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Summer 2018

Anticorruption: How to Beat Back Political & Corporate Graft



Robert I. Rotberg, guest editor

with Alina Mungiu-Pippidi · Bo Rothstein
Michael Johnston · Matthew M. Taylor
Paul M. Heywood · Susan Rose-Ackerman
Zephyr Teachout · Louise I. Shelley · Mark L. Wolf
Sérgio Fernando Moro · Sarah Bracking
Rotimi T. Suberu · Jon S.T. Quah · Minxin Pei



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“Anticorruption: How to Beat Back Political & Corporate Graft”

Volume 147, Number 3; Summer 2018

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Inside front cover: Demonstrators protesting against South African President Jacob Zuma and calling for his resignation hold placards and shout slogans outside the Gupta Family compound in Johannesburg on April 7, 2017. Zuma had long been accused of being in the sway of the wealthy Gupta business family, allegedly granting them influence over government appointments, contracts, and state-owned businesses. © 2018 by Gulshan Khan/AFP/Getty Images.

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Accomplishing Anticorruption: Propositions & Methods

Robert I. Rotberg

Abstract: The insidious practice of corruption cripples institutions, consumes communities, and cuts deeply into the very structure of people's lives. It destroys nations and saps their moral fiber. Corruption is invasive and unforgiving, degrading governance, distorting and criminalizing national priorities, and privileging acquisitive rent-seeking, patrimonial theft, and personal gains over concern for the commonweal. It also costs an estimated \$1 trillion annually – roughly a loss of 2 percent of global GDP – and disproportionately affects the most needy countries and their peoples. This opening essay shows that these baleful results need not occur: the battle against corrupt practices can be won, as it has been in several contemporary countries and throughout history. Ethical universalism can replace particularism. Since collective behavioral patterns and existing forms of political culture need to be altered, anticorruption endeavors must be guided from the apex of society. Consummate political will makes a critical difference. Anticorruption successes are hard-won and difficult to sustain. This essay and this special issue show what can and must be done.

ROBERT I. ROTBERG, a Fellow of the American Academy since 2005, is President Emeritus of the World Peace Foundation and Founding Director of the Program on Intra-state Conflict and Conflict Resolution at the Harvard Kennedy School. He is the author of *The Corruption Cure: How Citizens and Leaders Can Combat Graft* (2017), *Africa Emerges: Consummate Challenges, Abundant Opportunities* (2013), and *Transformative Political Leadership* (2012), and the editor of *Corruption, Global Security, and World Order* (2009).

Confronting and curbing corruption are not impossible. We now know how to transform wildly corrupt countries into largely graft-free polities. We know what works reliably, what works occasionally, and what works only under optimal conditions. We know that talented political will is essential. But we also know that altering corrupting incentives for individuals is less powerful than shifting the contours of behavior collectively.¹

Corruption is a systemic malady, emerging from the top down rather than the bottom up.² That is, the stain of corruption spreads from the attitudes and permissive policies of persons at the top of political and corporate entities downward. Leaders set the tone; misconduct at one level of authority implicitly authorizes the next. Integrity or its absence therefore seeps into the collective societal consciousness: either to make corruption an ongoing social practice and an essential (even if de jure forbidden)

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component of a governing political culture; or more rarely, to accomplish the reverse, creating legal and normative barriers to wholesale approval of corrupt practices.

We know that corruption can be reduced or even nearly extirpated at the national level because a number of nation-states (most of them small and tightly controlled) have in modern times succeeded in transitioning from wholesale corruption to the pursuit of a fully ethical system. One or two small, fully democratic states have also managed to develop successfully without enduring any periods of corruption, in part by introducing widespread changes in their peoples' understandings of corruption. In China, the world's most populous nation, President Xi Jinping's lengthy and aggressive anticorruption campaign may result in the diminution of many enduring corrupt endeavors, even if his foremost goals for the campaign are doubtless political.

Fortunately, to buttress what we have learned from the contemporary experience of those democratic and quasi-democratic entities that have beaten back corruption and effectively altered their prevailing political cultures, we also now understand that today's least corrupt countries were once themselves promiscuously crooked, but shifted incrementally over the nineteenth and twentieth centuries from having widespread to very limited tolerance of corruption. These changes took place thanks to gifted leadership, the influence of the Enlightenment, the spread of mass education, the emergence of autochthonous churches, and the rise of merit-based bureaucratic systems. Bo Rothstein's essay in this volume emphasizes the role of education: "With the introduction of free public education," he writes, "citizens got a stake in a well-functioning public sector and thus found a reason to oppose corruption."³ Education also engendered loyalty to the state and an embryonic sense of nationality.

Effectively, these peoples – mostly European, followed in the twentieth century by a few Asian and African populations – moved away from particularism, wherein "individuals [are] treated differently according to status," to what Alina Mungiu-Pippidi and others call ethical universalism, or the equal treatment of all in the delivery of government services and opportunities. As Mungiu-Pippidi asserts in this volume,

Particularism, rather than ethical universalism, is closer to the state of nature (or the default social organization) and...its opposite, a norm of open and equal access or public integrity, is by no means guaranteed by political evolution.⁴

But when a society does reach that point, acculturative anticorruption efforts have been internalized by the political culture and the body politic. In other words, ethical universalism (hardly a utopian concept) replaces corruption and patrimonialism – malign allocational norms – with public-spiritedness and fairness in governance and politics, corporate behavior, and daily life. Ethical universalism "presumes that all inhabitants of a jurisdiction will be treated fairly, equally, and tolerantly – that minorities are entitled to the same privileges and opportunities as majorities, and that groups large and small can anticipate receiving similar rights and privileges."⁵

In the Nordics, elsewhere in Northern Europe, and even in the Antipodes, there has been a major and profound shift from the societal expectation that position, fortune, and licenses are obtained primarily by buying influence and access from rulers and their bureaucrats to a presumption that such goods can be attained through personal achievement and merit. Collective behavioral responses have evolved toward an anticorrupt norm. In other words, elites, and later entire populations, first in Prussia and the Nordic nations and then

in the Netherlands, Britain, New Zealand, and Canada, gradually discovered that their political and corporate endeavors could succeed optimally only if the temptation to gain power and preferment by virtue of corrupt transactions and influence were reduced as much as possible.

These ineluctable advances in the functioning of these relatively small societies constituted a virtuous circle: empowerment encouraged institutions to function and citizens to use them well. Citizen participation in turn strengthened political institutions. As Matthew Taylor puts it: “In a word, Denmark.”⁶

Elsewhere, by contrast, regional corruption remains. For example, although Chileans’ interactions with their police forces and bureaucrats are free of petty corruption, in nearby Argentina, Bolivia, Peru, and Brazil, that is not always the case. And in all of those South American countries, among others, grand corruption still flourishes, as clearly demonstrated by Brazil’s Odebrecht corporate bribing scandal and the ongoing *Lava Jato* investigation and prosecution of intertwining corrupt Petrobras, Odebrecht, and government officials. (Judge Sérgio Fernando Moro, who presides over the *Lava Jato* cases, writes in his essay in this volume about how today’s Brazilian corruption is being prosecuted and tried.)⁷

Africa, too, has seen mixed success on corruption, with a tiny handful of exemplary anticorruption efforts. There may be residual corruption in Botswana, but its citizens do not anticipate being fleeced at police roadblocks or told that marriage and driving licenses are only available for an extra fee, paid under the counter. In contrast, neighboring Zimbabwe was awash until 2018 with roadblocks manned by machine gun-toting, woefully underpaid policemen; permits were only procured by bribes; and electricity or water only arrived at households by special ar-

rangement.⁸ One expects to be extorted in Kenya, Nigeria, or Zambia; but not in Botswana or Mauritius; and less often nowadays in Benin and Ghana. The striking differences in attitudes in those less corrupt polities come after decades of leader-induced revampings of “standard operating procedures.”

The less corrupt African societies, and those in Europe, Asia, and Australasia, are separated from the run of their peers by critical shifts in prevailing political cultures that took place during the last sixty years, that were engineered from above, and that were orchestrated largely by example and with an emphasis on integrity. Taylor, in his essay in this volume, calls these striking anticorruption improvements “positive equilibrium shifts.” In earlier centuries, the Nordics and other peoples achieved the same radical enhancements in expectations, but over much longer periods and much more gradually. Rothstein’s essay in this collection emphasizes that the Nordic transformation was largely driven “indirectly” (that is, anticorruption was a by-product of robust reforms universalizing public goods), a strategy that Rothstein also recommends to advocates and implementers of twenty-first-century anticorruption efforts.⁹

Canada provides another example of incremental institutional changes to corruption norms. Canada’s first prime minister openly took bribes in exchange for authorizing railway and construction contracts. By the end of the nineteenth century, politicians still profited from their positions at the provincial level, but hardly ever federally. By the post-World War II period, Canadians had ceased to tolerate even most provincial chicanery, which was targeted by major prosecutions. But only in the twenty-first century have Canadians collectively embraced what we might call an absolute intolerance of rent-seeking, in-

fluence peddling, political and official advantage-taking, and overall sleaze in both public and private spheres of endeavor (not that rule-breaking does not here and there persist).

According to Transparency International's most recent Corruption Perceptions Index, Canada is the eighth-ranking least corrupt nation-state, following New Zealand, Denmark, Finland, Norway, Switzerland, Singapore, and Sweden. Tied with Canada are the Netherlands, Luxembourg, and the United Kingdom. Australia and the United States rank as somewhat more corrupt than Canada, according to recent iterations of this well-respected index.¹⁰

We know how to reform societies and eliminate the types of graft that erode society's fabric and impede economic growth. We even know – because British governor of Hong Kong Sir Murray MacLehose, Prime Minister Lee Kuan Yew of Singapore, and President Paul Kagame of Rwanda showed the way – that the inhabitants of city-states up through medium-sized nations can be retrained or resocialized relatively quickly to shun corrupt temptations. President Sir Seretse Khama of Botswana also demonstrated how a thoroughly democratic, tolerant, honest, political leader could encourage his associates, his followers, and the general population to refrain from the common regional acceptance of corruption as a way of life. Whereas Lee and Kagame led by example but also used coercion, Khama socialized his citizens within a totally democratic environment, and so taught them to operate very differently from their peers in neighboring states. So did Prime Minister Sir Seewoosagur Ramgoolam and his successors in Mauritius. They accomplished in modern times what the kings of Denmark and leaders in Sweden, Norway, and Finland managed to do, using a combination of coercive and social-shaming methods, from the late eighteenth century onward. In mod-

ern Europe, Estonia and Georgia have more or less followed the Botswanan and Hong Kong models in their shift from Soviet-style criminalized corruption to Nordic-like paradigms. So have Costa Rica, Uruguay, and Slovenia.

The anticorruption ideal is common to all nations, all traditional cultures. There is very little evidence that the nature and practices of corruption vary from culture to culture or that the corrupt act itself is viewed more permissively in some societies than in others. Nor is there any evidence that the presence of everyday grand or petty corruption helps a modern nation to function effectively; there is no evidence that corruption somehow appropriately greases the wheels of commerce, improves official service delivery, and incorporates outgroups into a political, social, or economic environment from which they would otherwise be excluded. Systematically cleansing an infected country of small-scale extortions helps just as much as jailing venal offenders to demonstrate that corruption is dysfunctional and an impediment to economic and social growth.

In the twenty-first century, in the “global village,” no nation-state permits bribery, graft, and extortion; a diverse collection of states legally defines private, public, and overall abuse congruently; and, most important of all, their diverse citizenries have no difficulty knowing the many ways in which their rulers, as well as the minor officials with whom they deal day-to-day, are corrupt. Even kleptocracies and other excessively corrupt regimes – the largely criminalized states at the bottom end of the Corruption Perceptions Index – all publicly hold that they prohibit and abhor corrupt behavior.

In 2018, no group of citizens anywhere is demanding more corruption, less transparency and accountability, or more compromised service delivery. Only multinational corporations with their eyes on a

resource prize or wealthy, small countries seeking to host a global sporting championship favor outright covert bidding for services or results that (in theory) should be provided on the basis of merit. If at one time the distinctions between corrupt bids and honest competition, or between a bribe and a gift, were poorly illuminated, this demarcation is now increasingly appreciated in urban and middle-class Africa, Asia, and the Americas, even if it is adhered to only indifferently.¹¹

In spite of increasing consensus on the illegitimacy of corrupt principles of allocation, the long hand of corruption nonetheless extends across borders. Louise Shelley's essay demonstrates how it takes both corrupt national officials and low-level professionals – operating not only in developing states or conflict zones but in free trade zones and corporate offices – to facilitate the wholesale pilfering and devastation of illicit trading schemes. Shelley recounts the huge sums of money involved in the smuggling of guns, drugs, and people within and across national borders. But she also makes clear that the trade in rare environmental resources, including ivory and rhino horn provided by poachers and timber harvested from old-growth rain forests, can only flourish because of high- and low-level corruption. Gatekeepers such as customs agents and airport personnel are rewarded when they facilitate the movement of contraband cigarettes, illegally harvested timber, precursor chemicals for synthetic drug fabrication, and all manner of counterfeit goods (including those sold on the Internet or Darknet).

Criminalized syndicates reach high into many governments; corrupt kleptocrats and insurgent groups like Boko Haram and Al Shabaab find funding through such high-level contacts. Unfortunately, as important as stanching the flow of trafficked goods and persons is for national governments, their poor citizens, the tourism in-

dustry, and ultimately the environmental sustainability of the planet, there exist few proven anticorruption initiatives capable of dealing effectively with illicit trade. An International Anti-Corruption Court, perhaps organized analogously to the International Criminal Court, as Judge Mark Wolf proposes in his essay, could help. So could globally exposing money-laundering and cross-border currency movements and the shuttering of those places where ill-gotten gains are stashed, including offshore tax havens.

These transnational flows complement the use of corrupt extractive techniques within individual countries. The most egregiously corrupt are also thoroughly criminalized and, usually, repressive. In the many nations in which leaders prey on their citizens by purloining much of their wealth (including many post-Soviet and African nations), anticorruption efforts are much harder to imagine, and their successful outcomes rare or nonexistent. These are the criminalized or criminal states, where the entire point of a presidency is not to rule for the people, but for oneself, one's family, and one's cronies. These are extractive enterprises where we cannot expect bad rulers to be voted out (although the Gambia is an unusual exception and President Robert Mugabe's removal from Zimbabwe's presidency by a gentle coup may prove positive) or well-meaning foreign donors to have influence. They are family concerns or, as in Afghanistan, fiefdoms arrayed against one another, each to benefit its own followers.¹²

What can be done to pry populations from under the heel of such corrupt despots? World order, in the form of kinetic exercises of power and United Nations Security Council sanctions, can make money laundering and banking difficult, or in some cases impossible, for criminalized states. World powers can place embargoes on imports and exports, seal bank accounts,

and hinder the travel of autocrats outside of their home states. Democratic neighboring entities can shun those who hold illegitimate power, refusing diplomatic dealings or otherwise recognizing them as leaders. The aforementioned International Anti-Corruption Court could also bring the criminally corrupt before a globally legitimated bar of justice. Such a new court would subject those who are above law in their own countries to what the rule of law imposes in most democratic states. An International Anti-Corruption Court could also trace and help to contain the movement abroad of ill-gotten personal wealth and the proceeds of corrupt transactions.

There are a number of conceptual approaches that, if honored and developed, can reduce corruption within nation-states. Foremost is the full functioning of the rule of law. Moro, in his essay in this volume, reiterates that strong laws against corruption are necessary to authorize and propel effective anticorruption actions. He writes:

Better laws can improve the efficiency of the criminal justice system and increase the transparency and predictability of relations between the public and private sectors, reducing incentives and opportunities for corrupt practices.¹³

But reasonable laws are in no way sufficient on their own. Those legal strictures need to apply to everyone, not just the poor and powerless. If not, a country risks “a progressive erosion of trust.”

For many decades, politicians and powerful businessmen were largely immune from effective prosecution for corruption in Brazil, as in so many other seriously corrupt nations. In Brazil, grand corruption was systemic; it had become a “standard operating procedure” at the state and national political and corporate levels. But gradual changes in the law, as well as growing pressure for more effective judicial ac-

tion, culminated in the first conviction of a sitting federal politician in 2012, followed by a number of high-profile corruption sentences in subsequent years. Congress also authorized the use of plea bargains to obtain evidence of corruption, and of pretrial detention to prevent new offenses. These rule-of-law reforms enabled Brazilian prosecutors and Moro and his fellow judges to pursue charges of corruption against individual politicians, political parties, and corporations, strengthening the rule of law in Brazil and helping to bring the impunity that politicians had long enjoyed to an unceremonious end.

These are among the important lessons for anticorruption efforts everywhere, not just Brazil. Furthermore, whereas the United States has recently retreated from its long prohibition against lavish corporate contributions to domestic politicians’ electoral efforts, Brazil’s Supreme Court, recognizing the pernicious role of unlimited monies in elections, has now outlawed corporate transfers of cash to political forces until Brazil’s troubled legislative and executive branches can set reasonable limits.¹⁴

Singapore long ago severely restricted electoral campaign expenditures, thus theoretically obviating the need for politicians to seek help in paying for such costs. European and South American nations do the same and, like Singapore and many other parliamentary systems, permit only abbreviated preelection periods of vote solicitation. Greatly curtailing the amount of money needed to win a legislative seat turns out to be a powerful anticorruption tool, as Lee Kuan Yew presumed. In his contribution to this volume, Rotimi Suberu writes, also, of how significant electoral institutional reforms can contribute to a reduction of Nigeria’s predilection toward corrupt behavior.

Creating special anticorruption commissions or agencies to investigate and com-

bat corrupt activities within specific political jurisdictions was an institutional invention of the 1950s and 1970s. Implicitly using a principal-agent model of how corruption worked, political executives and legislatures may have thought that the existence of such commissions would lead, after hard forensic investigation of crooks in governmental or paragonovernmental activities, to the prosecution and elimination of much corruption. But, as we now know, only when such a new institution is backed by abundant political will can it succeed in accomplishing its mandated task.

Jon S.T. Quah's essay reviews how the Singapore and Hong Kong anticorruption commissions – the most successful in history – helped to carry out the mandates of hard-charging executives who were determined to break corrupt practices within their city-states. Their regimes provided sufficient funding and manpower to make the commissions powerful. They also gave them independence and protected them from political and gangster pushback (unlike the comparable body established in Indonesia in 2002). In other words, an abundance of political will contributed to their efficacy.

Quah contrasts successes in those two jurisdictions with the failure of the commission model to bolster anticorruption efforts in the Philippines (even before the presidency of Rodrigo Duterte) and India. I indicate elsewhere, too, that of the fifty or so anticorruption commissions established in Africa and Asia, only a handful proved effective. Most were led by well-intentioned judges or prosecutors, but only in Botswana and Mauritius, and for a time in Zambia and Nigeria, were these commissions permitted to act in an unfettered manner. Unlike the commissions in Singapore and Hong Kong, their investigations were often negated by attorneys-general or by heads of state. Some culprits were just too powerful (as in Brazil, which had no such commissions before

2012) to be taken to court and punished; ironically, some of the accused were able to buy their way out of investigation. And in a few places (such as Malawi and Zambia in this century), heads of state naturally refused to permit anticorruption commissions to investigate their own persons. As a result, most of the African commissions ended up concerning themselves with the small fry, not major embezzlers, as Namibia's anticorruption commission is currently doing.¹⁵ Rothstein's Quality of Government Institute at the University of Gothenburg concluded after extensive survey research (cited in Rothstein's essay in this volume) that the establishment of special institutional anticorruption arrangements have proved effective anticorruption instruments only in special cases. Mungiu-Pippidi advances additional evidence that

countries that adopt autonomous anticorruption agencies, restrictive party finance legislation, or whistleblower protection acts make no more progress on corruption than countries that do not.¹⁶

For these reasons, Suberu's anticorruption recipe emphasizes the enhanced autonomy of critical Nigerian federal oversight bodies and offices and would devolve authority (and power) to subfederal entities. To some extent, what Suberu advocates resonates with Paul Heywood's plea for the disaggregation of corruption statistics and awareness: he cautions us against regarding corruption as only a nation-based problem, rather than one that also infects subsidiary regions and operates transnationally.¹⁷

Holding rule-makers and government actors accountable is also essential: accountability is the rubric under which Matthew Taylor and others wish to place the equilibrium-shifting activities that will bring about meaningful anticorruption advances. For Taylor, accountability encompasses oversight and sanctions.

With respect to transparency – widespread information sharing – Taylor applauds the reforms in Georgia that made governmental functions less opaque, civil-service examinations competitive, university entrance tests truly fair, and interactions with bureaucrats more automated.¹⁸ As Moro states in his essay, making the evidence and procedure of the courts in the Lava Jato corruption cases fully public produced “the popular support necessary for the enforcement of the law.” It also hindered the obstruction of justice by “powerful defendants.”¹⁹

Moro also reveals that oversight – the evaluation of a government’s performance by publics and special auditors – was enhanced in Brazil by greater monitoring of local government functioning and by improved municipal auditing mechanisms. In South Africa, where the state (as Sarah Bracking’s essay discloses) was captured by corrupt entrepreneurs in cahoots with the chief executive, critical oversight was advanced by the public prosecutor (an ombudsperson), a free media, and unfettered political opposition.

Sanctions – the demonstration that societal norms work – included the sacking of vast numbers of official offenders and thousands of presumably corrupt policemen. Sanctions of this kind enhance social trust, their most important contribution to the anticorruption endeavor.

All of these management enhancements led in Georgia to greater institutional effectiveness – enhanced bureaucratic capacity combined with broad engagement by citizens – and, importantly, improved tax-collection abilities. They also included the creation of several anticorruption agencies to prosecute further the war against prevailing (inherited from Soviet times) corrupt practices. In Georgia, however, these “accountability” reforms also led to the kinds of regime domination and “hyper-centralization” that eventually worked against the

completion and sustainability of Georgia’s anticorruption drive. Elsewhere, “accountability” has advanced according to Taylor’s formula without the loss of momentum and the ultimate equilibrium-shift failure (abbreviated or aborted acculturation) that he describes.

Strengthened rule-of-law regimes and improvements to accountability theory and mechanisms depend on active political will. Rarely do effective, sustainable, remedial actions against the scourge of corruption occur without the exercise of consummate political will on the part of a national or regional political chief executive. As Quah’s essay indicates (and other literature supports), successful anticorruption endeavors depend on transformative leaders and civil-society reformers working separately or together to establish or reconfigure existing political cultures. That is what happened in Botswana, Hong Kong, Singapore, and Rwanda. This is what Xi Jinping in China and Crown Prince Mohammed bin Salman in Saudi Arabia may also be trying to do.

Minxin Pei doubts very much that Xi wants or can accomplish such an objective:

Xi’s anticorruption crackdown is less unusual than it appears. What separates it is its ferocity and length, which are largely the result of Xi’s political motivation of conducting a de facto and full-scale purge under the guise of an anticorruption drive.²⁰

If Xi really wanted to reduce Chinese corruption, Pei reminds us, he would empower civil society and the media, two customary watchdogs, and not crack down harshly as he has on nearly all free expression and criticism of the state.

Exercising political will means leadership from the front, not from behind; it means diagnosing societal ills and articulating solutions that, after careful analysis and broad explanation, can be sold to

skeptical publics and opponents. Political will is active, not passive, leadership. Often it is bold and courageous, politically risky. It puts a leader at any level squarely behind public policy choices that may not immediately be popular, may be difficult to accomplish, and may ultimately fail. Exercising political will exposes vulnerabilities. Political will means that a leader sets integrity standards, adheres to them, and attempts by a variety of mostly democratic means to overcome opposition. But what does *integrity*, often positioned as the force opposing corruption, contribute? In his essay, Heywood writes at length about the meaning of integrity and what it contributes to the anticorruption endeavor.

To enunciate a novel policy direction for a state or a region is one thing. But to put the full weight of high public office or to stake the legitimacy of a presidency or premiership on an unproven proposition for societal reconfiguration, and to threaten established interest groups and criminalized elites, constitutes the essence of political will. Additionally, political will encompasses resolve. Expressing political will is never enough, however; no amount of bluster and exhortation can translate a change agenda into an acceptable and functional national program. The goals of an energetic political will are only achieved as a result of deep teaching, committed persuasion, and the effective mobilization of large arrays of peoples behind a clearly defined and intelligible project attractive to whole communities and legions of voters. This is the essence of the anticorruption agenda in polities, contemporary or historical, that have been shifted by leadership action from a deep acceptance of corrupt behavior toward a robust approval of new noncorrupt norms.²¹

In addition to these relatively large-scale attitudinal changes that are fundamental to any anticorruption campaign, now there are a number of ways in which em-

ploying modern technology can assist battles against the corruption scourge.

Alongside committed political will, technological innovations can be effective in tackling grand corruption, but they are best positioned to assist efforts to minimize corruption at the petty level.²² Indeed, in many corrupt settings, the ubiquitous smartphone enables even the least privileged to access rules and regulations and thus to match wits and knowledge, for the first time, with bureaucratic insiders. Needing to bribe for services that are a citizen's by right, not favor, could in this manner become an impost of the past.

Putting nearly all licensing or permitting operations online is the simplest and most direct use of modern technology to moderate or defeat petty corruption. If interactions are completed online via user-friendly interfaces (preferably on a mobile telephone), a client can obtain birth certificates, marriage licenses, and all kinds of documents from what in India is called the permitting Raj without being hit up for bribes or "tea money." In theory, all supplicants seeking a bureaucratic transaction would be treated equally, by an algorithm or a computer. Because none could be favored, no application process could be expedited or slowed down without direct interference with the program. Applicants could also file for a permit using a number, rather than their names, which would mean that it would be even harder to discriminate for or against a particular person or group. This is the method that post-Soviet Georgia employed to end bribery and favoritism in university entrance examinations.

When routine bureaucratic interactions are automated and human oversight is reduced or eliminated, corruption recedes. This new method of limiting and enhancing a state's dealings with its citizens and clients could also be extended to immigration services and customs halls; there, processes of naturalizing citizens or im-

porting goods might be treated with more impartiality by nonhuman-mediated interactions. Advanced, algorithmically driven computer programs can limit the very discretion that has long enabled corrupt practices to flourish.

Extortionate efforts – by hospital clerks to admit an injured person, a principal to permit a pupil to enroll, or a policeman to wave a car with bald tires through a barrier, all for a fee – might also, with some clever technological adaptations, be reduced, if not eliminated, given sufficient political will from above. Petty corruption could be overwhelmed or greatly reduced if available modern technological resources were employed to substitute for face-to-face encounters (especially if they are in user-friendly formats such as smartphone apps).

Handheld devices and webcams can also permit citizens to gather audiovisual evidence of attempts at extortion by officials, by policemen at roadblocks, or by physicians and nurses in government hospitals selling medicines and supplies to patients. If a high- or low-ranking official asks for a bribe, a citizen can surreptitiously record the incident. Indeed, the very act of capturing these illegal but common abuses of authority can empower citizens and change their political consciousness even if the process only rarely leads to punishment.

Even though NGOs and civil society, working on behalf of citizens, do not always know exactly how to translate this sort of documentation into reform, it has helped to make parts of South and Central Asia and sections of sub-Saharan Africa more corruption-free than before. Mobile-telephone services such as Ushahidi (“Testimony”; a mobile data-gathering app used in nine countries) and Frontline SMS give local citizens the ability to track human rights violations and violators, note violent acts in real time, and reveal security breaches. Bribespot.com (which originated in Estonia) allows users to send anon-

ymous texts reporting bribes in eight languages, with compatibility for additional languages and nations coming soon. Ipaidabribe.com is well-used in India.

In future years, governments and civil-society operatives will increasingly utilize handheld devices to empower anticorruption endeavors. (Pakistan is a pioneer already.) As smartphones get smarter and as 4G and 5G (and perhaps one day 6G) wireless networks are extended, those technological advances will become less expensive and more accessible. The hope, therefore, is that their deployment will make it possible to disseminate information about corruption widely and to collect hard data about corruption and corrupt acts almost instantaneously. In Afghanistan, for example, the United States Agency for International Development (USAID) has sponsored an extensive scheme to track and monitor governmental financial transactions via mobile technology in an effort to deter officials from the wildly corrupt dealings that are otherwise common there.

When official data of all kinds are made accessible, astute civil-society actors can also uncover previously unknown corruption trends via data analysis. In Mexico, for example, a think tank examined the rolls of the public educational system and discovered more than 1,400 teachers who had allegedly been born on the same day in a single year. The ghost teachers were then purged from the rolls, depriving officials who had been pocketing their pay of easy money. Similarly, in Nigeria, investigators discovered evidence of serious money laundering by poring over property and company registers. Tax authorities in many countries are able to discover the real owners of more than eighty-five million companies worldwide by searching OpenCorporates, a British-founded web compendium of property registers from more than one hundred nations and political entities. The more data appear online, the more they

can be analyzed to expose – and hopefully to end – corrupt practices. (See the Panama and Paradise Papers, for example.) As Mungiu-Pippidi suggests, civil-society organizations and others can then monitor “how many public contracts go to companies belonging to officials or how many people put their relatives on public payrolls.”²³ Making data sources like these open and universally accessible through public or semipublic entities (such as governments or registers of commerce) always helps.

The use of modern opinion-polling methods can reveal how citizens evaluate local corruption and whether they see progress being made in reducing it. Transparency International’s Global Corruption Barometer Survey performs this function in a number of countries. The Latinobarometro and Afrobarometer instruments both also assess citizens’ views of graft on their continents. The Gilani Research Foundation does the same in Pakistan. More specialized surveys, such as Cyprus’s bribery survey, provide information that assists civil societies, governments, and donors in assessing the extent and varieties of corrupt behavior in a particular political jurisdiction. The international charity Oxfam provides trusted surveys about public services that help deter the proliferation of corrupt practices.

There is no end to the relevant and helpful data that can be accumulated through judicious polling of mobile-telephone subscribers, pedestrians on the street, shoppers in a market, and people gathered around a village water pipe. In one context after another, such data provide abundant evidence of public discontent with the corrupt practices of those who rule over societies and citizens smothered by the sleaze and alarmed by the stench of corruption. The question for civil-society and political reformers in each of those affected nation-states thus quickly becomes how best to transform mass resentment and mass

resignation (or resilience) into anticorruption energy that will bring about meaningful change for the better.²⁴

Most of the anticorruption initiatives discussed in this issue of *Dædalus*, and in the many books and articles previously published by its contributors, focus on the public and political spheres, in which private profiteering from official positions is both illegal and everywhere frowned upon culturally. For a long time, the academic discussion of corruption and anticorruption, where it existed at all, accordingly focused primarily on that public sphere. So did the international lending institutions and most foreign aid donors. More recently, however, both scholars and practitioners have come to realize that private corruption (primarily corporate corruption, but also corruption in quasi-public bodies such as the key athletic federations like FIFA and the International Olympic Committee) is as pernicious and destructive to citizen rights as purely state-based corruption. Impartiality – often honored only in the breach – is important in all of those spheres. Transparency International, in its definition of corruption, rightly refers to abuses of entrusted power rather than abuses only by persons in public positions.

Susan Rose-Ackerman’s essay in this volume seeks to distinguish between behavior that is unproblematically “corrupt” – petty payoffs, massive kickbacks, vote buying – and a host of other situations in which private wealth influences public (and private) choices. “I reject,” she writes,

an expansive notion of corruption that covers all cases in which private wealth affects public choices, either directly or indirectly. That is an impossibly broad definition.²⁵

She also notes that private wealth “distorts the exercise of public power, directing it away from majoritarian preferenc-

es and values.” But, she continues, labeling all such “distortions” as corrupt “sets an idealized standard of purity, implying that virtually all politicians and officials are guilty of corruption.”²⁶

Zephyr Teachout, by contrast, builds a much more expansive and critical argument. Her essay regards the largest multinational global corporate entities – such as Amazon, Google, and Facebook – as inherently monopolistic, and therefore corrupt because of the baleful influence that they and their vast wealth can exert on the actions and policies of nation-states. (Smaller corporations simply do not have the capacity for such corrupting influence.) Teachout argues forcefully for limiting the monopolistic power of those twenty-first-century trusts, at a minimum shielding the body politic from the untrammelled power of such behemoths. Amazon and Apple should be limited, she argues, in their ability to drive market prices lower or unfairly to prioritize search results. Comcast and Monsanto should be broken up. For Teachout, being monopolistic means being corrupt, since distorting public goods is often in the best interest of corporate expansion. “Corporate monopolies are a result,” Teachout explains,

of legal frameworks that enable excessive concentration of private power, limit the freedom to engage in moral action by officers and directors, and create overwhelming incentives to bend public power to selfish ends.... Multinational corporations, at a certain size and with enough power, are built to corrupt.²⁷

At a lesser scale, the acknowledgement of harm from business-to-business corruption, and its early curbing, flowed from Governor Sir Murray MacLehose’s reform efforts in Hong Kong in the 1970s. His pathbreaking Independent Commission Against Corruption (ICAC) was established to rid the then–British colony of graft, to end official and police collu-

sion with Chinese criminal gangs, and to destroy both tender and permit fraud. But MacLehose and his associates also realized that what happened within the corporate sector – within law firms and manufacturing and service enterprises – was equally destructive of the public trust. For those reasons, the ICAC was instructed to investigate both forms of venality equally. In an additional breakthrough innovation by MacLehose, the ICAC was given a mandate to educate businessmen, officials, and schoolchildren about the varieties and dangers of corruption. Quah’s essay develops that theme well. Heywood, in another geographical setting, emphasizes the importance of preventing corruption well before it emerges. Pei reminds us, too, that Xi’s campaign against corruption focuses exclusively on punishment, not on prevention; Xi need not learn from Hong Kong because he has other, not necessarily anticorruption, goals in mind.

It is obvious that multinational companies are also among the biggest bribe payers globally. The U.S. Foreign Corrupt Practices Act; the British, Canadian, Dutch, and French antibribery acts; and the OECD Convention Against Corruption curtail and catch some of this supply-side graft. The Extractive Industries Transparency Initiative, a global initiative to make foreign corporate payments to governments in the mining and petroleum and gas exploitation arenas open to inspection, tries to expose as much influence and concession buying as possible. As Moro’s essay makes clear, joining Teachout’s admonitions:

Companies must therefore do their homework, denouncing requests or demands for bribes, as well as implementing mechanisms of internal control and accountability that make it difficult or impossible to pay or receive them. It is also important for private-sector actors to work collectively so that

companies involved in corrupt practices are identified and isolated from the market and not allowed to assume a preeminent position.²⁸

The contributors to this issue of *Dædalus* do not uniformly embrace all of the above-mentioned frameworks or ingredients of anticorruption success. Indeed there is some spirited disagreement between authors, nearly all of whom are acknowledged and well-published authorities in the study of corruption as a phenomenon, regarding corruption as a social malady, as a weighty drag on development, and as a major contributor to the societal ills suffered by millions of the world's most impoverished peoples. Despite their different approaches to combating corruption, debates about the best way of effecting real improvements in corrupt nations, and concerns that prescribing exact curing remedies is premature, most of our writers consider a number of the factors already discussed in this essay as necessary, if not

sufficient, for the pursuit of an efficacious and responsible anticorruption program.

Robert I.
Rotberg

In addition to agreeing on some basic principles, our authors also suggest imaginative ways of advancing the anticorruption agenda. Rothstein prefers to make “war” on corruption and to let game and strategic military theory guide our efforts. Michael Johnston favors “deep democratization” – involving citizens fully in governing themselves – as the only path to defeating corruption. Mungiu-Pippidi wants international donors to contribute to the anticorruption project by imposing conditionality measures on their clients (such as compelling recipients to reveal the names and amounts of all procurement beneficiaries).

Overall, our authors combine theory and practice in order to offer a multifaceted anticorruption agenda of unparalleled ingenuity and promise that, when realized, could help to provide better social and economic outcomes to the many millions of people who live in deeply corrupt societies.

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ENDNOTES

- ¹ For a discussion of corruption as a collective action problem, see Bo Rothstein, “Fighting Systemic Corruption: The Indirect Strategy,” *Dædalus* 147 (3) (Summer 2018): 35–49.
- ² For a good explanation of what systemic corruption entails, see Sérgio Fernando Moro, “Preventing Systemic Corruption in Brazil,” *Dædalus* 147 (3) (Summer 2018): 157–168.
- ³ Rothstein, “Fighting Systemic Corruption,” 45.
- ⁴ Alina Mungiu-Pippidi, “Seven Steps to Control of Corruption: The Road Map,” *Dædalus* 147 (3) (Summer 2018): 23.
- ⁵ Robert I. Rotberg, *The Corruption Cure: How Citizens and Leaders Can Combat Graft* (Princeton, N.J.: Princeton University Press, 2017), 37.
- ⁶ This is Matthew Taylor's formulation in his essay in this volume. He draws on Bo Rothstein, Alina Mungiu-Pippidi, and Francis Fukuyama, among others. See Matthew Taylor, “Getting

- to Accountability: A Framework for Planning & Implementing Anticorruption Strategies,” *Dædalus* 147 (3) (Summer 2018): 66.
- ⁷ Moro, “Preventing Systemic Corruption in Brazil.”
- ⁸ Robert I. Rotberg, “Roadblocks and Bribes: Zimbabwe is Africa’s Shakedown State,” *Globe and Mail*, October 19, 2017, <https://www.theglobeandmail.com/opinion/roadblocks-and-bribes-zimbabwe-is-africas-shakedown-state/article36657279/>.
- ⁹ Rothstein, “Fighting Systemic Corruption.”
- ¹⁰ Despite its high rating by the CPI and other indexes, Canada still suffers from various kinds of corruption. For the details, see Robert I. Rotberg and David Carment, eds., *Canada’s Corruption: At Home and Abroad* (London: Routledge, 2018). For the Corruption Perceptions Index, see www.transparency.org/.
- ¹¹ This paragraph draws on Rotberg, *The Corruption Cure*, 27 – 28.
- ¹² The phenomenon is well described in Sarah Chayes, *Thieves of State: Why Corruption Threatens Global Security* (New York: W. W. Norton, 2015).
- ¹³ Moro, “Preventing Systemic Corruption in Brazil,” 162 – 163.
- ¹⁴ Susan Rose-Ackerman discusses corruption and electoral contributions trenchantly in her essay in this volume. See Susan Rose-Ackerman, “Corruption & Purity,” *Dædalus* 147 (3) (Summer 2018): 98 – 110.
- ¹⁵ Rotberg, *The Corruption Cure*, 109 – 175.
- ¹⁶ Mungiu-Pippidi, “Seven Steps to Control of Corruption,” 30.
- ¹⁷ Paul M. Heywood, “Combating Corruption in the Twenty-First Century: New Approaches,” *Dædalus* 147 (3) (Summer 2018): 83 – 97.
- ¹⁸ In his contribution to this volume, Michael Johnston is skeptical of transparency as an effective anticorruption strategy. See Michael Johnston, “Reforming Reform: Revising the Anti-corruption Playbook,” *Dædalus* 147 (3) (Summer 2018): 50 – 62.
- ¹⁹ Moro, “Preventing Systemic Corruption in Brazil,” 163.
- ²⁰ Minxin Pei, “How Not to Fight Corruption: Lessons from China,” *Dædalus* 147 (3) (Summer 2018): 225.
- ²¹ Rotberg, *The Corruption Cure*, 45 – 49. Johnston is again skeptical regarding the value of emphasizing political will in combating corruption. See Johnston, “Reforming Reform.”
- ²² Johnston and Mungiu-Pippidi argue against the utility of distinguishing or separating petty from grand corruption. See Johnston, “Reforming Reform;” and Mungiu-Pippidi, “Seven Steps to Control of Corruption.”
- ²³ Mungiu-Pippidi, “Seven Steps to Control of Corruption,” 28.
- ²⁴ This section draws, in part, on Rotberg, *The Corruption Cure*, 272 – 284.
- ²⁵ Rose-Ackerman, “Corruption & Purity,” 103.
- ²⁶ *Ibid.*
- ²⁷ Zephyr Teachout, “The Problem of Monopolies & Corporate Public Corruption,” *Dædalus* 147 (3) (Summer 2018): 112.
- ²⁸ Moro, “Preventing Systemic Corruption in Brazil,” 163.



CAN THE LAW REACH HIM?—THE DWARF AND THE GIANT THIEF.

Seven Steps to Control of Corruption: The Road Map

Alina Mungiu-Pippidi

Abstract: After a comprehensive test of today's anticorruption toolkit, it seems that the few tools that do work are effective only in contexts where domestic agency exists. Therefore, the time has come to draft a comprehensive road map to inform evidence-based anticorruption efforts. This essay recommends that international donors join domestic civil societies in pursuing a common long-term strategy and action plan to build national public integrity and ethical universalism. In other words, this essay proposes that coordination among donors should be added as a specific precondition for improving governance in the WHO's Millennium Development Goals. This essay offers a basic tool for diagnosing the rule governing allocation of public resources in a given country, recommends some fact-based change indicators to follow, and outlines a plan to identify the human agency with a vested interest in changing the status quo. In the end, the essay argues that anticorruption interventions must be designed to empower such agency on the basis of a joint strategy to reduce opportunities for and increase constraints on corruption, and recommends that experts exclude entirely the tools that do not work in a given national context.

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The last two decades of unprecedented anticorruption activity – including the adoption of an international legal framework, the emergence of an anti-corruption civil society, the introduction of governance-related aid conditionality, and the rise of a veritable anticorruption industry – have been marred by stagnation in the evolution of good governance, ratings of which have remained flat for most of the countries in the world.

The World Bank's 2017 Control of Corruption aggregate rating showed that twenty-two countries progressed significantly in the past twenty years and twenty-five regressed. Of the countries showing progress on corruption, nineteen were rated as either "free" or "partly free" by Freedom House (a democracy watchdog that measures governance via political rights and civil liberties); only seven were judged "not free."¹ Our governance measures are too new to

allow us to look further into the past; still, it seems that governance change has much in common with climate change: it occurs only slowly, and the role that humans play involuntarily seems always to matter more than what they do with intent.

External aid and its attached conditionality are considered an essential component of efforts to enable developing countries to deliver decent public services on the principle of ethical universalism (in which everyone is treated equally and fairly). However, a panel data set (collected from 110 developing countries that received aid from the European Union and its member states between 2002 and 2014) shows little evolution of fair service delivery in countries receiving conditional aid. Bilateral aid from the largest European donors does not have significant impact on governance in recipient countries, while multilateral financial assistance from EU institutions such as the Office of Development Assistance (which provides aid conditional on good governance) produces only a small improvement in the governance indicators of the net recipients. Dedicated aid to good-governance and corruption initiatives within multilateral aid packages has no sizable effect, whether on public-sector functionality or anticorruption.² Countries like Georgia, Vanuatu, Rwanda, Macedonia, Bhutan, and Uruguay, which have managed to evolve more than one point on a one-to-ten scale from 2002 to 2014, are outliers. In other words, they evolved disproportionately given the EU aid per capita that they received, while countries that received the most aid (such as Turkey, Egypt, and Ukraine) had rather disappointing results.

So how, if at all, can an external actor such as a donor agency influence the *transition of a society from corruption as a governance norm*, wherein public resource distribution is systematically biased in favor of authority holders and those connected with them, *to corruption as an exception*, a state that is

largely independent from private interest and that allocates public resources based on ethical universalism? Can such a process be engineered? How do the current anticorruption tools promoted by the international community perform in delivering this result?

Looking at the governance progress indicators outlined above, one might wonder whether efforts to change the quality of government in other countries are doomed from the outset. The incapacity of international donors to help push any country above the threshold of good governance during the past twenty years of the global crusade against corruption seems over- rather than under-explained. For one, corrupt countries are generally run by corrupt people with little interest in killing their own rents, although they may find it convenient to adopt international treaties or domestic legislation that are nominally dedicated to anticorruption efforts. Furthermore, countries in which informal institutions have long been substituted for formal ones have a tradition of surviving untouched by formal legal changes that may be forced upon them. One popular saying from the post-Soviet world expresses the view that “the inadequacy of the laws is corrected by their non-observance.”³

Explicit attempts of donor countries and international organizations to change governance across borders might appear a novel phenomenon, but are they actually so very different from older endeavors to “modernize” and “civilize” poorer countries and change their domestic institutions to replicate allegedly superior, “universal” ones? Describing similar attempts by the ancient Greeks – and also their rather poor impact – historian Arnaldo Momigliano writes: “The Greeks were seldom in a position to check what natives told them: they did not know the languages. The natives, on the other hand, being bilingual, had a

shrewd idea of what the Greeks wanted to hear and spoke accordingly. This reciprocal position did not make for sincerity and real understanding.”⁴

Many factors speak against the odds of success of international donors’ efforts to change governance practices, especially government-funded ones. One such factor is the incentives facing donor countries themselves: they want first and foremost to care for national companies investing abroad and their business opportunities; reduce immigration from poor countries; and generate jobs for their development industry. Even if donor countries would prefer that poor countries govern better, reduce corruption, and adopt Western values, they also have to play their cards realistically. Thus, donor countries often end up avoiding the root of the problem: when the choice is between their own economic interests and more idealistic commitments to better governance, the former usually wins out.

The first question a policy analyst should ask, therefore, is not *how* to go about altering governance in developing countries, but *whether* the promotion of good governance and anticorruption is worth doing at all, self-serving reasons aside. I have addressed these questions in greater detail elsewhere; this essay assumes a donor has already made the decision to intervene.⁵ The evidence on the basis of which such decisions are made is often poor, but realistically, due to the other policy objectives mentioned above (such as the exigencies of participation in the global economy), international donors will continue to give aid systematically to corrupt countries. As long as one thinks a country is worth granting assistance to, preventing aid money from feeding corruption in the recipient country becomes an obligation to one’s own taxpayers. For the sake of the recipient country, too, ensuring that such mon-

ey is used to do good, rather than actually to funnel more resources into local informal institutions and predatory elites, seems more of an obligation than a choice.

While our knowledge of how to establish a norm of ethical universalism is still far from sufficient, I will outline a road map toward making corruption the exception rather than the rule in recipient countries. To do so, I draw on one of the largest social-science research projects undertaken by the European Union, ANTICORRP, which was conducted between 2013 and 2017 and was dedicated to systematically assessing the impact of public anticorruption tools and the contexts that enable them. I follow the consequences of the evidence to suggest a methodology for the design of an anticorruption strategy for external donors and their counterparts in domestic civil societies.⁶

Many anticorruption policies and programs have been declared successful, but no country has yet achieved control of corruption through the prescriptions attached to international assistance.⁷ To proceed, we must also clarify what constitutes “success” in anticorruption reforms. Success can only mean a consolidated dominant norm of ethical universalism and public integrity. Exceptions, in the form of corrupt acts, will always remain, but if they are numerous enough to be the rule, a country cannot be called an achiever. A successful transformation requires both a dominant norm of public integrity (wherein the majority of acts and public officials are noncorrupt) and the sustainability of that norm across at least two or three electoral cycles.

Quite a few developing countries presently seem to be struggling in a borderline area in which old and new norms confront one another. This is why popular demand for leadership integrity has been loudly proclaimed in headlines from countries such as South Korea, India, Brazil, Bulgaria, and

Romania, but substantially better quality of governance has yet to be achieved there. While the solutions for each and every country will ultimately come from the country itself – and not from some universal toolkit – recent research can contribute to a road map for more evidence-based corruption control.

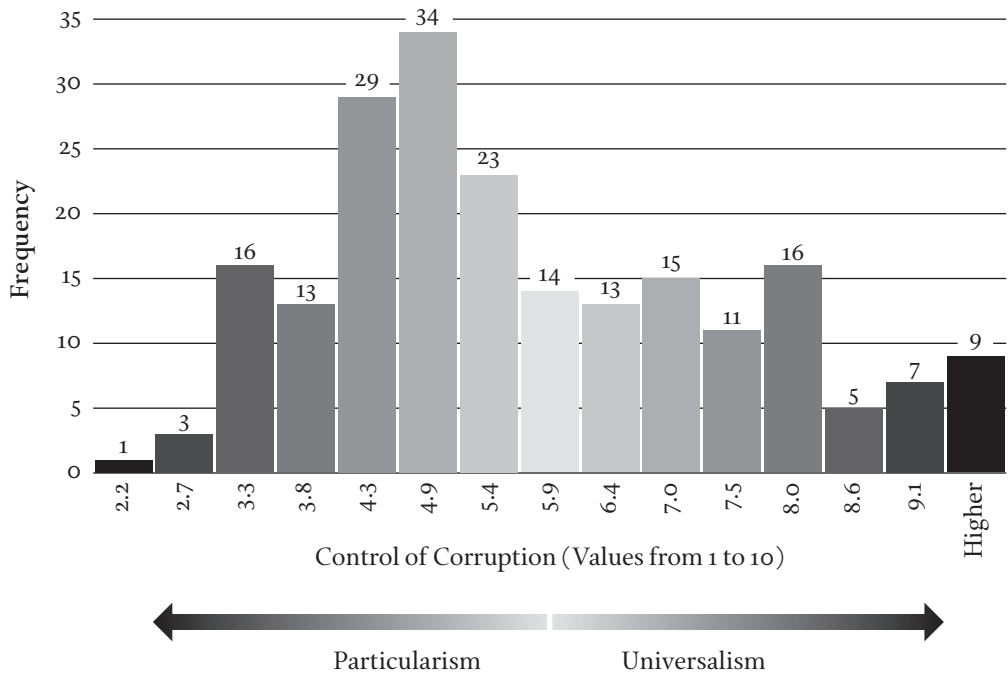
The first step is to understand that with the exception of the developed world, control of corruption has to be built from the ground up, not “restored.” Most anticorruption approaches are built on the concept that public integrity and ethical universalism are already global norms of governance. This is wrong on two counts, and leads to policy failure. First, at the present moment, most countries are more corrupt than noncorrupt. A histogram of corruption control shows that developing countries range between two and six on a one-to-ten scale, with some borderline cases in between (see Figure 1). Countries scoring in the upper third are a minority, so a development agency is more likely than not to be dealing with a situation in which corruption is not only a norm but an institutionalized practice. Development agencies need to understand corruption as a social practice or institution, not just as a sum of individual corrupt acts. Further, presuming that ethical universalism is the default is wrong from a developmental perspective, since even countries in which ethical universalism is the governance norm were not always this way: from sales of offices to class privileges and electoral corruption, the histories of even the cleanest countries show that good governance is the product of evolution, and modernity a long and frequently incomplete endeavor to develop state autonomy in the face of private group interests.

Institutionalized corruption is based on the informal institution of particularism (treating individuals differently according to their status), which is prevalent in col-

lectivistic and status-based societies. Particularism frequently results in patrimonialism (the use of public office for private profit), turning public office into a perpetual source of spoils.⁸ Public corruption thrives on power inequality and the incapacity of the weak to prevent the strong from appropriating the state and spoiling public resources. Particularism encompasses a variety of interpersonal and personal-state transaction types, such as clientelism, bribery, patronage, nepotism, and other favoritisms, all of which imply some degree of patrimonialism when an authority-holder is concerned. Particularism not only defines the relations between a government and its subjects, but also between individuals in a society; it explains why advancement in a given society might be based on status or connections with influential people rather than on merit.

The outcome associated with the prevalence of particularism – a regular pattern of preferential distribution of public goods toward those who hold more power – has been termed “limited-access order” by economists Douglass North, John Wallis, and Barry Weingast; “extractive institutions” by economist Daron Acemoglu and political scientist James Robinson; and “patrimonialism” by political scientist Francis Fukuyama.⁹ Essentially, though, all these categories overlap and all the authors acknowledge that particularism rather than ethical universalism is closer to the state of nature (or the default social organization), and that its opposite, a norm of open and equal access or public integrity, is by no means guaranteed by political evolution and indeed has only ever been achieved in a few cases thus far. The first countries to achieve good control of corruption – among them Britain, the Netherlands, Switzerland, and Prussia – were also the first to modernize and, in Max Weber’s term, to “rationalize.” This implies an evolution from brutal material interests (espoused,

Figure 1
Particularism versus Ethical Universalism:
Distribution of Countries on the Control of Corruption Continuum



Source: The World Bank, Worldwide Governance Indicators, Control of Corruption, <http://info.worldbank.org/governance/wgi/#home> distribution. Distribution recoded 1 – 10 (with Denmark 10). The number of countries for each score is noted on each column.

for instance, by Spanish conquistadors who appropriated the gold and silver of the New World) to a more rationalistic and capitalistic channeling of economic surplus, underpinned by an ideology of personal austerity and achievement. The market and capitalism, despite their obvious limitations, gradually emerged in these cases as the main ways of allocating resources, replacing the previous system of discretionary allocation by means of more or less organized violence. The past century and a half has seen a multitude of attempts around the world to replicate these few advanced cases of Western modernization. However, a reduction in the arbitrariness and power discretion of rulers, as occurred in

the West and some Western Anglo-Saxon colonies, has not taken place in many other countries, regardless of whether said rulers were monopolists or won power through contested elections. Despite adopting most of the formal institutions associated with Western modernity – such as constitutions, political parties, elections, bureaucracies, free markets, and courts – many countries never managed to achieve a similar rationalization of both the state and the broader society.¹⁰ Many modern institutions exist only in form, substituted by informal institutions that are anything but modern. That is why treating corruption as deviation is problematic in developing countries: it leads to investing in norm-enforcing instru-

ments, when the *norm-building* instruments that are in fact needed are quite different. Strangely enough, developed countries display extraordinary resistance to addressing corruption as a development-related rather than moral problem. This is why our Western anticorruption techniques look much like an invasion of the temperance league in a pub on Friday night: a lot of noise with no consequence. Scholars contribute to the inefficacy of interventions by perpetuating theoretical distinctions that are of poor relevance even in the developed world (such as “bureaucratic versus political” or “grand versus petty” corruption), which inform us only of the opportunities that somebody has to be corrupt. As those opportunities simply vary according to one’s station in life (a minister exhorting an energy company for a contract is simply using his grand station in a perfectly similar way to a petty doctor who required a gift to operate or a policeman requiring a bribe not to give a fine), such distinctions are not helpful or conceptually meaningful. In countries where the practice of particularism is dominant, disentangling political from bureaucratic corruption also does not work, since rulers appoint “bureaucrats” on the basis of personal or party allegiance and the two collude in extracting resources. Even distinguishing victims from perpetrators is not easy in a context of institutionalized corruption. In a developing country, an electricity distribution company, for instance, might be heavily indebted to the state but still provide rents (such as well-paid jobs) to people in government and their cronies and eventually contribute funds to their electoral campaigns. For their part, consumers defend themselves by not paying bills and actually stealing massively from the grid, and controllers take moderate bribes to leave the situation as it is. The result is constant electricity shortages and a situation to which everybody (or nearly everybody) contributes, and which has to

be understood and addressed holistically and not artificially separated into types of corruption.

The second step is diagnosing the norm. If we conceive governance as a set of formal rules and informal practices determining who gets which public resources, we can then place any country on a continuum with full particularism at one end and full ethical universalism at the other. There are two main questions that we have to answer. What is the dominant norm (and practice) for social allocation: merit and work, or status and connections to authority? And how does this compare to the formal norm – such as the United Nations Convention against Corruption (UNCAC), or the country’s own regulation – and to the general degree of modernity in the society? For instance, merit-based advancement in civil service may not work as the default norm, but it may in the broader society, for instance in universities and private businesses. The tools to begin this assessment are the Worldwide Governance Indicator Control of Corruption, an aggregate of all perception scores (Figure 1); and the composite, mostly fact-based Index for Public Integrity that I developed with my team (which is highly correlated with perception indicators). Any available public-opinion poll on governance can complete the picture (one standard measure is the Global Corruption Barometer, which is organized by Transparency International). Simply put, the majority of respondents in countries in the upper tercile of the Control of Corruption indicators feel that no personal ties are needed to access a public service, while those in the lower two-thirds will in all likelihood indicate that personal connections or material inducement are necessary (albeit in different proportions). Within the developed European Union, only in Northern Europe does a majority of citizens believe that the state and markets work impartially. The United States, developed Commonwealth

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countries, and Japan round out the top tercile. The next set of countries, around six and seven on the scale, already exhibit far more divided public opinion, showing that the two norms coexist and possibly compete.¹¹ In countries where the norm of particularism is dominant and access is limited, surveys show majorities opining that government only works in the favor of the few; that people are not equal in the eyes of the law; and that connections, not merit, drive success in both the public and private sectors. Bribery often emerges as a substitute for or a complement to a privileged connection; when administration discretion is high, favoritism is the rule of the game, so bribes may be needed to gain access, even for those with some preexisting privilege. A thorough analysis needs to determine whether favoritism is dominant and how material and status-based favoritism relate to one another in order to weigh useful policy answers. Are they complementary, compensatory, or competitive? When the dominant norm is particularistic, collusive practices are widespread, including not only a fusion of interests between appointed and elected office holders and civil servants more generally, but also the capture of law enforcement agencies.

The second step, diagnosis, needs to be completed by fact-based indicators that allow us to trace prevalence and change. Fortunately for the analyst (but unfortunately for everyone else), since corrupt societies are, in Max Weber's words, *status societies*, where wealth is only a vehicle to obtain greater status, we do not need Panama-Papers revelations to see corruption. Systematic corrupt practices are noticeable both directly and through their outcomes: lavish houses of poorly paid officials, great fortunes made of public contracts, and the poor quality of public works. Particularism results in privilege to some (favoritism) and discrimination to others, outcomes that can both be measured.¹²

Table 1 illustrates how these two contexts – corruption as norm and corruption as exception – differ essentially, and shows that different measures must be taken to define, assess, and respond to corruption in either case. An individual is corrupt when engaging in a corrupt act, regardless of whether he or she is a public or private actor. The dominant analytic framework of the literature on corruption is the principal-agent paradigm, wherein agents (for example government officials) are individuals authorized to act on behalf of a principal (for example a government). To diagnose an organization or a country as “corrupt,” we have to establish that corruption is the norm: in other words, that corrupt transactions are prevalent. When such practices are the exception, the corrupt agent is simply a deviant and can be sanctioned by the principal if identified. When such practices are the norm, corruption occurs on an organized scale, extracting resources disproportionately in favor of the most powerful group. Telling the principal from the agent can be quite impossible in these cases due to generalized collusion (the organization is by privileged status groups, patron-client pyramids, or networks of extortion) and fighting corruption means solving social dilemmas and issues around discretionary use of power. Most people operate by conformity, and conformity always works in favor of the status quo: if ethical universalism is already the norm in a society, conformity helps to enforce public integrity; if favoritism and clientelism are the norm, few people will dissent. The difference between corruption as a rule and corruption as a norm shows in observable, measurable phenomena. In contexts with clearer public-private separation, it is more difficult to discover corrupt acts, requiring whistleblowers or some time for a conflict of interest to unfold (as with revolving doors, through which the official collects benefits from his favor by getting a cushy

Table 1

Corruption as Governance Context

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	Corruption as Exception	Corruption as Norm
Definition	Individual abuses public authority to gain undue private profit.	Social practice in which particularism (as opposed to ethical universalism) informs the majority of government transactions, resulting in widespread favoritism and discrimination.
Visibility	Corruption unobservable; whistleblowing needed.	Corruption is observable as overt behaviors and flawed processes, as well as through outcomes/consequences; monitoring and curbing impunity needed.
Public-Private Separation	Enshrined. Access is permitted via lobby, and exchanges between the sides are consequent in time (revolving doors).	Permeable border, with patrimonialism and conflict of interest ubiquitous. Exchanges between the sides are synchronous (one person belongs to both sides at the same time).
Preferred Observation Level	Micro and qualitative (for example, lobby studies).	Macro (how many bills are driven by special interest, how many contracts awarded by favoritism, how many officials are corrupt, and so on).

job later with a private company). In contexts where patrimonialism is widespread, there is no need for whistleblowers: officials grant state contracts to themselves or their families, use their public car and driver to take their mother-in-law shopping, and so forth – all in publicly observable displays (see Table 1).

Efforts to measure corruption should aim at gauging the prevalence of favoritism, measuring how many transactions are impersonal and by-the-book, and how many are not. Observations for measurement can be drawn from all the transactions that a government agency, sector, or entire state engages in, from regulation to spending. The results of these observations allow us to monitor change over time in a country's capacity to control corruption. Even anecdotal evidence can be a good way to gauge changes to corruption over long periods: twenty years ago, for example, it was customary even in some developed countries for companies bidding for public contracts to consult among themselves;

today this is widely understood to be a collusive practice and has been made illegal in many countries. These indicators signal essential changes of context that we need to trace in developing countries and indeed to use to create our good governance targets. If in a given country it is presently customary to pay a bribe to have a telephone line installed, the target is to make this exceptional.

In my previous work, I have given examples of such indicators of corruption norms, including the particularistic distribution of funds for natural disasters, comparisons of turnout and profit for government-connected companies versus unconnected companies, the changing fortunes of market leaders after elections, and the replacement of the original group of market leaders (those connected to the losing political clique) by another well-defined group of market leaders (those connected with election winners). The data sources for such measurements are the distribution of public contracts, subsidies, tax breaks, gov-

ernment subnational transfers; in short, basically any allocation of public resources, including through legislation (laws are ideal instruments to trade favors for personal profit). If such data exist in a digital format, which is increasingly the case in Eastern Europe, Latin America, and even China, it becomes feasible to monitor, for example, how many public contracts go to companies belonging to officials or how many people put their relatives on public payrolls. Ensuring that data sources like these are made open and universally accessible by public or semipublic entities (such as government and Register of Commerce data) is itself a valid and worthy target for donors. The method works even when data are not digitized: through simple requests for information, as most countries in the world have freedom of information acts. Inaccessibility of public data opens an entire avenue for donor action unto itself: supporting freedom-of-information legislation also supports anticorruption efforts, since lack of transparency and corruption are correlated.

Now that targets have been established, the fourth step is solving the problem of domestic agency. By and large, countries can achieve control of corruption in two ways. The first is surreptitious: policy-makers and politicians change institutions incrementally until open access, free competition, and meritocracy become dominant, even though that may not have been a main collective goal. This has worked for many developed countries in the past. The second method is to make a concerted effort to foster collective agency and investment in anticorruption efforts specifically, eventually leading to the rule of law and control of corruption delivered as public goods. This can occur after sustained anticorruption campaigns in a country where particularism is engrained. Both paths require human agency. In the former, the role of agency is small. Reforms slip by with little

opposition, since they are not perceived as being truly dangerous to anybody's rents, and do not therefore need great heroism to be pushed through; just common sense, professionalism, and a public demand for government performance. The latter scenario, however, requires considerable effort and alignment of both interests favoring change and an ideology of ethical universalism. Identifying the human agency that can deliver the change therefore becomes essential to selecting a well-functioning anticorruption strategy.

Changing governance across borders is a difficult task even under military occupation. Leaving external actors aside, a country's governance can push corruption from norm to exception either through the actions of an enlightened despot (the king of Denmark model beginning in the eighteenth and nineteenth centuries), an enlightened elite (as in the British and American cases), or by an enlightened mass of citizens (the famous "middle class" of political modernization theory). Enlightened despots do appear periodically (the kingdom of Bhutan is the current example of shining governance reforms, after the classic example of Botswana, where the chief of the largest tribe became a democratically elected president). Enlightened elites can perhaps be engineered (this is what George Soros and the Open Society Foundation have tried to do, with one of the results being a great mobilization against elites in less democratic countries), and countries that have them (like Estonia, Georgia, Chile, and Uruguay) have evolved further than their neighbors. Enlightened and organized citizens must reach a critical mass; and regardless how strong a demand for good governance they put up, they cannot do much without an alternative and autonomous elite that is able to take over from the corrupt one. As the recent South Korean case has proved, entrusting power at the top to former elites leads to an immediate return

to former practices; however, in that case, the society had sufficiently evolved in the interval to defend itself.

In principle, donors can work with enlightened despots, attempt to socialize enlightened elites to some extent, and help civil society and “enlightened” citizens. But, in practice, this does not go so well. Donors seem by default to treat *every* corrupt government as though it were run by an enlightened despot, entrusting it with the ownership of anticorruption programs. These, of course, will never take off, not only because they are more often than not the wrong programs, but because implementing them would run counter to the main interests of these principals. Additionally, this approach is not sustainable: pro-Western elites are so scarce these days that checking their anticorruption credentials often becomes problematic. Take the tiny post-Soviet republic of Moldova, which could never afford to punish anyone from the Russian-organized crime syndicates that control part of its economy and even a breakaway province thriving on weapons smuggling. Due to international anticorruption efforts, a prime minister was jailed for eight years for “abuse of function” – actually for failing to prevent cybercrime – despite the fact that he held pro-EU policy goals. The better and less repressive approach – designing anticorruption interventions that include society actors as main stakeholders by default, not just working with governments – is rather exceptional, although such an approach might greatly enhance the effectiveness of aid programs in general.

The remaining option, building a critical mass from bottom up, is not easy either, as it basically means competing with patronage and client networks that have a lot to offer the average citizen. “Incentivizing,” another anticorruption-industry buzzword, is really a practical joke. No anticorruption incentive can compete with a

diamond mine, a country’s oil income, or, indeed, its whole budget, including assistance funds. Despoilers generally control those rents and distribute them wisely to stay in control. Anticorruption is not a win-win game, it is a game played by societies against their despoilers, and when building accountability, not everybody wins. But if in contemporary times countries like Estonia, Uruguay, Costa Rica, Taiwan, Chile, Slovenia, Botswana, and even Georgia are edging over the threshold of good governance through their own agency, we must maintain hope that others can follow.

We see all around the world that demand for good governance and participation in anticorruption protests have increased – just not sufficiently to change governance. Perhaps there was not enough middle-class growth in the last two decades for that: the Pew Research Center found that between 2001 and 2011, nearly seven hundred million people escaped poverty but did not travel far up enough to be labeled middle-class.¹³ Fortunately, the development of smartphones with Internet access provides a great shortcut to fostering individual autonomy and achieving enlightened participation.

Any assistance in increasing the percentage of “enlightened citizens” armed with smartphones is helpful in creating grassroots demand for government transparency; this is why both Internet access and ownership of smartphones are strongly associated with control of corruption.¹⁴ But for our transition strategy we need more: careful stakeholder analysis and coalition building. Brokers of corrupt acts and practitioners of favoritism are not hidden in corrupt societies. Losers are more difficult to find; today’s losers may be tomorrow’s clients. As a ground rule, however, whoever wishes to engage in fair, competitive practices – whether in business or politics – stands to lose in a particularistic society.

He or she faces two options: to desert for a more meritocratic realm (hence the close correlation between corruption and brain drain) or to fight. These are our recruitment grounds. It is essential to understand who is invested in challenging the rules of the game and who is invested in defending them; in other words, who are the status quo losers and winners? Who, among the winners, would stay a winner even if more merit-based competition were allowed? Who among the losers would gain? These are the groups that must come together to empower merit and fair competition.

By now, enough evidence should exist to support a theory of change, which in turn informs our strategy. To understand *when* the status quo will change, we need a theory of *why* it would change, who would push for the desired evolution, and how donors can assist them to steer the country to a virtuous circle. The main theories informing intervention presently are very general: *modernization theory* (the theory that increases in education and economic development bring better governance) and *state modernization* (the belief that building state capacity will also resolve integrity problems). But as there is a very close negative correlation between rule of law and control of corruption, it is the case more often than not that rule of law is absent where corruption is high, so legal approaches to anticorruption (like anticorruption agencies or strong punitive campaigns) can hardly be expected to deliver.¹⁵ The same goes for civil-service capacity building in countries where bureaucracy has never gained its autonomy from rulers. Good governance requires autonomous classes of magistrates and of bureaucrats. These cannot be delivered by capacity-building in the absence of domestic political agency or some major loss of power of ruling elites that could empower bureaucrats.¹⁶ This is why the accountability tools that work in our statistical assessments are those associated with civil-society agency.

Voluntary implementation of accountability tools by interested groups (businesses who lose public tenders, for instance, or journalists seeking an audience) works better than implementation by government, which is always found wanting by donors.

In our recent work, my colleagues and I tested a broad panel of anticorruption tools and good governance policies from the World Bank's Public Accountability Mechanism database. The panel includes nearly all instruments that are either frequently used in practice or specified in the UNCAC: anticorruption agencies, ombudsmen, freedom of information laws (FOIs), immunity protection limitations, conflict of interest legislation, financial disclosures, audit infrastructure improvements, budgetary transparency, party finance restrictions, whistleblower protections, and dedicated legislation.¹⁷ The evidence so far shows that countries that adopt autonomous anticorruption agencies, restrictive party finance legislation, or whistleblower protection acts make no more progress on corruption than countries that do not.¹⁸ The comprehensiveness of anticorruption regulation does not seem to matter either: in fact, the cleanest countries have moderate regulation and excessive regulation is actually associated with more corruption; what matters are the legal arrangements used to generate privileges and rents. In other words, it may well be that a country's specific anticorruption legislation matters far less in ensuring good control of corruption than its overall "regulatory quality," which might result precisely from a long process of controlled rent creation and profiteering.¹⁹

Actually, as I have already argued, the empirical evidence suggests corruption control is best described as an equilibrium between *opportunities* (or resources) for corruption, such as natural resources, unconditional aid, lack of government transparency, administrative discretion, and obstacles to trade, and *constraints* on corruption, whether

legal (an autonomous judiciary and audit) or normative (by the media and civil society).²⁰ Not only is each element highly influential on corruption, but statistical relationships between resources and constraints are highly significant. Examples include the inverse relationship between red tape and the independence of the judiciary and between transparency in any form (fiscal transparency, existence of an FOI, or financial disclosures) and the direct relationship between civil society activism and press freedom. Using this model, my colleagues and I designed an elegant composite index for public integrity for 109 countries based on policy determinants of control of corruption (which should be seen as the starting point of any diagnosis, since it shows at a first glance where the balance between opportunities and constraints goes wrong). While even evidence-based comparative measures can be criticized for ignoring cross-border corrupt behavior (like hiding corrupt income offshore), from a policy perspective, it still makes the most sense to keep national jurisdiction as the main comparison unit. Basically every anticorruption measure that would limit international resources for corruption is in the power of some national government.

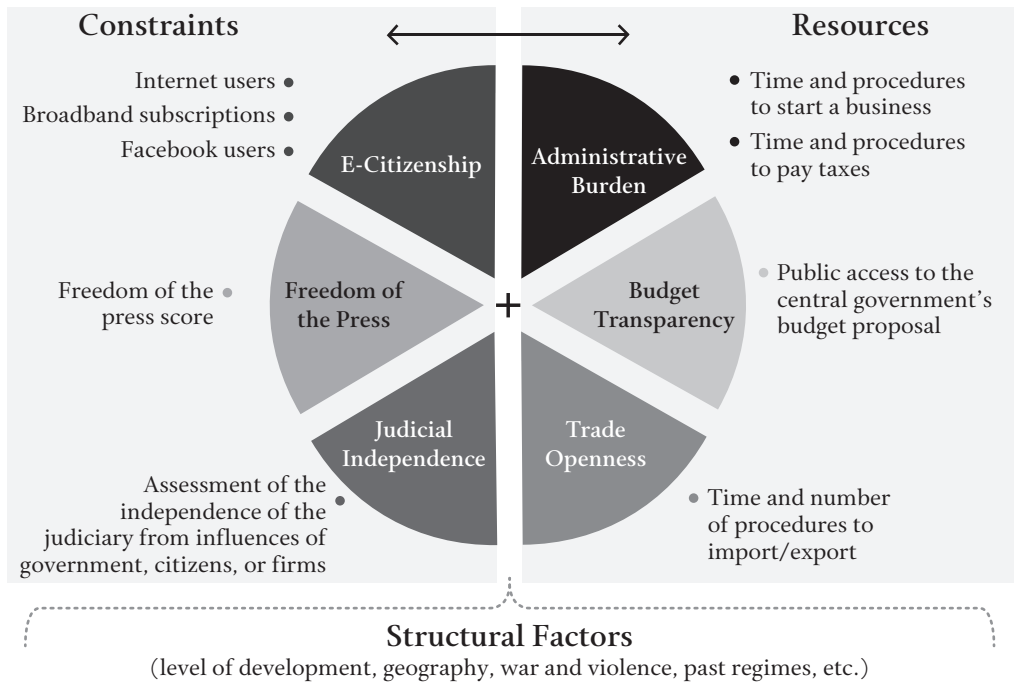
Let's take the well-known example of Tunisia, whose revolution was catalyzed in late 2010 by an unlicensed street vendor who immolated himself to protest against harassment by local police. Corruption – as inequity of social allocation induced and perpetuated by the government – was one of the main causes of protests. Has the fall of President Ben Ali and his cronies made Tunisians happy? No, because there are as many unemployed youths as before, equally lacking in jobs and hope, and the maze of obstructive regulation and rent seekers who profit by it are the same. If we check Tunisia against countries in its region and income group on the Index of Public Integrity, we see that the revolution has only

brought significant progress on press freedom and trade openness. On items such as administrative burden, fiscal transparency, and quality of regulation, the country still has much to do to bring the economy out of the shadows and restore a social contract between society and the state (see Table 2). To get there, policies are needed both to bring the street vendors into the licensed, tax-paying world and to reduce the discretion of policemen.

Examples of specific, successful legislative initiatives exist in the handful of achievers we identified through our measurement index: Uruguay and Georgia, for instance, which have implemented soft formalization policies, tax simplification, and police reform. This is the correct path to follow to control corruption successfully. In a context of generalized law-breaking fostered by unrealistic legislation, selective enforcement becomes inevitable, and then even anticorruption laws can generate new rents and protect existing ones, reproducing rather than changing the rules of the game. One cannot expect isolated anticorruption measures to work unless opportunities and constraints are brought into balance. For instance, one cannot ask Nigeria to create a register for foreign-owned businesses in order to trace beneficial ownership (as is the standard procedure for anticorruption consultants) without formalizing and registering (hopefully electronically) *all* property in Nigeria, a long-standing development goal with important implications for corruption. It is quite important, therefore, that we understand and act on both sides of this balance. Working on just one side only creates more distance between formal and informal institutions, which is already a serious problem in corrupt countries.

The sixth step on the road map is for international donors to get together to implement a strategy to fix this imbalance. In the same way the Millennium Devel-

Figure 2
Control of Corruption as Interaction between Resources and Constraints



Source: Alina Mungiu-Pippidi and Ramin Dadasov, "Measuring Control of Corruption by a New Index of Public Integrity," *European Journal on Criminal Policy and Research* 22 (3) (2016).

Table 2
Tunisia's Public Integrity Framework

	Component Score	World Rank (of 109)	Regional Rank (of 8)	Income Group Rank (of 28)
Judicial Independence	5.34	55	5	11
Administrative Burden	8.77	47	3	8
Trade Openness	7.1	76	3	21
Budget Transparency	6.79	71	2	20
E-Citizenship	5.22	60	5	19
Freedom of the Press	5.16	65	1	14

Note: On the Index of Public Integrity, Tunisia scores 6.40 on a scale of 1 to 10, with 10 as the best, and ranks 59th out of 109 countries. Source: Index of Public Integrity, 2015, <http://www.integrity-index.org>.

opment goals required coordination and multiyear planning, making the majority of transactions clean rather than corrupt requires long-term strategic planning. The goals are not just to reduce corruption with isolated interventions, but to build public integrity in many countries – a clear development goal – and to refrain from punishing deviation. The joint planners of such efforts should begin by sponsoring a diagnostic effort using objective indicators and subsequently launch coordinated efforts to reduce resources and increase constraints. This collaboration-based approach also allows donors to diversify their efforts, as some may have strengths in building civil society, others in market development reforms, and others still in increasing Internet access. Freedom of the press receives insufficient support, and seldom the kind it needs (what media needs in corrupt countries is clean media investment, not training for investigative journalists).

Finally, international donors must set the example. They should publicize what they fund and how they structure the process of aid allocation itself. Those at the apex of the donor-coordination strategy ought to

agree upon aid-related good-governance conditions and enforce them across the board. Aid recipients – including particular governments, subnational government units or agencies, and aid intermediaries – should qualify for receiving aid transfers only if they publish in advance all their calls for tenders and their awards, which would allow monitoring the percentage of transparent and competitive bids out of the total procurement budget. Why not make the full transparency of all recipients the main condition for selection? Such indicators could also be useful to trace evolution (or lack thereof) from one year to another. On top of this, using social accountability more decisively, for instance by involving pro-change local groups in planning and audits of aid projects, would also empower these groups and set an example for how local stakeholders should monitor public spending. These gestures of transparency and inclusiveness toward the societies that donors claim to help – and not just their rulers – would bring real benefits for both sides and enhance the reputation of development aid.

ENDNOTES

- ¹ Count based on the Worldwide Governance Indicator Control of Corruption recoded on a scale of 1 to 10, with the best performer rated 10.
- ² Ramin Dadasov, “European Aid and Governance: Does the Source Matter?” *The European Journal of Development Research* 29 (2) (2017): 269 – 288.
- ³ Cited in Alena V. Ledeneva, *How Russia Really Works: The Informal Practices that Shaped Post-Soviet Politics and Business* (Ithaca, N.Y.: Cornell University Press, 2006).
- ⁴ Arnaldo Momigliano, *Alien Wisdom: The Limits of Hellenization* (Cambridge: Cambridge University Press, 1975), 8.
- ⁵ See Alina Mungiu-Pippidi, *A Quest for Good Governance: How Societies Develop Control of Corruption* (Cambridge: Cambridge University Press, 2015).
- ⁶ See Alina Mungiu-Pippidi and Ramin Dadasov, “When Do Anticorruption Laws Matter? The Evidence on Public Integrity,” *Crime, Law, and Social Change* 68 (4) (2017): 1 – 16. I am grateful to Sweden’s Expert Group for Aid Studies (EBA) for funding this research and for helpful comments on an earlier version of this article. See Alina Mungiu-Pippidi, *Seven Steps to Evidence-Based Anticorruption: A Roadmap* (Stockholm: Swedish Expert Group for Aid Studies, 2017), http://eba.se/wp-content/uploads/2017/11/2017_10_final-webb.pdf.

- ⁷ An ampler discussion of this issue can be found in Robert Klitgaard, *Addressing Corruption Together* (Paris: Organisation for Economic Co-operation and Development, 2015), <https://www.oecd.org/dac/conflict-fragility-resilience/publications/FINAL%20Addressing%20corruption%20together.pdf>.
- ⁸ For the intellectual genealogy of these terms, see Mungiu-Pippidi, *A Quest for Good Governance*, chap. 1 – 2; and Talcott Parsons, *Introduction to Max Weber, The Theory of Social and Economic Organization* (New York: The Free Press, 1997), 80 – 82.
- ⁹ Daron Acemoglu and James A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* (New York: Crown Business, 2012); Francis Fukuyama, *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (New York: Farrar, Straus and Giroux, 2014); and Douglass C. North, John J. Wallis, and Barry Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (New York: Cambridge University Press, 2009).
- ¹⁰ A fuller argument roughly compatible with mine appears in North, Wallis, and Weingast, *Violence and Social Orders*.
- ¹¹ For evidence, see Mungiu-Pippidi, *A Quest for Good Governance*, chap. 2; and Mungiu-Pippidi and Dadasov, “When Do Anticorruption Laws Matter?”
- ¹² For a more extensive argument, see Robert Rotberg, “Good Governance Means Performance and Results,” *Governance* 27 (3) (2014): 511 – 518; and Alina Mungiu-Pippidi, “For a New Generation of Objective Indicators in Governance and Corruption Studies,” *European Journal on Criminal Policy and Research* 22 (3) (2016): 363 – 367.
- ¹³ Rakesh Kochhar, *A Global Middle Class Is More Promise than Reality* (Washington, D.C.: Pew Research Center, 2015), <http://www.pewglobal.org/2015/07/08/a-global-middle-class-is-more-promise-than-reality/>.
- ¹⁴ See Niklas Kossow and Roberto M. B. Kukutschka, “Civil Society and Online Connectivity: Controlling Corruption on the Net?” *Crime, Law and Social Change* 68 (4) (2017): 1 – 18.
- ¹⁵ Lant Pritchett and Michael Woolcock, “Solutions when the Solution is the Problem: Arraying the Disarray in Development,” *World Development* 32 (2) (2004): 191 – 212.
- ¹⁶ Robert Rotberg makes a similar point in “Good Governance Means Performance and Results.”
- ¹⁷ See Mungiu-Pippidi and Dadasov, “When Do Anticorruption Laws Matter?”
- ¹⁸ *Ibid.*
- ¹⁹ See updated evidence in Mihaly Fazekas, “Red Tape, Bribery and Government Favouritism: Evidence from Europe,” *Crime, Law & Social Change* 68 (4) (2017): 403 – 429.
- ²⁰ For the full models, see Mungiu-Pippidi, *A Quest for Good Governance*, chap. 4; and Alina Mungiu-Pippidi and Ramin Dadasov, “Measuring Control of Corruption by a New Index of Public Integrity,” *European Journal on Criminal Policy and Research* 22 (3) (2016): 415 – 438.

Fighting Systemic Corruption: The Indirect Strategy

Bo Rothstein

Abstract: While attention to corruption and anticorruption policies has increased dramatically in research and in policy, the results of many anticorruption and so-called good-governance programs have so far been unimpressive. I argue that this lack of success can be explained by the reliance on a theoretical approach – namely, the “principal-agent theory” – that seriously misconstrues the basic nature of the corruption problem. In this essay, I contend that the theory of collective action is a more fruitful foundation for developing anticorruption policies. I suggest that policy measures based on a collective-action understanding of corruption will be much less direct – and ultimately more effective – than approaches derived from the principal-agent theory. Taking inspiration from military theorist Basil Liddell Hart’s “indirect approach” strategy, I argue that decision-makers should focus on policies that change the basic social contract, instead of relying solely on measures that are intended to change incentives for corrupt actors.

