

A CRITIQUE OF THE INTERNATIONAL ANTI-CORRUPTION DEBATE:

LESSONS FROM EL SALVADOR AND PAKISTAN

by

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## THESIS ABSTRACT

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Title: A Critique of the International Anti-Corruption Debate: Lessons From El Salvador and Pakistan

Corruption is an age-old problem that affects every society, government, and institution. In recent decades it has received considerable attention from scholars, development experts, and global policy-makers, and anti-corruption reforms now exist in nearly every country in the world. Unfortunately, decades of research and activism have created a proliferation of data and policy prescriptions that continue to follow a set of narrow, misguided assumptions about the causes and consequences of this serious problem. This is a critique of the perspective that has dominated the international anti-corruption debate. Building upon comparative research conducted in El Salvador and Pakistan, this thesis sheds light on how these narrow-minded assumptions lead to misguided and ineffective anti-corruption efforts in two distinct regions of the world.

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# CHAPTER I

## INTRODUCTION

### *A. STATEMENT OF THE PROBLEM*

Corruption is an age-old problem that exists in every society. In certain parts of the world, however, corruption reaches a pervasive, systemic level that influences all aspects of the relationship between a citizen and his or her government. Once corruption reaches this systemic level it erodes state legitimacy, thus further decreasing respect for the rule of law and increasing the potential for violence and conflict. Impunity is a necessary condition for systemic corruption, and when impunity becomes pervasive it acts to reinforce levels of both corruption and violence within a society.

Corruption became a hot topic for scholarly research and governmental action in the late 1980s and early 1990s due to twenty years of large, headline-grabbing corruption scandals in both Western states and the developing world.<sup>1</sup> The creation of Transparency International (TI) in 1993 provided the framework for what would soon become a global anti-corruption movement. TI's first major accomplishment, the Corruption Perceptions Index or CPI, represented the first attempt to measure and compare corruption across countries and regions, and since this time numerous other studies have been completed to address the causes and effects of corruption throughout the world. This proliferation of corruption-related research provided a wealth of data and new perspectives on the problem, yet arguably this has not translated into successful anti-corruption policies or improvements at the local, national, or international level. Despite the efforts of

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<sup>1</sup> The term "developing" comes with significant baggage and controversy, as does its counterparts "third world", "global south", etc. Dissecting the historical and other related controversies behind this choice of language is beyond the scope of this thesis. I use these words interchangeably to refer to countries that, by and large, receive or have received development aid or support from the U.S., European countries, the OECD, the Soviet Union (when it existed) or other large donor countries.

countless individuals and organizations – and billions of dollars spent - progress has been slow.

This lack of progress can be explained in part by the fact that any attempt to combat corruption must first overcome the complexity of the topic itself. Two initial questions arise: First, how should we define corruption? Second, how can we measure something that is almost by definition done in secret? Putting aside for the moment the question of *who* should be defining and measuring corruption, which is discussed in detail below, these seemingly simple questions continue to confound most corruption scholars and anti-corruption organizations. The CPI and other related measurements attempt to overcome these initial obstacles by measuring *perceptions* of corruption instead of specific corrupt acts. Like other reports that have followed it, the CPI is an aggregate measurement of perceptions drawn from members of the international community, i.e. businessmen and women, foreign government employees, academics, and employees of international or non-governmental organizations. These studies represent the foundation of global anti-corruption efforts yet, while helpful for moving the corruption debate forward, they have too-often focused on misguided understandings of the problem; policies built upon these studies often lead to perverse or counter-productive outcomes. For example, a country's ranking can shape local perceptions of corruption in unintended ways, and it often directly or indirectly affects the availability of necessary development tools such as foreign direct investment, international development aid, and even bi-lateral economic and strategic relations. Furthermore, flawed methodologies lead to misguided and eventually ineffective domestic and international anti-corruption policies. My research with two anti-corruption agencies, the Tribunal de

Ética Gubernamental in El Salvador and the National Accountability Bureau in Pakistan, highlight how a misguided understanding of the causes and consequences of corruption lead to anti-corruption agencies with narrow mandates and limited power. I argue that this pattern further reinforces levels of corruption and impunity in a society by delegitimizing the very state institutions created to address the problem.

Many corruption studies focus on the economic nature of the problem and often reach conclusions that simply blame the failure of newly implemented economic policies in developing countries on the corruption inherent in these “weak” states.<sup>2</sup> In this way corruption has been largely (if not exclusively) defined by Western norms and is often seen as a problem inherent to poor, developing states led by corrupt leaders and bloated bureaucracies. This contextualization of the problem is inadequate. It places responsibility for solving the “corruption problem” on Western educated elites from international institutions while simultaneously placing blame for corruption (and its consequences) on the local population and government. This approach also ignores the implications high levels of corruption have for violence and the rule of law, which in turn leads to the creation and enforcement of anti-corruption agencies with narrow economic foci (e.g. asset recovery). Furthermore, this misguided approach to what is a complex yet universal problem buttresses the belief that some societies, regions, or peoples are simply more “corrupt” than others, which reinforces outdated notions of “developed and underdeveloped,” “modern and primitive,” etc.

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<sup>2</sup> See, e.g. Susan Rose-Ackerman, *Corruption: A Study in Political Economy* (New York: Academic Press, 1978). This approach was especially common in the earliest years of anti-corruption research, i.e. the 1970s through 1990s. Although there has been some effort to move away from this focus in recent years, the bulk of the literature retains undertones of this perspective.

Defining and understanding corruption is extremely challenging. This is because corruption – and what is considered “corrupt” behavior – varies not only by geography and culture but also by institution. In a general sense, corruption is most often associated with politicians and civil servants who receive bribes or other rewards in exchange for providing what should be (relatively) free or at least impartial public services. While this type of corruption is certainly problematic and prevalent in many societies, it is not necessarily the most detrimental. Although most corruption related research and policy reforms have addressed this type of political or administrative corruption, judicial corruption may have a more potent and direct impact on the lives of those most affected by corrupt state institutions: the general public. Political and administrative corruption certainly impedes economic development and limits the ability of average citizens to access state resources, but it does not necessarily undermine the legitimacy of the state itself. In some cases, it may even provide an alternative yet consistent method of distributing public resources.

When the public believes that the judiciary is corrupt and impunity runs rampant, this erodes perceptions of state legitimacy and respect for the rule of law, which often increases violence, illegal activity, and both public and private corruption. This is especially problematic in so-called “transitional” countries that are attempting to rebuild their society in a post-conflict environment. While these problems have been openly discussed for decades, few scholars have specifically focused on the role that (perceptions of) judicial corruption plays with respect to larger questions of adherence to the rule of law, state legitimacy, and peace.<sup>3</sup> More research needs to be completed asking

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<sup>3</sup> See Eric Uslaner, *Corruption, Inequality, and the Rule of Law* (New York, NY: Cambridge University Press, 2008). This is the most recent book that focuses directly on how perceptions of judicial

questions about how lawyers and human rights activists within a “corrupt” society perceive of and attempt to combat corruption, and specifically how these actors view corruption as a roadblock to their work.

Globally, scholars and policy makers alike need to better understand how corruption is dynamic in both definition and effect, and they must also consider non-economic effects. I argue that corruption and impunity should be reframed as legal issues that inhibit the rule of law and administration of justice, especially in relation to security and human rights. This perspective will help the anti-corruption movement move away from traditional definitions that view corruption and impunity as simply economic inefficiencies prone to developing countries (a perspective I call the “hole in the bucket” analysis that sees corruption simply as the failure of weak leaders to allocate resources appropriately). While some scholars have acknowledged the link between perceptions of corruption and rule of law issues, few have directly addressed it.<sup>4</sup> The purpose of this thesis is to show why that must be done.

In the pages that follow I review and then critique the dominant corruption perspective and show how it leads to unsuccessful anti-corruption reforms. I supplement this critique with independent research conducted in two distinct countries that suffer from similar levels of corruption and impunity: El Salvador and Pakistan. My critique builds upon and adds to the work of scholars from far-reaching disciplines, including law,

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corruption (or unfairness), among other factors, reinforce inequality, low levels of trust, and in some cases violence. I rely heavily on Uslaner’s work throughout this thesis.

<sup>4</sup> See, generally, Uslaner, *Corruption, Inequality, and the Rule of Law*; for a more theoretical approach see Laura S. Underkuffler, *Captured by Evil: The idea of corruption in law*, (New Haven, CT: Yale University Press, 2013).

political science, economics, geography, and sociology. This is because corruption, like my educational background, is interdisciplinary in nature.

### *B. RESEARCH METHODOLOGY*

Through my research I attempt to understand how lawyers and non-lawyers alike work with (and within) judicial systems that the international community considers extremely corrupt. I focus on perceptions and misperceptions of corruption across societies, with an emphasis on how and why different cultures define corruption differently. This culturally sensitive context helps me to better address the causes and consequences of systemic corruption in otherwise diverse regions of the world. Thus, although my focus countries are different in many ways, I used nearly identical methodologies in each. Through this research I also hoped to draw clearer links between corruption and impunity, and violence, although, for reasons discussed below, I had more success drawing these connections in El Salvador than in Pakistan. My goal for this thesis is that it will help reframe the corruption debate so that lawyers, scholars, and policy makers see corruption as a rule of law issue, and not simply an impediment to economic growth.

This thesis is built largely on bibliographic research, which is supplemented with qualitative field research. I read, analyzed, and critiqued the perspectives of nearly two-dozen corruption scholars, along with several international organizations and the most prominent anti-corruption NGO, Transparency International. The bibliographic research created the foundation for my critique of the international anti-corruption debate. My critique is further supported by independent research I conducted in El Salvador and Pakistan. My findings in each country support my larger critique and provide unique

insights into possible avenues through which the international anti-corruption movement could be reframed.

Despite the methodological challenges inherent in researching this topic, from a practical standpoint it is surprisingly easy to get people to speak openly about corruption. For this and other reasons, my field research was qualitative in nature. In El Salvador and Pakistan I conducted formal and informal interviews, participant observation, and regularly monitored various forms of media. I attempted to interview roughly the same number and type of individuals in both countries, yet due to access limitations and the realities of conducting fieldwork the numbers do not align exactly. I used a hand-held audio recorder whenever possible, and supplemented this with vigorous note-taking; in El Salvador, nearly all of my interviews were recorded yet in Pakistan only one person allowed it. Nonetheless, in both countries I asked the same questions to the same type of people and conducted almost identical analysis of local and international news media.

In each of the formal interviews I began with a simple question: how do you see corruption as a barrier to your work? Due to the unique and sensitive nature of the problem being discussed, I remained flexible with respect to the structure of each interview. Each interview was scheduled to last between fifteen and forty-five minutes, although at least two interviews in each country lasted more than two hours. In each country I attempted follow-up interviews whenever possible, though I was able to do this with only about 1/3 of my research subjects. Most interviewees spoken openly and freely about their opinions, experiences with, and concerns about corruption in their respective country or institution, yet each took the conversation in their own specific directions.



Regardless, I continued to work off a set of key questions that emphasized my underlying research goals and assumptions. These questions included:

- What do you think are the key causes and consequences of corruption in [El Salvador or Pakistan]?
- How do you see corruption acting as a barrier to the rule of law in [El Salvador or Pakistan]?
- What are your perceptions about the level and extent of corruption in your country, and how does that compare with international perceptions (i.e. Transparency International rankings or perceptions from international news media)?
- What links, if any, do you see between corruption and violence in your country?
- Do you believe corruption can or should be combated and, if so, how?

In each interview I also asked questions related to that subject's professional or personal experiences with corruption. When interviewing public attorneys, judges, or other government officials, for example, I asked them to explain how corruption complaints were handled within their individual institution. When speaking with private attorneys or human rights activists I asked them to describe their experiences working with state institutions that they considered corrupt (specifically the legal system).

Finally, I held in-depth interviews with high-ranking representatives from the domestic anti-corruption agency in each country. In these interviews I asked the aforementioned questions but also spent considerable time discussing the mandate, procedures, and day-to-day strengths and limitations of their respective anti-corruption agency.

The research environment in El Salvador was surprisingly open. This is in part due to the fact that I had previously spent three months working in the country alongside well-known scholars and human rights activists, and many of them helped connect me to the public or private officials I would later interview. Despite mounting violence and a very contentious political situation (related to calls for the repeal of the Amnesty law), no interview subjects denied my request and only a few balked at direct questions.

In El Salvador I held formal, audio-taped interviews with seven Salvadoran government officials: representatives of the Salvadoran Human Rights Ombudsman's office, including the Adjunct Ombudsman; two officials from the Corte de Cuentas, including a judge who oversaw inter-agency disputes related to corruption or misappropriation of funds; a member of the Foreign Ministry's human rights division; and three members of the (then-newly created) anti-corruption agency, the Tribunal de Ética Gubernamental. I also held formal, audio-taped interviews with the Executive Directors of two human rights organizations that had pursued corruption-related cases in the courts, three private human rights attorneys, and an anti-corruption activist. Finally, I held formal yet unrecorded interviews with a Supreme Court Justice, the then-Vice President of the El Salvador, two deputies of the El Salvador's legislature, two representatives from the US State Department and a USAID employee in charge of overseeing USAID's Democracy and Governance programs in El Salvador. These interviews were shorter in length, more limited in content, and at times were structured around other formal meetings or informal social gatherings that I participated in. In some cases my questions were reviewed and pre-selected before the event, which limited my ability to hold conversations or ask follow-up questions. Nonetheless, even the "non-

answers” I received from politicians and high-ranking government officials at times spoke volumes about the extent and nature of the corruption problem in El Salvador.

Additionally, I held informal interviews with nearly thirty members of the general public: scholars and law students, victims of human rights abuses, restaurant owners, hotel employees, etc. These informal interviews allowed me to describe my project in an unstructured way and get real-time, uncensored feedback from individual citizens about the level and extent of the corruption problem in their country. These interviews also provided me with an invaluable perspective on the way perceptions of corruption manifest within the public sphere, which when combined with the analysis of news media further informed my critique of the international anti-corruption debate.

In Pakistan I held formal interviews with seven members of the Pakistani bar, including Supreme Court advocates and public and private attorneys at all levels; six government officials, including two high-ranking career civil servants and four representatives of Pakistan’s National Accountability Bureau; and six academics, including professors in the fields of law, political science, international relations, and governance. I also held informal interviews with various businessmen, students, and foreigners (including one US State Department official) who had experienced corruption through their interactions with the Pakistani judicial system or other government ministries. These interviews provided valuable insights into the corruption debate, and also to what I believe were changing perceptions of state legitimacy in the lead-up to the May 2013 elections.

As in El Salvador, I also monitored and analyzed news media in Pakistan in an effort to better understand how the corruption debate was informed and shaped by local,

national, and even international organizations. Not surprisingly, corruption is a popular topic of discussion in both the traditional and electronic media in Pakistan, and politicians throughout South Asia have staked their candidacies on anti-corruption platforms. The 2012 dismissal of Prime Minister Gilani in connection with President Zardari's Swiss corruption case was still fresh on peoples' minds, and the unexpected wave of support for Imran Khan's PTI party in the 2013 elections rested at least partly on his anti-corruption rhetoric. Even more so, the Chief Justice's seemingly unrelenting anti-corruption crusade was daily fodder for newspapers, political pundits, and the general public alike. I believe that these and other similar events partially explain why, despite concerns of violence or other retribution, most people in Pakistan were ready and willing to openly share their perceptions of corruption with me.

Despite this openness the research environment in Pakistan remained complicated in ways that I did not experience in El Salvador; this is, in my experience, especially true for Americans. My visa process was drawn out and complicated, and in the end I was only given a short-term tourist visa, which meant I had to be relatively careful about how I advertised my visit. Similarly, the limited temporal scope of the visa forced me to be in Pakistan during the national elections, which presented both a problem and an opportunity. The wave of pre-election violence, in conjunction with General Musharraf's return to the country and subsequent indictment, made courthouses and some government buildings almost completely inaccessible to me. I was unable to interview several judges and other officials who had previously agreed to meet with me. That being said, the security situation in Islamabad and Lahore was better than I expected, and I rarely if ever felt uncomfortable or unsafe moving about the large urban areas. On the other hand,

distrust and animosity towards the US government continues to affect the research environment for Westerners. Backlash from the 2012 raid in Abbottabad that killed Osama Bin Laden remained strong, and thus my movements and activities were restricted and at times monitored. For example, I had been invited to Swat with a high-level Pakistani attorney to view some corruption-related court proceedings, but upon arrival in Pakistan he told me that new checkpoints had been erected and I would never get the documentation required to enter that region of the country.

The continually contentious nature of US drone strikes in Pakistan also presented issues, as I was regularly confronted in public or even during lectures and asked to justify my country's policies in Pakistan. These seemingly random questions about US policies clouded countless conversations I was trying to have with Pakistanis and created uncomfortable situations that I am certain would discourage many researchers. However, because corruption was also a key election issue, these challenges also presented me with an invaluable opportunity for studying the way the corruption debate unfolds in the Pakistani media and with the public. Everyone I interacted with throughout my visit was willing to discuss the ongoing corruption problems in Pakistan, what various leaders promised to do to combat corruption, and what, if anything, could realistically be accomplished in terms of anti-corruption initiatives. In this context the informal interviews I held with students, academics, businessmen, and others informed my research almost as much as the pre-planned interviews I conducted with members of the Pakistani bar.

## CHAPTER II

### LITERATURE REVIEW

Corruption is, as the legal scholar Laura Underkuffler argues, “the most powerful word in the English language.”<sup>5</sup> I argue that the word is this powerful precisely because of its dualistic nature: it is a well-known and commonly used term, yet it hard to define and can mean many, many different things in different contexts. Therefore, any study of corruption must address several basic yet extremely complicated questions: What is corruption, and how has it been understood historically? How do scholars and policy makers define corruption? How can corruption be accurately measured if it is by definition done in secrecy, behind closed doors, and often does not involve a tangible product that can be traced (such as drugs or even human beings)? What makes corruption inherently “bad”? Assuming that it is “bad”, how and why should corruption be combated? What exactly do anti-corruption agencies or “national integrity systems” (NIS) actually do? Finally, what are the links between levels of corruption and levels of violence, and how might public perceptions of corruption affect those links?

Although there is little universal agreement about the answers to these questions, there is almost universal acceptance on two key points: corruption is defined most broadly as the use of public office for private gain,<sup>6</sup> and corruption is a truly global problem that negatively affects every state or large institution, albeit in different forms and to varying extents. Corruption can represent the commission of an act or the failure

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<sup>5</sup> Underkuffler, *Captured by Evil: The idea of corruption in law*, 1.

<sup>6</sup> This definition is so ubiquitous as to almost need no citation. See Robert Klitgaard et. al, *Corrupt Cities: A Practical Guide to Cure and Prevention* (Oakland, CA: Institute for Contemporary Studies Press, 2000), 2; Michael Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy* (New York, NY: Cambridge University Press, 2005)

to act, and many argue that it may involve both legal and illegal activities.<sup>7</sup>

Unfortunately, these basic definitions represent the bulk of consensus on the issue; In the anti-corruption policy-world, disagreement abounds. To better understand corruption as a scholarly topic I will first situate the concept historically and then attempt to address the never-ending “definitions debate”.<sup>8</sup> I will then distinguish between types or levels of corruption and outline how, if at all, corruption can be measured. I will then describe some of the key consequences of corruption, which will be followed by an overview of the various models by which corruption has been addressed at the domestic and international level. This background material will lay the foundation for what I call the “dominant perspective,” i.e. the ideological perspective that has dominated the anti-corruption debate for decades. This literature review will also provide support for my main argument: the dominant perspective is lacking and misguided, which in turn leads to ineffective institutional reforms and weak anti-corruption agencies.