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When politicians want to signal that they are very serious about a problem, they sometimes describe themselves as being “at war” with it. Well-known examples include the “war on poverty,” the “war on drugs,” and the “war on terror.” As the number of studies demonstrating corruption’s considerable negative effects on almost all measures of human well-being has risen, the war analogy has been extended to the fight against corruption.¹ The current president of Nigeria, Muhammadu Buhari, for example, declared a full-scale “war against corruption,” making it a centerpiece of his 2015 election campaign and early administration.² The war metaphor can be exaggerated or misplaced, but in the case of corruption, it may not be so far-fetched. First, the effects of corruption on population health are so profound that people are literally “dying of corruption.”³ Second, fighting corruption can be so dangerous – with powerful economic, political, and criminal interests fighting for its preservation – that high-level anticorruption

tion officials often feel that their work puts their and their family's lives at risk, in some cases forcing them to flee their home country.⁴ Third, despite a number of large-scale anticorruption "attacks," especially during the last two decades, corruption has proved itself to be a very resilient, often well-organized and -entrenched enemy.⁵ Still, large-scale armed conflicts are rarely accountable to democratic law, implying that war is not the best metaphor for dealing with corruption through democratic means. However, the *strategic* thinking about armed conflicts has useful applications in the fight against corruption. The main purpose of this essay, then, is to analyze anticorruption efforts through the lens of military strategy – in particular, that of military theorist Sir Basil Liddell Hart – to see what can be learned from theories about success and failure in military conflicts.

To observe the fight against corruption from this strategic perspective, we need to know a number of things. First, what is our current position in the conflict? In other words, how have we been doing? Are we on the retreat or the offensive, or is the situation more like Eric Maria Remarque's 1929 novel, *All Quiet on the Western Front*? Second, what type of conflict is this likely to be? Should we expect to meet a guerrilla-like enemy or an army on open fields? Third, what do we know about the enemy or, more precisely, what type of enemy are we talking about? Where is he and what are his weaknesses? And fourth, what sorts of tactics and strategies are known to be successful when attacking corruption? Should we opt for a blitzkrieg, or is this more likely to be a war of attrition? Which strategy is more likely to produce victory given the enemy's location and weaknesses?

From a social-science perspective, contemporary anticorruption efforts are looking quite good compared with those of the 1990s, when there was very little interest in

studying corruption among academics, and it was something of a taboo in policy circles.⁶ Standard textbooks (in economics, political science, and public administration, for example) paid little serious attention to the problem. Hardly any comparative data existed, and most disciplines were dominated either by structural variables (such as modernization theory or Marxism) or behavioral variables (such as microeconomics or studies of electoral behavior).

All of this started to change in the mid-1990s. The "institutional turn" in the social sciences, pioneered by Nobel prize-winning economic theorists Douglass C. North and Elinor Ostrom, paved the way for thinking about the effects of institutions on human prosperity and well-being. Thanks to their work, we now have quite a good theoretical understanding of why some societies have good and others dysfunctional institutions (both formal and informal). Unfortunately, poor institutions are common, stable, and detrimental to prosperity and human well-being, due in part to the fact that they generate corruption. In addition, there is now a large amount of comparative (and to some extent also longitudinal) data on corruption, as well as many case studies and historical accounts of corrupt regimes and anticorruption campaigns. A search of academic journals for articles including the term "political corruption" yielded a meager fourteen articles (!) in 1992, but as of 2014 delivered more than three hundred.⁷ The general public's awareness of the detrimental effects of corruption seems also to have increased dramatically. Recent comparative surveys have found that, among some populations, corruption is perceived as a more serious problem than unemployment, poverty, and terrorism.⁸

Effective political mobilization for "clean government" has occurred in some countries, including in Romania and South Korea in 2017.⁹ In addition, since the 1990s, many countries have adopted more strin-

gent laws against corruption and established special anticorruption units. The United Nations Convention Against Corruption was signed in 2003 and has now been ratified by more than 170 countries. Furthermore, many national and international development and aid organizations have put anticorruption high on their agenda, lifting the taboo against tackling corruption. Thus, compared with the situation twenty years ago, there is room for some optimism, since many of the “weapons” needed in this conflict seem now to be in place.

However, the results on the ground have so far not been very impressive. It is difficult to trace any major positive results from the many good-governance programs that the World Bank and other international development organizations have launched since the mid-1990s. Alina Mungiu-Pippidi has summarized the new era of anticorruption work as one of “great expectations and humble results.”¹⁰ Political scientist Francis Fukuyama adds that the international development and aid community “would like to turn Afghanistan, Somalia, Libya, and Haiti into idealized places like ‘Denmark,’ but it doesn’t have the slightest idea of how to bring this about.”¹¹ In his recent book *Analysing Corruption*, political scientist Dan Hough notes that “success stories are depressingly thin on the ground.”¹² Although some countries have improved, not much of the change can be attributed to donor-led programs or initiatives.¹³

A particularly painful result is that democratization seems not to be a surefire cure for corruption. Economists Philip Keefer and Razvan Vlaicu found that “in 2004 more than one-third of all democracies exhibited as much or more corruption than the median non-democracy.”¹⁴ They argue that in a country that has recently democratized, politicians have no or a low reputation and thus no means of making credible electoral promises to the citizenry. Politicians must therefore rely on

local patronage networks and provide targeted goods to their supporters in direct exchange for votes. In other words, in order to attain office and to stay in power, they undermine the quality of public institutions by, for example, handing out public-sector jobs or targeting benefits directly to their presumed political supporters. Consequently, a young and fragile democracy will typically overprovide targeted goods, such as public-sector jobs and public works projects, while at the same time underproviding nontargeted goods, such as universal health care, education, rule of law, and protection of property rights.¹⁵ This argument is supported by the research of political scientist Michele D’Arcy, who showed that between 1985 and 2008, scores on measures of corruption in sub-Saharan Africa have increased considerably, and that this negative development is “primarily driven by the 38 countries which have experienced increased levels of democracy.”¹⁶ Systemic corruption, in which corrupt practices are the rule in interactions between citizens and public officials, seems thus to be a hardened and difficult enemy. This implies that current anticorruption strategies are in need of some serious rethinking.

A society free of corruption is probably as likely as a society free of crime. However, both crime levels and the prevalence of corruption vary dramatically between countries (and in many cases within countries). The rate of intentional homicides is 121 times higher in Jamaica than in Singapore.¹⁷ Since most of what we call corruption is illegal, we should not be surprised by the existence of similarly huge variations in corruption levels between countries. Corruption also takes many forms, from outright demands for high bribes in exchange for health care to more subtle exchanges of personal favors regarding the recruitment or promotion of civil servants. Thus, when we speak about anticorruption

policies, we are usually thinking of various forms of systemic corruption.

If anticorruption policies are to be effective, we ought first to ask: where is the problem? The availability of increasingly large data sets has expanded our capacity to conduct advanced statistical analysis about what differentiates countries with high and low levels of corruption. One problem in this research is that many of the variables with a statistically high explanatory power are so fundamental on a structural-historical level that they are not susceptible to change through political action. For example, countries dominated by Lutheranism, that are geographically relatively small, that have not had a history of exploitation by colonial powers, and that have been relatively ethnically homogeneous have fared better against corruption than other countries.¹⁸ These research results are valuable and scientifically correct, but since they point to factors that are inaccessible to current policies, they have very little relevance for policy-makers. A cancer patient asking her doctor for a cure is not helped by the advice that she should have chosen other parents. As political scientist John Gerring has stated, researchers “sometimes confuse the notion of statistical significance with real-life significance.”¹⁹

A related problem is the importance of “normatively impossible” variables. For example, some countries seem to have started successfully to address systemic corruption after having experienced the national trauma of losing a war.²⁰ It goes without saying that this is not a policy solution we can recommend.

In terms of determining the enemy’s location, the other spectrum of explanations focuses on behavioral issues like the level of integrity and the standard of ethics of politicians, civil servants, and other professional groups in the public sector.²¹ To some analysts, it goes without saying that a country with high moral standards in the

civil service would not suffer from systemic corruption. The problem with this type of analysis is that the explanatory variables are hard to distinguish from what is to be explained. It is close to a tautology to say that low levels of corruption in a country can be explained by a high ethical standard among politicians, judges, and civil servants. In reality, this line of reasoning does not have any explanatory power; instead it is more a repetition of the data.

The alternative to structural and behavioral explanations is to focus on the significance of institutions. Most important is that institutions are constructed, reproduced, and sometimes destroyed by humans and thus, in principle, open for policy-induced change. It is possible to defeat the “enemy” of poor institutions. The second thing about institutions is that we can observe huge variations in institutional quality between countries, and to some extent at the subnational level as well.²²

Institutions can be formal or informal, but which of these should we target to lower total levels of corruption? This is an issue to which there now seems to be a clear answer: the importance of formal institutions has been much overrated. Using panel data for 189 countries, Mungiu-Pippidi has shown that the existence of an anticorruption agency or an ombudsman office in a country has no statistical impact on the control of corruption.²³ A case in point is Uganda, which has remained corrupt after numerous interventions by the World Bank and bilateral donors had established an institutional framework that, according to the Swedish International Development Cooperation Agency, was “largely satisfactory in terms of anticorruption measures.”²⁴ In fact, Uganda’s formal institutions of anticorruption regulation score 99 out of 100 points in the Global Integrity 2009 index; yet according to existing measures, the country remains one of the most corrupt in the world.²⁵

The main evidence against the importance of formal institutions comes from two large-scale surveys carried out in 2010 and 2013 by the Quality of Government Institute. The surveys consisted of interviews with about 120,000 persons (for the most part in EU countries) and asked detailed questions about citizens' experiences and perceptions of corruption, as well as perceptions of impartiality and competence in three public service sectors (health care, law enforcement, and education). These questions made possible the construction of a European Quality of Government Index capturing corruption, impartiality, and competence in the delivery of these public services. These surveys are unique in that respondents were sampled from official regions in EU countries, making it possible to study subnational variation. Results showed significant subnational variation in corruption (and the related issues of competence and impartiality) in about one-third of EU countries. The most dramatic subnational differences were found in Italy, where the best performing regions in the North are almost as clean as Denmark, while some of the Southern regions score at the same high levels of corruption as Serbia and Romania.²⁶

From a policy perspective, this result sends an important message. Italy has had the same formal national institutions (such as its laws and courts) for one hundred fifty years. The dramatic regional differences show that whatever the quality of the national institutions, they seem to hardly have had an impact on the level of corruption "on the ground." This result implies that the strong focus on changing national formal institutions, such as the introduction of special national anticorruption agencies and more stringent laws, is in all likelihood misplaced. This is not to say that national laws against corruption are unimportant, but it is obvious from the Italian example that they are far from sufficient.

As of today, many if not most highly corrupt countries have stringent formal laws against corruption.

Does the lack of traction of formal institutions imply that corruption is somehow "ingrained" in the traditional culture in Sicily and other highly corrupt societies? This is the widespread understanding in anthropology,²⁷ but to an increasing degree also in economics.²⁸ The difference seems to be that many anthropologists, believing in cultural relativism, describe corruption as an inevitable artifact of culture, largely disregarding the vast amount of empirical research showing its detrimental effects on almost all aspects of human well-being.²⁹ Economists, on the other hand, blame the cultures of highly corrupt societies, labeling them "dysfunctional."³⁰

If by "culture" we mean the general moral orientation of the population in question, there are (at least) two problems with both of these understandings of corruption. The first is a lack of empirical support. For example, respondents in the Afrobarometer survey for eighteen sub-Saharan African countries were asked their views on scenarios in which an official either "decides to locate a development project in an area where his friends and supporters live"; "gives a job to someone from his family who does not have adequate qualifications"; and "demands a favour or an additional payment for some service that is part of his job." Between 60 and 76 percent of the 25,086 respondents considered all three examples of corruption to be "wrong and punishable," while only a small minority view such actions as "not wrong at all." Furthermore, only about 20 percent deem these actions "wrong but understandable."³¹

Corroborating these data, political scientist Sten Widmalm found similar results in the Indian context. In a survey at the village level, Widmalm finds that there is surprisingly large support among the population for what is often referred

to as the Weberian civil-servant model: as many as 77 percent of the villagers responded that they deemed it “very important” that civil servants “treat everyone equally, regardless of income, status, class, caste, gender and religion” and that civil servants “should never under any circumstances accept bribes.”³² Yet another study analyzing grassroots organizations’ mobilization against corruption in culturally diverse places like India, the Philippines, Mongolia, and Uganda has shown that these organizations have a very similar perception of the malfeasance they are up against.³³ In a separate large-scale experimental study of propensity to contribute to public goods, researchers found that when given the same institutional setup, students from highly corrupt Romania are no more likely to cheat or “free-ride” than students from Britain or Sweden.³⁴ In addition, political scientist Eliška Drápalová has shown that nearby cities in highly corrupt regions in Europe, sharing the same “culture,” can have very different levels of corruption.³⁵

An oft-cited study showing a large variation in the propensity of United Nations diplomats from different countries to pay their parking tickets in New York need not be interpreted as a support for the “culturalist” hypothesis.³⁶ The reason why diplomats from highly corrupt countries did not pay their parking tickets may be that “standard operating procedure” in their home countries is that refusing to pay a parking ticket has no legal consequences.

The moralizing, culturalist understanding of corruption espoused by economists is also deeply problematic from a policy perspective. Blaming the culture of a nation is not very different from saying that its people are bad or dishonest, which is not a good starting point for achieving broad-based policy change. The problem is that such analyses mistake formal institutions for culture as a moral orientation. For exam-

ple, according to economist Amir Licht and colleagues, “Cultural orientations represent general societal emphases that are deeply ingrained in the functioning of major societal institutions, in widespread practices, in symbols and traditions, and, through adaptation and socialization, in the values of individuals.”³⁷ In a similar vein, economist Paul Collier has written that culture consists of both “beliefs” and “social networks.”³⁸ I maintain that informal institutions and moral values or beliefs are two different things. Philosophers have long argued for a fundamental distinction between “moral norms” and “social norms”: moral norms “justify the relevant normative principle,” while social norms consist of the “presumed social practice.”³⁹ If traveling in a country where the “presumed social practice” for getting medical treatment for one’s children is to pay bribes to health personnel, most parents would likely pay the bribe. However, they could still be morally upset and convinced that doing so is ethically wrong. Similarly, a doctor in a systemically corrupt health care system may morally disapprove of the practice of taking money “hidden in an envelope,” but it makes little sense to be the only honest player in a system where this is the presumed social practice.⁴⁰ The costs for an honest policeman in, for example, a Mexican police force can be very high. The point is that dysfunctional informal institutions and networks are not necessarily to be understood as part of a culture, if we define “culture” as a population’s moral beliefs and values.

In other words, cultural values and actual practices are not always consistent.⁴¹ The question then becomes whether there is some social entity between formal institutions and moral culture that can solve this problem. Political economist Elinor Ostrom put forward an answer, suggesting that we should distinguish between “rules in form” and “rules in use” (which she also called “work rules”).⁴² In a similar

manner, political economist Peter Hall has suggested that between culture and formal institutions exists an informal institution called “standard operating procedures.”⁴³ These rules are informal but well known to the participants in a community; most important, they do not necessarily reflect their adherents’ moral orientations. They are thus similar to what the philosophers label “social norms.” In a thoroughly corrupt setting, even people who think that corruption is morally wrong are likely to take part because they see no point in doing otherwise.⁴⁴ With the phrase “the system made me do it,” political scientist Rasma Karklins neatly encapsulates the distinction between understanding corruption as ingrained in the moral fabric of a society and its people versus understanding corruption as a series of “standard operating procedures” that may force people to act in ways they think are morally wrong.⁴⁵

Analytically, we have now located where the enemy is entrenched. It is for the most part neither in a society’s formal institutions, nor in a dysfunctional culture of “bad” values or beliefs among the population in systemically corrupt countries. For the most part, corruption is entrenched in a society’s (or organization’s) “standard operating procedures.” And there are anthropological analyses that support this understanding of corruption.⁴⁶ Daniel Jordan Smith, for example, concludes that “although Nigerians recognize and condemn, in the abstract, the system of patronage that dominates the allocation of government resources, in practice people feel locked in.”⁴⁷ What locks them in is thus not a set of dysfunctional moral values but a set of dysfunctional “standard operating procedures.”⁴⁸

With this understanding, the question is now why the international anticorruption regime has not been blessed with more victories and why the enemy has been so resilient. The bulk of anticorruption policies

from the World Bank and many other development organizations have been guided by an economic approach called the principal-agent theory.⁴⁹ Corruption, the theory says, can be remedied if the honest “principal” (such as a president, government, or head of company) changes the incentives for its dishonest and corrupt “agents,” so that they will find it in their rational self-interest to stay away from corruption. To put it simply, since the “agents” are thought to be rational utility maximizers, the theory suggests that when the fear of being caught is higher than the greed that drives corrupt behavior, corruption will decrease. From this theory flows a fairly direct and head-on strategy: more stringent laws, more surveillance, less administrative discretion, and tougher punishments. In previously trying to answer why, for the most part, anticorruption policies based on this strategy have failed, I have pointed at the shortcomings of principal-agent theory itself.⁵⁰ The most obvious problem is that if erasing corruption were just a matter of changing incentives, the problem should have been solved long ago, since there is no lack of knowledge about how to structure an incentive system. Simply put, if the principal-agent theory were correct, eradicating corruption should have been a piece of cake.

The problem with the principal-agent theory is that the policy solutions it generates depend on a certain type of actor (the benevolent and ethical principal) who is *not* a rational, self-interested utility maximizer. This implies that the primary mover is a type of agent that should not even exist according to the central axiom of the theory. In most systemically corrupt systems, it is the agents at the top – the presumed principals – who earn most of the rents from corruption. Obviously, such principals will have little motivation to change the incentives for their opportunistic agents who are engaged in corruption. As Robert Rotberg has demonstrated, cor-

ruption can be successfully addressed from above by determined political leaders who can credibly demonstrate the will to do it.⁵¹ However, it is also quite rare that systematically corrupt societies produce such leaders. In any case, if we could find or create principals who are determined and serious about curbing corruption in a country long plagued by systemic corruption, such principals would need to send very strong signals to make their commitment to anticorruption seem credible to the population. As is well known from noncooperative game theory, creating such “credible commitments” is not an easy task.⁵²

Together with colleagues from the Quality of Government Institute, I have suggested a theoretical alternative: namely, that systemic corruption should be understood to be a *collective action problem*. More precisely, because of the implicit lack of trust, it is what I call a *social trap*.⁵³ In such situations, agents are not motivated by utility maximization, but by what they perceive will be the most likely strategy of most other agents in their society. The theory that human behavior is based on reciprocity rather than rational utility maximization has gained substantial support in recent experimental research. It shows that agents are willing to do “the right thing” provided that they have reason to expect others to do the same.⁵⁴ As Ernst Fehr and Urs Fischbacher have stated: “If people believe that cheating on taxes, corruption and abuses of the welfare state are widespread, they themselves are more likely to cheat on taxes, take bribes or abuse welfare state institutions.”⁵⁵ Understanding corruption as a collective-action problem or social trap produces very different policy solutions from the incentive-based solutions derived from principal-agent theory. Effective policies against corruption must destabilize the corrupt equilibrium. This requires a signal of credible commitment to the population from the government to convince the majority of corrupt

agents that most other agents are willing to change. The question is what these messages of *credible commitment* are, which types of policies can send them, and how those policies should be implemented from a strategic point of view.

A specific problem in the field of anticorruption policy-making is to find a balance between taking “context” into account – since every country has its quite specific corruption problems (as well as history and culture) – and formulating a more general theory from which to derive actionable policies. The argument against “one-size-fits-all” policies has been very common in the anticorruption literature, in particular from anthropologists, but I argue that it can only be taken so far, lest we end up with one theory of corruption per country (or region, city, or village).⁵⁶ An analogy can be made to medical research: while there exists much universal knowledge about how to cure many types of illnesses, professional clinical physicians never prescribe a treatment without carefully examining the individual patient.

The argument so far gives one clear result: namely, that the anticorruption “regime” is in need of a new theoretical approach. Since systemic corruption is a conflict zone, I will enlist one of the most famous military theorists of the twentieth century: British writer and historian Sir Basil Liddell Hart.⁵⁷ Respected scholars in this field have lauded Liddell Hart as “the greatest thinker about war in this century,” “the most formidable military writer of this age,” and “one of the most profound, original and influential military thinkers of modern history.”⁵⁸ Liddell Hart’s theories have had, and continue to have, an “enormous” influence over thinking about military strategy in the Western world.⁵⁹

Liddell Hart’s most famous theory of war strategy, “the indirect approach,” originated from a critique of the “head-on” attri-

tion strategies used by the armies on the Western Front during World War I.⁶⁰ Liddell Hart was not only a war strategist and historian, but a social scientist who “was constantly comparing events, individuals and situations to find generalizations that would hold across time and space.”⁶¹ He developed the “indirect approach” by analyzing more than two hundred eighty major military campaigns from ancient to modern times to understand which strategies were most likely to lead to victory.⁶² This is not the place to give a complete account of this complex strategic theory. But Liddell Hart considered his theory as not only a military strategy, but “a law of life in all spheres” to be applied wherever there is “room for a conflict of wills.”⁶³ It is in this spirit that I suggest anticorruption strategies would be a suitable area for the use of his theory.

Liddell Hart’s central argument is that a direct attack on the enemy by military force hardly ever works, but instead leads to a hardening of the enemy’s resistance and willingness to continue fighting. Instead, he argues, victory more often comes from finding and attacking the enemy’s “Achilles heel . . . in order to dislocate an opposing psychological and physical balance,” as historian Richard Larson has written.⁶⁴ This can be done, for example, through a blitzkrieg-type surprise attack, in which the strategy is to avoid direct attritional confrontation with the opposing army and instead penetrate in depth to reach behind the main forces and attack supply lines, headquarters, and especially centers of communication. This creates defeatism and causes “psychological dislocation” among enemy troops and leadership.⁶⁵

The indirect approach can also take the form of breaking the enemy’s will to fight in a slower and more incremental way. One of Liddell Hart’s many examples is the British naval blockade of Germany during World War I, which lasted several years and led to an extreme shortage of

food and other essential goods in Germany. Thus, the indirect approach *can* involve direct physical attacks, as in the blitzkrieg tactic, but does not have to. The effect that produces victory was, according to Liddell Hart, “the dislocation of the enemy’s psychological . . . balance.”⁶⁶

The main goal thus is not to destroy the enemy’s material capacity to fight, but his psychological will to do so, his “equilibrium” of control, morale, and supply.⁶⁷ Liddell Hart argued that of the hundreds of military campaigns he analyzed before formulating his theory, only in six “did a decisive result follow a plan of direct strategic approach to the main *army* of the enemy.” And even these six provided little justification for the direct approach.⁶⁸

The relevance of Liddell Hart’s work to the formulation of anticorruption strategies is clear. The “direct approach” includes policies built upon the principal-agent theory, which attack corrupt behavior head-on with increased control, stricter punishments, and less discretion of the agents. The direct approach also often focuses on going after the “big fish.” The indirect approach has a clear resemblance to responses based on collective-action theory, which focus on reciprocity, changing perceptions about “the rules of the game,” and breaking a corrupt equilibrium. Liddell Hart’s theory is “elastic” in that it does not prescribe any specific tactics for winning military conflicts; it is context-dependent and eclectic in approach. As Mearsheimer suggests, the “indirect approach” theory “did not emphasize any single instrument; the means depended on the case at hand.”⁶⁹ Disrupting the moral equilibrium of corrupt agents can either be achieved through a “big-bang” approach (many things are changed at about the same time in the same direction) as I have suggested elsewhere;⁷⁰ a blitzkrieg approach, as Hong Kong and Singapore seem to have employed;⁷¹ or a more gradual approach, as political scien-

tist Anders Sundell has promoted.⁷² There may also be combined approaches, such that an initial gradual approach paves the way for a big-bang change, leading to a new, low-corruption equilibrium.⁷³ The important lesson we can take from Liddell Hart is thus not in the specific selections of means, such as choice of policies or political tactic for anticorruption, but the importance of the “indirectness” of the general strategy.

Is it possible to give a concrete example of a successful indirect approach to controlling corruption? The answer is yes: in a recent policy report, *Making Development Work*, my colleague Marcus Tannenberg and I have listed five indirect strategies for which we claim there is reasonable empirical support. Among these are provision of a functioning system of taxation, gender equality in the public sector, and free and universal public education.⁷⁴ I will focus here on education. Such reforms were introduced in many Western countries during the nineteenth century and seem to have had a considerable long-term effect on their levels of corruption. Data on mean years of schooling exist for seventy-eight countries from 1870 onward; the correlation with a standard measure of corruption for 2010 is surprisingly high (Pearson’s $r = 0.76$).⁷⁵ Moreover, a country’s historical level of education turns out to be more correlated with corruption levels than initial wealth or degree of democracy. The historical literature about school reforms also comes with a number of surprises: For example, economic theories (whether modernization theory or Marxism), which suggest education develops alongside economic growth, do not fit. Britain, the most industrialized country, was a latecomer in free universal public education, introducing it in 1905.

The first country to modernize its education system was militaristic and autocratic Prussia, which launched massive educational reforms in 1807, one year after its hu-

miliating defeat by Napoleon’s “army of citizens” at Tilsit in 1806. Sweden and Denmark followed. The goal of all of these massive reforms was the same: state-building by way of creating new bonds among citizens and between citizens and the state. As sociologist John Boli has stated, free universal public education was established to create “new citizens for a new society.”⁷⁶ Shortly after being defeated by Germany in 1871, France introduced its own education reforms in order to make “peasants into Frenchmen.”⁷⁷ These reforms’ universality

signalled a decisive break with the voluntary and particularistic mode of medieval and early modern education, where learning was narrowly associated with specialized forms of clerical, craft and legal training, and existed merely as an extension of the corporate interests of the church, the town, the guild and the family. Public education embodied a new universalism which acknowledged that education was applicable to all groups in society and should serve a variety of social needs. The national systems were designed specifically to transcend the narrow particularism of earlier forms of learning. They were to serve the nation as a whole.⁷⁸

This argument should not be interpreted as a historical-structural explanation implying that countries are forever bound by their history when it comes to controlling corruption. On the contrary, we have shown that countries that still had very little free universal education by the 1870s (such as Finland, Japan, and South Korea) managed to catch up during the interwar period and now have much better scores for control of corruption than would be expected based on their nineteenth-century education levels.

There are several reasons why reforms such as free universal public education qualify as an example of the indirect approach to combating corruption. First, these reforms did not attack corruption directly by, for example, imposing more stringent laws and

increased surveillance. In fact, they were ostensibly not even aimed at reducing corruption at all, but merely had that side effect. Second, education is known to increase levels of social trust, thereby changing individuals' psychological sense of what can be expected from their fellow citizens. Following the logic of collective action, such generalized trust is an important ingredient for controlling corruption. Third, free universal public education was for many citizens the first public good they got from the state that was beneficial for them as individuals (well before pensions and other social reforms). Until these reforms were established, the state was for most citizens a hostile entity only serving the particularistic interests of a small elite. With the introduction of free public education, citizens got a stake in a well-functioning public sector and thus found a reason to oppose corruption. To some extent, reforms like these are similar to what Michael Johnston has advocated for (in this issue and elsewhere) in his proposal for "deep democratization" as a force against systemic corruption.⁷⁹ Fourth, the institutionalization of public education, in addition to creating a bond of loyalty between citizens and the state, produced a large new professional sector of teachers and school leaders, who in turn helped produce citizens' loyalty to the state. Last, these costly, large-scale reforms have served as an important signal of the state's commitment to principles of impartiality and equality: the ideal behind free universal public education is that every child, no matter her or his economic or social background, should get a reasonably fair chance in life.

Italy fits this pattern surprisingly well. As mentioned above, contemporary Italy has very stark variations in corruption between its Northern and Southern regions. The country introduced a radical educational reform in 1859, with three years of free education for every child. However, the reform was implemented only in the North, while

regions in the South almost completely disregarded it.⁸⁰ As a result, illiteracy levels in Southern Italy were surprisingly high well into the 1930s, and the effects on corruption, as well as a lack of a social contract between citizens and the Italian state, exist to this very day.⁸¹

The example of universal public education should only be seen as an illustration of the general argument about the efficacy of an indirect approach to curbing corruption. As emphasized above, the indirect approach does not prescribe any specific tools. Instead, the means used must resonate with the historical and social context. Limiting anticorruption efforts to direct changes to the incentive structure for public officials (stricter laws, more controls, less discretion for civil servants, harder punishment, and so on) is not likely to work. Such efforts to change formal institutions are often necessary, but they are in all likelihood not enough. From the theory of collective action comes a different message: namely, the importance of changing what people have come to understand as the "standard operating procedures" when they interact with public officials. The main goal should be to convince the population that the basic social contract is about to change and to give them a stake in the existence of a well-functioning public sector that can deliver important goods to them in an honest and competent manner.

Those in power and those who mobilize to oppose corruption will have to ensure that their commitment to anticorruption is not seen as cheap talk, but instead includes efforts that are likely to change general perceptions about the state's priorities. This is likely only possible through large-scale efforts like the universal educational reforms described above.

AUTHOR'S NOTE

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ENDNOTES

- ¹ Ben W. Heineman and Fritz Heimann, "The Long War against Corruption," *Foreign Affairs* 85 (3) (2006): 75 – 81.
- ² Wale Adebawo and Ebenezer Obadare, "When Corruption Fights Back: Democracy and Elite Interest in Nigeria's Anti-Corruption War," *Journal of Modern African Studies* 49 (2) (2011): 185 – 213.
- ³ Sören Holmberg and Bo Rothstein, "Dying of Corruption," *Health Economics, Policy and Law* 6 (4) (2011): 529 – 547.
- ⁴ Adebawo and Obadare, "When Corruption Fights Back"; and Michela Wrong, *It's Our Turn to Eat: A Story of a Kenyan Whistle Blower* (London: Fourth Estate, 2009).
- ⁵ Sarah Bracking, ed., *Corruption and Development: The Anti-Corruption Campaigns* (New York: Palgrave, 2007); and Dan Hough, *Analysing Corruption: An Introduction* (Newcastle upon Tyne, United Kingdom: Agenda Publishing, 2017).
- ⁶ Michael Johnston, "From Thucydides to Mayor Daley: Bad Politics and a Culture of Corruption," *PS: Political Science and Politics* 39 (4) (2006): 809 – 812.
- ⁷ Bo Rothstein and Marcus Tannenberg, *Making Development Work: The Quality of Government Approach* (Stockholm: Swedish Government Expert Group for Aid Studies, 2015).
- ⁸ Leslie Holmes, *Corruption: A Very Short Introduction* (Oxford: Oxford University Press, 2015).
- ⁹ Andreas Bågenholm and Nicholas Charron, "Anti-Corruption Parties and Good Government," in *Elites, Institutions and the Quality of Government*, ed. Carl Dahlström and Lena Wängnerud (New York: Palgrave Macmillan, 2015), 263 – 282.
- ¹⁰ Alina Mungiu-Pippidi, *The Quest for Good Governance: How Societies Develop Control of Corruption* (New York: Cambridge University Press, 2015).
- ¹¹ Francis Fukuyama, *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (New York: Farrar, Straus & Giroux, 2014).
- ¹² Hough, *Analysing Corruption*.
- ¹³ Robert Klitgaard, *Addressing Corruption Together* (Paris: The Organisation for Economic Co-operation and Development, Development Assistance Committee, 2015); and Robert I. Rotberg, *The Corruption Cure: How Leaders and Citizens Can Combat Graft* (Princeton, N.J.: Princeton University Press, 2017).
- ¹⁴ Philip Keefer and Razvan Vlaicu, "Democracy, Credibility, and Clientelism," *Journal of Law Economics & Organization* 24 (2) (2008): 371 – 406.
- ¹⁵ Philip Keefer, "The Poor Performance of Poor Democracies," in *The Oxford Handbook of Comparative Politics*, ed. Charles Boix and Susan Stokes (Oxford: Oxford University Press, 2007), 886 – 910.
- ¹⁶ Michele D'Arcy, "Rulers and Their Elite Rivals: How Democratization Has Increased Incentives for Corruption in Sub-Saharan Africa," in *Elites, Institutions and the Quality of Government*, ed. Carl Dahlström and Lena Wängnerud (New York: Palgrave Macmillan, 2015), 111 – 128.
- ¹⁷ Data from United Nations Office on Drugs and Crime, *Global Study of Homicides 2013* (Vienna: United Nations Office on Drugs and Crime, 2014).
- ¹⁸ Daniel Treisman, "The Causes of Corruption: A Cross-National Study," *Journal of Public Economics* 76 (3) (2000): 399 – 457; Daron Acemoglu, Simon Johnson, and James A. Robinson, "The Colonial Origins of Comparative Development: An Empirical Investigation," *The American*

- Economic Review* 91 (5) (2001): 1369 – 1400; and Alberto Alesina and Eliana La Ferrara, “Ethnic Diversity and Economic Performance,” *Journal of Economic Literature* 43 (3) (2015): 762 – 800. Bo Rothstein
- ¹⁹ John Gerring, “The Relevance of Relevance,” in *The Relevance of Political Science*, ed. Gerry Stoker, B. Guy Peters, and Jon Pierre (London: Palgrave Macmillan, 2015), 36 – 49.
- ²⁰ Paul Collier, “The Cultural Foundations of Economic Failure: A Conceptual Toolkit,” *Journal of Economic Behavior & Organization* 126 (2016): 5 – 24.
- ²¹ Paul D. Collins, “Introduction to the Special Issue: The Global Anti-Corruption Discourse Towards Integrity Management,” *Public Administration and Development* 32 (1) (2012): 1 – 10.
- ²² Davide Torsello and Bertrand Vernand, “The Anthropology of Corruption,” *Journal of Management Inquiry* 25 (1) (2016): 34 – 54.
- ²³ Alina Mungiu-Pippidi, *Contextual Choices in Fighting Corruption: Lessons Learned* (Berlin: Hertie School of Governance, 2011).
- ²⁴ Rothstein and Tannenberg, *Making Development Work*, 34.
- ²⁵ Ibid.
- ²⁶ Nicholas Charron, Victor Lapuente, and Bo Rothstein, *Quality of Government and Corruption from a European Perspective: A Comparative Study of Good Government in EU Regions* (Cheltenham, United Kingdom: Edward Elgar, 2013); and Nicholas Charron, Lewis Dijkstra, and Victor Lapuente, “Mapping the Regional Divide in Europe: A Measure for Assessing Quality of Government in 206 European Regions,” *Social Indicators Research* 124 (3) (2015).
- ²⁷ Daniel Jordan Smith, *A Culture of Corruption: Everyday Deception and Popular Discontent in Nigeria* (Princeton, N.J.: Princeton University Press, 2007); and Torsello and Vernand, “The Anthropology of Corruption.”
- ²⁸ Collier, “The Cultural Foundations of Economic Failure”; and Amir N. Licht, Chanan Goldschmidt, and Shalom H. Schwartz, “Culture Rules: The Foundations of the Rule of Law and Other Norms of Governance,” *Journal of Comparative Economics* 35 (4) (2007): 659 – 688.
- ²⁹ See, for example, Giorgio Blundo and Jean-Pierre Olivier de Sardan, *Everyday Corruption and the State: Citizens and Public Officials in Africa* (London: Zed Books, 2006).
- ³⁰ Collier, “The Cultural Foundations of Economic Failure,” 5.
- ³¹ Rothstein and Tannenberg, *Making Development Work*. The Afrobarometer surveyed individuals from Benin, Botswana, Cape Verde, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mali, Mozambique, Namibia, Nigeria, Senegal, South Africa, Tanzania, Uganda, Zambia, and Zimbabwe.
- ³² Sten Widmalm, “Explaining Corruption at the Village and Individual Level in India: Findings from a Study of the Panchayati Raj Reforms,” *Asian Survey* 45 (5) (2005): 756 – 776; and Sten Widmalm, *Decentralisation, Corruption and Social Capital: From India to the West* (Thousand Oaks, Calif.: SAGE Publications, 2008).
- ³³ Pierre Landell-Mills, *Citizens against Corruption: Report from the Front Line* (Leicestershire, United Kingdom: Matador & Partnership for Transparency Fund, 2013).
- ³⁴ John D’Attoma, Clara Volintiru, and Sven Steinmo, “Willing to Share: Tax Compliance and Gender in Europe and America,” *Research and Politics* 4 (1) (2017): 1 – 10.
- ³⁵ Eliška Drápalová, “Good Apples on Bad Trees: Explaining Variation in Levels of Corruption in Southeuropean Local Government” (Ph.D. diss., European University Institute, Badia Fiesolana, Firenze, 2016).
- ³⁶ Raymond Fisman and Edward Miguel, “Corruption, Norms, and Legal Enforcement: Evidence from Diplomatic Parking Tickets,” *Journal of Political Economy* 115 (6) (2007): 1020 – 1048.
- ³⁷ Licht, Goldschmidt, and Schwartz, “Culture Rules,” 682.
- ³⁸ Collier, “The Cultural Foundations of Economic Failure.”

- ³⁹ Geoffrey Brennan, Lina Eriksson, Robert E. Goodin, and Nicholas Southwood, *Explaining Norms* (Oxford: Oxford University Press, 2013), 89.
- ⁴⁰ János Kornai, *Hidden in an Envelope: Gratitude Payments to Medical Doctors in Hungary* (Budapest: Collegium Budapest Institute for Advanced Study, 2000).
- ⁴¹ Katja Gelbrich, Yvonne Stedham, and Daniel Gäthke, "Cultural Discrepancy and National Corruption: Investigating the Difference between Cultural Values and Practices and Its Relationship to Corrupt Behavior," *Business Ethics Quarterly* 26 (2) (2016): 201 – 222.
- ⁴² Elinor Ostrom, *Understanding Institutional Diversity* (Princeton, N.J.: Princeton University Press, 2005).
- ⁴³ Peter A. Hall, "Policy Paradigms, Social Learning and the State," *Comparative Politics* 23 (1993): 275 – 296.
- ⁴⁴ Donatella della Porta and Alberto Vannucci, *Corrupt Exchanges: Actors, Resources, and Mechanisms of Political Corruption* (New York: Aldine de Gruyter, 1999).
- ⁴⁵ Rasma Karklins, *The System Made Me Do It: Corruption in Post-Communist Societies* (Armonk, N.Y.: M. E. Sharpe, 2005).
- ⁴⁶ David Sneath, "Transacting and Enacting Corruption: Obligation and the Use of Money in Mongolia," *Ethnos* 71 (1) (2006): 89 – 122; and Cynthia Werner, "Gifts, Bribes, and Development in Post-Soviet Kazakstan," *Human Organization* 59 (1) (2000): 11 – 22.
- ⁴⁷ Smith, *A Culture of Corruption*, 65.
- ⁴⁸ Adebani and Obadare, "When Corruption Fights Back."
- ⁴⁹ Mehmet Ugur and Nandini Dasgupta, "Corruption and Economic Growth: A Meta-Analysis of the Evidence on Low Income Countries and Beyond" (London: EPPI-Centre, Social Science Research Unit, Institute of Education, University of London, 2011).
- ⁵⁰ Anna Persson, Bo Rothstein, and Jan Teorell, "Why Anticorruption Reforms Fail: Systemic Corruption as a Collective Action Problem," *Governance* 26 (3) (2013): 449 – 471; and Bo Rothstein, "Trust, Social Dilemmas and Collective Memories," *Journal of Institutional Theoretical Politics* 12 (4) (2000): 477 – 503.
- ⁵¹ Rotberg, *The Corruption Cure*.
- ⁵² Gary J. Miller and Andrew B. Whitford, *Above Politics: Bureaucratic Discretion and Credible Commitment* (New York: Cambridge University Press, 2016); and Douglass C. North, "Institutions and Credible Commitment," *Journal of Institutional and Theoretical Economics* 147 (1) (1993): 11 – 21.
- ⁵³ Bo Rothstein, *Social Traps and the Problem of Trust* (Cambridge: Cambridge University Press, 2005).
- ⁵⁴ Christina Bicchieri and Erte Xiao, "Do the Right Thing: But Only If Others Do So," *Journal of Behavioral Decision Making* 22 (2) (2009): 191 – 208.
- ⁵⁵ Ernst Fehr and Urs Fischbacher, "The Economics of Strong Reciprocity," in *Moral Sentiments and Material Interests: The Foundations for Cooperation in Economic Life*, ed. Herbert Gintis, Samuel Bowles, Robert Boyd, and Ernst Fehr (Cambridge, Mass.: The MIT Press, 2005), 151 – 193, 167.
- ⁵⁶ Torsello and Vernand, "The Anthropology of Corruption."
- ⁵⁷ Julian Lindley-French and Yves Boyer, *The Oxford Handbook of War* (Oxford and New York: Oxford University Press, 2012).
- ⁵⁸ John J. Mearsheimer, *Liddell Hart and the Weight of History* (Ithaca, N.Y.: Cornell University Press, 1988), 1.
- ⁵⁹ Alex Danchev, "Liddell Hart's Big Idea," *Review of International Studies* 25 (1) (1999): 29 – 48, 29.
- ⁶⁰ Brian Bond, *Liddell Hart: A Study of His Military Thought* (London: Cassell, 1977).
- ⁶¹ Mearsheimer, *Liddell Hart and the Weight of History*, 10.

- ⁶² R. A. Mason, "Sir Basil Liddell Hart and the Strategy of the Indirect Approach," *Royal United Bo Rothstein Services Institution Journal* 115 (1970): 37 – 41.
- ⁶³ Danchev, "Liddell Hart's Big Idea," 29.
- ⁶⁴ Robert H. Larson, "Book Review of John. J. Mearscheimer's *Liddell Hart and the Weight of History* (Cornell University Press, 1988)," *The American Historical Review* 96 (1) (1991): 171.
- ⁶⁵ Mearsheimer, *Liddell Hart and the Weight of History*, 89.
- ⁶⁶ Mason, "Sir Basil Liddell Hart and the Strategy of the Indirect Approach."
- ⁶⁷ Basil H. Liddell Hart, *Thoughts on War* (Staplehurst, United Kingdom: Spellmount, 1999).
- ⁶⁸ Mason, "Sir Basil Liddell Hart and the Strategy of the Indirect Approach."
- ⁶⁹ Mearsheimer, *Liddell Hart and the Weight of History*, 89.
- ⁷⁰ Bo Rothstein, "Anti-Corruption: The Indirect 'Big-Bang' Approach," *Review of International Political Economy* 18 (3) (2011): 228 – 250.
- ⁷¹ Rotberg, *The Corruption Cure*.
- ⁷² Anders Sundell, "Understanding Informal Payments in the Public Sector: Theory and Evidence from 19th Century Sweden," *Scandinavian Political Studies* 37 (2) (2014): 95 – 122.
- ⁷³ Bo Rothstein and Jan Teorell, "Getting to Sweden, Part II: Breaking with Corruption in the Nineteenth Century," *Scandinavian Political Studies* 38 (3) (2015): 238 – 254; and Jan Teorell and Bo Rothstein, "Getting to Sweden, Part I: War and Malfeasance, 1720 – 1850," *Scandinavian Political Studies* 38 (3) (2015): 217 – 237.
- ⁷⁴ Rothstein and Tannenber, *Making Development Work*; and Eric M. Uslaner and Bo Rothstein, "The Historical Roots of Corruption: State Building, Economic Inequality, and Mass Education," *Comparative Politics* 48 (2) (2016): 227 – 248.
- ⁷⁵ Ibid.
- ⁷⁶ John Boli, *New Citizens for a New Society: The Institutional Origins of Mass Schooling in Sweden* (Oxford: Pergamon, 1989).
- ⁷⁷ Eugen Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870 – 1914* (Stanford, Calif.: Stanford University Press, 1976).
- ⁷⁸ Andy Green, *Education and State Formation: The Rise of Education Systems in England, France and the USA* (New York: St. Martin's Press, 1990), 79.
- ⁷⁹ Michael Johnston, *Corruption, Contention and Reform: The Power of Deep Democratization* (Cambridge: Cambridge University Press, 2013); and Michael Johnston, "Reforming Reform: Revising the Anticorruption Playbook," *Dædalus* 147 (3) (Summer 2018): 50 – 62.
- ⁸⁰ Martin Clark, *Modern Italy, 1871 – 1982* (London: Longman, 1996).
- ⁸¹ Spencer Di Scala, *Italy from Revolution to Republic: 1700 to the Present* (Boulder, Colo.: Westview Press, 2009).

Reforming Reform: Revising the Anticorruption Playbook

Michael Johnston

Abstract: Three decades of anticorruption activism have yielded only indifferent results. It is time to step back and rethink some basic issues. Among them are what the opposite of corruption might look like; our excessive faith in transparency; the distinction between “grand” and “petty” corruption; our reliance on the concept of “political will”; and what the best ways are of measuring corruption and mobilizing civil society. “Best practices” are elusive and do not always transfer well from one setting to the next. However, “better practices” are possible if we understand how corruption arises as a political and social issue, and how well-governed societies got that way. We often turn history upside down, overemphasizing reform from above while neglecting contention from below; and get history backward by mistaking outcomes of contention for the causes of better government. “Deep democratization” – enabling citizens to demand justice and better government – tailored to contrasting situations and syndromes may yield better long-term results.

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Two generations of activism and research in support of corruption control have produced indifferent results at best. What kind of thinking – and rethinking – might lead to better outcomes? This essay offers critical commentary about the contemporary anticorruption movement, made from the perspective of a longtime friend and active participant. (When I write that “we” have struggled with this or failed to realize that, I include myself.) The arguments in this essay fall into two categories: common reform themes that need rethinking or, in some cases, replacement; and a discussion of what history might tell us about the drivers of both corruption and sustained opposition to it. My ideas in no way supplant reforms underway today, but rather are intended to build stronger foundations for them. The result is not a list of “best practices,” but ideas about *better* practices, tailored to address a range of challenges.

It would be wrong to suggest that the reform movement has failed. Corruption, for many years

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a nonissue in academe, business, and international policy, now has a prominent place on the global agenda. Annual governance rankings still make headlines. Aid programs and investment decisions treat corruption as a prominent concern, while official exploitation and misconduct are mobilizing grievances in political upheavals and “color revolutions” in many societies. We may take such heightened awareness of corruption for granted nowadays, but it was not always so. This itself is a significant accomplishment.

Positive results, however, are another matter. Success has been possible within specific agencies and locales, and the Hong Kong and Singapore reform sagas are familiar history. But clear-cut, sustained reductions in corruption in diverse societies on the state level have been few. Country-level indices point to a few cases – such as Japan and Belgium – where corruption is perceived to be in decline, but the measures used are problematic on the grounds of validity (most measure perceptions of corruption, not corruption itself) and reliability (country scores usually have large standard errors, making many comparisons suspect). More persuasive process-tracing evidence from the European Union’s massive ANTICORRP research project has identified seven countries – Chile, Costa Rica, Estonia, Georgia, South Korea, Taiwan, and Uruguay – as having made progress on corruption; Rwanda and Botswana appear to be close behind.¹ Those cases offer valuable lessons, but as comparatively small (save for Korea) and ethnically homogeneous societies, they are unrepresentative of the full range of countries.

How can we do better?

Commitment is not the problem. Around the world people and groups are working hard, often at personal risk, to fight abuses of power and wealth. Strategies and tactics have evolved: less emphasis is now placed

on privatization, scaling back the state, and relying on markets in place of public institutions; and there is greater appreciation of the global nature of many corruption problems. International cooperation has grown: the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Treaty, Group of States Against Corruption (GRECO), and United Nations Convention Against Corruption (UNCAC), along with the venerable U.S. Foreign Corrupt Practices Act and the UK Bribery Act of 2010, bring cross-border support to the struggle.² New metrics of corruption, and of the effects of reforms, continue to appear.³

Still, the same ideas and strategies tend to dominate even in quite different settings. Top-down national efforts emphasizing crime-prevention concepts and transparency, often built around anticorruption agencies (ACAs); improved administrative processes; independent judiciaries and news media; and poorly defined support from civil society, remain core themes.⁴ These are scarcely bad ideas in themselves, but making them work in an applied context is another matter. We acknowledge that historical and cultural variations among societies matter, yet devise reform strategies that are remarkably similar from one case to the next. We still have no clear sense of which ideas to apply in what sequence and which to avoid entirely when dealing with contrasting situations or problems. Equally frustrating, it has proven difficult to win lasting political and public support and credibility for reform initiatives, even though large majorities would benefit from effective corruption control.

A number of reform assumptions and distinctions go largely unquestioned; some seem to be repeated mostly because we hear others repeating them. Too little thought, for example, has been devoted to asking what the *opposite* of corruption might be and how we might build positive support

for that. “No corruption” is neither possible nor a credible goal for engaging sustained citizen interests; and “less corruption,” or less disruptive varieties of it, while more realistic, will inspire few. Technocratic visions of “good governance” often reduce government to a referee in social and economic arenas, thereby undervaluing justice and sidestepping the political contention often required to pursue it. In politically or culturally complex and/or divided societies, reform agendas based on harmony and moral consensus are unlikely to succeed, and in any event give little concrete guidance on how to move forward.

History offers one way to conceptualize the opposite of corruption: a reduction in corruption (to within reasonable limits) has often been a byproduct of prolonged political contention over the sources, uses, and limits of power. Ensuring that citizens have a voice in such processes and can defend themselves against official abuses is a process I have called *deep democratization*.⁵ Integrating citizens and their needs and wishes into governing lends new meaning to the notion of *integrity*, evoking honesty and transparency but also wholeness.

Reform strategies often place excessive faith in *transparency*, at times treating the term as synonymous with corruption control. Transparency is a laudable principle so long as it does not place vulnerable people at risk: political and legal scholar Richard Briffault has cited cases in which backers of controversial political causes have been threatened once their contributions have been disclosed, and fear of reprisal from employers has been cited as a justification for not disclosing individuals’ small contributions.⁶ But as a means of corruption control, transparency has problems. To begin, it addresses relatively few of the behaviors and social issues that many citizens view as corruption. For instance, a large majority of Americans see political contributions as corrupting democratic

life despite (or perhaps precisely because of) the fact that most such money changes hands legally in publicly disclosed transactions.⁷ Transparency can also strengthen already-influential interests well-placed to capitalize upon access and openness, and can even facilitate corruption: according to some critics, the Legislative Reorganization Act of 1970, by making the workings of Congress and its committees more transparent and reducing the power of committee chairs, not only gave contributors more leverage over individual members of Congress, but also made it easier to track the activities of donation recipients through phases of the legislative process. In other words, contributors found it easier to ensure that they received value for their money.⁸ Transparency, therefore, is not an inherent good, and will accomplish little if citizens have little reason to “look in,” do not feel safe in doing so, or lack the political resources and opportunities to act on what they see.

Distinguishing between “grand” and so-called “petty” corruption has intuitive appeal: massive fraud in the course of building a dam and small protection payments regularly demanded by police are not the same thing. But precisely what the grand-versus-petty distinction helps us understand has never been clear. Indeed, this opposition may obscure more than it reveals, particularly if it is invoked to minimize the importance of the “petty”: “petty” corruption is a serious problem, keeping poor people poor and the powerless vulnerable. Far from being distinct problems, “grand” and “petty” corruption can enable each other.⁹ The spark that set off Tunisia’s national upheaval was a public suicide resulting from police abuse of a young fruit seller in an open market: seemingly petty corruption that nonetheless enjoyed protection from the top of the system.¹⁰ In other instances, front-line functionaries share bribes with the superiors to whom they owe their jobs, creat-

ing a sizable upward flow of money into the hands of a select few. We do need to differentiate among the kinds of corruption problems (more on that below) but the value of the grand-versus-petty distinction – that is, what analytical work it does for us – remains unclear.

Political will – which we might define as politicians’ firm intention and desire to effect change, although reformers rarely say precisely what they mean when they invoke the term – is often considered the foundation for corruption control. Few would dispute that reforms will more likely succeed if backed by leaders. But will of any sort is a matter of intentions and dispositions and as such is fundamentally unknowable a priori. High-profile proclamations of “zero tolerance” may come to naught, and splashy reform campaigns can be mostly for show – or worse, aimed at jailing critics. In practice, we cannot assess political will until we have outcomes to analyze in their full political context, as public policy scholar Derick Brinkerhoff’s framework for assessing political will suggests.¹¹ Good intentions can run headlong into historical constraints, social divisions, a lack of resources, or entrenched opposition. A leader or regime might overcome some obstacles by coercion, but that sort of “will” can do immense damage to state integrity and will scarcely foster anticorruption strength in the rest of society. If anything, many extensively corrupt societies suffer from an excess of political will – as powerful figures silence their critics and derail or prevent investigations – and from the weakness of countervailing institutions and interests.

Political will or its absence can inform post hoc assessments of anticorruption efforts, particularly if we break the general concept down into more specific sources of support and opposition. But while it might be deemed a necessary condition for corruption control, it is usually insufficient on its own. Calls for political will oversimpli-

fy the complexities of building social support for reform, and outcomes usually reflect a great many interconnected and context-specific influences. Indeed, if reforms fail, they invite us to blame the victims: *we gave them the right tools and ideas, but the leaders just wouldn’t see them through*. Finally, if a genuine anticorruption champion should appear, what happens when she or he leaves the stage, or when once-strong support begins to fade? Ronald MacLean-Abaroa’s corruption-control efforts during his time as mayor of La Paz, Bolivia, produced quite positive results, but once he left office, many corrupt practices returned.¹²

The notion that *civil society* has a central role to play in corruption control is widely accepted, but often in ways that reflect a narrow view of civil society itself. Many civil-society tactics center on formal organizations advocating reform as a public good: that is, as a cause that all should actively support because all will benefit. In developing countries, many such groups are donor-funded, operate mostly in and around national capitals, and are guided by donors’ agendas; often they are as concerned with protecting their own resources as they are with introducing significant change.¹³ But the strength of civil society considered less narrowly is also found in groups and informal social activities that have little to do with public purposes yet still build social capital in the form of networks, skills, and trust that can be mobilized in many ways for many reasons. In our possibly overoptimistic scenarios about civil society in the United States, for example, residents wanting to clean up a park do not necessarily organize a formal group.¹⁴ Instead, they may draw upon their own and shared networks – friends, members of clubs and churches, and outdoor enthusiasts – to get the job done. Such civil-society mobilization is difficult to sustain from above, but it can happen organically; someone chooses to take the lead, and side

benefits such as beer and a barbecue at the end of the day will make the cleanup all the more attractive.

The point is that collective action cannot rely solely on formal purpose-oriented organizations, but must engage a wider range of social ties and incentives.¹⁵ The democratic transition in 1970s Spain, for example, was aided by a civil society that proved just strong enough to sustain trust and discourage massive disorder. Later data showed, however, that Spain at the time of Franco's death had few autonomous social organizations.¹⁶ What it did have were long-standing, deep traditions of informal socializing in neighborhoods and local communities – arguably a durable substitute for formal organizations.¹⁷ Similar informal networks supported democratic reforms in neighboring Portugal. Particularly in postconflict and postauthoritarian settings, reformers might do well to encourage the formation of multipurpose women's, students', and farmers' organizations; social clubs and music societies; labor unions; and neighborhood mutual-aid schemes that offer citizens things they want and need. Few such groups will have dedicated anticorruption agendas or acquire strength immediately, but over time all might contribute to networks and trust, and diffuse organizational skills in ways that are useful to challenge official exploitation. That approach will take time and patience, but the resulting social ties will likely be strong, versatile, and grounded in relationships unlikely to emerge from donor-driven advocacy of public goods in civil-society and non-governmental organizations.

A final point in need of rethinking is *reliance upon one-dimensional, country-level corruption indices* and rankings. Such indices do keep corruption on the agenda and direct our attention to regimes that would rather we looked the other way. But some are of dubious validity and reliability, exaggerate the precision of results, and have problems

tracking change.¹⁸ For example, by attributing corruption to the societies in which it is revealed, these indices may overlook cross-border dealings. Further, important reforms requiring major political capital frequently fail to “move the needle” on such indices, while the trials, scandals, and evidence that emerge when a country gets serious about corruption can ironically make perceptions worse. Analysts have made strides in assessing the overall scope of corruption in societies and regions, but measurement on the scale at which reforms are effected remains difficult.¹⁹ Do improvements in specific procurement or customs functions, for example, actually restrain corruption in those areas of government? As a result, it has been hard to assess tightly targeted controls to show that they are producing benefits, and thus to show citizens that reform is real and can improve their lives.

What might work better? First, we might stop thinking of corruption as a national characteristic attributable to all parts and levels of a society and recall that a one-number score may distort more than it reveals. Corruption often arises in small niches: a procurement process; a relationship between a politician and a contributor, or between officials and vendors; or in a tax assessor's use of discretion. Indicators of government performance – how long it takes to get a license or permit, the variability of inspections or tax assessments, prices paid for comparable commodities like fuel or concrete – benchmarked over time and across jurisdictions, can signal the effects of corruption and the incentives sustaining it.²⁰ They will not measure corrupt dealings directly or generate headline numbers about whole regimes, but may well give reformers critical insights into points of vulnerability and the effects of new controls.

No master plan will suffice to check corruption as a singular problem, for that is not

the kind of problem it is. Progress must take many, and evolving, forms, as has been the case historically, and the impact of our efforts must be assessed in numerous ways. “Best practices” will be elusive; indeed, what is effective in Country A can be impossible in Country B, irrelevant in Country C, and downright harmful in Country D (as with privatizations in Russia in the 1990s).²¹ We can, however, work toward *better* practices adapted to the diverse contexts in which corruption is embedded, and reflecting a fuller understanding of the ways both it and sustained anticorruption opposition take root.

To a surprising extent, we treat corruption as though it were essentially the same thing everywhere, but this is not so in two senses. First, “corruption” has long been implicitly equated with “bribery.” A United Nations document on corruption-prevention processes, for example, while allowing that corrupt activities arise in many situations, nevertheless simply equates them with bribery and extortion.²² This kind of normative thinking is understandable in part because bribery is likely the most common corrupt practice, and in part because direct quid pro quo transactions between parties on relatively equal footing are easily modeled, and so receive more attention.²³ But that is to underestimate the sheer diversity of the phenomenon: nepotism, official theft, and extended rings of collusion in privatization or customs functions (to name a few variations) involve diverse interactions, timelines, risks, and gains, and can have differing origins and consequences. Some corrupt dealings revolve around the activities of middlemen who make temporary, but lucrative, connections between citizens and officials. Others involve repressive uses of authority or outright violence, and are scarcely equal trades. Examples include more lurid forms of extortion as well as the *plata o plomo* (“silver or lead”) choices forced upon state and local officials by Mex-

ican drug cartels.²⁴ Some corruption is carried out openly and with impunity. Some corruption undermines order; elsewhere it is doled out as patronage – and functions as a means of control and of maintaining social order (albeit a dysfunctional one).²⁵ In still other cases, elite collusion unifies ruling coalitions facing rising competition, sustaining a de facto political predictability that can coexist with sustained economic growth. Recent research argues that not all corruption is illegal: some of it works through, not in defiance of, laws and institutions.²⁶

The second sense in which corruption is not uniform has to do with the deeper origins of corruption. What are the most important contrasts to understand? Useful distinctions – for example, “need” corruption versus “greed” corruption²⁷ – have emerged in the literature. Anticorruption expert Adam Graycar’s TASP (Type, Activities, Sectors, Places) framework can map occurrences and vulnerabilities.²⁸ But most other typologies categorize derivative details, not fundamental contrasts. My own work points to four broad syndromes of corruption defined by the openness in political and economic arenas and by the strength of state, political, and social institutions.²⁹ *Official Moguls* cases (such as Egypt, Nigeria, and in a larger and more decentralized way, China) are dominated by a few elites in a setting of very weak institutions, monopolizing power and resources for themselves and for clients and ruling more by personal power than official authority. *Oligarch-and-Clans* situations (for example, in Mexico and the Philippines) likewise involve very weak institutions, but in these cases several contending powerful figures and their followers amass both wealth and power in a setting of pervasive insecurity. There is little doubt about who is in charge in Official Mogul cases, while in Oligarch-and-Clan situations, it may not be clear that anyone is in control: corruption is often linked to violence as oligarchs

struggle to protect their gains and enterprises from predation by other oligarchs. *Elite Cartel* societies (such as the Republic of Korea, Botswana, and Poland) are often new or reforming democracies with emerging markets; their institutions are only moderately strong, but they are dominated – and stabilized – by networks of colluding elites sharing the proceeds of corruption while seeing off would-be competitors. *Influence Market* cases (such as the United States, Japan, and Australia) tend to be affluent market democracies with open, generally well-institutionalized politics and economies. In these states, however, political influence (usually over specific decisions and benefits) is traded as a commodity, often legally. Influence Markets might seem relatively benign, but they affect policy – and often limit political and economic competition – within large and important economies, and affect many other societies via global markets. These syndromes can point to contrasting challenges of building support for reforms. Thus, more work and creative thinking is needed regarding contrasts in the underlying causes, inner workings, evolution, and consequences of corruption problems.

Much can be learned from a fresh historical look at corruption and reform. Most theories of change supporting reform efforts turn history upside down or get it backward.³⁰ The former involves overemphasizing reform from above while taking it as a given that political support from below will develop naturally. Missing from such scenarios are the political contention and bottom-up demand needed to use diverse grievances to mobilize broad support for controls and check the powerful. Getting history backward means that we mistake outcomes – legislation, institutions, a middle class, an active civil society, anticorruption agencies, checks by the press and the courts – for the *causes* of better gov-

ernment.³¹ But what initially propelled well-governed countries toward good government is not necessarily what sustains it now, and there is no guarantee that things will not get worse. For struggling societies, simply emulating the laws and institutions of successful countries without ensuring solid social demand for reform, grounded in lasting social values and interests, will be like pushing on one end of a string.

We see variations on that theme today. Many countries have anticorruption laws on the books (even if penalties need updating), an ACA of some sort, and numerous externally funded governance projects. Few in society, however, have a compelling stake in their success; support from courts and prosecutors is weak or absent, and enforcement is ineffective. Strong, effective laws and institutions found elsewhere, by contrast, were rarely if ever implemented from the start, but rather emerged out of long and contentious processes of deep democratization, driven by citizens' demands for better treatment and ways to protect their interests. Frederick Douglass put it best in 1857: "Power concedes nothing without a demand. It never did and it never will."³² Those demands, in turn, cannot be taken for granted, and usually require broad social support: it is essential that leadership have real social roots and knowledge of what concerns citizens most.³³

The argument follows – correctly – that to succeed, deep democratization requires some degree of liberty and security, or at least of political space to express oneself as well as a diversity of active voices in society. But that does not mean reform must await the arrival of institutionalized democracy (which, after all, creates corruption risks of its own). Economist Jonathan Isham and governance experts Daniel Kaufmann and Lant Pritchett have shown that even in undemocratic societies, basic civil liberties – such as freedom to criticize the regime in public occasionally – are linked to better

use of aid resources.³⁴ The real lesson here is that basic political changes must often be underway before corruption controls can gather force.

How might deep democratization work in practice, particularly where political, administrative, and law-enforcement institutions are weak or manipulated from above? The four syndromes offer some clues, not in the form of specific reform menus, but rather in terms of the social and political foundations that must be built to support existing and future measures.³⁵ Particularly for the Official Moguls and Oligarchs-and-Clans syndromes, this process must usually be long-term and indirect, focused not on “fixes” but rather on building lasting resistance to corruption and opportunities for its expression. Even periods of rapid change often build upon underlying longer-term developments that have brought new interests into being and enabled them to make demands. The argument here is not that struggling societies should let corruption go unchallenged until some developmental checklist has been completed. Rather, caution and pragmatism are in order: confronting entrenched corrupt regimes prematurely can end in tragedy, as with the Tiananmen Square demonstrators of 1989, on whose lists of grievances corruption ranked highly.³⁶

Therefore, where Official Moguls monopolize power, a key reform task is to *increase political pluralism* over time by enabling more people to voice their interests. Corruption may be just one of many entrenched governance issues a country faces as it begins moving toward more pluralism; in a way, the specific grievances people raise matter less than their ability to raise them at all. Repressive regimes will not welcome new voices, so increasing pluralism will be a long and difficult process, just as it was, historically, in many of today’s well-governed societies.³⁷ Reformers might seek

to restrain abuses by police and exploitation by officials interacting directly with citizens; set a higher standard of professionalism and independence for judiciaries and the press; and pursue meaningful (if realistically limited) opportunities for association and expression. Nonpolitical groups, social and recreational networks, ethnic or migrant communities, and some religious groups may offer safe ways to build strength and mutual trust.

In Oligarchs-and-Clans scenarios, pluralism abounds. Indeed, notwithstanding oligarchs’ personal clout, it can be unclear whether anyone is really in charge. Potential opponents of corruption are numerous but find it risky in a climate of danger and insecurity to challenge oligarchs, who may be linked to organized crime, drug cartels, or private armies. In this case, the primary reform goals – which are far from easy to achieve – are to reduce citizens’ pervasive sense of insecurity and create safe and valued political and economic spaces where individuals can pursue and defend their own interests. This includes strengthening electoral, financial, law-enforcement, and judicial bodies so they are neither colonized by oligarchs nor supplanted by mafias. Corruption may be a common thread linking a large number of specific grievances around which people can be mobilized once they have a safe space in which to act.

Elite Cartel cases, in which dominant including elites face pressure from competing political and economic forces, are characterized by multiple active interests and a moderately well-institutionalized political space. In these cases, in addition to mobilizing social interests and maintaining safe political space, a major goal is to increase political and economic competition and openness, which often entails direct challenges to collusive corruption. Familiar anticorruption and institution-building measures can be effective if they enjoy social support. In addition, many Elite Cartel so-

cities have experienced sustained economic growth, increasing the range of active interests in society and reinforcing citizens' incentives to be their own advocates. Entrenched elites will not give ground gladly, but unlike Official Moguls and Oligarchs, for whom defeat may mean ruin or death, they may have the option of making way for more competition. Moreover, the costs of outright repression, both economically and in terms of public image, may well counsel political accommodation.³⁸

Finally we come to Influence Markets, and to a paradox: these regimes have institutionalized anticorruption laws and ideas and flagrant abuses are uncommon, yet much activity commonly seen as corrupting takes place within the limits and protection of the law. Monetary contributions to political campaigns are just one example. The challenge in such environments is to demand enforcement of corruption controls, increase competitiveness in economies and politics, and roll back legislation creating unfair advantages and suspects. Such efforts typically must traverse political, economic, and legal landscapes long ago reshaped to suit the wealthy, who have the added advantage of defending a status quo many people see as legitimate. Transparency, ironically, may do as much harm as good, persuading many that wealth alone is what really decides elections and shapes public policy. From one election cycle to the next, donor transparency produces what amount to "target lists" of likely contributors (for politicians) and sympathetic recipients (for both candidates and contributors with influence agendas).³⁹ Some forms of confidential contributions might be helpful, but "dark money" has obvious risks too.⁴⁰ Influence Market corruption – seemingly less damaging than other syndromes – may actually be among the toughest varieties to control and, because of wealthy countries' economic clout, should be a global as well as a domestic concern.

These long-term, politicized, indirect reform scenarios will be unsatisfying to anyone looking for quick fixes via direct attacks on corrupt practices. The ideas here seek to replicate and gradually accelerate the political contention that enabled today's relatively well-governed peoples to check abuses of power. There is no guarantee of success: useful stalemates, in which contending parties gradually arrive at workable settlements that can become institutionalized, are more likely than civic breakthroughs; and as I argue above, solutions implemented in different polities have different results. Followers may lose heart; collective action problems may also set in. Therefore, reforms must be closely linked to citizens' well-being. The indicators and benchmarks of government functions outlined above may help persuade citizens that they are benefiting from reform as they see improved and more fairly distributed services. They can also enable leaders and managers to claim some credit for progress, thus placing advocates of better government in a less adversarial relationship with ruling elites.

The punchline of this essay, in the end, is that when it comes to reform there is no punchline. No standard "toolkit" is likely to address corruption in all its forms. Until we trade whole-country perception ratings for evidence-driven assessments of trends in the quality of government we will understand neither the effects of corruption controls nor which practices might be "best" in a particular setting.⁴¹ At the same time, however, if we do pursue deep democratization, some cautionary tales should be kept in mind.

*First, do no harm.*⁴² Even seemingly promising reforms are likely to fail if they lack a solid base of political support grounded in lasting interests. Indeed, they may do more harm than good: not only to backers vulnerable to reprisals, but also to soci-

ety as a whole if reform opportunities are lost; or if citizens, investors, and aid partners conclude that corruption cannot be challenged. Meanwhile, corrupt operators may decide that even a failed reform push means they had better take as much as they can – and take it quickly.⁴³ These forms of backlash must be considered when reforms are undertaken.

Trust and credibility are essential. Citizens have heard anticorruption appeals before, and have likely seen them fail. Indeed, they may well have seen corruption control used as a pretext for seizing power or for continued elite enrichment. In postconflict or deeply divided societies, citizens may distrust each other as much as corrupt officials, which further complicates collective action problems. But rather than targeting corruption in general, those in governance roles should listen to specific grievances – about, for example, poor utility services, health systems devoid of resources, police who work harder at collecting bribes than at protecting the public – to identify issues in which people have a shared stake. Demonstrable improvements in those areas can build the credibility of reform, reduce collective-action problems, and foster trust in the more honest officials. In that connection, “working with civil society” must involve the whole country as much as possible, reaching beyond the orbit of familiar NGOs and into grassroots networks.

What you do, do well. As noted, credibility is a primary challenge for reformers, particularly in Official Moguls and Oligarchs-and-Clans situations. At the outset it is likely better to attain modest goals on a regular basis – and, of course, to call attention to accomplishments – than to proclaim massive campaigns that will once again come to naught. We cannot make “picking the low-hanging fruit” a permanent approach, but it is a first step toward building the credibility and relative strength needed to confront entrenched interests.

Establishing an anticorruption agency is not always a wise idea. Particularly in response to entrenched Moguls and Oligarchs, such organizations make the extensive resources and support needed by them hard to justify. Where moguls are in charge, the agency is vulnerable to capture from above, if it was not set up that way from the beginning. Where oligarchs slug it out, an ACA may be ineffective in the face of their muscular networks, which can colonize the courts and law enforcement. The two most successful ACA stories are those of Hong Kong’s Independent Commission Against Corruption (ICAC) and Singapore’s Corrupt Practices Investigation Bureau. But both of these societies are small and, in the case of Hong Kong, ethnically homogeneous, and well-positioned to capitalize upon low-corruption reputations. Most other societies are considerably larger, more diverse, and more economically differentiated, and thus face challenges on a greater scale. Moreover, since neither Hong Kong nor Singapore is a democracy, their ACAs face little opposition. By contrast, the excellent ICAC of New South Wales, Australia, has often had to fend off accusations of favoritism by one political party or another.

In the end, the deep democratization argument reminds us why corruption is worth worrying about in the first place: justice. Can people be governed – and ideally, govern themselves – in ways that are both effective and fair? Corruption is by no means the only reason why societies, even when outwardly successful, fall short of those ideals.⁴⁴ Still, the best way to link the grassroots and high-level parts of the anticorruption movement may be to harness political aspirations to broader social justice and set them as the guiding principles of reform thinking. Linking reform to aspirations to fair treatment by officials, secure property rights, responsive representation, and better public services could be the best way to mobilize lasting support for

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the long fight against corruption. Indeed, in some instances it might be advantageous not to discuss corruption at all, but rather to keep the focus on fairness, freedom, and hu-

man dignity. Demonstrating improvements in those areas, in turn, may be the most effective way to show that progress is being made and reform is for real.

AUTHOR'S NOTE

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ENDNOTES

- ¹ Alina Mungiu-Pippidi and Michael Johnston, eds., *Transitions to Good Governance: Creating Virtuous Circles of Anticorruption* (Cheltenham, United Kingdom: Edward Elgar, 2017).
- ² *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (Paris: Organisation for Economic Co-operation and Development, 2011), https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf; Council of Europe, "Group of States against Corruption," <http://www.coe.int/en/web/greco> (accessed September 5, 2017); United Nations Office on Drugs and Crime, *United Nations Convention against Corruption* (Vienna: United Nations Office on Drugs and Crime, 2004); *Foreign Corrupt Practices Act*, 15 U.S.C. § 78dd-1, 1977 et seq., <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>; and United Kingdom, *Bribery Act 2010*, 2010 c. 23, <http://www.legislation.gov.uk/ukpga/2010/23/contents>.
- ³ Christian Michelsen Institute, U4 Anti-Corruption Resource Centre, "The Proxy Challenge Award 2016," <https://www.cmi.no/events/1751-the-proxy-challenge-award>.
- ⁴ A historical discussion appears in Jesper Johnsen, *Anti-Corruption Strategies in Fragile States: Theory and Practice in Aid Agencies* (Cheltenham, United Kingdom: Edward Elgar, 2016), 40–46, 66.
- ⁵ Michael Johnston, *Corruption, Contention, and Reform: The Power of Deep Democratization* (Cambridge: Cambridge University Press, 2014), chap. 2.
- ⁶ Richard Briffault, "Campaign Finance Disclosure 2.0," *Election Law Journal* 9 (4) (2010): 273–303.
- ⁷ Johnston, *Corruption, Contention, and Reform*, 198.
- ⁸ James D'Angelo, David C. King, and Brent Ranalli, "The Evolution of Transparent Corruption," unpublished manuscript, August 2017, <http://congressionalresearch.org/extrafiles/images/DAngelo2017EvolutionOfTransparentCorruption.pdf>.
- ⁹ Thanks to Jennifer Kartner for her comments on this point.
- ¹⁰ Johnston, *Corruption, Contention, and Reform*, chap. 4. See also Sarah Chayes, *Thieves of State: Why Corruption Threatens Global Security* (New York: W. W. Norton, 2015), chap. 6.
- ¹¹ Derick W. Brinkerhoff, "Assessing Political Will for Anti-Corruption Efforts: An Analytic Framework," *Public Administration and Development* 20 (3) (2000): 239–252.
- ¹² Robert Klitgaard, Ronald MacLean-Abaroa, and H. Lindsey Parris, *Corrupt Cities: A Practical Guide to Cure and Prevention* (Oakland: ICS Press, 2000).
- ¹³ Michael Johnston and Jesper Johnsen (with Olivia T. Gamble), "Doing the Wrong Things for the Right Reasons? 'Do No Harm' as a Principle of Reform," *U4 Brief* 13, December 2014, <http://www.u4.no/publications/doing-the-wrong-things-for-the-right-reasons-do-no-harm-as-a-principle-of-reform/downloadasset/3696>.
- ¹⁴ Robert Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon & Schuster, 2000).
- ¹⁵ James Q. Wilson, *Political Organizations* (New York: Basic Books, 1973).

- ¹⁶ Mariano Torcal and Jose Ramon Montero, "Facets of Social Capital in New Democracies: The Formation and Consequences of Social Capital in Spain," *Social Capital and European Democracy*, ed. Jan W. van Deth, Marco Maraffi, Ken Newton, and Paul F. Whiteley (London and New York: Routledge, 1999), 167 – 191.
- ¹⁷ Michael Johnston, "Social Capital and Democratic Development in Spain: Six Hypotheses in Search of a Concept," paper presented at U.S. Government agency conference "Measuring Social Capital," Arlington, Virginia, March 2009.
- ¹⁸ Melissa A. Thomas, "What Do the Worldwide Governance Indicators Measure?" *The European Journal of Development Research* 22 (1) (2010): 31 – 54.
- ¹⁹ Kelly M. McMann, Brigitte Seim, Jan Teorell, and Staffan I. Lindberg, "Democracy and Corruption: A Global Time-Series Analysis with V-Dem Data," V-Dem Working Paper No. 43 (Gothenburg, Sweden: The Varieties of Democracy Institute, 2017); and Nicholas Charron, Lewis Dijkstra, and Victor Lapuente, "Mapping the Regional Divide in Europe: A Measure for Assessing Quality of Government in 206 European Regions," *Social Indicators Research* 122 (2) (2015): 315 – 346.
- ²⁰ Michael Johnston, "Components of Integrity: Data and Benchmarks for Tracking Trends in Government" (Paris: Organisation for Economic Co-operation and Development, 2009), <http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=GOV/PGC/GF%282009%292&doclanguage=en>; and Michael Johnston, "Assessing Vulnerabilities to Corruption: Indicators and Benchmarks of Government Performance," *Public Integrity* 12 (2) (2009): 125 – 142.
- ²¹ Chrystia Freeland, *Sale of the Century: Russia's Wild Ride from Communism to Capitalism* (London: Little, Brown, 2009).
- ²² Petter Langseth, *Prevention: An Effective Tool to Reduce Corruption* (Vienna: United Nations Global Programme Against Corruption, 1999).
- ²³ "Relatively equal" does not imply that there are no status or power differences between bribe payers and recipients; after all, the official has discretion over a valuable commodity or decision for which others are willing to pay. Still, a simple, closed-ended quid pro quo transaction implies that the payer gets value for money and the recipient gets what is thought to be a fair price.
- ²⁴ Raoul Lowery Contreras, "'Plata o Plomo,' Silver or Lead," *The Hill*, September 4, 2014, <http://thehill.com/blogs/pundits-blog/immigration/216598-plata-o-plomo-silver-or-lead>.
- ²⁵ Keith Darden, "The Integrity of Corrupt States: Graft as an Informal State Institution," *Politics and Society* 36 (1) (2008): 35 – 59; and John Waterbury, "Endemic and Planned Corruption in a Monarchical Regime," *World Politics* 25 (4) (1973): 533 – 555.
- ²⁶ Lawrence Lessig, "'Institutional Corruption' Defined," *Journal of Law, Medicine, and Ethics* 41 (3) (2013): 2 – 4; and Oguzhan Dinçer and Michael Johnston, "Measuring Illegal and Legal Corruption in American States: Some Results from the Edmond J. Safra Center for Ethics Corruption in America Survey," Working Paper 58 (Cambridge, Mass.: Edmond J. Safra Center for Ethics at Harvard University), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2579300.
- ²⁷ Monika Bauhr, "Need or Greed? Conditions for Collective Action against Corruption," *Governance* 30 (4) (2017): 561 – 581.
- ²⁸ Adam Graycar, "Cracking Down on Corruption," PowerPoint slide deck, 2014, http://www.law.columbia.edu/sites/default/files/microsites/public-integrity/files/capi_columbia_oct_2014.pdf.
- ²⁹ Michael Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy* (Cambridge and New York: Cambridge University Press, 2005); and Johnston, *Corruption, Contention, and Reform*.
- ³⁰ Johnston, *Corruption, Contention, and Reform*, 29 – 47.
- ³¹ Rustow has made a similar argument about the origins of democracy, pointing out the role of prolonged political contention and arguing that the factors that launched democratization in many societies (contention over the power of ruling elites, grievances on the part of politically excluded groups) are not the ones that sustain democracy today (a middle class, a free press,

- civil liberties, and the like). See Dankwart A. Rustow, "Transitions to Democracy: Toward a Dynamic Model," *Comparative Politics* 2 (3) (1970): 337 – 363.
- ³² Frederick Douglass, "If There Is No Struggle, There Is No Progress," BlackPast.org, <http://www.blackpast.org/1857-frederick-douglass-if-there-no-struggle-there-no-progress#sthash.Orl1tuhb.dpuf>.
- ³³ Abhijit Banerjee and Esther Duflo, *Poor Economics: A Radical Rethinking of the Way to Fight Global Poverty* (New York: Public Affairs, 2012).
- ³⁴ Jonathan Isham, Daniel Kaufmann, and Lant Pritchett, "Civil Liberties, Democracy, and the Performance of Government Projects," *World Bank Economic Review* 11 (2) (1997): 219 – 242.
- ³⁵ Johnston, *Corruption, Contention, and Reform*, chap. 4 – 8.
- ³⁶ Clemens Stubbe Ostergaard and Christina Petersen, "Official Profiteering and the Tiananmen Square Demonstrations in China," *Corruption and Reform* 6 (2) (1991): 87 – 107.
- ³⁷ Michael Johnston, "Political Corruption: Historical Conflict and the Rise of Standards," in *The Global Resurgence of Democracy*, ed. Larry Diamond and Marc F. Plattner (Baltimore: Johns Hopkins University Press, 1993), 193 – 205.
- ³⁸ Such networks may also reemerge, although perhaps in altered form, as they have in some of the old American political machines and, to some degree, in contemporary Korea.
- ³⁹ Bertram J. Levine and Michael Johnston, "The Compliance Equation: Creating a More Ethical and Equitable Campaign Financing System by Blinding Contributions to Federal Candidates," in *Blinding as a Solution to Bias: Strengthening Biomedical Science, Forensic Science, and Law*, ed. Aaron S. Kesselheim and Christopher T. Robertson (Amsterdam: Academic Press, 2016), 278 – 296.
- ⁴⁰ Levine and Johnston, "The Compliance Equation"; Bruce Ackerman and Ian Ayres, *Voting with Dollars: A New Paradigm for Campaign Finance* (New Haven, Conn.: Yale University Press, 2004); and Jane Mayer, *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right* (New York: Doubleday, 2016).
- ⁴¹ Johnston, "Components of Integrity"; Johnston, "Assessing Vulnerabilities to Corruption"; and Alina Mungiu-Pippidi, ed., "Special Issue: Measuring Corruption in Europe and Beyond," *European Journal on Criminal Policy and Research* 22 (3) (2016).
- ⁴² Michael Johnston, "First, Do No Harm – Then, Build Trust: Anti-Corruption Strategies in Fragile Situations," background paper for the 2011 *World Development Report* (Washington, D.C.: The World Bank, 2010), http://siteresources.worldbank.org/EXTWDR2011/Resources/6406082-1283882418764/WDR_Background_Paper_Johnston.pdf.
- ⁴³ James C. Scott, *Comparative Political Corruption* (Englewood Cliffs, N.J.: Prentice Hall, 1972), 80 – 84.
- ⁴⁴ Daron Acemoglu and James A. Robinson, *Why Nations Fail* (New York: The Crown Publishing Group, 2012).

Getting to Accountability: A Framework for Planning & Implementing Anticorruption Strategies

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Abstract: A key lesson from historical examples of anticorruption successes and failures is that bursts of anticorruption policy seldom develop into lasting shifts in the overall corruption equilibrium if these policies are not embedded in a broader accountability effort. This essay draws on past examples of anticorruption success to develop an accountability framework that can be broadly applied across a number of sectors and contexts. This essay further proposes an iterative, strategic approach that uses the basic structure of this accountability equation to guide anticorruption efforts in order progressively to eliminate bottlenecks to effective accountability.

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Corruption is a complex problem with enormous political salience. It is therefore not surprising that the solutions academics proffer for addressing corruption – long-term structural remedies that may not mature for decades or quick solutions that are almost certain to founder as they are battered against preexisting political conditions – frequently leave policy-makers dissatisfied.

The first approach to combating corruption begins from the premise that it has deep and structural roots in culture, social inequality, and the (un)rule of law.¹ Effectively targeting corruption when structure is the driver requires a “big bang,” a critical juncture, or a historical turning point momentous enough to pull a country off its current path. Describing the Korean, Japanese, and Finnish cases, political scientists Eric Uslaner and Bo Rothstein have suggested that external stimuli from the Japanese occupation, American postwar occupation, and the Soviet threat led all three countries to invest heavily in education as a means of nation-building. Given the strong ties

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between education, systemic inequality, trust, and corruption, this investment paid big dividends for development and, incidentally, for anticorruption.² But it took catastrophic war or the threat thereof to jolt societies into action.

Other scholars in the structural-change school suggest that elite displacement may be the key causal mechanism to combat corruption. A generational shift that changes policy priorities might do the trick: universal social-welfare policies, for example, have in recent years helped generate a change in the corruption equation in the new democracies of the developing world, whether by weakening old patronage practices or reducing inequality and thus enhancing trust.³ Scandal, economic shock, or war may lead to elite replacement. The trouble with these structural theories of change, of course, is that anticorruption gains are often purely incidental, external sources of change cannot be conjured from thin air, and triggers for change (such as wars, genocides, or regime changes) may be even more damaging than the underlying disease of corruption. Further, the time horizon for these structural improvements is usually at least several decades long – hardly the stuff for today’s results-oriented reformers.

At the other end of the spectrum, a second group of anticorruption advocates offers up immediate remedies for symptoms of corruption. But this literature all too frequently suggests specific tactics without explaining how those solutions will work to fight corruption. Jeremy Pope’s influential Transparency International handbook on national integrity systems, for example, suggests the establishment of “integrity pillars” – institutions needed to fight corruption – but does not provide a theory of what each is intended to accomplish or how to prioritize among them.⁴ One reason for this lack of clarity may be that the prescriptions appear self-evident: efficient

courts or independent auditors seem preferable to their dysfunctional or subservient alternatives, after all. But little is in fact known about what actually drives change in corruption levels in the short term, or how these solutions build on each other. The result is a laundry list of one-size-fits-all remedies, provided without much guidance for implementation, sequencing, or concern for the systemic whole, which at best will correct topical maladies.⁵ Even broader national anticorruption strategies, very much in vogue these days, are frequently developed without great thoughtfulness about the prescribed reform measures and the changes that they are designed to generate.⁶ There is no theory of change undergirding their implementation, meaning that best practices may be plopped down without much consideration of local conditions, leaving them vulnerable to co-optation by local power structures.

This essay uses anticorruption success stories to argue that strategic, incremental, and iterative accountability reforms offer a pragmatic alternative to deeply structural or highly specific institutional anticorruption approaches. The first section describes the relationship between policy bursts and anticorruption equilibria, providing historical experiences from countries where small bursts of anticorruption efforts accumulated into lasting shifts in the local accountability equilibrium. The second section draws on these cases to argue that we already know a great deal about the accountability systems required to generate lasting shifts in the corruption equilibrium. Such knowledge may help us to speed up and focus contemporary anticorruption efforts more strategically. The final section uses contemporary case studies to propose a strategy for tackling the bottlenecks to effective accountability: the goal is to pursue reforms that alleviate the most binding constraints (“bottlenecks”), and thus produce the “biggest bang for the

reform buck,” and to do so iteratively, so that one success builds on another.⁷

Cold realism is needed. Many of the countries that today have reasonably effective anticorruption systems stumbled across them by historical happenstance. Historical cases of a significant and lasting shift in corruption levels are few and far between. Those we do find appear to have arisen through incrementally implemented changes in effective governance rather than through wholesale systemic reforms targeted specifically at corruption.⁸ Depressingly, the shift from “closed-access” political systems marked by particularism and distrust to open-access systems with inclusive political institutions, universalism, and formalized trust is rare; economist Douglass North and colleagues note that only about twenty-five countries have made that leap in the past two centuries. Indeed, closed-access systems are the historical norm.⁹

But realism need not imply nihilism. Building on lessons from past successes, it should be possible to introduce the kinds of improvements in transparency, oversight, and sanctioning power that cumulatively add up to a shift in the overall corruption equilibrium. The shift is likely to be a multigenerational effort, with the possibility of reversals along the way. But even if the process of strategically developing accountability institutions does not guarantee movement all the way from a closed to an open-access order, such a process may nonetheless be able to move countries to a normatively preferable new equilibrium. And the accumulation of knowledge from past experiences should enable us to formulate an anticorruption strategy that permits quicker progress on anticorruption today than was possible in the past.

Before proceeding, it will be useful to define *policy bursts* and *equilibrium shifts*. Policy bursts are policy interventions that may have immediate effect, but whose effects

can peter out if left untended or unused. For example, passage of a freedom of information law may inspire a short-lived moment of transparency before bureaucrats learn tricks for blocking inconvenient inquiries. New prosecutorial tools (such as anti-money laundering laws) may spawn new cases until criminal defense lawyers adapt, prosecutions hit new roadblocks further along in the judicial process, or criminals find new ways to transfer ill-gotten gains. Anticorruption agencies (ACAs) may achieve initial results but then founder, as they have in most countries, because of their insertion into a hostile environment marked by weak political will, low investment, and internal corruption.¹⁰

This is not to say that only isolated policies are at risk of petering out. Wholesale across-the-board approaches in which a broad range of instruments are simultaneously adopted can also prove to be short-lived. The Chinese case is emblematic: General Secretary Xi Jinping’s massive anticorruption campaign introduced a variety of compliance-based tools and even changed some officials’ behavior. Yet because the campaign has privileged sanction over prevention and compliance over a broader norm of integrity, its anticorruption efforts have naturally been applied selectively, with political motivations.¹¹ In the political-economic context of a Communist party-state, prevention has few political payoffs, while enforcement has more. The end result is that Xi’s anticorruption crusade has not led to a lasting change in behavior and is unlikely to move corruption to a stable new equilibrium. Similarly, a broad “big-bang” anticorruption campaign in Mexico under President Vicente Fox failed to develop into an equilibrium shift before his leadership and his party were discredited by corruption allegations of their own.¹²

Equilibrium shifts are transformations into new self-sustaining, societal states of

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mind. It takes a big push to move out of one equilibrium into another, because equilibria are sustained by norms, routines, and institutional patterns of behavior. In the most negative equilibria, institutions are subverted by the very governance flaws they ostensibly should combat, and status and connections are the core determinants of public-goods provision. A lack of trust becomes the guiding norm governing behavior across the society, and corruption is only one expression of it.¹³ The most positive accountability equilibrium, by contrast, is a societal state marked by ethical universalism; reciprocal accountability; and fairness and public integrity.¹⁴ A positive equilibrium has been described as a virtuous cycle in which empowerment encourages citizens to participate, institutions function, citizens feel empowered to use them, and citizen participation in turn strengthens institutions.¹⁵ In a word, Denmark.¹⁶

The goal is therefore to spur a shift from a “corrupt equilibrium in which it can be irrational and even dangerous to be honest”¹⁷ to an equilibrium in which accountability “feeds on itself” in a virtuous cycle.¹⁸ There will be intermediate equilibria along the way; the goal is to move stepwise from one equilibrium to the next, addressing some of the constraints to successful anticorruption in a strategic manner aligned with local conditions.

When things go well, policy bursts will collectively add up to an equilibrium shift. Perhaps the best known example is the United States, where during the Progressive Era (from the late 1800s to early 1900s) a largely uncoordinated and unplanned series of accountability efforts took place.¹⁹ Driven by a vague (and sometimes ugly) malaise, public pressures led to an accumulation of unrelated incremental institutional reforms, such as regulation of the trusts, elimination of patronage hiring in the civil service, restrictions on corporate campaign contributions, and an end to boss-driven

politics. Although many of these changes began in the late nineteenth century, they only precipitated a significant shift in the accountability equilibrium between the 1920s and the New Deal.²⁰ Summarizing a complex history, economists Edward Glaeser and Claudia Goldin use quantitative measures of press coverage of corruption to demonstrate an arc-like pattern: corruption rose steadily from 1815 to 1850, but began falling after 1870, reaching a stable lower-corruption equilibrium by the 1930s, where it remained until the 1970s (when the authors ceased data collection).²¹

Sweden and much of Scandinavia underwent similar incremental, decades-long equilibrium shifts. Their experience shares with the United States’ a lengthy transition period, little direct policy focus on corruption per se, and broad reforms across a wide range of institutions that altered the calculus in favor of collective action. Bo Rothstein, for example, has described how over a roughly four-decade period in the mid-nineteenth century, Sweden, reacting to crushing military defeats, undertook multiple dramatic institutional changes toward establishing good governance: strengthening the civil service, removing patronage appointments, enhancing oversight of political leaders, and ensuring genuine political contestation. These were “indirect” reforms in that few of the new policies or institutions directly targeted corruption. But all of the changes were driven by elite concerns about the importance of genuine institutional change.²² As in the United States, the incremental reform process added up to a significant shift in the corruption equilibrium, as cumulative incremental policy bursts accumulated into a lasting equilibrium shift.

Bursts of anticorruption policies do not always result in an equilibrium shift, of course. For all of the heroic stories of anticorruption efforts carried forward by daring and pioneering muckrakers, prosecu-

tors, and police, there are at least as many cases in which apparent successes proved superficial, tenuous, and reversible.

The Italian case is illustrative. A number of factors made *Mani Pulite* (“Clean Hands,” an anticorruption investigation that began in 1992) function better and more effectively than past efforts, leading to the investigation of more than six thousand individuals, including more than five hundred members of parliament and five former prime ministers.²³ Greater internal independence among a new generation of investigating magistrates (*giudici ragazzini*); the popularity of their anti-mafia efforts; the end of the Cold War and the concomitant decline in the relative importance of political stability; and strong new guarantees of judges’ independence all contributed to making *Mani Pulite* possible.²⁴ Public support for the prosecuting magistrates spurred investigation, especially after parliament banded together early on to protect itself from prosecution.

Yet *Mani Pulite*’s trajectory became more sobering after this initial burst of activity. Investigating magistrates lost the confidence of the public, in many cases because they were seen as overzealous and politically motivated. Many politicians and businessmen implicated in the case – not least Prime Minister Silvio Berlusconi – thrived in the obliterated political landscape.²⁵ Ineffectual prosecutorial instruments let hundreds of defendants escape under the statute of limitations, leading criminals to have a “sense of impunity.”²⁶ The legal changes that might have followed such a massive investigation were blocked, and Berlusconi’s government sought to reduce the allegedly arbitrary powers of judges.²⁷ The constant media bombardment of corruption stories may actually have caused a “saturation effect,” increasing public tolerance for corruption.²⁸ Corruption became even more sophisticated, as political scientist Alberto Vannucci has written: “Corrupt politi-

cians, public servants and entrepreneurs have learnt the lesson . . . developing more sophisticated skills and [techniques] to practice corruption with higher probability of impunity.”²⁹

Corrupt elites worked proactively to weaken accountability, taking advantage of the fact that the policy burst was relatively isolated in a single institution. Especially once public attention turned away from the investigations, politicians did all they could to make prosecutors’ jobs more difficult: strengthening evidentiary protections, decriminalizing accounting fraud, reintroducing parliamentary immunity, eliminating sentencing rules, and reducing statutes of limitations in corruption cases by more than half.³⁰ The end result was that this anticorruption burst did not yield an equilibrium shift, and there was a modest decline in perceptions of corruption control in the two decades that followed *Mani Pulite*.³¹

Uncertainty about whether policy bursts will accumulate into a new and improved equilibrium is also evident in contemporary Brazil. In the wake of the 1985 transition to democracy and the drafting of the 1988 constitution, Brazil has been slowly undertaking improvements in its accountability framework in response to a combination of scandals, bureaucratic innovations, and democratic pressures. These improvements included changes to campaign finance and congressional spending rules that emerged out of scandals like President Fernando Collor de Mello’s 1992 impeachment and a massive 1993 congressional budget scandal. They included a shift away from clientelistic delivery of social spending through adoption of the Bolsa Família conditional cash transfer program. Improvements also arose from responses to unrelated policy challenges, such as hyperinflation, the remedies for which included greater oversight of tax revenues, better controls over spending,

and enhanced regulation of financial institutions. International pressures also contributed to enhancing institutional effectiveness, including through the implementation of strong anti-money laundering laws and the creation of specialized courts for financial crimes.

One consequence of these gradually accumulating institutional improvements has been a number of high-profile investigations of corruption since the turn of the century. These gains have not yet been met, however, by equally strong judicial performance, suggesting that the next bottleneck on the way to a new accountability equilibrium is the court system's chronic ineffectiveness. Meanwhile, strong push-back has arisen from antireform groups, notably politicians who benefit from the status quo and whose staying power has been enhanced by the impunity guaranteed by the judicial system. Although there are hopeful green shoots of a new equilibrium, it is unclear whether Brazil's incremental gains are the sign of an impending shift or whether the country will instead come to resemble post-Mani Pulite Italy. One thing is clear: achieving a more positive new equilibrium will require strategic, conscientious, and informed efforts beyond the current headline-grabbing Lava Jato investigation.³²

As we think about how best to engender a corruption equilibrium shift, it may be useful to focus on accountability rather than on corruption per se. One important reason is that focusing on accountability over corruption may expand the constituencies of political support: after all, accountability has many possible beneficial outcomes beyond anticorruption alone, including policy efficiency and effectiveness, which may be desired even by corrupt incumbents. Accountability is the right to hold other actors to a set of standards, judge whether those standards were met, and impose sanctions if

they are not.³³ Accountability generates the desired performance through *answerability* (those governing are obliged to respond continuously for their acts and omissions) and *enforcement* (the imposition of sanctions for failing to meet public standards).³⁴

The fact that various mechanisms and bodies can impose accountability makes accountability both polysemic and multidirectional. It is polysemic because it can be imposed in an almost infinite combination of ways: political (removal of ministers, elections); social (egg-throwing, public shaming, reputational costs); legal and criminal (fines, jail time); or bureaucratic (limiting salary, promotion, or tenure or demanding additional information and paperwork). Accountability refers to an actor's assumed responsibilities, which could be formal (the actor pledges not to violate the constitution) or informal (the incumbent should not abuse the stature of the office of the presidency); just as the sanctions imposed may be both formal (a bureaucrat is subpoenaed by congress) and informal (the bureaucrat is not subpoenaed, but knows that there is a long tradition of legislative oversight). Effective accountability typically involves some mixture of judgment (politicians' performance as judged by voters), norm (what is corrupt behavior), and law (officials' performance must accord with their legal responsibilities).

Accountability is multidirectional rather than horizontal or vertical: seldom does accountability come about solely from a single agency blowing the whistle and punishing another horizontally, or from voters responding to politicians vertically. More likely, some combination of whistleblowers or media reports triggers accountability processes, which are kept in motion by simultaneous pressures across agencies and from society. It is also multidirectional, because effective accountability does not only entail sanctioning improper behavior but also monitoring and investigating govern-

ment conduct; and accountability does not solely mean punishing transgression, but avoiding possible transgressions ahead of time and following up if they occur anyway. The institutions and mechanisms that might potentially impose accountability include everything from the most predictable – police, prosecutors, judges, anti-corruption agencies, and accounting tribunals – to those not included in conventional thinking about accountability, such as securities regulators, central banks, and revenue authorities. The relevant bodies will also vary by country.

Yet whatever the idiosyncrasies of individual country-level experiences of accountability, going back to first principles suggests that accountability (A) is the outcome of transparency (T), oversight (O), and sanction (S), all of which are moderated by the degree of institutional effectiveness (E), tempered by the degree of political dominance (D). The equation

$$A=(T+O+S)*(E-D)$$

is widely applicable and can be used at various levels of analysis, from county boards to national legislatures and across or within different policy sectors. The equation allows practitioners wide latitude in determining how to achieve the objective of accountability, but nonetheless provides a structure that can guide strategic policy choices.

The first component is *transparency* (T), defined in its most essential sense as public access to government meetings, procedures, and information. Transparency gives public agencies, private individuals, and nongovernmental organizations the information they need to evaluate the government's performance on whatever criteria those groups find most relevant. Obviously, transparent data can be made more useful to citizens in any number of ways: At its worst, public disclosure can sometimes be no more than an elaborate ruse

manipulated by bureaucrats. At its best, however, transparency assumes an inclination toward information-sharing, easily accessible and timely provision of data, and the ability to verify data across sources, meaning that information is both visible and usable for drawing inferences about government actions.³⁵

The second component is *oversight* (O), meaning that government functions are subject to surveillance that gives public or private agents the right to evaluate a government's performance more intensively than by simply accessing data furnished by the government itself. Ideally, oversight would be almost unlimited, and all government accounts, processes, and agents would be susceptible to random or targeted audits. Oversight is likely to be most effective when it relies on the reinforcing perspectives provided by multiple overlapping accountability bodies operating independently but jointly.³⁶ Ideally, this web of accountability agencies would be able to operate in "fire alarm" and "police patrol" modes simultaneously, reacting to unexpected revelations but also continuously probing vulnerabilities so as to unmask inadequate or inappropriate performance.

The third component is *sanction* (S). Cesare Beccaria, Jeremy Bentham, and economist Gary S. Becker have all suggested that the costs of committing criminal acts factor heavily in individuals' decisions to engage in wrongdoing. But sanctions also serve a societal role: effective ones may ultimately be less about altering the individual calculus of whether to commit wrongdoings than about generating societal trust.³⁷ Because mutual trust is so important to anticorruption, more important than punishment for a single individual is: 1) demonstrating that there is a societal norm at work and restoring it to its proper place; and 2) the iterative process by which transparency, oversight, and sanctions together point to underlying dy-

namics that contribute to governance failures and provide clues toward how best to realign institutions and incentives to deter such abuses.

Transparency, oversight, and sanctions are moderated by *institutional effectiveness* (E) and *political dominance* (D). Three factors play a central role in institutional effectiveness: 1) state capacity (a professional bureaucracy with the ability to implement policy without undue external influence);³⁸ 2) a robust institutional toolkit, including relevant laws, mutually supportive bureaucracies, and adequate budgets; and 3) citizen engagement, which is a force multiplier for transparency, oversight, and sanction. Political dominance (D), on the other hand, plays a negative role by diminishing the incentives for active oversight or energetic sanction. All other things equal, the more agencies are dominated by the incumbent party or government allies, the less likely they will be able to fulfill their accountability function.³⁹ Political dominance is often associated with lack of political will to combat corruption; reciprocally, increased political competition often brings with it the will to enforce the law energetically and address its shortcomings when necessary.

A frustrating finding from years of research is that anticorruption programs actually work best where corruption is lowest.⁴⁰ When society is stuck in a low-level equilibrium in which corruption benefits the corrupt and low levels of interpersonal trust give the noncorrupt little reason to work collectively to curb corruption, it can be very hard to overcome dominant political interests and impose effective accountability.⁴¹ But one of the most significant implications of the accountability equation is that progress may be nonlinear: as institutional effectiveness improves or political domination declines, small gains in transparency, oversight, or sanction may rebound to outsized outcomes. The result is

a classic story of punctuated equilibrium: institutional improvements usually accumulate in a slow and incremental manner, but shifts in accountability equilibria may occur with astonishing rapidity.

The World Bank's Control of Corruption indicator ranks only thirty-five countries – roughly one in six nations in the world – in the category of Denmark.⁴² How might policy bursts be designed to push more countries into this high-performance equilibrium, or at least closer to it? Further, is this goal achievable in our lifetimes?

The challenge is daunting. The top-ranked countries have somehow managed to merge two powerful and contradictory impulses: maintaining a strong and capable state but constraining it via law and democratic choice.⁴³ The twenty countries at the top of the World Bank's Control of Corruption indicator are all rich, mostly small, and predominantly European. In the past twenty years, only four countries have joined the top-twenty club; of these, only Japan climbed more than ten spots to rise from outside the top-thirty.⁴⁴

Reaching the top echelon of anticorruption ratings need not be policy-makers' objective. Even shifting from the bottom group of countries to the middle of the pack is a challenging proposition, but one worthy of pursuit. Over the twenty-year period covered by the Control of Corruption indicator, only eight countries in the entire 214-nation data set underwent a 20 percent improvement in their score relative to the range of the indicator (that is, a more than 1-point gain on the -2.5 to 2.5 range; somewhat arbitrarily, I will posit here that this size gain is a sign of an equilibrium shift).⁴⁵ Figure 1 shows the top two performers, Georgia and Rwanda. Japan is also shown, because in addition to its move to the top echelon, it is one of the few large countries (with a population of more than one hundred million) to show

statistically significant gains over the period.⁴⁶ Despite the three countries' vastly different histories, demographic sizes, and wealth, together their experiences provide some guidance about why progress across the full accountability equation [$A=(T+O+S)*(E-D)$] is essential to an equilibrium shift.

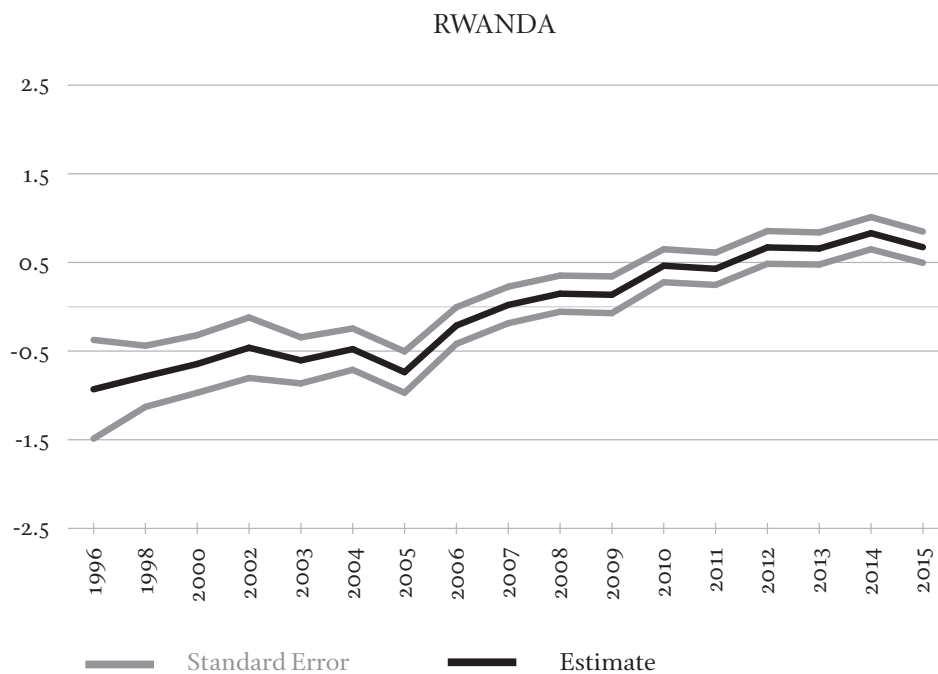
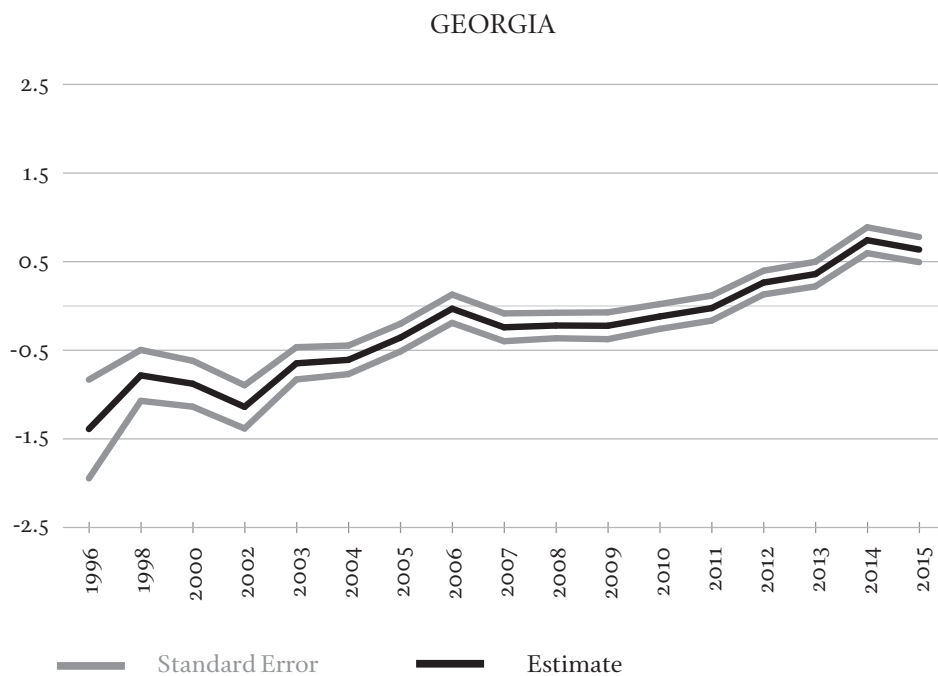
Georgia has made the most remarkable anticorruption gains of the last twenty years as it moved from Soviet domination to a post-Cold War period of kleptocracy and finally to a cleaner equilibrium by 2010, when Transparency International ranked the country the most effective in the world at fighting corruption.⁴⁷ These gains were made possible in part by structural effects that may not be relevant to other countries: an educated population, historic resistance to Soviet rule, a head start in removing the economic distortions of Soviet rule via reforms that were already underway by the mid-1990s, and the nearly complete turnover of elites between the Soviet collapse in 1991 and the Rose Revolution in 2003. Contingent political factors also played a role: discontent with corruption, poor public services, and the manipulation of elections contributed to the Rose Revolution, which helped usher in a new generation of policy-makers.

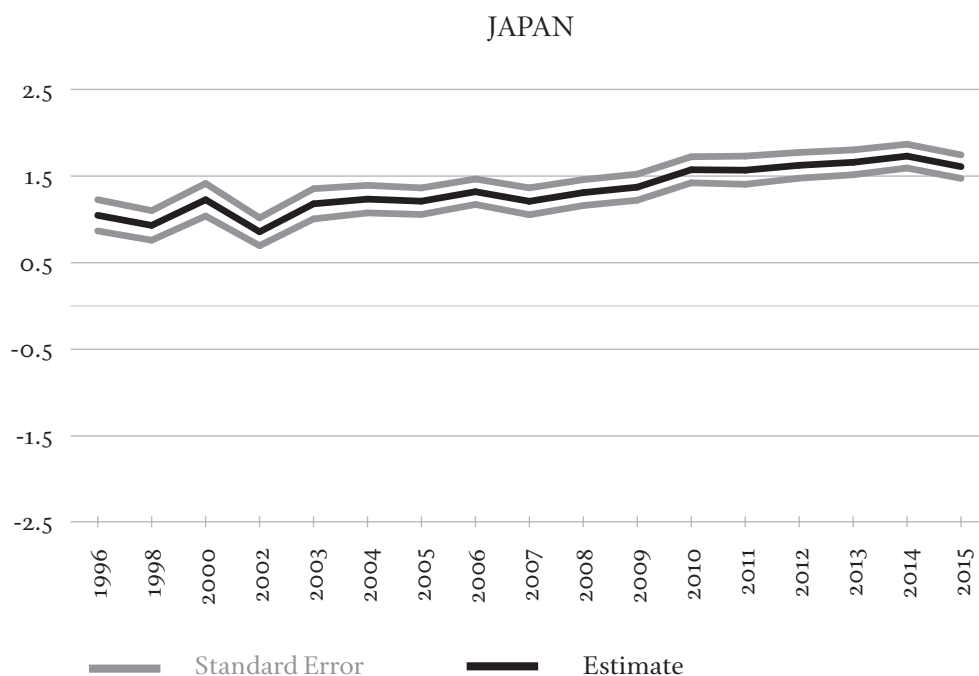
Although these factors may have been helpful, none guaranteed improvement, and comprehensive reforms that fit the accountability equation appear to have played a more central role in altering the corruption equilibrium. Following the 2004 inauguration of President Mikheil Saakashvili, parallel reforms in distinct areas were driven forward with an overarching focus on improving service provision and fighting corruption. Together, this strategy contributed to a "mental revolution" in Georgian society.⁴⁸ Below, I list the confluence of factors that fit within the anticorruption equation outlined above.

- *Transparency reforms* included efforts to improve the transparency of competitive civil service exams, make public and civil registries work better, automate public service provision to reduce the number of interactions between civil servants and the public, and introduce a competitive common entrance exam to overcome corruption in university admissions.
- *Oversight reforms* included the decentralization of municipal services, introduction of local elections for mayors, improved monitoring of local governments, and location-specific innovations, such as the use of closed-circuit televisions in university testing centers.⁴⁹
- *Sanctions* against corrupt officeholders were severe, with many removed from office while the new government focused on exemplary high-level arrests and prosecutions of key officials. Most notably, early in the Saakashvili administration, sixteen thousand traffic officers were fired overnight.⁵⁰
- *Institutional effectiveness* was improved through competitive hiring practices and salary hikes in the public sector, a focus on improving revenue collection and broadening the tax base, increased collection rates for public utilities, and a reduction in licensing requirements and tariffs. New statutes introduced plea bargaining and asset seizures.⁵¹ New bodies were created to combat corruption, such as the Interagency Council for Combating Corruption, the Internal Affairs Ministry's Anti-Corruption Department, the State Audit Office, and the State Procurement and Competition Agency.
- Although *political domination* has been high at times – for example, under Saakashvili's United National Movement – the strong consensus in favor of anticorruption reform blunted the potentially damaging effects of political domination in the short term. Eventually, domina-

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Figure 1
Control of Corruption: Georgia, Rwanda, and Japan, 1996 – 2015





	GDP Per Capita, 2015	Control of Corruption Gain, 1996 – 2015	Control of Corruption Gain, 5-Point Range
Georgia	\$3,796	2.025	40.5%
Rwanda	\$697	1.603	32.1%
Japan	\$34,523	0.562	11.2%

Note: Integers on x-axis before 2002 represent available data points; lines are not drawn to scale. Control of corruption range is from -2.5 to 2.5. When comparing 1996 – 2000 with 2002 – 2015 averages, the p-value for the change in all three countries is below 0.01. Source: The World Bank, Worldwide Governance Indicators, <http://info.worldbank.org/governance/wgi/index.aspx#home> (accessed March 28, 2017). GDP data are from The World Bank, “GDP per Capita,” <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (accessed March 28, 2017).

tion led to complaints – which have never been entirely silenced – about hypercentralization, increasingly authoritarian tendencies, and weak judicial independence.⁵² Partly as a consequence of these concerns, significant political turnover occurred, such as the 2012 victory of the Georgian Dream coalition over the United National Movement.

Despite its gains, Georgia is not Denmark. Tensions in Abkhazia and South Ossetia and the military conflict with Russia in 2008 permitted areas of intense criminality to emerge.⁵³ Writing in 2009, political scientist Alexandre Kukhianidze noted that the police were still used for political ends, courts remained dependent, human rights were upheld in the breach, and law enforcement was timid in prosecuting elite corruption. But today's Georgia is a stunning success in contrast with the Georgia of two decades prior, when corruption was embedded, organized crime threatened national security, individuals distrusted the government, and the country was even considered a "failed state."⁵⁴ The nation clearly achieved an equilibrium shift from a pattern of distrust, widespread government abuses, and corruption in both its petty and grand modalities to a new equilibrium in which universalism and impartiality are the default expectation, albeit incompletely realized. This equilibrium shift was engendered by a series of complementary innovations across the entire accountability equation: transparency, oversight, sanction, institutional effectiveness, and political dominance.

Despite its relative poverty, Rwanda has risen in little more than a decade (between 2005 and 2016) from eighty-third to fiftieth place on the Corruption Perceptions Index. Its story – summarized for space's sake here – broadly aligns with that of Georgia. Under bold and hard-nosed leadership, similar to that exercised in Geor-

gia, new transparency reforms were introduced, including whistleblower mechanisms and annual asset declarations for high-level officials.⁵⁵ Oversight was increased through creation of new accountability institutions, including an Ombuds Office, a National Tender Board, and an Auditor General's Office. The National Anticorruption Advisory Council created in 2004 coordinates the efforts of multiple institutions. Regular audits have enhanced oversight and several high-level officials have been prosecuted for corruption-related malfeasance. Government effectiveness is high for the region. Civil society is deeply engaged, in part due to the strong consensus that emerged from the genocide and efforts at achieving postconflict justice and reconciliation.⁵⁶

Two issues remain problematic: first, political domination, including President Paul Kagame's seeming political permanence; second, and partly in consequence, limited judicial independence, which raises questions about the politicization of sanctions. Nonetheless, there has been a significant shift since the 1990s, which has led Rwanda to a new, if still imperfect, equilibrium. The country is now recognized as an anticorruption standout in Africa, and one can imagine that if political domination lessened and the mantle of anticorruption were passed on to new leaders, the new equilibrium might become even more self-sustaining.

Finally, Japan offers an example of just how the process of lessening political domination can help to improve significantly the performance of the full accountability system. After nearly four decades of rule by the Liberal Democratic Party, Prime Minister Morihiro Hosokawa was elected in 1993. His election triggered more effective use of extant accountability capacity while also helping to catalyze both electoral and campaign-finance reforms. Following Hosokawa's compul-

sory resignation in 1994 and a 1998 information-for-sex scandal in the Ministry of Finance and Bank of Japan, new anticorruption regulations were put into place, including new penal laws on bribery, restrictions on illegal proceeds from mediation, and parliamentary ethics rules. Active competition for political office, in other words, strengthened both the effective enforcement of extant laws and the government's willingness to undertake new reforms in response to scandal.

The diverse experiences described above suggest that countries that are successful at converting policy bursts into equilibrium shifts have simultaneously incorporated reforms across the full $(T+O+S)^*(E-D)$ accountability equation. Countries that have not achieved the same equilibrium shift, such as Italy, have often been too reliant on herculean efforts by a single body – prosecutors, for example – without a widespread push to generate or improve performance across the broader accountability equation.

In the remainder of this essay, I sketch some ideas for improving the application of the accountability equation through a more deliberate strategic, iterative, and incremental approach. One reason for a strategic approach is that “big bangs,” especially of the multigenerational sort, are hard to create and sustain, and there are no surefire prescriptions for doing so. Incrementalism is less glamorous but more likely to yield lasting improvements: there is considerable evidence in the academic literature on policy reform that “powering through” by force is seldom as effective as ongoing “problem-solving.”⁵⁷ Incrementalism is effective in helping to develop “second-best solutions” tailored to local needs and contexts.⁵⁸

Future equilibrium shifts might be encouraged or accelerated through a more strategic approach to incrementally iden-

tifying and dismantling bottlenecks to accountability. A great deal of strategic thinking is already done at a national level, whether through Transparency International's National Integrity System reviews, the Organisation for Economic Co-operation and Development's Integrity Review process, the National Anti-Corruption Strategies developed under the United Nations Convention Against Corruption, or the Open Government Partnership's National Action Plans.⁵⁹ But even in these national cases, a deeper strategic approach might be helpful, melding: 1) continuous reappraisal of the bottlenecks to transparency, oversight, sanction, and institutional effectiveness; 2) loose coordination of both reappraisal and reform efforts; 3) widespread participation by actors from distinct agencies and civil-society organizations tasked with the component elements of the accountability equation; and 4) the adoption of new tactics in a conscientious and iterative manner.⁶⁰

The marginal effects of anticorruption policy bursts often diminish over time. Progressing from a policy burst to an equilibrium shift therefore requires ongoing and consistently renewed efforts to identify and remedy the most immediately important constraints to accountability. This can prevent backsliding on reforms that have already been undertaken. The path toward more effective accountability thus may often be a matter of identifying key bottlenecks, then brainstorming ways of applying international best practices that both address the bottleneck and fit the local context. How best can countries overcome the particular circumstances that engender the bottleneck? Is it a consequence of policy, legislation, capacity, or process? Particular corruption scandals or court cases may be useful starting points for thinking about which limits on accountability ought to be targeted, drawing public attention to their costs, and building

the consensus needed to overcome resistance to reform. More important than any single intervention is regular, structured assessment aimed at identifying the next bottleneck to accountability in a progressive fashion, then prioritizing it and focusing scarce political resources on it in a sustained manner.

Doing so requires that the selection of these bottlenecks be undertaken in a much more analytical and considered fashion than is frequently the case. The strategic discussion of the bottlenecks would ideally proceed stepwise, addressing first the issues that have the largest downstream effects at that particular moment in time.⁶¹ This approach argues for an incremental and iterative attack: it is simply not possible simultaneously to remove all barriers to accountability, identify *ex ante* the interactions between reforms and existing accountability capacity, forecast the sort of political opposition that may arise, or ensure that all the bottlenecks that might emerge in the future are in fact being correctly identified ahead of time. Incrementalism need not mean glacial reform; it does mean, however, greater attention to problem-solving that weds international best practices with local solutions that are sensitive to political conditions on the ground.

For this reason, it makes sense for reformers to attack the bottlenecks that have the biggest impacts today, evaluate their downstream effect after implementation, and return next year for a new discussion of where the largest impediments to effective accountability are arising in the new, postreform context. As noted earlier, Brazilian society over the past thirty years has proceeded stepwise to enhance transparency, oversight, and sanction.⁶² Most recently, after prosecutorial weaknesses were addressed through organizational innovation (such as the creation of joint task forces) and new laws (such as plea bargaining and antiracketeering laws), a new bot-

tleneck emerged in Brazil: *foro privilegiado*, the high court's original jurisdiction in cases involving sitting federal politicians. Political defendants are automatically tried in the Supreme Court; due to the Court's dysfunction and overloaded docket, this had become a *de facto* guarantee of impunity. This bottleneck had long existed, but had not become a salient problem until recently because neither police nor prosecutors were able to effectively bring high-level cases to court at all, let alone push them through the Supreme Court. As more effective investigation and prosecution turned up clear evidence implicating scores of senior politicians in corruption, the *foro privilegiado* has clearly become one of Brazil's central roadblocks to full accountability. Under public pressure, both Congress and the high court now appear to be considering ways of tackling this newly salient bottleneck.

A central lesson from past experiences of successful equilibrium shifts is that anti-corruption gains often occur not merely because of political will or specific policy changes, but as the result of a pattern of continuous reform. Public administration scholar Jin-Wook Choi, for example, demonstrates that the creation of ACAs – which are often the number-one prescription for corruption – was only the starting point for improvement in Hong Kong and Singapore. Upon their creation, ACAs were made accountable to the executive, the legislature, and the public. Subsequent reforms then turned to the civil service and to enhancing broader government effectiveness.⁶³ Although ACAs are often given credit for Singapore's and Hong Kong's gains, neither country stopped at the ACA, and subsequent development of the broader accountability system was essential to shifting the corruption equilibrium. Sadly, many anticorruption policy-makers seem only to have recognized the first step – adoption of ACAs – as the solution.

More than 150 countries now have ACAs, but unsurprisingly, these bodies have produced meager results in all but a handful of cases.⁶⁴

A loose coordinating mechanism may improve the process of strategically selecting and continually tackling bottlenecks. In the United States during the Progressive Era, this mechanism was an active press, working together with civil society. In Brazil, for more than a decade, federal bureaucrats led the effort, working through an annual intrabureaucratic process known as the National Strategy Against Money Laundering and Corruption to come up with reform ideas and carry them forward.⁶⁵ In Hong Kong, the key coordinator has been the ACA. But coordination does not mean control, and it should probably not be too closely identified with a particular politician or political faction for fear that their departure or declining popularity could lead to the collapse of anticorruption coordination efforts.

For this reason, broad participation by relevant accountability bodies in the reappraisal and reform process is as important as any one specific policy reform. One reason is that on-the-ground expertise will be useful. Another is that the process of uncovering bottlenecks may engender long-term buy-in and create a mental map for reformers across a wide range of bureaucratic agencies to follow in order to engage in the continuous collective action required for reform. A third reason is that simply being asked regularly to focus on accountability keeps it high on the priority list for busy policy-makers.

The accountability equation described here sits on the ladder of abstraction between tactical choices and policy tools (such as procurement reform or antiracketeering laws) and more conceptual governance orders (such as open-access orders or “rule-of-law regimes”).⁶⁶ The equation

provides guidance on how to structure tactical policy choices, as well as how it may be possible to move conscientiously and proactively from pernicious cycles of corruption to improved governance.

This framework has several potential benefits. One is that, by focusing on accountability, it expands the deliverables of reform beyond anticorruption alone, providing more incentives for society to undertake the collective action needed to combat corruption effectively.⁶⁷ Reform can make leaders’ jobs easier. After all, anticorruption need not be the primary selling point for the preservation of a free media, independent courts, active accounting tribunals, or other accountability-enhancing bodies. A free press, for example, does not only report on scandal; it can also provide information to the regime, disseminate official data, and publicize politicians’ achievements; three contributions even the most risk-averse politician may cherish. Independent courts may not only convict corrupt officials, but also uphold (and thereby legitimize) the current incumbent’s laws and restrain future coalitions seeking to overturn today’s preferred policies. Accounting agencies serve not only to uncover corrupt dealings, but also to evaluate and corral bureaucracies, ensure the effective use of public monies, and see to it that policy goals are being met. In other words, the more deliverables can emerge from accountability agencies, the more likely stakeholders are to preserve and improve them.

Emphasizing the broad accountability equation over the implementation of boilerplate anticorruption “best practices” may also be preferable because it is hard to know where challenges – such as particular forms of corruption, ineffectiveness, or inefficiency in the provision of public policies – might arise. It is therefore difficult to design a single intervention that is certain to “be in the right place at the right time” or to address all of corruption’s multifarious

forms.⁶⁸ Furthermore, because any single institution can be co-opted or may have unpredictable performance in particular contexts, a broader accountability approach can help ensure that any single agency or reform initiative is buttressed by others.

The accountability equation approach may also be particularly conducive to a long-term strategy of institutional capacity building, whereby islands of excellence are created independently of each other but are slowly patched together by connections that enhance their joint effectiveness. This can offer a partial antidote to problems of

agency and leadership. While good leaders always play an important role, anticorruption efforts may be more likely to survive and accumulate when power is dispersed across multiple agencies, leaders, and processes, in such a way that when one falters, others are able to pick up the reins. Finally, an iterative approach across the full accountability framework may enable reformers to sequence reforms in ways that do not directly challenge political elites, or do so only under politically advantageous conditions.

AUTHOR'S NOTE

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ENDNOTES

- ¹ Susan Rose-Ackerman and Bonnie J. Palifka, *Corruption and Government: Causes, Consequence, and Reform* (New York: Cambridge University Press, 2016), 27–36.
- ² Eric M. Uslaner and Bo Rothstein, “The Historical Roots of Corruption: State Building, Economic Inequality, and Mass Education,” *Comparative Politics* 48 (2) (2016): 239–240; and Eric M. Uslaner, *Corruption, Inequality, and the Rule of Law: The Bulging Pocket Makes the Easy Life* (New York: Cambridge University Press, 2008).
- ³ Rebecca Weitz-Shapiro, *Curbing Clientelism in Argentina: Politics, Poverty, and Social Policy* (New York: Cambridge University Press, 2014), 157–159; and Uslaner, *Corruption, Inequality, and the Rule of Law*.
- ⁴ Jeremy Pope, *Confronting Corruption: The Elements of a National Integrity System – The TI Source Book 2000* (Berlin and London: Transparency International, 2000). According to Alina Mungiu-Pippidi: “The integrity pillars include: an elected legislature, an honest and strong executive, an independent and accountable judicial system, an independent auditor general (subordinate to the parliament), an ombudsman, a specialized and independent anticorruption agency, an honest and nonpoliticized civil service (bureaucracy), honest and efficient local government, independent and free media, a civil society able to promote public integrity, responsible and honest corporations, and an international framework for integrity.” Alina Mungiu-Pippidi, *The Quest for Good Governance: How Societies Develop Control of Corruption* (Cambridge: Cambridge University Press, 2015), 76.
- ⁵ Anwar Shah, *Tailoring the Fight against Corruption to Country Circumstances* (Washington, D.C.: The World Bank, 2007), 234.
- ⁶ Mark Pyman, Sam Eastwood, Jason Hungerford, and Jasmine Elliott, *Research Comparing 41 National Anti-Corruption Strategies: Insights and Guidance for Leaders* (London: Norton Rose Fulbright, 2017), 48. Further, Jonathan Fox notes that many accountability efforts are based on the assumption that “every little bit helps,” but an accumulation of tactical interventions may actu-

- ally lead to unsatisfactory results, waste, and inefficiency. See Jonathan Fox, “Scaling Accountability through Vertically Integrated Civil Society Policy Monitoring and Advocacy” (Washington, D.C.: Accountability Research Center and Institute of Development Studies, 2016), 6.
- ⁷ This approach is informed by Ricardo Hausmann, Dani Rodrik, and Andrés Velasco, “Growth Diagnostics,” unpublished manuscript (2005), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.446.2212&rep=rep1&type=pdf> (accessed April 10, 2018).
- ⁸ I define “governance” as a desirable “composite of political goods delivery.” Robert I. Rotberg, “The Governance of Nations: Definitions and Measures,” in *On Governance: What It Is, What It Measures, and Its Policy Uses*, ed. Robert I. Rotberg (Waterloo, Canada: Centre for International Governance Innovation, 2015), 7–22, 12.
- ⁹ Douglass C. North, John Joseph Wallis, and Barry R. Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (Cambridge: Cambridge University Press, 2009), xii.
- ¹⁰ Jon S.T. Quah, “Controlling Corruption in Asian Countries: The Elusive Search for Success” in *Routledge Handbook of Corruption in Asia*, ed. Ting Gong and Ian Scott (Abingdon-on-Thames, United Kingdom: Routledge, 2017), 241–261, 246.
- ¹¹ Minxin Pei, “How Not to Fight Corruption: Lessons from China,” *Daedalus* 147 (3) (Summer 2018): 216–230; and Quah, “Controlling Corruption in Asian Countries,” 254.
- ¹² Stephen D. Morris, *Political Corruption in Mexico: The Impact of Democratization* (Boulder, Colo.: Lynne Rienner Publishers, 2009), 113–114. On big-bang approaches, see Bo Rothstein, “Anti-Corruption: The Indirect ‘Big Bang’ Approach,” *Review of International Political Economy* 18 (2) (2011): 228–250. For a critique of the big-bang literature and a defense of incrementalism, see Katherine Bersch, “The Merits of Problem-Solving over Powering: Governance Reforms in Brazil and Argentina,” *Comparative Politics* 48 (2) (2016): 205–225; and Matt Andrews, Lant Pritchett, and Michael Woolcock, “Escaping Capability Traps through Problem Driven Iterative Adaptation (PDIA),” Working Paper No. 2012/64 (Tokyo: United Nations University World Institute for Development Economics Research, 2012).
- ¹³ Uslaner, for example, finds a strong correlation between pickpocketing and petty and grand corruption across countries. Uslaner, *Corruption, Inequality, and the Rule of Law*. See also Jin-Wook Choi, “Corruption Prevention: Successful Cases,” in Gong and Scott, eds., *Routledge Handbook of Corruption in Asia*, 264.
- ¹⁴ Mungiu-Pippidi, *The Quest for Good Governance*, 58.
- ¹⁵ As Bailey notes with reference to security, “the low-level equilibrium is characterized by strong inertia. Once events start a country toward a low-equilibrium path, a variety of mechanisms operate to reproduce negative behavior and to resist significant reforms.” John Bailey, *The Politics of Crime in Mexico: Democratic Governance in a Security Trap* (Boulder, Colo.: First Forum Press, 2014), 10. See also Jonathan Fox, “Social Accountability: What Does the Evidence Really Say?” *World Development* 72 (2015): 346–361; and Timothy J. Power and Matthew M. Taylor, “Introduction: Accountability Institutions and Political Corruption in Brazil,” in *Corruption and Democracy in Brazil: The Struggle for Accountability*, ed. Timothy J. Power and Matthew M. Taylor (Notre Dame, Ind.: University of Notre Dame Press, 2011), 1–28.
- ¹⁶ Mungiu-Pippidi, *The Quest for Good Governance*; and Francis Fukuyama, *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (New York: Farrar, Strauss and Giroux, 2014).
- ¹⁷ Bo Rothstein, “Corruption and Social Trust: Why the Fish Rots from the Head Down,” *Social Research* 80 (4) (2013): 1009–1032.
- ¹⁸ Morris, *Political Corruption in Mexico*.
- ¹⁹ At its narrowest, the period of American progressivism is dated from 1901 to 1917, as in Edward L. Glaeser and Claudia D. Goldin, *Corruption and Reform: Lessons from America’s Economic History* (Chicago: University of Chicago Press, 2006). But this may be unnecessarily restric-

tive: Richard Hofstadter suggests the period began with the rise of politician William Jennings Bryan and ended with the New Deal, extending roughly six decades between 1870 and the 1930s. This is because many of the ideas of the populist Bryan only culminated in reform under the Progressives, but also because some key reforms, such as breaking up trusts, actually began before progressivism emerged on the scene. Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.* (New York: Alfred A. Knopf, 1966), 3.

- ²⁰ While we often think of countries in a virtuous equilibrium as having “always been there,” far from an immaculate conception, the virtuous equilibrium often emerges from a fraught process marked by ambiguous morality and haphazard incrementalism. For all of its positive contributions, for example, the Progressive movement was at its core motivated by mean and nativist inclinations. Much of the opposition to patronage and boss politics was self-interested behavior by old elites threatened by the new bosses’ mass politics. Civil service reform was a slow process, and the old patronage system yielded only in a context in which government was increasing in size, thus minimizing zero-sum conflicts between politicians and reformers. Overall, progressivism was a “vague and not altogether cohesive or consistent movement,” resulting from loss of status among the old Protestant Yankee professional class, fearful of the effects of industrialization, urbanization, and immigration. The movement was often “retrograde and delusive,” sometimes “vicious,” and egged on by muckrakers who were driven, alternately, by radical leftist sympathies, profit motives, or fears of newly arrived urban immigrant populations. Hofstadter, *The Age of Reform*, 5–18, 135–203; Merilee S. Grindle, *Jobs for the Boys: Patronage and the State in Comparative Perspective* (Cambridge, Mass.: Harvard University Press, 2012), 1; and Glaeser and Goldin, *Corruption and Reform*, 7.
- ²¹ Glaeser and Goldin, *Corruption and Reform*, 17.
- ²² Rothstein, “Anti-Corruption: The Indirect ‘Big Bang’ Approach,” 243–246.
- ²³ Alberto Vannucci, “The ‘Clean Hands’ (Mani Pulite) Inquiry on Corruption and its Effects on the Italian Political System,” *Em Debate* 8 (2) (2016): 2, 62–68; and Alberto Vannucci, “The Controversial Legacy of ‘Mani Pulite’: A Critical Analysis of Italian Corruption and Anti-Corruption Policies,” *Bulletin of Italian Politics* 1 (2) (2009): 233–264.
- ²⁴ Sérgio Fernando Moro, “Considerações sobre a operação Mani Pulite,” *Revista CEJ* 8 (26) (2004): 56–62.
- ²⁵ Berlusconi served as prime minister from 1994–1995, 2001–2006, and 2008–2011.
- ²⁶ Vannucci, “The ‘Clean Hands’ (Mani Pulite) Inquiry.”
- ²⁷ The first comprehensive anticorruption law in Italy, Law 190, passed only in 2012. See *ibid.*, 3.
- ²⁸ Daniel Binette, “The Petrobras Investigations and the Future of Brazil’s Democracy: Thailand and Italy as Cautionary Tales,” *The Global Anticorruption Blog*, May 6, 2016, <https://globalanticorruptionblog.com/2016/05/06/the-petrobras-investigations-and-the-future-of-brazils-democracy-thailand-and-italy-as-cautionary-tales/>.
- ²⁹ Vannucci, “The ‘Clean Hands’ (Mani Pulite) Inquiry.”
- ³⁰ Rafael Cariello, “Os Intocáveis,” *Revista piauí* 116 (2016): 11.
- ³¹ The World Bank, *Worldwide Governance Indicators*, January 2017, <http://info.worldbank.org/governance/wgi/#home>.
- ³² See Sérgio Fernando Moro, “Preventing Systemic Corruption in Brazil,” *Dædalus* 147 (3) (Summer 2018): 157–168.
- ³³ Ruth W. Grant and Robert O. Keohane, “Accountability and Abuses of Power in World Politics,” *American Political Science Review* 99 (1) (2005): 29–43, 29.
- ³⁴ Andreas Schedler, Larry Diamond, and Marc F. Plattner, *The Self-Restraining State* (Boulder, Colo.: Lynne Rienner Publishers, 1999), 14.
- ³⁵ See the discussion in Katherine Bersch and Greg Michener, “Identifying Transparency,” *Information Polity* 18 (3) (2013): 233–242.

- ³⁶ This phenomenon has also been termed “institutional multiplicity.” See Mariana Mota Prado, Lindsey D. Carson, and Izabela Correa, “The Brazilian Clean Company Act: Using Institutional Multiplicity for Effective Punishment,” *Osgoode Hall Law Journal* 53 (1) (2015): 107–163. Matthew M. Taylor
- ³⁷ David H. Bayley, *Police for the Future* (New York: Oxford University Press, 1994).
- ³⁸ Katherine Bersch, Sérgio Praça, and Matthew M. Taylor, “State Capacity and Bureaucratic Autonomy within National States: Mapping the Archipelago of Excellence in Brazil,” in *State Building in the Developing World*, ed. Miguel Angel Centeno, Atul Kohli, and Deborah Yashar (Cambridge: Cambridge University Press, 2017), 157–183, 161.
- ³⁹ Another factor is political will, which may temper political dominance. Lee Kuan Yew, the first prime minister of Singapore, is a frequently cited example of an infrequent phenomenon: the benevolent dictator seeking anticorruption gains. But in part because the historical record suggests that lasting anticorruption gains seldom come from a single leader, and Lee is still very much the exception to the political dominance rule, I have not included political will as a variable in my analysis. I am grateful to Kate Bateman and Robert Rotberg for raising the issue of leadership and will. Ultimately, though, leaders’ skills and wills are a matter of happenstance that cannot be easily engineered and therefore do not easily fit into a framework that sets out to systematize accountability. On the connection between political dominance and corruption, see Weitz-Shapiro, *Curbing Clientelism in Argentina*; and Katherine Bersch, Sérgio Praça, and Matthew M. Taylor, “State Capacity, Bureaucratic Politicization, and Corruption in the Brazilian State,” *Governance* 30 (1) (2017): 105–124.
- ⁴⁰ Jeff Huther and Anwar Shah, “Anti-Corruption Policies and Programs: A Framework for Evaluation,” Policy Research Working Paper 2501 (Washington, D.C.: The World Bank, 2000); and Franklin Steves and Alan Rouso, “The Effectiveness of Anti-Corruption Programmes: Preliminary Evidence from the Transition Countries,” paper presented at the Annual Meeting of the American Political Science Association, Washington, D.C., September 1, 2005.
- ⁴¹ Effective accountability often reduces corruption in roundabout ways: for example, by ensuring that government investment goes to publicly appropriated goods such as education, which are associated with lower corruption, rather than to privately appropriable goods, such as infrastructure investment. See Uslaner and Rothstein, “The Historical Roots of Corruption.”
- ⁴² Mungiu-Pippidi, *The Quest for Good Governance*, 48. For original data, see The World Bank, *Worldwide Governance Indicators*.
- ⁴³ Fukuyama, *Political Order and Political Decay*, 25.
- ⁴⁴ Japan climbed thirteen spots, from thirty-second place in 1996 to nineteenth in 2015, gaining 11 percent on the Control of Corruption scale as it moved from 1.05 to 1.61. Rotberg’s analysis, using both the Corruption Perceptions Index and the World Bank indicator, reaches the similar conclusion that Georgia and Rwanda led the world in anticorruption gains between 2004 and 2014. Rotberg, *The Corruption Cure*, 176.
- ⁴⁵ In order from greatest to smallest gain, these countries are: Georgia, Rwanda, Estonia, Latvia, the United Arab Emirates, Liberia, Qatar, and Croatia.
- ⁴⁶ Because the Worldwide Governance Indicators are aggregated from various perception indices, the entire series may be recalculated in any given year because of changes in the component indices. In analyzing historical trajectories, it is therefore important to look only at statistically significant improvements. But the Worldwide Governance Indicators data can still be compared over time so long as margins of error are taken into account. See Daniel Kaufmann, Aart Kraay, and Massimo Mastruzzi, “The Worldwide Governance Indicators: Methodology and Analytical Issues,” Draft Policy Research Working Paper (Washington, D.C.: The World Bank, 2010), 5–10.
- ⁴⁷ G. E., “Tbilisi’s Corruption Busters: Lessons from Georgia’s Fight against Graft,” *The Economist*, February 7, 2012, <https://www.economist.com/blogs/easternapproaches/2012/02/tbilisi%E2%80%99s-corruption-busters>.

- ⁴⁸ The World Bank, *Fighting Corruption in Public Services: Chronicling Georgia's Reforms* (Washington, D.C.: The World Bank, 2012), 7.
- ⁴⁹ Christopher Berglund and Johan Engvall, "How Georgia Stamped Out Corruption on Campus," *Foreign Policy*, September 3, 2015.
- ⁵⁰ G. E., "Tbilisi's Corruption Busters."
- ⁵¹ Alexandre Kukhianidze, "Corruption and Organized Crime in Georgia before and after the 'Rose Revolution,'" *Central Asian Survey* 28 (2) (2009): 215 – 234.
- ⁵² G. E., "Tbilisi's Corruption Busters."
- ⁵³ Louise Shelley, Erik R. Scott, and Anthony Latta, eds., *Organized Crime and Corruption in Georgia* (London: Routledge, 2007).
- ⁵⁴ Kukhianidze, "Corruption and Organized Crime in Georgia."
- ⁵⁵ Rotberg speaks to the importance of leadership and political will both in Georgia and Rwanda. Rotberg, *The Corruption Cure*, 179 – 185, 223 – 256.
- ⁵⁶ Phil Clark, "After Genocide: Democracy in Rwanda, 20 Years On," *Juncture* 20 (4) (2014); Baf-four Ankomah, "Rwanda: A Star in Fighting Corruption," *NewAfrican*, March 19, 2013; Eugene Kwibuka, "Anti-Corruption Council Calls for Efforts against Graft," *The New Times*, April 18, 2015; and Marie Chene, "Overview of Corruption in Rwanda," *U4 Anti-Corruption Resource Centre Expert Answer*, April 16, 2008.
- ⁵⁷ Bersch, "The Merits of Problem-Solving over Powering."
- ⁵⁸ Dani Rodrik, "Second-Best Institutions," *American Economic Review* 98 (2) (2008): 100 – 104.
- ⁵⁹ On the latter particularly, see the very insightful United Nations Office on Drugs and Crime, *National Anti-Corruption Strategies: A Practical Guide for Development and Implementation* (New York: United Nations Office on Drugs and Crime, 2015).
- ⁶⁰ On developing a strategic approach, see Fox, "Scaling Accountability through Vertically Integrated Civil Society Policy Monitoring and Advocacy." On the application of a problem-driven iterative approach, see Andrews, Pritchett, and Woolcock, "Escaping Capability Traps."
- ⁶¹ For ideas on how to evaluate the local anticorruption context, see United Nations Office on Drugs and Crime, *National Anti-Corruption Strategies*.
- ⁶² Sérgio Praça and Matthew M. Taylor, "Inching toward Accountability: The Evolution of Brazil's Anticorruption Institutions, 1985 – 2010," *Latin American Politics & Society* 56 (2) (2014): 27 – 48.
- ⁶³ Choi, "Corruption Prevention: Successful Cases," 274.
- ⁶⁴ Quah, "Controlling Corruption in Asian Countries," 246.
- ⁶⁵ Gordon LaForge, "The Sum of Its Parts: Coordinating Brazil's Fight against Corruption, 2003 – 2016" (Princeton, N.J.: Princeton University Innovations for Successful Societies, 2017), https://successfulesocieties.princeton.edu/sites/successfulesocieties/files/GLF_AC-Strategy_Brazil_FORMATTED_20Feb2017.pdf.
- ⁶⁶ On "rule-of-law" regimes, see Rotberg, "The Governance of Nations," 15.
- ⁶⁷ The shift from particularism to ethical universalism is at its heart a collective-action problem. See Mungiu-Pippidi, *The Quest for Good Governance*, 15; Rothstein, "Anti-Corruption: The Indirect 'Big Bang' Approach"; Mark Pieth, ed., *Collective Action: Innovative Strategies to Prevent Corruption* (Zurich: Dike, 2012); and Rotberg, *The Corruption Cure*, 11.
- ⁶⁸ Heywood stresses that conceptualizing corruption as a homogenous problem tends to lead to "magic bullet" solutions. The broader accountability framework adopted here should help to avoid such homogenization while remaining flexible enough to tackle diverse forms of corruption. Paul M. Heywood, "Rethinking Corruption: Hocus-Pocus, Locus and Focus," *The Slavonic & East European Review* 95 (1) (2017): 21 – 48.

Combating Corruption in the Twenty-First Century: New Approaches

Paul M. Heywood

Abstract: Despite the focus placed on combating corruption over the last quarter-century, practical results have been disappointing. A small number of “success” stories cannot mask the fact that corruption continues to blight the lives of millions of citizens. This essay argues that part of the reason for the broad failure of anticorruption policies is that we have not specified clearly enough what we are seeking to address, and have paid insufficient attention to changes in how and where different forms of corruption operate in practice. Rather than sticking to unrealistic aspirations to “defeat” corruption, this essay argues that we should pay more attention to the positive promotion of integrity, supported by a better understanding of the drivers of individual behavior, particularly how these are more complex than suggested by the incentives-based literature. The final section of the essay outlines some practical measures we can take, underlining the need to focus reform efforts at both supra- and subnational levels in order to help move beyond what has become a sterile conversation about corruption.

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Why do we still need to ask how to combat corruption? After all, there has been no shortage of attention devoted to this issue over the last twenty-five years: academic researchers, policy-makers, international financial organizations, dedicated anticorruption agencies, civil society organizations, investigative journalists, prosecuting authorities, advocacy groups and coalitions, and individual champions have all engaged in the fight against corruption. And they have produced no shortage of strategies and approaches to win that fight: the World Bank has recommended “six strategies to fight corruption,” designed to complement a prior “two-pronged strategy,” in addition to “10 ways to fight corruption”; Transparency International identified “5 key ingredients” to stop corruption; while the World Economic Forum has published “5 ways to beat global corruption,” as well as “3 key steps to end corruption.”¹ The answers seem to keep coming, but the problem remains stubbornly resistant to resolution.

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Indeed, we could argue that anticorruption efforts represent a huge policy failure: there seems little evidence that we are much closer to resolving the issue in 2018 than we were in 1996 when James D. Wolfensohn, then president of the World Bank, announced that “we need to deal with the cancer of corruption.”² Moreover, there has been a growing chorus of calls for a fundamental reassessment of how we should understand and combat corruption, often framed in terms of the need to “rethink” existing approaches.³

All this rethinking inevitably begs the question of what the anticorruption movement and its efforts have achieved so far. One somewhat cynical answer is that anticorruption has highlighted a broad consensus that we need to understand better what corruption is, why it occurs, and what we can do to stop it: a sort of intellectual Groundhog Day that keeps bringing us back to the same fundamental questions. As Transparency International’s Dieter Zinnbauer has observed,

The problem with most of the corruption literature is that plausible drivers of change in corruption are too narrowly tied to changes in corruption, integrity and governance. Or they introduce broader forces of change in very conceptual, correlational fashion (e.g. internet penetration) without the ability or objective to unpack these black boxes and unearth actual transmission mechanisms.⁴

In other words, we keep engaging in the same kind of circular logic that suggests the best way to reduce corruption is to develop institutional configurations and socioeconomic settings in which public officials act with integrity so that corruption does not prosper.

In seeking to move forward the discussion on corruption and anticorruption, this essay identifies three things we should focus more attention on and three things we should stop doing. It then offers some

practical steps that may address some of the shortcomings of current approaches. Given the scale and complexity of the issues under consideration, the essay offers provocations, rather than fully formulated solutions, in the hope that they may not only contribute to the growing calls to “rethink” corruption, but also help reframe the terms of the conversation.

Integrity is often posited as the opposite of corruption, reflected in the widespread use of the term in anticorruption circles: from NGOs such as Global Integrity and Integrity Action through Transparency International’s National Integrity System (NIS) assessments and the Organisation for Economic Co-operation and Development’s (OECD) Public Sector Integrity Reviews and Integrity Weeks/Forums, to instruments such as the recently launched Index of Public Integrity. In practice, though, much of the attention devoted to integrity has been implicit: rather than exploring in depth what should be understood by integrity in public life, and how to achieve it, researchers, activists, and policy-makers have often seemed to assume that integrity will result simply from the elimination of corruption.

Predominant anticorruption approaches respond to a logic that does not sit easily with the promotion of integrity. The reason is that policies designed to combat corruption are usually developed as a reaction or response to specific scandals, or else are designed to *prevent* particular forms of behavior. They are driven by an attempt to address the visible expression of corruption, focusing primarily on institutional configurations or regulatory frameworks, rather than the promotion of prointegrity values among public officials. This means that the practical expression of integrity in anticorruption contexts often reflects this institutional and regulatory focus: for example, Transparency International’s NIS

approach focuses quite narrowly on formal law enforcement as exercised through core institutions (so-called pillars) and corruption-combating agencies. Similarly, the Index of Public Integrity has a strongly institutional tenor, consisting of six components (judicial independence, administrative burden, trade openness, budget transparency, e-citizenship, and freedom of the press) that contribute to the “control of corruption.” The OECD CleanGovBiz Integrity in Practice “toolkit” similarly emphasizes rules and regulation, even when discussing prevention. More promising is the OECD’s recent Recommendation on Public Integrity that includes a section on cultivating a culture of integrity – perhaps the single key factor at all organizational levels in building defenses against corrupt activity – but again major emphasis is placed on control, oversight, and enforcement measures.⁵

Yet ensuring that public officials do not behave corruptly offers no guarantee that they will instead act with integrity. It is quite possible to act noncorruptly but also without integrity; for instance, by performing a task with little effort, habitually turning up late to work, or refusing to cover for colleagues. While the absence of corruption does not imply the presence of integrity, it is not so obvious that the reverse holds: if public officials are acting with integrity, they generally cannot – by most common definitions of the term – be acting corruptly. We therefore need a better conceptual understanding of integrity in public life and its relationship to corruption in order to build an effective model of integrity management: that is, the formal framework that ensures that public officials engage in ethical behavior, acting with honesty and fairness while complying with prevailing legal norms.

But the promotion of integrity faces serious challenges, among them the difficulty of defining just what exactly we do mean by the term, compounded by its overlap not

only with anticorruption, but also with ethics, morality, and good governance. The OECD refers to public integrity as “the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector.” However, just as with generic definitions of corruption, such a conceptualization begs a host of questions, not least about the relationship between personal integrity and role-based integrity – as well as between integrity at the individual or at the institutional level – and also the relationship between public and private sectors. Thus, integrity entails complex relationships with other dimensions and can be analyzed from various perspectives.

Drawing on moral and political philosophy, we can identify the core characteristics of personal integrity as: wholeness (thinking beyond just the personal); action that is consistent with principles (doing the right things); morality (doing things for the right reasons); and process (doing things in the right way). Some would add the coda “even when no one is watching” (attributed, apparently in error, to C. S. Lewis) to indicate that *genuine* integrity does not require any oversight, though such a prospect is wholly unrealistic in real life. Political integrity, meanwhile, encompasses normative justice, openness and transparency, citizen engagement, and impartial authorities.⁶

An effective integrity-management framework, at whatever administrative level, requires mechanisms that reinforce interaction between the personal and political dimensions. However, with few exceptions (such as the work of governance scholar Leo Huberts and associates at the Vrije Universiteit Amsterdam or the emerging OECD agenda) integrity per se is very often effectively little more than a slogan, or else is subsumed without detailed analysis within a broader emphasis on “good government/governance.”⁷

In contrast, Bo Rothstein and political scientist Aiysha Varraich have argued that quality of government understood as impartiality should be seen as the opposite of corruption.⁸ However, impartiality (“when implementing laws and policies, government officials shall not take anything into consideration about the citizen/case that is not beforehand stipulated in the policy or the law”) has little to say about how to address genuine ethical dilemmas or challenges that, for some, represent the only true test of whether individuals act with integrity.⁹ To take a recent example from the United Kingdom, a woman who had spent twenty-seven years married to a British citizen and whose children and grandchildren were born in the country was deported to Singapore after breaching regulations in relation to periods spent out of the country. In a YouGov survey of more than 6,700 UK citizens, 63 percent of respondents felt that the decision was wrong, with just 17 percent believing that deportation was the right decision (even among UKIP voters, 50 percent said she should have been allowed to stay).¹⁰ Although the case had seen the UK’s policy on residency rights impartially applied, it raises difficult questions about interpretation of the “letter” versus the “spirit” of a law.¹¹ Indeed, “common sense justice,” in psychologist Norman Finkel’s sense of reflecting what ordinary people think is just and fair, suggests that in a case such as this, the exercise of impartiality is problematic.¹² While this is just one example, there are countless situations in which specific circumstances or complexities are not prestipulated in a policy or law, leaving public officials having to rely on their individual discretion or interpretation rather than the impartial application of rules. In such cases, integrity – rather than impartiality – is the key virtue.

The second thing we should start doing is pay greater attention to the drivers of individual behavior, in relation to both cor-

ruption and integrity. Although behavioral economists have increasingly focused in recent years on experiments that seek to explain corruption, there is still a very widely held assumption among many researchers that, in the words of economists Benjamin Olken and Rohine Pande, “corrupt behavior can be modeled in line with a few general economic principles: corrupt officials respond to monitoring and punishments as one would expect from basic incentive theory.”¹³ Yet in practice, and as behavioral economics suggests, people rarely act as rational cost-benefit optimizers, and their decisions and motivations are subject to a wide variety of biases and influences that are not always coherent or consistent.

Indeed, some psychologists have suggested that fraudulent behavior is often driven not so much by financial incentives as by more complex sets of relationships, including a desire to help or hurt others even when there is no material gain for the individuals involved.¹⁴ “Bounded ethicality” affects how we make ethical judgments: that is, the way that decisions and choices are framed influences our very capacity to see the bigger picture. Experimental evidence suggests that when people assess business decisions, they use different standards and measures than when they consider ethical choices: the former cognitive frame stresses achievement and success as the key decision drivers, making people subconsciously more likely to consider cheating in pursuit of goals. In short, we routinely overestimate our ability to do what is right, and underestimate the extent to which we may behave unethically without meaning to.¹⁵ One recent study – based on four behavioral experiments using a newly developed corruption game – suggests that, contrary to the idea of a slippery slope through which corrupt acts start small and build up over time, some people may find it easier to rationalize leaping off a cliff when a too-good-to-pass-up “golden opportunity” arises than

to bear the moral cost of repeated unethical behavior.¹⁶

In general, though, there is a striking lack of detailed work on the individual motivations that underpin corrupt behavior. In contrast to studies of deviance and criminal behavior, social psychologists have with few exceptions devoted little attention to corruption. And yet corruption is manifested in concrete acts that take place in concrete settings, usually (if not always) involving purposive interaction between at least two individuals. If we are to understand better why people decide to engage in corrupt activity, we urgently need to move beyond the reductionist and simplistic idea that it can all be explained by incentives, and that by changing or tweaking those incentives we can address the issue. Linked to this point, we should focus more attention on the role of unwritten and informal social norms as a driving factor behind patterns of corrupt behavior; as highlighted in a recent Chatham House report on collective action and the social norms underpinning corruption in Nigeria: “identifying the specific social drivers of specific collective practices is critical to designing targeted and effective policy interventions to change those practices.”¹⁷

The third thing we should start doing is accept that we can never “win” the battle against corruption in the sense of defeating or eradicating it, and we should therefore set more realistic aspirations for anticorruption interventions. While there have been some widely cited contemporary “successes” (for instance, Singapore and Hong Kong in Asia, Botswana and Rwanda in Africa, Estonia and Georgia in Eastern Europe), such cases represent a strikingly small number in both absolute and proportional terms, and the evidence suggests things may be getting worse elsewhere. As Syed Hussein Alatas long ago observed, corruption “inheres in all social systems.... It affects all classes of society; all state organizations, monar-

chies and republics; all situations, in war and peace; all age groups; both sexes; and all times, ancient, medieval and modern.”¹⁸

That will remain true, and so the best we are likely to achieve is to “manage” corruption, or to constrain it within more acceptable limits. In particular, we should identify the most egregious and damaging forms of corruption, the ones that cause most social harm at greatest cost, and focus particular attention on measures to combat them. That inevitably means making hard choices about what we should *not* expend much energy on, rather than sticking to the mantra of “zero tolerance” toward any and all forms of corruption in the pursuit of chimerical aspirations.¹⁹

We should also focus more attention on the feasibility of any reform measures. As economist Mushtaq Khan has argued, conventional anticorruption strategies have sought to improve rule-following across the board, alongside changes to the cost-benefit calculations of public officials, but have generally failed because they pay insufficient attention to the interdependencies and variables that determine what is possible as opposed to what is desirable.²⁰ To be feasible, reforms need to be appropriate to and consistent with the political settlement in question, instead of seeking, for instance, to introduce formal regulatory changes to legal frameworks in situations in which entrenched elites benefit from their control of informal power networks. There is a tendency in much anticorruption programming to equate law with stable government, rather than focusing on the critical question of how to establish the rule of law in those environments where it is lacking.²¹ In line with the social drivers of specific practices, without a better understanding of how the interaction between institutions, beliefs, and behaviors results in a given legal order, it will be difficult to implement successful anticorruption interventions.

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From a focus on feasibility, it follows that we also need to pay more attention to variability both in form and outcomes of political settlements, even if we allow for the individualistic version of modernity that underpins the anticorruption vision of “ethical universalism” associated with open-access societies. In practice, even the most well-ordered Western states fall short on some aspects of the ideal type of corruption-free governance, and – more important – they manifest a range of different modalities to achieve similar ends (ranging from constitutional forms of government to territorial organization, electoral terms and systems, accountability frameworks, and so forth). As development scholar Merilee Grindle has persuasively argued, we should be suspicious of the normative connotations associated with “good” governance and its ever-growing list of requirements, and focus instead on the practical organization of actual governance tasks.²² That means accepting messiness and ambiguity, reflecting the complexity of modern political organization, as well as the need to understand better the interplay between microlevel interventions and macrolevel drivers of historical development.

In order to strengthen our assault on corruption, there are three things we should stop doing, each representing a logical extension of the discussion to this point. First, we should stop talking about corruption as if its meaning were self-evident. For a variety of reasons, the way the term has come to be used by academics and practitioners, as well as by journalists and political commentators, acts as an obstacle to moving the anticorruption agenda forward.²³ A main drawback to discussing “corruption,” without any adjectives, is that we cannot reach any kind of consensus, other than at an abstract or generic level, over what it comprises. To be sure, there is increas-

ing reference to some variation on the now well-worn formulation that corruption is the “abuse of public office for private gain”; but this definition suffers from two principal problems. First, since what should count as “abuse” is not itself defined, the definition effectively begs the question: what constitutes the alleged transgression of what norm, and who decides? Second, even if we could agree on what we mean by abuse, the definition still encompasses such a vast array of different kinds of activity by different actors in different settings that it is not helpful in any *operational* or *policy-informing* sense.

Definitions in other fields often provide what might be termed “core” or “umbrella” terms, which are then taxonomically subdivided. For instance, both condors and wrens are birds, but ornithologists have no difficulty distinguishing between them. Alternatively, to use the analogy most frequently applied to corruption, cancer always describes abnormal and uncontrolled cell growth, but encompasses over a hundred different diseases.²⁴ When it comes to corruption, though, we seem somehow stuck at the generic level: much of both the research and the associated anticorruption strategies developed over the last twenty-five years have signally failed to engage in the critical differentiation of pathological characteristics that distinguish some forms of corruption from others. If corruption is a form of cancer (or some other disease), then corruption oncologists need a more sophisticated understanding of its DNA if they are to develop effective responses; but discussions of corruption and how to combat it often proceed as if such efforts are a tiresome or annoying distraction. It is as if many who seek to combat corruption set out from the proposition that we sort of know what we mean, so let’s not get too hung up on the definitional niceties; in the words of one scholar:

We all basically know what we're talking about – primarily bribery and embezzlement, [as well as] some other bad conduct relating to conflict of interest. . . . Why not just accept that when most of us use the term “corruption,” we're talking about that cluster of stuff, and charge ahead with our research?²⁵

While many scholars and anticorruption practitioners do indeed mean “that cluster of stuff” when talking of corruption, others see the term as encompassing different or additional dimensions (for instance, legal uses of power that nonetheless betray the “democratic transcript” by violating the rationale and spirit of public rules).²⁶ Ultimately, the likely impossibility of establishing an uncontested, yet rigorous, definition means that corruption, unless we specify what precisely we understand by it, ceases to have any clear referent in research or practical policy terms. However, in reality, we rarely see such specification;²⁷ instead, at best, there has been a tendency to develop dichotomous distinctions (grand/petty, political/administrative, systemic/sporadic, individual/institutional, extortive/transactive, need/greed). Not only are modalities of corruption more complex and flexible than suggested by such binary schema, but there tends to be a separation between, on the one hand, work that seeks to identify “types” of corruption and, on the other, policy-oriented approaches to combat corruption writ large.

But perhaps just as significant, this lack of clarity means that the term can easily be pressed into political use as a descriptor of whatever is unpopular. We begin to see corruption everywhere and in everything, the root cause of any form of failure in any political setting: popular protests against the alleged corruption of political leaders have become common throughout the world, regardless of regime type. In turn, mutual accusations of corruption have become the stock-in-trade of polit-

ical contestation, as was starkly evident in the 2016 U.S. elections, and as has long been the case in post-Communist regimes and elsewhere. As a result, the term has become ever more devalued even as it is ever more widely used, ultimately serving as little more than a boo word.