#### *A. HISTORICAL CONTEXT*

Plato is perhaps the most famous ancient corruption scholar, though surely he would not have described himself this way. In his discussion of the three types of “corrupted” or “perverted” governments – democracy, oligarchy, and tyranny – he explained that leaders should be entrusted with power so long as they acted with reason and virtue, i.e. in a way that conformed with how society justified their power.<sup>9</sup> This perspective mirrors later writings by Aristotle, Thucydides, and Machiavelli, all of which

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<sup>7</sup> Klitgaard et. al, *Corrupt Cities*, 2.

<sup>8</sup> See, e.g., Michael Johnston, “The Definitions Debate: old conflicts in new guises,” in *The Political Economy of Corruption*, ed. Arvind K. Jain (New York, NY: Routledge, 2001), 11-31.

<sup>9</sup> Johnston, “The Definitions Debate,” 11.

associated corruption “less with actions of individual leaders than with the moral health of entire societies.”<sup>10</sup> Throughout much of human history, leaders claimed power through forms of rigid social hierarchy, but those hierarchies were expected to - and justified on the ground that they did - “enunciate society’s values and goals.”<sup>11</sup> These regimes only became “corrupted” if they were guided by the interests of the rulers instead of the law, or what we would today call the public interest.<sup>12</sup> As opposed to modern notions of a “corrupt official” or a “corrupt act”, at this point in time corruption referred “at least as much to the ends and justifications of power as to the ways it was used and pursued” by individual people.<sup>13</sup> In this sense, corruption was defined as a “general disease on the body politic”.<sup>14</sup> Although this perspective is often associated with Western thinkers, in reality it crosses the common East – West divide. For example, in his famous treatise on statecraft, written in the fourth century B.C., the Indian Philosopher Kautiliya outlined the “forty ways of embezzlement” and provided detailed instructions for how leaders could prevent the corruption of government.<sup>15</sup> The belief that corruption equals a form of dysfunctional or dishonest government that served its own personal interest(s) survives to this day.

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<sup>10</sup> Johnston, “The Definitions Debate,” 12.

<sup>11</sup> Johnston, “The Definitions Debate,” 13.

<sup>12</sup> Carl J. Friedrich, “Corruption Concepts in Historical Perspective,” in *Corruption: Concepts and Contexts* (3<sup>rd</sup> ed.), eds. Arnold J. Heidenheimer and Michael Johnston (London: Transaction Publishers: 2009), 17.

<sup>13</sup> Johnston, “The Definitions Debate,” 12.

<sup>14</sup> Friedrich, “Corruption Concepts in Historical Perspective,” 17-20.

<sup>15</sup> Pranab Bardhan, “Corruption and Development: A Review of Issues,” in *Political Corruption: Concepts & Contexts* (3<sup>rd</sup> ed.), eds. Arnold J. Heidenheimer & Michael Johnston (London: Transaction Publishers, 2009) 321-322.



Despite this historical consistency, the term corruption has always existed within or alongside another, more ambiguous concept: morality. The Ancient Greek word *Diaptheirei*, commonly associated with corruption, referred to corruption of the mind, or the inability to make sound moral judgments. Whether king, bureaucrat, priest, or layman, it was individuals that could be corrupt or act in corrupt ways. On the other hand, the Latin term *Corruzione* refers to deterioration in the overall quality of government, regardless of the morality or “reason” used to justify specific individual actions. These two definitions highlight the dualistic nature of corruption. In the former sense corruption takes on an ethereal, almost religious sense that links it to earlier understandings of natural law; a person of sound mind and judgment uses reason to pursue the greater “good”, and one who does not or cannot do so is said to be corrupted. In the later sense corruption becomes legalistic in nature and more closely relates to how corruption is defined by modern, secular governments today. Therefore, there is a tension between corruption seen as an immoral act, a disease that occurs within the mind and perhaps the soul of individual humans, and corruption as a form of illegal or inappropriate government behavior that subverts the interest of the public. These two definitions are not necessarily mutually exclusive, but they do not completely overlap. Lord Acton (perhaps unwittingly) represented the middle ground between these two concepts in his famous dictum “Power corrupts, absolute power corrupts absolutely.”<sup>16</sup> The benevolent king, through self-interested or immoral acts, can quickly become the corrupt tyrant.

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<sup>16</sup> John E. E. Dalton Acton, *Essays on Freedom and Power*, ed. Gertrude Himmelfarb (Glencoe, Ill: The Free Press, 1948), 364.

Although a common understanding of corruption includes notions of morality, here it is important to note that our modern conception of corruption is directly linked to post-Enlightenment theories of power, government, and economics; in this sense corruption is always considered in relation to a public “good” that is being illegally or unfairly diverted from public use. The rise of classical liberalism in the 17<sup>th</sup>, 18<sup>th</sup>, and 19<sup>th</sup> centuries shifted standard beliefs about legitimate government away from notions of divine right to what are considered early forms of meritocratic democracies. This shift, pushed forward by Enlightenment thinkers and the American and French revolutions, forever changed our understanding of what constitutes legitimate government. Though imperfect, the early democracies built in the United States and Western Europe during this period represented the first time our modern understandings of corruption began to solidify. This is because prior to this period most governments - and the men who ruled them - were expected to serve the public interest in a much more narrowly defined manner. Kings, emperors, or oligarchs had supreme authority that they derived from either divine right or an overwhelming, almost unrestricted, control over the use of force; in many cases, rulers possessed both. The king had the ability and right not only to promulgate the law but also to decide what is in the public interest, whether concerning religious, economic, or security concerns.<sup>17</sup> What the King decreed was law, so almost by definition what the King did could not be corrupt (at least in the legal sense of the word).

This is not to say that corruption did not exist in earlier times, but rather that it took different forms and was condemned for different reasons. Because even “while the

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<sup>17</sup> See, e.g., Jacob van Kleveran, “Corruption as a Historical Phenomenon,” in *Political Corruption: A Handbook*, eds. Heidenheimer, Johnston, and Le Vine, (London: Transaction Publishers, 1990), 73-75.

King can do no wrong, his counselors [were] answerable to Parliament.”<sup>18</sup> Individual public servants could be corrupt if they disobeyed the actions of the King in an effort to enrich themselves, but these acts were not necessarily considered corrupt because they violated a duty owed to the public; in fact, it was the moral duty owed to the king that was violated. Yet at this time there was no real distinction between concepts of “public trust” and “private interest”<sup>19</sup> because politics was, quite literally, nothing more than the exercise and protection of personal power.<sup>20</sup> No individual owed an obligation to anyone other than the sovereign, and thus actions taken by the sovereign could not be corrupt in the modern sense of the word.

Post-Enlightenment notions of “rule by the people, for the people” changed the understanding of what constituted a legitimate government, and the concept of corruption changed with it. This period also saw the shift from mercantilism to capitalism, which further shaped the political and economic spheres along individualist, contractarian principles. Industrialization and urbanization created new ways of attaining wealth. Small kingdoms consolidated around city-centers run by bankers, merchants, and private landowners, and these new power groups challenged classically conservative notions of government and power. “Eventually, the rise of the money economy made regular

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<sup>18</sup> Johnston, *The Definitions Debate*, 16.

<sup>19</sup> Ernst Kantorowicz, *The King's Two Bodies: A Study of Medieval Political Theology* (Princeton: Princeton University Press, 1957) (Kantorowicz calls this divide between public and private the “two bodies” doctrine, and further argues that this form of political structure did not truly exist in pre-modern empires).

<sup>20</sup> Although some segments of the public may argue that this continues today, I argue that there is a clear distinction with respect to this issue between our imperfect democracies and earlier forms of monarchical government.

taxation possible, and the growth of government made it necessary.”<sup>21</sup> Rulers needed expanded administrative and bureaucratic structures to manage this larger, more complicated urban populace. These structures brought new opportunities for rent seeking by low and mid-level civil servants.<sup>22</sup> Rent-seeking, defined by corruption scholar Michael Johnston as “extracting wealth from the economic system without contributing to productivity,” began to represent the new understanding of corruption.<sup>23</sup> Rent seeking takes many different forms (discussed further below), but as a concept it exemplifies the shift from a moral or religious notion of corruption to one based on economics and personal enrichment at the expense of public duty. This was the case even in Soviet Russia and other non-capitalist countries, and this economics-focused definition represents how corruption is widely understood today.<sup>24</sup>

Considering this shift it is not surprising that the recent corruption debate has in many ways been dominated and defined by international financial and development institutions that emphasize neoliberal economic policies. This is further explained through historical processes, i.e. that corruption became a policy and academic buzzword during neo-liberalism’s high point. The elections of U.S. President Ronald Reagan (1980) and British Prime Minister Margaret Thatcher (1979), the rise of the “Chicago School” of neo-liberal economic theory, the demise of the Soviet Union and proclamations for the “End of History” all combined to promote a market-oriented

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<sup>21</sup> Johnston, “The Definitions Debate,” 13.

<sup>22</sup> van Klaveren, “Corruption as a Historical Phenomenon”, 78-79.

<sup>23</sup> Johnston, “The Definitions Debate,” 19.

<sup>24</sup> Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy*, 6. (Johnston argues that this represents a “new consensus [that] emerged during the 1990s – one that treats corruption mostly as bribery, and as both effect and cause of incomplete, uneven, or ineffective economic liberalization . . .”).

explanation of - and solution to - most of the world's problems.<sup>25</sup> At the international level, decades of state-centered, top-down development projects proved unable to reduce poverty or develop what was then called the "third world" in a pattern similar to Western Europe's post-Marshall Plan growth. The failure of developing or third world countries to prosper in the United Nations' development decade<sup>26</sup> and beyond caused policy analysts in Washington and Europe to blame ineffective and overreaching state institutions and corrupt local leaders. Dan Hough argues that this "lean government agenda" is part of the problem with the anti-corruption movement, as it only emphasizes remedies that "fit well with a preordained skepticism about the ability of government to deliver efficient and effective services . . .".<sup>27</sup>

Just prior to and during the rise of neo-liberalism, international aid and development became a key focus of foreign policy for many donor and recipient countries. Due to the large sums of capital and political resources being exchanged, the demand for transparency rose. As many underdeveloped countries failed to experience the economic and political development that international experts promised, corruption allegations and anti-corruption campaigns became a prominent part of the public debate. For donor countries it became politically unpopular (or at least contentious) to provide financial or other development assistance to countries whose leaders enriched themselves

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<sup>25</sup> See, e.g., John Williamson, "What Washington Means by Policy Reform," in *Latin American Adjustment: How Much Has Happened?*, ed. John Williamson (Washington, DC: Peterson Institute for International Economics, 1990); Francis Fukuyama, "The End of History", in *The National Interest* (Summer 1989).

<sup>26</sup> Richard Jolly, "The UN and Development Thinking and Practice," *NUPI Forum For Development Studies* 1 (Oslo: Norwegian Institute of International Affairs, 2005), 50-51.

<sup>27</sup> Dan Hough, *Corruption, Anticorruption & Governance*, (Hampshire, England: Palgrave Macmillan, 2013), 29, 32.

at the expense of their people.<sup>28</sup> Similarly, citizens in recipient countries turned their focus to corruption when they began to wonder why, in light of the reports of high levels of international assistance and financial donations from abroad, their living or security conditions were not improving. By the 1980s, academics and policy makers were emphasizing a new development agenda founded on limiting the size of government while relying on market mechanisms to lift countries out of poverty and debt. This intellectual shift – towards markets and away from government-centered programs – reached the highest levels of power in the Europe and the U.S.<sup>29</sup>

By this time the major Western governments and international institutions that built on capitalist principles, namely the International Monetary Fund (IMF), the World Bank (WB), the US Treasury Department, and bilateral development agencies such as USAID, shifted their development agendas towards enhancing “good governance” while limiting state power and increasing the role of markets in local economies. As previously stated, at this point in time the failures of previous development policies<sup>30</sup> were largely blamed on bloated governments, excessive regulation, and corrupt local leaders. While no one would argue to promote bad governance, the governance agenda that evolved out of this period was ideologically skewed. The belief was that pervasive corruption in developing countries served as an economic “hole in the bucket” that inhibited countries

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<sup>28</sup> Filipino President Ferdinand Marcos and his shoe-loving wife are well-known but certainly not unique examples of this. See David C. Kang, *Crony Capitalism: Corruption and Development in South Korea and the Philippines* (New York, NY: Cambridge University Press, 2002).

<sup>29</sup> Two key proponents of this new approach were British Prime Minister Margaret Thatcher (elected 1979) and U.S. President Ronald Reagan (elected 1980). This shift is also marked by Robert McNamara’s retirement from the World Bank in 1981, as his departure signaled the end of a development agenda focused on reducing poverty through the basic needs approach.

<sup>30</sup> For an overview of the development policies referred to here, including import-substitution industrialization (or ISI), See James M. Cypher & James L. Dietz, *The Process of Economic Development* 3<sup>rd</sup> ed., (New York, NY: Routledge, 2009), 140-164.

from properly developing according to liberal economic principles; put simply, if corrupt local leaders had not drained otherwise valuable development dollars from their country's coffers the positive economic and development projections would have been realized. On October 1<sup>st</sup>, 1996, James Wolfensohn, the President of the World Bank, spoke of the "cancer of corruption" at the 51<sup>st</sup> annual Meeting of the Board of Governors at the IMF. This speech was the moment "it became clear that for the international policy community tackling corruption was moving centre-stage."<sup>31</sup> By this time, policies of deregulation, privatization, capital market liberalization, and reductions in spending on social services<sup>32</sup> became tied to development loans and grants through structural adjustment programs (SAPs).<sup>33</sup> The conditionalities included in these SAPs often included a market-centered approach to governance, which included privatization, transparency initiatives and other policies deemed necessary to disincentivize corrupt practices.

Many current authors reject the belief that corruption is the reason "...why the pro-market economic reforms of the past two decades in the South have not [succeeded]" in the way they were expected to, and argue that this perspective is both imperialistic (by promoting the idea that "the 'third world' state is the source of corruption,") and limiting (by not allowing those opposed to the neoliberal agenda to focus on or provide insight

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<sup>31</sup> Hough, *Corruption, Anti-Corruption and Governance*, 12.

<sup>32</sup> Williamson, "What Washington Means by Policy Reform," (coining the term "Washington Consensus" to a set of policies of that included deregulation, privatization, capital market liberalization, and fiscal discipline, among others).

<sup>33</sup> This process became known as "conditionality". See Louis A. Picard and Terry F. Buss, *A Fragile Balance: Re-Examining the History of Foreign Aid, Security, and Diplomacy*, (West Hartford, CT: Kumarian Press, 2009), 124-146. (From 1979 until the mid-1990s The World Bank, the International Monetary Fund (IMF), and other international development aid organizations began conditioning aid allocations to a host government's willingness to change its economic structure through the reforms of the Washington Consensus)

into the anti-corruption debate).<sup>34</sup> Some authors argue that, from this dominant perspective, corruption too quickly becomes “the excuse of apologists of capitalism in the wake of capitalism’s failures,” because “it is easier to criticize other peoples’ corrupt implementation of one’s strategies than to question the validity of those strategies themselves.”<sup>35</sup> This perpetuates concepts of colonialism, dependency, and a blaming the victim mentality where the powerful (i.e. Western governments and institutions) take credit for policies when they produce positive outcomes and have a convenient scapegoat to blame when they do not. Notwithstanding the strength of these critiques, the dominant perspective – and the research and programs that flow from it – continue to permeate the anti-corruption policy world to this day.

Although corruption is a timeless problem, for reasons explained in the preceding paragraphs it has until recently only been focused on through very specific, case-by-case investigations. For centuries bribery and ‘using public office for private gain,’ an oft-cited definition of corruption,<sup>36</sup> was seen simply as a necessity for doing business in certain parts of the world and, by many, as a fundamental aspect of human behavior.<sup>37</sup> While this debate continues, it is safe to say that the general perception of corruption – regardless of how you define it – is that it is unethical and detrimental to society for a number of well-established reasons.

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<sup>34</sup> Ed Brown & Jonathan Cloke, “Neoliberal Reform, Governance and Corruption in the South: Assessing the International Anti-Corruption Crusade,” *Antipode* 36, no. 2 (2004): 273.

<sup>35</sup> Klitgaard et. al., *Corrupt Cities*, 9-10.

<sup>36</sup> See, e.g. Michael Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy* (New York, NY: Cambridge University Press, 2005), 12.

<sup>37</sup> For an interesting discussion of the psychological and sociological causes of corrupt behavior, see Annette Y Lee Chai & John A Bargh, *The Use and Abuse of Power: Multiple Perspectives on the Causes of Corruption* (Philadelphia, PA: Taylor & Francis Publishing, 2001).



While well-known anti-corruption agencies were first developed in Hong Kong and Singapore in the 1950s-1970s, it was not until major Western scandals like Watergate exploded that lawmakers took the efforts to write and codify anti-corruption laws at the domestic and international level.<sup>38</sup> These scandals awakened the Western world to the nature and extent of the problem, yet it took even longer for corruption to be treated as an appropriate topic of scholarly and policy planning debates. The birth of Transparency International (TI) in 1993 saw for the first time a unified attempt to measure corruption around the world through the Corruption Perceptions Index (CPI).<sup>39</sup> These steps moved corruption as a concept beyond basic philosophical or moral debates about the duty of public officials; today corruption is the focus of foreign and domestic policy planning, the debate about the legitimacy and efficacy of international development assistance, and is a topic of choice for investigative journalists everywhere. It is nearly impossible to flip through the international section of any major newspaper without seeing a headline about corruption and its common counterpart, impunity.

This historical explanation of the corruption debate fails to answer perhaps the most fundamental question in any corruption study: what exactly *is* corruption, and how do we define such an ambiguous and amorphous term?

## *B. DEFINITIONS AND TYPES OF CORRUPTION*

“Any attempt to analyze the concept of corruption must contend with the fact that in English and other languages the word corruption has a history of vastly different meanings and connotations.”<sup>40</sup>

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<sup>38</sup> Patrick Meagher, “Anti-Corruption Agencies: Rhetoric Versus Reality,” *The Journal of Policy Reform* 8, no. 1 (2005): 70.

<sup>39</sup> Although Transparency International was created in 1993, the Corruption Perceptions Index was not first published until 1995.

<sup>40</sup> Arnold J. Heidenheimer, *Political Corruption: Readings in Comparative Analysis*, (New Brunswick, NJ: Transaction Publishers, 1970), 3.

Corruption is ubiquitous and amorphous; it exists everywhere yet takes no one specific form. Most humans - regardless of their education level, nationality, or culture - intuitively understand the word corruption, yet few can define it. Although classical conceptions of corruption as relating to the morality of individuals or societies “have given way to more limited, modern definitions” that classify specific acts by specific persons, this has in no way “settled the matter.”<sup>41</sup> Nearly every journal article or book written about corruption confronts this issue at the outset, and although most authors cite their own definition nearly all make clear that no single definition is free from controversy.