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Our failure to specify what exactly we understand by corruption is reflected in a tendency to amalgamate all forms of corruption into a value that can then be measured within a jurisdiction. This brings us to the second practice to stop: the near exclusive focus on nation-states as our unit of analysis; and with it, the increasing production of rank indices measuring the amount of corruption in any one state compared with another. There is now a very extensive literature on the problems of measuring corruption, but relatively little of it questions the utility or relevance of focusing on nation-states. While there are a few measures that look at the subnational level, notably from the Quality of Government Institute at the University of Gothenburg, the vast majority of approaches both to measurement and remedies are pitched at the level of individual countries. In the words of political scientists Alexander Cooley and Jason Sharman:

As much as social scientists may hold the sanguine view that “everybody knows” that corruption is a cross-border problem, the methodologies commonly adopted systematically suggest the opposite conclusion, i.e., that corruption is a bordered, bounded characteristic of individual states.²⁸

In many ways, such a focus on nation-states is entirely understandable. States are so well established as units of political analysis, given their dual claim to sovereignty and legitimate authority, that it is natural to focus on individual state corruption and state efforts to combat it, just as we look at and compare a host of other governance indicators at the state lev-

el. However, there are clear problems with such an approach. To begin, it rarely works in practice, since most national-level measures of corruption provide only a single aggregate indicator. Moreover, it can still mask potentially significant variation *within* countries; as political scientist Staffan Andersson has observed, “actual instances of corruption may vary spatially – both subnationally and across government levels and sectors – a factor not detected by studies relying on single-country scores.”²⁹ The obvious case is Italy, with its stark differences between North and South, though these variations are also evident both in very large jurisdictions like Russia and India and in small countries like Sweden and the United Kingdom.³⁰ Research shows that 80 percent of the variance in the outcomes of aid projects occurs within countries rather than across them, further undermining the idea that there is anything approaching a uniform “level” of corruption within nation-states.³¹

But most important, the focus on nation-states fails to reflect the reality of how some of the most egregious forms of corruption operate in practice, particularly those that entail shifting value from one jurisdiction to another. We know that kleptocracy most often relies on the collusion of rich countries: “the bigger the financial center, the more dirty money flows through it.”³² While it is true that effective action against such activities would require sovereign nation-states to come together in a concerted manner, that is unlikely to happen if we systematically underplay the interconnectedness of how some forms of corruption function and the facilitating role of so-called clean countries. As Cooley and Sharman have observed, the implication for how we research and combat corruption is that we need “a shift in the unit of analysis, to transnational networks, rather than just states,” a point underlined by the revelations in the “Panama Papers” and “Paradise Papers.”³³

Third, we need to stop searching for unicorns. By this, I mean any attempt to identify “the answer” to how we should combat corruption, exemplified by the various lists mentioned at the start of this essay. There is now a consensus that one-size-fits-all approaches are doomed to failure, and yet the temptation to develop prescriptive approaches remains deeply embedded and anticorruption “toolkits” abound. Even if those once offered by the United Nations, for example, are no longer peddled quite so hard, the language of anticorruption tools and toolkits is still widely used, as is the invocation to establish anticorruption agencies with common standards.³⁴ It is essential, of course, to outline some core standards and expectations against which to judge progress, but research increasingly emphasizes the need to pay due attention to specific contexts and how these shape the implementation of any given reform measures. Equally, the “paths to success” in those countries deemed to have done well in combating corruption can vary significantly, calling into question any notion of one specific or “correct” route: as the eighteenth-century biologist and Catholic priest John Needham observed, there are more ways to heaven than one. The evidence suggests that, historically, crisis and existential threats, gradualist reform, visionary leadership, and/or popular demands can all be key factors – depending on their interaction with other circumstances – in moving from particularism to the more universalistic and impartial provision of public goods that characterizes low-corruption jurisdictions.³⁵

There is, then, no single route that needs to be followed, just as apparently similar circumstances in different countries can result in very different outcomes. Rothstein convincingly argues against precisely the institutional toolkit approach that seeks a “magic key” to unlock incremental anticorruption measures.³⁶ He uses

the examples of Sweden and Denmark to illustrate how a “big-bang” approach to major administrative reorganization in the mid-nineteenth century – following crushing military defeats that threatened their very survival – better accounts for the move from “limited” to “open-access” orders. However, in Spain, which also suffered a catastrophic military defeat at the end of the nineteenth century, the response was very different: in this case, rather than a move toward more impersonal, universalistic forms of administrative organization, the crisis brought forth a so-called iron surgeon in the form of Miguel Primo de Rivera, establishing a model of Spanish dictatorship that would persist for much of the twentieth century. Ultimately, and as unsatisfactory as it may seem, it is hard to escape the conclusion that a very significant element of contingency plays into how different administrative orders have come about. For all that comparative historical and institutional sociologists – building on Barrington Moore’s classic *Social Origins of Dictatorship and Democracy* – have persuasively identified different routes to the modern world, we still struggle to unpack the precise mechanisms that explain the relationship between long-term structural factors and short-term agency.³⁷

Given these arguments, the challenge is to identify what kinds of specific initiatives may work in combating corruption. An essential first step is to specify both the type of corruption in question and its locus. That means paying far more attention to the modalities of different forms of corruption and how they change and mutate in response to wider sociopolitical and economic developments. Different strategies will be required to address different types of corruption. If we wish to concentrate on tackling transnational corruption, for instance, then we need a more sophisticated understanding of how licit and illicit

practices interact to establish global networks populated by individuals who exploit channels made available through the operations of banks, shell companies, realtors, and so forth.

Of particular note, the emergence of what has been termed the “post-modern state” has led to a blurring of conventional divisions between different spheres of activity, notably the public and private sectors. Despite continued contestation over the nature and meaning of processes associated with both “globalization” and the “hollowing out” of the state, the fact is that in many states, there no longer exists a clear separation between the respective remits of public and private providers: not just in terms of policy delivery, but increasingly in terms of policy design, especially in relation to financial and regulatory matters.

This point matters greatly for any attempt to tackle transnational corruption because corrupt individuals have been able to adapt and change in response to these broader developments, exploiting new opportunities in a continuing effort to outsmart the regulatory measures designed to curb their activities. Notably, changes in the global financial architecture associated with the way that money can be moved internationally have not only made it much harder for individual states to enforce effective regulations, but have also created new opportunities for illicit international networks to hide the proceeds of corrupt activities. At the same time, the increased interpenetration between public and private sectors, associated with the rise of what have been variously described as “business politicians,” “flexians” (an elite professional class who serve multiple, overlapping roles ranging across government and private enterprise), or “globalized individuals,” undermines traditional forms of accountability.³⁸ In this emerging and fluid environment, the ability of individuals to move between a range of roles and nationalities, coupled with quan-

tum leaps in information technology, offers new opportunities for malfeasance.

The implication of such developments is that successful efforts to tackle the increasingly transnational nature of much contemporary corruption, often structured through intermediaries operating in the legal and professional world, requires much greater international cooperation and shared activity than has been the convention in anticorruption programming. A transnational strategy must put greater emphasis on the policy role of such international bodies as the Financial Action Task Force, supported by its equivalent regional groups,³⁹ as well as more extensive use of such instruments as beneficial ownership regulations, unexplained wealth orders, and the United Nations Office on Drugs and Crime's International Money Laundering Information Network. Twenty EU member states have recently announced an agreement to set up in Luxembourg the European Public Prosecutor's Office, designed to tackle cross-border fraud, and some, including Judge Mark Wolf in this volume, have called for the establishment of an International Anti-Corruption Court, modeled on the International Criminal Court.⁴⁰ Clearly, the role of such instruments in turn raises questions about accountability, transparency, and civic participation, but it is clear that without more concerted cooperation across states, nationally focused responses are unlikely to succeed in managing corruption.

A second observation about practical interventions again relates to scale, but this time it focuses on the subnational rather than transnational level. It is noteworthy that two of the most widely cited examples of positive anticorruption measures, Hong Kong and Singapore, are effectively city-states. Other "success stories" have also involved various agencies working together to clean up cities, as in Lviv, La Paz, Monterrey, and Ciudad Juárez.⁴¹ That

points to the need to focus more attention on anticorruption initiatives in urban centers. Just 3 percent of the earth's landmass is urbanized, yet cities are responsible for around 70 percent (and growing) of overall primary energy consumption, reflecting their status as the prime drivers of the global economy: 50 percent of global GDP is generated by 380 cities in the developed world (20 percent from 190 cities in North America alone), and just 20 cities are home to one-third of all large corporations and nearly half their income.⁴² Dieter Zinnbauer is one of the few to have noted that cities matter in fighting corruption, pointing out a "double blind-spot: anti-corruption analysts and advocates do not pay sufficient attention to cities, and urban practitioners do not pay enough attention to corruption."⁴³ Writing for *The Guardian*, Jack Shenker observes that

despite the soaring relevance of cities to our lives, to date global anti-corruption efforts have largely been targeted at countries as a whole, rather than at the urban settlements within them. The recent Panama Papers exposé . . . revealed the extent to which tax havens have a direct impact on cities.⁴⁴

In June 2017, the Center for Advancement in Public Integrity at Columbia Law School hosted the Global Cities II conference, which focused on the increasing use of data analytics to combat corruption.⁴⁵ The conference brought together anticorruption leaders from Bogotá, Cape Town, London, Melbourne, Miami, Montréal, New York, Paris, Rio de Janeiro, and San Francisco to explore how data driven approaches in areas highly vulnerable to fraud (benefits, human resources, procurement, campaign finance) can help identify outliers that may indicate untoward activity. Anticorruption analysts have put great hopes in the use of open data to help fight corruption, notably through the auspices of the Open Data Charter, following recognition by the G20

Anti-Corruption Working Group of its potential to follow financial flows and highlight irregularities in public contracting and procurement processes in particular.⁴⁶ The use of open data, of course, is not a magic bullet, and the extent to which it offers a route forward will be conditioned by other factors (including the capacity to interpret and act upon it). Whereas data analytics are clearly of significant potential relevance in “world cities” where illicit money flows enable corrupt networks to operate, they are less likely to be helpful in war-torn centers where law and order has effectively collapsed, or where bribery for access to services is routinized and there are strong links between corruption and generalized violence and organized crime.

The key point, however, is that successful anticorruption initiatives can start small: there is no ineluctable need for them to be led from above by national authorities. That is encouraging, since it suggests that there can be a possibility of progress even when political will at the national level is lacking. Increasingly, anticorruption researchers and programmers are recognizing that the need to consider context means that initiatives need to be highly targeted, both in terms of scale and sectoral focus.

In addition to looking in more detail at the prevalence and operation of corruption in cities and at other subnational levels, there is a growing realization that we need to pay greater attention to sectoral differentiation, exploring the pathologies of corruption risk in specific fields. This line is further developed, with notable advances in studying procurement processes, as well as initiatives such as the Transparency International global programs on defense and security, pharmaceuticals and health care, and mining, among others, together with a growing recognition of corruption in fields like education and professional sports. However, in general anti-corruption programming, there is still too

much emphasis on the public sector versus the private sector, coupled with calls for generic, national anticorruption plans and strategies.

The argument I have sought to make is that if we want to make progress in tackling corruption, we need to make fundamental changes to our approach. Most important, we should stop talking in global, generic terms about corruption and be much more attentive to which precise issues we are concerned about, where they occur, and how they operate. That means taking proper account of how changes in both the international architecture of global trade and finance, and also the design and organization of modern states, affect the nature of and possibilities for emerging corrupt exchanges. We therefore need to rein in our ambition and be more realistic about what it is possible to achieve and at what level. We need to focus more attention on appropriate units of analysis, both in terms of research and in policy-formulation; that means better understanding when and why individuals engage in corrupt activities, how their actions are shaped by social norms, and how those norms can be changed. Equally, we should pay much more attention to what we mean when we talk about integrity, recognizing that it does not result simply from removing corruption. In short, we need to change the terms of the conversation and accentuate the positive, rather than only trying to eliminate the negative.

ENDNOTES

- ¹ See Augusto Lopez-Claros, “Six Strategies to Fight Corruption,” The World Bank, May 14, 2014, <http://blogs.worldbank.org/futuredevelopment/six-strategies-fight-corruption>; Robert Hunja, “Here are 10 Ways to Fight Corruption,” The World Bank, December 8, 2015 <http://blogs.worldbank.org/governance/here-are-10-ways-fight-corruption>; Transparency International, “How to Stop Corruption: 5 Key Ingredients,” March 10, 2016, https://www.transparency.org/news/feature/how_to_stop_corruption_5_key_ingredients; Blair Glencorse, “5 ways to Beat Global Corruption,” World Economic Forum, November 6, 2014, <https://www.weforum.org/agenda/2014/11/five-ways-beat-global-corruption/>; and Dimitri Vlassis, “3 Key Steps to End Corruption,” World Economic Forum, January 16, 2015, <https://www.weforum.org/agenda/2015/01/three-ways-to-end-global-corruption/>.
- ² James D. Wolfensohn, “People and Development: Annual Meetings Address,” in *Voice for the World’s Poor: Selected Speeches and Writings of World Bank President James D. Wolfensohn, 1995 – 2005* (Washington, D.C.: The World Bank, 2005).
- ³ See Daniel Kaufmann, “Rethinking the Fight Against Corruption,” The Brookings Institution, November 29, 2012, <https://www.brookings.edu/opinions/rethinking-the-fight-against-corruption/>; Alina Mungiu-Pippidi and Niklas Kossow, “Rethinking the Way We Do Anti-Corruption,” *NATO Review*, 2016, <http://www.nato.int/docu/review/2016/Also-in-2016/anticorruption-corruption-laws-regulation-control-anticorrrp-budget-index/EN/index.htm>; Janine Wedel, “Rethinking Corruption in an Age of Ambiguity,” *Annual Review of Law and Social Science* 8 (2012): 453 – 498; John M. Ackerman, “Rethinking the International Anti-Corruption Agenda,” *American University International Law Review* 29 (2) (2014): 293 – 333; Franklin A. Gevurtz, “Rethinking Corruption: An Introduction to a Symposium and a Few Additional Thoughts,” *McGeorge Global Business and Development Law Journal* 20 (2) (2007): 237 – 242; Paul M. Heywood, “Rethinking Corruption: Hocus-Pocus, Locus and Focus,” *Slavonic and East European Review* 95 (1) (2017): 21 – 48; Michael Sidwell, “Rethinking Corruption in the Middle East and North Africa,” Transparency International, July 7, 2011, <http://blog.transparency.org/2011/07/07/rethinking-corruption-in-the-middle-east-and-north-africa/>; Rustamjon Urinbojev and Måns Svensson, “Rethinking Corruption in Post-Soviet Uzbekistan,” in *Eugen Ehrlich’s Sociology of Law*, ed. Knut Papendorf, Stefan Machura, and Anne Hellum (Münster: LIT Verlag, 2014), 207 – 235; Marlon Arthur Huwae, “My Voice: Rethinking Corruption in Southern Hemisphere,” *USA Today*, November 6, 2015, <https://www.usatoday.com/story/opinion/2015/11/06/voice-rethinking-corruption-southern-hemisphere/75325512/>; and Meredith L. Gore, Jonah Ratsimbazafy, and Michelle L. Lute, “Rethinking Corruption in Conservation Crime: Insights from Madagascar,” *Conservation Letters* 6 (6) (2013): 430 – 438. I should also mention the special issue of *Slavonic and East European Studies* 95 (1) (2017) on “Innovations in Corruption Studies,” linked to ANTICORRP and edited by Alena Ledeneva, Roxana Bratu, and Philipp Köker, available at <http://www.jstor.org/stable/10.5699/slaveasteurorev2.95.issue-1>.
- ⁴ Dieter Zinnbauer, “Social Accountability – Taking Stock of All the Stock-Taking and Some Interesting Avenues for Future Practice and Research,” February 8, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2913597.
- ⁵ Organisation for Economic Co-operation and Development, “Recommendation of the Council on Public Integrity,” January 26, 2017, <http://webnet.oecd.org/OECDACTS/Instruments/ShowInstrumentView.aspx?InstrumentID=353&InstrumentPID=476&Lang=en&Book=False>. The Transparency International “School on Integrity” that has run annually since 2011 offers a program predominantly focused on identifying, monitoring, measuring, and reporting corruption, as well as providing “state-of-the-art” anticorruption training, but seems to have no sessions on what is meant by integrity; see <http://transparencyschool.org>.
- ⁶ See Paul M Heywood, Heather Marquette, Caryn Peiffer, and Nieves Zúñiga, “Integrity and Integrity Management in Public Life,” ANTICORRP D11.4 Academic Report on Integrity Management, February 28, 2017, http://anticorrrp.eu/wp-content/uploads/2017/08/D11_4-FINAL-combined.pdf.

- ⁷ Leo Huberts, *The Integrity of Governance: What It is, What We Know, What is Done, and Where to Go* (London: Palgrave Macmillan, 2014).
- ⁸ Bo Rothstein and Aiysha Varraich, *Making Sense of Corruption* (Cambridge: Cambridge University Press, 2017), 125 – 148.
- ⁹ See Lynne McFall, “Integrity,” *Ethics* 98 (1) (1987): 5 – 20; and Damian Cox, Marguerite La Caze, and Michael P. Levine, *Integrity and the Fragile Self* (Hampshire, United Kingdom; Burlington, Vt.: Ashgate, 2003).
- ¹⁰ Matthew Smith, “Deporting Irene Clennell was Wrong, Say Nearly Two Thirds of Brits,” YouGov UK, <https://yougov.co.uk/news/2017/03/01/deporting-irene-clennell-was-wrong-say-nearly-two-/> (accessed March 31, 2017).
- ¹¹ Stephen M. Garcia, Patricia Chen, and Matthew T. Gordon, “The Letter Versus the Spirit of the Law: A Lay Perspective on Culpability,” *Judgement and Decision-Making* 9 (5) (2014): 479 – 490.
- ¹² Norman J. Finkel, *Commonsense Justice: Jurors’ Notions of the Law* (Cambridge, Mass.: Harvard University Press, 1995).
- ¹³ Benjamin A. Olken and Rohine Pande, “Corruption in Developing Countries,” *Annual Review of Economics* 4 (2012): 479 – 509.
- ¹⁴ Francesco Gino and Lamar Pierce, “Lying to Level the Playing Field: Why People May Dishonestly Help or Hurt Others to Create Equity,” *Journal of Business Ethics* 95 (S1) (2010): 89 – 103.
- ¹⁵ Max H. Bazerman and Ann E. Tenbrunsel, *Blind Spots: Why We Fail to Do What’s Right and What to Do about It* (Princeton, N.J.: Princeton University Press, 2012); and Ann E. Tenbrunsel and David M. Messick, “Ethical Fading: The Role of Self-Deception in Unethical Behavior,” *Social Justice Research* 17 (2) (2004): 223 – 236.
- ¹⁶ Nils C. Köbis, Jan-Willem van Prooijen, Francesca Righetti, and Paul A. M. Van Lange, “The Road to Bribery and Corruption,” *Psychological Science* 28 (3) (2017): 297 – 306.
- ¹⁷ Leena Koni Hoffmann and Raj Navanit Patel, *Collective Action on Corruption in Nigeria: A Social Norms Approach to Connecting Society and Institutions* (London: Chatham House, Royal Institute of International Affairs, 2017), v – vi. See also Cheyanne Scharbatke-Church and Russell Hathaway, “Are Social Norms an Important Missing Link in Anti-Corruption Programming?” CDA Perspectives Blog, March 21, 2017, <http://cdacollaborative.org/blog/social-norms-important-missing-link-anti-corruption-programming/>.
- ¹⁸ Syed Hussein Alatas, *Corruption: Its Nature, Causes and Consequences* (Aldershot, United Kingdom: Avebury, 1990), 3 – 4.
- ¹⁹ Charles Kenny, *Results Not Receipts* (Washington, D.C.: Center for Global Development, 2017), 111, suggests that “donor countries” professing “zero tolerance” for corruption is more of a marketing ploy than a matter of principle.
- ²⁰ Mushtaq H. Khan, “Governance and Anti-Corruption Reforms in Developing Countries: Policies, Evidence and Ways Forward,” G-24 Discussion Paper Series No. 42 (New York and Geneva: United Nations Conference on Trade and Development, 2006), http://www.unctad.org/en/docs/gdsmdpbg2420064_en.pdf.
- ²¹ Gillian K. Hadfield and Barry R. Weingast, “Microfoundations of the Rule of Law,” *Annual Review of Political Science* 17 (2014): 21 – 42.
- ²² Merilee S. Grindle, “Good Governance, R.I.P.: A Critique and an Alternative,” *Governance* 30 (1) (2017): 17 – 22. See also Merilee S. Grindle, “Good Enough Governance: Poverty Reduction and Reform in Developing Countries,” *Governance* 17 (4) (2004): 525 – 548; and Merilee S. Grindle, “Good Enough Governance Revisited,” *Development Policy Review* 25 (5) (2007): 533 – 574.
- ²³ In a recent post on his influential From Poverty to Power blog, Duncan Green of Oxfam observed that he felt “the anti-corruption movement is a bit stuck and really does need to re-think. One option would be to stop using the ‘C’ word altogether because it’s such a terrible

starting point.” See Duncan Green, “How Can the Anti-Corruption Movement Sharpen Up Its Act,” *From Poverty to Power*, July 20, 2017, <http://oxfamblogs.org/fp2p/how-can-the-anti-corruption-movement-sharpen-up-its-act/>. Kenny, in *Results Not Receipts*, 1–17 and 109–111, argues that the way we conceptualize and measure corruption damages the potential for humanitarian aid to deliver results.

- ²⁴ I have argued elsewhere that, despite its widespread use, cancer is a very poor analogy for corruption. See Paul M. Heywood, “Why We Need to Kill the ‘Corruption as Cancer’ Analogy,” *CDA Perspectives Blog*, September 19, 2017, <http://cdacollaborative.org/blog/need-kill-corruption-cancer-analogy/>.
- ²⁵ See Matthew Stephenson’s comment in response to the post by Rick Messick, “Why is Corruption so Hard to Define,” *The Global Anticorruption Blog*, August 5, 2015, <https://globalanticorruptionblog.com/2015/08/05/why-is-corruption-so-hard-to-define/>.
- ²⁶ Michael Johnston notes that in influence markets, “even if all funds flow through legal channels there can still be major corruption concerns”; Michael Johnston, *Syndromes of Corruption* (Cambridge: Cambridge University Press, 2005), 60. See also Daniel Kaufmann and Pedro C. Vicente, “Legal Corruption,” *Economics & Politics* 23 (2) (2011): 195–219; and Zephyr Teachout, “The Problem of Monopolies and Corporate Public Corruption,” *Dædalus* 147 (3) (Summer 2018): 111–126.
- ²⁷ In the words of Staffan Andersson: “The literature often treats corruption as if it consists of one thing regardless of where or how it occurs.” See Staffan Andersson, “Beyond Unidimensional Measurement of Corruption,” *Public Integrity* 19 (1) (2016): 58–76.
- ²⁸ Alexander Cooley and J. C. Sharman, “Transnational Corruption and the Globalized Individual,” *Perspectives on Politics* 15 (3) (2017): 746.
- ²⁹ Andersson, “Beyond Unidimensional Measurement,” 59.
- ³⁰ See Miriam Golden and Lucio Picci, “Proposal for a New Measure of Corruption, Illustrated with Italian Data,” *Economics and Politics* 17 (1) (2005): 37–75; Alexander Libman and Vladimir Kozlov, “Sub-National Variation of Corruption in Russia: What Do We Know About It?” *Region* 2 (2) (2013): 153–180; Nicholas Charron, “The Correlates of Corruption in India: Analysis and Evidence from the States,” *Asian Journal of Political Science* 18 (2) (2010): 177–194; and Jonas Linde and Gissur Ó. Erlingsson, “The Eroding Effect of Corruption on System Support in Sweden,” *Governance* 26 (4) (2013): 585–603.
- ³¹ Kenny, *Results Not Receipts*, 110.
- ³² J. C. Sharman, *The Despot’s Guide to Wealth Management* (Ithaca, N.Y.: Cornell University Press, 2017), 17.
- ³³ Cooley and Sharman, “Transnational Corruption,” 746.
- ³⁴ United Nations Office on Drugs and Crime, *The Global Programme Against Corruption: UN Anti-Corruption Toolkit*, 3rd ed. (Vienna: United Nations Office on Drugs and Crime, 2004), https://www.un.org/ruleoflaw/files/UN_Anti%20Corruption_Toolkit.pdf; and Organisation for Economic Co-operation and Development, *Specialised Anti-Corruption Institutions: Review of Models* (Paris: Organisation for Economic Co-operation and Development, 2013), <https://www.oecd.org/corruption/acn/specialisedanti-corruptioninstitutions-reviewofmodels.htm>. See also ACTS Anti-Corruption Toolkit for SMEs (small to medium business enterprises), <http://www.acts-project.eu/P42AoC155S124/Contacts.htm>; Transparency International, “Corruption Fighters’ Toolkits: Introduction,” https://www.transparency.org/whatwedo/tools/corruption_fighters_toolkits_introduction/3/; CDC Group, “ESG Toolkit for Fund Managers: Anti-Corruption,” <http://toolkit.cdcgroup.com/business-integrity/anti-corruption>; and Sam Eastwood, Jason Hungerford, Mark Pyman, and Jasmine Elliott, “Countries Curbing Corruption,” *Norton Rose Fulbright*, April 2017.
- ³⁵ Alina Mungiu-Pippidi, *The Quest for Good Governance: How Societies Develop Control of Corruption* (Cambridge: Cambridge University Press, 2015), 57–82.

- ³⁶ Bo Rothstein, "Anti-Corruption: The Indirect 'Big Bang' Approach," *Review of International Political Economy* 18 (2) (2011): 228 – 250. Paul M. Heywood
- ³⁷ Barrington Moore Jr., *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World* (Boston: Beacon Press, 1966).
- ³⁸ Donatella della Porta, "Actors in Corruption: Business Politicians in Italy," *International Social Science Journal* 48 (149) (1996): 349 – 364; Janine Wedel, *Shadow Elite* (New York: Basic Books, 2009); and Cooley and Sharman, "Transnational Corruption."
- ³⁹ See details at Financial Action Task Force, <http://www.fatf-gafi.org/countries/>.
- ⁴⁰ Reuters, "Twenty EU Countries to Set Up Prosecutor for Cross-Border Fraud," October 12, 2017, <https://www.reuters.com/article/eu-fraud/twenty-eu-countries-to-set-up-prosecutor-for-cross-border-fraud-idUSL8N1MN47B>; and Judge Mark L. Wolf, "The Case for an International Anti-Corruption Court," Brookings Institution, July 23, 2014, <https://www.brookings.edu/research/the-case-for-an-international-anti-corruption-court/>. See also Mark L. Wolf, "The World Needs an International Anti-Corruption Court," *Dædalus* 147 (3) (Summer 2018): 144 – 156.
- ⁴¹ See Ilya Lozovsky, "The Spirit of Lviv," *Curbing Corruption: Ideas That Work* (London: Legatum Institute, 2015), <http://www.li.com/programmes/curbing-corruption-ideas-that-work/>; Nieves Zúñiga and Paul M. Heywood, "Cleaning Up La Paz," *Curbing Corruption: Ideas That Work*; and Lucy Conger, "The Private Sector and Public Security: The Cases of Ciudad Juárez and Monterrey," Working Paper Series on Civic Engagement and Public Security in Mexico (San Diego: Wilson Center at the University of San Diego, 2014).
- ⁴² McKinsey Global Institute, "Urban World: What Next?" October 2016, <https://www.mckinsey.com/mgi/overview/in-the-news/urban-world-app>.
- ⁴³ Dieter Zinnbauer, "Cities of Integrity," draft working paper (Berlin: Transparency International, 2013).
- ⁴⁴ Jack Shenker, "Which are the Most Corrupt Cities in the World?" *The Guardian*, June 21, 2016, <https://www.theguardian.com/cities/2016/jun/21/which-most-corrupt-cities-in-world>.
- ⁴⁵ Center for the Advancement of Public Integrity, "Data Analytics, the Next Frontier: Taking a Byte Out of Corruption," July 2017, http://www.law.columbia.edu/sites/default/files/microsites/public-integrity/data_analytics_the_next_frontier_o.pdf.
- ⁴⁶ Open Data Charter, *Open Up Guide: Using Open Data to Combat Corruption* (New York: Open Data Charter, May 2017), https://opendatacharter.net/wp-content/themes/property/assets/anti-corruption_guide.pdf.

Corruption & Purity

Susan Rose-Ackerman

Abstract: Corruption is a complex and contested concept that raises difficult ethical and legal issues at the borderline between individuals' public and private roles. What is appropriate or required in one role may be inappropriate or even illegal in another. Based on these concepts of role and responsibility, I begin this essay by analyzing three cases that fit comfortably into the "illegal corruption" category: so-called grand and petty corruption and electoral fraud. These categories express widely accepted boundaries at the interface between public power and private wealth. I then discuss more ambiguous cases, such as lobbying and campaign finance, that demand nuanced legal and policy solutions. Responses to both types of behavior must go beyond law enforcement to include the reorganization of government institutions and their relationship to the private sector.

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The term "corruption" is often used to condemn behavior that violates the speaker's values. It evokes notions of putrefaction, rot, and decay; corrupt acts undermine a pure ideal. But if not everyone shares the same values, the term can imply an overbearing insistence on one's own view of what is right and good. This produces much conceptual confusion. Many commentators enshrine specific values and assert that deviations from those values are corrupt. These scholars conflate the mechanisms that produce the harm with the harm itself.

If one takes majority rule as the gold standard for public action, then deviations from that voting mechanism are corrupt. If one places the competitive market on a pedestal, then monopoly power is corrupt. If expertise sets the standard, then efforts to undermine science are corrupt. If, as Bo Rothstein has argued, the state ought to treat everyone impartially, then favoritism is corrupt.¹ In the same spirit, Alina Mungiu-Pippidi has asserted that corruption constitutes deviations from ethical universalism, a view also held, with some modifications, by Robert Rotberg.² Payoffs can undermine each of these

values, but departures from any particular value system do not constitute corruption per se. Rather, under my definition, corruption occurs when an official charged with a public responsibility operates in his or her own interest in a way that undermines the program's aims, whatever they may be. Officials who administer public programs without gaining personal benefits are not corrupt, in my view, even if the programs' values are abhorrent and immoral.

Conversely, if a law openly violates one's favored norm, paying a bribe to undermine that law is still corrupt, even if one finds such behavior justifiable in context. Suppose, for example, a society operates with a rigid caste system that limits the human potential of those at the bottom of the hierarchy. The system itself clearly violates ethical universalism. Yet if a lower-caste person bribes his or her way up the ladder, the payments are corrupt in that they violate the terms of the society's established framework. The behavior itself is justifiable in its defiance of an immoral system, but remains identifiably corrupt. In fact, widespread payoffs of, for example, the police, medical doctors, or prison guards are often evidence that the programs they administer do not operate impartially. However, the payoffs remain bribes in terms of the existing government structure.

In a world with contested views of the right and the good, one ought to debate the principles behind normative claims about corruption, ask how states and the private sector fall short, and assess which actions constitute "corruption" and which reflect other structural or individual failings. Corruption is one aspect of the tension between private wealth and public power, and it highlights the limits of self-interest as a model of behavior. However, conflating that tension with corruption ignores the complexity of the relationship.

Even if everyone agreed on the public good, treating any shortfall from the ideal

as corruption fails to accommodate the reality of human weakness and the inevitable trade-offs of daily life. The pervasiveness of trade-offs makes clear the limits of moral absolutism as a framework for policy-making or governance. Law reform will generally be counterproductive if statutes impose rigid, unrealistic standards of behavior combined with harsh sentences. Such legal regimes may push the outlawed behavior underground or encourage the payment of bribes to those who enforce the law. Conversely, a set of harsh legal rules that go unenforced breeds contempt for the law.

Corruption is both a moral and a legal category. In my analytic framework, corruption comprises the mechanisms that undermine the goals of public programs, whatever those goals may be.³ The corrupt seek to obtain personal material benefit at the expense of programmatic aims or institutional goals. However, those goals need not themselves be "virtuous"; corruption itself can advance either nefarious or noble aims. I distinguish corruption that violates the rules of the game through payoffs from unethical actions that may or may not be consistent with state policy. Thus, with Rothstein, Mungiu-Pippidi, and Rotberg, I applaud polities that espouse ethical universalism and impartiality, but I do not claim that deviations from those values are "corrupt."

Many institutional and personal failures – for example, waste, poor administration, technical mistakes, and violence – are not corrupt. Furthermore, such failures are often not illegal, and calling them "corrupt" does not help illuminate a path to reforms that require the cooperation of officials and citizens. Conflating outright bribery with other forms of maladministration and self-seeking is likely to antagonize rather than motivate officials and citizens. However, the study of corruption ought to go beyond the assessment of laws against bribery, extortion, and fraud to cov-

er analogous forms of self-seeking. If some questionable behavior is legal or widely tolerated, one needs to ask whether and how it should be outlawed or punished. Simply calling it “corrupt” does not answer these questions.

Applying the “corruption” label is not always controversial. Difficulties arise at the margins where values conflict and ideals must accommodate a messy reality. I concentrate on politics that differentiate roles and responsibilities. Difficult ethical and legal issues arise at the borderlines between roles. Those who hold government or political positions as legislators, ministers, party functionaries, judges, presidents, prime ministers, or civil servants also have other roles as devoted family members, businessmen, tribal elders, religious leaders, or even members of organized crime groups. Individuals change roles over days, weeks, or years. What is appropriate or required in one role may be inappropriate or even illegal in others. As Rothstein and Mungiu-Pippidi have argued, public roles require a level of objectivity, evenhandedness, and transparency not imposed on one’s personal life, where favoring one’s family is the norm.

Based on the concepts of role and responsibility, I begin with three cases that fit comfortably into the “illegal corruption” category: so-called grand and petty corruption and electoral fraud. These categories may overlap with each other, but each expresses widely accepted boundaries at the interface between the public and private spheres. I then discuss the more ambiguous cases of campaign finance, lobbying, and conflicts of interest, which demand more nuanced legal and policy responses. I emphasize responses that go beyond law enforcement, particularly policies that reorganize government institutions and their relationship to the private sector.

Direct monetary payoffs to secure government contracts, purchase state-owned

enterprises, and obtain concessions for resource extraction are corrupt by almost any definition. The explicit *quid pro quo* distorts government choices and imposes costs on citizens. Government officials may seek bids for contracts that fit poorly with the needs of the country and instead maximize the rents to be shared between public officials and private firms. Corrupt deals can limit competition even for otherwise valid purchases, driving up prices. For privatizations and concessions, lack of competition drives down prices, undermining social benefits. A corrupt firm might influence bidding specifications in order to become the only qualified bidder, making the formal bidding process look clean because the illicit behavior took place earlier.

Corrupt deals may also permit infrastructure contracts that violate laws pertaining to the environment, pay and working conditions, or treatment of local communities. Firms that obtain concessions through payoffs are also vulnerable to extortion, and those threats may affect project timelines, leading investors to speed up resource extraction or to use production processes that are easy to shut down or move away on short notice. The benefits to a country’s citizens are lower than they would be under an honest system, sometimes by a great deal. Even if the winning firm turns out to be the most efficient, the gains of the transaction are shared between the corrupt official and the firm and lost to the population. Monopoly power on its own may be as costly as corruption; competitive pressures are essential to produce contracts that operate in citizens’ best interests.

Recipients of kickbacks are corrupt so long as the law distinguishes between the personal interests of officials and those of the state.⁴ For example, a ruler who chooses projects to maximize bribes could by chance end up supporting projects that are superior to those he or she would otherwise select. The deals remain corrupt,

however, because of the bribe-maximizing selection method. To assess the impact of corruption, behaviors and methods must be separated from outcomes.

If accepting kickbacks for major contracts, privatizations, or concessions is unambiguously corrupt, what about the firms that make such payments? Firms excuse payoffs by claiming that they cannot otherwise do business in a country where corruption is the norm. This excuse is often a non-starter under the law: in international contracts, such behaviors might be prohibited by the laws of the host country, a corporation's home country, or both. Legal instruments outlawing corruption in international business deals include the U.S. Foreign Corrupt Practices Act (FCPA) and the Organisation for Economic Co-operation and Development (OECD) Anticorruption Convention. Even bribes paid to finalize deals in deeply corrupt environments fall under these legal strictures. Nevertheless, some see these payoffs as "necessary payments" (*notwendigen Ausgaben*, the term once used by German firms to account for such payments in their financial records). No one disputes that a system of kickbacks imposes higher costs to host countries' citizens compared with an honest system, but parties to these contracts argue that the only alternative is no investment at all. The United States has been an aggressive enforcer of the FCPA under the umbrella of the OECD Convention. As a result, some U.S. businesses claim that enforcing the FCPA harms America's economic interests. That claim is deeply misleading; it overstates the case and denies the importance of ethical business dealings. First, the FCPA applies not only to U.S. companies but also to all companies that are listed on U.S. capital markets or are otherwise linked to the U.S. economy. Second, most international companies are subject to anticorruption regimes in their home countries if those jurisdictions have ratified the OECD Convention – meaning

that the competition often faces the same ethical and legal obstructions as U.S. firms. Finally, even if a kickback helps win an individual deal, systemic corruption introduces inefficiencies and reduces competitiveness and private-sector development. This, in turn, hampers economic growth and limits opportunities for investment and trade that arise from better economic conditions.

Corruption can initiate downward spirals of bribery, extortion, and escalating bureaucratic demands.⁵ Abetting corrupt officials in their search for private gain will encourage them to ramp up their extortionate behavior going forward. The long-term losses for global business and for the citizens of kleptocratic states will arguably cancel out the short-term gain from individual contracts.

Consider next so-called petty corruption, wherein bribes to low-level officials induce them to override regulatory rules, reduce taxes, limit fines, and allocate scarce public benefits in ways that advantage the briber. The label "petty" is not intended to imply that the backhanders are unimportant or tolerable, but rather to highlight the difference in scale between the corruption of large deals and situations in which a large proportion of those demanding a service or avoiding a cost make payoffs. These bribes distort the allocation of benefits and costs, and they signal underlying weaknesses in public programs.

Apologists for small bribes see them as the grease that makes the operations of private businesses and the administration of public programs run. For them, the ideal of unfettered market trades and sale of public goods to the highest bidder ought to trump legal rules. Anything that furthers that ideal is not corrupt, but rules that are inconsistent with the free-market ideal are. Note the arrogance of this view. The commentator asserts the right to evaluate the rules in the light of his or her own values, privileging

quid pro quo transfers and labeling behavior that seeks to restrict them as corrupt. To assert that some payoffs are acceptable *because* they mimic the free market, or that some rules are illegitimate because they do not, closes the door to genuine debate about how to regulate market failures, preserve individual rights, and deal with social and economic inequities.

The evaluation of petty corruption begins with distinctions between licit and illicit behavior. What can be legally bought and sold? What trades are illegal and subject to punishment? Has that boundary been set appropriately? Should the law permit more or fewer trades? Should governments redesign programs to change financial incentives or to influence choices? I focus on three reform measures against petty corruption: legalizing payments, reforming programs to limit incentives for payments, and eliminating programs infiltrated with self-seeking.

The first solution is to legalize payments. Legal market trades would then allocate goods and services to purchasers who value them the most in material terms. High earners could thus satisfy more of their needs and desires than those with low income and wealth. Is such an allocation acceptable for a particular public program? The answer depends upon its underlying justification. The easy cases for legalization of payments are regulatory initiatives that attempt to enhance efficiency. For example, a government may decide to limit the import of capital goods through a quota. Legally selling these quotas in auction to the highest bidders would minimize their economic costs.

Bribe payments can undermine public goals, which is why reducing incentives for payments is also an important second option. An initiative may target the needy or the worthy. The goal may be Rothstein's impartiality, but scarce resources imply that not everyone can obtain the benefit. If

officials allocate the program's benefits according to payoffs received, their behavior violates the underlying purposes of these programs. Payoffs, even if "petty," distort official criteria and are thus corrupt.

Corruption also undermines public purposes if bribes become substitutes for qualifications for access to benefits. If the qualifications relate to the underlying purpose of the program (for example, if a program is reserved for the neediest candidates), payoffs distort the programs, directing benefits away from the intended recipients. One can make similar arguments about government-imposed costs to citizens in the form of taxes, customs duties, fines, regulatory shutdowns, and criminal arrests: those who pay bribes to avoid such costs undermine the legal framework that keeps the government functioning.

Finally, if, in practice, the administration of a public program is arbitrary and unfair, it is likely that the laws themselves are discriminatory or their administration is faulty, meaning that the programs themselves may need to be modified or eliminated. In that case, legalizing or overlooking private payments would only give officials incentive to impose arbitrary red tape or threaten citizens to generate more payoffs. Reform must limit the cause of the bribes, whether it is self-seeking behavior or citizens' frustration with a discriminatory system. Bribes paid to convince authorities to overlook rule violations or permit access to services without the required qualifications are also corrupt. These cases involve dysfunctional bureaucrats who either do little work without payoffs or actively extort them.

Although one may sympathize with citizens facing extortionate demands, few would hesitate to label such systems corrupt. Payoffs contribute to societal dysfunction, even if those who pay bribes are better off in the short term than those who do not. If the state tolerates "petty" bribes, a

vicious cycle can develop that may escalate and undermine all public programs. However, cracking down on payoffs is insufficient and may be unfair to those caught in a web of petty corruption. The state must reform the programs to limit corrupt incentives facing both those who pay and those who receive payoffs or, in the extreme case, to cancel dysfunctional programs. Reforms might, for example, increase the supply of scarce public services, set clearer qualification standards, add transparency about beneficiaries, or streamline bureaucratic processing of applications. Admittedly, such reforms require reform-minded officials in positions of power; implementing them is not always possible where bureaucratic corruption is pervasive.⁶

The third type of unambiguously corrupt behavior I will examine is election fraud, including vote buying and electoral manipulation. In such scenarios, politicians and political parties pay individual voters for their support. Voters may not object because they benefit from candidates' largesse. In some cases, the distribution of state resources and patronage jobs creates webs of obligation such that voters may overlook or even encourage illegal contributions from the wealthy if some benefits flow to them. These personalized benefits can make it difficult for credible opposition candidates to arise. The government becomes a site for a mutual exchange of favors that ultimately benefits those with the most resources and political power.

Even in elections with secret ballots, vote buying can occur. In especially blatant cases, political operatives mark ballots for voters. Politicians may employ other techniques, such as paying election officials and monitors to manipulate voter registration rolls, miscount or misreport votes, "lose" ballot boxes, limit the opening times of polling stations in contested voting jurisdictions, or fail to publicize balloting loca-

tions. Sometimes partisan electoral officials misuse their positions to fraudulently elect favored candidates. Incentives for vote buying and electoral fraud are stronger the more competitive the election.⁷ If a party or candidate is certain to win or lose, fraud is unnecessary; hence, the absence of voter fraud does not necessarily imply stronger democratic institutions. Reform requires political parties and leaders to espouse honest elections, support election monitors (perhaps from outside the country), and encourage the creation of independent domestic institutions to organize and monitor elections. Concerned citizens can provide decentralized oversight.

Not all corruption fits within these three categories; in some cases "corruption" is a problematic or ambiguous label. I reject an expansive notion of corruption that covers all cases in which private wealth affects public choices, either directly or indirectly. That is an impossibly broad definition, especially if we operate under the understanding that corrupt acts should be illegal. Few commentators advocate this approach, but why label an action "corrupt" if not to call for its sanctioning under criminal or civil law? If calling something "corrupt" is merely a way of signaling its immorality, why not just criticize it as such and engage in public debate about what the standard of behavior ought to be? "Political corruption" is an especially ambiguous category that can refer both to explicit quid pro quos and to broader pathways through which private wealth affects elections and policy choices. Campaign finance, lobbying, favoritism, and conflicts of interest – all behaviors that under some circumstances and for some commentators have been deemed corrupt – illustrate the conceptual and policy difficulties of this term.

I will first discuss campaign finance. Democratic political systems must finance politi-

cal campaigns without encouraging the sale of politicians to contributors. Well-funded candidates may be more likely to win elections, after which they can pursue the donors' favored policies. Politicians may base their policy positions around the goal of obtaining more funding, creating a feedback loop of ever-increasing devotion to donor interests. However, the simple act of donating to those with similar policy positions is not obviously corrupt. Election donations are, as the U.S. Supreme Court argues, a form of "speech."⁸ Even if biased in favor of the wealthy or well-organized interest groups, donations support and provide data to candidates and incumbents.

Governments have drawn the line between legal and illegal gifts in quite different ways, and laws vary with respect to the limits placed on quid pro quo deals by politicians. Even though the U.S. Supreme Court has struck down many campaign-finance regulations as unconstitutional limits on free speech, the justices still accept corruption (or its appearance) as a constitutional justification for regulation.⁹

Groups that donate to elected officials often expect special consideration in legislative or administrative processes or assistance in obtaining contracts and concessions. The interests of wealthy groups or individuals can easily conflict with those of the general public. In an ideal democracy, the electoral process disciplines politicians to represent the interests of their constituents, with voters able to penalize candidates who are beholden to special interests. But voters cannot act unless they know both how their representatives behave and who has given them money. Legal gifts can have a corrupting effect, especially if the quid pro quo is not obvious to voters.

Sometimes expectations of a quid pro quo are quite straightforward. In other cases the effects of the exchange are subtle and difficult to document. Some contributions are long-term investments in de-

veloping relationships of mutual trust designed to get sympathetic candidates into office. In practice, it is difficult to distinguish between politicians who modify their positions to favor contributors and those who simply share their contributors' points of view. Private contributions influence who runs for office, as well as how politicians behave once elected. Even if donations only buy access, they can influence legislative outcomes.

Although empirical research has not conclusively determined the impact of campaign donations on electoral success, politicians and contributors behave as if money matters. Incumbents have a fundraising advantage, and those in powerful positions in the legislature are especially favored for reelection. A study of roll-call votes in the U.S. Congress found no statistically significant relationship between votes and contributions, but other routes to influence are more subtle.¹⁰ Although the evidence that donations influence behavior is mostly anecdotal, the link between campaign funds and influence remains a persistent concern of critics worldwide.

The difficulty of articulating a legal definition of corruption that is applicable to elected politicians and those seeking influence is illustrated by *McDonnell v. U.S.*, a 2016 Supreme Court decision interpreting the federal bribery statute.¹¹ The opinion overturned the corruption conviction of then-Virginia governor Robert McDonnell, who had arranged meetings between state officials and a donor seeking economic advantages. The Court held that the governor's efforts were part of the routine actions expected of elected officials, even if some of those actions were "distasteful." Unlike the earlier *Citizens United* case, freedom of speech was not at issue, because the case targeted the governor, not the businessman. The Court also heard *Caper-ton v. A. T. Massey Coal Co., Inc.*, in which an elected state judge had received large do-

nations from one of the parties in the case: gifts that could have had a “significant and disproportionate influence” on his objectivity. The Supreme Court required the state judge to recuse himself from the case because of the high “probability of actual bias.”¹² As lawyer Joel Ramirez argues, this decision provides an opening for campaign-finance regulations directed at candidates rather than donors, avoiding both First Amendment challenges and bribery prosecutions.¹³

If *McDonnell* implies that prosecutors must prove an explicit quid pro quo to secure a bribery conviction, that would raise the bar for conviction. *Caperton*, however, holds that circumstantial evidence can be sufficient to limit the effect of private wealth on public choices. Because links between donations and favors can undermine electoral democracy, campaign funding should be regulated directly, not as a subset of antibribery law. State statutes could theoretically outlaw both giving and accepting substantial gifts, even if these actions do not violate the federal bribery law.¹⁴

Reform proposals for election law range from strict proposals employing a broad legal definition of corruption to more permissive ones that rely on disclosure to increase transparency. Neither extreme seems appropriate. In a highly competitive system with informed voters who do not expect personal favors, prompt and complete disclosure might be sufficient. Politicians who rely too heavily on special interest money – and voted accordingly – would be defeated. More direct restrictions should hold if the system is not competitive and if voters are poorly informed; without spending limits, politicians can favor large contributors and gifts can be used to mislead voters regarding candidates’ positions and behavior.

Campaign-finance reform must avoid laws that are so strict as to encourage illegality. Although laws in many countries

are overly permissive, in others the regulations practically require off-the-books transfers for candidates to fund their campaigns. Strict legal limits can also encourage unreported corrupt transfers. Scandals point to the importance of both clear rules governing the solicitation of private money and sufficient legal sources of funds. Furthermore, the impact of corporate gifts depends on politicians’ abilities to provide individualized favors to firms. If such favors are not outlawed or controlled, the distinction between bribes and legal campaign contributions will be blurred and will depend upon reporting requirements and the reaction of voters.

Societies must reach a consensus about the degree to which a democratic government can or should interfere with its citizens’ wishes to express their political interests through donations to political parties or individual candidates. Once a polity has agreed on a norm of behavior, solutions can be pursued along four dimensions. First, the costs of political campaigns can be reduced by limiting campaign length and restricting the range of acceptable fundraising methods. Second, stronger disclosure rules can be implemented. Third, laws can limit individual donations or candidates’ spending. In the United States, although the Supreme Court has limited the regulation of campaign spending, the justices have so far accepted existing restrictions on direct contributions to candidates and parties. Fourth, public budgets can provide alternative sources of funds. Many proposals for more extensive public funding in the United States have been advanced; however, opponents worry that public funding and spending limits will protect incumbents and unduly disadvantage minority parties. Public funding formulas could overcome the incumbency advantage, but finding a workable system may be difficult in the United States given the

Supreme Court's aggressive stance against efforts to level the playing field.

Alternatively, candidates who demonstrate substantial public support could obtain funding, for example, through government-funded vouchers (called "democracy dollars" when implemented by the Seattle government) given to voters to support the candidates of their choice. One plan would combine a voucher program with anonymous private donations, resulting in "a secret donation booth."¹⁵ In promoting democratic values, a voucher plan would reduce the influence of wealthy interests. If not well-monitored, however, it could increase illegal corruption; candidates might bribe voters in exchange for assigning vouchers to them; and the wealthy might finance independent campaigns to influence the voucher system.

The law should require disclosure of the relations between politicians and wealthy interests. Restrictions on outside earnings and lobbying by retired politicians – such as "cooling-off periods" in which former legislators or officials are barred from lobbying the offices in which they worked – are more controversial, but will be important in political systems in which the electorate is poorly informed or less educated. The more the electorate demands accountability, the less restrictive legal rules need to be.

Lobbying is another ambiguous form of influence. Legislators, presidents, and other public officials need information from outside experts and need to gauge the opinions and policy preferences of both ordinary citizens and organized groups. Proactive efforts by private individuals and organizations to influence public choices – what we call lobbying – are sometimes criticized as being inherently corrupt. But one should avoid easily equating lobbying with corruption. Lobbying gives wealthy interests clout; however, well-organized civil societies groups in such fields as environmental

policy, consumer protection, and education, as well as labor unions and associations of beneficiaries (like pensioners and veterans), also lobby. Lobbying is a necessary aspect of the relationship between lawmakers and the public, but it is fraught with the potential to facilitate corrupt deals. Often, lobbyists cultivate long-term relationships of mutual assistance, meaning that individual donations may not have immediately visible consequences. This affects the integrity of democratic politics. However, entirely outlawing lobbying – a multibillion-dollar industry in the United States alone – is not a plausible response. If a state tried to bar all contacts with lobbyists, it would likely drive the practice underground, transforming it into outright corruption. Today, although they are not "corrupt" per se, lobbying and political pressure challenge the egalitarian values of democracy. Particularly troublesome are situations in which lobbying and campaign finance complement each other, as is arguably the case in the United States.¹⁶ But the answer is some form of campaign finance reform, not a wholesale ban on lobbying.

The routes to political influence in a given society depend upon its underlying levels of both corruption and political competition. If personal connections matter and major shake-ups in elite power are uncommon, those seeking political influence will curry favor with incumbents. They may stay within the law or pay politicians off outright, depending upon local conditions. However, these connections can backfire if powerful politicians extort firms and appropriate their profits, shifting monopoly rents to politicians and generating a long-run negative impact on private investment. In contrast, if a polity enjoys competitive elections and alternations in power, strategic actors are more likely to seek routes to influence that are independent of the partisan composition of government at a particular point in time.¹⁷

In either case, corrupt payoffs are less necessary in states with better rule of law and other routes to influence via lobbying and connections. These states are also likely to have strong conflict-of-interest laws prohibiting certain kinds of explicit business/political connections. As a result, political connections are more necessary in states that are not riddled with outright bribery, such as the United States. Although personal ties theoretically make it easier to arrange illegal quid pro quo arrangements, they often also make them less necessary, as individuals respond to interpersonal rather than monetary obligations. Furthermore, lobbyists do play a significant role in educating politicians about policy issues and about constituencies' needs: evidence from the United States finds that lobbyists' contacts and expertise matter to members of the U.S. Congress. Thus, even if most public officials do not take kickbacks and do not use their power to extort private firms, they may favor firms that actively lobby them.¹⁸

Lobbyists seek to benefit their clients and will concentrate their efforts on politicians capable of affecting outcomes. My model of lobbying identifies four stylized possibilities: 1) lobbyists' access to politicians is heavily rationed and skews toward wealthy interests, and lobbyists provide personal or campaign-linked benefits to politicians; 2) access is similarly skewed toward lobbyists representing wealthy and powerful clients, but the lobbyists provide information and expertise that favor the interests of their clients; 3) access is open regardless of moneyed interests but the benefits to politicians are personal or campaign-related; and 4) access is open and lobbyists provide information and expertise on all sides of the issue. The fourth vision of lobbying is obviously most consistent with the view that lobbying enhances democratic accountability and improves the quality of statutes, while the first is very close to outright corruption. In most democracies, the real-

ity falls somewhere in the middle. Policies should encourage the fourth model (that is, open access and objective expertise) by lowering barriers to those seeking to provide information and by requiring influence-seekers to register and report publicly on their activities.

Conflicts of interest, the third issue I will discuss, are a related but distinct question. They arise when an official mixes public and private roles, furthering, say, the interests of her family or business when acting as a bureaucrat, judge, or politician.¹⁹ In the most extreme cases, the same elite actors control both the state and the economy. Explicit payoffs are unnecessary because public officials advance their own private financial interests with no need for an intermediary. Illegal corruption and fraud are a subset of this concept, but not all conflicts are corrupt. The challenge for policy-makers is twofold. First, they need to consider whether some conflicts are so inherently harmful that they ought to be outlawed, even if they do not constitute corruption or fraud. Second, the state may need to adjust its mixture of ex-ante prohibitions and ex-post penalties for conflict-of-interest scenarios. Requirements for financial disclosure, divestiture, and recusal may be too lax or too stringent. Do they discourage otherwise qualified people from taking public positions, thus limiting the pool of talent? Are they too easy for politicians to circumvent by, for example, transferring assets to their children or moving assets abroad? Do the rules favor wealthy private interests without the need for outright payoffs?

Most mature democracies seek to limit the influence of private economic interests on elected politicians or, at the very least, require them to report their financial interests. Elected officials are generally regulated less stringently than other public officials, presumably because they write the rules that apply to them. Especially in new

democracies, revealing conflicts of interest and maintaining financial transparency have not been high priorities. Yet if uncontrolled, politicians with widespread business interests can undermine governmental legitimacy as surely as do those who serve the interests of large contributors. At a minimum, disclosure of politicians' financial interests and those of their families seems necessary for democratic accountability. Once lobbying is added to the mix, the benefits of openness to outside sources of information must be balanced against the risk of improper influence, leading to difficult trade-offs. However, simply labeling all conflicts of interest as corruption conflates too many different types of public-private interactions.

Private wealth distorts the exercise of public power, directing it away from majoritarian preferences and values. But to label all such distortions "corrupt" sets an idealized standard of purity, implying that virtually all politicians and officials are guilty of corruption. A rigid and uncompromising stance would likely discourage almost everyone from seeking public office, leaving the field to zealots and ideologues.

But even if the corruption is not in doubt, the best remedy may not be a law-enforcement crackdown. If bribes are endemic to a dysfunctional system, efforts to combat them should focus on institutional reforms. The goal should be to change the expectations of both officials and of citizens and businesses, and to avoid vicious cycles where the corruption of some encourages more and more to turn corrupt over time as they observe the actions of others. Reformers need to distinguish between clearly unacceptable practices such as grand corruption, petty corruption, and vote buying, on the one hand, and more ambiguous cases such as lobbying, conflicts of interest, and campaign finance, on the other.

As Bonnie J. Palifka and I discuss in our recent book *Corruption and Government: Causes, Consequences, and Reform*, reformers need to ascertain which vulnerabilities in their society have the greatest impact on citizens and businesses.²⁰ This can be done through surveys of the public and targeted research into sectors subject to grand corruption or organized crime influence. With such a road map in place, reforms can take several forms.

First, reforms should modify the incentives motivating both those who pay and those who accept or solicit bribes. To counter grand corruption, reforms should increase the competitiveness and transparency of bidding processes for government contracts and favor purchases of products sold in the private market over tailor-made products suitable only for government use. Such reforms can limit both monopoly power and corruption. Convictions for corruption should be possible on the evidence of payoffs alone. To limit low-level kickbacks, public programs should streamline and clarify rules and application processes. Some public programs may need to be redesigned to limit discretion and reduce scarcity. Civil servants must be adequately trained and compensated, including rewards for competent service.

Campaign-finance laws need to prevent the de facto "sale" of votes and political support. At the same time, voter fraud can be reduced through improved voting technology in conjunction with better internal and external monitoring.

Second, reformers may need to change criminal law so that its coverage and penalties are sufficient both to deter corruption and encourage honest and competent enforcement. The use of independent anti-corruption agencies has a mixed record because they often either lack sufficient power or are not truly independent. Recent examples, such as that of Brazil, suggest that good models do exist. Even so, strong law

enforcement is never sufficient if the underlying institutions of government are riddled with payoff incentives. This may make it tempting for reformers simply to shrink government, but this is not the answer. Rules that are only “red tape” can encourage corruption, as we have seen, and should be repealed. But anticorruption efforts should recognize the positive role of regulations that serve the public interest. Privatizing public programs may create private monopolies that earn excess profits without the need for payoffs; smaller government is not necessarily better government.

Third, civil society must be engaged in the anticorruption effort. Civil-society groups can be an important source of support, helping citizens resist corrupt demands and push for systemic reform. Social media, too, can serve as a platform for reformers and concerned citizens and provide a means to encourage whistleblowing and investigative journalism. Institutions of public oversight, from competitive elections to specialized institutions such as ombudsmen and whistleblower protections, can empower anticorruption movements that operate outside of government.

Fourth, cross-border responses need to regulate financial flows and confront organized crime. The international community must take concerted action to stem money laundering and to limit the reach of organized crime and the impunity of corrupt multinationals. The United States is at the forefront of enforcing the OECD

Anticorruption Convention, which targets corrupt overseas investments. However, all international financial centers need to strengthen laws that mandate documentation of the beneficial owners of shell companies, as well as legislation making it difficult to hide corrupt proceeds in fixed assets, such as real estate.²¹

The ambiguous cases of campaign donations, lobbying, favoritism, and conflicts of interest present serious challenges, but calling them uniformly corrupt simply fuels public cynicism. Citizens need to debate the relative benefits and costs of the available options, not shut down debate with broad labels. There are several ways to increase government transparency and public accountability. Most obvious is the disclosure of budgets, contracts, and government rules and ordinances. Provisions for public input into policy, followed by public statements laying out the reasons for reforms, can help lend legitimacy to executive actions. Freedom of information laws can encourage honest and competent administration by requiring public access to government documents.

None of these reform proposals is a panacea, and all require civil-society pressure and leaders committed to reform. Leadership is necessary but is never sufficient on its own. Reformers must understand how corruption and other forms of self-dealing work at an institutional level in order to construct reforms with some chance of success.

ENDNOTES

¹ Bo Rothstein and Jan Teorell, “What is Quality of Government? A Theory of Impartial Government Institutions,” *Governance* 21 (2008): 165–190.

² Alina Mungiu-Pippidi, *The Quest for Good Governance: How Societies Develop Control of Corruption* (Cambridge: Cambridge University Press, 2015), 14–17, 27–30, 57–82; and Robert I. Rotberg, *The Corruption Cure: How Citizens & Leaders Can Combat Graft* (Princeton, N.J.: Princeton University Press, 2017), 196–222.

- ³ Susan Rose-Ackerman and Bonnie J. Palifka, *Corruption and Government: Causes, Consequences and Reform*, 2nd ed. (Cambridge: Cambridge University Press, 2016), 3 – 11; and Susan Rose-Ackerman, *Corruption; A Study in Political Economy* (New York: Academic Press, 1978), 1 – 14.
- ⁴ Officials pursuing their self-interest with complete impunity resemble something like Michael Johnston’s “Official Moguls” corruption syndrome, outlined in Michael Johnston, *Syndromes of Corruption: Wealth, Power and Democracy* (Cambridge: Cambridge University Press, 2005), 155 – 185; and Michael Johnston, *Corruption, Contention and Reform: The Power of Deep Democratization* (Cambridge: Cambridge University Press, 2014), 16 – 28, 86 – 118.
- ⁵ Susan Rose-Ackerman and Sinéad Hunt, “Transparency and Business Advantage: The Impact of International Anti-Corruption Policies on the United States National Interest,” *New York University Law School Annual Survey of American Law* 3 (67) (2012): 433 – 466.
- ⁶ In his essay in this volume, Bo Rothstein stresses the vicious cycles that perpetuate corruption. He recommends an indirect approach focusing “on reciprocity, changing perceptions about ‘the rules of the game,’ and breaking a corrupt equilibrium.” Bo Rothstein, “Fighting Systemic Corruption: The Indirect Strategy,” *Dædalus* 147 (3) (Summer 2018): 43.
- ⁷ Fabrice Lehoucq, “Electoral Fraud: Causes, Types and Consequences,” *Annual Review of Political Science* 6 (2003): 233 – 256.
- ⁸ *Buckley v. Valeo*, 424 U.S. 1 (1976).
- ⁹ See *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010). On legal corruption, see Lawrence Lessig, *Republic, Lost: How Money Corrupts Congress – and a Plan to Stop It* (New York: Grand Central Publishing, 2011), 226 – 247; and Zephyr Teachout, *Corruption in America: From Benjamin Franklin’s Snuffbox to Citizens United* (Cambridge, Mass.: Harvard University Press, 2014), 46 – 50, 251 – 253.
- ¹⁰ Stephen Ansolabehere, John M. Figueiredo, and James M. Snyder, Jr., “Why is There So Little Money in U.S. Politics?” *Journal of Economic Perspectives* 17 (2003): 105 – 130.
- ¹¹ *McDonnell v. U.S.*, 136 S. Ct. 2355 (2016).
- ¹² *Caperton v. A. T. Massey Coal Co., Inc.* 556 U.S. 868 (2009).
- ¹³ Joel J. Ramirez, “Beyond Quid Pro Quo: *Caperton* and Anticorruption by Anti-Transparency,” supervised analytic writing paper (New Haven, Conn.: Yale Law School, May 2017).
- ¹⁴ Virginia has taken modest steps toward capping gifts from lobbyists to state lawmakers. See Jim Nolan and Marcus Schmidt, “Legislature Approves Ethics Bill with \$100 Aggregate Gift Cap,” *Richmond Times-Dispatch*, April 17, 2015, http://www.richmond.com/news/virginia/government-politics/legislature-approves-ethics-bill-with-aggregate-gift-cap/article_1d1225c8-3929-5099-8ce5-eace700186c9.html.
- ¹⁵ Bruce Ackerman and Ian Ayres, *Voting with Dollars: A New Paradigm for Campaign Finance* (New Haven, Conn.: Yale University Press, 2012).
- ¹⁶ Richard Hasen, “Lobbying, Rent-Seeking, and the Constitution,” *Stanford Law Review* 64 (2012): 191 – 253.
- ¹⁷ Raymond J. Fisman, “Political Connections and Commerce – A Global Perspective,” in *Greed, Corruption, and the Modern State: Essays in Political Economy*, ed. Susan Rose-Ackerman and Paul Lagunes (Northampton, Mass.: Edward Elgar, 2015), 71 – 91.
- ¹⁸ Marianne Bertrand, Matilde Bombardini, and Francesco Trebbi, “Is It Whom You Know or What You Know? An Empirical Assessment of the Lobbying Process,” *Quarterly Journal of Economics* 122 (4) (2014): 1639 – 1676.
- ¹⁹ Susan Rose-Ackerman, “Corruption and Conflicts of Interest,” in *Corruption and Conflicts of Interest: A Comparative Law Approach*, ed. Jean-Bernard Auby, Emmanuel Breen, and Thomas Perroud (Cheltenham, United Kingdom: Edward Elgar, 2014), 3 – 11.
- ²⁰ Rose-Ackerman and Palifka, *Corruption and Government*, 3 – 11.
- ²¹ *Ibid.*, 294 – 315, 446 – 519.

The Problem of Monopolies & Corporate Public Corruption

Zephyr Teachout

Abstract: Defining corruption as the exercise of public power for private, selfish ends, many theorists have argued that individuals can be corrupt even if their actions are legal. This essay explores the knotty question of when legal corporate action is corrupt. It argues that when corporations exercise public power, either through monopolistic control of a market or through campaign contributions and support of governmental actors, they are subject to the same responsibilities of anyone who exercises public power. Therefore, as a theoretical matter, we should call corporations corrupt when they exercise public power selfishly, in a way that puts their own interests over the public's interests. Because they make legal corporate corruption less likely, global anticorruption campaigns should therefore emphasize antimonopoly laws and campaign finance laws.

Should we call legal corporate political behavior corrupt? If so, when?

It is a tricky issue. Of course, in some cases, corporate actors engage in *illegal* bribes of public officials, and we can easily label this behavior corrupt.¹ But more frequently, corporate actors use sophisticated legal means to exercise power over public officials: by making campaign contributions, lobbying, exerting media influence, funding nonprofits, sponsoring think tanks, paying speaking fees, or even cornering the market on key goods and services, creating public dependencies on the corporation. These kinds of behaviors make up what Michael Johnston has termed “influence markets,” which he identifies as the primary mode of corruption in developed democracies.² These behaviors are also explored in depth in the works of sociologist Amitai Etzioni.³ All of these behaviors are not only legal in the United States, but are encouraged and taught as essential strategies in business schools. They also have the tendency to spread. Having built their power within

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the United States or similar legal systems, corporations then use legal tools to exert influence in other countries. Depending on which side of the law they stand on, corporate actors may push to legalize the most powerful of their mechanisms of control, criminalizing the tools used by weaker societal agents, or they may exercise their influence to decriminalize their behaviors in a new market. The question is, which of these behaviors should we call corrupt, and which are merely corrupting?

In 1820 America, it was not illegal for a corporation to give money to a member of Congress in explicit exchange for that congressperson's vote. In 2017 America, because of *Citizens United*, it is not illegal for a corporation to spend millions of dollars to punish a congressperson who voted against its interests. We can certainly agree that the former is corrupt; I think most would accept that the latter is also corrupt. But if legality is not the line between corrupt and noncorrupt corporate political behavior, what is?

I argue that we should use the same test for corporations as we do for public officials, condemning selfish behavior as corrupt when it accompanies the exercise of public power, regardless of whether that public power derives from formal office-holding. Elected officials who exercise public power in the service of private ends are corrupt irrespective of the legality of their behavior. By extension – with understanding that it is not easy to identify what constitutes “public power” or even “selfish behavior” – all selfish exercise of public power is corrupt. The key theoretical point is this: public power, not public office-holding, ought to be our marker for determining who may be guilty of public corruption. Corporate actors are corrupt when they exercise public power in a way that serves selfish ends at the expense of public ends, regardless of whether it is illegal, and regardless of whether they formally hold office.

The descriptive implications of this conclusion are substantial: it means that some of the great drivers of contemporary corruption around the world today are large multinational corporations engaging in legal behavior. The practical implications are also substantial, and flow from the improved description: our anticorruption strategies must include antimonopoly laws, not because antitrust violations are themselves corrupt or because mergers are themselves corrupt, but because corruption is more likely when economic power is centralized. Failure to name legal corporate behavior as public corruption in global anticorruption campaigns to date has led to a focus on passing criminal laws and transparency laws, instead of examining problems of market structure and monopolization with global and domestic impacts. As Lord Acton famously put it: “Power tends to corrupt.” Power is especially likely to corrupt when it is unconstrained by democratic accountability.

This kind of corporate and multinational corruption is a tragedy of design. It flows from our failure to protect markets from concentrated economic power. Corporate monopolies are a result of legal frameworks that enable excessive concentration of private power, limit the freedom to engage in moral action by officers and directors, and create overwhelming incentives to bend public power to selfish ends. Unlike small companies that have limited incentive or capacity to corrupt – because they do not exercise public power – multinational corporations, at a certain size and with enough power, are built to corrupt.

The critical strategic solution to this design flaw is to engage antimonopoly laws in anticorruption efforts. The antimonopoly approach is prophylactic instead of punitive; in this way it resembles elections, another prophylactic anticorruption tool. New antitrust enforcement should not seek to punish corrupt behavior, but to encour-

age structures of power that make corruption less likely. Open markets, free from dominant players, are not only important for a thriving economy and innovation, but for limiting corruption.

This essay proceeds in two sections. The first makes a theoretical argument and shows that a surprising formalism pervades many approaches to understanding public corruption. This formalism appears in two ways: First, discussion of public power often stops with a formal analysis of who holds a particular office, instead of who wields power over that office. Second, even those anticorruption analysts and activists who claim not to tie a definition of corruption to legality tend to use legality as an important marker in separating the corrupt from the noncorrupt. Building on these theoretical points, the second section highlights antimonopoly and campaign contribution laws as critical sets of tools for dealing with this crisis of corruption.

To be clear, I do not make accusations about corrupt behavior by particular modern corporate multinationals. An approach of identifying after-the-fact bad actors is always going to be a weak strategy. Instead, I lay out a theoretical framework for enabling accusations against modern corrupt corporations and a practical road map for deterring future corruption via structural changes.

Aristotle laid out six kinds of government: three ideal forms and three corrupt forms. The rule of one he described as either monarchy or tyranny; the rule of a few as either an aristocracy or an oligarchy; and the rule of the many as either a polity or mob rule. The fundamental difference between the good and corrupted government, according to Aristotle, was the psychological orientation of those who governed: corrupt governments were selfish; ideal governments sought the public good. Explaining the difference between a tyr-

anny and a monarchy, he wrote, “the tyrant looks to his own advantage, the king to that of his subjects.” A tyrant is a king who “pursues his own good”; an oligarchy is an aristocracy that pursues its own good; and mob rule is a publicly governed polity whose constituent parts each pursue their own selfish interests.⁴

This framework, which I have adopted, suggests there are two key features of corruption: the exercise of governing power and selfish intent. The implication of this framework is that private actors engage in public corruption when they wield governing power selfishly.

Within the anticorruption field, there are those who describe corruption in terms of the violation of formal roles and obligations, and those who see corruption in terms of the illegitimate pursuit of private interest at the expense of the public interest.⁵ The former ties itself in knots of positivism. As political scientist Richard Mulgan has recently argued:

By taking existing duties and rules as given, such definitions are too closely tied to a particular institutional context. They do not provide an external standard by which to assess whether the duties or rules themselves prohibit actions that should be regarded as corrupt.⁶

All parties appear to agree that public power is an important feature of public corruption, though this has been given short shrift in some of the literature.⁷ For instance, a recent article appearing in the *UCLA Law Review* observes that most definitions of corruption involve the abuse of public office for private gain. The article continues: “The term ‘public office’ is relatively clear. It includes, among others, those persons whom the electorate has entrusted with power to advance the public interest.”⁸ Accompanying this assertion is a link to a judicial decision about the scope of a bribery statute, making the easy error of conflating statutory law and definitions

of corruption in one area but not in another. If one does not confine oneself to statutes, it is not at all clear that office, instead of power, is the key question.⁹

For much of industrial history, private parties were viewed as corrupt when they exercised public power, regardless of whether they held office.¹⁰ In the 1874 case *Trist v. Child*, an old man hired a lobbyist to help collect a debt from Congress. After the lobbyist succeeded, the old man refused to pay him; in response, the lobbyist sued the man for money owed. The case came before the Supreme Court, which had to decide whether contracts to lobby were legitimate and enforceable in court. The Court concluded that they were not, writing that “If any of the great corporations of the country were to hire adventurers who make market of themselves in this way [for] the promotion of their private interests, the moral sense of every right-minded man would instinctively denounce the *employer and employed* as steeped in corruption.”¹¹ The Court’s language indicates that corporations could themselves be corrupt, not merely a means by which public entities are corrupted.

But over the last forty years of anticorruption efforts, many academics and journalists have treated private companies as corrupt only when engaged in what is sometimes called “private corruption”: namely, accepting internal bribes or kickbacks.¹² Much of the discussion about private entities – big multinational companies like Monsanto, Google, or Siemens – concerns whether we should recognize a category of private-to-private corruption.¹³ To address these concerns, some definitions of corruption focus on “entrusted power” instead of public power. Transparency International, for instance, defines corruption as “the abuse of entrusted power for private gain,” in order to include private-to-private relationships within the definition. But Transparency International does not have

a clear scope of what constitutes entrusted power for purposes of public corruption, nor does it examine whether multinational corporations can be seen as having “entrusted power” because of their enabling statutes. Alternatively, private companies are seen as corrupting when they induce behavior on the part of elected officials, or perhaps when they break existing anticorruption laws. They are not treated as corrupt for their use of legal mechanisms, even when that use is for self-serving ends.

Some modern definitions openly rely on public office, instead of public power, as a central feature of corruption. Political scientist Joseph Nye’s influential definition of corruption begins with a claim about the centrality of formal roles, arguing that corruption is either rule violation or “behavior which deviates from the *formal duties of a public role* because of private-regarding (personal, close family, private clique) pecuniary or state gains.”¹⁴ Several other scholars have placed public office at the center of the definition, but even those who do not privilege the phrase “public office” or “formal duties” often implicitly limit the accusation of public corruption to those with formal public power.¹⁵

How should we approach this question? It is perhaps easiest to divide the possible approaches into a formal approach and a functional approach. The formal approach limits the accusation of public corruption to those who hold an official position. The functional approach looks at whether public power is exercised, regardless of office-holding.

A formal approach leads to peculiar results. Imagine a rich business owner in a small town. He consciously chooses to use his wealth to elect a town council and mayor that will serve his interest and lower his taxes. He is shameless about his desires: he readily announces that he is only interested in himself, and will use whatever means he can to serve himself. A formal

approach would treat the business owner as not corrupt because he is not an elected official. It would not ask how he uses his wealth, whether in fact he has public power, or whether he is being selfish. Instead, it looks merely at his status: since he was neither appointed nor elected, it treats him as someone who might be involved in private corruption (accepting bribes in his business) or someone who might lead to the corruption of public officers, but not someone who might be corrupt in his own right.

On the other hand, a functional analysis would treat this business owner as engaged in public corruption because he is using public power, and using it to serve private ends without regard to the public good. That he may also be corrupting the local government is a secondary question. This business owner is not unlike Aristotle's king (or oligarch), who chooses to rule over others in a way that benefits himself. That he uses the mechanisms of democracy does not change the fundamental combination of his ruling others and his moral orientation.¹⁶

Another thought experiment in formalism also leads to the mangling of language. Imagine a king who has inherited absolute power over his country. He is selfish and cares only for his own interests, not the interests of the public. Because he is worried about revolt, he chooses to install an elected government, but creates laws allowing for only one party on the ballot, and establishes informal mechanisms that ensure that he is the only person who can select who runs for office. He then officially steps down from his position and abolishes the monarchy. But there is no doubt that he controls who gets "elected" and what decisions they make in office. A formal approach would say that only those elected officials can be guilty of public corruption. A functional approach would consider the actual power dynamics, not the form.

As these examples show, a functional analysis is the more natural approach: formalism seems to simplify the concept, but adds a requirement to public power of public office-holding that is hard to justify. Ruling is what creates moral obligations, regardless of how that rule is exercised. The strongest argument against the formal approach is that there is no a priori reason to limit the scope of public corruption to those holding elected, appointed, or inherited office. The selfish interests in a corrupt government *might* be the interests of the people holding formal power in the government, but – critically – they can also be the private interests of someone or something that exercises informal power over the official government from outside it.

The best defense of a formal approach is that it is more administrable and renders corruption easier to measure. But we should not confuse the administrability of criminal and civil laws with the correct definition of a nonlegal term like corruption, just as we should not refuse to call something corrupt because it is difficult to measure. The functional approach would be inappropriate for defining criminal laws of corruption; it would require a fact-finder to make determinations of influence and power in a political society, beyond a reasonable doubt.¹⁷ But we are not rewriting legal definitions, and inadequacy in criminal law does not make the functional approach inadequate in our efforts to locate corruption.

Another possible objection to the functional approach might be that it seems harsh: it subjects private actors who have never run for public office or sought to be appointed to public office to accusations of public corruption and obligations to the public good that they never wanted. But on the individual level, this problem does not exist. Individuals are not required to exercise public power, even when they have the capacity to do so. And most CEOs of most companies, like individuals, simply

have no capacity to exercise public power. They are free to suggest ideas, set up meetings, and occasionally lobby officials, but no one would argue that in so doing they are exercising public power. Success in private business creates no obligation to engage in the public sphere in a selfish way. Moreover, inasmuch as those with inherited public power never chose their position, we do not soften the blow of corruption accusations by arguing that kings cannot be guilty of misusing powers they did not seek. They may always abdicate. However, for corporate officers and directors of enormous companies that can exercise governing power, this harshness *does* expose a fundamental problem with our current antimonopoly laws by creating two obligations that conflict with each other.

Using the functionalist approach, we should shift from an analysis of office-holding to an analysis of who holds “governing power.” Governing power exists when a company, person, or institution has the capacity to make choices that govern the lives of others. A juror has governing power over the defendant. A magnate has governing power over his town when he uses his ability to elect or defeat candidates who then exercise formal power. Governance is often defined by reference to a combination of decision-making and the implementation of those decisions. Political scientist Stephen Bell’s popular definition of governance argues that it is “the use of institutions, structures of authority and even collaboration to allocate resources and coordinate or control activity in society or the economy.”¹⁸ The lines are by no means clear; and there is not space here to explore in full the difficult questions of what is and is not governing power.

More important, the job of anticorruption activists is largely not to identify instances of normative failure, but to identify the syndrome, and then push for the rules that make the syndrome less likely.

We need not spend much time debating the particulars of who or what company is corrupt, so long as we agree that there is a broad set of powerful companies that pursue selfish interests while exercising public power.

By way of analogy, consider a national campaign against alcoholism. One way to deal with alcoholism is to try to identify everyone who is alcoholic – engaging in extensive studies to determine who might be dependent on alcohol and who is merely drinking a lot – in order to provide individualized resources to those who need them. In that approach, the question of who makes the judgment about particular individuals, and by what criteria they are judged, is critical. But another approach might be to use countrywide surveys to identify that there is problem of alcoholism, and then suggest countrywide solutions that would reduce the levels of addiction overall and the likelihood of future addiction. In the second approach, we spend little energy parsing the alcoholic from the nonalcoholic, and most of our energy is focused on prophylactic rules.¹⁹

Using this syndrome approach, undoubtedly there are several big multinationals engaged in public corruption. We need not have a consensus around individual actors’ corruption in order to agree that there is endemic corruption. Two analysts might disagree over whether Siemens or Amazon has more governing power, but they can certainly agree that some large multinational corporations engage in the selfish use of public power, and would likely include both Amazon and Siemens in that category.

For instance, I can argue that Google’s exercise of public power is corrupt because it does so in pursuit of its own selfish ends, regardless of the impact on the public good. As evidence to support my argument, I could point out that, as of 2017, Google is the largest lobbyist in the Unit-

ed States. Google has been implementing a successful political strategy to embed its software in public schools (both in order to get its tools adopted and in order to collect data).²⁰ Google is a major funder of think tanks and has exercised its funding power to shape policy, supporting scholars who support its own political ends. In short, an essential, nonaccidental part of Google's business strategy is to shape public policy in a way that serves its own narrow interests. As with the rich businessman controlling the small town described above, I argue that a functional analysis would treat Google as corrupt. However, one need not agree with my particular argument about Google in order to agree that the structure of power in our society makes it likely that powerful companies like Google – if not Google itself – will use public power for private ends.

The legality of the behavior is not decisive in determining either whether there is governing power or whether it is selfish. Google's practices as described here are entirely legal under U.S. law. Lobbying is legal, funding think tanks is legal, building a political strategy to shape public education is legal, and supporting academics is legal. Moreover, these behaviors *should* be legal. However, the legality or illegality of a behavior is not a particularly useful distinction in determining whether something is corrupt. As political scientist Dennis Thompson has argued, "Connections that are proximate and explicit, elements required to show bribery, are not necessarily any more corrupt than connections that are indirect and implicit. The former may be more detectable, but are not necessarily the more deliberate or damaging form of corruption."²¹

Instead, there are many possible relationships between the legality of a behavior and its corruptness. First, it is possible that there is no relationship between illegality and

corruption. The second possibility is that illegality separates corrupt from noncorrupt behavior. The third possibility is that illegal activity defines the heart of corruption, that which is easiest to define and which we should most readily condemn, but some legal activity is also corrupt, if less intensely so. The fourth possibility is that there is often a relationship between illegality and corruption, but that such correlation does not help us decide in any particular instance whether an action is corrupt or not. Corruption encompasses a great deal of legal behavior; only a small subset of corrupt behavior has been criminalized. Moreover, noncorrupt behavior can be criminalized and called "corrupt" by the state.

The final option – a correlative relationship but not sufficiently strong to make presumptions – is the best way to understand the connection between corruption and legality. While the overlap between illegality and corruption exists, and may not be wholly arbitrary, it approaches arbitrariness because the reasons for not criminalizing behavior are so varied and historically and culturally dependent. Unless one is a positivist (believing law defines morality), there is no a priori reason to assume a strong relationship between that which has been criminalized and that which is corrupt. In fact, given that power tends to protect itself, in most polities we should often start with the assumption that the most corrupt acts are shielded from criminal liability by those in power. Those in power, be they judges or lawmakers, may have selfish reasons to protect corrupt behavior and criminalize noncorrupt behavior. World history is littered with regimes that do not criminalize corrupt behavior because those in power are engaged in it. But even in a perfectly functioning democracy, where an engaged public would have criminalized corrupt behavior, there are many reasons for using other tools than criminal law to deter corruption.

The reasons for criminalizing some behavior and not others is often unrelated to the morality of the action or the degree of public condemnation. A democratic society could decide that criminal law is not a particularly effective mechanism for deterring corruption. In the United States, bribery of members of Congress was not illegal at the federal level until 1853. Before then, everyone thought that paying a congressperson in exchange for changing a vote was corrupt; they simply did not use criminal law as the tool for deterring such corruption. Other considerations, like the desire to protect certain forms of expression, could lead to the legalization of corrupt behavior. For instance, under existing U.S. law, a senator who accepts a personal gift of \$15 with the understanding that it will influence his or her vote is committing federal bribery. No explicit exchange is needed. However, if the same senator accepts a campaign contribution of \$5,000, knowing it represents the purchase of the exercise of one hundred votes, that does not violate federal bribery law in the absence of an explicit contract or agreement indicating the senator's intent.²² There are reasons, both historical and protective of political expression, that make the former a crime and the latter not. But those reasons tell us nothing about the corruptness of the action. The fact that the latter is not a crime is not evidence that it is not corrupt, or that it is somehow less corrupt.

As of 2016, it is legal under federal law in the United States for someone to pay tens of thousands of dollars to a state governor in exchange for the governor, using the official title of the office, setting up meetings and making introductions to other officials and business executives. The Supreme Court struck down a law criminalizing this behavior because of free speech and due process concerns. Nothing in the decision suggested that the Court thought that the behavior was not corrupt.²³ In the same vein, lobbying, which was criminal

behavior for one-third of American history, has achieved protected legal status because laws against lobbying were struck down as violative of the First Amendment.²⁴ This is undoubtedly a good thing. But the fact that criminalizing a behavior would threaten free speech is hardly sufficient to mean that no instances of that behavior are exhibitions of corruption.

In sum, criminality and corruption may have a substantial overlap in certain developed democracies, but that overlap does not tell us much about the corruptness of any particular act, or whether most corrupt acts are crimes.

You might argue that I have created a straw man. It is the rare definition of corruption that openly relies on criminal law as a starting point for determining whether corruption exists. Definitions are far more likely to refer to "abuse of public power for private ends," or "norm violation in a self-serving way by those in public power." Even Joseph Nye, whose definition is often characterized as requiring illegality, recognizes norm violation, apart from illegality, within the category of corruption. However, among the scholars and commentators who *theoretically* acknowledge that much corrupt behavior is legal, many still exhibit an assumption that legality is a good marker of corruption. Empirical studies and economic models of corruption often start with criminality.²⁵ Transparency International starts with the assumption that most corruption is illegal.²⁶ Many comparative studies rely on criminality directly or indirectly.

For instance, in Susan Rose-Ackerman's landmark book *Corruption and Government: Causes, Consequences, and Reform*, she acknowledges that legal corruption is important, but states that because her work is comparative, she will only look at those instances in which laws were broken.²⁷ She further argues that it "may be rhetorically valuable" to call legal behavior corruption,

but that it does not “further the analytical” or “policy exercise of understanding the landscape and proposing reforms.”²⁸ This seems to get the analytical and policy project upside down: it privileges those with the power to make the law with the power to define corruption.²⁹ Rose-Ackerman’s recent work has been more likely to recognize legal behavior as a significant problem, but I use this example because it is typical of the simultaneous acceptance and rejection of legal corruption.³⁰

Once the anticorruption community accepts that neither office-holding nor legality is a definitive marker of the existence of public corruption, it becomes free to explore corruption as it actually exists in modern society.

In the last thirty years, the entire machinery of modern multinational corporations has developed, through law and culture, to embrace the pursuit of public power as an essential business function. The deep design of a large multinational corporation is to build power to gain control over local governments and international regimes in which it operates so that it can advance policies that create value for the corporation.³¹ Large multinational corporations routinely exercise public power, and do so guided by private interests above public ones. The intent/orientation of large corporations is easier to divine than the intent of most individuals or organizations. When there is a conflict between public and private interests, the enabling statutes of a corporation require an orientation toward a limited set of stakeholders.

One might point out that corporate entities need not seek short-term profits. As the U.S. Supreme Court recently reaffirmed: “Modern corporate law does not require for-profit corporations to pursue profit at the expense of everything else, and many do not.”³² The myth that corporations are required to maximize share-

holder value is just that: a myth, and one that is largely pushed by activist hedge fund managers seeking to pressure corporations to produce short-term profits.³³

However, corporations are not free to pursue the public good when doing so conflicts with the long-term sustainability of the corporation. Under state law, directors and officers of a corporation have a duty of care and of loyalty to the corporation. That duty does not flow merely to shareholders, but to all the stakeholders in a corporation. At a basic, ethical level, these laws create an obligation to maximize value – arguably long-term, sustainable value – for the corporation. It is rare that a lawsuit succeeds on the grounds that directors and officers violated these obligations, but that does not mean that the obligation does not exist. Instead, the laws, designed to ensure that directors and officers do not treat the corporation as their own vehicle, also ensure that the public good cannot justify decisions that directly hurt stakeholders.

In many instances, corporate stakeholder ends will either support the public interest or at least be consistent with the public interest. In these instances, there is no corruption problem. Under other circumstances, a CEO may have some discretion due to conflicting visions of long-term sustainability: this discretionary space is where corporate social responsibility (CSR; a form of corporate self-regulation) is likely to be most powerful. In the overwhelming majority of other instances, the corporation will not exercise public power. In these cases also, there is no corruption problem. For the millions of small or medium-sized corporations, their private obligations will not conflict with public obligations, because such corporations simply do not have the power to shape public policy on taxes, trade, antimonopoly, or contracting: they will face no moral dilemma. The local pizza shop has no raft of lobbyists, and if the owner makes a political donation, it will be \$30 or \$300, not

a \$300,000 independent expenditure. The vast majority of companies never engage a lobbying firm, let alone build all the tentacles of public-policy-bending machinery. Some company owners may be wonderful and deeply invested in their community, others greedy and self-centered, but as a structural matter, these companies do not pose a public corruption threat.

However, for large corporations that invest heavily in politics, there will be frequent episodes in which the obligations to long-term profitability and to the public interest directly conflict. Four of the most common conflicts involve tax laws, trade laws, antimonopoly laws, and contracts with the government. Big corporations will almost always have an interest in lowering their tax burden, improving their position in global trade, decreasing antimonopoly enforcement, and increasing opportunities to win government contracts. Occasionally these interests will align with those of the public, but frequently they will not. It is indefensible – to all the stakeholders in the corporation – not to be engaged in politics and not to build public power that can be used to benefit the corporation in terms of taxes, trade, antimonopoly, and government contracts. A CEO of Apple that did not have a public relations firm would be fired by its board of directors.

Imagine a CEO of a modern multinational corporation with \$100 million to invest. She can choose to invest the money in decreasing the cost of producing the product, or she can invest the money in changing the laws to decrease the corporate tax rate. The first involves changing the production line, switching some materials, and a slight product innovation; the second involves a combination of campaign contributions, direct lobbying, media strategy, and coauthored white papers. Most estimates suggest the first strategy provides a 5 percent return on investment, while the second strategy provides a 50 percent return on investment.

The first strategy does not hurt the public at large; the second strategy decreases essential tax revenue for schools. The first strategy involves no corruption. The second strategy is corrupt. We would expect the CEO to engage in the second strategy. The selfish exercise of public power – public corruption – is an essential part of the job.

How can we change that behavior? How can we fight the threat of rampant legal public corruption by large multinationals? Some analysts, like Ben Heinemann Jr., argue that the discretion afforded directors and officers is far greater than that which they exercise, and that corporate leaders can, consistent with law and culture, pursue the public good. Heinemann's efforts are important, but cannot address the problem posed by a corporation like Apple that wants to reduce its tax burden through lobbying and campaign contributions. Some might argue for a fundamental overhaul in corporate law, explicitly requiring officers and directors to serve the public good. And the rise of new corporations operating with clear public obligations might create positive impacts at the margins, but the side effects of fundamentally restructuring the corporate form would be far from benign. Moreover, this argument is antidemocratic, and essentially an argument for aristocratic/oligarchic rule: it accepts that multinationals play a governing role, and merely requests that they do so with a public orientation.

Instead, our anticorruption efforts should focus on the precise point at which public corruption comes into play: when corporations come to exercise public power. Corporate public corruption is most likely when the industry itself is very large and heavily concentrated; when there are cross-industry interests in bending public power; or when a single corporation has become essential to a polity, or "too big to fail."

In other words, we should focus public policy on the problem of corporations ex-

exercising public power – which only happens at a certain scale and degree of power – and not the problems of corporations being selfish: let them be selfish, but do not let them govern.

In the United States, there is a long tradition of resisting the corrupting tendencies of concentrated power through antimonopoly laws. These laws – at the center of which is the Sherman Antitrust Act of 1890 – were not designed to punish corrupt behavior, but to make corruption less likely. They were designed to prevent corporate directors and officers from facing the point at which their public and corporate obligations clashed. They were designed to ensure that private parties did not gain unaccountable public power. As Justice William O. Douglas explained in his dissent in the 1948 Supreme Court case *U.S. v. Columbia Steel Co.*, the traditional philosophy of American antitrust law is that

all power tends to develop into a government in itself. Power that controls the economy . . . should be scattered into many hands so that the fortunes of the people will not be dependent on the whim or caprice, the political prejudices, the emotional stability of a few self-appointed men.

Drawing on that tradition, we should embrace antimonopoly law as an essential tool for fighting local and global corruption.

The first target might be highly concentrated industries. Profits are higher in concentrated industries, creating more cash flow for investment in politics. (It is no accident that pharmaceuticals, an industry that explicitly relies on monopolies, has among the highest profits and the greatest political investments.) Moreover, it is simpler and cheaper to organize a group consensus when the potential members are few. Fewer actors can more easily make joint strategic decisions about what to demand from government and create a shared, consistent message when lobbying and in meet-

ings. With fewer actors, the costs of identifying shared needs, of coordinating timing, and of identifying and punishing free-riders are all reduced. In monopolistic or oligopolistic industries, it is easier to share fixed costs, like writing legislation, identifying targeted politicians, and producing effective messaging. The concentrated industry therefore can more economically lobby for shared goals, including decreasing taxes for the industry, increasing subsidies for the industry, decreasing regulations, and creating public insurance for the industry. An essential part of our anticorruption strategy, then, must be decreasing concentration. That means looking at industries that are dominated by few firms, such as online advertising or online retail.

Anticorruption reformers should also focus on corporations that have grown so large that they represent a significant fraction of the economy. When the size of a corporation relative to the GDP is significant – like 2 percent of GDP – democratic choices become constrained by the self-interest of the individual corporation. Even in the absence of resources devoted to purchasing political influence, the company with a large relative size will have public power. Its sheer size makes it incumbent upon legislators to design laws that will at minimum ensure the stability of the company. If Lockheed goes under and lays off all of its employees, that has an impact on the entire economy. Even without lobbying, therefore, Lockheed can make demands of government based on the threat of its own failure. Companies that are large relative to the size of a country's GDP can control politics by threatening to collapse or leave if their demands are not met.

In concrete terms, global anticorruption should support free and open markets, with decentralized economic actors. We should support antitrust efforts that put barriers in the way of companies' monopolistic behavior, such as the European

Union's efforts against Google; support antitrust regimes that lead to breaking up heavily concentrated industries and stopping mergers; and support campaign finance regimes that make corporate influence on elections more difficult. The goal is to encourage an approach toward power that recalls Justice Louis Brandeis: concentrated private power is corrupt and corrupts, and therefore should not be allowed.

The most useful antimonopoly, anticorruption strategies will differ in particular contexts; but as the exercise of power by multinationals continues to grow, there are a handful of urgent approaches:

- Applying neutrality principles to platforms like Google and Facebook, and not allowing vertical integration: search services and advertising must be broken up. Amazon and Apple must be limited in their ability to discriminate in price or search, and to use pay-to-play models in their search. The massive public power and control wielded by these platforms depend on their ability to leverage their power in one area to make profits in another. This approach includes condemning countries that refuse to limit platform dominance and power.
- Supporting legal regimes that separate distribution from content in cable and wireless companies, requiring the breakup of Comcast, for instance. Condemning countries that refuse to separate the two.
- Urging countries to break up big banks, both in terms of size and function.
- Supporting the breakup of the monopolies of companies like Monsanto, allowing for competition from farmers; opposing the Monsanto-Bayer merger; supporting countries that ban the ownership of seeds and chemicals.
- Encouraging global trade agreements to disfavor monopolistic practices.
- Condemning countries that allow corporate spending in elections.

None of these principles is simple to implement. There will necessarily be a high degree of over- and under-inclusiveness in any rule. There is no magic number representing company size within a country, or across countries, and no magic structural relationship that will avoid these harms. This, of course, is true for most laws: even for something seemingly more straightforward like traffic law, there is no magic number at which the speed limit best accommodates the principle of reducing unnecessary deaths. But when it comes to governance and rules of governance, there is always special difficulty in defining the rules of the game, because the rules of engagement create the outcome, including the outcome of what the rules of engagement should be. However, the difficulty in designing rules should not be a deterrence to trying. The underlying argument here is similar to that of the mid-twentieth-century Chicago school of economics. Our visions of human nature differ: I believe people are complicated and can be public-orientated, that we are not solely or even primarily *homo economicus*. And we use different language. But these economists from Chicago saw the threat of corruption of large corporations wielding public power. They were worried about a future of "rent-seeking," as they called it, shifting public policy as a strategy for increasing profits. In "The Theory of Economic Regulation," George Stigler famously wrote that "regulation is acquired by the industry and is designed and operated primarily for its benefit."³⁴

Stigler, Gary Becker, Richard Posner, and others argued that the size of government should shrink to prevent corruption, because a smaller government with weaker central governing powers would create less incentive for private actors to seek public power. They argued that rent-seeking would be more likely in highly regulated industries because the existence of regu-

lation and differentiation is what inspired corporate political involvement.

However, they did not push for an aggressive antimonopoly strategy. Instead, they pushed to dismantle antimonopoly laws. Why? They made two basic theoretical mistakes in their description of politics. First, they imagined a limited set of policies that might affect a company and, second, they presumed an upper limit of the value that companies could extract from governments. Judge Posner argued that once a company becomes a monopolist, it has “less incentive to expend resources on obtaining the aid of government in fending off competitors” than one in a highly competitive industry.³⁵ Posner imagines that the would-be monopolist faces a single rent (monopoly) that, once secured, sates his interest, and operates as a ceiling of all possible rents. This is clearly false: experience shows that big companies, having invested in securing a foothold in power, will have already paid much of the fixed cost of building the machinery to exercise public power, and will be more imaginative (and efficient) in using it to secure more benefits of different kinds. This logical flaw also shows up in the work of Gary Becker. In his classic 1983 paper modeling rent-seeking, Becker describes an upper limit on what a company will seek from the government: “The total amount raised from taxes, including hidden taxes like inflation, equals the total amount available for subsidies, including hidden subsidies like restrictions on entry into an industry.”³⁶ However, the creative rent-seeker, like the entrepreneur in any area, will not look at present flows to determine potential flows, but will look at possible flows given political limitations. There is no theoretical constraint on the potential size of the subsidy. The potential value of the subsidy is not defined by existing taxes. More taxes can be levied: the existing population of the country does not define it, because levies (direct and indirect)

can be brought to bear on other countries’ populations. As a theoretical matter, then, the upper limit of a subsidy from a government is the maximum revenue the government can generate through its power. (As a practical matter, the probabilities approach zero as the subsidy approaches the maximum revenue.) This is not a small point. There are plenty of real-world examples in which companies exercise public power to secure benefits despite the absence of existing revenue. The bailout of the financial institutions is one example; the insurance mandate sought by insurance companies is another. And at a smaller scale, laws that require schools to teach technology classes are, from the perspectives of certain technology companies, rent-seeking laws: they are not grounded in existing revenue but rely on school boards to create it. Deficit spending is not limited by current tax revenues. And one can seek rents through the manipulation of monetary policy in a way that is not limited by existing revenues. In other words, the total potential benefits are bounded by the total potential (not actual) governmental revenue, including debts. The fixed upper limit model was essential to the argument that that concentration in industries posed no corruption threat.

Anticorruption crusaders have for decades asked companies to join them in fighting corruption on a global level. Some of these efforts have doubtlessly produced public good. However, corporate social responsibility is bound to be insufficient to address the threat of corruption that flows from those companies themselves. Even the most aggressive corporate social responsibility standards do not exhort companies unilaterally to become less politically powerful. Even if they did, it is unlikely that such an exhortation would work: it is hard to imagine Microsoft choosing not to merge with LinkedIn because of internal CSR policies.

Corporate public corruption flows from a tragic tension: between directors' or officers' obligation to the corporation's health, and their ability to increase profitability by increasing corporate power. There is ample evidence that massive corporations, even those perceived as leaders in CSR, invest heavily in public relations to reduce their tax burden. They do not bribe, but they extract wealth from the public through tax cuts; on a net level, they add more corruption than they reduce.

One approach locates the institutional flaw in corporate law and corporate obligations, arguing that officers and directors should be ethically free to pursue the public good even when it directly conflicts with corporate goals. In the Aristotelian framework, one might call this the aristocratic approach: the goal is to free corporate CEOs to be aristocrats instead of oligarchs. While I laud these efforts, I am troubled by the vision they present: unaccountable corporate

actors independently choosing that which is best for the country, and quite possibly the world. Moreover, systems of aristocracy are notoriously weak, and tend toward corruption themselves. Freedom plus exhortation does not always mean virtue. The occasional multinational will resist the temptation to reduce its own taxes or deregulate its industry, but that is hardly a prospect to rely on. As Madison famously wrote in *Federalist Paper* No. 51: "If angels were to govern men, neither external nor internal controls on government would be necessary."

The problem is not with the existence of the corporation, or with corporate law. More free and open markets would lead to less corruption. The problem is with concentrated power: a handful of actors who are *sui generis*; so large and powerful they can bend public power. The modern anti-corruption movement chooses not to address these large actors, using formalism or legalism as an excuse, at all of our peril.

ENDNOTES

- ¹ As when Siemens spent millions of dollars paying executives to win contracts at a state-owned utility in Israel. "Siemens to Pay to Settle Bribery Case," Reuters, May 26, 2016, <http://www.reuters.com/article/israel-siemens/siemens-to-pay-israel-43-mln-to-settle-bribery-case-israel-idUSL5N17Z2N6>.
- ² For example, see Michael Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy* (Cambridge: Cambridge University Press, 2005), 60–88.
- ³ For example, see Amitai Etzioni, *Capital Corruption: The New Attack on American Democracy* (New Brunswick, N.J.: Transaction Books, 1988).
- ⁴ Aristotle *Nicomachean Ethics* 8.1.
- ⁵ For some discussion of the debate, see Michael Johnston, "Public Officials, Private Interests, and Sustainable Democracy: When Politics and Corruption Meet," in *Corruption and the Global Economy*, ed. K. A. Elliot (Washington, D.C.: Institute for International Economics, 1997), 61–82; Dennis F. Thompson, *Ethics in Congress: From Individual to Institutional Corruption* (Washington, D.C.: Brookings Institution Press, 1995), 7 [corruption ordinarily involves the "improper use of public office for private purposes"]; Michael Johnston, "The Political Consequences of Corruption: A Reassessment," *Comparative Politics* 18 (4) (1986): 459, 460 [corruption is "the abuse of public roles and resources for private benefit"]; and Joseph J. Senturia, "Corruption, Political," in *Encyclopaedia of the Social Sciences*, ed. Erwin R. A. Seligman and Alvin Johnson (New York: Macmillan, 1931), 448 [defining corruption as "the misuse of public power for one's own personal profit"]. For an argument that morality is essential to understanding corruption, see Laura S. Underkuffler, *Captured by Evil: The Idea of Corruption in Law* (New Haven, Conn.: Yale University Press, 2013).

- ⁶ Richard Mulgan, “Aristotle on Legality and Corruption,” in *Corruption: Expanding the Focus*, ed. Manuhua Barcham, Barry Hindess, and Peter Larmour (Canberra, Australia: ANU Press, 2012), 26.
- ⁷ The idea that private actors might be part of a corrupt system has received attention. Michael Johnston, for instance, has argued that in societies with close ties between political elites and companies, the lines between public and private are blurred, which implicates corruption because corruption depends upon the idea of clearer lines between the spheres. I see this essay as supporting Johnston’s arguments about influence markets and elite cartels.
- ⁸ Sung Hui Kim, “Insider Trading as Private Corruption,” *UCLA Law Review* 61 (2014): 928 – 952.
- ⁹ To be clear, the problem of private actors corrupting public actors via legal means is central to much of the literature, but I make a slightly different point.
- ¹⁰ See, for example, Melvin Urofsky’s description of Louis Brandeis’s battle with Boston Elevated. Melvin I. Urofsky, *Louis D. Brandeis: A Life* (New York: Schocken, 2012), 135 – 139.
- ¹¹ *Trist v. Child*, 88 U.S. 21 Wall. 441 441 (1874). Emphasis added.
- ¹² Much of the discussion about private entities – including big multinational companies like Monsanto, Google, or Siemens – concerns whether they are engaged in what is sometimes called private corruption, and whether we should even recognize the category of private corruption. For instance, on a smaller scale, if a bank manager accepts a personal payment from a customer in exchange for giving that customer special banking treatment, is that corruption? This essay does not address that question, but rather argues that there are many situations in which private actors do exercise governing power, and should be recognized for such. There is also a split between analysts who believe that there is a separate category of private-to-private corruption, and those who believe there is not. For purposes of this essay, I do not engage that argument: I am not addressing those situations in which Siemens might accept bribes from Bayer, but rather when Bayer uses its power to influence the German government.
- ¹³ For a recent volley in this debate, see Kim, “Insider Trading as Private Corruption.”
- ¹⁴ Joseph Nye, “Corruption and Political Development: A Cost-Benefit Analysis,” *The American Political Science Review* 61 (2) (1967): 417.
- ¹⁵ Arnold Heidenheimer and Michael Johnston argue that corruption has been defined in three ways: “public office centered,” “market centered,” and “public interest centered.” See Arnold J. Heidenheimer and Michael Johnston, eds., *Political Corruption: Concepts and Contexts* (Abingdon, United Kingdom: Routledge, 2000), 3 – 6. A closer examination, however, shows that the market-centered approach also depends upon formal office office-holding, since it describes corruption as those instances in which entities seek rents from “the bureaucracy” or public officials. For a discussion of the market-centered definitions of Jacob van Klaveren and Nathaniel Leff, see *ibid.*, 8. Moreover, some of the public interest-centered definitions also employ public office office-holding and formal roles. For instance, Carl Friedrich attaches corruption to power-holders tasked with certain duties. Friedrich argues corruption exists when a “powerholder” “is by monetary or other rewards not legally provided for, induced to take actions which favour whoever provides the rewards and thereby does damage to the public and its interests.” Carl J. Friedrich, “Political Pathology,” *The Political Quarterly* 37 (1) (1966): 70, 74. For a more general discussion of these different approaches, see Heidenheimer and Johnston, eds., *Political Corruption: Concepts and Contexts*, 6.
- ¹⁶ The functional approach could consider this business owner not corrupt if he were using his wealth to shape public power to pursue public ends, even if we disagreed with those ends.
- ¹⁷ The United States’ federal criminal law of bribery has, in some very limited circumstances, taken a functionalist approach to determining who is a “public official.” In *Dixson vs. United States* (1984), an administrator at a private nonprofit corporation, administering federal grants, took money from a contractor in exchange for steering federal funds the contractor’s way. The administrator argued that he should not be convicted under federal bribery law because he was not a public official. The Supreme Court rejected that argument, and instead used something like a functional analysis, suggesting that someone is a public official depending on a fact-specific

analysis of the degree to which he exercised public power. However, *Dixson* involved statutory interpretation, not interpretation of public terms of approbation, and the statute at issue defined a public official as one “acting for or on behalf of the United States.” *Dixson v. United States*, 465 U.S. 482 (1984).

- ¹⁸ Stephen Bell, *Economic Governance and Institutional Dynamics* (Oxford: Oxford University Press, 2002).
- ¹⁹ The approach that would make the least sense is one that identifies alcoholism by looking at who is breaking laws related to alcohol, using formal means to determine a very difficult and perhaps impossible diagnostic question.
- ²⁰ Natasha Singer, “How Google Took Over the Classroom,” *The New York Times*, May 17, 2017, <https://www.nytimes.com/2017/05/13/technology/google-education-chromebooks-schools.html?mcubz=0>.
- ²¹ See Dennis F. Thompson, “Two Concepts of Corruption: Making Campaigns Safe for Democracy,” *George Washington Law Review* 73 (5–6) (2005): 1046.
- ²² *McCormick v. United States*, 500 U.S. 257 (1991). I have oversimplified a complicated area in my description above, but the basic point remains: the requirements for one are different than for the other.
- ²³ *McDonnell v. United States*, 579 U.S. ____ (2016).
- ²⁴ Zephyr Teachout, “The Forgotten Law of Lobbying,” *Election Law Journal* 13 (1) (2014): 4.
- ²⁵ For example, see Timothy Besley and John McLaren, “Taxes and Bribery: The Role of Wage Incentives,” *The Economic Journal* 103 (416) (1993): 119.
- ²⁶ See, for example, the Transparency International website: “Corruption generally comprises illegal activities, which are deliberately hidden and only come to light through scandals, investigations or prosecutions.” Transparency International, “Corruption Perceptions Index 2014: In Detail,” https://www.transparency.org/cpi2014/in_detail#myAnchor1.
- ²⁷ See Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge: Cambridge University Press, 1999).
- ²⁸ *Ibid.*, 343.
- ²⁹ It is a variation of the Hobbesian idea that the sovereign controls law and therefore meaning: “The judgement of what is reasonable, and what is to be abolished, belongeth to him that maketh the law, which is the sovereign assembly or monarch.”
- ³⁰ See, for instance, Susan Rose-Ackerman, “International Actors and the Promises and Pitfalls of Anti-Corruption Reform,” *University of Pennsylvania Journal of International Law* 34 (3) (2013): 484. Rose-Ackerman writes, “Although outright corruption in the form of bribes and kickbacks will remain a problem facing all polities for the foreseeable future, those interested in promoting economic growth, poverty alleviation, governance reform, and market efficiency also need to consider how the legal exercise of financial power undermines these values.”
- ³¹ They also have a separate, personal desire to use public power for private ends, since corporate pay is regularly tied to shareholder value; this creates separate issues that I do not address here, but note: it creates conditions of excessive temptation, more than most people can bear.
- ³² *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ____ (2014).
- ³³ For example, see Lynn Stout, “Corporations Don’t Have to Maximize Profits,” *The New York Times*, April 15, 2015.
- ³⁴ George Stigler, “The Theory of Economic Regulation,” *The Bell Journal of Economics and Management Science* 2 (1) (1971): 3.
- ³⁵ Richard Posner, *Antitrust Law*, 2nd ed. (Chicago: The University of Chicago Press, 2001), 23.
- ³⁶ Gary S. Becker, “A Theory of Competition Among Pressure Groups for Political Influence,” *The Quarterly Journal of Economics* 98 (3) (1983): 372.

Corruption & Illicit Trade

Louise I. Shelley

Abstract: Illicit trade in diverse commodities – including drugs, people, natural resources, and counterfeit goods – is a significant component of the global economy. And illicit trade could not be possible without both high- and low-level forms of corruption. Transnational corruption has facilitated the global growth of illicit trade, undermining governance, the economy, health, social order, and sustainability in all regions of the world. This essay explores the convergences of corruption, illicit trade markets, and the legitimate economy, and identifies strategies for combatting them.

Corruption is a key facilitator of illicit trade. Because of corruption – both low- and high-level corruption¹ – protected timber can be logged and traded; humans, drugs, and arms can be smuggled; and illicit goods can be transported across borders without payment of duty. When perpetrators are caught, the payment of bribes can ensure their release or minimize their sentences. This impunity contributes to the growth of illegal activity.

Illicit trade facilitated by corruption is always disturbing; together, these markets produce a more serious composite effect. The corruption associated with illicit trade drives many of the most destabilizing phenomena in the world: the perpetuation of deadly conflicts, the proliferation of the arms and weapons trade, and the propagation of environmental degradation. In the developing world, where corruption is more pervasive and states are weaker, illicit trade is like “termites at work.”² But corruption also contributes to the growth of illicit trade in the developed world by stimulating demand for illicit goods and enriching “legitimate” corporations. And as the trade of goods moves into virtual/online marketplaces, corruption follows into cyberspace.

Global illicit trade both undermines the state and creates enormous resources for nonstate actors. As

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the illicit economy grows, there are fewer opportunities for a viable licit and inclusive economy. Illicit trade, when executed by transnational criminals who no longer need the state and/or terrorists who seek to destroy the state, provides a powerful force for the destruction of the existing order.

This essay examines how corruption has helped illicit trade expand in both the real and the virtual worlds, making the products and services of the illicit economy more widely available. Addressing this corruption linked to illegal global markets must be a much higher priority for both developing and developed states: to ensure that future generations have the natural, human, and economic resources needed to sustain themselves, and that states have the capacity to provide services for their citizens. To do so requires a multifaceted strategy that addresses the corruption of nonstate actors, officials, and corporations.

Researchers of illicit trade have for nearly two decades relied on a shared definition of their subject: “a cross-border commercial activity for the provision of goods and services that violates the laws of the exporting and/or importing country.”³ But this definition is inadequate; not all illicit trade crosses borders. For instance, the United Nations Protocol addressing the contemporary trade in human beings states that individuals need not cross borders to be victims of trafficking. On closer inspection, this dry and restrictive definition does not capture a phenomenon that has such expansive and profound effects across the planet.

In response, the Organisation for Economic Co-operation and Development (OECD) in 2016 provided a more ample definition: “Illicit trade involves goods and services that are deemed illegal as they threaten communities and society as a whole. Illicit trade has a negative impact on economic stability, social welfare, public health, public safety and our environment.”⁴

Within this very broad framework are diverse categories of trade in goods and services, often facilitated by corruption. One analytical model identifies four primary submarkets of illicit trade.⁵ The first market includes “prohibited goods and services,” including narcotics, and human and arms trafficking. Prohibited since 2003 through the United Nations Convention on Transnational Organized Crime, there is a strong consensus on the criminal nature of these areas of illicit trade.⁶ And because they are reliant on organized crime for their survival, corruption is closely associated with these forms of illicit trade.

The second market includes the “irregular sale of regulated commodities, such as antiquities, or fauna and flora, goods that infringe upon intellectual property rights, and goods that do not conform to applicable local standards.”⁷ Growing scientific evidence and concerns over the survival of cultural heritage and of the planet’s diverse species has led to the regulation of trade of these commodities under the United Nations Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The illicit trade that has met the demand for restricted natural resources such as timber, minerals, and gold is therefore strongly correlated with high-level corruption.

The third market comprises popular items of consumption on which states often impose high excise taxes, such as cigarettes and alcohol. The smuggling of these commodities results in significant revenue losses for states. Global cigarette smuggling is estimated to cost countries billions of dollars of lost revenue. In Europe alone, annual sales in illicit cigarettes are estimated at €7.8 billion to €10.5 billion.⁸ Total revenues may be less, but growth rates for the illicit tobacco trade are higher still in the Middle East, Africa, and Australia.⁹ Cigarettes, tobacco, and alcohol have been at the heart of contraband smuggling for several centuries,

consistently involving corruption of border and customs personnel, in particular.

The fourth market includes the sale of stolen goods, such as cars and electronics.¹⁰ This form of illicit trade is not as tightly linked to corruption as are other forms. The trade in stolen goods has evolved in the contemporary cyber world, with stolen property sold alongside licit products online.

But this conceptualization of illicit trade markets is largely pre-Internet and Darknet (the portion of the Internet hidden from search engines and inaccessible without special software or network configurations), before trade expanded to include new virtual goods. Today, we need to add a fifth category: the illicit trade in virtual products that cannot exist outside of cyberspace, such as botnets, malware, and ransomware. These products allow criminals to access bank accounts, steal credit card numbers and identities, and lock the computers of institutions and individuals (denying them access to their data) unless they pay a ransom. The sale and use of these products are also not devoid of corruption.

Commerce requires not just goods, but money to pay for purchases. Currencies developed with commerce in antiquity, as traders needed to pay for goods.¹¹ In the past, illicit traders produced and benefited from counterfeit currency; now they depend on illegal financial flows facilitated by corruption.¹² The nonprofit Global Financial Integrity has defined illicit financial flows as “money that is illegally earned, transferred or utilized.”¹³ But today, with the emergence of anonymized payment systems in cyberspace, of which bitcoin is the best-known, illicit financial flows actually help drive the growth of the new illicit economy.

Not all illicit financial flows help finance criminal commerce; abuse of trade can help mask kleptocratic theft. National leaders often attempt to hide their misappropriation of national resources by label-

ing the transfers sent to offshore banking centers like Panama as payments for commercial goods. Often, no trade occurs, or a minor transaction is disguised as a much larger trade to justify the movement of large funds. This phenomenon is referred to as *trade-based money laundering*.¹⁴ Perpetrators therefore often abuse the global trading system to facilitate large-scale corruption and criminal misconduct.

The illicit economy includes the sale not only of such well-known commodities as drugs, arms, and people, but of endangered species and timber, oil, animal parts, energy resources like oil and gas, counterfeits (including pharmaceuticals), and antiquities. Illicit trade has diversified rapidly in recent years as law enforcement efforts focused on the drug trade have intensified. Illicit actors have thus moved into economic areas with significant profits but much less risk, engaging corrupt officials to facilitate sales of other illegal commodities. The illegal trade of environmental products represents the fastest-growing sector of illicit trade, estimated at 5 and 7 percent annually and exceeding the growth rate of the legitimate economy as a whole.¹⁵ Facilitating this growth is the low cost of corruption to move these goods: the risks of arrest and property seizure are less than in the drug trade, and so officials operating in lower-risk illicit markets cannot command the same high bribes. The illicit trade market in antiquities has also exploded in the context of nearly two decades of continuous war and civil conflicts in the Middle East. Terrorists and militants participate in this trade, but corrupt officials and local criminal entrepreneurs in Syria and Iraq also benefit.

In 2012, the United Nations Office on Drugs and Crime (UNODC) estimated that the sale of illegal goods worldwide was an \$870 billion-a-year business, and that drugs represented \$320 million of the total. According to the UNODC: “These immense

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illicit funds are worth more than six times the amount of official development assistance, and are comparable to 1.5 per cent of global GDP, or 7 per cent of the world's exports of merchandise."¹⁶

Corruption may also result in our underestimation of the size of the problem. High levels of corruption in branches of government most linked to the dynamics of illicit trade – customs, border patrol, and law enforcement – undermine collection of the very data that we need to understand the pervasiveness of the phenomenon. And so statistics on illicit trade rarely cover its extent. This is particularly characteristic of the trade in counterfeit goods, as the data in one recent OECD study suggest. The study concluded that counterfeits represented 5 percent of trade in Europe, but only 2.5 percent of trade in the developing world.¹⁷ Why this discrepancy, when counterfeit goods are so pervasive in Africa and in many parts of Asia and Latin America? The World Customs Organization offers one explanation, acknowledging that no type of government can boast a customs department “immune to corruption.” Corruption plagues customs administrations around the world, and in many countries, positions in the customs service are sold for high prices.¹⁸ Officials who have purchased their positions can go on to make significant revenue by accepting bribes to let counterfeit goods and contraband pass. Therefore, data on counterfeit goods in global trade are almost surely understated, especially in the developing world, where customs corruption is particularly acute.

The UNODC, the United Nations Environment Programme, and the OECD have reported data on revenues generated from distinct categories of illicit trade.¹⁹ But the reality of corruption on the ground means that trade in these illegal goods often converges and overlaps. Once officials have accepted bribes to look the other way, the same smugglers can move people, arms,

and drugs across the same border together or at different times, and in different combinations. Convergences have included rhino horn traveling in hollowed-out South African trucks carrying smuggled cigarettes; ivory tusks packed alongside drugs on the East Coast of Africa; even nuclear materials moving with smuggled antiquities in Turkey.

Illicit trade also is not always a distinct phenomenon; it intersects with the licit economy. Smuggled antiquities are sold on the Darknet and in antique stores, sitting beside objects with appropriate provenance; less regulated pharmacies may sell counterfeit or diverted medicines along with legitimate drugs. Online sales platforms such as Alibaba, eBay, and Amazon sell both legitimate and counterfeit goods simultaneously; the commitment of personnel and time needed to weed out purveyors of counterfeits is too great for them to bother with. But the convergence of the licit and the illicit suggests that the global economy is more affected by illicit trade than current global figures suggest.

One of the most destabilizing and disturbing world crises today is the conflict in Syria. Overwhelmed by the massive destruction, loss of lives, millions of refugees, and assortment of military actors, it is hard to remember that corruption and illicit trade had much to do with the initiation of this crisis. In the 1970s, then – President Hafez al-Assad, the father of President Bashar al-Assad, launched an unsustainable program for agricultural self-sufficiency, growing crops requiring significant amounts of water without considering whether “Syria had sufficient groundwater and rainfall to raise those crops. Farmers made up for water shortages by drilling wells to tap the country’s underground water reserves.”²⁰ Due to diminishing water tables, Bashar al-Assad in 2005 made it illegal to dig new wells without a license. But

in an environment of high levels of corruption, the ban did not stop those who had money to bribe officials for licenses to dig deeper. Even bribery could not ensure sustainable access, however, as the drought in the once-fabled Fertile Crescent continued, and any remaining water was at such depth that it was no longer profitable to dig for it.²¹

Desperation drove Syrians to desert agricultural land and migrate en masse to urban areas. Between 2002 and 2010, Syria experienced an incredibly rapid rate of urbanization. Before the U.S. invasion of Iraq in 2003, there were 8.9 million Syrians living in cities; in 2010, there were 13.8 million. Of this urban growth, approximately 1.5 million people were fleeing the drought.²² Syria, in a decade, became one of the most urbanized countries in the world.²³ But this population transition occurred in a corrupt and badly governed state that did not show concern for its citizens and their welfare.

Recent migrants to urban areas congregated in illegal settlements that developed on the periphery of Syrian cities. The corrupt Assad government neglected these communities, and they were therefore characterized by a paucity of infrastructure, high crime rates, absence of services, and unemployment. They became “the heart of the developing unrest” during the Arab Spring.²⁴ Today this region is a center of illicit trade in drugs, particularly Captagon; people; oil; weapons; cigarettes; antiquities; and every other type of contraband imaginable. Those profiting from the smuggling in Syria include corrupt government officials, criminals, and members of terrorist organizations like ISIL and Al Nusra.²⁵

Syria demonstrates how, fed by corruption, an urban hub of illicit trade can develop in the chaos and destruction of conflict. Meanwhile, the advent of the Darknet – an overlay network that hides users’ location/identity and activities from private or state surveillance and is accessible

only through special software like Tor – is another kind of hub entirely.²⁶ While the Darknet is an important anonymizing tool for dissidents in authoritarian countries, it is also host to sales of the most dangerous items evading law enforcement: narcotics, arms, and malicious tools to undermine computer systems and hack into financial accounts. Many believe that these hidden sites are safer, less violent, and devoid of the corruption that characterizes the criminal world. Yet in many respects, the Darknet resembles more traditional criminal markets. For example, law enforcement efforts to dismantle the Darknet megacommerce site Silk Road and to bring its founder Ross Ulbricht, also known as Dread Pirate Roberts, to justice reveal that the corrupt practices associated with large-scale organized crime also transfer to the cyber world.

During the height of Silk Road’s operations, buyers and sellers exchanged more than six hundred thousand messages monthly, overwhelmingly concerning drug sales. Ulbricht received a commission on sales through the Silk Road site; processing \$1.2 billion in transactions in a little over two years through the cryptocurrency bitcoin netted Ulbricht \$80 million.²⁷ During the two-year federal investigation of Silk Road, in which law enforcement had to first identify the mastermind behind the site, a U.S. Secret Service agent and a Drug Enforcement Administration agent used pseudonyms to steal bitcoins from the site, attempted to extort money from Ulbricht, and sold Ulbricht sensitive law enforcement information helping him to avoid arrest.²⁸ Clearly some of the same forms of corruption exist in virtual illicit trade as in the real world: law enforcement participation in extortion, theft, and abuse of position for financial advantage. The Web is not a hygienic space, as some believe. This is hardly surprising, given that known behaviors in the real world transfer into the new technology.

Corruption facilitates illicit trade not only in hubs but also along the long supply chains that move illicit environmental commodities from their sources to their final sales markets. At the source, corrupt officials take advantage of their position to be guardians of the natural resources of the regions they rule, often profiting significantly from their exploitation and sale.

The perpetrator of the “biggest environmental crime of our time,” according to former prime minister of the United Kingdom Gordon Brown, is not a named criminal, but the governor of Sarawak (one of two Malaysian states on Borneo), Abdul Taib Mahmud.²⁹ A graduate of an Australian law school, Taib served as chief minister of Sarawak for more than thirty years. Under his leadership, and with loans from some of the largest multinational banks in the world, he helped facilitate the deforestation of 80 percent of Sarawak’s rain forests, which had been among the most biologically diverse and best preserved in the world. (And the Borneo rain forest was enormous, ranking behind only the Amazon and Congo Basin in size.) Through a patronage system that also favored Taib’s family businesses, the Sarawak state awarded contracts to commercial logging firms to deforest the territory at an unprecedented rate, suddenly depriving the earth of one of its last remaining rain forests, and the native populations of the habitat where they had traditionally lived.³⁰ Leading international financial institutions have happily accepted the profits from this devastation, frequently ignoring the corruption behind their kleptocratic depositors.³¹

As in Sarawak and Sabah, the destroyers of timber resources in Kalimantan (Indonesian Borneo) are principally high-level officials. Yet their corruption has been unmasked by national state-sponsored anti-corruption activities. In contrast, the revelations surrounding the perpetrators and facilitators of the destruction of Malaysian

Borneo’s rain forests were possible only through investigations and advocacy conducted outside of Malaysia, since the leadership of the Malaysian government remains embroiled in its own major corruption charges.

In Indonesia, timber exploitation and the surrounding corruption were investigated by the state’s most trusted public institution: the Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK). Established by law in 2002, the Commission has “made a reputation for itself globally for thoroughly investigating, researching, and trying high-level targets,” while achieving high conviction rates.³²

The Commission has made the destroyers of Indonesian rain forests a top focus of its activities. The rationale for this approach is clear. The Indonesian anticorruption agency analyses indicate that Indonesia may have lost as much as \$9 billion in revenues from 2003 to 2014, largely owing to companies underreporting timber production. The government collected fees and royalties on only about 19 to 23 percent of all timber production during these years, a revenue loss that could occur only with pervasive high-level corruption.³³ Many different corrupt and illegal activities facilitate the deforesting of Indonesia, such as illegal logging, logging prior to receiving necessary permits (including environmental permits), logging outside of the territory for which the permit was granted, and logging within primary forests (old-growth forests that have developed undisturbed and thus have unique ecological features).³⁴ This deforestation could only proceed with corruption on the local, regional, and/or national level. Corrupt officials include not only forestry officials and local governors, but also judges and law enforcement, exhibiting such blatant corruption as the direct delivery of cash.³⁵

In the early 2000s, a member of the Indonesian parliament was sentenced to eight

years' imprisonment for accepting bribes to allow the conversion of protected forest zones (rain forest land is often converted into palm oil or pulp plantations). Subsequently, in 2007, two government officials and their collaborator, a logging company executive, were convicted for illegal logging. In another case in 2008, a government regent, the ruler of an Indonesian province, received an eleven-year prison sentence for his role in illegal logging. By 2014, one-third of Kalimantan regents were under investigation for corruption. The dominant form of corruption among them was taking bribes to issue permits to cut timber and thereby allow the expansion of palm oil plantations.³⁶

Once the timber is shipped from Indonesia, it often passes through free trade zones (FTZs), where goods can be landed, warehoused, manufactured or altered, distributed for trade, or re-exported duty free. Before the government of Indonesia cracked down on illicit timber trade, approximately fifteen cargo vessels per month were filled with illegally cut timber and moved through free trade zones in Singapore, Hong Kong, and Malaysia, before being transported to China and other Asian countries for importation. One illegal timber investigation in Indonesia revealed the involvement of an Indonesian general working with brokers in Singapore and document forgers in Malaysia. Traders, shipping agents, and banks were also directly involved in disguising the origin and nature of illegal timber shipments.³⁷

The passage through Singapore may be surprising, since the country enforces strong anticorruption policies and is ranked sixth among states with the lowest level of corruptions, according to Transparency International's Corruption Perception Index 2017.³⁸ But as the Economist Intelligence Unit reports, "Singapore is less vigilant than it could be, particularly with regards to the FTZs, inside of which neither

Singapore Customs nor any other government authority is a consistent presence."³⁹

A report from the International Chamber of Commerce on the use of FTZs to move illicit goods applies to the timber trade as well as counterfeiting:

In recent years, FTZs have provided a mechanism for counterfeiters to move illegal fake products around the world. Increasingly, counterfeiters use transit or transshipment of goods, through multiple, geographically diverse FTZs for no other purpose than to disguise the illicit nature of the products. Once introduced into an FTZ, counterfeit goods may undergo a series of economic operations, including assembly, manufacturing, processing, warehousing, re-packaging, and re-labelling.⁴⁰

After moving through FTZs, the timber continues on to processors, often in China, who sell the processed timber to the United States and Europe, where there is great commercial demand for wood flooring and furniture. A recent exhibition on plywood at the Victoria and Albert Museum in London shows the journey endangered wood takes, from harvest and transport to importation and illegal entry into commercial markets.⁴¹ In the United States, for example, the recent prosecution of hardwood retailer Lumber Liquidators revealed that the company, aware of its origin, had bought lumber from a Chinese source in the illicit timber trade.⁴² The corruption and criminal sanctions brought against Lumber Liquidators reveal the complicity of purchasers in the United States, just as charted in the Victoria and Albert exhibit. Commercial corruption facilitates illicit trade at the retail end of the market, the final stage of the supply chain.

Free trade zones also enable smugglers of ivory. To move ivory to China from Africa, one Guangzhou-based trafficking network moved a shipment of tusks through at least eighteen different transshipment

points to obfuscate the commodity, its origin, and its destination. Among these transit points were free trade zones, illustrating how these ungoverned ports employ corruption to facilitate illicit trade.⁴³

Different corrupt actors facilitate the illicit trade in animal parts of endangered species. Rhino horn smugglers have identified and recruited corrupt officials, both local and international, with care. Law enforcement in Africa, Asia, and at points in between has failed to disrupt the crime syndicates and transnational networks that are key to the success of this trade. As a South African government advocate for the rhino said to me in a meeting: “There is not only our corruption but everyone else’s along the route.”⁴⁴ A recent exposé by investigative journalists, presented at The Hague and on television, revealed the personal relationship between the South African minister of security and a Chinese organized crime figure who ran massage parlors frequented by the minister. According to the program, this relationship helped facilitate the rhino trade.⁴⁵ The minister’s leadership coincided with the inability of security forces to investigate rhino horn trade effectively, a phenomenon that made observers question his integrity.⁴⁶ Particularly problematic is China’s role as a major investor in South Africa and other countries in Africa. The importance of these larger trade and investment issues to African countries too often overrides efforts to counter this illicit trade and the corruption that facilitates it.

The South African security minister and other high-level officials prevented much-needed investigations of poachers and poaching networks by removing network analysts and counterpoaching agents from the state effort. This enabled corrupt airport employees in South Africa to load the rhino horn on planes in airports transiting the Middle East. On this journey, some of the cargo passes through FTZs, where there is no scrutiny of goods, while in other

cases, officials are bribed to ignore certain loads. The horn then moves on to Southeast Asia, where local as well as high-level corruption facilitates the movement of endangered species parts. Particularly notorious is the prime minister’s office in Laos, which has cut deals with wildlife traffickers to allow parts of tigers, elephants, and rhinos to transit the country.⁴⁷ Animal parts also flow through Myanmar and Vietnam, both among the lowest rated countries in Asia on the Corruptions Perceptions Index.⁴⁸ Once the animal parts arrive in Southeast Asia, corrupt officials and crime syndicates help move the rhino horn to high-end purchasers largely in Vietnam, where increasing private wealth and uses varying from party drug to cancer treatment have created a strong market.⁴⁹ (The number of rhinos poached in South Africa rose from thirteen in 2007 to more than twelve hundred in 2014, although recent education campaigns in Vietnam have lowered demand since the mid-decade peak.)⁵⁰

In this trade, officials do more than turn a blind eye; they can serve as key personnel in conspiracies to move rhino horn. Corrupt park rangers, park guards, and other employees of national and private reserves provide information to poaching syndicates and, on occasion, provide cover for poaching teams moving inside protected areas. Some corrupt park employees actually run their own poaching rings, with analysis suggesting that they are passing information on social media, using coded signals and photos to help poachers locate rhino and avoid detection. Officials can also issue fraudulent CITES permits authorizing the export of rhino horn.⁵¹ Corrupt military personnel, border guards, and customs officials of all levels are key figures in the operation of this illicit trade.

None of the above cases of corruption have been proven to reach the top of government, but heads of state and their im-

mediate families do play roles in many other forms of illicit trade, including drug trafficking, human trafficking, and the cigarette trade. Illicit actors have also strategically penetrated the state, often entering legislative bodies to shape laws in their favor; for instance in Russia, Colombia, and Italy. These criminals may also join the executive branch of government to ensure the absence of effective law enforcement. That government officials in many countries acquire immunity from prosecution upon election or appointment is only added incentive to enter government.⁵²

High-level corruption challenges efforts to counter illicit trade; present strategies to combat illegal commerce are state-based and there are no existing mechanisms to counter heads of state or high-level officials who are themselves major perpetrators or facilitators. The problem is most acute in relationship to the drug trade, but is also present in many other major forms of illicit trade, such as cigarette smuggling, the diversion and resale of donated pharmaceuticals, and illicit arms sales.

President Manuel Noriega of Panama was tried and imprisoned for his involvement with the drug trade.⁵³ Top officials in Venezuela and Afghanistan and their close family members have also played important facilitating roles in the transnational drug trade. Ahmed Karzai, the brother of President Hamid Karzai, was a key figure in the Afghan drug trade, and the president, according to a leaked U.S. government cable, actively intervened on behalf of accused drug traffickers.⁵⁴ In 2016, the Organized Crime and Corruption Reporting Project (OCCRP) named President of Venezuela Nicolás Maduro as its “Man of the Year” for doing the most in the world to advance organized criminal activity and corruption. His nephews were indicted in U.S. courts for trying to use the presidential hangar of a Venezuelan airport to smuggle 800 kilos of cocaine into the United States.⁵⁵

Many officials seek to share in the profits of the drug trade, but participation may often be coerced. The Latin American expression *plata o plomo* (silver or lead) describes how traffickers compel obedience in helping facilitate the drug trade not just from community members, but even national leaders in the Caribbean and high-level officials in Mexico, Central America, and South America.⁵⁶

Top officials also abuse their office for personal gain by promoting other forms of illicit trade. Milo Djukanović, the former president and prime minister of Montenegro, was indicted by the Italian government for his role at the center of a ten-year cigarette smuggling conspiracy.⁵⁷ The OCCRP named the former president its Man of the Year in 2015. The distinguished jury of the OCCRP concluded that “Djukanović and his close associates engaged in extensive cigarette smuggling with the Italian Sacra Corona Unita and Camorra crime families. He was indicted in Bari and freely admitted [to] the trade, but said his country needed money. He invoked diplomatic immunity to get the charges dropped.”⁵⁸ The trade benefited him and his cronies but had very significant negative financial effects on neighboring countries that lost tax revenue through the sale of contraband cigarettes.

The family of Horacio Cartas, president of Paraguay, is also deeply involved in producing “illicit white cigarettes”: cigarettes produced legally at the factory but with the intention of smuggling them into other countries for sale without payment of national taxes. Examining President Cartas’s family tobacco business (of which he is a key shareholder) raises multiple red flags. Paraguay produces a significant share of the world’s illicit whites, an estimated sixty-five billion cigarettes annually, and is responsible for 11 percent of the world’s contraband cigarettes.⁵⁹ The prime target of Paraguay’s smuggled cigarettes is Brazil, where one-third of all purchased cig-

arettes are illegal, costing the Brazilian government an estimated tax loss of \$1.2 billion annually.⁶⁰ Large-scale smuggling helps fund crime groups that facilitate the trade, such as Los Zetas and the Sinaloa cartel, who in turn use the operation to launder their money.⁶¹ Corrupt participants include border and customs officials who facilitate the cross-border movement of the cigarettes and the law enforcement officials who allow the criminal organization to operate as distributors and profiteers.

Defining corruption as “the abuse of public or private office for personal gain,” our analysis of corruption encompasses not only public officials who engage in illicit trade, but private sector participants as well. Company leadership can benefit personally from illicit trade, but corporations can also gain as a whole, since illicit trade may increase business revenues and share values. Such was the case with cigarette giants Philip Morris and British American Tobacco, among others, which had engaged with smugglers and companies closely tied to international organized crime to boost sales, avoid taxes, and increase profits. That is, at least until a major European investigation exposed this behavior, leading to billions of dollars in fines and legally binding agreements designed to increase regulation and accountability.

Facilitators in the private sector are diverse and span low-level employees up to the top of corporations. Corrupt individuals at all levels of government, companies, and professions are needed to facilitate illicit trade. The most harm, however, is done by officials at the top who have the ability to set policies in motion that facilitate illicit trade, derail investigations, or cause massive shipments to pass without obstruction across borders.

Corporate facilitators range from the Jet-Blue flight attendant who checked baggage containing seventy pounds of cocaine to the

high-paid professionals at Mossack Fonseca in Panama who helped launder money for criminals, corrupt officials, and even terrorists.⁶² The participation of Mossack Fonseca employees is, unfortunately, far from unique. Supporting each illicit market is a chain of professionals who violate the ethical codes of their profession and engage in what many would perceive to be corrupt and even criminal behavior. Email records included in the Panama Papers reveal that Mossack Fonseca leadership knew when corrupt officials or criminals were opening new accounts, but willingly accepted them as clients to profit from their ill-gotten gains.

Through their involvement in illicit trade, corrupt officials undermine not only financial systems but the sustainability of the planet. Illustrative of this was the CEO of Volkswagen who, with other Volkswagen corporate leaders, made the decision to build “clean diesel” Volkswagen cars with a so-called defeat device to recognize when they were undergoing emissions tests and manipulate their emissions-control systems to beat the test. In reality, on the road, these vehicles emitted up to forty times the allowable level of nitrogen oxide, which can cause respiratory diseases such as asthma and lung cancer.⁶³ In addition to health and environmental consequences, Volkswagen deceived more than eleven million customers. For these crimes, and with company officials indicted, Volkswagen entered a guilty plea in U.S. courts to multiple charges, including conspiracy to commit wire fraud, conspiracy to violate the Clean Air Act, customs violations, and obstruction of justice. Volkswagen paid a multibillion dollar fine to the U.S. government in early 2017.⁶⁴ Further investigations now underway reveal that Volkswagen was not the only automobile manufacturer to evade emissions controls deliberately.

To take another example, legitimate Chinese factories producing ozone-depleting

substances (ODS) deal directly in legal trade with legitimate clientele around the world. But the illicit market includes diverters as well as middlemen from these factories who trade and broker their commodities illegally. They do this by means of “false labelling, misdeclaration of documents, concealment, fake recycled materials and transshipment fraud,” which are all used to smuggle hydrochlorofluorocarbons (pollutants), violating the Montreal Protocol.⁶⁵ This is not only corporate fraud, but public corruption, because the people responsible are employees of state-owned companies.

Illicit trade demands more attention from many different sectors of society: the global community that faces instability and destruction, governments that lose tax and customs revenues, corporations that lose profits and revenues needed for innovation, individuals who may purchase inferior or dangerous goods, and any person concerned with species extinction or the quality of their environment. Yet many do not appreciate the full consequences of the corruption that facilitates illicit trade because they examine each of its traits in a stovepipe fashion rather than understanding the convergence of these phenomena.

Corruption at all levels of state bureaucracy is necessary to facilitate illicit trade. Yet corporations, as well as shippers, expeditors, brokers, and bankers, also play a critical role. Some corporations are privately held and controlled by shareholders, some are publicly traded but with a government as the majority shareholder, and some are owned by government outright. Illicit trade on a global scale, totaling hundreds of billions of dollars annually, requires much more than criminal actors; it requires workers from diverse parts of the legitimate economy to facilitate and protect it.

The phenomenon that we have analyzed is decidedly transnational; yet most strategies and legal frameworks to combat cor-

ruption are state-based and thus are woefully inadequate to the task. Therefore, we need strategies to address the corruption facilitating illicit trade. These strategies are complex, requiring tactics that cross borders and are not confined to a single jurisdiction. Such strategies must be able to target high-level state but also corporate officials.

Some of the proposed countermeasures are useful in addressing corruption but do not specifically target illicit trade, whereas others are focused on stopping the corruption behind smuggling and other forms of illegal commerce. For human health and the welfare of other forms of life on the planet, we must prioritize corruption that undermines sustainability. This is an alien concept, but one that requires serious consideration if future generations will reside on this planet.

The analysis here reveals that many people engaged in highly lucrative forms of illicit trade are national leaders or close family members. Their positions of power grant them total impunity in their home country because domestic law enforcement will rarely investigate their corruption and do so only at great personal risk to themselves. Therefore, to address this high-level corruption and its devastating consequences on (often developing) countries' economies and governance, it is necessary for there to be investigative capacity outside of the country in question. Just as the International Criminal Court has investigated and prosecuted officials and rebel leaders who have engaged in mass crimes, we need an institution that allows the international community to investigate and sanction corrupt leaders engaging in illicit trade. The International Anti-Corruption Court proposed by Judge Mark Wolf elsewhere in this volume might prove such a mechanism.⁶⁶ With a non-state-based institution to impose accountability, government officials might re-

frain from or reduce participation in illicit trade with the knowledge that they could be brought to trial by skilled independent prosecutors. With an anticorruption institution that focuses on the proceeds of corruption rather than just the perpetration, it might reduce the likelihood of high-level officials participating in illicit trade.

Legislation requiring banks and financial institutions to identify beneficial ownership is another important step toward reducing corruption, both generally and specifically in regard to illicit trade. Illicit fortunes can be laundered through illicit trade because of the absence of transparency in financial accounts and institutions. Moreover, trade-based money laundering is key to the movement of wealth to anonymous offshore accounts. Therefore, requirements that those depositing funds or buying real estate declare the beneficial owner of the property would help curb the corruption behind many forms of illicit trade. Making it more difficult to hide or use the fruits of official corruption is a disincentive to participate.

Transparency and oversight are central to preventing corruption. Because illicit trade intersects so frequently with the licit business world, it is important that there be public-private partnerships that help expose these forms of corruption. Such partnerships now exist in extractive industries. For example, the Extractive Industries Transparency Initiative takes a multistakeholder approach to monitoring resources in oil, gas, and minerals. The Initiative lists right on its homepage those countries not in compliance.⁶⁷ This serves a dual function. It names and shames noncompliant countries. Moreover, it discourages foreign investment in countries that are not compliant, leading investors to put their money where they can ensure there is oversight. A similar effort is now being made in the fishing industry, in which corruption facilitates trade in illegally caught fish as well as human trafficking of men to be fishermen.⁶⁸

The Extractive Industries Transparency Initiative is monitoring corruption at the source, while other efforts are attempting to track corruption that facilitates the movement of illicit goods along supply chains. Corporations, often under pressure from civil society, are paying more attention to both the goods they sell and how they reach market. Unions, consumers, students, and human rights activists have made supply chain transparency a priority, particularly in regard to human trafficking. The Supply Chain Transparency Act was passed in California in 2010 and went into force in 2012. Although only one U.S. state has enacted such a measure, the size of the California market – larger than many countries – has forced companies to change business practices in order to be able to continue to sell there. Improved supply chain transparency efforts have focused primarily on clothing and footwear, but because these commodities make up a major import and export sector, these efforts also have important effects on controlling corruption.⁶⁹ The nonprofit organization Verité works with corporations to improve the transparency of their supply chains and provides educational and training materials to help businesses who do not contract for Verité's services. There are now many more opportunities to engage in monitoring.

We must focus not just on corruption in the real world, but on how the corruption patterns we have identified translate into the cyber world. As more commercial activity transfers to the Internet, there are more and greater opportunities for anonymity in both commerce and payments, especially through cybercurrencies. Illicit trade in multinational commerce requires cooperation from law enforcement in many countries. But with corruption becoming less traceable online, it becomes of paramount importance that procedures are established to make it more difficult for corrupt officials to undermine investigations.

As we establish regulatory frameworks for new and developing technologies, we must incorporate anticorruption measures.

Controlling corruption is key to combating illegal trade in drugs (pharmaceuticals and illicit drugs); people; cyber resources; cigarettes, alcohol, and other legitimately produced goods; and endangered natural resources like ivory, rhino horn, and protected timber. There is not one form of cor-

ruption or one level of official that is responsible for this trade. Strategies to address corruption facilitating illicit trade must therefore range from petty bribery to heads of state to the offshore banks that harbor the proceeds. Only by using diverse anticorruption strategies can one begin to tackle both the national and transnational corruption that facilitates this trade.

ENDNOTES

- ¹ Petty corruption is the everyday low-level corruption that occurs when officials meet citizens and demand bribes or other favors to perform their duties. Grand corruption is the high-level corruption carried out by senior officials who amass great private wealth and use corruption to sustain their positions and those of their families.
- ² Peter Gastrow, *Termites at Work: Transnational Organized Crime and State Erosion in Kenya* (New York: International Peace Institute, 2011), <https://www.ipinst.org/2012/02/termites-at-work-transnational-organized-crime-and-state-erosion-in-kenya-comprehensive-research-findings>.
- ³ Asif Efrat, *Governing Guns, Preventing Plunder: International Cooperation Against Illicit Trade* (Oxford: Oxford University Press, 2012), 5; and H. Richard Friman and Peter Andreas, "Introduction: International Relations and the Illicit Global Economy," in *The Illicit Global Economy and State Power*, ed. H. Richard Friman and Peter Andreas (Lanham, Md.: Rowman and Littlefield, 1999), 5–6.
- ⁴ Organisation for Economic Co-operation and Development, "Countering Illicit Trade," <http://www.oecd.org/gov/risk/illicit-trade.htm> (accessed August 22, 2017).
- ⁵ Phil Williams, "Crime, Illicit Markets and Money Laundering," in *Managing Global Issues: Lessons Learned*, ed. P. J. Simmons and Chantal de Jonge Oudraat (Washington, D.C.: Carnegie Endowment, 2001), 107.
- ⁶ United Nations Office on Drugs and Crime, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Vienna: United Nations Office on Drugs and Crime, 2000), <https://www.unodc.org/unodc/en/treaties/CTOC/>; and Efrat, *Governing Guns, Preventing Plunder*.
- ⁷ Organisation for Economic Co-operation and Development, "Illicit Trade: Convergence of Criminal Networks," in *Illicit Trade: Converging Criminal Networks* (Paris: OECD Publishing, 2016), 19–21.
- ⁸ "A Brief Overview of Illicit Trade in Tobacco Products," in *ibid.*, 124.
- ⁹ *Ibid.*, 128.
- ¹⁰ Radisch, "Illicit Trade: Convergence of Criminal Networks," 19.
- ¹¹ Viviana Zelizer, *The Social Meaning of Money: Pin Money, Paychecks, Poor Relief, and Other Currencies* (Princeton, N.J.: Princeton University Press, 2017).
- ¹² Edoardo Grendi, "Counterfeit Coins and Monetary Exchange Structures in the Republic of Genoa during the Sixteenth and Seventeenth Centuries," in *History from Crime*, ed. Edward Muir and Guido Ruggiero (Baltimore: Johns Hopkins University Press, 1994), 170–205.
- ¹³ Global Financial Integrity, "Illicit Financial Flows," <http://www.gfintegrity.org/issue/illicit-financial-flows/> (accessed September 25, 2017).

- ¹⁴ Sarah Bracking, *The Financialisation of Power: How Financiers Rule Africa* (London and New York: Routledge, 2016), 111 – 113; and John A. Cassara, *Trade-Based Money Laundering: The Next Frontier in International Money Laundering Enforcement* (New York: John Wiley & Sons, 2016), 13 – 31, 111 – 124.
- ¹⁵ Christian Nellemann, Rune Henriksen, Arnold Kreilhuber, et al., eds., *The Rise of Environmental Crime: A Growing Threat To Natural Resources, Peace, Development and Security* (Nairobi: United Nations Environment Programme, 2016), https://reliefweb.int/sites/reliefweb.int/files/resources/environmental_crimes.pdf.
- ¹⁶ United Nations Office on Drugs and Crime, “New UNODC Campaign Highlights Transnational Organized Crime as a US\$870 Billion a Year Business,” July 16, 2012, <https://www.unodc.org/unodc/en/frontpage/2012/July/new-unodc-campaign-highlights-transnational-organized-crime-as-an-us-870-billion-a-year-business.html>.
- ¹⁷ Organisation for Economic Co-operation and Development and European Union Intellectual Property Office, *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact* (Paris: OECD Publishing, 2016), 11.
- ¹⁸ Gerard McLinden and Amer Zafar Durani, “Corruption in Customs,” *World Customs Journal* 7 (2) (2013): 3 – 10.
- ¹⁹ Nellemann, *The Rise of Environmental Crime*; and Organisation for Economic Co-operation and Development and European Union Intellectual Property Office, *Trade in Counterfeit and Pirated Goods*. See also the extensive data from the United Nations Office on Drugs and Crime, “Transnational Organized Crime: The Globalized Illegal Economy,” <https://www.unodc.org/toc/en/crimes/organized-crime.html> (accessed April 23, 2018).
- ²⁰ John Wendle, “The Ominous Story of Syria’s Climate Refugees,” *Scientific American*, March 2016, <http://www.scientificamerican.com/article/ominous-story-of-syria-climate-refugees/>.
- ²¹ Ibid.
- ²² Colin P. Kelley, Shahrzad Mohtadi, Mark A. Cane, Richard Seager, and Yochanan Kushnir, “Climate Change in the Fertile Crescent and Implications of the Recent Syrian Drought,” *Proceedings of the National Academy of Sciences* 112 (11) (2015): 3241 – 3246, <http://www.pnas.org/content/112/11/3241.full>.
- ²³ United Nations Department of Economic and Social Affairs, Population Division, *World Urbanization Prospects: The 2014 Revision, Highlights* (New York: United Nations, 2014), 2, <http://esa.un.org/unpd/wup/highlights/wup2014-highlights.pdf>.
- ²⁴ Kelley et al., “Climate Change in the Fertile Crescent.”
- ²⁵ See my previous book, Louise I. Shelley, *Dirty Entanglements: Corruption, Crime and Terrorism* (Cambridge: Cambridge University Press, 2014), 156, 159; and Stefan Heißner, Peter R. Neumann, John Holland-McCowan, and Rajan Basra, *Caliphate in Decline: An Estimate of Islamic States Financial Fortunes* (London: The International Centre for the Study of Radicalisation, 2017), 7, <http://icsr.info/wp-content/uploads/2017/02/ICSR-Report-Caliphate-in-Decline-An-Estimate-of-Islamic-States-Financial-Fortunes.pdf>.
- ²⁶ Nick Bilton, *American Kingpin: The Epic Hunt for the Criminal Mastermind behind the Silk Road* (New York: Portfolio, 2017), 42 – 43.
- ²⁷ Steve Kovach, “FBI Says Illegal Drugs Marketplace Silk Road Generated \$1.2 Billion in Sales Revenue,” *Business Insider*, October 2, 2013, <http://www.businessinsider.com/silk-road-revenue-2013-10>.
- ²⁸ Andy Greenberg, “Ross Ulbricht’s Lawyers Say They Have Found Another Corrupt Agent on Silk Road Case,” *Wired*, November 29, 2016, <https://www.wired.com/2016/11/ross-ulbrichts-lawyers-point-another-corrupt-agent-silk-road-case/>.
- ²⁹ Gordon Brown, “Fight for the Borneo Rainforest: Gordon Brown Celebrates the Role of Journalist Clare Rewcastle,” *Independent*, March 10, 2011, <https://www.independent.co.uk/environment/green-living/fight-for-the-borneo-rainforest-gordon-brown-celebrates-the-role-of-journalist-clare-rewcastle-2237427.html>.

- ³⁰ Lukas Straumann, *Money Logging on the Trail of the Asian Timber Mafia* (Basel: Bergli Books, 2014), 16. Louise I. Shelley
- ³¹ Ibid.
- ³² Pahala Nainggolan, "Corruption: Climate Change and Illegal Timber Trade," presentation at the OECD Integrity Forum, Fighting the Hidden Tariff: Global Trade without Corruption, Paris, April 20, 2016. See also Environmental Investigation Agency, *Permitting Crime: How Palm Oil Expansion Drives Illegal Logging in Indonesia* (London: Environmental Investigation Agency, 2014), 9, <https://eia-international.org/wp-content/uploads/Permitting-Crime.pdf>.
- ³³ Report at the 16th International Anti-Corruption Conference, Putrajaya, Malaysia, September 2 – 4, 2015; and Sarah Schonhardt, "Indonesia Seeks to Resolve Timber Reporting Issues," *The Wall Street Journal*, February 24, 2016, <http://www.wsj.com/articles/indonesia-seeks-to-resolve-timber-reporting-issues-1456325915>.
- ³⁴ Environmental Investigation Agency, *Permitting Crime*, 10 – 19.
- ³⁵ Ibid., 19 – 20.
- ³⁶ Schonhardt, "Indonesia Seeks to Resolve Timber Reporting Issues."
- ³⁷ Telapak and Environmental Investigation Agency, *The Last Frontier: Illegal Logging in Papua and China's Massive Timber Theft* (Bogor, Indonesia: Telapak, 2005), 17 – 19, www.eia-international.org/wp-content/uploads/The-Last-Frontier.pdf.
- ³⁸ Transparency International, Corruption Perceptions Index 2017, https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table.
- ³⁹ The Economist Intelligence Unit, *The Illicit Trade Environment Index* (London: The Economist Intelligence Unit, 2016), 12, http://illicittradeindex.eiu.com/ECC%20illicit%20trade%20paper%20V9_Oct12.pdf.
- ⁴⁰ International Chamber of Commerce, *Controlling the Zone: Balancing Facilitation and Control to Combat Illicit Trade in the World's Free Trade Zones* (Paris: International Chamber of Commerce, 2013), 6, <https://cdn.iccwbo.org/content/uploads/sites/3/2016/11/Combating-illicit-trade-in-FTZs-1.pdf>.
- ⁴¹ "Plywood: Material of the Modern World," shown at the Victoria and Albert Museum, London, July 15, 2017 – November 12, 2017.
- ⁴² Jani Actman, "From Trees to Tigers: Case Shows Costs of Illegal Logging," *National Geographic*, November 10, 2015, <http://news.nationalgeographic.com/2015/11/151110-timber-russian-far-east-illegal-logging-siberia/>; and United States Department of Justice, "Lumber Liquidators Inc. Sentenced for Illegal Importation of Hardwood and Related Environmental Crimes: Virginia Hardwood Flooring Company to Pay \$13 Million, Largest Lacey Act Penalty Ever," Justice News, February 1, 2016, <https://www.justice.gov/opa/pr/lumber-liquidators-inc-sentenced-illegal-importation-hardwood-and-related-environmental>.
- ⁴³ Jackson Miller, Varun Vira, and Mary Utermohlen, *Species of Crime: Typologies & Risk Metrics for Wildlife Trafficking* (Washington, D.C.: C4ADS, 2015), 12, <https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/56af8242cf80a1474b572b85/1454342724100/Species+of+Crime.pdf>.
- ⁴⁴ Author conversation with a high-level South African official, Pretoria, South Africa, January 2015.
- ⁴⁵ "Major South African Politician Allegedly Exposed in Undercover Poaching Documentary," SAPeople, November 13, 2016, <http://www.sapeople.com/2016/11/13/investigative-doc-the-poachers-pipeline-exposes-major-south-african-politician/>. On the Hague hearing, see Wildlife Justice Commission, "Public Hearing: Viet Nam Investigation, The Hague, the Netherlands, 14 – 15 November 2016," *WJC Bulletin* 211 (1) (2016), <http://enb.iisd.org/download/pdf/sd/enbplus211num1e.pdf>.
- ⁴⁶ Author interviews in South Africa and Washington, D.C., 2016 – 2017.
- ⁴⁷ Nick Davies and Oliver Holmes, "Revealed: How Senior Laos Officials Cut Deals with Animal Traffickers," *The Guardian*, September 27, 2016, <https://www.theguardian.com/environment/2016/sep/27/revealed-how-senior-laos-officials-cut-deals-with-animal-traffickers>.

- ⁴⁸ Transparency International, Corruption Perceptions Index 2017, https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table.
- ⁴⁹ Gwynn Guilford, "Why Does a Rhino Horn Cost \$300,000? Because Vietnam Thinks It Cures Cancer and Hangovers," *The Atlantic*, May 15, 2013, <https://www.theatlantic.com/business/archive/2013/05/why-does-a-rhino-horn-cost-300-000-because-vietnam-thinks-it-cures-cancer-and-hangovers/275881/>.
- ⁵⁰ Oliver Milman, "Rhino Horn Demand in Vietnam Drops by More Than 33% in One Year," *The Guardian*, October 16, 2014, <https://www.theguardian.com/environment/2014/oct/16/rhino-horn-demand-in-vietnam-drops-by-more-than-33-in-one-year>.
- ⁵¹ Research conducted by the Terrorism, Transnational Crime and Corruption Center of George Mason University in South Africa between April 2014 and January 2015 (the author is the director of the Center). Annette Hübschle, "A Status Symbol to Die For," *Max Planck Research*, January 2015, 73–75, https://www.mpg.de/9093473/W005_culture_society_070-077.pdf; and Annette Michaela Hübschle, *A Game of Horns: Transnational Flows of Rhino Horn* (Köln: International Max Planck Research School on the Social and Political Constitution of the Economy, 2016), http://pubman.mpg.de/pubman/item/escidoc:2218357:5/component/escidoc:2261029/2016_IMPRSDis.
- ⁵² Ray Godson, ed., *Menace to Society: Political-Criminal Collaborations around the World* (New Brunswick, N.J.; and London: Transaction Publisher, 2004), 1–26; and Peter B. Maggs, Olga Schwartz, and William Burnham, *Law and Legal System of the Russian Federation*, 6th ed. (Huntington, N.Y.: Juris Publishing, 2015), 275–276.
- ⁵³ Randal C. Archibald, "Manuel Noriega, Dictator Ousted by U.S. in Panama, Dies at 83," *The New York Times*, May 30, 2017, <https://www.nytimes.com/2017/05/30/world/americas/manuel-antonio-noriega-dead-panama.html?mcubz=1>.
- ⁵⁴ Larry Shaughnessy, "WikiLeaks: Karzai's Brother Denies Drug Dealing, Remembers Chicago," CNN, November 30, 2010, <http://www.cnn.com/2010/US/11/30/wikileaks.karzai.brother/>; and Jon Boone, "WikiLeaks Cables Portray Hamid Karzai as Corrupt and Erratic," *The Guardian*, December 2, 2010, <https://www.theguardian.com/world/2010/dec/02/wikileaks-cables-hamid-karzai-erratic>.
- ⁵⁵ Organized Crime and Corruption Reporting Project, "Nicolás Maduro: 2016 Man of the Year in Organized Crime and Corruption," <https://www.occrp.org/personoftheyear/2016/>.
- ⁵⁶ Luis Jorge Gray Salamanca and Eduardo Salcedo-Albarán, *Narcotráfico, corrupción y Estados: Cómo las redes ilícitas han reconfigurado las instituciones en Colombia, Guatemala y México* (Mexico City: Debate, 2012); and Kayonne Marston, *In Pursuit of Illicit Goals: Structure, Dynamics, and Disruption of Crime Facilitating Networks in Jamaica* (Ph.D. diss., School of Policy, Government and International Affairs, George Mason University, 2016).
- ⁵⁷ Organized Crime and Corruption Reporting Project, "Milo Djukanović: 2015 Man of the Year in Organized Crime and Corruption," <https://www.occrp.org/personoftheyear/2015/>.
- ⁵⁸ *Ibid.*
- ⁵⁹ Benoît Gomis and Natalia Carrillo Botero, "Paraguay's Tobacco Business Fuels Latin America's Black Market," *Foreign Affairs*, February 5, 2016, <https://www.foreignaffairs.com/articles/paraguay/2016-02-05/sneaking-smoke>.
- ⁶⁰ Andrew Martin and Juan Pablo Spinetto, "Can Paraguay Escape Decades of Despotism, Ineptitude, and Corruption?" *Bloomberg Businessweek*, March 22, 2016, <https://www.bloomberg.com/features/2016-paraguay-president-horacio-cartes/>.
- ⁶¹ Kyra Gurney, "Brazil Cigarette Seizures Highlight Paraguay Contraband Trade," *Insight on Crime*, May 29, 2014, <http://www.insightcrime.org/news-briefs/brazil-cigarette-seizures-highlight-paraguay-contraband-trade>; and Gomis and Botero, "Paraguay's Tobacco Business Fuels Latin America's Black Market."

- ⁶² James Queally and Richard Winston, "Flight Attendant Accused of Smuggling 70 Pounds of Cocaine at LAX Due in Court," *Los Angeles Times*, March 24, 2016, <http://www.latimes.com/local/lanow/la-me-ln-flight-attendant-smuggling-cocaine-lax-20160324-story.html>. Louise I. Shelley
- ⁶³ Jack Ewing, "Offices of Volkswagen and Audi Chiefs Searched in Raid, Warrant Says," *The New York Times*, March 19, 2017, <https://www.nytimes.com/2017/03/19/business/volkswagen-chief-executive-emissions-warrant.html>.
- ⁶⁴ Hiroko Tabuchi, Jack Ewing, and Matt Apuzzo, "6 Volkswagen Executives Charged as Company Pleads Guilty in Emissions Case," *The New York Times*, January 11, 2017, <https://www.nytimes.com/2017/01/11/business/volkswagen-diesel-vw-settlement-charges-criminal.html?mcubz=1>.
- ⁶⁵ Environmental Investigation Agency, *Update on the Illegal Trade in Ozone-Depleting Substances*, EIA Briefing to the 38th Meeting of the Open-Ended Working Group of the Parties to the Montreal Protocol, Vienna, Austria, July 18 – 21, 2016 (London: Environmental Investigation Agency, 2016), 1, 3, <http://conf.montreal-protocol.org/meeting/oewg/oewg-38/publications/Observer%20Publications/EIA%20OEWG38%20ODS%20Illegal%20Trade%20briefing%20July%202016.pdf>.
- ⁶⁶ Mark L. Wolf, "The World Needs an International Anti-Corruption Court," *Daedalus* 147 (3) (Summer 2018): 144 – 156. See also Judge Mark L. Wolf, *The Case for an International Anti-Corruption Court* (Washington, D.C.: Governance Studies at Brookings, 2014), <https://www.brookings.edu/research/the-case-for-an-international-anti-corruption-court/>.
- ⁶⁷ The Extractive Industries Transparency Initiative, <https://eiti.org/>.
- ⁶⁸ See Fisheries Transparency Initiative, <http://fisheriestransparency.org/>.
- ⁶⁹ Brian Stauffer, "Follow the Thread: The Need for Supply Chain Transparency in the Garment and Footwear Industry," Human Rights Watch, April 20, 2017, <https://www.hrw.org/report/2017/04/20/follow-thread/need-supply-chain-transparency-garment-and-footwear-industry>.

The World Needs an International Anti-Corruption Court

Mark L. Wolf

Abstract: In War and Peace, Leo Tolstoy wrote that “the thoughts that have enormous consequences are always simple.”¹ This essay explains an ambitious idea with enormous consequences that is simple: an International Anti-Corruption Court is needed to diminish the devastating consequences of grand corruption, the abuse of public office for private gain by a nation’s leaders. Grand corruption depends on a culture of impunity in countries whose leaders will not permit the enforcement of existing criminal laws against their close colleagues and themselves. An International Anti-Corruption Court would provide a forum to enforce those laws, punish corrupt leaders, and deter and thus diminish grand corruption. The successful prosecution and imprisonment of corrupt leaders would create opportunities for the democratic process to produce successors dedicated to serving their people rather than to enriching themselves.

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As the contents of this volume of *Dædalus* demonstrate, there is a growing international understanding that more effective means are needed to combat corruption, particularly what is coming to be called “grand corruption” or “kleptocracy.” Grand corruption is the abuse of public office for private gain by a nation’s leaders. It flourishes in many countries because of a failure to enforce existing criminal statutes prohibiting bribery, money laundering, and the misappropriation of national resources. Impunity exists because corrupt leaders control the police, the prosecutors, and the courts.

In 2016, leaders from more than forty countries met in London for the Anti-Corruption Summit. They endorsed a Global Declaration Against Corruption, committing each represented nation to the proposition that “the corrupt should be pursued and punished.”² The Declaration emphasized the “centrality” of the United Nations Convention Against Corruption (UNCAC), in which 183 countries pledged to enact laws criminalizing corruption and to enforce

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them even against their nation's leaders.³ Implicitly recognizing that existing institutions and efforts have not been adequate, the participating governments committed themselves to "exploring innovative solutions" to combat corruption.⁴ An International Anti-Corruption Court (IACC) would be an invaluable innovation.

It is a fundamental premise of criminal law that the prospect of punishment will deter crime. Research has validated this premise, including with regard to violations of human rights.⁵ The absence of risk of punishment, particularly imprisonment, contributes greatly to the pervasiveness and persistence of grand corruption.

The United States provides a model for a new international approach to creating the crucial, credible threat that corrupt leaders will be punished for their crimes. Public corruption exists in the United States. Officials – most often state and local officials – sometimes abuse their public offices for personal gain. However, in contrast to many other nations, the United States has been serious about investigating, prosecuting, and punishing powerful, corrupt public officials.

As a federal judge, in 2011, I sentenced former Speaker of the Massachusetts House of Representatives Salvatore DiMasi to eight years in prison for demanding bribes in connection with computer contracts worth \$17 million. The state inspector general, in a public decision, invalidated the contracts because of flaws in the bidding process. A subsequent *Boston Globe* investigation revealed that the successful bidder had been paying the Speaker's law partner \$5,000 per month, most of which was flowing to the Speaker. Federal – not state – prosecutors and the Federal Bureau of Investigation then continued the investigation. They found hundreds of thousands of dollars had also been paid to a friend of the Speaker. When DiMasi was charged in fed-

eral court, the case was randomly assigned to me. A jury found DiMasi guilty and I decided the sentence. Mark L. Wolf

As the DiMasi case illustrates, the United States does not rely on elected state district attorneys to investigate and prosecute corrupt state and local officials because they are often part of the political establishment that must be challenged and, in any event, typically lack the necessary legal authority, expertise, and resources. In the United States, independent media often expose corruption. Federal investigators are authorized to conduct undercover operations and secretly record conversations, and are adept at unraveling complicated financial transactions. Federal prosecutors are capable of trying complex cases successfully before impartial judges and juries. As a result, public officials convicted of corruption regularly receive serious sentences, which have the potential to deter others and to create a political climate in which candidates dedicated to governing honestly are elected.