Before turning to the complex and much-disputed definition of corruption it is appropriate to first provide basic definitions for some actions that are, for the most part, considered corrupt. Bribery, perhaps the most quintessential form of corruption, is an illegal payment made to a government official in return for some type of official, state-sanctioned act that 1) has a selective and tangible impact and 2) would not, in the absence of the payment, otherwise have been made. Bribery can take its most common form, a direct handoff of cash, or can manifest in one of two alternate forms: Kickbacks and Extortion. A kickback is a bribe paid after the service has been rendered, and is common among private individuals and organizations that bid on government contracts. Extortion is when a public official threatens to use state power - legally or illegally - to induce the payment of a bribe; this is perhaps most common with government institutions that have direct and tangible control over peoples’ daily lives, such as police, prosecutors and

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<sup>41</sup> Johnston, “The Definitions Debate,” 11.

security forces. Each of these acts generally involves a transaction between public and private individuals.

Embezzlement occurs when government officials directly appropriate funds for alternate, generally private uses. Fraud, on the other hand, refers to a wide range of (often) imaginative schemes orchestrated by public officials to illegally appropriate state funds. Examples of fraud are as endless and diverse as the human imagination, but some common fraudulent acts include the creation of fake or “paper” companies, overcharging on government contracts, paying “ghost” employees, keeping two sets of accounting books, falsifying checks, or simply accepting payment for projects that are never completed. While fraud often involves both public and private individuals, embezzlement is one of the few types of corrupt acts that often does not involve any inappropriate or illegal behavior by private individuals; sometimes embezzlement is overlooked in return for other actions but often it is completely unilateral.

Nepotism is the giving of public sector jobs, contracts, or benefits to unqualified family members, while favoritism involves similar actions that involve friends, political supporters, or even “quid pro quo” exchanges with other government officials.<sup>42</sup> A broader category of corruption covers actions where a conflict of interest exists, i.e. when officials make public decisions that directly or indirectly affect that official’s family, friends, business associates, or even personal financial interests. Finally there are the numerous acts covered under the broad heading of “electoral corruption”: vote buying or

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<sup>42</sup> In some corrupt transactions these distinctions get blurred, such as the case of JP Morgan Chase hiring the children of Chinese leaders in a scandal that involved a blend of nepotism, favoritism, and allegations of quid pro quo exchanges. See Jessica Silver-Greenberg and Ben Protess, “JPMorgan Hiring Put China’s Elite on an Easy Track,” *The New York Times*, August 29, 2013.

vote-rigging, electoral fraud, illegal campaign contributions, intimidation, or any number of actions that may violate a country's specific electoral laws.

Defining these individual acts may seem self-evident, but it does not solve the initial problem at hand: what *is* corruption, or, rather, what is it that makes these (or any other) actions corrupt? The most common definition of corruption, according to authors such as Joseph Nye, is the “misuse of public power for private or political gains.”<sup>43</sup>

Major institutions such as the IMF, the OECD, and the anti-corruption NGO Transparency International use nearly identical definitions.<sup>44</sup> Public power, in this sense, is generally meant to refer to public officials, although this does not necessarily refer only to public office-holders.<sup>45</sup> Political scientist Joseph Nye tries to expand the definition by describing corruption as

“behavior which deviates from the normal duties of a public role because of private-regarding (family, close private clique), pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes bribery (use of rewards to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses).”<sup>46</sup>

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<sup>43</sup> Joseph Nye, “Corruption and Political Development: A Cost-Benefit Analysis,” *American Political Science Review* 61, no. 2 (1967): 417-427.

<sup>44</sup> Hough, *Corruption, Anti-Corruption & Governance*, 2.

<sup>45</sup> John A. Gardiner, “Defining Corruption,” in *Political Corruption: Concepts and Contexts* (3<sup>rd</sup> ed.), eds. Arnold J. Heidenheimer and Michael Johnston (New Brunswick, NJ: Transaction Publishers, 2009), 26.

<sup>46</sup> Joseph Nye, “Corruption and Political Development: A Cost-Benefit Analysis” in *Political Corruption: A Handbook*, eds. Heidenheimer, Johnston, and Le Vine, (London, UK: Transaction Publishers, 1990), 966.

Johnston calls these definitions “behavior-classifying,” and notes that despite all the disagreement most modern corruption definitions conform to this approach.<sup>47</sup>

Heidenheimer argues that nearly all behavior classifying definitions fall into one of three broader categories: public-office centered (see quote by Nye, above); market centered (i.e. when a civil servant uses his public office as a profit-seeking enterprise); and public-interest centered.<sup>48</sup> While Public-office centered and market-centered definitions seem precise and easy to understand, public-interest centered definitions describe both the nature of the underlying act and its consequences. Friederich’s definition is perhaps the best example of this category, one that incorporates both the legal and moral nature of the word corruption: “the pattern of corruption can be said to exist whenever a power-holder . . . [is] induced to take actions which favor whoever provides rewards and thereby *does damage to the public and its interest*.”<sup>49</sup> To Friedrich, corruption must incorporate certain actions by specific individuals that lead to perverse outcomes. Unfortunately, as corruption scholar Michael Johnston argues, this perspective muddies the debate considerably because “the definition of corruption and its consequences are distinct issues.”<sup>50</sup>

Johnston attempts to clarify the distinction between corrupt acts and the consequences of such acts while still retaining both the legal and moral nature of the problem. He does this by defining corruption as “the abuse of a trust, generally one

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<sup>47</sup> Johnston, “The Definitions Debate,” 17.

<sup>48</sup> Arnold J. Heidenheimer, “Perspectives on the Perception of Corruption,” in *Political Corruption: A Handbook*, eds. Heidenheimer, Johnston, and Le Vine, (London, UK: Transaction Publishers, 1990), 149-164.

<sup>49</sup> Friedrich, C.J., “Political Pathology,” in *Political Quarterly* 37, no. 1 (1966), 70-85 (emphasis added).

<sup>50</sup> Johnston, “The Definitions Debate,” 19.

involving public power, for private benefit which often, but by no means always, comes in the form of money.”<sup>51</sup> He chooses his words carefully. Terms like “generally involving” and “by no means always” highlights his concern that in many situations – especially in transitional democracies or newly liberalized economies – the line between public and private is quite unclear. In this way his definition encompasses many acts by many individuals yet still does not divert from what most believe is the central tenet of corruption: the abuse of power for private gain. That being said, some scholars continue to resist universal definitions by emphasizing their inapplicability in certain contexts. For example, while the line between public and private may be clear in some countries (particularly Europe and the U.S.), it is not so elsewhere. Peter Ekeh uses a historical analysis to explain why the public private divide is not the same in Africa as in the West, noting post-colonial societies in Africa often contained what he called “two publics”.<sup>52</sup> Some Asian scholars dispute the “private gain” component entirely, noting that some Asian governments consider actions that constitute dereliction of duty or immoral behavior corrupt regardless of whether the public official received, or even attempted to receive, any private gain.<sup>53</sup>

Although these classifications have been discussed throughout decades of corruption-related literature they do little to remedy underlying definitional concerns. For example, the terms “misuse” and “gains” must be judged according to some standard, as does the concept of “public interest”. In an attempt to clarify these concepts

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<sup>51</sup> Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy*, 11.

<sup>52</sup> Ekeh, Peter, “Colonialism and the two publics in Africa, a Theoretical Statement,” *Comparative Studies in Society and History* 17, no. 1 (1975): 91-112.

<sup>53</sup> See, e.g. “Kilkon Ko and Cuifen Weng, “Critical Review of Conceptual Definitions of Chinese Corruption: a formal-legal perspective,” in *Journal of Contemporary China* 20, no. 70 (2011): 359-378, 364.

corruption and corrupt acts are often defined either by legal or normative standards, or sometimes both. Not surprisingly, legal standards tend to be more objective but less malleable, while normative measurements consider subjective or cultural perspectives that make comparisons across national or even institutional lines incredibly difficult. As Robert Klitgaard makes clear, both perspectives present incredible challenges: emphasizing culture risks racially-biased, ethnocentric blaming that is too often disregarded as “emblematic of imperialist thinking,” while ignoring culture leads to ineffective policies created by what Myrdal termed uncritical “diplomacy in research.”<sup>54</sup>

From a legal perspective, corrupt acts are defined by statute or administrative code, and thus that which is not illegal cannot be corrupt. While this may be “convenient and unambiguous,”<sup>55</sup> I agree with Uslaner that this legality paradigm “misses the mark for [at least] two reasons.”<sup>56</sup> First, although statutes vary from place to place, the existence of a well-written corruption law tells us little about enforcement; in fact, often the most “corrupt” nations suffer more from a lack of enforcement than a lack of statutes. Second, statutes – and those who interpret statutes - often make fine distinctions that everyday citizens do not understand or agree with. Trained lawyers who often have incentives to create legal gray areas or “loopholes” are the same individuals who write or vote on statutes. This explains why many acts that are publically condemned as being corrupt may in fact be legal, while other acts that are widely tolerated may in fact be illegal and corrupt. Furthermore, laws change, so a legal perspective on the definition of corruption allows governments to “legalize” what is otherwise widely believed to be

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<sup>54</sup> Klitgaard, *Controlling Corruption* (Berkeley, CA: University of California Press, 1988), 9.

<sup>55</sup> John A. Gardiner, “Defining Corruption,” 30.

<sup>56</sup> Uslaner, *Corruption, Inequality, and the Rule of Law*, 7.

corrupt behavior;<sup>57</sup> Scott refers to this problem as “proto-corruption.”<sup>58</sup> Considering this it is not hard to conceive of a government that is abusive, unethical, or unfairly serving special interests yet is not actually considered corrupt because, according to a legal definition of corruption, it is not breaking the law.

This in turn creates problems when corruption is compared across countries or within a single country across time, as written laws and formal norms of office tend to be “quite divergent” from one country to the next.<sup>59</sup> Culture and tradition heavily inform law in developing countries in ways that are not immediately apparent to Western anti-corruption reformers. For example, otherwise functional and legal patronage networks in South Asia may be castigated because of their corrupt nature despite the fact that the public who accesses these networks do not necessarily want reform (*see* Pakistan section, below).<sup>60</sup> Additionally, in heavily codified societies like the United States there is a tendency to implicitly give normative value to legal codes or official actions. For example, there is very little scientific or legal justification for legalizing opiates in pill form but not in powder form, yet Americans undoubtedly view the consumption of heroin and oxycontin from two very different ethical perspectives. Therefore, those who try to move away from a normative perspective by equating corruption with illegality may, in the end, simply shift the normative perspective of a society against newly illegal

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<sup>57</sup> See, e.g., *Citizens United v. Federal Elections Comm’n*, 558 U.S. 310 (2010). (Prohibits the U.S. federal government from restricting political expenditures by corporations.)

<sup>58</sup> J.C. Scott, *Comparative Political Corruption* (Englewood Cliffs, NJ: Prentice-Hall, 1972), 7-8.

<sup>59</sup> Scott, *Comparative Political Corruption*, 5.

<sup>60</sup> For a discussion of the differences between bribes, patronage, and gift-giving, *see* Susan Rose-Ackerman, *Corruption and Governance: Causes, Consequences, and Reform* (New York, NY: Cambridge University Press, 1999), 91-110.



activities. By equating legality with ethics, this view risks pushing liberal jurisprudence back in line with the natural law theories that it left so long ago.<sup>61</sup>

Defining corruption normatively presents its own problems. Some scholars equate fairness and equality with ideal governments, thus linking partiality with corruption.<sup>62</sup> Although this diminishes some of the problems raised about the legality approach, equating corruption with unfairness raises other significant concerns: it too narrowly focuses on the actions of government officials while ignoring private actors; it expands the concept of corruption beyond its already oversized definition; it conflates cause and effect because a fair legal system “does not preclude breaking the law”; it focuses too heavily on those that implement policy (e.g. low-level bureaucrats) and ignores those who create or flout policy, and; it ignores the fact that there are many reasons government officials may act unfairly that do not relate to misusing power for private gain (prejudice, racism, and sheer laziness are but a few examples).<sup>63</sup> Finally, although social and cultural perspectives ought to be considered when designing and implementing anti-corruption policies, explicitly cultural definitions of corruption remain rare because public opinion and cultural standards vary across time, space, and even within segments of the same society.<sup>64</sup>

Heidenheimer takes a unique normative perspective on corruption in his study on how different societies tolerate and evaluate behavior that is sometimes but not always

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<sup>61</sup> See, e.g. Jeremy Bentham, “Critique of the Doctrine of Inalienable, Natural Rights,” in *The Works of Jeremy Bentham* vol. 2, ed. John Bowring (London: Simpkin, Marshall, and Co., 1843).

<sup>62</sup> See, e.g. Oskar Kurer, “Corruption: An Alternative Approach to Its Definition and Measurement,” *Political Studies* 53, no. 1 (2005): 222-239, cited in Uslaner, *Corruption, Inequality and the Rule of Law*, 8.

<sup>63</sup> Uslaner, *Corruption, Inequality, and the Rule of Law*, 7-9.

<sup>64</sup> Johnston, “The Definitions Debate,” 17.

considered corrupt. By focusing on perceptions of actions taken in specific public settings, and only considering what he calls “exchange transactions” (e.g. bribery), Heidenheimer outlines three “shades” of corrupt behavior: Black, Grey, and White.<sup>65</sup> Each of these shades is defined by normative perceptions of the public, not by legality. “Black corruption” exists when there is a consensus of elite and mass opinion that a specific act, taken in a specific setting, is condemned and should be punished. “Grey corruption” exists when some segments of society, usually elites, want the behavior condemned while others do not; with Grey corruption, often the majority of public opinion is ambiguous at best. “White corruption” concerns otherwise corrupt acts that are tolerated by the majority of both elites and the mass public. Whether the acts are legal or illegal, ethical or immoral, they are considered “white” if the majority of society do not wish to see the acts punished. These shades of corruption are particularly helpful for distinguishing certain actions that may seem corrupt to the world yet are more or less tolerated by the people in the setting where the act occurred.<sup>66</sup>

A third approach, espoused by Fisman & Miguel, emphasizes incorporating culture and local practices into anti-corruption reforms yet avoiding a cultural focus when defining, measuring, and classifying corruption as a problem.<sup>67</sup> This perspective allows for standardization of research across disciplines and geographic regions while still allowing for flexibility in the implementation of concrete anti-corruption policies.

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<sup>65</sup> Heidenheimer, “Perspectives on the Perception of Corruption,” 152-153.

<sup>66</sup> For an elaboration of this perspective see, e.g. Pierre Lascombes & Odette Tomescu-Hatto, “French Ambiguities in Understandings of Corruption: Concurrent Definitions,” *Perspectives on European Politics and Society* 9, no. 1 (2008): 24-38.

<sup>67</sup> Fisman & Miguel, *Economic Gangsters: Corruption, Violence, and the Poverty of Nations* (Princeton, NJ: Princeton University Press, 2008), 76-110.

Some authors move beyond simply defining the word corruption and instead focus on defining and analyzing certain patterns of corrupt behavior at the meta-level. Although this approach does not solve the basic definitional problems discussed above, it paints a clearer picture of how corruption manifests in various political, social, or cultural contexts. Whatever definition one chooses to use, understanding these broad categories is imperative for anyone who attempts to link the causes, consequences, and definitions of corruption with specific anti-corruption reforms. Unfortunately, as with definitions, there is much disagreement, overlap, and ambiguity amongst scholars who define these categories or patterns of corrupt behavior.

Robinson attempts to clarify the definitions debate by separating corrupt acts into three distinct categories: incidental (individual), institutional (e.g. police corruption), and systemic (societal).<sup>68</sup> Individual corruption relates to (ethical *or* legal) misdeeds committed by individual actors, such as individual politicians or public officials. While problematic, individual corruption tends to be “episodic, rather than systemic,” and it arguably has less of an impact on government or society as a whole; individual corrupt politicians, for example, tend to be investigated or at least voted out of office before they can steal enough to drastically impact those they serve.<sup>69</sup> Institutional corruption is common in sectors of government or industry that have high levels of rent-seeking opportunities combined with a weak system of controls and regulations. Any institution that relies on underpaid, low-level officials to carry out important, daily functions with

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<sup>68</sup> Mark Robinson, “Corruption and Development: An Introduction,” *The European Journal of Development Research* 10 (1998), 1-14, 3.

<sup>69</sup> This, of course, assumes a well-functioning democratic system, something that is certainly not existent in many states that confront high levels of corruption. For an example of how this functions in the United States *see*, Monica Davey, “Blagojevich Sentenced to 14 years in Prison,” *The New York Times*, December 7, 2011.

the public can fall victim to this type of corruption. Police forces, energy or resource distributors, and national education systems are prime examples of this; in each of these institutions low and mid-level government employees have significant contact with – and power over – regular citizens. This is especially problematic in developing or transitional countries with limited resources and weak institutional frameworks. Organized crime, drug-traffickers, gangs and even terrorist groups tend to infiltrate and sometimes even control institutions riddled by this type of corruption.<sup>70</sup> However, most countries that experience only individual or institutional corruption are able to address it through *ad hoc* investigations or institutional reform meant to combat specifically this type of sporadic corruption problem. This is possible because in these situations, “corruption is the exception, not the rule.”<sup>71</sup> Systemic or societal corruption is different.

In a reaction to what he calls the “new consensus” regarding corruption’s link with democratization and development, Johnston emphasizes the importance of distinguishing between different economic and political opportunities available to individuals within complex societal and institutional frameworks.<sup>72</sup> From this perspective he defines four “syndromes” of corruption commonly found in developing and developed countries (though his focus is mostly on the link between corruption and development). These four syndromes, Influence Market Corruption, Elite Cartel Corruption, Oligarch and Clan Corruption, and Official Mogul corruption, “reflect frequently encountered combinations of stronger or weaker participation and institutions”

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<sup>70</sup> Louise Shelley, “The Unholy Trinity: Transnational Crime, Corruption, and Terrorism,” *Brown Journal of World Affairs* 11, no. 2 (Winter/Spring 2005): 101-111.

<sup>71</sup> Michael Johnston, “Fighting Systemic Corruption: Social Foundations for Institutional Reform,” in *Corruption and Development*, ed. Mark Robinson (Portland, OR: Frank Cass Publishers, 1998), 85-103.

<sup>72</sup> Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy*, 2.

in a wide array of countries.<sup>73</sup> *Influence Market* corruption involves efforts by private parties to “rent access and influence within well-institutionalized policy processes.” Perhaps the most common legal example of this is lobbying in the United States, although it takes different forms in many different countries.<sup>74</sup> *Elite Cartel* corruption involves “networks of political, economic, military, bureaucratic, or ethnic and communal elites” who work together behind the scenes to sustain power in spite of increasing political competition. This is often the case in countries with strong militaries that are also involved in the political and economic function of the state, e.g. Pakistan. *Oligarch and Clan Corruption* is defined by public officials and private entrepreneurs who generate an extensive following despite illegal and often violent behavior. This syndrome is common in transitioning economies such as those in Eastern Europe and Central Asia after the fall of the USSR, and it has recently become prevalent in the regions of Mexico and Central and South America where drug cartels hold significant influence over local governments and the public.<sup>75</sup> *Official Mogul* corruption occurs when government officials (or their friends and families) “plunder the state with impunity,” as has been the case the Phillipines under Marcos, Zimbabwe under Mugabe, Indonesia under Suharto, and Nigeria under any number of political leaders since independence. These individuals often pretend to justify their rule on popular support or

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<sup>73</sup> Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy*, 46.