However, in countries in which grand corruption flourishes, leaders control the media and do not permit their own criminal activity to be exposed. In many countries, exemplified by Mexico, Malta, Slovakia, Turkey, and Russia, independent investigative journalists are often threatened, imprisoned, and even killed. There are no fair elections that would allow the replacement of corrupt leaders, in part because their political campaigns are frequently financed by the interests that bribe them. Because those leaders control prosecutors and judges, they are able to operate with impunity.

Therefore, an IACC is needed for the extraterritorial prosecution and punishment of corrupt leaders of countries that are unwilling or unable to enforce their own laws against powerful offenders. The international consequences of grand corruption justify the creation of an IACC, separate

from but similar to the International Criminal Court (ICC).

It is estimated that trillions of dollars are paid in bribes annually and that the cost of all forms of corruption is more than 5 percent of global GDP.⁶ Developing regions lose ten times more to corruption than they receive in foreign aid.⁷ Illicit outflows of funds that developing countries desperately need total more than \$1 trillion per year.⁸

The cost of corruption is not limited to poorer countries. For example, in 2011, the third-largest outflow of illicit capital in the world came from Russia. Bribery, theft, kickbacks, and corruption cost the country \$427 billion from 2000 to 2008.⁹ Russia's leaders evidently contribute a great deal to the illicit capital that leaves the country. In 2016, a massive leak of documents known as the Panama Papers revealed that close associates of President Vladimir Putin moved \$2 billion, in transactions involving as much as \$200 million at a time, through international banks and companies created to mask their true beneficial owners.¹⁰ Putin's closest friend, a cellist who had long claimed he was not wealthy, was revealed to have almost £19 million in a Swiss bank, as well as investments in numerous Russian and offshore entities, including a 3.9 percent share of a Russian bank with assets of almost \$11 billion.¹¹ In 2017, it was revealed that Russian Prime Minister Dimitri Medvedev had accumulated more than \$1 billion worth of property, including vast estates in Tuscany and Russia, and owned two yachts.¹²

The costs of grand corruption are not exclusively economic. Grand corruption also breeds constituents for terrorists. Many supporters of the Taliban in Afghanistan and of Boko Haram in Nigeria are not religious fanatics. Rather, they are angry people attracted to organizations that have positioned themselves as prime opponents

of their nation's corrupt leaders.¹³ At the same time, corruption – especially grand corruption – makes it difficult for governments to combat terrorism because funds intended for that purpose are regularly embezzled or misspent. For example, according to the former “anticorruption czar” of Kenya, John Githongo, corruption has “opened the door to al-Shabab” in that country because bribes were paid to high officials to obtain contracts for vital security equipment, which was substandard and delivered at inflated prices or, in some cases, not delivered at all.¹⁴

In addition, grand corruption is closely correlated with the worst abuses of human rights. As then–United Nations High Commissioner for Human Rights Navi Pillay explained in 2013:

Corruption kills. . . . The money stolen through corruption every year is enough to feed the world's hungry 80 times over. . . . Corruption denies them their right to food, and, in some cases, their right to life.¹⁵

Grand corruption also has other fatal consequences. In Sierra Leone, one-third of the funds allocated to combat Ebola in 2014 could not be accounted for; some of those funds, however, were eventually found in the bank accounts of health officials responsible for administering the relief effort.¹⁶ Angola claims the highest mortality rate in the world for children below age five, while Isobel DosSantos, the daughter of its president for thirty-eight years until 2017, is reportedly worth \$3 billion.¹⁷

Moreover, indignation at grand corruption is destabilizing many countries and in the process creating grave threats to international peace and security. People around the world, particularly young people, no longer accept grand corruption as an inevitable fact of life. The ostentatious corruption of President of Ukraine Viktor Yanukovich was a major cause of the 2014 Maidan protests that drove him out

of office and to Russia. The flagrant illicit wealth of Hosni Mubarak of Egypt and Ben Ali in Tunisia triggered uprisings in those countries.

The ousting of Yanukovich and the ensuing Russian invasion of Crimea badly damaged the United States and European Union's relationship with Russia, impairing their ability to cooperate on vital security matters, including in Syria and Iran. The removal of Mubarak cost the United States a valuable, though corrupt, partner in the Middle East. As these examples illustrate, grand corruption creates difficult dilemmas for the United States and its allies. Secretary of State John Kerry was therefore correct when he asserted in 2016 that "the quality of governance is no longer just a domestic concern."¹⁸

Grand corruption does not thrive because of a lack of laws. As indicated earlier, 183 countries are parties to UNCAC. Almost all of them have enacted the required statutes criminalizing bribery, money laundering, and misappropriation of national resources. Parties to the Convention also have an international legal obligation to enforce those laws against corrupt leaders. However, as explained earlier, many countries do not hold corrupt leaders accountable because those very leaders control every element of the administration of justice. Kleptocrats enjoy impunity because they are able to prevent the honest, effective investigation and prosecution of their colleagues, their friends, their families, and themselves.

Again, Russia is illustrative. In 2008 and 2010, respectively, the multinational corporations Siemens AG and Daimler AG admitted, in prosecutions in New York for violating the United States Foreign Corrupt Practices Act (FCPA), to paying millions of dollars in bribes to Russian officials, as well as to officials in many other countries.¹⁹ The FCPA authorizes the prosecu-

tion of companies and individuals that pay bribes, but not of the public officials who demand or receive them. In their plea bargains, Siemens and Daimler each agreed to cooperate in the prosecution of the Russian officials they had bribed.²⁰ The evidence, including the names of twelve officials bribed by Siemens, was turned over to the Russian government.²¹ Then-President Medvedev promised to pursue the cases, yet no Russian official has ever been prosecuted for taking a bribe from Siemens or Daimler.²²

Instead, in countries ruled by kleptocrats, those who expose corruption are often punished. Russian lawyer Sergei Magnitsky was probing the theft by Russian officials of companies worth \$230 million from his client, Hermitage Capital, when he was arrested for alleged tax fraud, tortured, and denied medical care in prison, where he eventually died.²³ Similarly, Alexei Navalny, a political opponent of Putin, has been repeatedly prosecuted after exposing corruption in Russia involving government-owned energy company Gazprom, VTB Bank, Russia's chief prosecutor, and Medvedev, among others.²⁴

Russia is not unique or, indeed, unusual in persecuting those who expose grand corruption. In 2016, Hisham Geneina, Egypt's "anticorruption czar," revealed that endemic graft had cost his country about \$76 billion.²⁵ As a result, he was removed from office and prosecuted for disturbing the peace.²⁶ In 2013, prosecutors in Turkey who developed corruption cases against members of then-Prime Minister Recep Erdoğan's cabinet were removed and prosecuted for allegedly attempting a coup.²⁷ A Turkish businessman, Reza Zarrab, who was cleared in Turkey of bribing some of those cabinet members, pled guilty in New York, in 2017, to doing just that.²⁸ A Turkish banker was convicted in the same case for conspiracy to violate U.S. sanctions on Iran, and several Turkish officials Zarrab

claims to have bribed are evading prosecution, while being protected by Erdoğan in Turkey.²⁹ One of the prosecution's witnesses in the New York case was a former Turkish police officer who had been jailed in Turkey in retaliation for leading its investigation of Zarrab and who eventually fled to the United States with evidence he had obtained.³⁰

International treaties, including UNCAC itself, require the good-faith enforcement of criminal laws enacted pursuant to the Convention against a nation's leaders. However, those laws have been widely ignored. UNCAC's monitoring mechanism is weak, and the international community has focused excessively on whether the statutes required by UNCAC have been enacted and insufficiently on whether they are actually enforced.³¹

I myself experienced a vivid example of this in St. Petersburg in 2014. I was on a panel with diplomats from the United Nations and the European Union who praised Russia because it had enacted the statutes required by UNCAC. Citing substantial evidence of continuing grand corruption, I questioned whether the "progress" being praised was real or rather, like the proverbial "Potemkin village," all façade and no substance. The positive reaction to my remarks by the many Russians in the audience confirmed that they were not fooled by the official charade that we had witnessed.

While criminal laws that could punish and deter corrupt leaders are not being enforced, there are other efforts being made to combat grand corruption. However, the fact that grand corruption continues to flourish demonstrates that the current means alone are inadequate and something new is needed.

The United States enacted the FCPA in the aftermath of Watergate, and the statute has been energetically enforced in the past decade. However, the FCPA only applies to

companies that do business in the United States. Forty countries in the Organisation for Economic Co-operation and Development (OECD) Convention Against Bribery have undertaken to enact counterparts to the FCPA, but those statutes are rarely enforced.³² Moreover, as explained earlier, the FCPA, and its counterparts as well, permit only the prosecution of individuals and organizations that pay bribes, but not the public officials who often demand them.³³

Another approach to attacking grand corruption is civil litigation to recover and repatriate illicitly obtained assets from the former rulers of many countries. However, asset recovery is legally complex, forensically difficult, and ponderously slow. For example, funds unlawfully obtained by former President Ferdinand Marcos were frozen in 1986 but not returned to the Philippine government until 2004.³⁴ Efforts to recover illicitly obtained assets from Marcos's wife are still ongoing.³⁵

In any event, even expedited asset recovery would not be effective in deterring high officials from engaging in criminal corruption. At best, only a fraction of looted assets and bribes are ever recovered. For example, in a highly publicized case, the United States alleged that Teodorin Obiang, son of the president and himself the second vice president of Equatorial Guinea, had corruptly received \$100 million and laundered it in the United States by, among other things, buying a mansion, sports cars, and Michael Jackson memorabilia. After several years, the Department of Justice settled the case for \$30 million and never recovered a coveted crystal studded glove worn by Jackson that Obiang was supposed to forfeit.³⁶

As the Obiang case indicates, corrupt leaders can correctly calculate that they are unlikely to be caught and, at worst, risk being forced to return only a fraction of what they have illegally acquired. This is not sufficient to alter their corrupt conduct.

The Obiang case also illustrates how the enormous wealth corruptly obtained by high officials is typically laundered through a series of complex financial transactions and invested abroad. Some of the loot is used to buy lavish properties in the names of shell companies or straw owners in appealing places such as London, Paris, New York City, and Palm Springs. The sources of corruptly obtained funds are difficult to trace, and the true beneficial owners of assets acquired with that money are difficult to identify.

The countries that participated in the 2016 Anti-Corruption Summit in London pledged to improve the transparency of beneficial ownership and the international community's capacity to cooperate in investigating the flow of the fruits of corruption.³⁷ These are worthy endeavors. However, it should be recognized that greater transparency of beneficial ownership and improved ability to follow the money are not ends in themselves. Rather, they are only means to discover evidence of criminal activity. There must be a forum in which evidence of corruption by a nation's leaders can be honestly and effectively presented to an impartial tribunal capable of imposing prison sentences on powerful people.

In 2002, the evils of genocide and other intolerable abuses of human rights led to the creation of the ICC. The comparable consequences of grand corruption now justify the creation of an IACC. As indicated earlier, the proposed IACC should be similar to but separate from the ICC. There are principled reasons for not diffusing the ICC's singular focus on genocide, crimes against humanity, and war crimes. In addition, the statute that created the ICC cannot be properly interpreted to give the ICC jurisdiction over cases of grand corruption. Reopening the statute in an effort to expand the court's jurisdiction could lead instead to the demise of the ICC.

Obtaining evidence for potential prosecutions in the IACC would be challenging. However, an International Anti-Corruption Coordination Centre was recently established by the United Kingdom, the United States, and several trusted allies to investigate allegations of grand corruption and to facilitate joint decisions concerning where cases should be prosecuted. As the examples of the Siemens and Daimler bribery of Russian officials illustrate, it would often be futile and, indeed, foolish to rely on the countries in which the crimes were committed to prosecute them. An IACC is essential to realizing the potential of improved international investigations.

In addition, after 9/11, the United States Treasury Department established an Office of Terrorism and Financial Intelligence, which has become expert in tracing sources of terrorist financing. In view of the national security implications of grand corruption, robust use of its resources to develop evidence for use in the IACC would be fully justified. It would also be appropriate to add grand corruption to the mandate of the Financial Action Task Force – an independent intergovernmental body that develops policies to protect global financial systems against money laundering, and the financing of terrorists and sale of weapons.

In any event, the IACC should employ elite prosecutors from around the world with the experience and expertise necessary to develop and present complex cases effectively. In addition, the Court should be led by able and impartial international judges.

Importantly, like the ICC, the IACC should operate on the principle of complementarity. National courts would have primary jurisdiction over crimes by corrupt leaders in their countries. The IACC could only exercise jurisdiction if a nation proved unwilling or unable to make good-faith efforts to investigate, prosecute, and punish its leaders and their accomplices for corruption. The IACC would therefore be a court of

last resort, to be relied upon only in cases in which national enforcement of existing domestic criminal laws against a country's leaders is not possible.

By operating on the principle of complementarity, the IACC would give countries a significant incentive to improve their capacity to enforce their criminal laws, and to punish and deter corruption, especially grand corruption. Study of abuses of human rights provides evidence "that pressure from the outside, including the exercise of extraterritorial jurisdiction by other states under universal . . . jurisdiction, inspires domestic trials in response."³⁸ The Spanish prosecution of former dictator Augusto Pinochet, his arrest in London, and his subsequent trial in Chile is a prominent example of this phenomenon. The IACC would have the potential to catalyze comparable national responses to grand corruption.

The IACC should have jurisdiction to prosecute any head of state or of government, anyone appointed by a head of state or government, and anyone who conspires with one of those officials, if they violate a statute required by UNCAC. The IACC would therefore not require the creation of any new legal obligations. Rather, it would only provide a venue for the enforcement of existing norms that are codified in the laws of virtually every country.

The IACC's jurisdiction should include cases concerning corrupt leaders of countries that join the Court but prove to be unwilling or unable to enforce their domestic anticorruption laws against them. The IACC should also have jurisdiction concerning leaders of countries that do not join the Court in certain circumstances. For example, a leader of any state who used the financial system of an IACC member to launder the proceeds of a bribe should be subject to prosecution in the IACC if the member state is unwilling or unable to prosecute. In addition, the United Nations Security Council should be authorized to

refer the leader of any country for prosecution in the IACC, as it can refer for prosecution in the ICC citizens of states that have not joined the court.

Since I first proposed the IACC in two articles published in 2014, the concept has been questioned and criticized, and also gained significant support.³⁹ A common criticism of the IACC is that it would violate the sanctity of national sovereignty.⁴⁰ However, any country that agreed to join the IACC would delegate to the court the authority to enforce its domestic laws if necessary. Therefore, prosecution of its leaders in the IACC would not be a violation of national sovereignty, but rather a vindication of the will of its people. In any event, as grand corruption has substantial international consequences, there is a compelling justification for an IACC to enforce a nation's laws against its corrupt leaders when they themselves are the obstacle to domestic enforcement.

It is sometimes said that creating another court comparable to the ICC, which costs about \$160 million a year, would be too expensive. However, corruption is estimated to cost trillions of dollars annually, and grand corruption contributes greatly to that cost. The IACC would reduce corruption and thus save many nations enormous sums of money. Moreover, a conviction in the IACC could result not only in a prison sentence, but in an order of restitution to the victimized country as well. Fines imposed by the IACC could be used to defray, if not cover, the costs of its operation. Therefore, an IACC would be cost-effective.

Some argue that the ICC is weak, unfair in its prosecutorial policies, and not a model worthy of emulation. Although 124 nations have joined the ICC, its jurisdiction is not universal. Major powers – including China, Russia, India, and the United States – have refused to join, largely immunizing themselves from prosecution in the ICC.

It is, however, premature to declare the ICC a failure. The federal courts in the United States were also weak at a similar stage in their development. In 1832, the Supreme Court issued an order that irritated President Andrew Jackson, who ignored it and famously (but probably apocryphally) is said to have responded, “[Chief Justice] John Marshall has made his decision, now let him enforce it.”⁴¹ However, by 1974, Richard Nixon knew that the American people and Congress would not tolerate a president who defied a Supreme Court order. Therefore, he turned over the tapes of conversations in the Oval Office concerning crimes and cover-ups, and resigned in disgrace instead.⁴²

It is true that major powers on the United Nations Security Council have at times blocked investigations of their allies, such as China’s protection of North Korea. It is also true that the ICC has achieved only five convictions, and all have been of Africans. However, the ICC has focused on Africa for legitimate reasons. Thirty-three African states joined the Court – the most from any region; crimes against humanity have occurred repeatedly in Africa since the ICC was established; and most of the ICC investigations in Africa were opened at the request of the African governments themselves.⁴³

In addition, the ICC has been broadening its focus. In 2017, it conducted ten preliminary examinations, only four of which involved African countries. Ukraine, Colombia, Iraq, and Afghanistan are among the nations still being investigated.⁴⁴ The preliminary examination of ICC member Afghanistan could actually generate prosecutions of United States and British nationals if there is sufficient evidence that they committed war crimes in Afghanistan, and their governments are shown to have been unwilling to conduct genuine investigations and make good-faith decisions concerning whether to prosecute.

Some objections to the ICC actually indicate that the Court is developing credibility and having an impact. President Rodrigo Duterte of the Philippines objected to the ICC after a warning that his country might be investigated for the extrajudicial killings of drug dealers and addicts. Similarly, Russia denounced the ICC after the United States and the United Kingdom urged the court to investigate Russian bombings in Syria.⁴⁵

Perhaps one of the most significant arguments in favor of the ICC is that there is increasing evidence that prosecutions of human rights abuses in that court, as well as in domestic courts, are deterring violations of human rights.⁴⁶ As explained earlier, the principle of complementarity provides an incentive to states to improve their own institutions and efforts. ICC investigations have already catalyzed reforms in the Democratic Republic of the Congo, Sudan, Guinea, Georgia, and Colombia.⁴⁷ In addition, there is evidence that both the former president of Colombia and the Revolutionary Armed Forces of Colombia (FARC) rebels factored the possibility of ICC prosecution into their negotiations to end a fifty-year civil war.⁴⁸ Such examples have prompted some scholars to conclude that

ICC investigations, indictments and convictions or those triggered by complementarity are likely to encourage actual or potential perpetrators to reassess the risks of punishment – *relative to the status quo*, which is often impunity – and to moderate their behavior.⁴⁹

The deterrent effect of an International Anti-Corruption Court on grand corruption should be even greater than the ICC’s impact on violations of human rights. War crimes and related human rights abuses typically occur during armed conflict, when perpetrators may view the ends as justifying the means. In contrast, grand corruption involves discretionary crimes of calculation. When there is no risk of sanction

because the official controls all power to prosecute and punish, there is nothing to inhibit an avaricious leader from enriching himself corruptly. However, when the credible threat of extraterritorial prosecution and imprisonment is established, the calculation – and the conduct – should change.

Finally, the most common criticism of the proposed IACC is that it represents an impossible ideal. Some argue that if China, Russia, India, and the United States refused to join the ICC, corrupt leaders of other countries are even less likely to allow their nations to join an IACC in which they could be prosecuted. However, submitting to the jurisdiction of the IACC could be made a requirement of being a party to UNCAC and a member of the World Trade Organization. It could also be made a prerequisite for receiving bilateral foreign aid and loans from the World Bank and other development organizations.

Trade agreements are another means of promoting membership in the IACC. For example, the recent Trans-Pacific Partnership (TPP) has the “strongest anti-corruption and transparency standards of any trade agreement,” according to the Office of the U.S. Trade Representative.⁵⁰ Among other conditions, the TPP requires signatories to become parties to UNCAC, and to enact and enforce anticorruption laws.⁵¹ It also creates a mechanism to sanction violations of those requirements.⁵² Unfortunately, missing from the TPP sanctions is accountability for failure to enforce the TPP’s required anticorruption laws. However, joining the IACC could be a condition for becoming party to major trade agreements such as the TPP.

There are several models for a process to create the IACC. One is the ICC, which was founded in 2002 as a result of efforts that began after World War II. The victorious allies created courts to try Germans and Japanese for alleged war crimes. Those courts

were intended to establish the principle of individual accountability under the law, and to deter future wars and war crimes. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide declared genocide to be a crime. However, for fifty years there was no forum for the prosecution of individuals who committed genocide.

About twenty-five years ago, this deficiency became obvious and urgent. In the wake of atrocities in the former Yugoslavia and Rwanda, the United Nations Security Council established ad hoc tribunals to try perpetrators of genocide. A coalition of 2,500 civil-society organizations from 150 countries then led a successful campaign to create the ICC.⁵³ In 1998, a conference was convened in Rome to explore the creation of a permanent international criminal court. A treaty was endorsed by 120 countries. The required sixty countries ratified the treaty much sooner than expected and, only four years later, the ICC was established.⁵⁴

The 1997 Mine Ban Treaty provides another model for how to establish the IACC. This treaty emerged from the International Campaign to Ban Landmines (ICBL), which was launched by six nongovernmental organizations (NGOs) in 1992. The NGOs partnered with a core group of countries, including Canada, Norway, Austria, and South Africa, to conduct the campaign. By 1997, a treaty had been signed by 122 nations, becoming binding law with unprecedented speed.⁵⁵

As the leader of the ICBL, Nobel Peace Prize recipient Jody Williams, explained:

[I]t is possible for NGOs to put an issue . . . on the international agenda, [and] provoke urgent actions by governments and others. . . . It is [also] possible to work outside of traditional diplomatic forums, practices, and methods and still achieve success multi-laterally.⁵⁶

Williams’s view has been validated by the International Campaign to Abolish Nu-

clear Weapons (ICAN). ICAN was formed in Australia in 2007 to work for the adoption of a convention to eliminate nuclear weapons after decades of unsuccessful efforts to regulate them. Emulating the ICBL, ICAN involved 468 organizations in 101 countries, led by a few medium-sized nations, including Austria and Canada. In 2017, a Treaty on the Prohibition of Nuclear Weapons was adopted at the United Nations by a vote of 122 to 1. While the treaty is not supported by any of the states that now have nuclear weapons, it reflects a significant evolution of international norms and is a meaningful milestone. Although viewed by many in 2007 as a quixotic quest, ICAN was awarded the Nobel Peace Prize in 2017.⁵⁷

The IACC is still only a concept, and does not yet constitute an organized campaign. However, it is a concept that many people around the world find clear and compelling. They now know that grand corruption is extremely expensive, creates con-

stituents for terrorists, is closely correlated with the worst abuses of human rights, and is destabilizing many countries and the world. They understand that something new is needed to hold kleptocrats accountable for their crimes.

Therefore, conditions comparable to those that led to the creation of the ICC are emerging for the IACC. The proposed Court is supported by: prominent officials, including the United Nations High Commissioner for Human Rights and Nobel Peace Prize recipient President Juan Manuel Santos, who made Colombia the first country to endorse the IACC; leading NGOs, such as Transparency International, Global Witness, and Human Rights Watch; and courageous young people, including leaders of the Maidan uprising in Ukraine.

In short, there is a growing legion of advocates for a simple idea with enormous consequences: the IACC is urgently needed to end impunity for corrupt leaders, and to deter and diminish grand corruption.

ENDNOTES

¹ Leo Tolstoy, *War and Peace* (Boston: Colonial Press, 1904), 426.

² United Kingdom Office of the Prime Minister, "Global Declaration Against Corruption," May 12, 2016, <https://www.gov.uk/government/publications/global-declaration-against-corruption/global-declaration-against-corruption>.

³ United Kingdom Office of the Prime Minister, "Anti-corruption Summit London 2016: Communique," May 12, 2016.

⁴ *Ibid.*, para. 3.

⁵ Valerie Wright, "Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment," The Sentencing Project, November 2010, 4–5, <http://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>; citing Andrew von Hirsch, Anthony E. Bottoms, Elizabeth Burney, and P. O. Wikstrom, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (Oxford: Hart Publishing, 1999). See also Hyeran Jo and Beth A. Simmons, "Can the International Criminal Court Deter Atrocity?" University of Pennsylvania Law School Faculty Scholarship Paper 1686 (Philadelphia: University of Pennsylvania Law School, 2016), 9, http://scholarship.law.upenn.edu/faculty_scholarship/1686/.

⁶ International Chamber of Commerce, Transparency International, World Economic Forum, and United Nations Global Impact, *Clean Business is Good Business: The Business Case Against Corruption* (Cologny, Switzerland: World Economic Forum, 2008), 2, https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/clean_business_is_good_business.pdf; and The World Bank, "The Costs of Corruption," April 8, 2004, <http://go.worldbank.org/LJA29GHA80>.

- ⁷ Dev Kar and Sarah Freitas, *Illicit Financial Flows from Developing Countries over the Decade Ending 2009*, (Washington, D.C.: Global Financial Integrity, December 15, 2011), <http://www.gfintegrity.org/report/illicit-financial-flows-from-the-developing-world-over-the-decade-ending-2009/>.
- ⁸ Dev Kar and Joseph Spanjers, *Illicit Financial Flows from Developing Countries: 2004 – 2013* (Washington, D.C.: Global Financial Integrity, December 2015), vii, <http://www.gfintegrity.org/report/illicit-financial-flows-from-developing-countries-2004-2013/>.
- ⁹ Kar and Freitas, *Illicit Financial Flows from Developing Countries over the Decade Ending 2009*, 12.
- ¹⁰ International Consortium of Journalists, “Grant Leak of Offshore Financial Record Exposes Global Array of Crime and Corruption,” April 3, 2016, <https://www.icij.org/investigations/panama-papers/20160403-panama-papers-global-overview/>.
- ¹¹ Luke Harding, “Sergei Roldugin, the Cellist Who Holds the Key to Tracing Putin’s Hidden Fortune,” *The New York Times*, April 3, 2016, <https://www.theguardian.com/news/2016/apr/03/sergei-roldugin-the-celist-who-holds-the-key-to-tracing-putins-hidden-fortune>.
- ¹² Editorial Board, “Online Dissidents Expose the Russian Prime Minister’s Material Empire,” *The Washington Post*, March 9, 2017.
- ¹³ Sarah Chayes, “Nigeria’s In-Your-Face Corruption May be Fueling Boko Haram Terrorism,” *Los Angeles Times*, January 30, 2015, <http://www.latimes.com/opinion/op-ed/la-oe-chayes-nigeria-corruption-election-20150201-story.html>; and John Githongo, “Corruption Has Opened Door to Al-Shabaab in Kenya,” *The Guardian*, March 19, 2015, <https://www.theguardian.com/world/2015/mar/19/corruption-has-opened-door-to-al-shabaab-in-kenya>.
- ¹⁴ Githongo, “Corruption Has Opened Door to Al-Shabaab in Kenya.”
- ¹⁵ Navi Pillay, “The Negative Impact of Corruption on Human Rights,” Opening Statement to the Office of the United Nations High Commissioner on Human Rights, March 13, 2013, <http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13131&LangID=e>.
- ¹⁶ Lisa O’Carroll, “Sierra Leone Investigates Alleged Misuse of Emergency Ebola Funds,” *The Guardian*, February 17, 2015, <https://www.theguardian.com/world/2015/feb/17/sierra-leone-investigates-alleged-misuse-of-emergency-ebola-funds>.
- ¹⁷ Nicholas Kristof, “The Deadliest Country for Kids,” *The New York Times*, March 19, 2015, http://www.nytimes.com/2015/03/19/opinion/nicholas-kristof-deadliest-country-for-kids.html?emc=eta1&_r=0; and Nicholas Kristof, “Two Women, Opposite Fortunes,” *The New York Times*, March 21, 2015, http://www.nytimes.com/2015/03/22/opinion/sunday/nicholas-kristof-two-women-opposite-fortunes.html?emc=eta1&_r=0.
- ¹⁸ John Kerry, “Remarks at the World Economic Forum,” U.S. Department of State, January 22, 2016, <https://2009-2017.state.gov/secretary/remarks/2016/01/251663.htm>.
- ¹⁹ United States Department of Justice, “Daimler AG and Three Subsidiaries Resolve Foreign Corrupt Practices Act Investigation and Agree to Pay \$93.6 Million in Criminal Penalties,” April 1, 2010, <http://www.justice.gov/opa/pr/2010/April/10-crm-360.html>; and *United States v. Daimler AG*, No. 1:10-cr-00063-RJL, United States District Court for the District of Columbia (2010), para. 19.
- ²⁰ United States Department of Justice, “Daimler AG and Three Subsidiaries Resolve Foreign Corrupt Practices Act Investigation and Agree to Pay \$93.6 Million in Criminal Penalties.”
- ²¹ “This is How We Roll: Russians Learn How to Pronounce FCPA,” *Russia Monitor*, May 4, 2010, <http://therussiamonitor.com/2010/05/04/this-is-how-we-roll-russians-learn-how-to-pronounce-FCPA/>.
- ²² Ibid.
- ²³ Ellen Barry, “Lawyer Held in Tax Case in Russia Dies in Jail,” *The New York Times*, November 18, 2009, <http://www.nytimes.com/2009/11/18/world/europe/18russia.html>.

- ²⁴ Julia Ioffe, “Net Impact : One Man’s Cyber Crusade Against Russian Corruption,” *The New Yorker*, April 4, 2011, <https://www.newyorker.com/magazine/2011/04/04/net-impact>; Nataliya Vasilyeva, “Activist Presses Russian Corporations for Openness,” *The Boston Globe*, April 1, 2010, http://www.boston.com/business/articles/2010/04/01/activist_presses_russian_corporations_for_openness/; and Andrew E. Kramer, “Putin Aide Said to Hold Secret Assets in Europe,” *The New York Times*, July 27, 2012, <http://www.nytimes.com/2012/07/27/world/europe/in-russia-aleksei-navalnyaccuses-chief-investigator-of-secret-european-holdings.html>.
- ²⁵ Declan Walsh, “Graft Fighter in Egypt Finds Himself a Defendant in Court,” *The New York Times*, June 6, 2016, http://www.nytimes.com/2016/06/07/world/middleeast/egypt-hishamgeneina-trial.html?_r=0.
- ²⁶ *Ibid.*
- ²⁷ “Golden Squeal : Did Officials Help Evade Sanctions?” *The Economist*, June 11, 2016, <http://www.economist.com/news/europe/21700422-did-officialshelp-evade-sanctions-golden-squeal>.
- ²⁸ Benjamin Weiser, “Reza Zarrab, Turk at Center of Iran Sanctions Case, is Helping Prosecution,” *The New York Times*, November 28, 2017, <https://www.nytimes.com/2017/11/28/world/europe/reza-zarrab-turkey-iran.html>.
- ²⁹ Brendan Pierson, “U.S. Jury Finds Turkish Banker Guilty of Helping Iran Dodge Sanctions,” Reuters, January 3, 2018, <https://www.reuters.com/article/us-usa-turkey-zarrab/u-s-jury-finds-turkish-banker-guilty-of-helping-iran-dodge-sanctions-idUSKBN1ES1D0>; and Hulya Polat, “Turkish Officials Lash Out Against Bribery Claims in New York Trial,” VOA News, November 30, 2017, <https://www.voanews.com/a/turkey-officials-lash-out-against-bribery-claims-in-new-york-trial/4144237.html>.
- ³⁰ Pierson, “U.S. Jury Finds Turkish Banker Guilty of Helping Iran Dodge Sanctions.”
- ³¹ Transparency International, *UN Convention against Corruption : Progress Report 2013* (Berlin : Transparency International, 2013), 15 – 16, http://www.transparency.org/whatwedo/publication/un_convention_against_corruption_progress_report_2013.
- ³² Transparency International, *Exporting Corruption – Progress Report 2015 : Assessing Enforcement of the OECD Convention on Combating Foreign Bribery* (Berlin : Transparency International, 2015), 2 – 7, https://issuu.com/transparencyinternational/docs/2015_exportingcorruption_oecdprogre.
- ³³ David Leigh and Rob Evans, “BAE : Secret Papers Reveal Threats from Saudi Prince,” *The Guardian*, February 15, 2008. BAE was successfully prosecuted in the United States on charges related to the FCPA and agreed to pay \$450 million in penalties to the United States and Britain.
- ³⁴ “Making a Hash of Finding the Cash,” *The Economist*, May 11, 2013, <http://www.economist.com/news/international/21577368-why-have-arab-countries-recovered-so-little-money-thought-have-been-nabbed>.
- ³⁵ The World Bank and UNDOC Stolen Asset Recovery Initiative, Corruption Case Database, <https://star.worldbank.org/corruption-cases/home>.
- ³⁶ Arvind Ganesan, oral testimony to Tom Lantos Human Rights Commission Briefing : An International Anti-Corruption Court (IACC) to Mitigate Grand Corruption and Human Rights Abuses, November 13, 2014, <https://www.hrw.org/news/2014/11/13/tom-lantos-human-rights-commission-briefing-international-anti-corruption-court-iacc>.
- ³⁷ Michael S. Schmidt and Steven Lee Myers, “Panama Law Firm’s Leaked Files Detail Offshore Accounts Tied to World Leaders,” *The New York Times*, April 3, 2016.
- ³⁸ Geoff Dancy and Florencia Montal, “Unintended Positive Complementarity : Why International Criminal Court Investigations Increase Domestic Human Rights Prosecutions,” paper presented at the American Society of International Law Research Forum, Chicago, November 6 – 8, 2014, and at The Impact and Effectiveness of the International Criminal Court Conference, The Hague Institute of Global Justice, the Netherlands, December 11 – 12, 2014, 8.
- ³⁹ Mark L. Wolf, “The Case for an International Anti-Corruption Court” (Washington, D.C. : The Brookings Institution, 2014), <https://www.brookings.edu/research/the-case-for-an-international>

- anti-corruption-court/; and Mark L. Wolf, "Ending Global Corruption," *The Washington Post*, July 23, 2014.
- ⁴⁰ Brett D. Schaefer, Steven Groves, and James M. Roberts, "Why the U.S. Should Oppose the Creation of an International Anti-Corruption Court," The Heritage Foundation, October 1, 2014, <http://www.heritage.org/global-politics/report/why-the-us-should-oppose-the-creation-international-anti-corruption-court>.
- ⁴¹ *Marbury v. Madison*, 5 U.S. 137 (1803); and Jean Edward Smith, *John Marshall: Definer of a Nation* (New York: Henry Holt and Co., 1996), 15.
- ⁴² *United States v. Nixon*, 418 U.S. 683 (1974).
- ⁴³ Norimitsu Onishi, "South Africa Reverses Withdrawal from International Criminal Court," *The New York Times*, March 8, 2017, https://www.nytimes.com/2017/03/08/world/africa/south-africa-icc-withdrawal.html?_r=0.
- ⁴⁴ Jessica Hatcher-Moore, "Is the World's Highest Court Fit for Purpose?" *The Guardian*, April 5, 2017, <https://www.theguardian.com/global-development-professionals-network/2017/apr/05/international-criminal-court-fit-purpose>.
- ⁴⁵ *Ibid.*
- ⁴⁶ Kathryn Sikkink, "Global Deterrence – and Human Rights Prosecutions," in *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (New York: W. W. Norton & Company 2011), 162 – 188.
- ⁴⁷ Hyeran Jo and Beth A. Simmons, "Can the International Criminal Court Deter Atrocity?" Faculty Scholarship Paper 1686 (Philadelphia: University of Pennsylvania Law School, 2016), 11, http://scholarship.law.upenn.edu/faculty_scholarship/1686/.
- ⁴⁸ *Ibid.*, 12.
- ⁴⁹ *Ibid.*
- ⁵⁰ Office of the United States Trade Representative, "Trans-Pacific Partnership: Strengthening Good Governance Fact Sheet," <https://ustr.gov/sites/default/files/TPP-Strengthening-Good-Governance-Fact-Sheet.pdf>.
- ⁵¹ Office of the United States Trade Representative, Trans-Pacific Partnership, chap. 26, art. 26.6, 26.7, and 26.9, <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>.
- ⁵² *Ibid.*, art. 26.12, 28.
- ⁵³ Coalition for the International Criminal Court, "About the Coalition," <http://www.coalitionfortheicc.org/about-coalition-o>.
- ⁵⁴ Daniel Donovan, "International Criminal Court: Successes and Failures," *International Policy Digest*, March 23, 2012, <https://intpolicydigest.org/2012/03/23/international-criminal-court-successes-and-failures/>.
- ⁵⁵ Stephen Goose and Jody Williams, "The Campaign to Ban Antipersonnel Landmines: Potential Lessons," in *Landmines and Human Security: International Politics and War's Hidden Legacy*, ed. Richard A. Matthew, Bryan McDonald, and Kenneth R. Rutherford (Albany: State University of New York Press, 2004).
- ⁵⁶ *Ibid.*, 241.
- ⁵⁷ International Campaign to Abolish Nuclear Weapons, "Nobel Peace Prize 2017," October 6, 2017, <http://www.icanw.org/action/nobel-peace-prize-2017-2/>.

Preventing Systemic Corruption in Brazil

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Abstract: This essay describes the Brazilian anticorruption operation known as Operação Lava Jato (“Operation Car Wash”), its findings, and its results based on cases tried up to March 2018. Told from the perspective of the federal judge of the Thirteenth Federal Criminal Court of Curitiba, in whose court most of the Lava Jato cases have been prosecuted, this massive criminal case offers lessons that may be useful to other anticorruption efforts. Preventing systemic corruption is a challenge, but it is a necessary step for the improvement of democracy.

What began as an investigation of an isolated instance of corruption within a Brazilian oil company expanded into an immense anticorruption operation known as *Operação Lava Jato* (“Operation Car Wash”). This investigative operation has penetrated deep within Brazil’s government and corporate elite to root out systemic state-sanctioned corruption. Its criminal cases also appear to be instating new legal norms for how corruption cases are handled in Brazil, giving citizens hope that Lava Jato’s impact will be felt far into the future. How Brazilian prosecutors and courts dealt with this immense anticorruption effort may provide important lessons for the battle against systemic corruption both in Brazil and elsewhere. This essay provides a comprehensive account of Lava Jato and its significance for Brazil going forward.

It is important to note from the beginning that Lava Jato is not a single criminal case but several, in which federal prosecutors have decided to pursue separate charges against many defendants. So far, more than sixty criminal cases have been brought against about 289 defendants in Brazilian federal courts.¹ About thirty-three of those cases have already been tried, resulting in convictions of bribery and money laundering for about 157 people. The reflections I offer in

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this essay are based on the cases that have been tried at the time of writing. I do not analyze or comment upon cases that have yet to be tried or that are awaiting sentences.

At the core of the Lava Jato cases are crimes connected to contracts with *Petroleo Brasileiro S/A (Petrobras)*. Petrobras is a semipublic, majority state-owned Brazilian company engaged primarily in oil and gas exploration, refining, and transportation. It is Brazil's largest company and one of the world's major oil and gas companies. It was founded in 1953 to explore Brazilian oil and gas fields with the goal of transforming Brazil into a self-sufficient producer of petroleum products.

As the cases already tried reveal, multiple bribes were paid in contracts between Petrobras and its suppliers; these bribes were used for the criminal enrichment of Petrobras executives and politicians, as well as to finance electoral campaigns. Before describing what prompted the investigation and how it unfolded, however, it is important to provide some context, including some details concerning Brazilian criminal justice.²

White-collar crimes like bribery and money laundering represent a challenge for law-enforcement agencies all over the world. They are often difficult to discover, to prove, and to punish. Such crimes are usually committed in secret, by powerful people, and with some degree of sophistication. And police, prosecutors, and the judiciary are often not well prepared for the investigation, prosecution, and judgment of these highly sophisticated crimes. Sometimes powerful defendants also exploit the gaps in the criminal law and of the judicial system to prevent effective accountability.

Some countries are more successful than others in enforcing the law against these kinds of crimes. Brazil, at least prior to Lava Jato, did not have a strong tradition of enforcing the law against crimes committed

by powerful politicians or businessmen. There are likely two main reasons for this.

The first is the slow pace at which the judicial process progresses in Brazil. Until recently, the enforcement of a criminal conviction was possible only after the case reached a final decision that could no longer be appealed. Enforcement of a criminal sentence depended on the judgment of the last appeal. Only then would the case be seen as *transitado em julgado*, or tried with no possibility of appeal. Years might pass between an initial judgment and the final sentence.

This rule emerged from a 2008 Supreme Court decision regarding a controversial interpretation of the presumption of innocence in Brazil's Constitution.³ Theoretically, enforcing this rule would not be a problem, but because of a generous system of appeals and the heavy caseload of Brazilian Superior Courts, powerful defendants used it to manipulate the judicial process, initiating endless appeal proceedings to prevent their cases from ever reaching a conclusion and effectively avoiding accountability.⁴

Until recently, it was very common for no final decision to ever be reached in complex criminal cases involving powerful individuals. Even cases with strong evidence of criminal behavior or cases involving very serious crimes never reach conclusions in Brazil. As a rule, wealthy and well-connected defendants in these cases never go to prison, despite compelling evidence of their guilt. However, this rule changed recently, as I will explain below.

The second main reason for criminal impunity among the powerful is the fact that the Supreme Court of Brazil has original jurisdiction over criminal charges against high federal official authorities, including the president, vice president, cabinet ministers, and members of the federal Congress. This is ensured by a controversial provision in Brazilian law stating that high politicians and authorities in criminal cases must have *foro privilegiado* ("privileged

forum”). So if, for example, a criminal investigation in a lower court produces evidence of criminal conduct by a federal congressman, the judge must immediately send the case to the Supreme Court. However, as mentioned, the Brazilian Supreme Court’s heavy caseload (its docket contained over fifty-five thousand cases in the last year alone) makes it very difficult to adjudicate criminal charges in a timely fashion. Consequently, cases involving crimes committed by powerful defendants sometimes literally never end. In practice, the special jurisdiction of the Supreme Court over criminal charges involving high-ranking official authorities worked as a shield against accountability.

These are two primary structural reasons (though there are others) why law enforcement is so weak on crimes committed by powerful defendants in Brazil. The weak enforcement of the law against white-collar crimes is one of the likely reasons for the development of systemic corruption in Brazil. However, legal procedures have recently changed the system for the better, at least in part. Lava Jato is not alone, but rather is part of this broader effort.

Criminal Case 470, decided by the Brazilian Supreme Court in 2012, began to change the norm of weak enforcement of the law against white-collar crimes in Brazil.

In this case, also known as *Mensalão* (“monthly,” because the case involved monthly bribes to some congressmen), the Supreme Court convicted several highly placed politicians, including a powerful former minister of the federal government and several congressmen, political leaders, political party operatives, and bank directors, of bribery and money laundering.⁵ In this case, it was proven that the chief minister of the Brazilian federal government between 2002 and 2005 organized a bribery scheme to obtain political support from congressmen for federal legislative initiatives.

The charges were presented before the Supreme Court in 2006, though it took until 2012 for the case to go to trial. There was a great deal of skepticism about the Supreme Court’s judgment, especially about whether it would try the case in a reasonable time and convict the defendants. But in the end, the Supreme Court issued a guilty verdict for most of the defendants, including several powerful politicians. Of course, Brazilian courts had produced some convictions for white-collar criminals in the past. But these were the exception, not the rule, and none of them was as important or relevant as the decision in Criminal Case 470. These verdicts marked a clear break with the norm of weak enforcement of the law against white-collar or financial crimes. A Supreme Court decision has great influence across the whole judicial system. Beyond the importance of the criminal cases’ direct consequences, they worked as an example for all Brazilian law enforcement agencies and judges, showing that the shield against effective accountability for powerful defendants could be broken.

Two years after the judgment in Criminal Case 470, Operação Lava Jato began. As usually happens with criminal investigations, Lava Jato started small. The federal police opened an investigation targeting four individuals involved in what seemed at the time to be a money-laundering scheme involving black-market money exchanges. One of these individuals, professional money launderer Alberto Youssef, was connected to a former director of Petrobras, Paulo Roberto Costa. The investigation revealed that Youssef had bought a luxury car for Costa, concealing the origin of the resources used.

This evidence led the federal police, working with judicial search-and-seizure warrants, to raid the offices and houses of Youssef and Costa in March 2014. During this process, Costa tried to destroy and hide

paper evidence and consequently was placed into pretrial detention. Youssef was also arrested on a pretrial detention order due to his status as a recidivist career criminal.

Looking at the banking records of Youssef's front companies, police and prosecutors discovered that his accounts had received millions of reais in credits from some of the biggest Brazilian construction companies, which also happened to be some of Petrobras's major suppliers. In another line of the investigation, it was discovered with the assistance of Swiss authorities that Costa had hidden millions of dollars in offshore accounts. Facing long prison terms, Alberto Youssef and Paulo Costa agreed in the second half of 2014 to conclude plea agreements with the prosecutors.

Youssef and Costa revealed that, as a rule, every contract Petrobras signed with the major Brazilian construction companies included kickbacks of 1 or 2 percent of the total value of the contract to the Petrobras officials who approved it. Youssef's role was to organize the money laundering scheme. Costa received a share of the bribes to work for the interests of the construction companies. Another share of the money went to politicians, including federal legislators of the Progressive Party (*Partido Progressista*), which was part of the ruling coalition and was in practice responsible for the nomination of Costa for his position at Petrobras.

Youssef and Costa testified that other Petrobras officials had received bribes and had worked with intermediaries and politicians from other parties in the governing coalition, such as the Workers' Party (*Partido dos Trabalhadores*) and the Party of the Brazilian Democratic Movement (*Partido do Movimento Democrático Brasileiro*). They also revealed that the Brazilian construction companies who paid the bribes were fixing Petrobras's bidding-process outcomes. Petrobras's major suppliers decided in advance which among them would

win each bidding process, and the chosen company could then offer a price proposition without real competition. They called themselves "The Club."

The investigations continued to produce new evidence based in part on plea agreements with other cooperating criminals. Of course, everything a cooperating criminal says has to be supported by additional evidence. For this reason, many investigations are still ongoing. But it has been possible in some cases thus far to obtain evidence that corroborates information revealed by cooperating criminals. There have been about twenty-eight criminal convictions and sentences specifically related to bribery in Petrobras contracts as a result of the Lava Jato cases tried up to March 2018. Convictions reached top executives of the biggest Brazilian construction companies acting as corruptors; top executives of Petrobras acting as facilitators and beneficiaries of bribes or kickbacks; and intermediaries between these two groups.

So far, four former directors of Petrobras have been convicted and sentenced to prison terms. Two of them decided, after serving part of their prison sentences, to cooperate with authorities. The police and prosecutors discovered that all four had millions of dollars or euros in bribes hidden in offshore accounts in countries such as Switzerland, Monaco, and Luxembourg. A Petrobras CEO was also convicted for taking bribes and money laundering.

At least six trials ended in convictions for former federal legislators who had received bribes in the Petrobras scandal. In four other cases, the Court found that money from bribes had been directed to finance illicitly a political party. Two of the former lawmakers convicted in the Lava Jato cases had also been involved in Criminal Case 470 (*Mensalão*). Amazingly, they continued to accept illegal payments from Petrobras even as the *Mensalão* trial was under way in the Brazilian Supreme Court.

These behaviors, which may appear absurd, are indicative of the impunity many corrupt officials enjoyed. In another example, in 2014, Congress created a special investigation commission for the Petrobras scandal. A senator was nominated as vice president of the commission. Instead of doing the investigation, he took the opportunity to request bribes from top executives of the biggest construction firms then under investigation so that they might avoid scrutiny. For this, the senator was eventually convicted of taking bribes himself.

Even a former Speaker of the House of Representatives was implicated in the scandal and was convicted. Again with the assistance of Swiss authorities, it was discovered that he had received about \$1.5 million in bribes, which were deposited in offshore accounts in a Swiss Bank. A former governor of the state of Rio de Janeiro, a former secretary of finance of the federal government, and even a former president of Brazil were also convicted for receiving a share of bribes in Petrobras's contracts.⁶ So far, dozens of executives from eleven of Brazil's largest construction companies have been convicted as bribe givers.

To illustrate the magnitude of these corrupt practices, a manager at Petrobras, after reaching a plea agreement with the authorities, agreed to return nearly \$97 million in bribes that he had received from Petrobras contracts and kept in secret bank accounts abroad. In the beginning of the investigation, Petrobras assumed a posture of general denial, refusing to admit any problem of governance publicly. As the investigation developed, however, the company gradually began to admit that crimes were committed, culminating in an official recognition in Petrobras's 2015 annual report to shareholders of losses from corruption of nearly 6 billion reais (about \$1.9 billion).

It took time, but some of the construction companies involved in the scheme also began to admit responsibility. Three

of the largest companies – Camargo Correa, Andrade Gutierrez, and Odebrecht – reached leniency deals with the prosecutors. In exchange for lighter punishments, they agreed to reveal illicit acts, abandon criminal practices, implement efficient systems of compliance, and compensate public coffers by returning billions of reais. One of them also revealed that it paid bribes for public employees abroad, in countries like Peru, Argentina, and Mexico, among others.

The cases already tried reveal that the payment of bribes on Petrobras's contracts was not an exception but, rather, the rule. Some of the cooperating criminals used that very word, describing the crimes they committed as simply “a rule of the game in contracts of the public sector.” Some alleged that this illicit practice went beyond Petrobras and was used by other state-owned companies and in other branches of the federal government.

Investigations are ongoing not only in the Federal Criminal Court of Curitiba, where the investigation started, but in other Brazilian federal courts that were assigned responsibility for trying certain Lava Jato cases. Because of *foro privilegiado*, dozens of highly placed politicians, especially congressmen, are being investigated by the chief federal prosecutor before the Supreme Court. In spite of the Court's heavy caseload, some of these high-profile defendants have been charged already.

The cases already sentenced suggest that an environment of systemic corruption was uncovered by the investigation. The payment of bribes was taken for granted in Petrobras's contracts; participants knew even before signing contracts that bribes would be paid, just like the construction companies knew in advance whose “turn” it was to win the contract, irrespective of the formal bidding process. They also knew that the bribes would be shared between

Petrobras executives and the federal politicians who gave them political support. There were even fixed rules to calculate the amount of the bribes: generally 1 or 2 percent of the total value of the contract.

Corruption, as an isolated crime, exists all around the world. But systemic corruption – the payment of bribes as a rule of the game – is not as common, and represents a severe degeneration in the functioning of the public and private spheres, especially in democratic nations.⁷ The costs of systemic corruption are enormous. First, the cost of the bribes is usually added by the offending company to their contracts with state-owned companies or with the government, affecting public budgets. If the payment of such bribes is not an isolated practice but a general rule, the management of public resources is severely affected. Moreover, the need to generate funds for bribes in systemic corruption schemes can affect investment decisions by public and private entities.

Some of Petrobras's bad investments may not be simply explained as a result of a bad judgment or unlucky bet, but instead as a deliberate choice by the corrupt directors of Brazil's largest enterprise to generate bribes rather than to make the best decision from an economic point of view. One example is the construction of the new Abreu e Lima refinery.⁸ Initially, Petrobras estimated the cost of the project at \$2.4 billion. However, by 2015, Petrobras had already wasted \$18.5 billion on the construction of the refinery, and it was only partially complete. Even if the refinery operated with full efficiency for the rest of its planned life, it would incur a loss of \$3.2 billion. Lava Jato cases have shown that bribes were paid in some construction contracts for the refinery. But the difference between \$2.4 billion and \$18.5 billion cannot be explained only by the additional costs of the bribes. Bad investment decisions were made because Petrobras executives were more concerned

with receiving kickbacks than doing their job in the company's best interests.

Another detrimental effect of systemic corruption is that it chases away local and foreign investors. If the market is not clean and transparent and if bribes and cheating are the rule, responsible investors will not have the confidence to put their money into that market. But above all, systemic corruption is damaging because it undermines confidence in the rule of law and in democracy. If the law does not apply to everyone and if crime and cheating are the norm, trust in democracy will progressively erode.

Faced with the revelation of systemic corruption, what should be done? First, the judicial system must work. Crimes that are uncovered and proven through due legal process must be punished. Justice works when the innocent defendant goes home and the guilty defendant goes to prison, irrespective of their economic or political status. There is still much to be done to advance this concept in Brazil, yet Criminal Case 470 and Lava Jato, like other recent cases in Brazil, reveal that much can be done even within the current legal system, as long as allegations are dealt with seriously.⁹ Justice must be more than actors playing their parts in cases that never end with perpetrators who are never punished.

The adequate functioning of the criminal justice system is a necessary, though insufficient condition for the elimination of systemic corruption. It is imperative that other public institutions, like the executive and legislative branches of government, adopt public policies aimed at preventing and combating corruption as well. Systemic corruption is not and cannot be a problem only for the judicial branch.

The government is the principal actor responsible for creating a political and economic environment free of systemic corruption. Through its visibility and power, the government can lead by example. Better

laws can improve the efficiency of the criminal justice system and increase the transparency and predictability of relations between the public and private sectors, reducing incentives and opportunities for corrupt practices.

Another important step would be the significant reduction of party patronage in the civil service. The influence of party politicians in the recruitment of executives in state-owned companies, and other high positions in the state bureaucracy, is what made the criminal scheme at Petrobras possible. Based on cases tried and sentenced thus far, it seems that Petrobras executives were appointed with a mission: to obtain financial resources from suppliers for the illicit enrichment of politicians or the illegal financing of electoral campaigns. Reducing political influence in state-owned companies would help to prevent this evil.

Freedom of the press and access to information are also essential. For citizens to have meaningful checks on those who govern, they must be well informed about the management of public life.

Everything to do with the Lava Jato cases, from the prosecution, evidence, and hearing of witnesses to the judgment and sentencing, has been conducted openly and in the light of day. The Brazilian Constitution requires that the judicial process be open to public scrutiny. There is no possibility of having cases prosecuted and tried in secret. This rule of transparency was very important for the Lava Jato cases. Making every piece of evidence public was crucial for gaining the popular support necessary for the enforcement of the law, and helped preempt attempts by powerful defendants to obstruct justice.

In fighting systemic corruption, the private sector also plays a part. Corruption involves those who make illicit payments and those who receive them. Both parties are guilty. Companies must therefore do their homework, denouncing requests

or demands for bribes, as well as implementing mechanisms of internal control and accountability that make it difficult or impossible to pay or receive them. It is also important for private-sector actors to work collectively so that companies involved in corrupt practices are identified and isolated from the market and not allowed to assume a preeminent position. An outstanding example of this kind of private-sector responsibility can be found in Sicily, where businesses have joined together in associations like *Addiopizzo*, or “goodbye *pizzo*,” to collectively refuse to pay mafia money (*pizzo*).¹⁰ Acting together, they have more power to refuse to pay extortion money and to avoid retaliation from organized crime. Their slogan is “a whole people who pays *pizzo* is a people without dignity.” Collective mobilization on the part of private companies could be used to good effect in Brazil, with some situation-specific modifications.

It is also important to keep in mind that systemic corruption is a product of institutional and cultural weaknesses. Systemic corruption is not a natural phenomenon, and no country is destined to live with it. Even if discovering and exposing corruption generates new challenges and painful resistance in the short run, these effects are part of the cure. Once systemic corruption is discovered, necessary public policies should be adopted and implemented to overcome it. The problem cannot be resolved by sweeping it under the rug.

Because of the dimension of the crimes that have been uncovered, Lava Jato perhaps more than any other case provides Brazil with a golden opportunity to take the necessary steps to overcome this shameful practice. It is difficult to predict at this stage whether that will happen, whether corruption will be contained and reduced to more reasonable proportions, or whether Brazil will return to the pre-Lava Jato lev-

els of corruption. Some backlash and criticism against Lava Jato has arisen (especially from politicians and corporations involved), much of it driven by misconceptions about the nature of the enterprise.

Some critics have complained that the Lava Jato operation is not impartial and has been used to “play politics.” But this is not so. Of course, crimes involving bribes paid to politicians will inevitably have political consequences. But they arise outside the court and beyond the judges’ control.

Others have said that Lava Jato represents the “criminalization of politics.” The blame should not, however, be aimed at the judicial process, but rather at the politicians who committed the crimes. The judicial process is just a reaction against corruption, as the justice system cannot turn a blind eye to crime.

Some critics say that the judiciary has not respected due process in these cases. However, every aspect of the judicial process has been conducted in open court with respect for the rights of the defendants, and has been based on extensive evidence obtained, processed, and publicized in accordance with the law and the Brazilian constitution. Lava Jato is not a witch hunt. Investigators simply followed the leads from case to case, uncovering a widespread problem that mandated numerous convictions and detentions. Therefore, nobody is being charged or convicted based on political opinion. When there is evidence of illegal conduct, the accused are being charged and convicted because of the bribery and money laundering crimes they committed, not because of their political allegiances.

Finally, there has been concern about the use of pretrial detention in the Lava Jato cases. Pretrial detentions should, of course, be the exception and not the rule in any judicial system. However, a judge in Brazil can order a pretrial detention if the defendant presents a danger to other individuals or to society, or if there is a risk that the defen-

dant will flee or obstruct justice. There are similar laws in the United States: the U.S. Criminal Code allows a judge to deny bail if the defendant is potentially dangerous or a flight risk.¹¹ The U.S. Supreme Court case *U.S. v. Salerno* affirmed that this statute was constitutional.¹²

In the Lava Jato cases, pretrial detentions were ordered only when evidence against the defendant was particularly strong; when there was a risk that the defendant would flee or obstruct justice; or to prevent the defendant from committing new crimes while awaiting trial. It is important to understand that the crimes of the Petrobras cases were committed in a professional and serial manner in a context of systemic corruption. For example, one of the companies involved in this criminal network devoted a specific department solely to paying bribes, which was in operation for several years, even during the investigation. Operations ceased only when the company’s top executives were served with pretrial detention orders. Given the presumption of innocence, pretrial detentions should be exceptional; but the extraordinary nature of systemic corruption demands strong and urgent measures by criminal justice to break the vicious circle.¹³

Other critics have complained about the extensive use of plea agreements in the Lava Jato investigation, arguing that prosecutors and judges are still not being tough enough on white-collar criminals. However, crimes like corruption are committed in secret and usually only the criminals themselves are witness to their wrongdoing. Therefore, it is sometimes necessary to make a deal with a criminal to get evidence to build a case on more central players. As U.S. Federal Appellate Judge Stephen Trott has stated, sometimes such bargains are necessary, because without them “the big fish go free and all you get are the minnows.”¹⁴ It makes sense to offer a plea agreement, for example, to a

criminal responsible for a money laundering scheme in order to get evidence against bribe takers or bribe givers who are responsible for the national environment of systemic corruption.

Until now, the police, prosecutors, and the judiciary have been the main protagonists in Brazil's fight against systemic corruption. It is important also to acknowledge the Brazilian Supreme Court, which has handed down new precedents that strengthen some anticorruption rules. In a possible collateral effect of the investigation of the Petrobras scandal, Brazil's Supreme Court overruled the harmful provision I discussed above, which allowed wealthy defendants to postpone indefinitely, through endless appeals, the execution of a prison sentence.¹⁵ In 2016, the Supreme Court ruled that the enforcement of a criminal conviction is permitted immediately after a sentence is affirmed by a court of appeal; it is no longer necessary to wait several years for a final decision at the highest level of appeal.

This precedent represents a kind of judicial revolution in the enforcement of criminal law in complex cases in Brazil. Its impact is already visible in several other cases involving corruption. With this new ruling, Brazil's Supreme Court has clearly demonstrated that it fully understands the connection between systemic corruption and impunity.¹⁶

In another important case, Brazil's Supreme Court ruled against the legality of electoral contributions from companies.¹⁷ Brazilian electoral law previously lacked proper limits on large corporate contributions to elections. In light of endemic corruption, the Supreme Court understood that without safeguards, there would be a great danger of improper relations between companies and politicians via quid pro quo donations. So it ruled such contributions void until proper regulations could be approved.

Unfortunately, it seems that as of this writing, the executive and legislative branches of government have made no such significant contribution to Brazil's efforts against corruption. For example, they could do so by proposing and approving better anticorruption laws. One necessary step would be to change Brazilian electoral law along the lines of the Supreme Court decision I describe above. Congress should discuss proper and strict regulations for electoral contributions from companies. For example, it could forbid any electoral contributions from companies with government contracts and establish low limits for other corporate donations.

Unfortunately, there are some signs of reaction against Lava Jato from Congress itself. In 2016, federal prosecutors presented a bill to improve anticorruption laws. Despite major popular support for the measures, the House rejected most of the reforms, and it is still uncertain whether the bill will be approved. More disturbing was an attempt in the House to approve an amnesty bill for illegal electoral donations, up to and including bribes. In another controversial act, the Senate drafted a new bill about abuses of power committed by judges, prosecutors, and police officers. Of course, official authorities who abuse their powers should be held accountable; this, also, is central to a working system of justice. But the text of the bill was written such that it could have a cooling effect on the independence of the judiciary and the autonomy of the prosecutors and the police to pursue criminal corruption as they see fit. As of this writing, the future of this bill is also uncertain.

It is possible to garner some lessons from Brazil's situation. Decades of weak law enforcement against crimes committed by high politicians and powerful businessmen have generated a breeding ground for bribery, kickbacks, and corruption. Weak

law enforcement may not be the first cause of this virulent corruption, but it certainly does not help to constrain it. However, new realities have presented Brazil with an opportunity to face systemic corruption, to confront past failures and set a new course for the future. The systemic corruption uncovered in Brazil is shameful. But there is another way to look at this picture. The efforts of many individual Brazilians to fight the problem of corruption have brought these crimes to light. The police, the prosecutors, and the judiciary are now dealing seriously with them.

There is no shame in the enforcement of the law.¹⁸ Lava Jato provides a measurement of the extent of Brazil's corruption, but also a measurement of Brazilians' dedication to anticorruption efforts. The Lava Jato operation is still ongoing, but it is already without precedent. Corruption scandals are not new to Brazil's history, but never before were top executives of the country's biggest construction companies arrested, tried, and convicted. Never before Lava Jato had a single director of Petrobras been charged with a crime. Today, four of them and a CEO are serving prison terms. Eight powerful politicians have been convicted and some arrested, including the former speaker of the House. Several congressmen are being investigated and prosecuted before the Supreme Court for bribery and money laundering (and not because of their political opinions).

Several measures have been essential to the success of Operação Lava Jato, including:

- The creation of task forces by the police and federal prosecutors to concentrate effort and resources on the investigation and to prosecute serious bribery and money laundering crimes.
- The use of pretrial detentions only in cases in which there was strong evidence of the crimes or in which deten-

tions would prevent new crimes from being committed.

- The use of plea agreements to disrupt complicity and secrecy between criminals and to advance investigations.
- Extensive international cooperation and support from Switzerland and other countries.
- Trying cases under public scrutiny, from evidence and arguments to judgments.
- Speedy criminal procedures and trials.
- Strong public backing to prevent attempts by powerful defendants to obstruct justice.

All of these factors have contributed to progress in enforcing the rule of law in Brazil.

Much more must be done in the fight against corruption, and it is too soon to say whether Brazil will exchange its current system for one fully committed to effective accountability for crimes committed by powerful politicians and businesspeople.

Even so, it is important to highlight that since 2015, millions of Brazilians have protested against corruption. For example, in March 2016, more than three million people occupied the streets in several state capitals and major cities in peaceful demonstrations. It is true that these demonstrations were also motivated by other causes, such as dissatisfaction with the state of the economy and with the former government. But the Lava Jato operation was a common cause that united demonstrators. The fight against corruption has definitively entered Brazil's public policy agenda and will influence political debates for years to come.

Hopefully, it will be possible to look back some years from now and say that Lava Jato made the national economy, the rule of law, and democracy stronger in Brazil. Maybe it will be possible to say systemic corrup-

tion was overcome and that it became a sad memory from Brazil's past. We cannot take this result for granted, but there is some hope. At the very least, the Lava Jato cases,

like Criminal Case 470, represent a clear break with a past of impunity and with tolerance for systemic corruption.

Sérgio
Fernando
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ENDNOTES

- ¹ Basic information about *Operação Lava Jato* is available at Ministério Público Federal, “Caso Lava Jato,” <http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato> (accessed March 10, 2018).
- ² I am a federal trial judge in Brazil working in a role analogous to that of a district federal judge in the United States. Criminal cases are normally tried and sentenced in Brazil by a trial judge sitting alone, while jury trials are only used in murder cases. Federal judges in Brazil also have other responsibilities, such as ordering pretrial detentions and authorizing investigative measures such as wiretaps or searches and seizures. My court in Curitiba is responsible for trying most of the Lava Jato cases.
- ³ HC 84.078, Supremo Tribunal Federal, February 5, 2009. All Brazilian Supreme Court decisions are available at Supremo Tribunal Federal, <http://www.stf.jus.br>.
- ⁴ The Brazilian Supreme Court received 56,257 new cases in 2017. These statistics are available at Supremo Tribunal Federal, “Movimento Processual,” <http://portal.stf.jus.br/textos/verTexto.asp?servico=estatistica&pagina=movimentoProcessual>.
- ⁵ Ação Penal 470, Supremo Tribunal Federal, December 17, 2012. The opinion for the Court was delivered by Justice Joaquim Barbosa.
- ⁶ It is important to note that there are pending appeals against several of these convictions that could overrule them.
- ⁷ The *Mani Pulite* operation also revealed systemic corruption in contracts of the public sector in Italy. For a description, see Alberto Vannucci, “The Controversial Legacy of Mani Pulite: A Critical Analysis of Italian Corruption and Anti-Corruption Policies,” *Bulletin of Italian Politics* 1 (2) (2009): 246.
- ⁸ Regarding the cost of the Abreu e Lima Refinery, see Raquel Landim, “Refinaria Abreu e Lima dará prejuízo de US\$ 3,2 bi,” *Folha de S. Paulo*, December 18, 2015, <http://www1.folha.uol.com.br/poder/2015/01/1576627-refinaria-de-abreu-e-lima-dara-prejuizo-de-us-32-bi.shtml>.
- ⁹ For example, the “Calcutta Operation” (*Operação Calicute*) was inspired by Lava Jato and resulted in several criminal convictions against corrupt officials of the State of Rio de Janeiro. Some information about the Calcutta Operation is available at https://pt.wikipedia.org/wiki/Operação_C3%A7%C3%A3o_Calicute (in Portuguese, accessed March 20, 2018).
- ¹⁰ See Addiopizzo, <http://www.addiopizzo.org>.
- ¹¹ Title 18, Section § 3142.
- ¹² *United States v. Salerno*, U.S. 739, 107 (1987).
- ¹³ About ninety-seven pretrial detentions were ordered in *Operação Lava Jato*; however, most of them were later followed by criminal convictions. At the time of this writing, there were only six defendants in pretrial detention who had still not been tried.
- ¹⁴ Stephen S. Trott, “The Use of a Criminal as a Witness: A Special Problem,” *Hastings Law Journal* 47 (5/6) (1996).
- ¹⁵ HC 126.292, Supremo Tribunal Federal, February 17, 2016; and ADCs 43 and 44, Supremo Tribunal Federal, tried on October 5, 2016. These judgments overruled HC 84.078, Supremo Tribunal Federal, tried on February 5, 2009.

¹⁶ Unfortunately, in August 2017, information emerged that some justices were again considering changing their votes about the rule.

¹⁷ ADI 4.650, Supremo Tribunal Federal, September 17, 2015.

¹⁸ President Theodore Roosevelt, in a speech before the U.S. Congress in 1903: “The exposure and punishment of public corruption is an honor to a nation, not a disgrace. The shame lies in toleration, not in correction. No city or state, still less the nation, can be injured by the enforcement of law.” Theodore Roosevelt, “Third Annual Message, December 7, 1903,” The American Presidency Project, <http://www.presidency.ucsb.edu/ws/?pid=29544>.

Corruption & State Capture: What Can Citizens Do?

Sarah Bracking

Abstract: Given South Africa's recent history of corrupt state capture, the country faces two possible futures: a further decline into spoils politics or a return to an improved constitutional democracy. This essay argues that the latter is more likely in the long run, but is by no means guaranteed. Achieving such a future requires public administrators, citizens, the private sector, and top lawmakers to insist on a public-focused social order. This essay suggests that a coalition of anticorruption agents must be built across the public and private sectors, and that this effort will be successful to the extent that it can link people across traditional class and race divides.

The Machiavellian behavior of political elites in modern Africa, as elsewhere, often attracts little prosecutorial response due to the widespread practice of granting immunity to current and former officeholders. Former President Jacob Zuma of South Africa is no exception: he was able to secure his first term in office despite previous charges of rape and 783 counts of fraud, corruption, and racketeering. After this inauspicious start, Zuma continued throughout his tenure (from 2009 to 2018) to accrue more corruption accusations while continuing to evade prosecution.¹ While political corruption is not new in postapartheid South Africa, the ten-year Zuma administration marked a shift from political corruption in the form of kickbacks and contracts for relatives to a more structural pattern of systematic state capture pursued with impunity. Since Zuma's forced resignation in February 2018, his deputy, Cyril Ramaphosa, has served as president. However, the degree to which the deeper "shadow state" will persist remains to be seen. The corrupt clique run by Zuma (and the Gupta family, Zuma's close associates) is essentially defunct, but weak and porous state structures governing con-

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tracting and procurement remain for others to exploit, potentially including many Zuma-era persons who remain in place in the shadow state.

State capture refers to the process of obtaining, or capturing, state regulatory authority without democratic authorization. The persons capturing state powers can be private or – as in South Africa – a mix of politicians and private actors who have gained influence over regulatory processes to serve private interests. State capture of the South African government under the Zuma regime proceeded in large part through control of the contracting authorities for lucrative state-owned enterprises (SOEs). More recently, the power elite also consolidated state control by capturing the prosecuting authorities responsible for pursuing redress for criminal corruption within SOEs.

Economist Haroon Borat and colleagues have argued that the Zuma-centered power elite staged a silent coup during the ten-year period from 2007 to 2017. This operation was not the result of isolated acts of corruption, but a systematically pursued “political project of a well-organised network.”² Journalist and political adviser Sarah Chayes has noted that, in many countries, high levels of political corruption lead to the criminalization of the state and a corresponding deterioration of security. However, the case of South Africa is not one of state capture by a criminal network, but an insider “political project at work to repurpose state institutions to suit a constellation of rent-seeking networks.”³ To accomplish this political project, Zuma and his cronies established a symbiotic relationship between holders of political office and private actors, causing power to shift increasingly to a “shadow state,” where “deniability is valued, culpability is distributed (though indispensability is not taken for granted) and where trust is maintained through mutually binding fear.”⁴ This shadow state also ensures that co-opted security and intelligence ap-

paratuses intimidate any political person who resists.

While the contractual relationships of the South African “shadow state” are complex, during the Zuma era, they all tended to involve associates of the Zuma family, members of the Gupta family (hence the moniker “Guptagate” for recent corruption revelations), and the families’ relatives or close associates. Those close to the former president aimed “to convert political leverage into commercial gain” by fashioning themselves as “brokers-cum-fixers” in contracts involving state enterprises.⁵ They would set up a legitimate commercial vehicle, usually with Zuma family members as beneficiaries, and then “bully” other players into the contract, arguing that without their high-level political connections, the deal would never go through. Using this negotiating position, they would then change the rules of the contract, often to extract huge fees and service costs, which they subsequently sent to offshore tax havens.⁶ For example, the Guptas used a shell company called Homix to broker a deal between Transnet (the national rail and port authority) and the telecom company Neotel, netting themselves more than ZAR100 million (about \$8.4 million) simply for ensuring that Neotel got the Transnet deal. The “success fees” from the deal were then funneled to tax havens such as the United Arab Emirates and Hong Kong through the Gupta-related intermediaries YKA International Trading Company and Morningstar International Trade.⁷ Using this *modus operandi*, Zuma-Gupta cronies secured inflated procurement contracts with the largest state-owned enterprises, including aerospace conglomerate Denel, rail companies Transnet and Passenger Trains, electricity utility Eskom, and the Departments of Social Security and Mineral Resources.

This economic project began with the state-owned enterprises but, critically, evolved into state institutional capture.

Beginning in about 2012, the clique began to capture key sites of financial control, ultimately including the National Treasury itself. Other captured institutions included the Financial Intelligence Centre, which regulates illicit financial flows; the Chief Procurement Office, which regulates and raises the alarm in procurement activities; the Public Investment Corporation; the boards of development finance institutions; and the guarantee system, which raises finances for state entities – without parliamentary oversight.⁸ The March 2017 cabinet reshuffle that ousted Finance Minister Pravin Gordhan is cited as the moment when the network finally gained control of the National Treasury. The network also simultaneously captured key judicial institutions, such as the National Prosecuting Authority.

With the highest echelons of the state captured – seemingly including the National Prosecuting Authority, the Directorate for Priority Crime Investigation (also known as the Hawks), the Chief of Police, and the Public Protector's Office – there was no one left to indict President Zuma as corruption revelations emerged en masse in 2017. There were also sinister signs of wrongdoing within the state itself, indicating that rogue elements of the intelligence services or a private mafia may be interfering with law enforcement. For example, 2017 saw a spate of crimes seemingly linked to corruption scandals, including the theft of fifteen computers from Chief Justice Mogoeng Mogoeng's offices in March; the June death of a secretary at Eskom connected to corrupt CEO Brian Molefe's fraudulent pension payout; and three burglaries in July in which computers were stolen from the offices of the Hawks, the National Director of Public Prosecutions, and the chief prosecutor. Intelligence services also allegedly produced spurious reports about foreign interference in South African financial and political affairs; in fact, President Zuma insinuated

that such a report influenced his decision to fire Gordhan.⁹

As the state-capture project progressed, so too did public opposition, culminating in a watershed moment of confrontation between Zuma allies and the opposition in 2017. As mounting evidence of the Zuma administration's cronyism emerged in the public sphere in 2016 and 2017, the opposition rallied to accuse Zuma of corruption. The term "state capture" appeared in accusations leveled by opposition parties, watchdog organizations such as Right to Know and Corruption Watch, investigative journalists, and even some elements of the ANC itself. Most ANC members, however, countered with rhetorical maneuvers designed to draw attention away from Zuma's malfeasance. They invoked "white monopoly capital" as the real culprit, referring to the continued hold of White-owned business in the South African economy, and cynically repurposing the language of the radical agenda of anti-apartheid. ANC members suggested that all societal and economic ills affecting the country could be traced back to White business owners, and issued a new clarion call for "radical economic transformation." This motif was intended to lend an air of legitimacy and moral righteousness to a grey area of graft by suggesting that if White capital will not change voluntarily, then it is acceptable for political leaders to pursue extralegal means of redistributing wealth, even if these elites are themselves the primary beneficiaries. Thus, Zuma's defenders attempted to obscure and explain away a material pattern of endemic graft and fraud.

However, the 2016 publication of then-Public Protector Thuli Madonsela's *State of Capture* report, Bhorat's *Betrayal of the Promise*, and numerous reports of corruption in the critical press added substantially to the base of evidence against Zuma and his "silent coup."¹⁰ These timely reports com-

plemented the actions of whistleblowers and public protesters, weakening Zuma's clique. Indeed, as the full extent of political corruption became apparent beginning in May 2017, the state-capture project appeared to be unraveling: the country exploded in the largest public demonstrations since 1994, demanding that the president step down; and a succession of persons connected to the capture of procurement budgets in SOEs resigned. While President Zuma initially dismissed the demonstrators as disgruntled "White people," it became clear from social media and a stream of senior ANC stalwarts defaulting from the party line that a wide swath of Black ANC support also no longer saw economic transformation in Zuma's agenda, but graft instead. By Workers' Day (May 1), huge crowds of trade unionists and workers were chanting anti-Zuma slogans in the streets and demanding his resignation. Apparently, public shaming was still possible, which came as a surprise to many political commentators.

Resignations and firings resulted, including those of Brian Molefe (fired) and Ben Ngubane (resigned) from Eskom in May and June 2017, respectively. Even the Gupta family lawyer Gert van der Merwe turned state witness in June 2017 to avoid prosecution for money laundering relating to a 2010 case in Limpopo. Brian Molefe, who seemed like the personification of state enterprise takeover, filed papers to overturn a court order banning him from entering Eskom property and petitioned for reinstatement to his position. Both petitions were unsuccessful, proving Molefe's disposability to the clique. In short, by 2017, Zuma's twenty-year project of corruption and state capture was looking decidedly shabby. However, despite the turnover of key clique members and increased pushback from an outraged public, the shadow state remained after the dust settled. Indeed, the new finance minister, Malusi Gigaba, is a powerful clique member in his own right.

In his former role as minister of social enterprises, he endorsed inflated and corrupt locomotion deals with a Gupta-connected firm at Transnet, while also assisting in reshuffling the boards of state-owned enterprises to include key clique cronies.¹¹ The fact that corrupt individuals ascend to empty seats in office indicates that structural corruption may not be so easy to eradicate in South Africa. South Africa's current president, Cyril Ramaphosa, is currently enjoying a "honeymoon period" in which he claims to be in the process of "cleaning up" the government's corrupt upper echelons with the assistance of Pravin Gordhan (who was fired by Zuma but reappointed by Ramaphosa in February as minister of public enterprises). However, there remain many persons in political and administrative office associated with the prior regime and its networks of corruption.

There appear to be two possible futures diverging from 2017's watershed moment in the state-capture process. The first is based on political scientist Chris Allan's model of "terminal spoils politics," wherein corruption becomes endemic and systematic, putting the liberal state at risk of collapse.¹² This resembles Chayes's criminalization model, in which the shadow state deteriorates into a dominant criminal network. However, extreme and prevalent criminal corruption may not mean full state collapse. That an apparently liberal state can survive such an onslaught has been previously demonstrated in several Anglophone ex-colonies such as Zimbabwe, Nigeria, and Kenya. The flexibility of the liberal institutional form means that empty democratic rituals, such as rigged elections, can continue while the center of the establishment serves only a crony faction. The faction's power is particularly strong when it controls the uniformed services (and perhaps also a privatized extralegal force) and is prepared to perpetrate atrocities against those who challenge its

power.¹³ The recent “coup” in Zimbabwe illustrates this pattern: state military personnel, part of the powerful Joint Operations Command structure, were able to depose an aging president in favor of their preferred candidate, enabling the continuation of a criminalized clique’s power.

The second possible future is that the post-Zuma era will mark a true change in the state’s corrupt practices, the clique in charge will rotate, and the rule of law will strengthen. The many points of resistance to corruption in South Africa suggest that a return to a more constitutional order is still possible. Given that South Africa has a free and fair system of elections, a sophisticated free press, and a robust business sector, the question is just how far a concerted plot to capture the state can progress before it is countered by some sort of resistance. Let us now explore these two possible futures in turn, before assessing the strength of the anticorruption coalition already in place.

In 2013, development scholar Karl von Holdt wrote presciently about a possible transition to what he termed “violent democracy” in South Africa – involving the capture of the prosecuting authorities and a regression into localized violence at ward level. In this model, democracy and violence, instead of being mutually exclusive as many assume, may be configured into a symbiotic relationship such that violence plays a key role in social disputes and reorderings. Thus, it is not that democracy has broken down, but that violence becomes part of the systematic deployment of power.¹⁴ Von Holdt has noted that his analysis is similar to that of political economist Mush-taq Khan, who argued that democratization processes in developing countries did not so much replace patron-client relationships as accommodate them.¹⁵ “Violent democracy” builds on this observation, positing that democracies can accommodate and be propped up by violence as well.

Certainly, the concept of violent democracy, in which violence is distributed to groups beyond the state, maps well onto the South African transition.¹⁶ Even protests concerning everyday matters such as service delivery failure or student fees are generally marked by a high level of violence and repression. Events such as the infamous Marikana Massacre of 2012, when thirty-four miners were shot and killed by police, demonstrate that law-enforcement agents are willing and able to kill large numbers of demonstrators. In a highly unequal society such as South Africa’s, violence is used to maintain, challenge, or change the distribution of power.¹⁷ Once a regime has proven its brutality, citizens live in constant fear of the credible threat of violence should they stray from the party line. In short, disobedience toward the ruling party is accompanied by a permanent threat of potentially lethal retaliation. This is a reality in countries such as Zimbabwe, where the Gukurahundi massacres in the mid-1980s, Operation Marambatsvina in 2005, and election-linked political assassinations and torture in 2009 have made political violence and intimidation a matter of course. This norm has fast taken hold in South Africa, particularly in the province of KwaZulu-Natal, where those targeted include political and NGO officeholders who protest against corruption. For example, a number of those protesting mining companies’ cozy relationships with local chiefs and the ruling party have been murdered or assassinated, such as Sikhosiphi “Bazooka” Rhadebe, a vocal opponent of potential uranium mining on South Africa’s Wild Coast, whose execution-style killing in March 2017 delivered a strong political warning.

Elite factions often fight within the state for control of its sites of wealth accumulation, which can generate transfer of formal power.¹⁸ These smaller skirmishes are often linked to internecine contests within the security services and may lead to the de-

ployment of personnel to assassinate opponents. In the case of South Africa, cliques compete for political office, but also for resources that may be useful in a holistic strategy of graft, including political enablers and access to violence. To this end, cliques attempt to capture the intelligence agencies, police, and the National Prosecuting Authority to dictate the selective application of the rule of law, sparing faction members from investigation or prosecution and targeting opponents when needed. In this respect, von Holdt notes that

these attempts are not necessarily successful, as they run into resistance both from those state officials who do take seriously the impartial procedures that are central to the rule of law, as well as from allies of opposing factions who attempt to protect or reinstate investigations, or leak sufficient information to force application of the law.¹⁹

However, President Zuma's latter years in office make a convincing case for his successful capture of prosecuting authority and undue influence over the judiciary. This influence dates back to a corrupt arms deal in 1997 in which Zuma was implicated when he was deputy president. The arms-deal cases against Zuma were thrown out of court in 2006, dismissed due to procedural irregularities. (The ruling judge left open the possibility for *another* judge to reopen and hear the case, and these charges were the grounds for Zuma's April 2018 summons.) Judges in South Africa generally remain free and independent, but there is a clear tendency to behave differently in cases involving the president. Those procedural irregularities during the arms deal, for example, are alleged to have arisen from Chief Judge President John Hlophe improperly approaching Constitutional Court Judges Bess Nkabinde and Chris Jafta to influence that Court's ruling on the lawfulness of search and seizures of Zuma's home. Zuma is also renowned for what has been

termed his "Stalingrad Strategy" of stalling, delaying, and posting counter-cases involving procedure in order to delay appeals indefinitely, get cases dismissed, or prevent cases from coming to court at all. After the spy-tape saga,²⁰ 786 corruption charges against President Zuma were dropped in April 2009, and even the revelation of the ZAR246 million in state funds he spent on upgrading his private home from 2013 to 2016 could not unseat him.