<sup>74</sup> For an overview of the relationship between lobbying and illegal corruption in the U.S., see CBS News, *Jack Abramoff: The Lobbyist's Playbook*, Television, July 8, 2012, <http://www.cbsnews.com/videos/jack-abramoff-the-lobbyists-playbook-50127564/>.

<sup>75</sup> For an overview of the levels and extent of “narco-corruption” in Mexico, see PBS Frontline *Murder, Money, and Mexico: The rise and fall of the Salinas brothers*, <http://www.pbs.org/wgbh/pages/frontline/shows/mexico/readings/>

even divine right while simultaneously holding power through violence and the intimidation of opposition groups.

Despite differences of opinion over definitions, the available literature clearly makes a distinction between sporadic corruption committed by individuals who break governmental and/or societal “rules” to enrich or otherwise benefit themselves, such as simple bribery, and widespread or deeply entrenched corruption that literally changes the rules of the game for all involved. Robinson calls the latter type “societal” corruption, that which “pervades the entire society and in the process becomes routinised [*sic*] and accepted as a means of conducting everyday transactions.”<sup>76</sup> Johnston calls this “systemic” or “entrenched” corruption, a type of corruption “that is not only more extensive [than individual or institutional corruption] but is also a qualitatively different problem, embedded in political and economic systems in ways that both reflect its impact and help sustain its force.”<sup>77</sup> This type of corruption cripples governments and their ability to support or care for their citizens, and thus this type of corruption remains the most challenging to combat. Unfortunately, for many countries experiencing this level of corruption, institutions strong enough to combat the problems do not exist and, even when they do exist, nearly always remain underfunded.<sup>78</sup>

Countries such as Pakistan represent precisely this scenario, cases that Jeremy Pope, a co-founder of Transparency International, calls “systemic corruption: ... the corrupt practices of numberless individuals perpetrated against ineffective institutions” in

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<sup>76</sup> Robinson, *Corruption and Development, an Introduction*, 3.

<sup>77</sup> Johnston, “Fighting Systemic Corruption”, 86.

<sup>78</sup> El Salvador’s fledgling anti-corruption agency, the Tribunal de Ética Gubernamental is a prime example of this. See Chapter IV(B)(iii), *infra*.

a way that undermines not just specific public offices but the legitimacy of the state itself.<sup>79</sup> Working loosely from that definition it is pertinent (when possible) to avoid solely focusing on front-page corruption scandals and look also at the overall attitudes of people at various levels within a society to see what people think and feel about corruption in their government. It is important to understand how the perception of corruption affects the powerful and the powerless, the well-connected lawyer and the poor street vender, and through that lens one can attempt to address corruption outside of and/or beyond the economic lens through which it is generally seen. By the time a society is confronting systemic corruption is evident to researchers that

“Corruption [becomes] a crime of calculation, not passion. . . . [There] are saints who resist all temptation, and honest officials who resist most. But *when the size of the bribe is large, the chance of being caught small, and the penalty if caught meager*, many officials will succumb.”<sup>80</sup>

Corruption exists everywhere, but when it reaches this pervasive, systemic level it influences the level of conflict throughout society and saps public trust in government. The existence of impunity is a necessary condition for systemic corruption, and when impunity becomes pervasive it acts to reinforce levels of corruption and violence within a society. These two overlapping and at times mutually reinforcing problems plague many governments, institutions, and multinational corporations around the world yet, despite being illegal, many still believe that the existence of corruption and impunity simply represents a norm of human nature that cannot or will not change. The adage that “power corrupts, and absolute power corrupts absolutely” is taken as truth in many circles, and psychologists who study power and its influence on corrupting behavior admit that

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<sup>79</sup> Jeremy David Pope, “The Third Phase in the Fight Against Corruption: Implementation and Comparative Administrative Ethics,” *Public Integrity* 10, no. 1 (2007-2008): 76.

<sup>80</sup> Klitgaard et. al, *Corrupt Cities*, 96.

despite its incredible impact on the world we still know little about its causes or effects.<sup>81</sup> Nonetheless, scholars and policymakers continue to try to define corruption in hopes that it will help them measure, further understand, and eventually combat this severe problem.

### *C. MEASURING CORRUPTION*

A problem perhaps more vexing than defining or combating corruption is simply trying to get the necessary data. This begs the question, how does one measure corruption? Considering all the varying definitions of, and perspectives about corruption, and the legal and political sensitivity involved in corrupt acts, measuring corruption accurately presents perhaps the most complicated challenge to any corruption related-research. This problem raises important responses to any critique of Transparency International's CPI or other related indices. Put simply, this is an incredibly difficult problem to measure in any context, let alone from an international perspective, and Transparency International's attempt – though flawed – has unquestionably moved the debate forward.

Broadly speaking, there are two general methods used to measure corruption. The first involves individual investigations or case-studies where tools of forensic accounting are used: for example, tracing money coming in and out of government or business coffers with an eye for matching those flows with proper expenditures, official salaries, and other purchases made (or bank accounts held) by suspected corrupt individuals. This sometimes involves only specific individuals or offices, and in other cases it addresses entire administrations, industries, cities, or even nations. Getting access to this data is extremely complicated and often dangerous, and even when sufficient data exists it

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<sup>81</sup> Lee-Chai and Bargh, *The Use and Abuse of Power: Multiple Perspectives on the Causes of Corruption*, xiii.



generally only covers a limited number of powerful individuals or institutions and, therefore, does not give an estimate of the overall corruption as experienced by the general public.

The second method involves calculating aggregate measurements of *perceptions* of corruption, which is what Transparency International (and other agencies, such as the World Bank) measures. This method attempts to study broader perceptions of corruption thereby minimizing the critique that it only targets a few specific, individual cases. It does, however, come with its own critiques and methodological flaws, such as how data is measured and compiled, variance in perceptions (and language used to define perceptions) across cultures and peoples, questions about whose perceptions matter, etc. I outline Transparency International and the Corruption Perceptions Index in detail below, but before turning to that I will describe several alternate, case-study approaches to measuring corruption.

In their recent book, *Economic Gangsters: Corruption, Violence, and the Poverty of Nations*, economists Raymond Fisman and Edward Miguel provide several unique examples of how corruption can be measured on a case-by-case basis. In one example they attempt to measure how Indonesian President Suharto's family became so wealthy. Suharto's family, and especially his son Tommy, ran or held controlling shares in many supposedly legitimate Indonesian businesses. In an effort to see whether these businesses were profitable in their own right, or whether they owed their success to the connections with the Suharto's family, Fisman & Miguel monitored the stock prices of several Suharto family-owned businesses over a period of years. More specifically, they monitored how the stock market reacted when news leaked that President Suharto was ill

and/or dying.<sup>82</sup> Fisman & Miguel then compare one of Suharto's son's businesses, Bimantara Citra, with other businesses listed on the JSX stock exchange and the exchange average itself. Fisman & Miguel posited that if these companies were truly functioning and profitable aside from their political connections then news of Suharto's illnesses would not drastically affect their stock prices. Not surprisingly, they found the opposite: shares in Bimantara Citra (and other companies dominated by Suharto relatives) dropped more than three times as much as the stock exchange average (the JSX composite) whenever news was leaked about Suharto's failing health, and quickly rebounded as soon as the President returned to rule his country in a state of health.<sup>83</sup> Through this and other statistical analysis Fisman & Miguel were able to prove at least that "the collective wisdom of investors" in Indonesia and around the world was that these companies could no longer be profitable if Suharto was not in power.

Another clever, yet relatively simple method for measuring corruption is highlighted through Fisman & Miguel's study of smuggling between China and Hong Kong. They first investigated tariff levels between China & Hong Kong to see what types of goods would provide the highest incentive for smuggling;<sup>84</sup> perfumes, tobacco, foreign cars, industrial drilling machines, and even poultry had outrageously high tariffs. Some of these goods, however, would be harder to smuggle than others, so Fisman &

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<sup>82</sup> Suharto had already been president for more than thirty years when he began suffering health problems in the mid to late 1990s. Due to the fact that there was no clear plan for a post-Suharto Indonesia, whenever he became ill or traveled abroad for medical purposes there was intense speculation about what would happen to his country and businesses if he died.

<sup>83</sup> Fisman & Miguel, *Economic Gangsters*, 35.

<sup>84</sup> Fisman & Miguel stated that goods have a high incentive for smuggling if there are drastic differences between the tariffs of one good with similarly situated goods, and this even more so if the good was something that could not be easily identifiable by customs agents (i.e. it is hard to tell a turkey from a chicken, but not hard to tell a foreign car from other pieces of similarly sized machinery).

Miguel focused on poultry. Turkeys imported into China face a 10% tariff, while chickens imported into China faced a 20% tariff. Furthermore, turkeys were less popular in China than chickens and received a lower price per pound. Therefore, there was a clear economic incentive to import chickens but pretend they were turkeys. After comparing the number of chickens officially exported from Hong Kong to China, and cross-referencing that number with the number of chickens officially imported into China from Hong Kong, Fisman & Miguel quickly identified what they termed a “smuggling gap”. Their conclusion is simple but clear: many more Hong Kong “turkeys” were being imported into China than had actually left Hong Kong in the first place. This investigation was repeated with other types of goods, and Fisman & Miguel eventually concluded that this type of “sleight of hand,” as opposed to direct bribes, accounted for most of the corrupt smuggling between Hong Kong and China.<sup>85</sup>

These examples, although seemingly small and insignificant, help explain how various forms of corruption can be identified and measured in specific institutional or geographical situations. These methods are helpful for identifying specific problems and instituting reforms, but they do little to tell us how corruption levels compare across countries, regions, or even the globe. For that we must analyze the most widely-cited corruption measurement, Transparency International’s Corruption Perceptions Index (see part III.B., *infra*). But before turning to that, I will first attempt to answer a question that may seem self-explanatory: what makes corruption “bad”?

#### *D. CONSEQUENCES OF CORRUPTION*

Corruption is generally considered a detrimental, if inevitable, aspect of society. While there is still much debate about the causes of and possible solutions to corruption-

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<sup>85</sup> Fisman & Miguel, *Economic Gangsters*, 70.

plagued nations, few scholars or policy makers argue against reforming corrupt institutions. Some political scientists and development scholars once argued that corruption is not inherently negative and that in certain situations it may be preferable to alternatives or even the status quo.<sup>86</sup> In some cases this argument was justified on grounds of economic or political efficiency. For example, Huntington stated that “[i]n terms of economic growth, the only thing worse than a society with a rigid, over-centralized, dishonest bureaucracy is one with a rigid, over-centralized, *honest* bureaucracy.”<sup>87</sup> His point is that in some developing countries corruption actually greases the wheels of an otherwise inefficient economy, which in turn leads to much needed economic growth. This was generally argued about poor, developing countries in which the national governments exercised a (presumably too-) large amount of control over the economies. Similarly, Rose-Ackerman states that “individual bribes sometimes not only benefit the payer and the recipient but also enhance overall efficiency or fairness,” especially in countries with extensive, inefficient, and arbitrary regulatory systems.<sup>88</sup>

Other scholars hesitate to argue that corruption is beneficial yet still resist the “natural but wrong [assumption] that the results of corruption are always both bad and important.”<sup>89</sup> This critique resists the moralistic perspective on corruption while instead

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<sup>86</sup> For a discussion of the so-called “efficiency” argument, see Pranab Bardhan, “Corruption and Development: A Review of Issues,” 323.

<sup>87</sup> Samuel P. Huntington, *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968), 386 (emphasis added).

<sup>88</sup> Susan Rose-Ackerman, *Corruption and Government*, 225.

<sup>89</sup> Colin Leys, “What is the Problem about Corruption?” in *Political Corruption: A Handbook*, eds. Heidenheimer, Johnston, and Le Vine, (London, UK: Transaction Publishers, 1990), 65.

focusing specifically on outcomes. Although these perspectives have not completely subsided – some authors still point to the high levels of corruption experienced through the growth of the Asian Tigers as proof that corruption and growth can work hand-in-hand<sup>90</sup> – the overwhelming consensus among corruption scholars is the opposite. Despite whatever positive effects it may have in certain cases, corruption is inimical to the development and legitimacy of a state.<sup>91</sup> I believe that this argument holds because the negative effects of corruption regularly outweigh any supposed short-term benefits of individual corrupt actions.

The consensus that corruption is bad is based upon the belief that corruption limits economic and political growth, increases poverty and violence, and in extreme cases can lead to the dissolution of a state. From an economic and development perspective, this argument is relatively straightforward. Corruption inhibits economic growth in several ways simultaneously, and these consequences are particularly acute in poor, developing nations. First, it siphons money otherwise meant for much needed development projects into the pockets of individuals that, arguably, do not need or deserve it. By definition, rents (or bribes, embezzlement, fraud, etc.) remove wealth from an economy without adding a productive capacity. Corruption-prone governments tend to pursue small numbers of large, often inefficient infrastructure projects – as opposed to

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<sup>90</sup> For a rejection of the causation assumption inherent in this argument, see Rose-Ackerman, “When is Corruption Harmful?”, in *Political Corruption: A Handbook*, eds. Heidenheimer, Johnston, and Le Vine, (London, UK: Transaction Publishers, 1990), 353-371. (“...strong economic growth is not a cure [for corruption]. A growing pie may just imply that there are more rents to divide. Corruption may be more tolerable if the pie is growing since everyone can see some of the benefits...”).

<sup>91</sup> Dan Hough argues that governments, international organizations, NGOs and even the business community have reached a consensus that “corruption is . . . one of the great evils of our time.” Hough, *Corruption, Anti-Corruption & Governance*, 2

small-scale or human-centered development projects – because it is easier to seek rents and channel contracts to cronies at this level.<sup>92</sup>

Second, corruption reduces the impact of domestic or international development aid efforts, such as building schools, roads, or hospitals, which further inhibits a country's chance for future growth. When aid projects fail to deliver on promised returns due to corruption, public support for international aid diminishes. Furthermore, a poor ranking on a global corruption index can inhibit a country's ability to receive development aid in the first place, which in turn reduces a government's chance of receiving the resources it may need to complete anti-corruption reforms.

Third, corruption distorts the principles of supply and demand and offers incentives for businesses to bribe rather than produce the best product or service for the lowest price. This disincentivizes entrepreneurial activity and reduces talent levels and product quality within related industries.<sup>93</sup> In an increasingly globalized world where international trade is necessary for most countries, this seemingly minor distortion can have huge ripple effects throughout a local or national economy.

Fourth, corruption encourages capital flight because individuals who misappropriate or steal government funds will undoubtedly wish to store those funds outside the reach of their respective government agencies. One need only look at the Parisian apartments owned by members of African governing families, or the numerous estates in Florida owned by ex-Latin American military officials to understand how this

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<sup>92</sup> Uslaner, *Corruption, Inequality, and the Rule of Law*, 31.

<sup>93</sup> Paolo Mauro, "The Effects of Corruption on Growth and Public Expenditures," in *Political Corruption: Concepts & Contexts* (3<sup>rd</sup> ed.), eds. Heidenheimer & Johnston (New Brunswick, NJ: Transaction Publishers, 2009), 342-344.

manifests in certain circumstances. This is especially problematic in developing countries with high levels of valuable natural resources and/or civil conflict.<sup>94</sup>

Finally, foreign investment is discouraged when corruption is perceived as systemic.<sup>95</sup> Although some international businesses have until recently been quite willing and able to pay bribes to pursue international projects,<sup>96</sup> corruption increases uncertainty and presents complicated public relations (and at times legal) challenges for multinational corporations. If a nation's legal system is perceived as weak, unfair, or unreliable, outside investors will hesitate to bring resources and jobs to a developing country in fear that law will not protect their investments. These problems overlap and reinforce themselves, which repeats a cycle of poverty<sup>97</sup> through inefficient resource production and distribution at all levels of the economy. These problems multiply in effect because "corruption is regressive. It hurts the poorest and most marginalized sectors of society" as it is precisely those most in need who cannot afford to access resources through corrupt channels.<sup>98</sup> That being said, this perspective assumes that foreign investment is beneficial to those most in need. Although it is beyond the scope of this section, there is arguably as much – or perhaps more – corruption in the inequitable nature of the global

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<sup>94</sup> For competing views on the so-called "Resource Curse," see Macartan Humphreys, Jeffrey D. Sachs, and Joseph Stiglitz, *Escaping the Resource Curse* (New York, NY: Columbia University Press, 2007); Gavin Wright and Jesse Czelusta, "The Myth of the Resource Curse," *Challenge* 47, no. 2 (2004): 6-38.

<sup>95</sup> Robinson, *Corruption and Development: An Introduction*, 3.

<sup>96</sup> See, e.g., Siri Schubert and T. Christian Miller, "At Siemens, Bribery Was Just a Line Item," *The New York Times*, December 20, 2008, <http://www.nytimes.com/2008/12/21/business/worldbusiness/21siemens.html?pagewanted=all>

<sup>97</sup> The development economist Jeffrey Sachs coined this cycle the "Poverty Trap." See Jeffrey D. Sachs, *The End of Poverty: Economic Possibilities for Our Time* (New York, NY: Penguin Press, 2005).

<sup>98</sup> Brown & Cloke, "Assessing the International Anti-Corruption Debate," 274.

economic system, something that few anti-corruption organizations take into consideration.

When corruption reaches a systemic level it also undermines public trust of, and support for, government, which inhibits institutional growth at all levels.<sup>99</sup> Lack of faith in government limits civic engagement and participation, precisely the tools needed to ensure that corruption does not run rampant. Especially for developing countries with high levels of poverty, these consequences combine to create high levels of inequality and low-levels of trust, which increases the chances of corruption and violence across society. Citizens who may otherwise trust the government to provide resources will turn elsewhere for support (which often strengthens organized crime or other illicit networks), while those that would generally fear punishment will more regularly break the law to get what they need. Uslaner names this self-reinforcing cycle the “inequality trap”. He argues that although you “can have plenty of corruption without inequality,” corruption and inequality are connected at least because “people *perceive* of a link between inequality and corruption.”<sup>100</sup> This is so because our actions reflect not only our own beliefs and desires but also how also how we believe that others will act. In this sense, even incorrect perceptions of rampant government corruption can reinforce that very same behavior and become self-fulfilling (this will be discussed further in Section IIIa, *infra*).<sup>101</sup> If your family and community is poor, and you believe – rightly or wrongly – that government officials are milking the state coffers at your expense, there is little

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<sup>99</sup> Michael Johnston, “What can be done about Entrenched Corruption?” Paper presented at the Annual World Bank Conference on Development Economics, Washington, D.C., April 30-May 1, 1997, in eds. Rick Staphenurst and Sahr Kpundeh, *Curbing Corruption: Toward a Model for Building National Integrity* (Washington, D.C.: WBI Development Studies, 1999), 15-18.

<sup>100</sup> Uslaner, *Corruption, Inequality, and the Rule of law*, 28-29.