More recently, Madonsela's *State of Capture* report recommended that a commission of inquiry be set up to examine Zuma's wrongdoings. Zuma demanded that a court review the claim, citing concern that it would set a bad precedent to have the chief justice appoint a judge to head the inquiry, as it is usually the president's prerogative to establish and staff commissions of inquiry. However, Zuma's close implication in this case would have made it farcical to follow the usual procedures, and most believed his review request to be another example of his delaying tactics. In response to Zuma's complaint, the Democratic Alliance filed a declaratory order that the president had failed to implement the public protector's remedial actions, but Zuma countered that if he were to implement the remedial actions first, his review application would have been simply "academic"; so the review was permitted to go forward. Indeed, Zuma's notorious Stalingrad Strategy successfully delayed the work of the Commission until his departure from office in February 2018; the fate of the Commission's investigation is now unclear.

This story is typical of an administration in which very few cases of corruption were ever prosecuted, and those that were ended in plea bargains. The Anti-Corruption Task Team (ACTT), which unites the Hawks, the National Prosecuting Authority (NPA), the South African Revenue Service (SARS), the Independent Police Investigative Directorate (IPID), and the Financial Intelligence

Centre (FIC), oversees processing corruption cases, but has a poor record of seeing cases through to prosecution. ACTT recently reported to parliament's watchdog on public spending, the Standing Committee on Public Accounts (SCOPA), that some cases in its purview date back over a decade. Overall, ACTT had 284 outstanding cases related to provincial government (supported by a 111-page dossier) and 244 pages on municipal cases. ACTT also admitted that of thirty-one cases at national departments, only one was in court and two were before the NPA for a decision; twenty-eight were still under investigation. Even when perpetrators are processed and found guilty, they receive suspended sentences and plea bargains. SCOPA chairperson Themba Godi said the committee was "shocked and disappointed" to learn that all finalized cases had been settled through plea bargains: "None of the cases were fully prosecuted through convictions, meaning that all of them are outcomes where corrupt people have negotiated their way out of prison, which largely defeats the objective of using sentencing as a deterrent against corruption."²¹ Clearly, the executive benefits from the added protection of an NPA head unlikely to prosecute, despite a flurry of countersuits from the opposition.

Prosecutorial stagnancy and judicial manipulations have severely impaired efforts to hold the executive branch accountable. However, certain courageous and brilliant officeholders defy any description of the South African judiciary as entirely captured or without democratic checks and balances. For example, the last public protector, Thuli Madonsela (who served from 2009 to 2016), still managed to publish the *State of Capture* report in 2016, among other reports on corruption; and the surprising independence of Chief Justice Mogoeng Thomas Reetsang Mogoeng (appointed in 2011) has prevented any clique from controlling the judiciary in its entirety, while

contributing to a better demarcation between politics and the courts. Additionally, while many authors have written about the collapse and demise of South Africa, there are natural opponents to corruption: 1) other members of political parties that succeed in free and open elections; 2) the majority of citizens, who do not benefit from corruption and thus would not vote for a party that sanctions it; 3) public servants, including honest members of the prosecuting agencies, whose portfolios are designed to produce public goods; and 4) actors within the private sector who are frustrated by the actions of the government and its cronies when they adversely affect them.

Despite the multiple scandals outlined above, the ANC did not recall President Zuma until February 2018, when it finally forced him to resign. However, the scandals came at great political cost to the party, causing the collapse of the historic tripartite alliance between the ANC, the Congress of South African Trade Unions (COSATU), and the South African Communist Party (SACP). The alliance fell apart in early 2017 over the issue of whether Zuma should stay or go. COSATU asked him to step down and denied him participation in their rallies, while the SACP withdrew their support completely. Increasingly, factions within the ANC itself became more apparent as several senior officials also echoed growing opposition to the president. COSATU, once an alliance member, held a national strike against corruption on September 27, 2017. This is without precedent, as historically anticorruption protest was the preserve of the Democratic Alliance (DA) and "White" NGOs. Such is the crisis of the state that the Economic Freedom Fighters (EFF), COSATU, and the SACP have increasingly endorsed and supported anticorruption events and protests.

These coalitions of opposition within the ANC and its close partners have the poten-

tial to spark an elite transition to a more democratic future and a more transparent, open political order for the South African polity. This will only work, however, if the trend toward the use of violence is reversed and the electoral system and independent judiciary are protected. Nonetheless, the possibility of a shake-up in the leading factions is evidenced by shrinking majority support of the ANC, which led them to lose elections to the DA in Pretoria, Nelson Mandela Bay, Gauteng, and other metropolises; and rural seats to the Inkatha Freedom Party in Northern KwaZulu-Natal. There remains the possibility, therefore, that the ANC could lose in a national election, which motivates the party to attempt to discipline those who conducted the state capture project.

This anticorruption coalition also includes government ministers and sections of the ANC that remain more in the tradition of “transformational liberalism” associated with the Mbeki period. These politicians believe in pragmatic change within the parameters of the constitution rather than the permissibility of extralegal redistribution of resources executed through corruption. The existence of dissenting factions within the ANC suggests that rotating power is still a possibility within the party and potentially in the government and polity more broadly. Economist Douglass North and colleagues, in their research on configurations of elite competition, argue that when corrupt regimes are moving toward greater democracy, there begins an interchanging of elite factions in power, slowly leading to a freely competitive election process, transforming a limited-access order into an open-access democracy.²² According to this model, South Africa’s constitutional imperative that presidents may only serve two terms obliged the ANC to plan the replacement of President Zuma in December 2017. This law provided momentum for forcing his departure before the

2018 election. Thus term limits contribute to elite rotation, if not more fundamental changes to governance norms. Still more elite competition and a higher frequency of replacement of officeholders would be required to resoundingly unsettle the networks capturing procurement contracts.

When in April 2017 demonstrations and a national shutdown demanded that Zuma step down, the ANC initially closed ranks. The ANC Youth League and Umkhonto we Sizwe (MK) resistance fighters and veterans made a show of strength, accusing opponents of the president of treason in violent language. MK fighters turned out in battle fatigues to “defend” Luthuli House, the national headquarters of the ANC, from the “counterrevolutionaries.” These images and rhetoric are reminiscent of ZANU-PF’s post-2000 turn to populist nationalism to shore up Robert Mugabe’s rule after he lost a referendum on the constitution. Such national populism, or “patriotic nationalism,” is also associated with a rise in xenophobia (observed in bouts of violence in Durban and Pretoria) and a desire to tighten the nation’s borders.²³ Zuma’s “radical economic transformation” was one such manifestation of his patriotic-nationalist push.

President Zuma leveraged these ideas to extend his power base by reaching out to politicians on the provincial, municipal, and local levels. He made sure that he had supporters in lower levels of government while reshuffling his cabinet to include only loyalists. However, this entailed what appeared to be a sharp rise in the number of officeholders removed by violent means or death in the provinces and local wards. In KwaZulu-Natal, for example, the municipal elections of August 2016 were accompanied by the deaths of six councilors as one faction of the ANC in the province was removed to make way for a pro-Zuma leader. More officeholders were killed after the elections, including ex-ANC Youth League

leader Sindiso Magaqa. More recently, an elected councilor in Umthimkhulu was assassinated for allegedly preparing an anti-corruption speech for the December 2017 elective conference. Resisting corruption from within the ANC, despite recent electoral losses, can be a dangerous decision.

Given this increasing violence, the North model may not well explain the South African situation, in which democracy appears to be regressing to more violence and systemic corruption in such a way that the incoming elite may behave similarly to the old. For example, the change in political elite factions and accompanying violence in KwaZulu-Natal in 2016 did not lead to greater transparency: rather, it was simply seen as time to change who was “eating” from an older Mbeki faction to a new Zuma-loyalist faction. In this case, competition among elites led to political instability, which is just as likely to deteriorate the quality of democracy as it is to improve it. Furthermore, a change of elites at the provincial and municipal levels may actually assist in the centralization of authoritarian power at the center, as it arguably did in this case.

However, it is possible that an opportunity for a more effective anticorruption coalition exists, even in the midst of widespread violence. What emerged in 2017 was a greater number of councilors from all parties prepared to embark on the risky mission of resisting corruption at the local ward level. However, these individuals face grave potential repercussions for their principled resistance. While there is no systematic study on the implications for civil servants of resisting corruption, most political violence appears to be related to office-holding, and many deaths appear to be retaliation for corruption, or for resisting it. Protesting civil servants and provincial leaders are thus also at risk. However, traditional ANC supporters now seem much more willing to attend anticorruption ral-

lies (and anti-Zuma rallies, prior to his resignation), particularly when they are called by the SACP or COSATU. What is missing are the critical bridges between the politics of the poor when integrity is being defended at a local level and the movement politics of the middle classes, which is mostly articulated in documents, legal challenges, and city-based rallies. This divide is highly racialized and exacerbated by historical mistrust and by resource disparities that condition the means and ability to protest.²⁴

Administrative accountability on the part of public officials remains a widespread check on political wrongdoing in South Africa, and in the face of political corruption, more work is required to support the honest public servant. Corruption contradicts civil servants’ agendas and briefs, creating a tension between functional line ministries and the needs of state capturers. Perhaps for this reason, there is an increasing number of persons in public administration who are prepared to come forward as whistleblowers. In one example from KwaZulu-Natal, Umgeni Water Authority employees raised the alarm continuously about a senior executive’s procurement fraud until the board finally agreed to launch a graft probe. Also in KwaZulu-Natal, whistleblower Fikile Hlatshway-Rouget was unfairly dismissed from the provincial Treasury in 2013 after making a protected disclosure notification to her management concerning contracts and fees she believed to be fraudulent, including a ZAR25 million payment for a jazz festival that never took place. Her concerns were later confirmed by a forensic audit and Special Investigation Unit (SIU) investigation and her case was adopted by the public protector, who upheld her charge of unfair dismissal.²⁵ While no subsequent action was taken against those involved in the corruption – perhaps as a result of the change in the public protector to a more pro-Zuma

figure – provincial-level whistleblowing is on the rise. It is this organic anticorruption constituency that generates the evidence supporting thousands of corruption cases, whether prosecuted or not, in South Africa.

President Zuma's efforts were often frustrated by employees in the revenue service and in departments who contested his "deployees" and procurement policies. Given this resistance, he attempted to repurpose government, establishing ad hoc interministerial committees at the executive level that did not have to report to parliament and which often bypassed other tiers of government. These committees clearly pursued an accumulation agenda, focusing on sectors associated with large procurement contracts, such as telecommunications and infrastructure. However, the core civil service remained an arena of contestation between the honest and the corrupted, and administrative accountability proved a powerful restraint to political power. For example, there are cases in which the core civil service has launched successful challenges against these interministerial committees. The conflicts of interest between political deployees and public servants is so acute that one senior-level respondent to a 2015 survey of public-administration officials in eThekweni observed that finishing a five-year term in office as director general of a public works department at provincial level was not possible if one was honest. She stated that if director generals did not sign off on certain deals, a fake industrial tribunal would be convened to remove them from their positions. Civil servants often feel that the law is on their side when resisting corruption, but because of this abuse of HR regulations, they also accept that they may have to engage in a costly – and perhaps losing – battle with a labor tribunal in order to keep their jobs. Thus, building ethical universalism in the public service must be done in the context of real fears – not just of unfair dismissal, but of

violence from cliques – which can only be ameliorated through a well-funded whistleblower program.

The private sector, including international finance institutions, is another potential ally in the fight against corruption. While there are allegations of illegal direct transfers of cash to the president, mostly in the form of direct deliveries to his home in Nkandla in KwaZulu-Natal province, the spoils from state capture are channeled primarily through the modern network of offshore finance in ways that make them difficult to trace. Transfers move repeatedly from one to another Gupta-related company account and eventually to companies in foreign tax havens. While the owners of these accounts are not always known, the management service companies and transit financial companies involved in SOE deals have been linked to clique members, and some companies at the end of these transactional chains are in jurisdictions (such as Dubai) where the president is known to own luxurious properties. To all appearances, a president of an apparent democracy is becoming personally wealthy without answering to an effective domestic accountability mechanism. Examples of such individuals in other countries include former Democratic Republic of Congo President Mobutu Sese Seko, former Zimbabwe Prime Minister Robert Mugabe, former Nigerian President Olusegun Obasanjo, and retired Algerian Army General Ibrahim Babangida. However, what is perhaps more novel in the South African case is that graft is undertaken using the most sophisticated financial networks, rather than suitcases packed with money transferring through airports.

Therefore, the private sector has substantial power to assist in anticorruption work. There are already many examples of auditors, banks, and other executives raising red flags and taking legal action against corrupt procurement schemes. One is regula-

tory authorities' intervention in the corrupt coal-supply contracts of the state-owned energy enterprise Eskom. Eskom moved the contracts from a coal mine, Optimum (initially owned by the international company Glencore), to the Zuma/Gupta coal supplier Tegeta Exploration and Resources. This transfer was effected using several anticompetitive practices that were ultimately flagged by the private sector. Initially, Optimum was forced into bankruptcy by Eskom, then helmed by CEO Brian Molefe and Minister of Public Enterprises Malusi Gigaba. Eskom refused to renegotiate coal-supply deals that were causing Optimum to make a loss, and then fined Optimum handsomely for delivering supposedly substandard coal. Once Optimum was subjected to this forced bankruptcy, Tegeta was able to buy it at a basement price. To make sure the transition occurred, Eskom, under state capture, also provided Tegeta with a highly subsidized loan, ostensibly for coal expansion but used to purchase the failing Optimum. (Tegeta is jointly owned by Duduzane Zuma, son of the president; Gupta family members; Gupta proxy Salim Essa; and two offshore companies registered in the United Arab Emirates for which ownership details are unavailable.²⁶)

However, business rescue practitioners initially appointed by Glencore filed a report to the Directorate of Priority Crime Investigation under Section 34 of the Prevention and Combating of Corrupt Activities Act alleging that the Eskom "prepayment" loan to Tegeta was not used to expand operations as specified, and was improperly used to fund the purchase of the Optimum mine. Thus, it was a private-sector auditor who raised the red flag on corruption. In a similar case, auditors at Deloitte questioned the "commerciality" of the "fees" paid to the Gupta-associated offshore firm Homix by Neotel for its success in winning a tender with Transnet. The Neotel board of directors had apparently approved the payment

despite not knowing "who this [Homix] entity is."²⁷ Within the private sector, there is an emerging pattern wherein legitimate directors and owners of firms have used legal means to attempt to protect their own interests against those of state capture, such as in cases of locomotive procurement.²⁸ This is because state-captured contracts represent a cost to noncorrupt businesses, either because they are excluded from public procurement or because to participate requires the payment of extralegal rents that hurt their bottom line. This implies that in countries such as South Africa, which enjoys a highly capitalized and modern economy, a majority of persons in the private sector are naturally positioned to oppose corruption simply because it is a rent and cost to their own interests, moral issues aside.

The anticorruption and whistleblowing cases mentioned here were brought by specific persons whose interests were damaged by the state-capture elite, for example through loss of assets or contracts. These persons are important allies in anticorruption work and are joined by many more who lose business because they refuse to pay rents to corrupt brokers in order to be successful in public procurement. Also, persons who do pay rents but consequently see their profit margins squeezed can also be persuaded to oppose corruption. In general, the need to pay rents, "success fees," or other management service fees in order to secure a procurement deal represents costs to businesses that are not in the winning clique. The resentment generated by these fees can thereby motivate business associations, like the South African Chamber of Commerce, to help restore integrity by reporting corrupt payments that flow among its members and refusing to harbor corrupt brokers.

For some time now, there has been a consensus in the academic literature on corruption that donor-sponsored anticorruption

interventions do not have much effect on political corruption. Alina Mungiu-Pippidi has argued that individualized anticorruption interventions do not work when there is endemic corruption, because such corruption constitutes a collective-action problem.²⁹ A series of studies and evidence reviews from donor governments in the early 2000s showed that much of their anticorruption intervention had little (measurable) result.³⁰ It may be that, because many of these interventions focus predominantly on public-sector reform, they fail to address the “symbiotic relationship” between the constitutional and shadow states.³¹ South Africa’s case suggests that to be successful, anticorruption interventions must simultaneously prosecute businesspeople committing economic fraud in the economy and political persons facilitating it in the shadow state. This is difficult when the clique operating state capture has some control over prosecuting authorities, but because state-capture networks are international, there is nothing to prevent prosecution in other sovereign jurisdictions or the intervention of private banks to prevent the movement of “success fees” as illicit financial flows. The recent successful case of HSBC pursued by France for facilitating the tax avoidance of its nationals demonstrates that private-sector corruption on a massive scale can be prosecuted. In this case HSBC paid €300 million to the French government to settle these claims – just in time to face allegations of “possible criminal complicity” in facilitating money-laundering for the Gupta/Zuma state-capture project.³²

The account above shows that private-sector companies who are adversely affected by corruption are a weak link in the state-capture project. Van der Merwe, the Gupta attorney who turned state witness, admitted that he used his trust fund to launder payments between Limpopo Department of Health official Miriam Seg-

butla and businessman Johnny Lucas of some ZAR16 million in kickbacks to secure tenders in 2010. Indeed, all such deals require bank accounts, which are regulated and thus can and should be subject to oversight. Involving international financial institutions in the fight against corruption will require further research on how individual payments within this lattice of exchanges are explained, accounted for, and audited; and why they go undetected or unreported by banking staff and regulatory authorities. In the so-called Guptagate scandal, banks themselves invoked FIC regulations and closed the family’s bank accounts. Finance Minister Gordhan faced pressure from members of the state-capture clique to force the banks to reopen these accounts, but instead filed a suit detailing the ZAR6.8 billion in suspicious payments that the banks had found and asked the courts to rule that he had no power to interfere with their decision. National legislation to prevent companies domiciled in secrecy jurisdictions (that is, tax havens) from operating in national economic space, accompanied by a move from a domiciliary to a contributory principle of tax calculation (which would help make secrecy jurisdictions redundant), would reduce illicit financial flows of corruptly acquired funds.

The state-capture project also illustrates that members of the ANC, particularly at the local level, can remain anticorruption allies. Not only do party members worry about the future electability of the ruling party, but they are also adversely affected by the decline in public services that corruption causes. Civil servants and public-sector workers are also likely to be part of an anticorruption coalition if they struggle to meet their formal briefs and obligations due to the conflicting demands of corrupt elites. In this respect, it is not a surprise that trade-union members in the public sector were at the forefront of pressuring COSATU out

of the tripartite alliance with the ANC. Policy is required to facilitate a return to constitutionalism, ethical universalism, and the 2012 National Development Plan recommendation that South Africa “focus relentlessly on building a professional public service and a capable state.”³³ In turn, this requires a reduction in citizens’ fear of political violence at the ward level so that public servants are not afraid to blow the whistle, and so that a new leadership with a commitment to public service can emerge. Political violence must be monitored, resisted, and prosecuted. In confronting political violence, the police must assume their role as a public-service authority rather than as a tool of the ruling party.

That effective states are still associated with modernity and freedom helps in building a coalition to advocate for anticorruption policies, as social media is replete with the outrage of the young over the state of the South African nation and the elites’ broken promises of development and democracy. But the major challenge – restoring the

prosecuting power of the Hawks and the police, and the integrity of the National Prosecuting Authority – remains. In this task, the potential of a multiracial anticorruption coalition has not yet been realized, despite its manifestation in virtual space on social media, expressed through satire and vernacular appeals to solidarity. The postapartheid generation is rejecting the ideological cover of patriotic nationalism in favor of a modern state with improved service delivery. The predominantly White middle-class activism of the NGO sector needs to connect with and extend solidarity to this new generation of social activists, assisting in the in situ activism of those defending their neighborhoods and services against corruption by monitoring political violence and providing legal services. But NGOs must also connect with the white-collar public servants who are defending their public mandates: the costs of taking positions of integrity – not limited to the loss of life or employment – cannot be borne exclusively by activists and the young.

ENDNOTES

¹ Jacob Zuma was president of South Africa from February 9, 2009, to February 14, 2018, when his deputy Cyril Ramaphosa took over. Since resigning the presidency under pressure from the ANC, the national director of public prosecutions, alongside a Judicial Commission of Inquiry, decided in March 2018 that prosecution of the former president would move forward beginning with a summons to the KwaZulu-Natal High Court on April 6, 2018. However, with multiple appeals processes and remaining political support, this course could be extremely lengthy or eventually aborted.

² Haroon Bhorat, Mbongiseni Buthelezi, Ivor Chipkin, et al., *Betrayal of the Promise: How South Africa is Being Stolen* (Stellenbosch, South Africa: Stellenbosch University, 2017), 3.

³ *Ibid.*, 2.

⁴ *Ibid.*

⁵ *Ibid.*, 36.

⁶ *Ibid.*

⁷ *Ibid.*, 31.

⁸ *Ibid.*, 2.

⁹ Govan Whittles, “ANC Has to Adapt or Die, Says Gordhan,” *The Mail and Guardian*, July 2, 2017, <https://mg.co.za/article/2017-07-01-anc-has-to-adapt-or-die-says-gordhan>.

- ¹⁰ Thulisile Madonsela, *State of Capture* (Pretoria: Office of the Public Protector, 2016); and Borat et al., *Betrayal of the Promise*, 3.
- ¹¹ Borat et al., *Betrayal of the Promise*, 13, 25 – 28.
- ¹² Chris Allen “Understanding African Politics,” *Review of African Political Economy* 22 (65) (1995): 301 – 320.
- ¹³ Sarah Bracking, “Development Denied: Autocratic Militarism in post-election Zimbabwe,” *Review of African Political Economy* 32 (104 – 105) (2005): 341 – 357; Sarah Bracking, “Political Economies of Corruption beyond Liberalism: An Interpretative View of Zimbabwe,” *Singapore Journal of Tropical Geography* 30 (1) (2009): 35 – 51; and Lloyd Sachikonye, *When a State Turns on its Citizens: 60 Years of Institutionalised Violence* (Harare, Zimbabwe: Weaver Press, 2011).
- ¹⁴ Karl von Holdt, “South Africa: The Transition to Violent Democracy,” *Review of African Political Economy* 40 (138) (2013): 590.
- ¹⁵ Mushtaq Khan, “Markets, States and Democracy: Patron-Client Networks and the Case for Democracy in Developing Countries,” *Democratization* 12 (5) (2005): 704 – 724.
- ¹⁶ Daniel M. Goldstein and Enrique Desmond Arias, eds., *Violent Democracies in Latin America* (Durham, N.C.: Duke University Press, 2010).
- ¹⁷ Michael Burawoy and Karl von Holdt, *Conversations with Bourdieu: The Johannesburg Moment* (Johannesburg: Wits University Press, 2011), 94 – 96.
- ¹⁸ Von Holdt, “South Africa: The Transition to Violent Democracy.”
- ¹⁹ *Ibid.*, 596.
- ²⁰ In April 2009, the Acting National Director of Public Prosecutions, Mokotedi Mpshe, announced that because of an “abuse of process,” the corruption charges against Zuma related to the arms deal would have to be dropped. He was referring to a taped conversation of an improper discussion between the then-head of the Directorate of Special Operations Leonard McCarthy and then-National Prosecuting Authority head Bulelani Ngcuka. For a full account, see Helen Suzman Foundation, *Understanding the Spy Tapes Saga* (Parktown, South Africa: Helen Suzman Foundation, 2014), <http://hsf.org.za/resource-centre/hsf-briefs/understanding-the-spy-tapes-saga>.
- ²¹ Themba Godi, quoted in Marianne Merten, “Reporter’s Parliamentary Notebook: It’s Corporate Capture, States Ramaphosa, Now Let People Clear their Names,” *Daily Maverick*, June 15, 2017, <http://www.msn.com/en-za/news/other/reporters-parliamentary-notebook-its-corporate-capture-states-ramaphosa-now-let-people-clear-their-names/ar-BBCGh5B?li=BBqfP3n&ocid=UP97DHP>.
- ²² Douglass C. North, John J. Wallis, and Barry R. Weingast, *Violence and Social Orders: A Conceptual Framework for Understanding Recorded Human History* (Cambridge: Cambridge University Press, 2009).
- ²³ Amanda Hammar and Brian Raftopoulos, “Zimbabwe’s Unfinished Business: Rethinking Land, State and Nation,” in *Zimbabwe’s Unfinished Business: Rethinking Land, State and Nation in the Context of Crisis*, ed. Amanda Hammar, Brian Raftopoulos, and Stig Jensen (Harare, Zimbabwe: Weaver Press, 2003), 1 – 47.
- ²⁴ Tom Lodge and Shauna Mottiar, “Protest in South Africa: Motives and Meanings,” *Democratization* 23 (5): 819 – 837.
- ²⁵ Thulisile Madonsela, *Rocking the Boat* (Pretoria: Office of the Public Protector, 2016), http://www.pprotect.org/sites/default/files/legislation_report/Rocking_the_Bout_Final_Report.pdf.
- ²⁶ Susan Comrie, “On the Trail of Tegeta’s Offshore Shareholder,” *City Press*, May 17, 2016, <https://city-press.news24.com/News/on-the-trail-of-tegetas-offshore-shareholder-20160507>; and Warren Thompson, “A Multi-Million Rand Pay Day for the Zuma(s),” *Moneyweb*, August 23, 2017,

<https://www.moneyweb.co.za/news/companies-and-deals/a-multi-million-rand-pay-day-for-the-zumas/> Sarah Bracking

²⁷ Bhorat et al., *Betrayal of the Promise*, 31.

²⁸ *Ibid.*, 29.

²⁹ Alina Mungiu-Pippidi, "Corruption, Diagnosis and Treatment," *Journal of Democracy* 17 (3) (2006): 86 – 99; Bo Rothstein, *Quality of Government: Corruption, Social Trust and Inequality in an International Perspective* (Chicago: University of Chicago Press, 2011); and Anna Persson, Bo Rothstein, and Jan Teorell, *The Failure of Anti-Corruption Policies: A Theoretical Mischaracterization of the Problem*, Quality of Government Working Paper 19 (Gothenburg: University of Gothenburg, 2010).

³⁰ Persson et al., *The Failure of Anticorruption Policies*; Jesper Johnsen, Nils Taxell, and Dominik Zaum, *Mapping Evidence Gaps in Anti-Corruption: Assessing the State of the Operationally Relevant Evidence on Donors' Actions and Approaches to Reducing Corruption*, U4 Issue 7 (Bergen: Chr. Michelsen Institute, 2012); Department for International Development of the United Kingdom, *DFID's Governance Portfolio Review: Summary Review of DFID's Governance Portfolio, 2004 – 2009* (London: Her Majesty's Stationary Office, 2011); Department for International Development, *Joint Evaluation of Support to Anti-Corruption Efforts 2002 – 2009* (London: Her Majesty's Stationary Office, 2013); and The Norwegian Agency for Development Cooperation, *Contextual Choices in Fighting Corruption: Lessons Learned*, ed. Alina Mungiu-Pippidi, Masa Loncaric, Bianca Vaz Mundo, et al. (Oslo: Norwegian Agency for Development Cooperation, 2011).

³¹ Bhorat et al., *Betrayal of the Promise*, 3.

³² Rob Davies, "HSBC 'Complicit' in South Africa Scandal, House of Lords Told," *The Guardian*, November 1, 2017, <https://www.theguardian.com/business/2017/nov/01/hsbc-investigated-fund-transfers-south-africa-corruption-row-zuma-gupta>.

³³ National Planning Commission, *National Development Plan: Vision 2030* (Pretoria: National Planning Commission, 2012).

Strategies for Advancing Anticorruption Reform in Nigeria

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Abstract: A vast literature documenting the structural embeddedness, grotesque scale, and devastating consequences of political corruption in Nigeria threatens to overshadow the tenacity of the country's anti-corruption "wars," the recent gains in controlling electoral corruption, the development of a robust national discourse about improving the effectiveness of anticorruption reform, and the crystallization of potentially viable legislative and constitutional reform agendas for promoting good governance. Especially remarkable was the 2015 election of opposition presidential candidate Muhammadu Buhari, who ran on an anticorruption platform. Drawing lessons from those national anticorruption struggles, this essay distills several interrelated steps by which reformist political leaders and activist civil society organizations might advance anticorruption reform in Nigeria and, potentially, elsewhere. These strategies involve depoliticizing key oversight institutions, curbing presidential and gubernatorial discretionary powers, restructuring patronage-based fiscal federalism, expanding and entrenching current transparency laws, and promoting participatory constitutionalism.

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A vast literature documents how Nigeria's huge and ethnically fragmented population, overdependence on unearned oil income, relatively short and unstable history of autonomous postcolonial political development, and fraught institutional structures have spawned a "fantastically corrupt" state, to use former British Prime Minister David Cameron's apt characterization.¹ But prodigious discussions about corruption's entrenched roots, grotesque scale, and devastating consequences in Africa's demographic and economic powerhouse often obscure the tenacity of Nigeria's anticorruption "wars" and their partial gains. These campaigns have resulted in a robust national discourse about improving the effectiveness of anticorruption reform, in the crystallization of concrete legislative and constitutional agendas for promoting good governance, and in occasionally bold, if checkered, governance reforms.²

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Emblematic of such constructive governance reform is Nigeria's recent success in improving elections administration and mitigating a perverse legacy of chronic electoral corruption. This institutional evolution toward improved electoral governance was spurred by strident domestic and external criticisms of the farcical 2007 general elections. Constitutional and statutory reforms produced more credible electoral contests in 2011 and, in particular, 2015. The 2015 general elections were unprecedented, producing a presidential election victory for opposition candidate and former military head of state Muhammadu Buhari, who campaigned largely on an anticorruption platform.

Institutional reforms are, however, not the panacea for Nigeria's monumental sociopolitical challenges. In addition to flawed governance institutions, these challenges reflect the complex effects of predatory and unpatriotic political leadership, a patrimonial and ethnically fragmented political culture, and an extractive, oil-based political economy. Containing corruption in Nigeria, therefore, requires not only political institutional reforms, but also strong transformative leadership across political and civil society, broad-based economic diversification and liberalization, and reorientation of deeply embedded social norms, expectations, and practices.³ Nonetheless, as political sociologist Larry Diamond has claimed, judicious institutional innovations can "compensate for some of the weaknesses" in political economy and culture, "reduce the scope" for political leadership abuse, and "tilt the odds in favor of those who are committed" to transparent democratic governance.⁴

This essay begins with a dissection of the background, key features, achievements, and shortcomings of Buhari's anticorruption policy. I highlight the administration's failure to embed and extend the major elements of Buhari's anticorruption

campaign through appropriate legislative and constitutional change and broader and more systematic governance reform. My critique of Buhari's anticorruption policy is followed by analysis of the lessons and implications for broader anticorruption reform of Nigeria's recent experience in containing electoral corruption and improving electoral competitiveness and integrity. I then suggest a scheme for advancing anticorruption reform and highlight its key components. The scheme reflects not only lessons of recent electoral reforms, but also insights from the 2014 National Constitutional Conference Report and the 2015 Constitutional Alteration Bill, which are broadly supported (but as yet unimplemented) national constitutional reform blueprints bequeathed by the departing Goodluck Jonathan presidency to the Buhari administration.⁵ Contemporary models of anticorruption control are based largely on the experiences of relatively small or comparatively homogeneous countries like Botswana, Hong Kong, Singapore, and Taiwan. But the successful advancement of Buhari's anticorruption program could hold significant lessons for controlling malfeasance in other large, complex, multiethnic, and poor or resource-dependent countries.

Muhammadu Buhari's long-standing reputation for asceticism and personal integrity, his stern crackdown on corruption as military head of state in the 1980s, and his promotion of anticorruption reform as an overriding political campaign issue raised high hopes among Nigerians that his election victory would cauterize the country's corruption epidemic and usher in a new era of transparent governance. Indeed, Buhari's electoral manifesto incorporated thirteen anticorruption pledges, including establishing whistleblower-protection legislation; promoting exemplary ethical conduct (especially the public declarations of assets) among the president and his appointees;

enforcing transparency, accountability, and efficient resource management and reductions in the cost of governance in all Ministries, Departments and Agencies (MDAs); strengthening the institutional autonomy of anticorruption bodies; and articulating a coherent national anticorruption strategy.⁶

Following his inauguration in May 2015, Buhari confirmed that \$150 billion in public funds had been stolen and internationally laundered by the country's public officials during the preceding ten-year period.⁷ Nigeria's recent history has indeed included multiple instances of monumental mismanagement and scandalous plunder. These include the embezzlement of \$15 billion from state coffers through fraudulent arms contracts connected to the flawed military campaign against Islamist Boko Haram insurgents;⁸ the state-owned Nigerian National Petroleum Company's failure to remit \$18.5 billion in oil revenues to the national treasury from 2012 to 2013 (of which \$3.4 billion was diverted to a fictitious kerosene subsidy scheme);⁹ theft and misappropriation over a ten-year period (from 2005 to 2015) of \$40 billion paid to the states of the Niger Delta and the federally controlled Niger Delta Development Commission as funds for the amelioration of ecological challenges and infrastructural deficits in this oil-bearing region;¹⁰ the 2009 jailing in the United Kingdom of Delta State Governor James Ibori after he pled guilty to stealing \$80 million, which investigators believed represented only about one-third of the public monies he embezzled through inflated contracts, kickbacks, and direct cash transfers from government coffers;¹¹ and the brazen self-dealing by the Nigerian National Assembly, which awarded itself several opaque allowances and "running costs," making it one of the world's highest paid legislatures (a seat in the federal Senate attracted an estimated annual total remuneration of more than \$1.5 million

in 2015).¹² At the mass level, a survey by the United Nations Office on Drugs and Crime and the Nigerian National Bureau of Statistics found that ordinary Nigerians paid an estimated \$4.6 billion in bribes to public officials between June 2015 and May 2016, concluding that "bribery is an established part of the administrative procedure in Nigeria."¹³

Such epic and endemic corruption has propelled and compounded a multifaceted and existential crisis of political order, national security and intergroup coexistence in Nigeria. By 2015, Nigeria became home to two of the world's five deadliest terroristic organizations: Boko Haram and the so-called Fulani militants (rampaging armed nomadic herdsmen), both originating from Nigeria's Muslim-dominated North.¹⁴ Along with Southern-based violent or secessionist ethnic organizations like the Niger Delta Avengers and the Indigenous Peoples of Biafra, the terrorist organizations highlighted corruption's role in destroying opportunities for broad-based socioeconomic participation and employment. These organizations capitalized on the environment of political elite predation and extreme inequality, poverty, and discontent, fueling the rise of radical local insurgencies and hobbling the country's security institutions and counterinsurgency campaigns.

Such pervasive insecurity was symptomatic of the Nigerian government's failure to provide a broad variety of critical public goods. Nigeria's basic public infrastructure (including its schools, hospitals, roads, electricity system, and water supply) remains decrepit, despite billions of dollars budgeted for its improvement at federal and subnational levels. The country accounts, in per-capita terms, for the world's highest incidents of maternal deaths, out-of-school children, and multidimensional poverty or cumulative socioeconomic deprivations.¹⁵ Nigeria also has the worst police force in the

world according to the 2016 World Internal Security and Police Index, which measures indicators like the amount of resources devoted to internal security, effective use of allocated resources, and public trust in the police.¹⁶

Proclaiming its commitment to “killing corruption before it kills Nigeria,” the Buhari administration mounted multiple anticorruption initiatives.¹⁷ It appointed new dynamic heads for the country’s prime anticorruption agencies, the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC), and established a Presidential Advisory Committee Against Corruption to support the “administration in the prosecution of the war against corruption and the implementation of required reforms in Nigeria’s criminal justice system.”¹⁸ Along with the Code of Conduct Bureau and Tribunal, the EFCC and ICPC investigated and prosecuted key government officials or their associates, including Jonathan’s national security adviser, former First Lady Patience Jonathan, current Senate President Bukola Saraki, two Supreme Court justices, and several senators, former governors and deputy governors, and senior military officers. Despite the government’s failure to secure any high-profile convictions, the anticorruption investigations led to the recovery of “more than U.S. \$10 billion in looted cash and assets,” according to Transparency International.¹⁹

The administration also implemented several measures to clean up the country’s fraud-ridden public financial management. They created the Treasury Single Account, which eliminated multiple scam-infested MDA accounts by consolidating government finances in a single account at the Central Bank of Nigeria; the Presidential Initiative on Continuous Audit, which purged more than fifty-three thousand ghost workers from payrolls of MDAs; a new budget portal based on International

Public Sector Accounting Standards, designed to protect the budget-preparation process from manipulation, unauthorized alteration, or padding; and a Fiscal Sustainability Plan, which proposed prudential and transparent conditions under which subnational governments could receive federal budgetary bailouts.

In addition to supporting anticorruption investigations and promoting multiple administrative measures to improve public financial management, the Buhari administration sought to enhance legal frameworks for combating corruption. But more than two years after the inauguration of the Buhari administration, these attempts to institutionalize anticorruption reform remain unfulfilled, a fact that stands as one of the most disappointing aspects of the administration’s reform agenda. Thus far, the administration has improved Nigeria’s bilateral agreements on mutual assistance in criminal matters, extending them to include the United Arab Emirates, an increasingly important destination for resources looted by Nigeria’s corrupt public officials. It also proposed executive bills for the establishment of anticorruption courts and a whistleblower-protection law, which would formalize Buhari’s popular whistleblower policy that, in June 2017, paid over \$1 million to twenty individuals who provided information leading to the recovery of \$36.8 million in stolen state funds.²⁰ However, reflecting the absence of any coordinated or robust executive-legislative engagement on good governance, Buhari’s anticorruption legislative initiatives have largely languished in parliamentary rignmarole.

Indeed, although Buhari’s anticorruption policy was applauded by the administration’s domestic supporters and international partners, it not only provoked a pushback from corrupt public officials, but also attracted criticisms from independent observers. According to a 2017 “Buharimeter”

report by the Center for Development and Democracy, a reputable Abuja-based non-governmental organization, the anticorruption policy produced “no significant change” and its credibility “seems to be withering.” Specifically, the Center found that only one of Buhari’s thirteen anti-corruption pledges had been “achieved”: namely, the September 2015 release “of a summary statement to the press of the President’s and Vice President’s assets and liabilities.” Yet even this pledge had only been partially executed: the assets declarations of Buhari and his deputy were incomplete, while none of the president’s ministerial appointees publicly declared their assets. Although it acknowledged that the Buhari administration made “frantic” efforts to implement six other election pledges (involving general government accountability and reduction in the cost of governance), these efforts were as yet fruitless, and the Center also criticized the government for failing to take any actions on “fundamental or core issues” in the anticorruption campaign, including the agenda of the institutional autonomy of antigraft agencies.²¹ Indeed, Transparency International’s 2017 Perceptions Index confirmed that Nigeria was among the countries that were making “little or no progress in ending corruption.”²² Nigeria’s score (27 on a scale of 100) and rank (148 out of 180 countries) on the Index showed no real improvement from the final year of Jonathan’s corrupt administration, and represented somewhat of a decline from the country’s score (28) and rank (136 out of 176 countries) in 2016.

Essentially, Buhari’s anticorruption policy, despite paying lip service to good governance, has often been self-contradictory, shallow, and selectively enforced. Several government actions and policies have contradicted its professed anticorruption policy, leading one eminent columnist in 2017 to conclude that “the presidency itself has turned out, mostly by acts of omission, to

be a sort of refuge . . . [and] protected haven for corruption.”²³ Specifically, the Buhari presidency faced credible allegations of crass nepotism, cronyism, and sectionalism (in favor of Buhari’s Northern Muslim base) in making key appointments; as well as of implementing statist economic policies (including foreign-exchange controls) that created new opportunities for rent-seeking and corruption. Most important, the Buhari administration stands accused of failing to investigate, prosecute, or punish alleged acts of abuse of office among key allies, functionaries, and appointees of the presidency, including the chief of staff to the president, secretary to the federal government, inspector general of police, director general of the National Intelligence Agency, executive secretary of the National Health Insurance Scheme, minister of justice and attorney general of the Federation, and the group managing director of the Nigerian National Petroleum Corporation. In an outrageous instance of its complicity in grand corruption, the Buhari administration covertly reinstated and promoted a fugitive federal bureaucrat and former chairman of the Nigerian Pension Reform Task Team who was under investigation for alleged involvement in a multi-million-dollar pension fraud.²⁴ It would appear that Buhari’s anticorruption stance has been compromised by two major factors: the unsavory political alliances that are required to conduct a nationwide presidential campaign; and Buhari’s unwillingness to prevent the economically underdeveloped North from capturing “economic resources through direct access to public office and ensuing patronage networks.”²⁵

Even as it overlooked or downplayed allegations of corruption within its own ranks, the Buhari administration sensationally interrogated the political opposition, especially members of the ousted Peoples Democratic Party (PDP) and factional rivals of the president. Indeed, many opposition pol-

iticians defected to Buhari's ruling All Progressives Congress (APC) party, presumably to escape scrutiny, prosecution, or persecution for corruption. Widespread perceptions of partisanship in the anticorruption policy were further reinforced by the arbitrary and abusive tactics of anticorruption agencies, including the "unlawful detention of suspects and blatant disregard of court orders," with Jonathan's former national security adviser Sambo Dasuki emerging as a particularly conspicuous target of such lawlessness.²⁶

However, in 2017, the most compelling criticism of Buhari's anticorruption policy was of its shallowness. Succinctly, the policy failed to live up to its promise of addressing underlying institutional and systemic impediments to good governance and anticorruption reform in Nigeria. These impediments include the overpoliticization, institutional underdevelopment, and political dependence of the anticorruption agencies; the wide discretionary powers of political chief executives at national and subnational levels; the flawed design and chronically weak enforcement of current transparency and fair procurement laws; and the perverse and powerful incentives for decentralized corruption and distributive ethno-political contention that are inherent in the Nigerian system of oil-rents federalism. Indeed, the very idea of Nigeria as a political community has little social legitimacy in the eyes of many Nigerians.

The continuing institutional travails of the EFCC under Buhari are particularly revealing and ironic. In his January 2018 address to the African Union as the organization's designated "champion" for its theme on "Winning the Fight Against Corruption," Buhari declared, "I cannot over-emphasize the value of strong institutions. . . . We must adequately empower our national anti-corruption agencies and insulate them from political influence."²⁷ Yet, under Buhari, the EFCC has remained po-

litically dependent, often unprofessional, and beholden to the presidency, having lost most of its well-trained investigators and prosecutors when its activist founding head, Nuhu Ribadu, was summarily removed by the executive in 2007. Its current head, Ibrahim Magu, serves in a legally dubious acting capacity: the Senate failed to confirm his appointment on account of apparent politically motivated allegations by Nigeria's Department of State Services questioning Magu's integrity; and Buhari has been unwilling to replace him with a less politically controversial person. The entire agency itself currently employs fewer than three thousand people, but receives more than one hundred petitions daily, leaving investigators and prosecutors overstretched.²⁸ Moreover, the EFCC is hobbled by recurrent conflicts with the Office of the Minister of Justice and Attorney General.

There is a fundamental tension between the broad investigative, prosecutorial, and preventive functions of Nigeria's anticorruption agencies and the constitutional authority of the justice minister/attorney general, who has the legislative authority to take over, continue, or discontinue any criminal prosecution. The EFCC's political vulnerability and weak professionalism were thrown into sharp relief in July 2017, when the global Egmont Group of 156 Financial Intelligence Units (FIUs) voted to suspend, "by consensus," membership of the EFCC's Nigeria Financial Intelligence Unit (NFIU) "following repeated failures on the part of the NFIU to address concerns regarding the protection of confidential information . . . and the legal basis and clarity of the NFIU's independence."²⁹

Undoubtedly, Buhari's anticorruption initiatives have helped reduce the hemorrhaging of federal government finances, stabilize Nigeria's inherently volatile oil-centric economy, cauterize Boko Haram's Islamist terrorism, and nudge the country

away from the trajectory of brazen and catastrophic corruption that it was on during the Jonathan presidency. Indeed, Afrobarometer surveys show that most Nigerians applaud Buhari's anticorruption campaign, even as they remain divided or uncertain about its actual effectiveness in curtailing malfeasance.³⁰ Greater institutionalization is required not only to advance and consolidate Buhari's reforms, but also to prevent the policies' modest advances from being eroded.

Such institutionalization can draw on the experience of the country's recent successes in controlling electoral corruption. Electoral fraud, which almost always involves collusion between ruling-party functionaries and ostensibly nonpartisan election officials to abrogate the popular will, often reflects and reinforces broader systemic corruption by placing in public office individuals who are demonstrably inclined to use governmental positions for personal gain rather than public good.³¹ A credible electoral process, on the other hand, can empower politicians committed to anticorruption reform, furnish an avenue of popular protest and retaliation against political venality, stimulate constructive political contestation over governance reform, and offer a model of formal political design and institution-building for promoting the autonomy of critical oversight agencies. To be sure, elections can also exacerbate, rather than reduce, corruption, especially under conditions of widespread poverty, poor voter coordination, and chronically underdeveloped political institutions, including weak political parties. Nonetheless, contemporary experiences in countries as diverse as Georgia, Nigeria, Tanzania, and Ukraine demonstrate that presidential election campaigns in particular can help not only to highlight the fight against corruption, but also to open opportunities for the promotion of critical anticorruption legislation, strategies, and institutions.³²

Improvements in the quality of Nigeria's general elections in 2011 and 2015 provide an instructive template for advancing anticorruption reform. Those improvements followed reforms that were introduced after the elections in 2007, which international observers considered to be some of the most corrupt they had witnessed anywhere in the world.³³ The administration of President Umaru Yar'Adua (2007–2010) set up an Electoral Reform Committee (ERC), headed by former Chief Justice Muhammadu Uwais, to ameliorate the legitimacy crisis created by criticism of the elections. Shaping the work of the ERC was "a strong pro-reform platform bringing together opposition parties, civil society organizations, development partners and the diplomatic community."³⁴ Reflecting a consensus among these stakeholders, the ERC focused primarily on making the Independent National Electoral Commission (INEC), Nigeria's election management body, "truly independent, non-partisan, impartial, professional, transparent and reliable."³⁵

In its most radical proposal, the ERC recommended that INEC should cease to be a "federal executive body," and instead become a more inclusive, representative, and politically autonomous agency.³⁶ Under the Nigerian Constitution, federal executive bodies are largely appointed by the president, in consultation with the Council of State (a body headed by the president and comprising current heads of the federal executive, legislative, and judicial branches, all former presidents, and all governors, among others), subject to confirmation by the Senate. But the ERC recommended that the INEC board be constituted through a multilayered process beginning with the generation of nominees for membership of the commission from the general public and designated civil society organizations (including labor, bar, media, and women's organizations). Based on these public

and civic nominations, the National Judicial Council (NJC) was to prepare a shortlist of INEC board members from which the Council of State would make the final appointment, subject to confirmation by the Senate. The key innovation in this recommendation is its attempt to dilute partisan presidential control of the electoral administration body by giving the general public, civil society, and an independent judiciary important roles in making appointments. Especially significant is the key role of the NJC, which is headed and largely appointed by the Chief Justice of the Federation, and is vested with broad autonomous powers to oversee the funding, appointment, and discipline of the judicial branch.

Although the administration successfully resisted the ERC's radical recommendation, the ERC's overall emphasis on creating an impartial, inclusive, and independent election agency inspired many changes in election management that contributed to major improvements in the quality of Nigerian elections. The most important was the appointment of Professor Attahiru Jega, a member of the ERC and former head of Nigeria's university teachers' union, as chair of INEC. Jega's appointment not only ended the tenure of an openly partisan chair, but also marked the first time an independent civil-society luminary – rather than a current or retired government bureaucrat – was appointed to lead the commission. Jega further guaranteed his independence by offering to serve only one term in office, despite a constitutional provision allowing the president to renew Jega's five-year tenure for an additional term.

Aside from appointing a credible and independent activist to chair INEC, important changes to the constitution and the Electoral Act were introduced to advance clean-election reforms. A constitutional amendment granted financial autonomy and security to INEC by making its budget a first-line charge on the federal treasury, so

that financial allocations to the Commission do not pass through the federal executive but are made directly by the national legislature. In practical terms, this amendment meant that funding for INEC was appropriated to “an account in the Central Bank over which INEC would have full control.”³⁷ Other changes ended the absolute discretion the president exercised over the appointment of INEC's subnational residential electoral commissioners (the president's appointments were made subject to Senate confirmation); empowered INEC to exercise broad regulatory, oversight, and supervisory powers over the electoral process (including the scheduling of elections and the monitoring of internal party democracy); and introduced measures to streamline and accelerate electoral adjudication and petitions processes.

These changes produced a more politically independent and institutionally transparent INEC, which adheres to contemporary standards of professionalism. Thus, the commission explicitly committed itself to “creating a level playing field for all political parties and contestants and removing the perception that INEC functioned at the bidding of government and powerful individuals.”³⁸ Under Jega, INEC introduced extensive improvements in Nigeria's electoral governance, including technological innovations such as a more credible biometric electoral register and smart-card readers for voter authentication. INEC also began to cooperate with external stakeholders, facilitating the implementation of parallel voter tabulation by civil-society organizations and collaborating with donors, parties, civic organizations, and security agencies to make election-day logistics more transparent, efficient, and effective.

These electoral reforms did not, however, eliminate vote-buying (which was abetted by a lax political campaign finance system) or violence from Nigerian elections. Rather, they ended an entrenched tradi-

tion of partisan collusion within the highest echelons of the electoral administration to manipulate or bungle the electoral process. Over the 2011 and 2015 election cycles, these changes in electoral management produced more positive assessments of Nigerian elections by domestic and external observers. The changes also led to a reduction in the number of postelection petitions, to an erosion of the PDP's electoral hegemony, and ultimately to the presidential victory of an opposition party for the first time in the nation's fifty-five-year postindependence history. This electoral alternation, in turn, provided an opportunity for improved governance by replacing a government that openly condoned corruption with a governing coalition professing an explicit anticorruption platform.

Thus, Nigeria's recent experience with electoral reform underlines the importance of political and financial autonomy to the effective functioning of key oversight bodies. Failure to secure such autonomy or independence has been a core institutional challenge and, indeed, harms efforts to ensure constitutionalism, electoral integrity, human rights, and corruption control in Africa, Asia, and other developing-world contexts.³⁹ Institutionally advancing anticorruption reform therefore requires, above all else, insulating anticorruption bodies from politicization.

The strategy of depoliticizing the appointment and funding of major oversight agencies has come to enjoy broad consensus in Nigeria as a means of preventing political executives from interfering with and delegitimizing these agencies. While the national legislature, judiciary, and electoral commission already enjoyed significant political or budgetary autonomy, the 2014 National Conference Report and 2015 Constitution Alteration Bill proposed additional candidates for greater insulation from the executive, including the Revenue Mo-

bilization Allocation and Fiscal Commission (RMAFC), Accountant General of the Federation, and the Office of the Auditor General. To these institutions may be added the antigraft agencies (Code of Conduct Bureau and Tribunal, EFCC, and ICPC), Police Council and Service Commission, Fiscal Responsibility Commission, Public Procurement Council, and Nigerian Extractive Industries Transparency Initiative. Another institution in need of political insulation is the Office of the Attorney General, which (as informed observers have widely recommended) should be decoupled from the partisan, executive-appointed position of minister of justice. Indeed, the list should ideally include any institutions that must remain above partisan conflict and control if good democratic governance is to be enhanced.⁴⁰ Like INEC, all of these oversight institutions should be funded as budgetary first-line charges as a way of securing their political autonomy. In addition, heads of these institutions, including INEC, should be appointed using the multilayered process proposed by the ERC, which involves participation by the public and civil society, NJC, the Council of State, and the Senate.

In addition to making their appointments more inclusive and apolitical, members of oversight and anticorruption agencies should be allowed to serve an extended (for instance, eight-to-ten-year) nonrenewable tenure, rather than the current four-to-five-year renewable term. The use of nonrenewable terms is a globally accepted standard for reducing the risk of oversight agency leaders becoming beholden to politicians for reappointment. Significantly, the idea of single tenure for executive political officials has been widely promoted in Nigeria as a formula for reducing incumbent manipulations of elections and for facilitating the rotation and sharing of executive political offices among ethnic elites. Arguably, however, the principle of nonrenewable terms is far more appropri-

ate for nonpartisan oversight offices than for political offices, where longer but non-renewable single terms (as opposed to the current maximum of two four-year terms) could undermine political accountability and competition. The combination of extended terms and nonrenewable tenure for political officeholders could increase the risk of collusion between politicians and vested economic and other interests, while also liberating politicians from incentives for accountability and integrity that are inherent in reelection concerns.⁴¹

A potential criticism of the proposed formula for depoliticizing oversight agencies is the key role envisaged for the NJC, which is often critiqued for its perceived complicity in the judicial obstruction and corruption that have repeatedly stymied Nigeria's antigraft campaigns. Indeed, there is considerable evidence of collusion between corrupt officials, senior lawyers, and judges to obstruct the effective and timely prosecution of corruption cases, thereby undermining the Administration of Criminal Justice Act of 2015, which was instituted to protect Nigerian society from crimes through "speedy dispensation of justice."⁴² But Nigeria's paucity of high-profile anti-corruption convictions has resulted from the relatively poor funding, staffing, professionalization, and motivation of the anti-corruption agencies. Contending with better prepared and paid lawyers hired by the wealthy accused, these agencies' sheer prosecutorial mediocrity and negligence are compounded by weak interagency coordination and lack of collaboration with the federal ministry of justice and security services.⁴³

The NJC, on the other hand, has emerged as a relatively successful model of judicial self-regulation. Undoubtedly, the NJC's capacity to police and punish corruption among its own members is constrained by the fact that it is headed and dominated by the sitting chief justice and serving judges,

rather than by respected retired judges and other institutionally independent persons. Nonetheless, for all its challenges with malfeasance, the judiciary and NJC have "devised inbuilt mechanisms for removing corrupt and indolent judges" and, thus, have "fared better than the executive and legislature in the sanitization of the political system," according to human rights attorney Femi Falana.⁴⁴ Not surprisingly, surveys show that more Nigerians (43 percent) trust the judiciary than the presidency (36 percent), the majority political party (29 percent), the national legislature (27 percent), local governments (25 percent), opposition political parties (24 percent), internal revenue service (23 percent), or police (16 percent).⁴⁵ Sixty-seven percent of Nigerians accept that the courts have the right to make decisions that people must abide by, and the country performs better on indices of judicial independence and legitimacy than on most other indicators of public integrity.⁴⁶ In essence, among all major governing institutions, the NJC remains the most viable and credible instrument for depoliticizing the appointments of key anti-corruption and oversight agencies.

Giving the judiciary an important role in constituting oversight agencies will reduce the discretionary, quasimonarchical powers of political chief executives. Despite the constitutional entrenchment of independent judicial and legislative branches, the Nigerian presidency remains a sort of super-presidency, with direct control over administrative and patronage political appointments, security institutions, and the distribution of oil and other economic rents. Diminishing this corruptive dominance will require not only the extrication and insulation of key oversight agencies from direct presidential control, but also direct curtailment of the vast patronage powers of the presidency. A 2011 federal government committee, for instance, recommended either

scrapping or dissolving via merger more than one hundred of the 541 federal agencies, owing to their redundant and overlapping mandates and functions. Ultimately, this decision aimed to streamline the governance structure in order to make it more cost-effective and accountable. It also proposed the appointment of moderate-sized, rather than bloated, governing boards for the remaining agencies.⁴⁷

Reducing the spoils of the Nigerian super-presidency will additionally involve removing loopholes in current laws and administrative regulations that give the federal chief executive powers to dispense unilaterally economic opportunities through practices such as the discretionary allocation of crude oil–lifting contracts outside of competitive bidding rounds, the granting of presidential import duty waivers to businesses, and control of opaque extrabudgetary votes. Particularly in need of reassessment is the Public Procurement Act of 2007, which, according to legal scholar Sope Williams-Elegbe, gives procurement officials “much discretion in making procurement decisions,” but does not “insulate” these officials “from interference by high-ranking politicians.” This perpetuates a public procurement system that is “still riddled with corruption, fraud, and irregularities.”⁴⁸

Discretionary executive powers are most expansive at the subnational level, where gubernatorial privileges effectively overwhelm all potential sources of countervailing powers, including legislative assemblies, the judiciary, the offices of the accountant general and auditor general, local governments, and traditional chieftaincy institutions. In addition, along with the president and vice president, the governors and their deputies constitute an elite club of seventy-four public officers who enjoy constitutional immunity from all criminal prosecution while holding their offices. Proposals to curb these powers have been widely publicized and promoted and in-

clude rescinding constitutional immunity for political chief executives while constitutionally entrenching the financial, political, and operational autonomy of subnational legislatures and key oversight offices such as those of the state auditor general, accountant general, and attorney general. In addition, gubernatorial manipulation and emasculation of local authorities, including the replacement of democratically elected councils with administrators or caretaker committees appointed by the governor, can be curbed by transferring responsibility for conducting local elections from weak subnational election commissions to the more robust INEC, and by prohibiting or suspending federal transfers of revenues to unelected local governments.

Uniquely among African countries, Nigeria transfers about half of all centrally collected public revenues (mainly from oil) automatically and unconditionally to subnational units of state and local governments, which have the primary responsibility for basic social services in education, health, sanitation, and maintenance of local roads. Most of these revenues are simply distributed using the dual principles of relative population and equal interunit shares, rather than using a distribution system tied to social investments, development projects, or fiscal responsibility. Under current revenue-sharing laws, the federally collected oil and other revenues that are legally designated for allocation to subnational state governments and their respective local governments are to be shared using the following principles and weights: 40 percent is allocated equally to all the states or localities, and 30 percent is allocated according to relative population, while social development needs, land mass/terrain, and internally generated revenues are given weights of 10 percent each. In reality, however, the principle of interunit equality plays an outsized role, “extending to a large portion of

the 20% designated for social development and IGR.”⁴⁹ This distorts and politicizes the revenue-sharing system, fueling relentless pressures for the proliferation of new subnational administrations in order to access an equal share of the federal largesse.

Despite the fact that they derive an average of 80 percent of their budgets from constitutionally mandated federal transfers, Nigeria’s subnational governments are not subject to external scrutiny by the central government and have very little incentive to generate revenues from – or be responsible to – local populations. Indeed, attempts by the federal government to implement conditional grants programs for universal basic education, primary health care, and millennium development goals have largely been unsuccessful because subnational units already receive massive unconditional transfers from the center and therefore do not want to be accountable to the federal government for how central funds are used.

Instead of advancing local accountability and transparency, Nigeria’s subnational governments are mired in the extreme personalization of official powers and resource allocation. Nigerian state governors are implicated in financial mismanagement and profligacy, and political patronage appointments proliferate. Governors inflate or fabricate public procurement contracts and pay outrageous severance packages and pension allowances to themselves and other political officeholders. Due to their fiscal indiscipline and mismanagement, the governors have failed to insulate their states from exposure to international oil-price swings via the federal oil revenue transfer system. Nigeria’s subnational governments therefore suffer from considerable financial indebtedness and vulnerability due to the volatile swings in their incomes. In 2015, as international oil prices collapsed and federal revenue transfers declined precipitously,

subnational governments became insolvent, with thirty-three of the thirty-six states unable to pay the salaries and allowances of their employees.

Capitalizing on the states’ insolvency, the Buhari government articulated a fiscal sustainability plan that could nudge subnational governments toward more accountable and sustainable financial behavior. In order to continue to receive federal financial bailouts, the fiscal plan encouraged states to commit to observing the following principles of sound fiscal governance: timely publication of reports of audited finances and budget implementation performance, compliance with international public sector accounting standards, improvement of independently generated revenues, implementation of single treasury accounts, limitations on personnel expenditure as a share of total budgeted revenue, privatization or concession of inefficient state-owned enterprises, domestication of the national Fiscal Responsibility Act, and the development and maintenance of positive credit ratings.

However, the fiscal plan did not extend to general federal transfers, which continued to be disbursed unconditionally. Furthermore, the plan was designed as a set of action points rather than as preconditions for federal bailouts. Consequently, the fiscal plan was not seriously implemented by the states, which have continued to display “brazen” and “abysmal” disregard for transparency and accountability, according to a policy report by Lagos-based civic organization BudgIT. States considered themselves automatically and unconditionally entitled to sustenance and subsidization through the federal oil revenue devolution system.⁵⁰

The decentralization of financial resources and political governance to a multiplicity of subnational states under Nigeria’s unique form of federalism has functioned as a veritable instrument of ethno-political accommodation, enabling the country to avoid a

repeat of its 1967–1970 civil war and preventing the kind of extended and violent disintegrative ethno-political contention that has afflicted other large, multiethnic African countries like the Democratic Republic of the Congo and the Sudan. But the current Nigerian system of fiscal federalism is economically dysfunctional and unsustainable. It has encouraged irresponsible subunit financial behavior, which has in turn undermined the delivery of basic social services at the grassroots level and reinforced social discontent. These flaws have spawned intensive agitation for a restructuring of the Federation, or for a return to some version of Nigeria's pre-civil war system of three-unit, centrifugal, ethnoregional federalism. A judicious and practical response to these demands would be to enforce, extend, and institutionalize the current fiscal sustainability plan through appropriate amendments to federal revenue allocation laws, thereby transforming the current federal revenue distribution system into a conditional grants scheme that rewards efficient service delivery and good economic governance at the subnational level.

An impetus for such fundamental federal fiscal reform lies in the violent ethnic and regional insurgencies, widespread political agitation for constitutional restructuring, and diverse reform proposals that are directed against the current system of corrupt intergovernmental relations. These stirrings reflect a "broad consensus amongst Nigerians . . . that our federation has been dysfunctional, more unitary than federal, and not delivering public goods to the generality of our people," as Nasir el-Rufai, governor of Kaduna State and chairman of the ruling APC's Committee on True Federalism, has claimed.⁵¹ Nonetheless, visionary civic and political leadership is required to transform diffuse discontent and protests over the failures and flaws of the current federalism into a coherent and viable legislative and constitutional reform strat-

egy. Although such bold, institutionally reformist political leadership has been largely lacking in the Buhari administration, as political economist Kingsley Moghalu has asserted, "there is no avoiding the imperative of a rational constitutional design of Nigeria's federal system for stability and prosperity."⁵²

Because the constitution already endows the national assembly with broad powers to frame the "terms and manner" of the federal revenue distribution system (subject to the observation of certain basic "allocation principles"), incorporating the fiscal sustainability plan into the federal revenue sharing system should not require elaborate constitutional amendment.⁵³ Furthermore, insulating the Office of the Accountant General of the Federation and the RMAFC from presidential control would endow these institutions with the independence, legitimacy, and capacity to develop, fine-tune, and administer a reformed revenue-sharing system. This would prevent the conditional revenue-sharing system from degenerating into a scheme for federal executive meddling in subnational affairs or for undermining the constitutional autonomy of the states. Promoting subnational fiscal responsibility, efficiency, and transparency should advance rather than subvert subnational autonomy.

Transparency remains elusive in Nigeria despite the government's underwriting of schemes like the Freedom of Information Act, Nigerian Extractive Industries Transparency Initiative, and the Open Government Partnership. The Freedom of Information (FOI) Act of 2011, for instance, has been met with resistance from federal MDAs and subnational governments, in which an official culture of secrecy, stonewalling, and deception thrives. The Act has been hobbled by poor funding of FOI units, low institutional capacities of MDAs for digital record keeping and dissemination, weak

sanctions against noncompliance, and the assignment of oversight for FOI implementation to the political Office of the Minister of Justice and Attorney General. While it has bemoaned the Nigerian public's underutilization of the FOI Act, the Office has not addressed the failure of government agencies proactively to make information publicly available, or their systematic and brazen denials of FOI requests from civic organizations, which discourage citizens' use of the Act. Civil society activists who fought determinedly against all odds for the establishment of the FOI Act believe that transferring oversight for the Act to the proposed independent apolitical Office of the Attorney General would advance implementation of the law.

Governmental transparency would also be advanced by a constitutional amendment or the enactment of a law – which the National Assembly is constitutionally required to formulate – making the assets declarations of public officials readily “available for inspection by any citizen of Nigeria.”⁵⁴ Even without such a law, popular expectations regarding political leaders' transparency and integrity have encouraged several politicians to make their assets declarations public. The most famous of such politicians was President Yar'Adua, who publicized his assets declarations, first as Katsina State governor (1999 – 2007) and subsequently as president. President Jonathan's blunt refusal to follow Yar'Adua's example, among other acts of ethical dereliction, contributed to Jonathan's growing unpopularity and eventual defeat in the 2015 election. President Buhari's seemingly half-hearted commitment to the public declaration of his own assets and of those of his appointees, and his inability or unwillingness to sponsor an executive bill on public access to assets declarations, is a disappointing aspect of his anticorruption policy.

Even so, public agitation regarding asset declarations should focus less on compel-

ling individual acts of presidential transparency and more on getting the National Assembly to fulfill its constitutional obligation to implement legislation mandating public access to assets declarations. A law providing for the publication of public officials' assets declarations will be a powerful tool of anticorruption reform, complementing the FOI Act while reinforcing government's current whistleblower policy. The law will support and facilitate the work of the anticorruption commissions, engage and empower citizens to check the primitive accumulation of public functionaries, enhance a sense of participation in governance, and build a stronger sense of citizenship.

Building a stronger sense of citizenship is critical to anticorruption reform in Nigeria. Analysts agree that the monumental scale of political corruption is emblematic of weak civic attachment to the very idea of Nigeria as a cohesive political community.⁵⁵ This fragility reflects the scale and strength of Nigeria's sometimes-clashing ethnic identities, official entrenchment of discriminatory ethnic indigeneity practices, and the absence of a fiscal social contract based on public taxation (rather than extractive oil revenues), with the country generating an abysmally low 6 percent of its GDP from taxation. Indeed, as Bill Gates emphasized in his forthright address to Nigeria's national and subnational leaders in March 2018, in the absence of “effective and transparent investments” in education, health, and broad-based economic opportunities, the country's governments are now trapped in the world's most extreme instance of a “low equilibrium fiscal situation” in which in “return for low levels of service people pay low levels of tax.”⁵⁶ But compounding the fragility of Nigerian civic engagement and national identity is the absence of a broadly legitimate national compact – such as a popularly ratified constitution – that could

bind the various Nigerian peoples together. Rather, successive Nigerian constitutions have been imposed by unelected colonial or military elites, with civilian representatives playing a largely advisory (rather than sovereign) role, and with no direct participation by the citizenry at large. Consequently, no credible formal national contract exists to rival informal, corrupt, and exploitative social contracts between patrons and clients in ethnically defined constituencies.

Several proposals have been advanced for addressing the challenge of constitutional illegitimacy, including one to convene a sovereign national conference of Nigerian ethnic and social groups, similar to the conferences that were held with mixed outcomes in several francophone African countries in the 1990s. A less controversial suggestion, supported by the Citizens' Forum for Constitutional Reform, a broad coalition of Nigerian civil society groups, would subject future constitutional reforms or amendments to robust public vetting, including extensive public hearings or consultations and referenda. In response to civil-society demand for participatory constitutionalism, the House of Representatives convened public sessions on constitutional review in each of the country's three hundred and sixty legislative constituencies in 2012, while the Senate in 2013 approved a proposal to incorporate referenda into future constitutional amendments.

Key aspects of anticorruption reform should be assimilated into a broader process of constitutional review involving extensive public participation. Such participatory constitutionalism could advance anticorruption reform by enhancing the legitimacy and effectiveness of state institutions, counteracting the perception that multiethnic Nigeria is a fraudulent British colonial contraption, deepening a commitment to constitutionalism and the rule of law, and providing an opportunity for the collective action and civic co-

operation required to combat entrenched corruption.

Civic organizations have indeed been central to Nigeria's modest anticorruption achievements. The country's civil society has played invaluable roles in investigating and publicizing political scandals, advocating for new anticorruption laws and institutions, promoting compliance to those anticorruption instruments, mobilizing domestic public awareness regarding the deleterious effects of corruption, and harnessing international resources for the fight against corruption. Organizations like the Civil Society Network Against Corruption, Socio-Economic Rights and Accountability Project, and BudgetIT, as well as online media platforms like *Premium Times* and *Sahara Reporters*, are at the forefront of current advocacy for transparency and accountability in Nigeria. Civic coalitions like the Transition Monitoring Group and the Nigeria Civil Society Situation Room have been prominent in elections monitoring and reform, contributing to the development of the Nigerian electoral process as a potential mechanism for promoting competitive electoral alternations that can sanction grand political corruption and generate reformist political coalitions and leaderships. These civic struggles against corruption have informed the anticorruption institutional reforms enunciated in this essay and can help them continue to advance. To summarize and to conclude, the reforms would entail:

- 1) Creating genuinely apolitical anticorruption and oversight agencies by entrenching the financial and operational autonomy of these institutions from national and subnational political executives. Appointees to these agencies would be selected through a multilayered process involving not only the executive and the legislative branches, but also the general public, civil-society organizations, and the judiciary.

2) Instituting further curbs on discretionary powers of political executives by reforming current procurement practices, reducing the array of public agencies offering opportunities for patronage political appointments, rescinding the immunity from criminal prosecution enjoyed by incumbent executives, and promoting autonomous, democratically elected local governance bodies.

3) Restructuring the Nigerian system of unconditional federal revenue distribution into a conditional grants scheme in order to make subnational governments accountable, transparent, responsible, and efficient in their use of revenue transfers.

4) Strengthening current transparency laws by transferring responsibility for oversight of the FOI Act to a depoliticized and autonomous Office of the Attorney General, and by enacting a law to grant public access to officials' assets declarations.

5) Mobilizing extensive public participation in future constitutional change, including through the use of constitutional referendums, as a way of building social legitimacy for Nigeria's constitutional institutions and repairing the fragile sense of national political community.

Rotimi T. Suberu

ENDNOTES

- ¹ Robert I. Rotberg, *The Corruption Cure: How Citizens and Leaders Can Combat Graft* (Princeton, N.J.: Princeton University Press, 2017), 136; Stephen Ellis, *This Present Darkness: A History of Nigerian Organized Crime* (New York: Oxford University Press, 2016); and Daniel Jordan Smith, *A Culture of Corruption: Everyday Deception and Popular Discontent in Nigeria* (Princeton N.J.: Princeton University Press, 2007).
- ² See Ngozi Okonjo-Iweala, *Reforming the Unreformable: Lessons from Nigeria* (Cambridge, Mass.: The MIT Press 2012).
- ³ See Rotberg, *The Corruption Cure*, 290 – 309.
- ⁴ Larry Diamond, "Issues in the Constitutional Design of a Third Nigerian Republic," *African Affairs* 86 (343) (1987): 226.
- ⁵ See Rotimi Suberu, "Managing Constitutional Change in the Nigerian Federation," *Publius: Journal of Federalism* 45 (4) (2015): 552 – 579.
- ⁶ Center for Democracy and Development, *Buharimeter: PMB Performance Report* (Abuja: Center for Democracy and Development, 2017), 3.
- ⁷ Muhammadu Buhari, "Nigeria Committed to Good Governance and Fighting Terror," *The Washington Post*, July 20, 2015, https://www.washingtonpost.com/opinions/nigeria-committed-to-good-governance-and-fighting-terror/2015/07/20/8c1acd00-2e21-11e5-8353-1215475949f4_story.html?utm_term=.826756e78e68.
- ⁸ "Nigeria's Vice President Says \$15 bln Stolen in Arms Procurement Fraud," Reuters, May 2, 2016, <https://af.reuters.com/article/africaTech/idAFKCN0XUoCY>.
- ⁹ Sanusi Lamido, "Unanswered Questions on Nigeria's Missing Oil Revenue Billions," *Financial Times*, May 13, 2015; and William Wallis, "Nigeria: The Big Oil Fix," *Financial Times*, May 26, 2015.
- ¹⁰ John Ofikhenua, "Kachikwu: \$40 b Down the Drain in Niger Delta," *The Nation* (Lagos), August 26, 2016.
- ¹¹ Jim Boulden, "How Corrupt Nigerian Politician Was Brought to Justice in the UK," <http://www.cnn.com/2012/05/09/world/africa/ibori-mpa/index.html>.

- ¹² Paul Adams, “State(s) of Crisis: Subnational Government in Nigeria,” Africa Research Briefing Note No. 1602 (London: Africa Research Institute, 2016), 2.
- ¹³ United Nations Office on Drugs and Crime, *Corruption in Nigeria: Bribery, Public Experience and Response* (Vienna: United Nations Office on Drugs and Crime, 2017), 5 – 6.
- ¹⁴ Institute for Economics and Peace, *Global Terrorism Index 2015* (Sydney; New York; and Mexico City: Institute for Economics and Peace, 2015), 4.
- ¹⁵ Oxfam International, *Inequality in Nigeria: Exploring the Drivers* (Oxford: Oxfam International 2017), 15.
- ¹⁶ Institute for Economics and Peace, *World Internal Security and Police Index 2016* (Sydney; New York; and Mexico City: Institute for Economics and Peace, 2017), 5.
- ¹⁷ Muhammadu Buhari, “Special Guest of Honor’s Remarks,” in Presidential Advisory Committee Against Corruption, *International Workshop on the Role of Judges in the Fight Against Corruption: A Compendium of Papers* (Abuja: Office of the President, 2016), 40.
- ¹⁸ Presidential Advisory Committee Against Corruption, *Report: August 2015 – July 2016* (Abuja: Office of the President, 2016), 10.
- ¹⁹ Transparency International Secretariat, “Nigeria Must Strengthen Anti-Corruption Bodies and Increase Transparency on Asset Recovery,” June 16, 2016, https://www.transparency.org/news/pressrelease/nigerian_must_strengthen_anti_corruption_bodies_and_increase_transparency.
- ²⁰ Ismail Akwei, “20 Nigerians to Get Over \$1m Whistleblower Reward for Recovered \$36.8m,” Africa News, August 6, 2017, <http://www.africanews.com/2017/06/08/20-nigerians-to-get-over-1m-whistleblowing-money-from-recovered-368m/>.
- ²¹ Center for Democracy and Development, *Buharimeter*, 4 – 8.
- ²² Transparency International, “Corruption Perceptions Index 2017,” February 21, 2018, https://www.transparency.org/news/feature/corruption_perceptions_index_2017?gclid=EA1aIQobChMlxKWGmdis2gIVRrnACh25sQ3WEAAYASAAEgLWmfD_BwE.
- ²³ Biodun Jeyifo, “Why Are the People Not Clapping their Hands? Because Predatoriness Has Not Stopped!” *The Nation* (Lagos), October 15, 2017.
- ²⁴ “The Unending Maina Scandal,” *This Day*, January 26, 2018; and Yusuf Alli, “Maina Scandal: Ex-EFCC Chair, Ex-IGP, Two Heads of Service, Implicated,” *Sahara Reporters*, October 29, 2017.
- ²⁵ Zainab Usman, *The Successes and Failures of Economic Reform in Nigeria’s Post-Military Political Settlement*, University of Oxford Global Economic Governance Program Working Paper No. 115 (Oxford: University of Oxford Global Economic Governance Program, 2016), 46.
- ²⁶ Center for Democracy and Development, *Buharimeter*, 8.
- ²⁷ African Union, “President Buhari of Nigeria Launches the AU Theme of the Year 2018 on Fighting Corruption in the Continent,” Press Release, Directorate of Information and Communication, Addis Ababa, Ethiopia, January 29, 2018.
- ²⁸ Femi Falana, “Why Government Loses Corruption Cases,” *Sahara Reporters*, April 12, 2017.
- ²⁹ “Co-Chairs’ Statement – 24th Plenary of the Egmont Group of Financial Intelligence Units,” Egmont Group, Macao, South Africa, July 7, 2012, <https://egmontgroup.org/en/content/co-chairs%E2%80%99-statement-24th-plenary-egmont-group-financial-intelligence-units>.
- ³⁰ Oluwole Ojewale and Josephine Appiah-Nyamekye, “In Nigeria, Perceived Corruption Remains High Despite Praise for President’s Anti-Graft Fight,” *Afrobarometer Dispatch* No. 187, February 8, 2018.
- ³¹ Ray Fisman and Miriam Golden, *Corruption: What Everyone Needs to Know* (Oxford: Oxford University Press, 2017), 53.

- ³² United States Agency for International Development, *Practitioner's Guide for Anti-Corruption Programming* (Washington, D.C. : United States Agency for International Development, 2015), 29. Rotimi T. Suberu
- ³³ Rotimi Suberu, "Nigeria's Muddled Elections," *Journal of Democracy* 18 (4) (2007): 95 – 110.
- ³⁴ Peter Lewis and Michael Watts, *The Politics of Policy Reform in Nigeria* (Washington, D.C. : The World Bank, 2015), 1.
- ³⁵ Federal Republic of Nigeria, *Report of the Electoral Reform Committee* (Abuja : Federal Republic of Nigeria, 2008), 25.
- ³⁶ *Ibid.*, 28.
- ³⁷ Attahiru Jega, "Enhancing Electoral Integrity," AfricaPlus, May 18, 2017, <https://africaplus.wordpress.com/>
- ³⁸ *Ibid.*
- ³⁹ Michael Davis, "Strengthening Constitutionalism in Asia," *Journal of Democracy* 28 (4) (2017): 155.
- ⁴⁰ Diamond, "Issues in the Constitutional Design of a Third Nigerian Republic," 217.
- ⁴¹ Fisman and Golden, *Corruption*, 197 – 198.
- ⁴² Federal Republic of Nigeria, National Assembly, Administration of Criminal Justice Act, 2015 (Lagos : Federal Government Printer, 2015).
- ⁴³ Falana, "Why Government Loses Corruption Cases."
- ⁴⁴ Femi Falana, "Allegations of Corruption in the Justice Delivery Sector: Implications for the Rule of Law and Democracy," *Sahara Reporters*, December 6, 2016.
- ⁴⁵ Rick Staphenurst, Kerry Jacobs, and Oladeji Olaore, "Legislative Oversight in Nigeria: An Empirical Review and Assessment," *Journal of Legislative Studies* 22 (1) (2016): 1 – 29.
- ⁴⁶ Carolyn Logan, *Ambitious SDG Goal Confronts Challenging Realities: Access to Justice Is Still Elusive for Many Africans*, Afrobarometer Policy Paper No. 39, March 2017, 13; and Index of Public Integrity, "Nigeria," <http://integrity-index.org/country-profile/?id=NGA&yr=2017>.
- ⁴⁷ Federal Republic of Nigeria, *White Paper on the Report of the Presidential Committee on Restructuring and Rationalization of Federal Government Parastatals, Commissions and Agencies* (Lagos : Federal Government Printer, 2014).
- ⁴⁸ Sope Williams-Elegbe, "A Comparative Analysis of the Nigerian Public Procurement Act Against International Best Practice," *Journal of African Law* 59 (1) (2015): 85 – 98.
- ⁴⁹ World Bank, *Nigeria Economic Report No. 1* (Washington, D.C. : World Bank, 2013), 24.
- ⁵⁰ BudgIT, *State of the States Policy Brief April 2017* (Lagos : BudgIT, 2017), 13 – 15.
- ⁵¹ Nasir Ahmad el-Rufai, "Next Generation Nigeria: What is Restructuring and Does Nigeria Need It?" Africa Program Meeting Transcript, Chatham House, London, September 21, 2017, 3.
- ⁵² Kingsley Moghalu, "Osinbajo and the National Question," *This Day*, July 3, 2017.
- ⁵³ Federal Republic of Nigeria, *Constitution of the Federal Republic of Nigeria 1999* (Lagos : Federal Government Printer, 1999), sec. 162.
- ⁵⁴ *Ibid.*, 3rd Schedule, pt. I.
- ⁵⁵ See, for example, Chidi Anselm Odinkalu, "As Buhari Fights Corruption Without a Strategy," *Premium Times*, December 20, 2016; Francis Fukuyama, *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (New York : Farrar, Straus and Giroux, 2014), 225; Richard Joseph, *Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic* (Cambridge : Cambridge University Press, 1987); and Peter P. Ekeh, "Colonialism and the Two Publics in Africa: A Theoretical Statement," *Comparative Studies in Society and History* 17 (1) (1975): 91 – 112.
- ⁵⁶ "For the Records: Bill Gates' Speech that Rattled Nigerian Government," *Premium Times*, March 27, 2018.

Combating Corruption in Asian Countries: Learning from Success & Failure

Jon S.T. Quah

Abstract: With widespread corruption in many Asian countries, Singapore and Hong Kong SAR have proved exceptions: their governments' strong political will and reliance on single "Type A" anticorruption agencies (ACAs) have effectively and impartially enforced anticorruption laws. By contrast, the governments in China, India, and the Philippines have failed to minimize corruption due to weak political will and reliance on multiple ineffective and poorly resourced "Type B" ACAs. This essay draws on the experiences of these five countries to identify four lessons for policy-makers to enhance the effectiveness of their ACAs.

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Corruption is a serious problem in many Asian countries. On Transparency International's 2016 Corruption Perceptions Index (CPI), countries like China, India, and the Philippines have earned low scores as they remain plagued by pervasive corruption due not only to their governments' reliance on ineffective anticorruption agencies (ACAs), but also to the lack of political will to fund and enforce anticorruption efforts. Singapore and Hong Kong SAR, however, are exceptions, having earned high CPI scores of 84 and 77, respectively.¹ In these two countries, the public reports a lower level of perceived corruption and a greater trust in politicians because of their success in minimizing corruption (see Table 1). Why have Singapore and Hong Kong succeeded in combating corruption while India, China, and the Philippines have failed to do so? What lessons can policy-makers learn from these cases? This essay addresses these questions and identifies four lessons for policy-makers to enhance the effectiveness of ACAs.