<sup>101</sup> Uslaner, *Corruption, Inequality, and the Rule of Law*, 27.



incentive to keep you from breaking the law to get what you need. This can also push otherwise honest people into collusion with organized crime, separatist rebels, or even terrorist organizations in an effort to satisfy basic needs and resist what they see as corrupt governments.<sup>102</sup> In this way extensive corruption reduces support for popular participation in government<sup>103</sup> because it “breeds cynicism, criminality, and distrust.”<sup>104</sup> This is but one reason why some organizations and individual scholars argue that the “war on terror” would be better fought through economic development and institutional reform in regions responsible for high levels of terrorist recruits.<sup>105</sup>

Although the aforementioned consequences of corruption are well documented, proving causation remains difficult for various reasons. First, defining and measuring corruption is extremely complicated, as discussed above. Similarly, many authors have highlighted how the ideologies of certain anti-corruption organizations or individual scholars have caused them to stress corruption as “both effect and cause of incomplete, uneven, or ineffective economic liberalization.”<sup>106</sup> By emphasizing corruption’s role in government with illiberal economic structures these “experts” have (explicitly or implicitly) equated the implementation of neoliberal policies with the eradication of

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<sup>102</sup> See, e.g. Fisman & Miguel, *Economic Gangsters: Corruption, Violence, and the Poverty of Nations* 111-134; Raymond W. Baker, *Capitalism’s Achilles Heel: Dirty Money and How to Renew the Free Market System* (Hoboken, NJ: John Wiley & Sons Inc., 2005), 88-161.

<sup>103</sup> Johnston, *Syndromes of Corruption*, 36-37.

<sup>104</sup> S. Alatas, “Corruption,” in *The Oxford Companion to the Politics of the World*, ed. J. Krieger, (Oxford: Oxford University Press, 1993), 198-199, cited in Brown & Cloke, “Assessing the International Anti-Corruption Crusade”, 274.

<sup>105</sup> See, e.g., United States Institute of Peace, “Corruption, Governance, and Conflict,” *Study Guide Series on Peace and Conflict* (Washington, D.C.: USIP Press, 2010).

<sup>106</sup> Johnston, *Syndromes of Corruption*, 6.

corruption. For some, this perspective is both problematic and self-serving.<sup>107</sup> For others, it is simply incorrect because corruption tends to increase during the transition from state-based to a free-market economies. Nonetheless, this perspective has provided the foundation for many anti-corruption programs at the national and international level.

#### *E. COMBATING CORRUPTION: DOMESTIC AND INTERNATIONAL EFFORTS*

Corruption is, it would appear, one of the great evils of our time. Citizens are appalled by it, international organizations have created reform agendas to tackle it and politicians earnestly claim to want to reduce it. Even the world of business has embraced the notion that it could well be in its interests to work alongside regulators and policy-makers with a view to cleaning up the environment where trade takes place . . . Working to reduce the underlying negative effects of corruption therefore seems to be very much the order of the day.<sup>108</sup>

Combating corruption is incredibly complicated. This is due in part to the problems raised above (e.g. varying definitions, complications in measurement, etc.) but also because of the uniquely political nature of corrupt acts. Any attempt to reduce corruption must involve the creation and enforcement of legal and administrative procedures that help prevent and deter corruption while also providing clear punishments for those who commit corrupt acts. However, decades of “one-size-fits-all” anti-corruption efforts have shown that it requires more than copying and implementing “essentially technical solutions . . . [such as] particular types of [neoliberal] economic policies and/or institutional reforms.”<sup>109</sup> But corruption is not simply about economics, it is an interdisciplinary problem that often involves powerful actors with diverse interests.

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<sup>107</sup> Brown & Cloke, “Neoliberal Reform, Governance, and Corruption in the South: Assessing the International Anti-Corruption Crusade,” 289-291.

<sup>108</sup> Dan Hough, *Corruption, Anti-Corruption, and Governance*, 1.

<sup>109</sup> Brown & Cloke, “Neoliberal Reform, Governance and Corruption in the South: Assessing the International Anti-Corruption Crusade,” 289.

The efficacy of institutional reform is further limited when corruption becomes systemic, and attempting to punish the corrupt is not only difficult but often dangerous.<sup>110</sup> Nonetheless, tales of corrupt officials evoke strong emotions from the public, and thus promises to “eradicate corruption” are common cries during any election season.<sup>111</sup> Dan Hough and many other scholars make clear that, despite the difficulty involved, anti-corruption and “good governance” efforts have in a few decades grown from “the dog that can barely raise a wimper”<sup>112</sup> to the centerpiece of domestic, regional, and international policy agendas. This growth is in part because the rise of investigative journalism and the advent of social media have left few places for corrupt leaders to hide. The World Bank, a key leader in the international “good-governance” movement, states that although media can be used to simply prop up the already powerful, a strong and independent media is one of the “two most important factors in eliminating systemic corruption in public institutions.”<sup>113</sup> But, as will be discussed below, even an independent media cannot combat corruption in the long term. This is because fighting corruption is as complex as defining the term, especially in countries facing systemic corruption. Combating systemic corruption

“requires active participation and a long-term commitment by a variety of anti-corruption actors such as national government leaders; civil society, media (journalists), academics, the private sector and international

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<sup>110</sup> See, e.g., Declan Walsh, “Prosecutor in Bhutto’s Death and Mumbai Attacks is Assassinated,” *The New York Times*, May 3, 2013.

<sup>111</sup> Numerous examples of these parties exist throughout the world, including Imran Khan’s PTI party in Pakistan, and the Aam Aami Party in India.

<sup>112</sup> Hough, *Corruption, Anticorruption, and Governance*, 13.

<sup>113</sup> Rick Staphenurst, “The Media’s Role in Curbing Corruption,” *World Bank Institute* (Washington, D.C.: International Bank of Reconstruction and Development, 2000), 2; see also, Aymo Brunetti & Beatrice Wieder, “A Free Press is Bad News for Corruption,” *Journal of Public Economics* 87 (2003): 1801-1824.

organizations. However, *the political will of national governments should be in the front line* in the fight against these social norms.”<sup>114</sup>

For most of human history, anti-corruption efforts consisted simply of *ad hoc* investigations created to determine whether an individual, group, or political party (for example) had violated the law in one of any number of ways.<sup>115</sup> These investigations generally arose amid public outcry and political pressure over a specific scandal or crisis that was (often) first made public by the media or opposition politicians. Yet as with any anti-corruption efforts, individual investigations tend to be extremely political and the results can vary; sometimes laws or administrative guidelines are created, changed, or strengthened in hopes that another scandal will not ensue; sometimes individual corrupt officials are removed from office, fined, sent to jail, or even forced to flee the country;<sup>116</sup> sometimes entire agencies or state institutions are emptied and re-filled with new, supposedly corruption free staff.

Although *ad hoc* anti-corruption investigations are still common in many parts of the world the vast majority of anti-corruption initiatives today involve more permanent efforts created to address a wide range of people, institutions, and behaviors. There are three broad mechanisms by which these anti-corruption efforts are pursued: International (or regional) anti-corruption treaties; domestic anti-corruption statutes that sometimes

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<sup>114</sup> Dawit Kiros Fantaye, “Fighting Corruption and Embezzlement in Third World Countries,” *Journal of Criminal Law* 68, no 2 (2004): 174.

<sup>115</sup> See, e.g., Michael Johnston, “A brief history of anticorruption agencies,” in *The Self-Restraining State: Power and Accountability in New Democracies*, eds. Andreas Schedler, Larry Jay Diamond and Mark F. Plattner, 217-226 (Boulder, CO: Lynne Rienner Publications, 1999).

<sup>116</sup> President Nixon’s registration and Pakistani Prime Minister Benazir Bhutto’s removal from office provides well-known historical examples of this, as does former Illinois Governor Rod Blagojevich’s indictment and subsequent conviction on 18 corruption-related charges. For details of the latter, see Monica Davey, “Blagojevich Sentenced to 14 Years in Prison,” *The New York Times*, December 7, 2011.

have reach beyond one state's borders; and domestic or regional anti-corruption agencies (ACAs). Within these three mechanisms many variations exist.

The broadest and yet arguably least effective anti-corruption mechanisms exist at the international level. There are several regional or multi-lateral treaties that attempt to address corruption from an international legal perspective, the most important of which are (in chronological order): the Organization of American States (OAS) *Inter American Convention Against Corruption* (1996), the OECD *International Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions* (1997), the *United Nations Convention Against Corruption* (2003), and the African Union *Convention on Preventing and Combating Corruption* (2010). Although these treaties are important parts of the international anti-corruption movement, beyond standardization of language or publicity of communal intentions they have represented, at best, symbolic improvements. There are also anti-terrorism or anti-money laundering treaties that involve some specific anti-corruption initiatives, though these treaties tend to focus on specific types of corruption committed by specific individuals in a narrow set of circumstances.<sup>117</sup> Furthermore, the practical effects of these efforts are small because the UN and other international agencies “do not have the tools to enforce (or even monitor) its own anti-corruption efforts.”<sup>118</sup>

Another powerful yet relatively rare anti-corruption initiative involves creating domestic anti-corruption laws that govern the behavior of a country's citizens and corporations when they operate internationally. The purpose of these statutes is to limit

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<sup>117</sup> See, e.g. United Nations Convention against Transnational Organized Crime, UN RES 55/25, Nov. 15, 2000 (Vienna, Austria: United Nations Office On Drugs and Crime, 2001).

<sup>118</sup> Hough, *Corruption, Anti-Corruption, & Governance*, 26.

the supply-side of corrupt acts, i.e. to prevent and punish those who bribe government officials. Due to jurisdictional constraints, these laws only apply to individual citizens or corporations whose charter is in the state where the act was passed. Nonetheless, these laws can have an incredible impact for multiple reasons: they inhibit the practices of private individuals who are often otherwise immune from anti-corruption laws in some states (i.e. receiving a bribe is almost always illegal, but offering one is often not); they influence the behavior of powerful multinational corporations, including those whose annual revenue may be more than the GDP of the countries they do business in, and; corrupt behavior is punished outside the normal political constraints of the country where the act occurs (i.e. the corrupt actor is punished not in the country where the bribe took place – which, for obvious reasons, rarely happens – but in the state where the briber lives and works).

The most famous and controversial example of these laws is the 1979 U.S. Foreign Corrupt Practices Act (FCPA). The FCPA prohibits any representative, agent, or employee of publically held companies from bribing, or offering or promising to bribe,<sup>119</sup> a foreign government official in furtherance of interstate commerce. The FCPA is limited in that it only applies to specific individuals representing specific types of U.S.-based companies, and it only limits their ability to bribe foreign *government* officials; private individuals can act corruptly towards other private individuals or businesses without running afoul of the law. Similarly, the FCPA does not limit all transfers of cash or gifts; so-called “grease payments” are still allowed so long as they are considered

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<sup>119</sup> United States Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1, et seq.; see FCPA § 78dd1(a) for a full list of prohibited behaviors.

“routine government actions” and are not illegal in the state where they occurred.<sup>120</sup>

Notwithstanding these limitations, the FCPA has significant potential to limit some forms of corruption. Considering the international reach and influence that many U.S.-based corporations have, and also considering that many “corrupt” countries lack the ability or will to enforce their own anti-corruption laws, the FCPA and other laws like it provide an alternate route for punishing individuals who otherwise break the law with impunity.

In recent decades the trend within the anti-corruption movement has been towards creating domestic anti-corruption agencies, or ACAs (sometimes also referred to “National Integrity Systems”). Broadly speaking, the goal of these agencies is to coordinate the detection, prevention, and to a lesser extent punishment of corruption in any number of institutions. According to Patrick Meagher, the success of two initial anti-corruption agencies in Hong Kong (the ICAC, created in the 1950s) and Singapore (CPIB, created in the 1970s) “provided the impetus, and paradigm, for the establishment of strong, centralized agencies” dedicated to fighting corruption at the domestic level.<sup>121</sup> The structure, composition, and mandate of these agencies can vary widely depending on many factors, including the form of government, political will, amount and quality of resources available, strength of otherwise complimentary institutions, role of international agencies, etc. Nonetheless, ACAs can be broadly divided into two general formats: single-agency approaches and multiple-agency approaches.

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<sup>120</sup> See FCPA § 78dd1(f)(1-3) for definitions of what constitutes a “foreign official” and “routine government action”.

<sup>121</sup> Meagher, Patrick, “Anti-corruption Agencies: Rhetoric Versus Reality,” *The Journal of Policy Reform* 8, no. 1 (2005), 69-103. Meagher also notes that similar agencies did exist in earlier times, including a NYC agency created in the 1870s, yet these agencies more closely resembled *ad hoc* investigations because they often had a limited temporal scope.

The single agency paradigm, as seen in Hong Kong and Singapore, “places a number of key capabilities, responsibilities, and resources under one roof” in the hopes of creating a single, powerful government institution that can address many facets of anti-corruption work.<sup>122</sup> These agencies must still interact with other parts of the government (e.g. the legislature to seek funding, the prosecutors or the courts to pursue criminal charges, etc.), but the vast majority of their work can be completed internally. These agencies are often composed of staff with diverse training and professional backgrounds, which sometimes involves pulling individual government officials (forensic accountants, prosecutors, etc.) from other sectors of the government and private sector to work together.

Single agency mechanisms are ambitious but necessary approaches to combating corruption, especially in cases where there is a crisis of legitimacy or where corruption remains particularly entrenched in powerful institutions. For example, Hong Kong’s ICAC was created as an independent agency precisely because neither the Governor nor the public had faith in the police’s ability to monitor or disrupt entrenched corruption networks that had flourished in the 1960s and early 1970s.<sup>123</sup> Public perceptions are important not just for defining and understanding the problem but also with respect to creating effective anti-corruption strategies; if the public has no faith in the ACA, or remains fearful of the “corrupt” institution being investigated, progress is limited from the outset. This highlights how difficult it is to battle entrenched corruption because, as Uslaner argues, corruption is “sticky,” i.e. it relates to patterns of behavior that are self-

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<sup>122</sup> Meagher, “Anti-corruption Agencies: Rhetoric Versus Reality,” 72.

<sup>123</sup> For a detailed analysis of the creation, structure, and success of Hong Kong’s ICAC see Klitgaard, *Controlling Corruption* (Berkeley, CA: University of California Press, 1988), 98-121.



reinforcing and hard to change.<sup>124</sup> Corruption thrives in environments of fear and distrust, when (both corrupt and clean) institutions are perceived as unfair and illegitimate. In these cases it is necessary to create an independent institution that can address all the complex pieces of prevention, detection, and punishment. For these reasons single-agency models are common in countries that have faced significant corruption crises that affected – or were perceived to have affected – multiple government institutions at all levels.<sup>125</sup> The downside to single agency regimes is that they are often destined to fail in precisely the situations where they are needed; in countries confronting systemic corruption, “new institutional reforms and procedures – like the ones they replace, in many instances – are often deprived of the administrative and political support and underlying normative consensus that they require for success.”<sup>126</sup> Therefore, single agency approaches tend to create a catch-22 scenario: if the agency pursues short-term investigations and administrative reforms the effect will be short lived for lack of public or political will, yet if they flex their muscles too much they risk destroying the entire regime or, perhaps more commonly, their own agency in the process.

Multiple-agency approaches, on the other hand, are more common when corruption is not perceived as severe enough to de-legitimize an entire government or

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<sup>124</sup> Uslaner, *Corruption, Inequality, and the Rule of Law*, 27. Uslaner argues that 3 “sticky” yet mutually reinforcing factors combine to create what he calls the “inequality trap”: corruption, low trust, and economic and social inequality.

<sup>125</sup> Meagher, “Anti-Corruption Agencies: Rhetoric Versus Reality,” 73-76. Meagher believes that by 2005 there were perhaps 40 single-agency ACAs in existence, and in his work he outlines the success and failure of those in 10 countries: Argentina, Australia, Botswana, Ecuador, South Korea, Malaysia, The Philippines, Tanzania, Thailand, Uganda.

<sup>126</sup> Michael Johnston, “Fighting Systemic Corruption: Social Foundations for Institutional Reform,” 86.

institution. In many situations, a scandal may have exposed institutional weaknesses, but “the depth of the crisis is insufficient to support a more robust centralization of anti-corruption functions.”<sup>127</sup> In this approach traditional agencies often keep their responsibilities and jurisdictions yet are supplemented with new anti-corruption programs meant to address gaps in the existing structure that create opportunities for corruption. These “fragmented approaches” move beyond the short-term, *ad hoc* investigations of earlier times yet do not require the same level of resources, autonomy and publicity as single agency approaches; examples include the US Office of Governmental Ethics and similar agencies in Britain, France, India, and Mexico, to name just a few.<sup>128</sup>

Regardless of institutional structure, ACAs are limited in the work they can pursue. Even if resources abound (which is rare) and political will is high (common but not long-lasting), structural constraints keep ACAs from acting as truly independent investigative bodies. However, in both single and multi-agency approaches, ACAs tend to emphasize several concrete tasks that focus on prevention and deterrence: 1) receive and respond to complaints; 2) Intelligence, monitoring, and investigation (and coordination of other corruption-related intelligence and investigations from other institutions); 3) Preventative research, analysis, and technical assistance; 4) Ethics policy guidance, compliance review, and scrutiny of asset declarations; 5) Public information, education, and outreach; 6) Orientation of social equilibrium away from bribery and other corrupt practices.<sup>129</sup> In theory, the combination of these tasks could create a robust anti-

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<sup>127</sup> Meagher, “Anti-Corruption Agencies: Rhetoric Versus Reality,” 70.

<sup>128</sup> Meagher, “Anti-Corruption Agencies: Rhetoric Versus Reality,” 71.

<sup>129</sup> Meagher, “Anti-Corruption Agencies: Rhetoric Versus Reality,” 81. These six tasks were completed either sometimes or often by each of the 30 ACAs that Meagher and his team investigated.

corruption agency capable of turning the tide against even entrenched corruption. In practice, however, this is often not the case; limited resources, narrow mandates, shifting political wills, and violence and intimidation are but a few of the reasons that even popular and well-functioning ACAs have limited success (*see* case studies of El Salvador and Pakistan, below). Some ACAs also have the power to prosecute individuals or issue administrative orders in response to their investigations, but in many cases (e.g. Pakistan's NAB) the ACA must partner with the courts and prosecutors and thus must rely on the political will and resources of other possibly corrupt government institutions.

Many anti-corruption initiatives, whether international treaties or the creation of domestic ACAs, also suffer from “questions of external intervention and the geopolitics of North-South relations.”<sup>130</sup> This is because combating systemic corruption – however one defines it – involves normative shifts not only within state institutions but also within the perceived relationship between a government and its citizens. This type of “societal engineering,” as Amitaz Etzioni argues, is particularly difficult when “the change agent is a foreign power.”<sup>131</sup> Nonetheless, international aid agencies have become the lead players in anti-corruption efforts precisely because the countries or regions that suffer the most from corruption have the least ability – whether due to lack of resources, technical skill, or political will - to change the problem from within. For all the fanfare, global anti-corruption efforts (sometimes referred to derogatorily as the “anti-corruption

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<sup>130</sup> Brown & Cloke, “Neoliberal Reform, Governance, and Corruption in the South: Assessing the International Anti-Corruption Crusade,” 290.

<sup>131</sup> Etzioni, “Corruption Reduction: A Foreign Policy Goal and Instrument,” in *Harvard International Review* (Winter 2011): 22.

industry”<sup>132</sup>) are often critiqued alongside other development efforts as neo-colonial, imperialist, or simply ethnocentric and biased.<sup>133</sup>

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<sup>132</sup> See Dan Hough, *Corruption, Anti-Corruption and Governance*, 20-23 (“the global fight against corruption is therefore not only one where a lot of money is spent, it is one that employs a considerable number of people to come up with implementation strategies, think pieces, policy papers and review documents . . . [which leads cynics to argue] that it is at times ‘difficult to tell whether activists . . . are motivated by conviction, material benefits or both.’”)

<sup>133</sup> See, e.g., Brown & Cloke, “Neoliberal Reform, Governance, and Corruption in the South: Assessing the International Anti-Corruption Crusade.”

## CHAPTER III

### ARGUMENT

Corruption is an extremely sensitive problem in most countries. As discussed above, it is incredibly hard to define, measure, and combat. Transparency International (TI), the first and perhaps most important international anti-corruption organization, has led the way in the development of corruption-related research, methodological tools, and advocacy. Through the development and dissemination of reports such as the Corruption Perceptions Index (CPI), Transparency International has brought the corruption debate to the forefront of international law and development discussions. Good governance and anti-corruption reform, once side-notes to policy discussions, are now regularly included as parts of international and bi-lateral development programs. While I argue that the CPI has some major flaws in methodology and in the types of corruption it focuses on (*see* Part IIIa, *infra*), it must be seen as widely successful in bringing corruption to the forefront of discussions within international organizations, multi-national corporations, and governments in all parts of the world. It would be hard to argue that the 1997 OECD *International Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions* or the 2003 *United Nations Convention Against Corruption* were not directly related to the research and publicity that TI is responsible for instigating. This was a positive step for the anti-corruption movement, yet it is also representative of how the entire anti-corruption agenda is built on a shaky and overly simplistic foundation.

### *A. WHAT THE DOMINANT PERSPECTIVE IS LACKING*

I argue that the focus of corruption as an economic problem is not only self-serving for Western institutions such as the World Bank and IMF but also that it allows the international community in general to ignore the serious role that corruption plays as a barrier to the rule of law. If corruption is simply seen as economic in nature, as a 'hole in the bucket' of otherwise productive development or economic policies, there will undoubtedly be less of a commitment by outsiders - and, I argue, average citizens - to pursue and honestly address the nature of the problem. This is analogous to the difference between citizens' perceptions and attitudes towards the crimes of shoplifting and assault: while we all may agree on an intellectual level that shoplifting is bad for society, that stores or corporations do not absorb the costs of shoplifting but instead pass them on to their customers and the general public, etc., few of us would ever spend our own time or money to address the issue of shoplifting in our communities. But assault is on another level, and when violence becomes pervasive in our societies we quickly work to the extent that we can to root out its causes and pressure our leaders to implement solutions. Until corruption is viewed in this context, as an integral cause and effect of violence and disorder in society, the average citizen may continue to complain about the corrupt bureaucrats who run their government but too often they will become apathetic, learn to tolerate this behavior, or perhaps even attempt to benefit from it. Corruption will become the norm, it will permeate all interactions and transactions between the public and private sectors, and it will eventually look less like an abstract problem and more like the lifeblood running through (and at times keeping alive) domestic and international institutions. In some societies this is already the case.

Misguided approaches lead to flawed research methodologies and an emphasis on the wrong data; this in turn leads to a misunderstanding of the causes and consequences of the problem, which later leads to ineffective or unrealistic laws and anti-corruption institutions. This is the problem with the CPI and other measurements that follow the dominant perspective. I am not arguing that measuring perceptions is the wrong model – corruption is incredibly hard to measure in any form. Rather I argue that if we measure perceptions we cannot simply focus on the perceptions of elites (businessmen, academics, and policy makers) because this will necessarily skew the results and lead to the creation of laws that simply benefit those elites by combating the corruption they are most concerned about (e.g. by creating anti-corruption agencies designed as asset recovery tools). This is especially problematic if countries are ranked based on the perceptions of foreigners; if corruption is so detrimental to the daily lives of Salvadorans and Pakistanis, for example, we should be measuring *their perceptions* of the extent of corruption in the Salvadoran or Pakistani government. Instead, reports like the CPI measure the perceptions of local and foreign elites who have different interests than the public, and then use those perceptions to rally support among the masses for policy changes that ultimately will not affect their daily lives. In this sense surveys like the CPI may actually create misperceptions as to the actual level and extent of corruption in any one society. Granted, new efforts have been made by Transparency International and other institutions to measure public perceptions of corruption, yet these reports often take a backseat to the widely disseminated CPI.<sup>134</sup>

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<sup>134</sup> See, e.g., “Global Corruption Barometer,” *Transparency International*, Accessed July 5, 2014, <http://www.transparency.org/gcb2013>.

Scholars and policy-makers that attempt to study corruption often do so because corruption is seen as detrimental to economic development, state legitimacy, violence and the rule of law.<sup>135</sup> Yet the framework they use, including the reliance on reports such as the CPI, is misguided and needs to be reformed.<sup>136</sup> I argue that the current CPI methodology does far more to shape perceptions and reinforce stereotypes within and across populations than it does to promote a uniform understanding of pre-existing perceptions about corruption in various countries. Thus, it is not surprising that the anti-corruption agencies created in the late 1990s and early 2000s are already receiving criticism for lack of effect (e.g. NAB in Pakistan).<sup>137</sup> Misguided laws or legal institutions lead to unimpressive results and often-unexpected negative effects. The following analysis of the CPI highlights how the dominant perspective manifests in a specific, widely cited international corruption index. The effects of this misguided approach show why it is necessary that corruption scholars and policy makers that continue to promote the dominant perspective come to understand the limitations of this approach.

#### *B. TRANSPARENCY INTERNATIONAL & THE CORRUPTION PERCEPTIONS INDEX*

Transparency International (TI) is an international non-governmental organization (NGO) committed to creating “a world in which government, business, civil society and

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<sup>135</sup> See, e.g., Fisman & Miguel, *Economic Gangsters: Corruption, Violence, and the Poverty of Nations*.

<sup>136</sup> Brown & Cloke, “Neoliberal Reform, Governance and Corruption in the South: Assessing the International Anti-Corruption Crusade,” 273-291.

<sup>137</sup> While conducting in Pakistan I regularly read the local newspapers, including *Dawn* and the *International Herald Tribune Pakistan*, and I often encountered op-ed articles lambasting the ineffectiveness of NAB.



the daily lives of people are free of corruption.”<sup>138</sup> The organization was founded in 1993 by Peter Eigen, a retired World Bank official, and several of his “allies”. They believed that a lack of transparency and high levels of corruption were significant causes of economic and political underdevelopment throughout the world. Although corruption stories were regularly in the news at this time, especially those related to legendary heads of state like Ferdinand Marcos, as a policy issue it was still considered a “taboo” subject. According to TI’s website, the founders of the organizations were trying to change what they saw as a pervasive belief: “international agencies were consigned to the fact that corruption would sap funding from many development projects around the world” yet they did little to address it directly.<sup>139</sup> Mr. Eigen and his partners thus set out to change this fatalistic outlook by first designing a way to study corruption across countries, and then by turning their research into global advocacy and policy prescriptions that could be implemented at the national and international level.

*i. Organizational Structure*

The TI Secretariat, which “provides leadership for the movement’s international initiatives,” is based in Berlin.<sup>140</sup> This is the nerve center of the organization. Through their Berlin office, TI works to build coalitions with regional and international organizations (e.g. the UN, OECD, OAS, ASEAN, etc.) that either already have anti-corruption platforms or would benefit from implementing them. It also provides support

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<sup>138</sup> “Who We Are: Our Mission, Vision and Values,” *Transparency International*, Accessed April 22, 2014, <http://www.transparency.org/whoweare/organisation>.

<sup>139</sup> “Our History: In the Beginning,” *Transparency International*, Accessed May 2, 2014, <http://www.transparency.org/whoweare/history> (describes founders of organization as Peter Eigen and nine of his “allies”).

<sup>140</sup> “Our Organization: Secretariat,” *Transparency International*, Accessed May 12, 2014, <http://www.transparency.org/whoweare/organisation/secretariat>.

and oversight for the individual TI chapters, which is where the country-specific research, domestic policy reforms, and local advocacy takes place. TI describes this relationship as one of “mutual support”, and the intention is that the Secretariat provides administrative support and global expertise while the chapters provide nuanced, creative, and country or culture-specific information that may benefit the organization as a whole (or other chapters). Local chapters are present on every continent, although due to various local problems (violence or civil conflict, failing or nonexistent infrastructure, lack of local support, etc.) large gaps still exist in Africa.<sup>141</sup> The organization is overseen by a board of directors who are mostly academics and bureaucrats who have decades of experience in international organizations.<sup>142</sup> It also has an advisory council that consists of anti-corruption experts who are chosen by the Board of Directors, along with a list of individual members who voluntarily chose to be part of the organization.<sup>143</sup> Each of these organizational components is meant to provide expertise and support to the local and international efforts of the organization. The individual members and the representatives from the local chapters vote at the Annual Membership Meeting.<sup>144</sup>

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<sup>141</sup> “Where We Are in the World: Our Chapters,” Transparency International, Accessed May 11, 2014, [http://www.transparency.org/whoweare/organisation/our\\_chapters](http://www.transparency.org/whoweare/organisation/our_chapters).

<sup>142</sup> “Our Organization: Board of Directors,” *Transparency International*, Accessed April 9, 2014, [http://www.transparency.org/whoweare/organisation/board\\_of\\_directors/1](http://www.transparency.org/whoweare/organisation/board_of_directors/1).

<sup>143</sup> “Our Organization: Advisory Council,” *Transparency International*, Accessed April 9, 2014, [http://www.transparency.org/whoweare/organisation/advisory\\_council](http://www.transparency.org/whoweare/organisation/advisory_council); “Our Organization: Individual Members,” *Transparency International*, Accessed April 9, 2014, [http://www.transparency.org/whoweare/organisation/individual\\_members](http://www.transparency.org/whoweare/organisation/individual_members).

<sup>144</sup> Not surprisingly, one of Transparency International’s main institutional goals is to be incredibly transparent about what they do, who they are, and how the money is spent. “Our Organization: Accountability,” *Transparency International*, Accessed April 9, 2014, <http://www.transparency.org/whoweare/accountability>.

Although TI was initially focused as a research organization, it now has chapters in 100 countries and “works relentlessly to stir the world’s collective conscience and bring about change” with respect to corruption.<sup>145</sup> Other than the Corruption Perceptions Index, the organization creates topical, country-by-country, and region-specific corruption reports on an annual and semi-annual basis; publishes articles and policy papers in relevant academic journals; provides consulting to governments, international development organizations, and NGOs that have transparency and anti-corruption programs; is involved in organizing the annual International Anti-Corruption Conference (IACC); and completes other related research and advocacy work around the globe. It is also regularly cited in national and international media.<sup>146</sup> While many scholars critique specific policies and methodologies employed by Transparency International, most everyone in the anti-corruption field recognizes the way TI has dramatically changed the global corruption debate.<sup>147</sup> For example, by 1996 corruption had already become a major policy issue: the President of the World Bank spoke openly of the “cancer of corruption” and made anti-corruption reform a condition for assistance; the OECD adopted formal policies for criminalizing bribery; and the Organization of American States (OAS) adopted the first regional anti-corruption convention.

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<sup>145</sup> “Our Organization: Accountability,” *Transparency International*, Accessed April 9, 2014, <http://www.transparency.org/whoweare/accountability>.

<sup>146</sup> For example, The New York Times cited or directly referenced Transparency International 1,770 times over a 12-month period (search conducted May 12, 2014).

<sup>147</sup> Brown and Cloke, “Neoliberal Reform, Governance and Corruption in the South: Assessing the International Anti-Corruption Crusade,” 273-294; *See also*, Uslaner, *Corruption, Inequality, and the Rule of Law*, 12-14.

ii. Presentation of the Report

The CPI is presented in a colorful yet simple eight-page brochure that is available online and in print.<sup>148</sup> Despite the fact that the report represents an incredible amount of data, and that its results have direct and indirect effects on domestic legislation, international treaties, and tens of millions of dollars of development aid, the report itself has barely any text. The cover and back page account for 25% of the brochure, and another 50% consists of two different visual representations of the data: pages four and five list the rankings of the 177 countries and include a world map where each country's score is represented by a corresponding color scheme that has shades from yellow (scores close to 100, or "very clean") to dark red (scores close to 0, or "very corrupt"); page six uses the same color scheme but groups the names of countries around a circle made out of the color that corresponds with their ranking; Page seven has horizontal bars that represent regions of the world, and each bar is divided into rectangles of the different colors whose width corresponds with the number of countries in that region that rank in each color scheme. Page seven also has three paragraphs of text explaining how to read the info graphics on pages four through seven. Page eight is the back cover.

This simplistic style is arguably meant to make the data accessible and digestible to the general public, and in this way it may be much preferred to the dense and complicated structure of many development reports. However, the simplicity masks two important issues: 1 – corruption is *extremely complex*, and its definitions and consequences vary considerably depending on context, geography, and culture, and; 2 – the data being presented to the general public about *perceptions* of corruption in *their*

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<sup>148</sup> "Corruption Perceptions Index 2013: Results," *Transparency International*, Accessed April 4, 2014, <http://www.transparency.org/cpi2013/results>.

*country* is not gathered from the general public, but rather from “sophisticated” elites who may have a very different understanding of the problem than the general public (i.e. the supposed audience) actually has.

The bulk of the text consists of four paragraphs on page three that attempt to define the problem of corruption and outline the importance of the CPI report in combating that problem. The language is presented as a concise call to action, on behalf of the citizens of each nation, to combat a concrete problem that “we all know” leads to “clear” results: corruption “undermine[s] justice and economic development, and destroys public trust in leaders.” In an attempt to highlight the over simplistic yet dramatic nature of the report, I will reproduce that text in its entirety:

“From children denied an education, to elections decided by money not votes, public sector corruption comes in many forms. Bribes and backroom deals don’t just steal resources from the most vulnerable – they undermine justice and economic development, and destroy public trust in leaders.

But while the results of corruption are clear, the real extent of the problem is harder to pin down. Corruption is shadowy and secretive by nature. We all know corruption is a problem, but how bad is it, and what can be done?

This is where the Corruption Perceptions Index comes in. Based on expert opinion, the index measures the perceived levels of public sector corruption in countries worldwide, scoring them from 0 (highly corrupt) to 100 (very clean). Covering 177 countries, the 2013 index paints a worrying picture. While a handful perform well, not one single country gets a perfect score. More than two-thirds score less than 50.

The need for greater accountability is clear, and leaders cannot look the other way. But recognizing the problem is only the first step – governments need to turn pledges into actions. All citizens deserve bribe-free services, and leaders that are answerable to the public, not to powerful friends. Working together, we can make this a reality.”<sup>149</sup>

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<sup>149</sup> “Corruption Perceptions Index 2013,” *Transparency International*, <http://cpi.transparency.org/cpi2013/results/#myAnchor2> (last visited May 12, 2014), 3.

This language presents an overly simplistic version of a complex problem that the authors themselves admit is “shadowy and secretive in nature.” As stated above, this is likely related to questions of accessibility. However, by masking the complexity of the problem in clearly action-oriented language the report becomes more of a political slogan than a credible, independent analysis of research. It clearly states that corruption, and any attempt to measure its extent, is a significant challenge for the world. But then it quickly offers a solution to that problem: the numerical results listed on the following four pages. It does not explain how the results are tabulated, yet insists that the rankings are based on “expert” opinion. It does not explain what needs to be done. It does not explain how this data can, will, or even should be used, other than saying that “leaders cannot look the other way.” But it does do one very obvious thing: it tells every person who glances at its pages how corrupt each country’s government is through simple, eye-catching infographics. It purports to give a clear, precise picture of where in the world corruption flourishes. This allows any reader the ability to judge his or her own country in comparison to its friends, its enemies, and its neighbors.

Not surprisingly, the countries represented by major international aid organizations are noticeably light (yellow) and clean and in clear contrast to the corrupt, *dark red* countries of the developing world. This oversimplification would be problematic even if the data was based on public opinion in each of these “corrupt” countries, but it becomes even more troublesome when it is based on the opinions of elites who live, work, or regularly travel through the modern, developed, “clean” countries of the global north. This reinforces a paradigm focused on Western notions of economic progress and modernity, which in turn strengthens distinctions between “us”

and “them”); Just as early development indicators “taught” many people in the third world how poor and underdeveloped they really were, this report quickly and simplistically “teaches” the Pakistani, Salvadoran, or Russian public how corrupt their government actually is. This assumes, of course, that the public does not have or cannot come to their own informed opinions about the extent – let alone the causes and consequences – of corruption in their own country.

iii. *Methodology of the CPI*

The Corruption Perceptions Index was the first global corruption index and today it remains, arguably, the most widely recognized corruption index in the world. The inaugural report was published in 1995 and consisted of 45 countries ranked according to their perceived level of public sector corruption. It has since been published on an annual basis and the most recent report (2013) included 177 countries. Despite critiques saying otherwise, TI’s goal was that the country-specific data could be measured in relation to other countries during the same year and in relation to the same country in previous years. However, large, hard-to-explain fluctuations from year to year caused many scholars and policy makers to argue that even if the methodology was sound it was an inaccurate tool for measuring how perceptions improve or worsen over time. Due in part to these critiques (outlined further below), Transparency International went through an intense internal and external review of its methodology in 2011. This review led to a series of changes to the methodology.<sup>150</sup> Since updating the methodology in 2012, the

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<sup>150</sup> For time and space purposes, I will not outline the pre-2012 methodology in this paper. It is important to note that some of the critiques raised by other scholars over the last 15 years may be mitigated or even done away with due to the 2012 methodology; it is simply too early to tell. I argue that my general critique, on the other hand, has not been addressed by the changes to the methodology. See, “Corruption Perceptions Index – An Updated Methodology for 2012,” *Transparency International*, Accessed April 6, 2014, [http://cpi.transparency.org/files/content/pressrelease/2012\\_CPIUpdatedMethodology\\_EMBARGO\\_EN.pdf](http://cpi.transparency.org/files/content/pressrelease/2012_CPIUpdatedMethodology_EMBARGO_EN.pdf).

report gives countries a score ranging from 0-100; a country with a score of 0 is perceived as highly corrupt, while a country with a score closer to 100 is perceived as largely free from corruption. Countries are then ranked according to how their scores compare to other country's scores for that same year. The data sources vary from year to year and the methodology is quite complicated.<sup>151</sup>

The CPI is an aggregate index that draws on multiple data sources. TI draws on data from independent institutions that measure the perceptions of corruption in countries over the two years prior to the release of the report. Each data source must satisfy four specific criteria. The data source must:<sup>152</sup>

1. Be a measurement of perceptions of corruption in the public sector
2. Be based on a reliable and valid methodology, which scores and ranks multiple countries on the same scale
3. Be performed by a credible institution and expected to be repeated regularly
4. Allow for sufficient variation of scores to distinguish between countries

The 2013 CPI used 13 data sources, including, for example, the African Development Bank Governance Indicators 2012, the Economist Intelligence Unit Country Risk Ratings, the World Bank Country Policy and Institutional Assessment 2012, and the World Justice Project Rule of Law Index 2013.<sup>153</sup> For any country to be included in the index, a minimum of 3 data sources must assess the country. Once the sources have been chosen and the data for each country compiled, Transparency

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<sup>151</sup> "Corruption Perceptions Index: In Detail," *Transparency International*, Accessed May 11, 2014, [http://cpi.transparency.org/cpi2013/in\\_detail/](http://cpi.transparency.org/cpi2013/in_detail/).