In October 1951, 1,800 pounds of opium worth US\$133,330 were stolen in Singapore by a group that included three police detectives. The revela-

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Table 1

Perceived Extent of Corruption in Five Asian Countries, 2016

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	Corruption Perceptions Index Rank (and Score)	Political and Economic Risk Consultancy Rank (and Score)	Global Competitiveness Index (GCI): Diversion of Public Funds Rank (and Score)	GCI: Irregular Payments and Bribes Rank (and Score)	GCI: Organized Crime Rank (and Score)	GCI: Public Trust in Politicians Rank (and Score)
Singapore	7 (84)	1 (1.67)	3 (6.2)	3 (6.7)	7 (6.4)	1 (6.4)
Hong Kong SAR	15 (77)	4 (3.40)	12 (5.9)	12 (6.3)	18 (6.0)	21 (4.6)
China	79 (40)	11 (7.50)	44 (4.1)	54 (4.3)	78 (4.7)	30 (4.2)
India	79 (40)	16 (8.13)	34 (4.5)	49 (4.5)	97 (4.3)	31 (4.2)
Philippines	101 (35)	10 (7.05)	102 (2.9)	105 (3.2)	89 (4.3)	99 (2.4)
# of Ranked Countries	176	16	138	138	138	138

Note: The Corruption Perceptions Index expresses scores on a scale of 0 (highly corrupt) to 100 (very clean); the Political and Economic Risk Consultancy expresses scores on a scale of 0 to 10, with 0 being the best grade possible; and the Global Competitiveness Index indicators are expressed as scores on a 1 to 7 scale, with 7 being the most desirable. Source: Transparency International, "Corruption Perceptions Index 2016," https://www.transparency.org/news/feature/corruption_perceptions_index_2016 (accessed January 25, 2017); Political and Economic Risk Consultancy, "Annual Review of Corruption in Asia – 2016," *Asian Intelligence* 944 (2016): 1; and Klaus Schwab, ed., *The Global Competitiveness Report 2016 – 2017* (Geneva: World Economic Forum, 2016), 147, 197, 203, 297, 319.

tion of the opium hijacking scandal exposed the British colonial government's mistake in making the Singapore Police Force's Anti-Corruption Branch responsible for combating corruption in 1937, after the 1879 and 1886 Commissions of Inquiry had confirmed that police corruption was rampant. As the police failed to curb corruption, the British colonial government rectified its mistake by replacing the Anti-Corruption Branch with the world's first ACA, the Corrupt Practices Investigation Bureau (CPIB), in September 1952.²

On June 8, 1973, in Hong Kong, Chief Superintendent of Police Peter Godber, who was being investigated for corruption, escaped to the UK. His escape angered the public and revealed the ineffectiveness of the Royal Hong Kong Police Force's Anti-Corruption Office. Governor Sir Murray

MacLehose accepted the recommendation of the Blair-Kerr Commission of Inquiry to establish an ACA that would be independent of the police, and the Independent Commission Against Corruption (ICAC) was formed on February 15, 1974, almost twenty-two years after the CPIB.³

As British colonies, both Singapore and Hong Kong adopted the colonial government's method of combating corruption, which ignored the conflict of interest of relying on the police even though police corruption was widespread.⁴ The decision by the British colonial governments in Singapore and Hong Kong to replace the police with an independent ACA was the breakthrough needed to combat corruption effectively in both territories. However, the CPIB was ineffective during its first eight years due to weak legal powers and inade-

quate personnel. The People's Action Party (PAP) government assumed office in 1959 and enacted the Prevention of Corruption Act in 1960 to strengthen the CPIB by enhancing its legal powers and providing it with adequate funding, personnel and operational autonomy to perform its functions effectively. Similarly, Governor MacLehose and his successors continued to support the ICAC in Hong Kong with adequate budget, personnel, and autonomy.

The most important reason for Singapore's and Hong Kong's successes in combating corruption is the sustained political will of their governments as reflected in the CPIB's and ICAC's per capita expenditures and staff-population ratios from 2008 to 2014. In that period, the ICAC had more personnel, a larger budget, a higher per capita expenditure, and a more favorable staff-population ratio than the CPIB (see Table 2). But, as we will see, both the ICAC and CPIB had higher per capita expenditures and more favorable staff-population ratios than the lead ACAs in India and the Philippines.

Apart from providing the CPIB and ICAC with the necessary legal powers, budget, and personnel, their governments have also provided these ACAs with the operational autonomy to perform their functions without political interference. That means that they can be independent watchdogs capable of investigating all corruption cases, without fear or favor, and regardless of the position, status, or political affiliation of the persons under investigation.

Political scientist Robert Gregory describes the CPIB and ICAC as good examples of ACAs with high de facto independence and high operational impartiality. Even though the CPIB comes under the jurisdiction of the Prime Minister's Office in Singapore, the prime minister does not interfere in its daily operations; the director reports to the secretary to the cabinet. The CPIB's operational impartiality has been

protected by the PAP leaders whose "political self-denial" has maintained its de facto independence and sustained its impartial reputation and popular legitimacy.⁵

Another important reason for the successes of the CPIB and ICAC is their impartial enforcement of the anticorruption laws in Singapore and Hong Kong, respectively. In both cases, anyone found guilty of a corruption offense is punished regardless of his or her position, status, or political affiliation. The CPIB has investigated five PAP leaders and eight senior civil servants in Singapore without fear or favor from 1966 to 2014. For example, CPIB Assistant Director Edwin Yeo was charged on July 24, 2013, with misappropriating US\$1.41 million from 2008 to 2012. He was found guilty of criminal breach of trust and forgery and sentenced to ten years' imprisonment on February 20, 2014.⁶ The ICAC has also not hesitated to investigate political leaders and senior civil servants in Hong Kong SAR if they are accused of corruption offenses.⁷ The investigation of the corruption scandals involving the former Chief Executive of Hong Kong Donald Tsang in February and April 2012 culminated in his conviction on February 17, 2017, for misconduct in public office: he had not disclosed his rental negotiations with a property tycoon, Bill Wong, while his cabinet was reviewing a digital broadcasting license request from Wong's radio company. Tsang was sentenced to twenty months' imprisonment on February 22, 2017.⁸

Finally, Singapore and Hong Kong SAR have succeeded in minimizing corruption because of their comprehensive approach in dealing with all corruption complaints. The CPIB adopts a "total approach to enforcement" by focusing on both major and minor cases of public and private sector corruption, as well as "both giver and receiver of bribes" and other crimes uncovered in the investigation of corruption complaints.⁹ Bertrand de Speville, the ICAC

Table 2

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Per Capita Expenditures and Staff-Population Ratios of the CPIB and ICAC, 2008–2014

	2008	2010	2012	2014
CPIB Personnel	86	90	138	205
Budget	US\$11.2 million	US\$14.7 million	US\$20.3 million	US\$29.3 million
Per Capita Expenditure	US\$2.32	US\$2.90	US\$3.82	US\$5.36
Staff-Population Ratio	1:56,163	1:56,408	1:38,496	1:26,682
ICAC Personnel	1,263	1,321	1,282	1,358
Budget	US\$97.7 million	US\$104.65 million	US\$112.96 million	US\$120.14 million
Per Capita Expenditure	US\$13.40	US\$14.89	US\$15.78	US\$16.59
Staff-Population Ratio	1:5,780	1:5,317	1:5,581	1:5,333

Source: Republic of Singapore, *Singapore Budget 2008–2014: Annex to the Expenditure Estimates* (Singapore: Budget Division, Ministry of Finance, 2008–2014); and Hong Kong SAR, *Budget Estimates 2008–2014* (Hong Kong: Financial Secretary's Office, 2008–2014), Head 72, ICAC. The per capita expenditures and staff-population ratios of the CPIB and ICAC were calculated by the author.

commissioner from 1992 to 1997, contends that the ICAC has succeeded in gaining public confidence by ensuring that all corruption reports, no matter how small, are investigated and kept confidential.¹⁰

There are two types of ACAs: Type A ACAs that perform only anticorruption functions and Type B ACAs that perform both anticorruption and noncorruption-related functions.¹¹ The CPIB and ICAC are Type A ACAs responsible for investigating corruption cases, preventing corruption, and providing anticorruption education. However, unlike Singapore and Hong Kong, China, India, and the Philippines have failed to curb corruption not only due to the weak political will of their governments, but also the ineffectiveness of their multiple Type B ACAs (see Table 3). While some ACAs in these countries are Type A, including Chi-

na's National Corruption Prevention Bureau (NCPB), India's state anticorruption bureaus (ACBs), and the Philippines' Special Anti-Graft Court, they are largely ineffective due to limited resources.

The first manifestation of the weak political will of political leaders in China, India, and the Philippines in curbing corruption is their long-standing reliance on multiple yet ineffective ACAs, without making any improvements to enhance their effectiveness. For example, eighteen ACAs were created by the various presidents in the Philippines from the establishment of the Integrity Board by President Elpidio Quirino in 1950 to the creation of the Presidential Anti-Graft Commission (PAGC) and the Governance Advisory Council by President Gloria Arroyo in 2001.¹² The proliferation of ACAs in the Philippines has led to "duplication, layering and turf wars."¹³

Table 3
ACAs in China, India, and the Philippines

	Anticorruption Agency	Type of ACA
China	Central Commission for Discipline Inspection	Type B
	Ministry of Supervision	Type B
	Supreme People's Procuratorate	Type B
	National Corruption Prevention Bureau	Type A
India	Central Bureau of Investigation	Type B
	Central Vigilance Commission	Type B
	State Anti-Corruption Bureaus	Type A
	State Vigilance Commissions	Type B
Philippines	Office of the Ombudsman	Type B
	Special Anti-Graft Court	Type A
	Presidential Commission on Good Government	Type B
	Inter-Agency Anti-Graft Coordinating Council	Type B
	Office of Deputy Secretary for Legal Affairs	Type B

Source: Compiled by the author.

Instead of coordinating their activities and cooperating with each other, the five current ACAs in the Philippines compete for recognition, personnel, and resources because they are understaffed and poorly funded.

The Office of the Ombudsman (OMB) was established as a Type B ACA in 1979 by President Ferdinand Marcos to be responsible for five functions: investigation of inefficiency and anomalies; prosecution of graft cases in the Special Anti-Graft Court; disciplinary control of elected and appointed officials (except members of Congress and judiciary and impeachable officials); public assistance; and graft prevention.¹⁴ However, the OMB has suffered from a limited budget and severe staff shortages. Former Ombudsman Simeon Marcelo compared the budget and personnel of the OMB and Hong Kong SAR's ICAC in 2004 and found that: 1) the ICAC had 837 field investigators compared with the OMB's eighty-eight; 2) the OMB's staff-population ratio of

1:71,340 was much higher than the ICAC's staff-population ratio of 1:5,354; and 3) the ICAC's per capita expenditure of US\$12.43 exceeded by 124 times the OMB's per capita expenditure of US\$0.10. He concluded that the OMB was "designed to fail because of its crippling lack of resources."¹⁵ The OMB was severely understaffed in 2014 with 980 vacancies; its 1,214 personnel constituted only 55.3 percent of its established strength of 2,194 positions.¹⁶

Apart from its limited budget and personnel, the OMB lacks credibility. Filipino citizens filed impeachment complaints against Ombudsman Aniano Desierto in 1996, 2001, and 2002 for betraying the public trust. Even though these complaints were dismissed by Congress, the impeachment cases had "sullied the already unsavoury reputation of the Ombudsman."¹⁷ The OMB was later pejoratively described as "the Street Ombudsman" because Ombudsman Merceditas Gutierrez devoted its limited resources to

investigating petty corruption instead of continuing her predecessor's exposure of grand corruption.¹⁸ As Gutierrez was the classmate of First Gentleman Miguel Arroyo, she was criticized for protecting the interests of President Gloria Arroyo and her husband, their friends, and political allies. She was impeached by Congress in 2011 for not investigating the allegations against former President Arroyo and resigned as Ombudsman.¹⁹

President Corazon Aquino formed the Presidential Commission on Good Government (PCGG) in February 1986 to identify and retrieve the money stolen by the Marcos family and their cronies. The PCGG is not strictly an ACA because it is not involved in investigating corruption cases or in corruption prevention and education. The PCGG has failed to meet its objective of recovering the loot stolen by the Marcos family after thirty years; it has outlived its usefulness and should be abolished as soon as possible.²⁰ The Inter-Agency Anti-Graft Coordinating Council (IACC) is a voluntary alliance formed by the heads of the OMB, Civil Service Commission, Commission of Audit, National Bureau of Investigation, and the PAGC in 1997. The IACC's role is to enhance coordination among its member agencies, but it has met infrequently and failed to ensure collaboration among these agencies. Gutierrez "deactivated" the IACC by not convening it. The IACC's inability to coordinate the activities of the ACAs is reflected in the United Nations Office on Drugs and Crime's *Country Review Report of the Philippines*, which highlights "inter-agency coordination and limited resources" as the twin challenges faced by the OMB in investigating bribery and embezzlement cases.²¹ Like the PCGG, the IACC has also outlived its usefulness and should be disbanded.

After winning the 2016 presidential election, Rodrigo Duterte identified "fixing

the criminality problem, drugs, and stopping corruption" as his top priorities. He increased the low salaries of the police and military because the starting monthly salary of PHP14,000 (US\$301) for a police officer was adequate only for the officer's commuting expenses.²² Duterte's election victory is attributed to his "zero-tolerance approach" to corruption, which "resonated with the immense frustration many Filipinos feel over the widespread corruption that has plagued" the Philippines for many years.²³ However, Duterte's focus on combating drugs at the expense of fighting corruption was a serious mistake, and further increased opportunities for graft among the notoriously corrupt police force.²⁴

Of China's four ACAs, the Central Commission for Discipline Inspection (CCDI) is the most important, and is responsible for disciplining Communist Party of China (CCP) members accused of corruption and other offenses. CCP members found guilty of disciplinary offenses, including corruption, are punished with increasing severity, varying from a warning, serious warning, demotion from duty, expulsion from the CCP with a two-year probation period, to expulsion from the CCP and transfer to the judicial system for those accused of accepting bribes exceeding RMB5,000 (US\$748). The CCP was criticized for protecting those party cadres under investigation by shielding them in "a safe nest" and exempting them from criminal punishment.²⁵ Among the 115,143 CCP members disciplined from 1992 to 2006, 44,836 (38.9 percent) were warned and 32,289 (28 percent) were given a serious warning. In other words, two-thirds of the CCP members who were disciplined "got away with only a mild to serious warning that appeared to have no real punitive consequences."²⁶

The CCP has historically treated its corruption leniently because of the political tradition of not imposing legal penalties

on members to avoid embarrassing the CCP and the government and to prevent the erosion of official authority. Thus, instead of punishing high-ranking officials, which is seen as shameful and threatening to party-state authority, the preferred option is to rely on “internal resolution.” Not surprisingly, corrupt party officials believed that they were unlikely to be caught or punished.²⁷

There are three additional reasons why some corrupt officials are punished less severely. First, those cooperative corrupt officials who make voluntary confessions, provide information on the corruption of other officials, or return illegal income to the government are punished less severely. Second, some corrupt officials receive reduced punishment depending on the amount of money embezzled or number of bribes received. Third, when there are many corrupt officials, only seriously corrupt officials are punished, while the less corrupt officials are exempted from punishment to avoid paralyzing the operations of the city or local government because “when the number of corrupt agents becomes too high, curbing corruption becomes too difficult, if not impossible.”²⁸ The inconsistencies in investigating and punishing corrupt officials at the central and local levels in China have undermined the credibility of the disciplinary agencies and encouraged them to believe that they would be unlikely to be punished for their offenses.²⁹

The CCDI, Ministry of Supervision (MOS), and the Supreme People’s Procuratorate are ineffective ACAs because the “limited coordination between the three agencies, a lack of timely, actionable information, and narrow oversight capabilities all hinder anticorruption work.”³⁰ The NCPB was formed in 2007 to implement preventive measures, monitor the transfer of assets across the organizations, facilitate and promote information sharing between agencies, and monitor corrupt

practices among private enterprises, social organizations, and nongovernmental organizations. However, as the NCPB has only thirty personnel to perform its functions and is located within the MOS, it cannot enhance coordination and facilitate cooperation among the ACAs in China. Apart from its limited independence and minimal enforcement capabilities, its creation has increased complexity instead of improving coordination. The NCPB is in “a highly untenable position” because it lacks the power to enforce its mandate of coordinating the work of the ACAs.³¹

India also relies on ineffective ACAs to curb corruption, with the Central Bureau of Investigation (CBI) – the lead ACA – and the Central Vigilance Commission (CVC) being the most important. Both the CBI and the CVC rely on a vast network of anticorruption bureaus (ACBs) and state vigilance commissions (SVCs) in India’s twenty-eight states to deal, respectively, with anticorruption and vigilance work. The ACBs derive their powers of investigation from the Police Act because they are regular police units. The CBI has sixteen zones and sixty branches, with each state having a branch or unit at the state capital (or a major city). The SVCs are patterned after the CVC and are assisted by the special police establishments in conducting investigations of corruption by public servants.³²

The CBI was established in 1963 as a Type B ACA, as reflected in the functions of three of its six divisions. The Anti-Corruption Division is responsible for investigating corruption and fraud cases committed by public servants working for the central government. The Economic Crimes Division investigates bank and financial frauds; import, export, and foreign exchange violations; large-scale smuggling of narcotics, antiques, and cultural property; and smuggling of other contraband items. The Special Crimes Division deals with cases of

terrorism, bomb explosions, sensational homicides, kidnapping for ransom, and organized crime.³³

The CBI's Achilles' heel is that it is a police agency that derives its investigating powers from the Delhi Special Police Establishment Act of 1946. This means that, unlike Singapore's CPIB or Hong Kong SAR's ICAC, the Government of India (GOI) has continued to employ the traditional British colonial government's ineffective method of relying on the police to curb corruption.

The experiences of the CPIB and ICAC have confirmed the folly of relying on the police to curb corruption when they are themselves corrupt; the "golden rule" is that "the police cannot and should not be responsible for investigating their own deviance and crimes."³⁴ As one commenter put it, trusting police to curb corruption is like "giving candy to a child" and trusting him not to eat it.³⁵ Singapore and Hong Kong took fifteen years (1937 – 1952) and twenty-six years (1948 – 1974), respectively, to learn this important lesson. Unfortunately, the GOI has not learned it after fifty-four years; it still relies on the CBI, which is a police agency, to fight corruption in the midst of widespread police corruption in India. This weakness is not surprising, since "the greatest failing of India's domestic political system is its inability or unwillingness to curb widespread corruption."³⁶

The CBI's second limitation is that, as a Type B ACA, it investigates and prosecutes corruption cases and other economic and special criminal activities, including terrorism and organized crime. With the Mumbai terrorist attacks in 2008 and the current international concern with combating terrorism, it is difficult for the CBI to focus exclusively on its anticorruption functions because of the competing demands on its limited resources. Consequently, the CBI has accorded higher priority to combating terrorism than to fighting corruption. Furthermore, the important

functions of education, prevention, and the coordination of anticorruption activities are also neglected in India.

Third, the CBI is understaffed and poorly funded. While its actual strength has increased from 4,908 personnel in 2002 to 5,676 personnel in 2014, the number of vacancies has remained at 1,012 (17.1 percent) in 2002 and 1,000 (15 percent) in 2014. The CBI's inability to fill its many vacancies from 2002 to 2014 reflects its chronic staff shortage, as manifested in its unfavorable staff-population ratio of 1:228,206 in 2014.³⁷ As the CBI is "a very small organization as compared to the quantum of crimes" committed in India, former CBI Joint Director B. R. Lall recommends the expansion of its personnel by 20 percent annually over the next decade.³⁸

Finally, the CBI is perceived by the public as "a pliable tool of the ruling party, and its investigations tend to become cover-up operations for the misdeeds of ministers."³⁹ Former Central Vigilance Commissioner N. Vittal has criticized the CBI's lack of independence and credibility because it is "a football between the party in power and the party in opposition": the cases initiated by one regime are neutralized by the next. Former CBI Director D. R. Karthikeyan acknowledged that as the CBI was a government department, it was "expected to work as per the direction of its employer."⁴⁰

The CVC was created in 1964 as a Type B ACA to investigate improper transactions by public servants; examine complaints of corruption, misconduct, lack of integrity, or other malpractices committed by public servants; supervise the vigilance and anticorruption work of ministries, departments, and public enterprises by requesting and checking their reports on these activities; and request the CBI to investigate a case or entrust the complaint, information, or case for inquiry to the CBI, or to the ministry, department, or public enterprise concerned.⁴¹ Since the enactment of the CVC

Act in 2003, the CVC has also been responsible for supervising the CBI's operations by conducting monthly meetings with the CBI director to review the progress and quality of the cases being investigated.⁴²

The CVC is also understaffed as, in addition to its three commissioners and 238 personnel, it also relies on 199 full-time and 438 part-time central vigilance officers to handle the 62,362 complaints and 5,492 vigilance cases received in 2014.⁴³ In addition to its severe staff shortage, the CVC's second limitation is that it is an advisory body that relies on other public agencies to investigate the complaints of misconduct by civil servants that it receives. The CVC's limited budget and personnel means that it has to rely on the vigilance divisions of ministries and government departments.

There are four lessons policy-makers in countries with rampant corruption can learn from these cases. The most important lesson is that political will is essential for success in combating corruption. Political will refers to the sustained commitment of political leaders to implement policies to minimize corruption in their countries; it is important because leaders "can change a culture of corruption if they wish to do so" by enacting the laws and allocating the funds for enforcing these laws.⁴⁴ The tone from the top is critical for success because political leaders set the example by determining the direction, goals, and priorities of their country's anticorruption strategy. Robert Rotberg contends that "sincerely anti-corrupt leaders can influence the official behavior of entire leadership cohorts and of whole countries," as shown by the examples of Lee Kuan Yew in Singapore and Seretse Khama in Botswana.⁴⁵ Unfortunately, political will is scarce, especially in Asian countries where corruption is widespread because those persons "who are the greatest beneficiaries of corruption have the greatest power and use

the corrupt nature of government to maintain that power."⁴⁶

An analysis of the effectiveness of fifty ACAs by the World Bank concludes that "political will and commitment are the cornerstone of every successful anti-corruption effort."⁴⁷ While all governments have budget constraints, their "allocation of limited resources for ACA activities" signals their lack of "genuine commitment to the ACA's mission."⁴⁸ Two important indicators of political will are the budget and personnel allocated to the ACAs. First, the ACA's per capita expenditure is calculated by dividing its budget in U.S. dollars for a selected year by the country's population for the same year. Second, the ACA's staff-population ratio is assessed by dividing the country's population for a selected year by the number of the ACA's personnel for the same year.⁴⁹ Using these indicators, the strong political will of the governments of Hong Kong SAR and Singapore in curbing corruption is manifested in the higher per capita expenditures and more favorable staff-population ratios of the ICAC and CPIB (see Table 4). Conversely, the weak political will of the governments of the Philippines and India in combating corruption is reflected in the lower per capita expenditures and unfavorable staff-population ratios of the OMB and CBI.

The second lesson is that policy-makers must initiate appropriate reforms to tackle corruption by addressing its causes. However, despite what is known about the causes of corruption, most governments have failed to do so because it is easier to deal with the symptoms than to address the root causes of corruption.⁵⁰ President Xi Jinping's anticorruption campaign in China was launched in 2012 against the "tigers and flies," or those senior and junior officials who had become rich through bribery and patronage. However, this campaign is ineffective because it has only introduced regulations to curb extravagance

Table 4

Comparison of ACAs in Five Asian Countries

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	CPI Score, 2016 (0 – 100)	GDP Per Capita, 2015	Lead ACA	Lead ACA's Per Capita Expenditure, 2014	Lead ACA's Staff-Population Ratio, 2014
Singapore	84	US\$52,888	CPIB (Type A)	US\$5.36	1:26,682
Hong Kong SAR	77	US\$42,327	ICAC (Type A)	US\$16.59	1:5,333
China	40	US\$8,027	CCDI (Type B)	No Data	No Data
India	40	US\$1,598	CBI (Type B)	US\$0.05	1:228,206
Philippines	35	US\$2,904	OMB (Type B)	US\$0.39	1:81,631

Note: China's Central Commission for Discipline Inspection does not publish data on its budget and personnel. Source: Transparency International, "Corruption Perceptions Index 2016," https://www.transparency.org/news/feature/corruption_perceptions_index_2016. Data on GDP per capita are available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>. The per capita expenditures and staff-population ratios of the four ACAs were calculated by the author from their budgets and personnel in 2014.

and gift-giving without tackling the other four causes of corruption in China: low public-sector salaries, red tape, low probability of detecting and punishing corrupt CCP members, and lack of accountability of local government officials.⁵¹

Economist Daron Acemoglu and political scientist James Robinson believe that "poor countries are poor because those who have power make choices that create poverty. They get it wrong not by mistake or ignorance but on purpose."⁵² The rampant corruption in many Asian countries has not improved because their political leaders have made decisions that facilitate rather than curb corruption. Furthermore, corrupt politicians, civil servants, businesspersons, and citizens in these countries resist and subvert the implementation of comprehensive anticorruption reforms to protect their vested interests. Without substantive reforms to address the causes of corruption in Asian countries, their anticorruption efforts will continue to be ineffective.

The success stories of Singapore and Hong Kong SAR show that minimizing cor-

ruption in Asian countries is not an elusive dream. There is now a wealth of knowledge on the causes of corruption that policy-makers can distill to enhance the effectiveness of their anticorruption measures.⁵³ What appears to be lacking, however, is the political will of policy-makers in China, India, the Philippines, and other Asian countries to address the causes of corruption.

The third lesson for policy-makers is to establish a Type A ACA, like the CPIB or ICAC, and enhance its capacity, instead of relying on a Type B ACA or multiple ACAs. Denmark, Finland, and New Zealand have relied on other institutions instead of Type A ACAs to ensure good governance, but many Asian countries cannot rely on this option because they lack the strong institutions to deal with rampant corruption.⁵⁴ Since combating corruption is difficult and requires extensive financial and human resources, it would be more effective for policy-makers to establish a single Type A ACA (such as the CPIB or ICAC), which is dedicated solely to performing anticorruption functions, instead of any number of Type B ACAs (such as the CCDI, CBI, or OMB), which

have to perform both corruption and non-corruption-related functions. These ACAs would be more effective if they focused exclusively on combating corruption and relinquished their noncorruption-related functions to other domestic agencies.

The final lesson for policy-makers is that they should ensure that the new Type A ACA functions as an independent watchdog that investigates all corruption cases impartially, without fear or favor, and regardless of the position, status, or political affiliation of those persons being investigated. Singapore's CPIB and Hong Kong's ICAC are good examples of independent watchdogs. The second role of an ACA – as the “attack dog” of a government that abuses its powers by using corruption allegations as a weapon against its political opponents – is undesirable and should be avoided.

Over the past two decades, anticorruption campaigns have frequently been used in China against political enemies to undermine their power base in the CCP. There are four prominent examples of the CCP leaders' reliance on the CCDI as an attack dog against their political foes. The first example is the 1995 investigation of Chen Xitong, Beijing's party secretary, which was orchestrated by President Jiang Zemin because of the rivalry between his Shanghai faction and Chen's Beijing faction. Chen was sentenced to sixteen years' imprisonment for graft involving the misappropriation of RMB555,000.⁵⁵ Second, Chen Liangyu, Shanghai's party chief, was fired by President Hu Jintao in 2006 for his alleged role in the misuse of RMB3.2 billion from Shanghai's RMB10 billion pension fund. As Chen was an obstacle to his political control, Hu used the “antigraft card” to remove him from office; Chen was imprisoned for eighteen years for bribery and abuse of power in 2008.⁵⁶ The third case involved Bo Xilai, Chongqing's party chief, who was sentenced to life imprisonment in 2012 for bribery, embezzlement, and

abuse of power. Destroying Bo gave Xi Jinping “a weapon with which he could taint Bo's associates and accelerate the consolidation of his power.”⁵⁷ The fourth example is the 2014 CCDI investigation of Zhou Yongkang, the minister of public security from 2002 to 2007, for corruption, which resulted in the confiscation by the procuratorates of US\$16.05 billion worth of assets from his many residences across seven provinces in China. Zhou was expelled from the CCP in 2014, not only because of his corruption offenses, but also especially for his conspiracy with Bo Xilai to challenge Xi Jinping's leadership.⁵⁸

The third role of an ACA as a “toothless” or paper tiger is also undesirable as it reflects the government's weak political will to curb corruption by not providing the ACA with the necessary legal powers, budget, personnel, and operational independence to enforce the anticorruption laws impartially. The Korea Independent Commission Against Corruption (KICAC) was formed in South Korea in 2002, but was a weak replica of Hong Kong's ICAC because it could not investigate corruption cases. Its successor, the Anti-Corruption and Civil Rights Commission (ACRC) not only inherited the KICAC's Achilles' heel of being unable to investigate corruption cases, but its anticorruption functions were further diluted when the KICAC was merged in 2008 with the Ombudsman and Administrative Appeals Commission to form the ACRC, a Type B ACA. South Korea's inability to improve its CPI score beyond 53 to 56 from 2012 to 2016 reflects its failure to curb corruption and is an indictment of its futile strategy of relying on such paper tigers as the KICAC and ACRC throughout the past fifteen years.⁵⁹ Hence, it is not surprising that 76 percent of South Korean respondents in Transparency International's Global Corruption Barometer in 2017 believed that their government was doing badly in fighting corruption.⁶⁰

Unlike the ACRC, the OMB in the Philippines can investigate and prosecute corruption cases in addition to its other functions of graft prevention, disciplinary control, and providing assistance to public requests to expedite the delivery of services. However, the OMB's ineffectiveness as the lead ACA in combating corruption is the result of its serious staff shortage, limited budget, poor reputation, and inability to cooperate with the other ACAs in the Philippines. This explains why the OMB is also viewed as a paper tiger instead of a watchdog or attack dog.

The success of the CPIB and ICAC in combating corruption has resulted in the

proliferation of Type A ACAs around the world. It is not difficult for policy-makers to establish a Type A ACA in their country if they wish to do so. The challenge for them, however, would be to ensure that the new Type A ACA would have sufficient legal powers, budgets, and trained personnel to investigate corruption cases impartially and function effectively as an independent watchdog. It would be pointless for policy-makers in Asian countries to establish a Type A ACA if they lack the political will to ensure that it functions independently and effectively.

ENDNOTES

- ¹ Hong Kong was a British colony until July 1997 when it became a Special Administrative Region (SAR) of China. For convenience, Hong Kong SAR is referred to as a country in this essay.
- ² Jon S.T. Quah, *Combating Corruption Singapore-Style: Lessons for other Asian Countries* (Baltimore: School of Law, University of Maryland, 2007), 9 – 16.
- ³ Jon S.T. Quah, *Curbing Corruption in Asian Countries: An Impossible Dream?* (Bingley, United Kingdom: Emerald Group Publishing, 2011), 252 – 253.
- ⁴ Jon S.T. Quah, "Best Practices for Curbing Corruption in Asia," *The Governance Brief* 11 (2004): 1 – 2.
- ⁵ Robert Gregory, "Political Independence, Operational Impartiality, and the Effectiveness of Anticorruption Agencies," *Asian Education and Development Studies* 4 (1) (2015): 130 – 131.
- ⁶ Jon S.T. Quah, "Singapore's Corrupt Practices Investigation Bureau: Four Suggestions for Enhancing Its Effectiveness," *Asian Education and Development Studies* 4 (1) (2015): 77, 80 – 81.
- ⁷ Ian Scott, "Political Scandals and the Accountability of the Chief Executive in Hong Kong," *Asian Survey* 54 (5) (2014): 966 – 972.
- ⁸ "Ex-HK Chief Jailed 20 Months for Misconduct," *Straits Times*, February 23, 2017, A3.
- ⁹ Soh Kee Hian, "Corruption Enforcement," paper presented at the Second Seminar of the International Association of Anti-Corruption Associations, Chongqing, China, May 17 – 18, 2008, 1 – 2.
- ¹⁰ Bertrand de Speville, *Hong Kong: Policy Initiatives against Corruption* (Paris: Development Centre of the Organisation for Economic Co-operation and Development, 1997), 55 – 56.
- ¹¹ Jon S.T. Quah, "Learning from Singapore's Effective Anti-Corruption Strategy: Policy Recommendations for South Korea," *Asian Education and Development Studies* 6 (1) (2017): 20 – 21.
- ¹² Quah, *Curbing Corruption in Asian Countries*, 136.
- ¹³ Gabriella Quimson, *National Integrity Systems: Transparency International Country Study Report, Philippines 2006* (Berlin: Transparency International, 2006), 30.
- ¹⁴ Office of the Ombudsman, *Annual Report 2008* (Quezon City, Philippines: Office of the Ombudsman, 2009), 7 – 8.

- ¹⁵ Simeon V. Marcelo, *Combating Corruption in the Philippines: Are We Plundering our Chances or Doing it Better?* (Quezon City, Philippines: National College of Public Administration and Governance, University of the Philippines, 2005), 1–3.
- ¹⁶ Office of the Ombudsman, *Annual Report 2014* (Quezon City, Philippines: Office of the Ombudsman, 2015), 35.
- ¹⁷ Sheila S. Coronel and Lorna Kalaw-Tirol, *Investigating Corruption: A Do-It-Yourself Guide* (Quezon City, Philippines: Philippine Center for Investigative Journalism, 2002), 261–262.
- ¹⁸ “The Street Ombudsman,” *Newsbreak Online*, November 21, 2006.
- ¹⁹ M. Cayabyab, “PH Ombudsman Behind other Anti-Corruption Agencies in Asia,” *VERA Files*, May 10, 2011.
- ²⁰ Jon S.T. Quah, “Evaluating the Effectiveness of Anti-Corruption Agencies in Five Asian Countries,” *Asian Education and Development Studies* 4 (1) (2015): 154.
- ²¹ United Nations Office on Drugs and Crime, *Country Review Report of the Philippines* (Vienna: United Nations Office on Drugs and Crime, 2012), 8, 35.
- ²² “Fixing Crime, Corruption Top of Agenda for Philippines’ Duterte,” *Channel NewsAsia*, May 11, 2016.
- ²³ Beatriz Paterno, “What Does Rodrigo Duterte’s Victory Say about the Philippines’ Experience with Corruption?” *The Global Anticorruption Blog*, May 20, 2016.
- ²⁴ Ana P. Santos, “Philippine Drug War Continues Despite Corruption,” *Deutsche Welle*, February 14, 2017.
- ²⁵ Flora Sapio, *Implementing Anti-Corruption in the PRC: Patterns of Selectivity*, working paper no. 10 (Lund, Sweden: Centre for East and Southeast Asian Studies, Lund University, 2005), 8–10.
- ²⁶ Minxin Pei, “Fighting Corruption: A Difficult Challenge for Chinese Leaders,” in *China’s Changing Political Landscape: Prospects for Democracy*, ed. Cheng Li (Washington, D.C.: Brookings Institution Press, 2008), 230–232.
- ²⁷ Lening Zhang, “White-Collar Crime: Bribery and Corruption in China,” in *Crime and Social Control in China*, ed. Jianhong Liu, Lening Zhang, and Steven F. Messner (Westport, Conn.: Greenwood Press, 2001), 28, 33.
- ²⁸ Yongshun Cai, *State and Agents in China: Disciplining Government Officials* (Stanford, Calif.: Stanford University Press, 2015), 130–131.
- ²⁹ *Ibid.*, 133.
- ³⁰ Jeffrey Becker, “Tackling Corruption at its Source: The National Corruption Prevention Bureau,” *Journal of Chinese Political Science* 13 (3) (2008): 287.
- ³¹ *Ibid.*, 291, 297–299.
- ³² Quah, *Curbing Corruption in Asian Countries*, 97.
- ³³ Central Bureau of Investigation, *Annual Report 2014* (New Delhi: Central Bureau of Investigation, 2015), 4.
- ³⁴ Maurice Punch, *Police Corruption: Deviance, Accountability and Reform in Policing* (Portland, Ore.: Willan Publishing, 2009), 245.
- ³⁵ Quah, “Best Practices for Curbing Corruption in Asia,” 2.
- ³⁶ Michael Auslin, *The End of the Asian Century: War, Stagnation, and the Risks to the World’s Most Dynamic Region* (New Haven, Conn.: Yale University Press, 2017), 118.
- ³⁷ Central Bureau of Investigation, *Annual Report 2004* (New Delhi: Central Bureau of Investigation, 2005), 29; and Central Bureau of Investigation, *Annual Report 2014*, 84.
- ³⁸ B. R. Lall, *Who Owns the CBI? The Naked Truth* (New Delhi: Manas Publications, 2007), 230–231.

- ³⁹ S. S. Gill, *The Pathology of Corruption* (New Delhi: HarperCollins Publishers India, 1998), 238. Jon S.T. Quah
- ⁴⁰ N. Vittal, *Ending Corruption? How to Clean Up India* (New Delhi: Penguin Books India, 2012), 132 – 134, 23.
- ⁴¹ C. V. Narasimhan, “Prevention of Corruption: Towards Effective Enforcement,” in *Corruption in India: Agenda for Action*, ed. S. Guhan and Samuel Paul (New Delhi: Vision Books, 1997), 264 – 265.
- ⁴² Central Vigilance Commission, *Annual Report 2008* (New Delhi: Central Vigilance Commission, 2009), 1 – 2.
- ⁴³ Central Vigilance Commission, *Annual Report 2014* (New Delhi: Central Vigilance Commission, 2015), xi, 14, 23 – 24.
- ⁴⁴ Ian Senior, *Corruption – The World’s Big C: Cases, Causes, Consequences, Cures* (London: Institute of Economic Affairs, 2006), 184.
- ⁴⁵ Robert I. Rotberg, “Leadership Alters Corrupt Behavior,” in *Corruption, Global Security, and World Order*, ed. Robert I. Rotberg (Washington, D.C.: Brookings Institution Press, 2009), 342; and Robert I. Rotberg, *The Corruption Cure: How Citizens and Leaders Can Combat Graft* (Princeton, N.J.: Princeton University Press, 2017), 228 – 245.
- ⁴⁶ Senior, *Corruption – The World’s Big C*, 187.
- ⁴⁷ Francesca Recanatini, “Anti-Corruption Authorities: An Effective Tool to Curb Corruption?” in *International Handbook on the Economics of Corruption*, vol. 2, ed. Susan Rose-Ackerman and Tina Soreide (Cheltenham, United Kingdom: Edward Elgar, 2011), 565.
- ⁴⁸ *Ibid.*, 549.
- ⁴⁹ Jon S.T. Quah, “Benchmarking for Excellence: A Comparative Analysis of Seven Asian Anti-Corruption Agencies,” *Asia Pacific Journal of Public Administration* 31 (2) (2009): 182.
- ⁵⁰ Steven D. Levitt and Stephen J. Dubner, *Think Like a Freak: How to Think Smarter about Almost Everything* (London: Allen Lane, 2014), 66 – 67.
- ⁵¹ Jon S.T. Quah, *Hunting the Corrupt “Tigers” and “Flies” in China: An Evaluation of Xi Jinping’s Anti-Corruption Campaign (November 2012 to March 2015)* (Baltimore: Carey School of Law, University of Maryland, 2015), 4, 88 – 91.
- ⁵² Daron Acemoglu and James A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (London: Profile Books, 2012), 68.
- ⁵³ See Daniel Treisman, “What Have We Learned about the Causes of Corruption from Ten Years of Cross-National Research?” *Annual Review of Political Science* 10 (2007): 211 – 244.
- ⁵⁴ See Jon S.T. Quah, “Different Paths to Curbing Corruption: A Comparative Analysis,” in *Different Paths to Curbing Corruption: Lessons from Denmark, Finland, Hong Kong, New Zealand and Singapore*, ed. Jon S.T. Quah (Bingley, United Kingdom: Emerald Group Publishing, 2013), 226 – 232.
- ⁵⁵ “Web of Deceit: Main Characters in the Chen Xitong Scandal,” *Straits Times*, August 10, 1998.
- ⁵⁶ Quah, *Hunting the Corrupt “Tigers” and “Flies” in China*, 77 – 78.
- ⁵⁷ John Garnaut, *The Rise and Fall of the House of Bo* (Melbourne: Penguin Group, 2012), 129 – 130.
- ⁵⁸ Quah, *Hunting the Corrupt “Tigers” and “Flies” in China*, 79 – 81.
- ⁵⁹ Quah, “Learning from Singapore’s Effective Anti-Corruption Strategy,” 23, 26.
- ⁶⁰ Coralie Pring, *People and Corruption: Asia Pacific Global Corruption Barometer* (Berlin: Transparency International, 2017), 11.

How Not to Fight Corruption: Lessons from China

Minxin Pei

Abstract: The most effective anticorruption strategies combine prevention and enforcement. Yet the political payoffs are greater for enforcement-centered strategies, even though they often fail to achieve durable objectives. Autocratic regimes with endemic corruption thus tend to prefer enforcement-centered anti-corruption strategies: they are easier to contain, while prevention-centered strategies risk undermining the rulers' bases of power. This explains why the ruling Chinese Communist Party (CCP) has consistently favored an enforcement-centered anticorruption strategy. However, an overemphasis on enforcement, in the Chinese political context at least, has resulted in the politicization of anticorruption efforts and a lack of sustainability of such efforts.

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Judging by the numbers, the anticorruption campaign launched in late 2012 by Xi Jinping, the general secretary of the Chinese Communist Party (CCP), cannot fail to impress. By July 2017, the drive had put behind bars nearly 140 Party officials – with rankings of vice minister, deputy provincial governor, and higher – and more than fifty generals in the People's Liberation Army and the People's Armed Police. In the same period, tens of thousands of midlevel officials were also investigated, sanctioned, and prosecuted for various types of wrongdoing. In 2016 alone, the Party punished about twenty-one thousand midlevel officials.¹ While Xi's anticorruption crackdown, the most ferocious and sustained in the history of the People's Republic of China (PRC), may have temporarily curbed shady dealings involving government officials, its long-term effectiveness in reducing corruption remains doubtful. One telltale sign is that the strategy was primarily successful in exposing those officials who perpetrated illicit activities during the campaign, raising questions about the effectiveness of anticorruption efforts once the campaign dies down. The oth-

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er indicator of the poor long-term prospects of Xi's anticorruption drive is its near-total focus on enforcement (investigations, sanctions, and prosecutions), its high degree of politicization (the use of the campaign to destroy political rivals), and the lack of institutional reforms to prevent corruption.

This enforcement-centered anticorruption strategy adopted by Xi is no accident. One apparent reason for pursuing this strategy is that the Chinese party-state possesses an enforcement capacity that few middle-income countries can match. But the greater reason why Xi and his allies have picked this approach is not its effectiveness or sustainability, but its high political payoffs. Scholars specializing in anticorruption reforms have long known that it is a mistake to fight corruption by fighting corruption: that is, focusing on enforcement and neglecting prevention.² However, an enforcement-centered strategy is too politically attractive for leaders to resist. Generally speaking, enforcement includes anticorruption campaigns, high-profile prosecutions of senior government officials, and harsh penalties against wrongdoers. Politically, an enforcement-oriented approach is often a winner for the leaders who embrace it. In democratic societies, leaders can gain or protect their office by tapping into populist resentments against perceived privileges and corruption of elites. In autocratic regimes, rulers can also build public support with anticorruption campaigns and, more important, purge rivals on charges of corruption.

By comparison, prevention-oriented approaches generate fewer short-term political dividends. Measures designed to reduce the opportunities for corruption are seldom politically glamorous even though they promise better long-term results.³ Hong Kong's success in fighting corruption in the public sector shows that the focus of an effective anticorruption strategy should be reforming public policies and institutions to

reduce both the opportunities and incentives for government officials to engage in corrupt activities.⁴ Prevention-oriented policy and institutional changes are both more effective and less costly than a purely enforcement-focused strategy because enforcement incurs substantial costs: investigation, prosecution, and punishment all consume precious time and money. And clever wrongdoers can evade enforcement by covering up their tracks or seeking protection from powerful patrons. Worst of all, by the time enforcement actions are taken, the real damage caused by corruption is already done.

To be sure, a truly effective anticorruption strategy must include both prevention and enforcement; but it must place a greater emphasis on prevention. The puzzle here is why many countries, and autocracies in particular, have consistently favored enforcement over prevention in fighting corruption. The short answer is that the political incentive structures of enforcement and prevention for rulers are dramatically different. Antinepotism and asset-disclosure rules, conflict of interest regulations, transparency requirements for government budgeting and spending, and freedom of information may significantly reduce the incentives and opportunities for corruption, but they rarely provide the political benefits prized by autocratic rulers: favorable media coverage, public popularity, and the destruction of rivals. Worse still, policies and reforms designed to prevent corruption are almost certain to weaken the power of autocrats because the most widely applied instruments of prevention are those that deprive autocrats of discretion, undercut their ability to use patronage to maintain the support of their allies, and reduce their control over civil society and the media. For instance, effective prevention of corruption often requires a significant reduction of the government's involvement in the economy, thus restricting the rulers'

discretion and capacity to allocate favors to their loyalists. Furthermore, a vibrant civil society and free press, essential components of a prevention-oriented anticorruption strategy, threaten the political monopoly of autocratic regimes.

The political logic underlying the strategy for fighting corruption in autocratic regimes is thus straightforward: fighting corruption serves the interests of rulers better than does preventing corruption. Indeed, corruption is an indispensable tool of maintaining loyalty in an autocracy because dictators must provide side payments to their supporters. When rulers in autocracies decide to tackle corruption, often in response to public outrage, they favor measures that focus almost exclusively on the prosecution and punishment of the perpetrators of corruption. In most cases, such enforcement-oriented measures are further compressed into intense but short-lived anticorruption campaigns selectively targeting members of the ruling elite. The result of such enforcement efforts is predictable: the campaign may temporarily suppress corruption while it is active, but the institutional sources of corruption remain essentially intact. Once enforcement is relaxed, as inevitably is the case, corruption – still built into the structure of governance – returns with a vengeance.

Few countries illustrate this political logic – and the pitfalls of enforcement-oriented anticorruption efforts – better than the People’s Republic of China.

In the study of corruption, China presents an intriguing case. On the one hand, the country’s ruling Chinese Communist Party has established, at least on paper, one of the most fearsome enforcement regimes in the world. Operating largely outside the formal legal system, the CCP’s anticorruption regime consists of periodic anticorruption campaigns during which officials accused of corruption are deprived of their

constitutional protection and face severe punishment if found guilty, including the death penalty. Additionally, the CCP operates an extrajudicial system of Discipline Inspection Commissions (DICs), which wield enormous power of investigation, detention, and determination of guilt and penalty.

On the other hand, the CCP’s impressive enforcement capacity appears to have done little to reduce corruption. Judging by several measures indicative of the scope and intensity of corruption, such as the number of midlevel and senior officials caught taking bribes, corruption has worsened since the early 1990s when China’s economic takeoff began (see Table 1). The most positive thing one can say about the CCP’s enforcement capacity is that it may have succeeded in establishing a fragile equilibrium: while the CCP eschews preventive measures because they can produce outcomes averse to the interests of the regime’s leaders, it manages to deploy sufficiently tough measures to keep corruption from getting totally out of control. This balance allows enough corruption to maintain the regime’s patronage system but punishes individual wrongdoers (usually less powerful political patrons) when they become excessively greedy. The Party’s ability to maintain this equilibrium may be one of the reasons why, despite all the horrible media accounts, the level of corruption in China remains near the global median.⁵

Nevertheless, China’s mixed record in fighting corruption can yield two valuable lessons for the rest of the world. The first is that an effective anticorruption strategy must prioritize prevention and use enforcement as a complementary tool. The other is that such a strategy is perhaps not available to political leaders in many developing countries, especially those ruled by autocratic regimes. The political incentive structure dictates against prevention, and most developing countries lack the socioeconomic conditions and institutions

Table 1

Number of Prosecuted Corruption Cases Involving Officials at and above the County or *Chu* Level

Minxin Pei

	1982 – 1987	1988 – 1992	1993 – 1997	1998 – 2002	2003 – 2007	2008 – 2012	2013 – 2014
Number of Officials	1,500	4,629	3,175	12,830	13,929	13,153	6,911
Average per Year	300	926	635	2,566	2,786	2,630	3,455

Source: China Law Society, *Law Yearbook of China* (Beijing: China Law Society, various years).

needed for preventive measures to work effectively.

The CCP's approach to combating corruption has traditionally stood on three pillars: a vast number of rules regulating the behavior of Party and government officials; an internal extrajudicial body empowered to investigate, detain, and punish wrongdoers; and periodic and intense anticorruption campaigns. Each pillar of this anticorruption strategy serves a particular political purpose.

Since the early 1990s, the CCP has issued hundreds of rules detailing impermissible conduct for its members. To be sure, many of the new rules merely reiterate previously announced policies and may be redundant. But the very fact that the Party has to repeat essentially similar admonitions to its rank and file indicates that these rules have not been observed in practice. Even a casual examination of these dictates would reveal two serious flaws. One is that most of these provisions are relatively vague, thus making them difficult to observe and reserving the ultimate power of interpretation to the leadership of the Party. For example, the CCP Central Committee and State Council of the PRC first issued a decision banning the immediate family members of officials from engaging in business activities

in May 1985. The whole decision consisted of one paragraph of fewer than two hundred Chinese characters and did not even define "business activities." Judging by the fact that many, if not most, family members of officials of varying ranks have since gone into lucrative businesses, the decision evidently had no impact. The other flaw is that these rules do not contain provisions that ensure effective third-party monitoring of officials' compliance. In other words, only the Party's leaders can monitor – and thus decide – whether their subordinates have complied with these rules.

The centerpiece of the CCP's anticorruption regime is its "Rules for Disciplinary Action," first issued in 1997 and subsequently revised in 2004 and 2015. The "Rules" reflect both the Party's ambition and inherent limitations to crafting a workable regime to regulate the political, economic, and personal conduct of its members. On the surface, the "Rules" are comprehensive and, to those unfamiliar with the CCP's history as a revolutionary party, may appear overly intrusive and even puritanical. The number of articles detailing prohibited conduct and penalties was 168 in the 1997 version and grew to 174 in 2004, before they were whittled down to 129 in the 2015 revision. A cursory glance at the rules of conduct laid out by the CCP would show that Chinese rul-

ers are primarily concerned with maintaining the political loyalty and organizational discipline of its members. For instance, of the eighty-four rules in the 2015 version specifying prohibited conduct, fifty-four of them cover the Party's political and organizational discipline and only thirty address the economic activities and personal conduct of CCP members.

Even though China's ruling party sees the violation of its political and organizational rules as a more serious threat to its survival, the CCP nevertheless attempts to ensure that its members, who control enormous economic and administrative resources, will not abuse their power for personal gains. Among the key provisions against personal enrichment through the misuse of office, the most notable are those prohibiting Party officials and members (and their immediate family members) from accepting bribes, gifts, complimentary memberships in clubs, and other favors. Family members of Party officials are not allowed to conduct commercial activities in the same jurisdictions where the officials serve if these activities "may interfere with the impartial conduct of the officials' duties." There are also "relevant regulations," though unspecified in the "Rules," that prohibit Party members from engaging in a variety of business activities (such as investing in securities, owning nontradable shares, and registering or investing in companies domiciled abroad). One last notable aspect of the CCP's anticorruption regime is its provisions against improper personal conduct, especially sexual misconduct, by its members. For instance, Party members will be severely disciplined if they engage in what the Party labels "decadent life-style, low-taste pursuits, improper behavior in public, and inappropriate sexual relations."

Consistent with the 1985 decision and the "relevant regulations" above, one oddity of the "Rules" is that although the list of proscribed activities is quite long, the defini-

tion of the activities remains vague. Another oddity is that these prohibitions, which were first promulgated in the late 1990s, do not appear to have been effectively enforced, given the widespread prevalence of illicit activities in the Party since then. While these two oddities suggest that CCP leadership may need to revamp the Party's anticorruption regulations thoroughly, the Party's political calculus dictates that it would be better off with the existing approach: prohibiting a large number of vaguely defined but potentially corrupt activities, demonstrating to the public that it has strict rules in place but reserving for the Party itself maximum discretion in the interpretation and enforcement of these rules.

On paper, the Chinese state appears to possess the same legal institutions as other countries empowered with anticorruption investigations, prosecutions, and trials. For instance, the Ministry of Supervision is ostensibly the state bureaucracy tasked with monitoring government officials. Procuratorates are charged with prosecuting officials accused of corruption, while Chinese courts determine the guilt and penalties for these officials.

In reality, however, none of these institutions matters as much as the Party's internal Discipline Inspection Commissions, which effectively monopolize anticorruption enforcement. In terms of personnel, the Ministry of Supervision is staffed by the same officials who serve in the Central Commission for Discipline Inspection (CCDI). The provincial and municipal Departments of Supervision are likewise run by the same officials who serve on the Discipline Inspection Commissions in these jurisdictions. In carrying out anticorruption enforcement activities, DICs occupy a uniquely powerful niche: only DICs are empowered to conduct the initial investigations, detain the accused, and determine

guilt and punishment. Officials are handed over to the procuratorate only after the DICs have completed their investigations and reached their own conclusions.

Compared with anticorruption institutions in other countries, the DIC is a formidable enforcement agency: it combines the functions of investigation, prosecution, and judgment and its actions cannot be challenged in court. At the central level, the CCDI is headed by a member of the Politburo Standing Committee, the most powerful decision-making body of the CCP. In provinces and municipalities, DICs are headed by members of lower-level standing committees of the Party. Besides political status, the DICs possess the potent weapon of *shuanggui*: in effect, indefinite extralegal detention.⁶ Targets of investigations, invariably CCP members, are denied their constitutional rights once they are hauled in for interrogation by DIC officials. The Party's justification for the use of this harsh measure is that, as members of the CCP, the targets of investigation have implicitly forfeited their constitutional rights and are subject to the provisions of the Party's own rules. Once a target of investigation has been detained by the DIC, that person is locked in an isolation cell and prevented from either seeking help or leaking vital information. Access to legal counsel is denied and DIC investigators frequently resort to torture and sleep deprivation to extract confessions from the accused.

At the end of the *shuanggui* process, the DIC determines the specific criminal charges against the accused and the appropriate penalty, a decision that is almost certainly made by the most senior Party officials to which the DIC reports. Only then will the Party organization announce the expulsion of the accused from the Party (and dismissal from any government positions previously held) and the transfer of the case to the procuratorate, which duly prosecutes the case in a Chinese court that

never fails to corroborate the Party's finding of guilt.

Despite the enormous power and discretion that the CCP gives to its DICs in fighting corruption, the agency is plagued by serious problems that reduce its effectiveness and credibility. As an organization, the DICs have relatively small staffs that lack proper professional training in investigating white-collar crimes. Only municipal, provincial, and central DICs have full-time investigators. Based on disclosure of provincial DICs, a typical municipal DIC has fourteen investigators or case officers. The number of staff varies in provincial DICs. Yunnan's provincial DIC has 297, Shan'xi has 234, Guizhou has 182, but Heilongjiang has only 131. Since only seven out of ten staff members in provincial DICs work as professional investigators or case officers, the effective size of the professional staff in provincial DICs is quite small, ranging from ninety in Heilongjiang (a province of 38 million people and perhaps 2.47 million CCP members) to 210 in Yunnan (a province of 46 million and perhaps 3 million CCP members).⁷ The CCDI, the most powerful anticorruption agency, has a total staff of about one thousand, with seven hundred of them being full-time investigators and case officers. But they have to monitor tens of thousands of officials in provincial governments, central ministries, and large state-owned enterprises.

Evidently, the relatively small size of the staff of the DICs makes them heavily dependent on the leads provided to them by, in most cases, anonymous individuals. For example, a senior investigator of the CCDI disclosed that, in 2012, 42 percent of all DIC investigations in the country were based on leads provided by "the masses."⁸ In processing "leads from the masses," the challenge for DIC staffers is to sort out genuine leads from unverifiable accusations, a task made much harder by the anonymity of the majority of the accusers. Several local DICs

have claimed that about 70 percent of all denunciations are anonymous, although this number is likely understated.⁹

In 2015, the CCDI received, via texts and messages sent by mobile phones and the Internet, about 128,000 denunciations, averaging more than ten thousand per month.¹⁰ Provincial DICs were no less inundated: from January to November 2015, Sichuan's provincial DIC received 61,736 anonymous denunciations, averaging about 5,600 per month. Zhejiang's provincial DIC reported that, in 2015, it received about 20,000 letters exposing various types of wrongdoing by local Party members. In 2014, more than 30,000 denunciations poured into Guangdong's provincial DIC. In Yunnan, from January to March 2016, the provincial DIC received an average of 3,000 anonymous denunciations per month. In the Hangzhou municipality (population 9.2 million) in 2014, the Party's DIC received 10,349 such denunciations.¹¹ These figures imply that each staff member in the CCDI must handle fourteen denunciations per month. A typical investigator in the Yunnan provincial DIC must also examine fourteen denunciations per month. A municipal DIC investigator in Hangzhou handled about twelve denunciations per month in 2014.¹² Given the time-consuming nature of investigating corruption allegations and building a legitimate case against the accused, an average DIC staffer cannot afford to devote more than cursory attention to such leads.

Besides the difficulty of filtering for reliable leads, the effectiveness of the DICs is further undercut by the corruption of the anticorruption investigators themselves. Since directors of DICs wield considerable power and operate in a totally opaque environment, they often succumb to the temptations of using their power to extract bribes and engage in other illegal activities. In the last decade, directors of provincial DICs in Guangdong, Zhejiang, Shan'xi, and Sichuan, along with several deputy direc-

tors, were themselves arrested for corruption. More than one dozen directors of municipal DICs were sentenced to prison terms for corruption, one of whom received a rare death sentence for his egregious crimes. Even the director of the DIC of the People's Liberation Army was reportedly arrested for corruption in 2017. In the much-vaunted CCDI, two midlevel officials were arrested for attempted cover-ups.

But the most serious flaw of the DIC as an anticorruption agency is its politicization. It lacks genuine institutional autonomy and its enforcement decisions are made largely on the basis of political considerations. As a ruling party determined to keep its political monopoly intact, the CCP understandably will not embrace a fully independent anticorruption agency, such as the Independent Commission against Corruption in Hong Kong. What puzzles casual observers is why the CCP has opted to further eviscerate the autonomy of its own in-house anticorruption agency, the DIC, by denying this institution the requisite political status and independence needed to ensure its integrity, credibility, and effectiveness. In terms of its status, the DIC is deliberately set up as a committee subordinate to the CCP committee. While the head of the DIC sits on the standing committee of the CCP committee, he reports to the secretary of the CCP committee. In procedural terms, the DIC cannot launch an investigation without the authorization of the CCP committee. In the case of corruption allegations against senior officials (vice ministers, deputy governors, and above), the DIC must obtain approval from the Politburo Standing Committee. This arrangement seriously undermines the credibility and the effectiveness of the DIC since it gives the CCP committee, in particular its secretary, decisive influence over corruption investigations of Party members and the severity of the sanctions.¹³ The politicization of the DIC's operations can result

both in the protection of corrupt officials and in the wrongful persecution of innocent CCP members who have incurred the personal wrath of senior officials, in particular the Party secretary.

The CCP provides little public information that might reveal how political interference compromises the DIC's proceedings. But based on data on disciplinary sanctions released by the CCDI, it is evident that change of political leadership significantly affects the severity of discipline. The most notable aspect of anticorruption sanctions taken by the CCP is the very low rate of criminal prosecution of CCP members whose misdeeds have been investigated and proven by the DICs. Even more disturbing, the prosecution rate tends to rise when a new leader comes into office but declines in his second term.¹⁴ This suggests that newly installed leaders have an incentive to purge members of rival factions by using the anticorruption campaign, but once they have consolidated their power, they tend to be more tolerant of corruption committed by their loyalists. In Xi's anticorruption campaign, for example, none of his loyalists has been investigated or arrested, even though the likelihood that some of them have committed corrupt acts is very high (see Table 2).

The institutional flaws of DICs have not escaped notice of China's new leadership. After he was made the CCP general secretary in November 2012, Xi Jinping appointed his loyalist, Wang Qishan, to head the CCDI. An astute, capable, and ruthless politician, Wang has been instrumental in directing Xi's anticorruption campaign. He has also implemented several reforms to address the flaws of DICs that impair their autonomy and effectiveness. Among these measures were efforts to ensure that the head of the provincial DIC is not part of the local political network. Previously, most provincial DIC directors were "native sons." But Xi and Wang viewed their con-

nections with local political bosses as a vulnerability, raising the likelihood that they would cover up wrongdoing by familiar local officials. After Wang took over the CCDI, he reshuffled the leadership in most provincial DICs. As a result, of the thirty-one provincial DICs, twenty-four were headed by "outsiders," officials from different provinces. Half of the twenty-four outsiders were drawn from the CCDI.¹⁵

Another core reform of the new leadership was to require that any formal investigation launched by a local DIC must also be reported to a higher-level DIC. Before this measure, local officials could easily cover up the misdeeds of fellow Party members by either reporting that their investigations yielded no evidence of wrongdoing or understating the nature and severity of the criminal activities.

The third important reform adopted under Xi's leadership in the past few years is the dispatching of "roving inspection teams" to local governments, state-owned enterprises, and other state-affiliated institutions (such as universities). Headed by retired senior officials, these teams enjoy effective subpoena power because they can conduct confidential interviews with local officials, uncovering corruption by extracting information directly from potential witnesses and whistleblowers. It is worth noting that the nature of "roving inspection teams," however, indicates that even following reforms to strengthen subnational DICs, the new CCP leadership continues to harbor doubts about their effectiveness.

Periodic anticorruption campaigns form the third pillar of the CCP's enforcement strategy. For the CCP, such campaigns serve multiple purposes. For the regime as a whole, launching these campaigns sends a powerful signal to its rank-and-file indicative of the regime's resolve to reimpose discipline. For the CCP's top leaders, these campaigns can help win popular support

Table 2
Sanctions against CCP Members Who Have Violated the Party's Rules

	Total Number of CCP Members Disciplined for Wrongdoing	Annual Average	Number of CCP Members Criminally Prosecuted	Annual Average	Prosecuted CCP Members as a Share of All Those Disciplined (%)
1992 – 1996	669,300	139,860	37,492	7,498	5.6
1997 – 2001	846,150	169,230	37,790	7,558	4.5
2004 – 2006	377,234	125,744	23,482	7,827	6.2
2007 – 2012	668,428	133,685	24,584	4,917	3.7
2013 – 2016	1,165,000	291,250	46,600	11,650	4.0

Source: Central Commission for Discipline Inspection, *Work Report of the Central Commission for Discipline Inspection* (Beijing: Central Commission for Discipline Inspection, various years).

and purge rivals. That is why all new CCP leaders in the post-Deng era have embraced an anticorruption campaign immediately after taking power.

Heightened enforcement efforts during anticorruption campaigns can produce short-term results.¹⁶ With the ascension of new Party leadership, a larger-than-usual number of CCP members are disciplined and prosecuted; predictably, officials then become less reckless in abusing their power. The CCP follows a predictable pattern: To underscore the Party's seriousness, a new leader will launch the campaign with the prosecution of a senior leader, often a member of the Politburo (one of the twenty-five most important Party leaders). The CCDI will also detain for investigation other high-ranking officials – dubbed “tigers” – such as provincial Party chiefs, governors, and ministers. Invariably, their misdeeds are publicly disclosed and they are

denounced as ideological and moral degenerates who have betrayed the Party. After these fallen “tigers” are paraded on television to confess their crimes and personal failings, they receive lengthy jail sentences (although very few senior leaders get the death penalty). But “tigers” are not the only prey in an anticorruption campaign. Midlevel and low-ranking officials – or “flies” – also face greater risks of investigation and criminal prosecution under the new leadership.

In one sense, Xi's anticorruption campaign that began in late 2012 and continued into 2017 is the outlier: all other previous campaigns lasted about a year. Typically, once an anticorruption campaign has achieved the short-term objectives of the new leader, he calls it off: continuing the campaign would not only deliver diminishing political returns but also threaten to derail the leader's political agenda. But

in view of the above pattern, Xi's anticorruption crackdown is less unusual than it appears. What separates it is its ferocity and length, which are largely the result of Xi's political motivation of conducting a de facto and full-scale purge under the guise of an anticorruption drive.

Anticorruption campaigns may be a politically expedient tool for a new CCP leader to consolidate power and for a party-state to reassert its eroding authority over its members. But as a device to control corruption, as the Chinese case makes clear, these campaigns have severe limitations.

The first and perhaps most serious limitation of anticorruption campaigns is their deep politicization. Chinese leaders at all levels of the party-state have enormous discretion in picking the targets of these campaigns. Political logic dictates that they concentrate the focus of these campaigns on their adversaries while shielding their loyalists.¹⁷ As the result of such political selectivity, anticorruption campaigns lack the credibility needed to legitimize them as bona fide efforts to curb the abuse of the power.

The second flaw of anticorruption drives is their high political costs. Even though the CCP abandoned the Maoist model of governance in the late 1970s, the influence of the Maoist mobilization regime remains strong. During an anticorruption campaign, the entire CCP is mobilized to accomplish a political objective chosen by its top leader. Consequently, anticorruption campaigns consume an inordinate amount of time, energy, and attention of Chinese officials at all levels, at the expense of other important governance goals. Equally worrisome is the violation of the rights of Party members. Eager to demonstrate their loyalty and effectiveness, Chinese officials often disregard the rules and procedures in investigating alleged wrongdoing. Those unfortunate enough to be victims of anticorruption campaigns also face stiffer punishments because the CCP wants to make

them an example, to "slaughter a chicken to warn the monkeys."

The third serious flaw of anticorruption campaigns is their unsustainability: the high political intensity required of these campaigns makes them impossible to sustain. Chinese leaders simply cannot afford to turn the entire administrative apparatus of the party-state into a single-purpose machinery. When the crackdown on corruption is at the top of the governing agenda, lower-level officials, out of fear of running afoul of the regime's code of conduct, have full justification to do little else. Additionally, by casting a wide net, adopting harsh methods, and imposing strict rules on the conduct of officials, these campaigns encounter passive resistance in a demoralized and alienated bureaucracy whose cooperation the CCP must secure if it wishes to accomplish other vital objectives, such as delivering economic growth as a source of legitimacy. Indeed, bureaucrats resentful about the loss of their perks and corruption incomes are likely to engage in work stoppages to make tangible the high costs of the anticorruption crackdown. Because of their inherent unsustainability, all anticorruption campaigns in China are short-lived, with the exception of that launched by Xi Jinping, which increasingly resembles a political purge far more than a genuine anticorruption campaign, consistently targeting members of rival factions but leaving Xi's supporters unscathed. Judging by the long-term impact of these campaigns in curbing corruption, these drives are counterproductive. While corruption is temporarily suppressed during the campaigns, it bounces back quickly and grows more intense once they end: it does not take long for government officials to seek to recoup the illicit incomes they forwent while under tighter surveillance.¹⁸

Given the flaws embedded in the CCP's enforcement-oriented approach to fight-

ing corruption, why has the Chinese regime shunned measures that are preventive in nature? Academic research on corruption suggests that preventive measures are generally more effective in curbing abuse of power.¹⁹ Among the policy and institutional reforms regarded as the most effective in preventing corruption, three stand out: reduced state involvement in the economy, protection of civil liberties, and an independent judiciary. In all likelihood, the CCP, which has demonstrated a remarkable capacity to learn and adapt in the post-Mao era, knows well the policies and reforms crucial to the prevention of corruption. Indeed, the Party's Central Committee endorsed a resolution in late 2014 declaring its commitment to "perfecting a system of anticorruption enforcement and prevention and establishing an effective system so that [government officials] are afraid to be corrupt, unable to commit corruption, and will not even think about engaging in corruption."²⁰

Such lofty rhetoric notwithstanding, there is little evidence that the Party has actually taken any meaningful measures since late 2014 to build an anticorruption regime relying more on prevention than enforcement. The explanation is simple. For the CCP, embracing prevention-oriented reforms is equivalent to choosing a cure worse than the disease: doing so would almost certainly undermine the economic and political foundations of one-party rule.

Corruption tends to be more widespread in countries in which the state is extensively involved in the economy, mostly through regulation of economic activities, provision of subsidies, control of prices, and ownership of productive assets. Officials in charge of these activities have ample opportunities – and face nearly irresistible temptations – to extract bribes from ordinary citizens and private businessmen. In the Chinese case, the CCP-controlled state is deeply embedded in the economy. Even after four decades of economic reform, the state still

accounts for nearly 40 percent of the GDP and continues to own vast amounts of wealth, especially land, mineral resources, and monopolistic state-owned enterprises (such as telecom firms, airlines, and banks). Studies of corruption in China show that the CCP's role in the economy is the principal source of abuses of power.²¹

Despite such a clear and close connection between corruption and the involvement of the Chinese party-state in the economy, the CCP has consistently rejected radical economic reforms that would involve curtailment of its control over the Chinese economy. The most ambitious blueprint for economic reform released by the Xi Jinping administration, in the fall of 2013, unambiguously declares that the state-owned sector is the foundation of the Chinese economy and must be preserved and strengthened.²² While it is difficult to make an economic case for the CCP to maintain such deep and extensive involvement in the economy, the political logic for doing so is overwhelming. Such control provides one of the most critical instruments for the CCP to maintain its power. The direct control of economic resources enables the CCP to cover the costs of maintaining a vast party bureaucracy (the personnel and operational expenses of the full-time officials working exclusively in the CCP's organization are unknown, but dues collected by the CCP, about 1 percent of a member's income, are insufficient to cover them). Additionally, such control allows the CCP to maintain a lucrative patronage system that creates well-paying jobs for its supporters, who are likely to abandon the party-state without such opportunities. Finally, as economic performance constitutes a vital source of legitimacy for the CCP, direct control of the economy makes it possible for the Chinese party-state to engage in activities that can artificially boost short-term growth when necessary (as in the wake of the 2008 global financial crisis).

If reducing the state's involvement in the economy removes many opportunities for corruption, the power of civil society, in particular the monitoring capacity of the press and nongovernmental organizations (NGOs), can deter government officials from engaging in corrupt activities.²³ However, for the CCP, empowering civil society and the press in its fight against corruption is a political risk it cannot afford to take. That is why CCP censors have maintained a tight, albeit imperfect, lid on press reports of official scandals, especially those involving senior central government and Party officials. Few Chinese news outlets are allowed to conduct investigative reporting. Civil society groups in China dare not champion anticorruption causes, and those who do are shut down immediately and their leaders arrested, as in the case of the New Citizen Movement, a Beijing-based NGO that advocated government transparency and mandatory disclosure of the wealth of government officials. In 2013, the Chinese government banned the organization and later sentenced its leader to four years of imprisonment on trumped-up charges.

Despite the CCP's aversion to civil society and press freedom, Chinese citizens have become more active in monitoring official behavior and reporting wrongdoing. Aided by access to modern communications technologies and the spread of smartphones, ordinary Chinese citizens are now capable of recording evidence of wrongdoing by government officials and disseminating them easily through social media. To be sure, because of the growing sophistication and capabilities of China's cyber censors, these citizen activists operate in a difficult environment. Nevertheless, activists have scored some notable victories. For instance, in 2012, vigilant Chinese netizens spotted a local official wearing an expensive watch at the scene of a horrific traffic accident. They uploaded the photo to social media,

where it immediately went viral. In the ensuing political storm, the local official was investigated, prosecuted, and sentenced to ten years in prison for corruption. In another incident in 2008, a housing official in Nanjing incensed the public by declaring that housing prices were not too high. Watchful netizens noticed that this official was smoking expensive imported cigarettes and shared the photo online. Under public pressure, the Chinese government had to investigate the official, who was convicted and sentenced to eleven years in prison. In 2013, Yu Jianrong, a well-known scholar and advocate for civil rights, used the popular *Weibo* (Twitter-like) platform to launch a nationwide citizens' movement to photograph imported luxury cars affixed with military license plates and upload the pictures on the Web. Tens of thousands of citizens participated, causing Chinese military officers to leave their luxury cars at home (or at least no longer dare to put a military license plate on them).

Unfortunately, these instances of successful citizen participation in the fight against corruption in China are exceptions that prove the rule. The contradictions in China's enforcement-centered approach to fighting official corruption are apparent in Xi Jinping's ongoing anticorruption campaign. The real driving force behind Xi's ferocious and sustained anticorruption crackdown is his intent to purge rivals and consolidate power. The targets of the campaign make this clear: the hardest hit was the faction affiliated with former president Jiang Zemin, since this group posed the greatest threat to Xi's political survival. Another faction, the so-called Youth League affiliated with former president Hu Jintao, has suffered less because it presents a lesser threat. At the same time, not a single "princeling" – an offspring of a revolutionary veteran – has been targeted, even though this group is notoriously corrupt; princelings are natural political

allies of Xi, who is himself a princeling. Incidentally, not a single colleague who has worked closely with Xi before his ascent to power has been investigated or arrested during the five-year campaign.

Another indicator of the political nature of Xi's anticorruption fight is his crack-down on civil liberties and press freedoms, both critical ingredients of an effective anti-corruption strategy. After he rose to power, Xi imposed the most draconian control over Chinese society since the end of the Maoist era, launching a sustained crackdown on civil liberties and eschewing institutional reforms and policies that would help prevent public corruption (such as requiring officials to disclose their wealth). Based on the mixed record of the CCP's anti-corruption efforts and international experiences elsewhere, Xi's enforcement-based approach is unlikely to produce lasting improvements. Those outside China who admire the CCP's capacity to adopt tough enforcement measures in fighting corruption should think again about copying the Party's strategy.

In an ideal world, a truly effective and durable anticorruption strategy would be

within reach of Chinese leaders. All they need to do is incorporate many of the preventive components Chinese leaders have not yet been willing to adopt. Economically, the most important reform is a dramatic downsizing of the Chinese state's control of the economy. This would require the privatization of most state-owned enterprises and assets in a gradual, orderly, and transparent manner. Institutionally, the Party must pass mandatory and verifiable rules of disclosure of the wealth of its officials and make government budgeting and spending more transparent. The anticorruption enforcement that remains should be entrusted to an independent agency and independent judiciary to avoid politicization. Finally, the Chinese party-state must enlist the power of civil society and the press to monitor and police the bureaucracy. Conceptually, rebalancing China's anticorruption strategy is not difficult. The long-term benefits of a more balanced anticorruption approach are also self-evident. Politically, however, the CCP will likely find this package too frightening to endorse and too difficult to implement.

ENDNOTES

- ¹ See Economic Daily, "List of Senior Officials at the Ministerial Level and Above at the End of the 18th National Party Congress is the Highest in Shanxi," China Economic Net, February 26, 2018, http://district.ce.cn/newarea/sddy/201410/03/t20141003_3638299.shtml; "At Least 53 Armed Police and Airmen of the 18th National Congress of the Chinese Army Fell into the 'Hit Area,'" *Beijing Youth Daily*, December 30, 2016, http://military.china.com/important/11132797/20161230/30127822_all.html; and "Work report of the Seventh Plenum of the 18th Central Commission of Discipline Inspection," http://www.ccdi.gov.cn/xxgk/hyzt/201701/t20170120_114176.html (accessed March 28, 2018).
- ² Daniel Kaufmann, "Back to the Basics: 10 Myths about Governance and Corruption," *Finance and Development* 42 (3) (2005).
- ³ Rick Stapenhurst and Sahr J. Kpundeh, eds., *Curbing Corruption: Toward a Model for Building National Integrity* (Washington, D.C.: The World Bank, 1999).
- ⁴ Ian Scott, "Institutional Design and Corruption Prevention in Hong Kong," *Journal of Contemporary China* 22 (79) (2013): 77–92.

- ⁵ For instance, Transparency International's 2016 rankings of corruption perception places China at 79 out of 176 countries, tied with India and Brazil. See Transparency International, "Corruption Perceptions Index 2016," January 25, 2017, http://www.transparency.org/news/feature/corruption_perceptions_index_2016#table.
- ⁶ Flora Sapio, "Shuanggui and Extralegal Detention in China," *China Information* 22 (1) (2008): 7–37.
- ⁷ Members of the CCP account for 6.5 percent of the population.
- ⁸ "Central Commission for Discipline Inspection: Report Verification Rate Higher with Tips from Real Names," Caixin, May 8, 2013, <http://china.caixin.com/2013-05-08/100525082.html>.
- ⁹ The Hangzhou municipal DIC reported that in the first quarter of 2015, 34.6 percent of the denunciations came from individuals who provided identities. See Xintai Municipal Commission for Discipline Inspection, "Hangzhou Commission for Discipline Inspection and Communication Channel Calls for Correct Reporting," <http://www.xtjjc.gov.cn/contents/25/5618.html>. The Nanjing municipal DIC reported that, in the first half of 2016, 30 percent of the denunciations it received were from individuals providing their identities. See "Nanjing Commission for Discipline Inspection Report 'Big Data' for First Half of the Year," *Xinhua Daily*, August 26, 2016, <http://weibo.com/ttarticle/p/show?id=2309351001014012682897403380>. And the Chengdu municipal DIC reported that, in the first five months of 2013, 38 percent of the denunciations it received were from individuals providing identities, compared with 21 percent in the comparable period in 2012; see "Chengdu Municipal Commission for Discipline Inspection: Encourage Masses of Real Names to Report for Media Supervision," *People's Daily Online*, June 27, 2013, <http://cd.qq.com/a/20130627/004667.htm>.
- ¹⁰ The Central Commission for Discipline Inspection, "Is the Issue I Am Reporting Being Investigated?" Xinhua News, http://news.xinhuanet.com/legal/2016-02/04/c_128702525.htm.
- ¹¹ "Provincial DIC Received 61,736 Letters of Denunciation," *Sichuan Daily*, December 18, 2015; Zhejiang Provincial Commission for Discipline Inspection, "Ensure Each Letter of Denunciation is Followed Up On," April 6, 2016, <http://zj.zjol.com.cn/news/311164.html>; Zhao Yang, "How Guangdong DIC Handles Denunciations from Ordinary People," *Southern Daily*, October 16, 2015; The Central Commission for Discipline Inspection, "Yunnan's DIC Received 9110 Letters of Denunciation from January to March," April 26, 2016, http://www.ccdi.gov.cn/yw/201604/t20160425_78086.html; and Xintai Municipal Commission for Discipline Inspection, "Hangzhou Commission for Discipline Inspection and Communication Channel Calls for Correct Reporting," June 29, 2015, <http://www.xtjjc.gov.cn/contents/25/5618.html>.
- ¹² Hangzhou's DIC had a staff of 104 in 2014. Typically, 70 percent of the staff are investigators. "Chinese Communist Party Hangzhou Disciplinary Inspection Committee," *Hangzhou Almanac*, August 8, 2016, http://www.hangzhou.gov.cn/art/2016/8/8/art_1224776_2056793.html.
- ¹³ Xuezhi Guo, "Controlling Corruption in the Party: China's Central Discipline Inspection Commission," *The China Quarterly* 219 (2014): 597–624; and Ling Li, "The Rise of the Discipline and Inspection Commission, 1927–2012: Anticorruption Investigation and Decision-Making in the Chinese Communist Party," *Modern China* 42 (5) (2016): 447–482.
- ¹⁴ Jiang Zemin's second term effectively began at the end of 1997. Hu Jintao pushed out Jiang Zemin in 2004, and his second term began at the end of 2007. Xi Jinping's first term began at the end of 2012.
- ¹⁵ "Reshuffling of Provincial DIC Directors since the 18th Party Congress," Xinhua News, November 8, 2016, http://news.xinhuanet.com/renshi/2016-11/08/c_1119870848.htm.
- ¹⁶ Melanie Manion, "Taking China's Anticorruption Campaign Seriously," *Economic and Political Studies* 4 (1) (2016): 3–18.
- ¹⁷ Flora Sapio, "Implementing Anticorruption in the PRC: Patterns of Selectivity," Working Papers in Contemporary Asian Studies No. 10 (Lund, Sweden: Centre for East and South-East Asian Studies, Lund University, 2005).

- ¹⁸ Andrew Wedeman, "Anticorruption Campaigns and the Intensification of Corruption in China," *Journal of Contemporary China* 14 (42) (2005): 93–116.
- ¹⁹ Vito Tanzi, "Corruption around the World: Causes, Consequences, Scope, and Cures," *IMF Staff Papers* 45 (4) (1998): 559–594; and Susan Rose-Ackerman and Bonnie J. Palifka, *Corruption and Government: Causes, Consequences, and Reform*, 2nd ed. (Cambridge: Cambridge University Press, 2016), 126–164.
- ²⁰ "The CCP Central Committee's Resolution on the Comprehensive Promotion of Governing the Country According to Law and Other Major Issues," *People's Daily*, October 29, 2014, <http://cpc.people.com.cn/n/2014/1029/c64387-25927606.html>.
- ²¹ Minxin Pei, *China's Crony Capitalism: The Dynamics of Regime Decay* (Cambridge, Mass.: Harvard University Press, 2016).
- ²² "The Central Committee's Resolution on Several Important Issues Related to the Comprehensive Deepening of Reform," Xinhua News, November 15, 2013, http://www.gov.cn/jrzq/2013-11/15/content_2528179.htm.
- ²³ Robert Rotberg, *The Corruption Cure: How Citizens and Leaders Can Combat Graft* (Princeton, N.J.: Princeton University Press, 2017), 257–309; and Aymo Brunetti and Beatrice Weder, "A Free Press is Bad News for Corruption," *Journal of Public Economics* 87 (7) (2003): 1801–1824.

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