<sup>152</sup> "2012 Methodology Short Note," *Transparency International*, Accessed April 6, 2014, [www.transparency.org/files/content/pressrelease/2012\\_CPIshortMethodologyNote\\_EMBARGO\\_EN.pdf](http://www.transparency.org/files/content/pressrelease/2012_CPIshortMethodologyNote_EMBARGO_EN.pdf).

<sup>153</sup> "Corruption Perceptions Index 2013: Full Source Description," *Transparency International*, Accessed March 31, 2014, [http://cpi.transparency.org/cpi2013/in\\_detail/#myAnchor4](http://cpi.transparency.org/cpi2013/in_detail/#myAnchor4).



International standardizes the data<sup>154</sup>, calculates an average of all the country's standardized scores, and reports a measure of uncertainty.<sup>155</sup>

The CPI measures perceptions of public sector corruption through surveys of citizens and international actors who work with the individual government(s) in question. The focus is therefore on business people, academics, development organizations, and regional or international actors who arguably have a more nuanced perspective of the extent and type of corruption in the public sector; corruption related to private businesses or criminal organizations is not measured. The individuals who are surveyed are often well-traveled and educated, which (in theory) allows them to compare how they perceive of corruption in one country as opposed to others in the same region, on the same continent, or across the globe. This does, however, emphasize the perceptions of the local and global *elite*, a point that is the foundation of many of the methodological critiques discussed below.

iv. Standard Critiques of the Methodology

The main critiques of the CPI methodology are as follows:

- The measures are imprecise and unreliable.<sup>156</sup> Scholars who make this critique focus on the limited and focused number of research subjects (i.e. the elite in the

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<sup>154</sup> “2012 Methodology Short Note,” *Transparency International*, 1, Accessed April 6, 2014, [www.transparency.org/files/content/pressrelease/2012\\_CPIShortMethodologyNote\\_EMBARGO\\_EN.pdf](http://www.transparency.org/files/content/pressrelease/2012_CPIShortMethodologyNote_EMBARGO_EN.pdf), (Scores for each country are standardized by “subtracting the mean of the data set and dividing by the standard deviation and results in Z-scores, which are then adjusted to have a mean of approximately 45 and a standard deviation of approximately 20 so that the data set fits the CPI’s 0-100 scale”).

<sup>155</sup> “2012 Methodology Short Note,” *Transparency International*, 1, Accessed April 6, 2014, [www.transparency.org/files/content/pressrelease/2012\\_CPIShortMethodologyNote\\_EMBARGO\\_EN.pdf](http://www.transparency.org/files/content/pressrelease/2012_CPIShortMethodologyNote_EMBARGO_EN.pdf), (“The CPI is accompanied by a standard error and confidence interval associated with the score, which capture the variation in scores of the data sources available for that country/territory.”)

<sup>156</sup> This is the most widely cited critique, which applies to both the CPI and the other noteworthy corruption index, the World Bank Governance Indicators. See Uslaner, *Corruption, Inequality, and the Rule of Law*, 11-12. See also, Daniel Kaufmann, Aart Kraay, and Massimo Mastruzzi, “The World Bank

country and international actors) and the fact that some countries have more indicators than others. This imprecision is particularly inaccurate for the poorest countries as many of the sources are foreign actors or wealthy expatriates. This issue may have been resolved by the updated 2012 methodology, although the jury is still out on that.

- Country rankings vary widely from one year to the next, which makes it unsuitable for tracking changes over time.<sup>157</sup>
- The CPI focuses on the public sector, which emphasizes the conduct (and thus the blame) of the bribe-recipients, not the corporate or international actors who bribe them. TI has, however, responded to this criticism both by expanding some of the data sources and creating other corruption reports that help tell the overall picture for corruption in a country.<sup>158</sup>
- The aggregate numbers provided often fail to correlate with local corruption perception studies undertaken by media outlets, local universities, and other development organizations.

v. *My Addition to the Critiques*

As previously stated, TI updated the methodology in 2012 in part to address the aforementioned critiques. These changes are meant to improve the reliability of the data in two principle ways: 1 – Improving the reliability of data from year to year on any

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Governance Indicators: Answering the Critics,” World Bank Policy Research Working Paper No. 4149 (Washington, DC: The World Bank, 2007), Accessed May 12, 2014, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=965077](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=965077).

<sup>157</sup> Uslaner, *Corruption, Inequality, and the Rule of Law*, 12.

<sup>158</sup> For example, Transparency International now issues the “Global Corruption Barometer” and “The Bribe Payers Index,” *Transparency International*, Accessed April 9, 2014, <http://www.transparency.org/research>.

specific country so that changes can be more easily tracked and managed, and; 2 – making the data more statistically sound for use in comparing across countries or regions. These changes, if effective, may combat the first two critiques above, but fail to address the third and fourth critique. Furthermore, I argue that this list of critiques needs to be more nuanced so that it considers both the audience for the report and the policy implications that flow from country rankings. Put simply, improving the quality and reliability of the aggregate measures does not change *what* is purportedly being measured, nor does it change *who* is being asked to measure it. After the 2012 update the data may simply be a more accurate measurement of elite perspectives on business-related public sector corruption.

This is problematic not simply because a small number of voices are being heard but also because a narrow view of corrupt behavior is being emphasized. The focus on certain types of corruption – namely bribes, kick-backs, and complicated, often illegal permitting schemes *orchestrated by public officials* – emphasizes the perceptions and actions of very specific individuals: those attempting to do business within the country, and those high-level state officials who have the power and authority to actually control or benefit from allowing business people to do their work. Furthermore, even if the CPI was expanded to include perceptions of both public and private sector corruption it is still focusing on a narrowly defined set of actions that can be measured in monetary terms. This in turn leads to anti-corruption programs that stress asset recovery instead of institutional reform, which often have limited effects and are used as political weapons.<sup>159</sup>

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<sup>159</sup> This is based on my independent research with 2 domestic anti-corruption agencies: the Tribunal de Ética Gubernamental (TEG) in San Salvador and the National Accountability Bureau (NAB) in Islamabad.

Anti-corruption rhetoric is often justified by the argument that corruption impedes development and hurts the world's poor. Yet how can this be argument be served by measurements of elite perceptions of public sector corruption? The CPI (and related indices) do not investigate perceptions of corruption among the poor, nor do these reports study the type of corruption and abuse of power that the poor experience on a daily basis. This is because most people in these "corrupt" countries will never experience first hand the embezzlement, kickbacks, illegal permitting schemes, or bribes from multinational companies that the CPI measures. Granted, strong arguments have been made that this type of "mega-corruption" and high-level bribes directly relate to the levels of poverty and freedom within countries. However, I argue that the average person's concerns with corruption go far beyond how much money high-level government officials steal from multi-national corporations or foreign governments.<sup>160</sup> People are generally concerned more about lower level corruption that is pervasive (also called "systemic corruption"<sup>161</sup>). Similarly, high levels of perceived corruption among the general public – regardless of where their country ranks on the corruption perceptions index – often leads to low levels of state legitimacy, violence, and impunity. This creates a reinforcing cycle that Uslaner calls "the inequality trap."<sup>162</sup>

The simplicity of the CPI makes it a perfect tool for media campaigns and political stump speeches, and it also presents support to age-old ethnocentric and racist views about how some regions or peoples are simply more "corrupt" than others. A

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<sup>160</sup> This argument is based on my research in El Salvador and Pakistan, where many people took this type of "mega-corruption" for granted.

<sup>161</sup> Michael Johnston, "Fighting Systemic Corruption," 89-90.

<sup>162</sup> Uslaner, *Corruption, Inequality, and the Rule of Law*, 26-28.

country's CPI ranking affects its ability to receive financing from international public and private banks, get support from bilateral aid agencies, receive foreign direct investment, and work directly with international NGOs on transparency and anti-corruption initiatives.<sup>163</sup> These problems then cause countries with bad rankings on the CPI to respond by building domestic anti-corruption agencies that are either misguided or ineffective (or sometimes both). These agencies, not surprisingly, focus specifically on doing what they can to shore up their books and make high-level corruption less noticeable. To do this they emphasize combating specific types of corruption – those experienced by the elites whose perceptions matter for the CPI. This emphasis can manifest in different ways depending on the strength of domestic legal institutions and the perceived relationship between corruption and other development, security, or geopolitical goals. If corruption is perceived as bad but not a significant barrier to growth, as is the case in El Salvador, the creation of an anti-corruption agency (the *Tribunal de Ética Gubernamental*) is simply a political move that has no teeth and ultimately produces few results. In these situations fighting corruption is perceived as one among many concerns, too politically sensitive, and thus a poor ranking on the CPI does little more than influence public opinion and reduce state legitimacy.

In other cases, where corruption is seen as one of or perhaps the most important barrier to development and economic growth, a bad score on the CPI may lead to robust anti-corruption agencies that unfortunately only focus on asset recovery and financial

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<sup>163</sup> See, generally Picard & Buss, *A Fragile Balance*, 126 (explaining the relationships between World Bank and IMF conditionality with CPI rankings); In my research in El Salvador and Pakistan I have also personally been told by officials at USAID and various NGOs that a country's CPI score is taken into consideration by their organization when determining aid allocations, disbursement schedules, and monitoring and evaluation procedures.

transparency instead of prosecution, punishment, and institutional reforms. Pakistan presents a classic example of this situation.

## CHAPTER IV

### RESEARCH IN SUPPORT OF ARGUMENT: EL SALVADOR

#### A. RELEVANT BACKGROUND INFORMATION

El Salvador is confronting systemic corruption, yet those who study corruption or governance in Latin America often focus their research elsewhere. Part of this is due to the country's post-colonial history, and part of it is due to simple geopolitical truths: El Salvador is the smallest (but most densely populated) country in Central America and, for better or worse, it does not receive the attention that larger, more politically and economically powerful states such as Mexico, Venezuela, Argentina or Brazil regularly do. Furthermore, because "corruption has deep and firm roots within" the entire Latin American region, there has been a tendency to treat corruption in Latin America as not a new development but one built upon hundreds of years of populist politics and clientelism.<sup>164</sup> Similarly, Western scholars have traditionally viewed Latin American culture as one that emphasizes personal relationships and weak institutions, a lack of respect for the rule of law yet a strong adherence to hierarchy and social customs.<sup>165</sup> The belief is that strong ties to family and inner-circle groups, respect for formalism, and a history of corporatism throughout Latin America have created a citizen-state relationship that looks to outsiders like social tolerance and acceptance of otherwise corrupt behavior.<sup>166</sup> However problematic these beliefs may be, the perspective that Latin Americans trust their *caudillo*

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<sup>164</sup> Charles M. Blake and Stephen D. Morris, "Corruption and Politics in Latin America," in eds. Charles M. Blake and Stephen D. Morris, *Corruption and Politics in Latin America* (Boulder, CO: Lynne Rienner Publishers, 2010), 13-17.

<sup>165</sup> Blake and Morris, "Corruption and Politics in Latin America," 13-15; *see also* Jorge Nef, "Government Corruption in Latin America," in *Where Corruption Lives*, eds. Caiden et. al. (West Hartford, CT: Kumarian Press, 2001).

<sup>166</sup> Howard Wiarda, *Authoritarianism and Corporatism in Latin America, Revisited*, (Gainesville, FL: University Press of Florida Press, 2004).

leaders more than any formal government institution has, until recently, been at the forefront of the relevant literature. Yet in recent years this perspective has received considerable critique alongside a demand for a more nuanced understanding of the corruption problems throughout the region.<sup>167</sup>

Although historical and cultural explanations for corruption come with their own problems (see section II.b., *supra*), a brief overview of El Salvador's history can provide the backdrop for some of the country's current corruption problems. El Salvador gained independence from Spain in 1832 and became an independent republic in 1839. In the early years El Salvador relied primarily on profits from the international indigo and later coffee trade to support itself, yet it was marked by frequent and bloody revolutions. Like much of Latin America, its economy and politics were ruled by a small group of powerful families and the forces they controlled. In 1931 General Maximilian Hernández Martínez became President after a military coup, a moment that began roughly sixty years of military dictatorship. In the following year a peasant uprising erupted in the Western part of the country, led by local activist Farabundo Martí. Martí and his followers demanded, among other things, redistribution of land and better working conditions for the majority of the country's poor farmers. They also called for an end to corrupt and heavy-handed politics throughout the country, demands that were at the heart of the civil war more than 50 years later. This 1932 uprising was quickly crushed by the Salvadoran military in a massacre that killed over 30,000 mostly indigenous peasant farmers.<sup>168</sup> For most of the 20<sup>th</sup> century there were many attempts at elections that were neither free nor fair.

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<sup>167</sup> See, e.g. *Corruption and Politics in Latin America*, eds. Stephen D. Morris and Charles Blake.

<sup>168</sup> Estimates vary from 10,000 to 40,000, but the generally accepted number is roughly 30,000 killed.



The Salvadoran military – and its corporate and international supporters – did not truly lose power until the war ended in 1992.

After decades of poverty and injustice the Salvadoran public began demanding changes from in the 1970s. Up until this time there had been an “alliance between the military and the agro-export elite” that controlled all aspects of government and the economy,<sup>169</sup> and this group regularly used violence and intimidation to suppress opposition. In 1979 there was an internal coup that led to the establishment of a Revolutionary Government Junta of El Salvador, an event that coincided with the beginning of the Salvadoran Civil War. The underlying causes of the war included a mix of political, social, and economic inequalities and concerns about poor governance and corruption.<sup>170</sup> The war lasted from 1979 until Peace Accords were signed more than twelve years later; during this time approximately 75,000 people died and much of the state was destroyed. A peace agreement between the government of El Salvador and the Farabundo Marti National Liberation Front (FMLN) was signed in January of 1992 at Chapultepec Palace, Mexico City. Since 1992 El Salvador has seen some levels of impressive economic growth, relatively free elections, and peaceful transitions of power. Yet the legacies of these conflicts remain strong, and distrust of the state or anyone in uniform continues to inhibit public efforts towards peace, reconciliation, and increased civic engagement. Furthermore, political conflict has been recently overshadowed by gang warfare and the introduction of international narco-trafficking organizations throughout the country.

The history of governance in El Salvador and Latin America in general created a situation ripe for corruption, inequality, and disrespect for the rule of law. Despite hundreds of

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<sup>169</sup> Bertram Spector, *Negotiating Peace and Confronting Corruption: Lessons for Postconflict Societies* (Washington, DC: United States Institute of Peace Press, 2011), 25.

<sup>170</sup> Spector, *Negotiation Peace and Confronting Corruption*, 26-27.

millions of dollars spent on post-conflict peace building, economic development, and institutional reform, the Salvadoran state still lacks what Guillermo O'Donnell termed "horizontal accountability." O'Donnell defines horizontal accountability (HA) as

"the existence of state agencies that are legally enabled and empowered, and factually willing and able, to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful."<sup>171</sup>

Specifically, O'Donnell explains that horizontal accountability refers to a subset of interactions between state actors that are taken with the "explicit purpose of preventing, cancelling, redressing and/or punishing actions by another state agency that are deemed unlawful, whether on grounds of encroachment or *corruption*."<sup>172</sup> When states lack this type of accountability it often leads to the "legal institutionalization of mistrust."<sup>173</sup> Due to its history of militarism and corporatism,<sup>174</sup> El Salvador is especially prone to this lack of institutional accountability. Despite the Peace Accords in 1992, which required dissolution of certain factions of the military and police yet also allowed for the FMLN to enter the mainstream as legal political party, power and control has until very recently remained in the hands of those military and business leaders who led before and during the war. The first seventeen years of

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<sup>171</sup> Guillermo O'Donnell, "Horizontal Accountability and New Polyarchies," in *The Self-Restraining State: Power and Accountability in New Democracies*, eds. Andreas Schedler, Larry Diamond, and Marc. F. Plattner, 29-52 (Boulder, CO; Lynne Rienner Publishing, 1999).

<sup>172</sup> Guillermo O'Donnell, "Horizontal Accountability: The Legal Institutionalization of Mistrust" in *Democratic Accountability in Latin America*, eds. Mainwaring & Welna (Oxford, UK: Oxford University Press, 2003), 35 (emphasis added).

<sup>173</sup> O'Donnell, "Horizontal Accountability: The Legal Institutionalization of Mistrust."

<sup>174</sup> I use Wiarada's definition of corporatism: a state the relies on "the organization of society by functional groups – military, business, the church, organized labor – rather than on an individualistic basis and, instead of genuine pluralism, autonomy, and freedom of association, the organization, regulation, and control of these groups [is] under state authority." See Howard J. Wiarada, "Whatever Happened to Corporatism and Authoritarianism in Latin America?" in ed. Wiarada, *Authoritarianism and Corporatism in Latin America, Revisited* (Gainesville, FL: University of Florida Press, 2004), 3.

“free and fair” democratic elections in El Salvador resulted in the same party winning each time (the Nationalist Republican Alliance or ARENA party). During this period the economic and political power in the country remained in the hands of those who have traditionally held power. That being said, El Salvador has seen some political and economic improvements since the war: transitions of power remained peaceful (even when the FMLN won the presidency in 2009), per capita GDP and human development indicators have improved steadily,<sup>175</sup> and the government of El Salvador retained positive relations with most of its neighbors and powerful Western allies.<sup>176</sup>

Despite the aforementioned improvements, ten years after the end of the war El Salvador continued to suffer from widespread corruption, a dysfunctional legal system, high levels of impunity, and a deep seated but generalized cynicism about the efficacy of institutional reforms;<sup>177</sup> unfortunately, my research shows that many of these problems have not improved in the second decade of El Salvador’s “third wave of democracy”. According to recent reports from the World Economic Forum’s Global Competitiveness Index and the World Bank Governance Indicators, it continues to receive poor scores with respect to judicial independence<sup>178</sup> and the level to which the public can freely voice their expressions and hold

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<sup>175</sup> “El Salvador Country Profile,” *UNDP Human Development Report*, Accessed July 9, 2014, <http://hdr.undp.org/en/countries/profiles/SLV>.

<sup>176</sup> “El Salvador,” *United States Agency for International Development*, Accessed July 8, 2014, <http://www.usaid.gov/el-salvador>.

<sup>177</sup> Michael Dodson and Donald W. Jackson, “Horizontal Accountability and the Rule of Law in Central America,” in *Democratic Accountability in Latin America*, eds. Scott Mainwaring and Christopher Welna, 228-265 (Oxford, UK: Oxford University Press, 2003).

<sup>178</sup> “Global Competitiveness Index,” *World Economic Forum*, Accessed July 9, 2014, [www3.weforum.org/docs/WEF\\_GCR\\_Report\\_2011-12.pdf](http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf) (El Salvador received a 2.9 out of 7 on the Judicial independence indicator, which ranked it 106/142 countries.)

their government officials accountable.<sup>179</sup> Similarly, its human rights ombudsman's office and fledgling anti-corruption agency remain ineffective at best (see research findings, below).

Despite public distrust of government or cynicism about institutional reforms, the Salvadoran government has made several (at least symbolic) efforts to combat corruption at the national level. El Salvador created a Human Rights Ombudsman's office shortly after the Peace Accords and later signed both the Inter-American Convention Against Corruption (ratified in 1998) and the United Nations Convention Against Corruption (ratified 2004). In the meantime, however, neoliberal economic policies have continued to be implemented despite public resistance. This created situations where privatization and the mass accumulation of wealth by small segments of the population continued alongside widespread and at times systematic human rights abuses.<sup>180</sup> This is unsurprising. Like elsewhere in Latin America and the developing world, the combination of democratic transitions, economic crises, and the implementation of neoliberal economic reforms created an environment where "old forms of graft not only continue, but . . . new corrupt practices" take hold.<sup>181</sup> Put simply, "the heralded policies of economic deregulation and privatization, instead of promoting less government intervention and greater transparency in business activities, can turn into new means to pursue old [corrupt] ends."<sup>182</sup> This is all quite evident to the Salvadoran public and especially the professional class,

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<sup>179</sup> "El Salvador Country Profile," *Transparency International*, Accessed July 9, 2014, <http://www.transparency.org/country#SLV>.

<sup>180</sup> For an overview of continuing human rights abuses in El Salvador, see "Human Rights in Republic of El Salvador," *Amnesty International*, Accessed July 1, 2014, <http://www.amnesty.org/en/region/el-salvador>.

<sup>181</sup> Luigi Manzetti, "Market Reforms Without Transparency," in *Combating Corruption in Latin America*, eds. Joseph S. Tulchin and Ralph H. Espach (Washington, D.C.: The Woodrow Wilson Center Press, 2000), 130-172.

<sup>182</sup> Manzanetti, "Market Reforms Without Transparency," 131.

which explain why my research and that of others continues to show that the Salvadorans hold “a deep alienation with respect to both the political and legal systems” in their country.<sup>183</sup>

## A. RESEARCH FINDINGS

### i. Local Perceptions: Corruption Runs Rampant

Corruption and impunity remain significant problems for El Salvador. In the 2013 Corruption Perceptions Index El Salvador received a score of 38 / 100, and was ranked 83<sup>rd</sup> out of 177 countries.<sup>184</sup> Though not nearly as poorly ranked as Pakistan, El Salvador’s CPI score tied it with other historically corrupt countries such as Jamaica, Liberia and Peru. Perhaps more troubling is that after more than twenty years of institutional reform efforts El Salvador’s conviction rate remains an incredibly low 5%.<sup>185</sup> As stated above, corruption and impunity are often mutually reinforcing problems. While gang-related violence has been a significant problem for El Salvador since at least the turn of the century, corruption-related violence is increasing; threats of violence against police and prosecutors, politically motivated murders, extortion, and kidnappings for ransom are all common in El Salvador. Some of this is a legacy of the post-civil war amnesty law and ongoing debates about the extent to which past perpetrators should be held accountable. However, much of the current concerns about corruption and impunity stem from gang violence and the ability of domestic and international narcotics gangs to wield influence over the police, the (historically weak) Attorney General’s office, and the courts. This in turn leads to high perceptions of corruption among the public,

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<sup>183</sup> Dodson and Jackson, “Horizontal Accountability and the Rule of Law in Central America,” 244.

<sup>184</sup> “El Salvador Country Profile,” *Transparency International*, Accessed July 9, 2014, <http://www.transparency.org/country#SLV>.

<sup>185</sup> See, e.g., “El Salvador Travel Warning,” *United States Department of State*, April 25, 2014, Accessed July 6, 2014, <http://travel.state.gov/content/passports/english/alertswarnings/el-salvador-travel-warning.html>.

which further reinforces corrupt and violent behavior at all levels.<sup>186</sup> Thus, it is unsurprising that nearly all of my research subjects – even those who worked for the Salvadoran government – feared that gang violence and gang-related corruption had infiltrated the judicial system and other parts of the state far more than was understood by the international community.

My research uncovered two broad corruption-related problems that highlight how the dominant perspective, and the survey methods, policies, and institutional reforms that flow from it, are misguided. The first theme I uncovered in El Salvador was that the public perception of corruption was much worse than what international indices like the CPI reported. I believe this is because in many ways there are two El Salvadors – one represented by the 2% of the country that regularly uses glitzy shopping malls, international business centers, and expensive restaurants and resorts; these are the parts of El Salvador that international experts, businessmen/women, and foreign government employees regularly experience alongside current Salvadoran government and business elites.<sup>187</sup> The other El Salvador represents the daily life of the vast majority of the Salvadoran public, rich and poor, educated and uneducated alike. This El Salvador is a lesson in contrast: moderate levels of economic growth, new housing, and increased educational opportunities sit alongside entrenched rural poverty, gang warfare, and incredibly high levels of violence against women.<sup>188</sup> For the majority of Salvadorans that live in this El Salvador, economic realities may be improving but that is often in spite of the fact that the

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<sup>186</sup> “Global Corruption Barometer,” *Transparency International*, Accessed May 4, 2014, <http://www.transparency.org/gcb2013>.

<sup>187</sup> This divide was shown to me quite clearly during two different trips. I spent my first research trip to El Salvador living on the “wrong side of town” in San Salvador, working with researchers and human rights activists, and traveling the countryside. When I return six months later to hold interviews I stayed with an old friend who was now working at the US Embassy in San Salvador. Needless to say, his perceptions of development, corruption, and even the Salvadoran government were drastically different than anyone I had met in my first visit.

<sup>188</sup> Deborah Hastings, “In El Salvador, women killed “with impunity” just because they are women,” *The New York Daily News*, January 10, 2014, Accessed July 10, 2014. <http://www.nydailynews.com/news/world/femicide-rise-central-america-article-1.1552233>.

government, and everyone who works for it, is perceived as corrupt or, at best, simply unable or unwilling to provide basic services in an equal and impartial manner. Nonetheless, many who visit or work in El Salvador never experience this. Especially since El Salvador was chosen as one of President Obama's 4 "Partnership for Growth" countries the Salvadoran government and business community has bent over backwards to cater to international aid workers, businessmen, and members of international institutions. Perhaps not surprisingly, most Salvadorans never interact with these individuals and thus their own perspective on issues such as corruption differ drastically from the internationally reported perceptions contained in the CPI.

All but one of the people I interviewed spoke at length about the damage that corruption and impunity inflicted on Salvadoran society. Different people described the causes of corruption differently, but everyone spoke of similar consequences: increased violence, limited economic growth, a general lack of trust and support for government institutions. They also repeatedly referenced fear of people in uniform, especially the police and the military. Some of this fear no doubt stems from the civil war, but even the young, relatively well-off students I regularly met with were openly afraid of the police. Why? The short answer was always related to corruption and the abuse of power; these students were confident that, even in the event of an emergency, introducing the Salvadoran police into any situation would only make things worse. Uncertainty and inconsistency in police reporting, fears of extortion and threats, and simple incompetency were common complaints. Put simply, my subjects knew that unless they had powerful and wealthy parents willing to step in the police might make their life worse.

Yet these fears went beyond the armed men and women in uniform. Many of my interview subjects considered corruption the backbone of the Salvadoran judicial system, noting that any attempt to bring a case in the local courts was useless unless you had more money,

connections, or both than the accused. Even those interview subjects who were members of wealthy and powerful families hesitated to bring cases against known or suspected criminals, especially gang members. The overwhelming belief was that the traditional Salvadoran gangs had now joined forces with groups exercising even more power: ex-military and police officials, often those who had been “purged” from service after the Peace Accords; international narco-trafficking gangs, especially Mexican cartels; and unscrupulous businessmen or political middlemen who might use gangs as mercenaries for hire. This fear was particularly problematic for human rights activists and members of the NGO community, as seeking justice and reparations for past abuses put them in danger of becoming victims to corruption and corruption-related violence on a near daily basis.<sup>189</sup>

With respect to general questions about corruption, all but one of my subjects described despair and disbelief at any hope of limiting corruption in the future. Many believed that the entire judicial system would need to be gutted and reorganized with new lawyers, new judges, and new institutional protections to keep those lawyers and judges safe from the criminals that tend to threaten and extort them. Most members of the human rights community felt strongly that the current problems with corruption and impunity would never be addressed until the 1993 Amnesty law was repealed; to them, the fact that war criminals and political assassins were walking the streets openly - some as successful businessmen and others in political office – represented the underlying problem. They believe that until past abuses were rectified there would be no justice or true institutional reform.

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<sup>189</sup> Alexis Stroumbelis, “Armed Gunmen Raid Salvadoran Human Rights Organization, Burn Archives,” *CISPES*, November 14, 2013, Accessed December 12, 2013, <http://www.cispes.org/topcontent/press-release-armed-gunmen-raid-salvadoran-human-rights-organization-burn-archives-2/>.



One high-ranking government official with whom I spent a considerable amount of time went further and took a more nuanced approach in placing blame for corruption. To him, corruption represented a “crisis of values” that permeated all aspects of Salvadoran society, including the government, the church, and individual families; to solve it would take generations and would require new efforts at education, peace building, and civic engagement. Members of the human rights community and several of the private attorneys I spoke with agreed with this assessment yet were hesitant to assume that the future reform could survive without seeking justice for past abuses. To them, corruption was a societal problem that ran deep throughout all the official and unofficial Salvadoran institutions, but it was one that could only be rectified through continued demands for peace, justice, and respect for the rule of law. Granted, none of these subjects could point to specific cases of proven corruption, a problem that other researchers have encountered while studying this problem in Central America.<sup>190</sup> Nonetheless, for reasons argued in this thesis and elsewhere, the lack of “proven” corruption cases should not be seen as proof that corruption is not a problem. In some situations the lack of corruption convictions is actually evidence of wider problems, and in other cases it is clear that the perception of widespread corruption can create negative effects even if there is not proof of specific corrupt acts.

The businessmen and foreigners I spoke with provided an alternate perspective. First they smiled and politely told me that yes, corruption was endemic, but no, they did not speak openly about it or hope to change it because if they did they would not be able to continue their

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<sup>190</sup> See, e.g., Dodson and Jackson, “Horizontal Accountability and the Rule of Law,” in eds. Mainwaring and Welna, *Democratic Accountability in Latin America*, 237. (“In an October 1994 report ONUSAL presented a list of 52 judges against whom serious complaints of incompetence or corruption had been made. According to a January 1997 account, in the three years that followed . . . the Salvadoran Supreme Court had sanctioned 57 judges. . . . However, our subsequent interviews revealed that none of the 57 cases involved proven corruption.”)

work in the country. Several US government officials told me - off the record - that despite whatever mandate their department had they could not openly discuss corruption problems with members of the Salvadoran government because doing so would “end the conversation immediately.” This is in and of itself not surprising, but it does raise significant concerns for standard corruption measurements; the people that openly admit to not being able to talk about or combat corruption are the same individuals whose perceptions are measured in international indices like the CPI. At the very least, this begs the question: on what are these people basing their perceptions?

Throughout my interviews only one subject downplayed the corruption problems facing El Salvador. He was a mid-level administrative judge in charge of handling inter-agency litigation about misuse of government funds, among other types of cases. In addition, his office was responsible for receiving complaints about corrupt local officials from each of El Salvador’s fourteen departments. He said corruption was not a problem, and that in his twenty plus years of experience on the bench he had only witnessed one “true” corruption case. After asking follow-up questions it became quite clear that what he meant by “true”. According to him the vast majority of corruption claims brought by individual citizens were invalid and based on silly personal disputes. He clearly stated that his office did not even investigate 95% of the complaints because they were brought without evidence by uneducated citizens who did not – and in many cases could not – understand the complexities of what they were talking about. In his opinion, most people who brought claims against their mayor or a local municipal police officer for extortion, misuse of public funds, or even violent crimes such as rape and assault were like children trying to tell on their brother or sister for acts that were not actually committed. If, on the other hand, an educated individual such as myself brought a complaint that included

written accounts of corrupt behavior or additional proof, they would spare no expense to investigate. But that never happened, as most of the Salvadoran citizens who brought complaints to his department “cannot even read and write, so how can we trust them?” This certainly felt like the internalization of the global development discourse. Sure, he said, corruption exists in El Salvador, it exists everywhere, but it is not a major problem. I can understand why he feels that way, especially if other judges and attorneys share his pejorative opinions of the Salvadoran public.

*ii. Corruption and Violence in El Salvador*

The second general theme I uncovered in El Salvador, which was different than Pakistan (see chapter V, below), was that Salvadorans had no problem drawing a direct link between corruption (and impunity) and violence. To most of my interview subjects the longstanding belief that the government and its employees were “up for sale” to the highest bidder created fear, mistrust, and disrespect for the rule of law throughout Salvadoran society. These individuals recounted stories of friends or family members who had been violently abused, only to have their abuser pay off the police. Others recounted reading the daily accounts of violence in the newspaper yet never hearing about convictions, which instilled in them (and their families) a deep-seated belief that the justice system was either rigged or completely incompetent (or in some cases both). This was particularly problematic for human rights activists and their attorneys, as they strongly believed that corruption and violence were teaching the children well defined but illegitimate perspectives on the relationship between an individual citizen and the state. Furthermore, fear of the police and distrust of the law caused individual citizens to settle disputes themselves. Children were growing up disrespecting or fearing government officials which, in conjunction with limited economic opportunities, too often led to gang involvement

once these children reached adolescence. Otherwise law abiding families and neighborhood groups joined together to protect themselves against gangs and the police alike, which often resulted in more reckless illegal behavior and violence.

iii. *El Tribunal de Ética Gubernamental*

Amid long-standing complaints of corruption and incompetence, the Salvadoran legislature passed the Governmental Ethics law in 2006. Among other things, this law established El Salvador's first independent anti-corruption agency, the Tribunal de Ética Gubernamental (TEG), the following year. TEG's mandate was large and included ethical guidelines for various government departments, along with increasing transparency mechanisms so that the public would have more information about the government actions and initiatives at all levels. Directors were appointed, staff was hired, and public anti-corruption pronouncements began. Yet despite what was made publically available on the website TEG's functions were literally and figuratively limited from the outset, as often happens with domestic anti-corruption agencies. When I arrived to speak with one of the directors in 2011 TEG still did not have an official office, its agents had been appointed but were not being paid, and its public face – the website – had been temporarily shut down due to lack of funds. Not surprisingly, it seems that many of the legislators who originally voted (to much public fanfare) to pass the law of governmental ethics were hesitant to grant it more powers or even renew its budget.

When I returned in 2012 the situation at TEG was improving, albeit slowly. The organization had finally been set up in an office with desks, a few computers, and (perhaps most importantly) some security. The website was reopened, and they had begun educational campaigns on billboards and in schools. These campaigns were preventative in nature, meant to educate the public and especially children about what constituted “corrupt” behavior, what

should be done about it, and what its consequences were for society. According to TEG's sub-director this seemingly small yet creative effort was the best they could do with the limitations they had. TEG's budget had been renewed but remained limited: most of it was spent renting the office and purchasing the few pieces of equipment, so there was almost nothing left for administrative staff or corruption-related investigations. Nonetheless, TEG officials and their supporters saw this as a promising step forward because even publicizing the nature and (at this point still hypothetical) responsibilities of El Salvador's first permanent anti-corruption agency could have ripple effects throughout society.

That being said, everyone I spoke with seemed at once both proud of TEG's work and disillusioned by it. Most had other careers and thus could not afford to continue working without pay, and some openly suspected that the organization would forever be limited by politics and an unrealistic budget. Some expressed hope that external support could or even would arrive, perhaps from the U.S. government or other international development agencies. Others were skeptical, often for good reason. Considering that US government officials had openly told me that fighting corruption was counterproductive to their other economic and strategic concerns, I remain hesitant to believe that any influx of U.S. development aid into TEG will happen in the near future.

Despite these limitations, TEG and its employees continue to make the best of the resources they have. In the eighteen months since I conducted my research this anti-corruption agency continues to collect data, receive complaints, and regularly publicize their efforts. TEG has established municipal councils throughout the country and continues to define and promote ethical practices to government institutions at all levels. The education campaign has continued, and it has been expanded to include student government groups, essay contests, and other related

activities. Although TEG still does not have a clear mandate (or the resources required) to investigate and prosecute individuals for corrupt behavior, it is part of an effort to change society's deeply entrenched belief that corruption is and will remain an everyday aspect of Salvadoran culture. Some of this emphasis is related to a realistic appropriation of how to use limited funds, yet some of it is ideological; the same government official who lamented corruption as a "crisis of values" is now a key member of the TEGs leadership.

## CHAPTER V

### RESEARCH IN SUPPORT OF ARGUMENT: PAKISTAN

#### A. RELEVANT BACKGROUND INFORMATION

*For Pakistan, corruption has always been a fact of life, much as rain during the monsoon season.*<sup>191</sup>

##### i. Corruption in Pakistan: The Early Years

Almost immediately after partition Pakistan became embroiled in corruption allegations that affected senior politicians,<sup>192</sup> and unfortunately the situation seems to have changed little since. To many, however, the current corruption problem tends to look much, much worse than the early days. Despite inheriting what many considered a competent albeit abusive civil service apparatus from the British, Pakistani politicians quickly became known for corruption and incompetence. Regional and ethnic factions led to increased patronage and a culture of building political support through the milking of state funds for one's own family, ethnic group, or business associates. Additionally, despite the initial fanfare involved in statehood, the new Pakistani citizens spent the better part of the 1940s and 1950s "still coming to terms with the impact on their identity that independence combined with partition had produced."<sup>193</sup> It seemed that with Muhammad Ali Jinnah's death in 1948 the time of optimism and hope passed. Jinnah's repeated emphasis on equality, justice, and sovereignty for all Pakistanis in some ways died with him, and soon after it became clear how little Prime Minister Liaquat Ali Khan

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<sup>191</sup> Feisal Khan, "Corruption and the Decline of the State in Pakistan," *Asian Journal of Political Science* 15, no. 2 (August 2007): 226.

<sup>192</sup> Khan, "Corruption and the Decline of the State in Pakistan," 226.

<sup>193</sup> Sarah Ansari, "Everyday Expectations of the State During Pakistan's Early years: Letters to the Editor, Dawn (Karachi), 1950-1953," *Modern Asian Studies* 45, no. 1 (2011), 161.

actually trusted other Pakistani politicians.<sup>194</sup> The passage of the Public and Representatives Office (Disqualification) Act (PRODA) in 1949 made bribery, nepotism, and corruption criminal offenses,<sup>195</sup> and some historians even blame the failure of the first attempt at democracy on political corruption and ineptitude.<sup>196</sup> Put simply, those not involved in the entrenched corruption left over from the British colonial structure were too unqualified or inept to fundamentally change the system. In the first decade of the Pakistani state political infighting caused a “rotating door” of Prime Ministers, delayed the passage of a constitution until 1956, and arguably instigated the first military coup in 1958.<sup>197</sup>

An early example of judicial corruption occurred during this first decade and helped set the stage for future relations between the branches of government. In 1955 the Pakistan Supreme Court upheld the dismissal of the Constituent Assembly (the legislature) by the executive, and Chief Justice Munir included in the ruling a peculiar yet admittedly honest reason: there was no use in issuing writs against people it cannot force to comply.<sup>198</sup> Three years later the same Chief Justice ruled against a petition challenging the first military coup, and thus the precedent was set: the judiciary, being

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<sup>194</sup> Ian Talbot, *Pakistan: A Modern History* (New York, NY: St. Martin’s Press, 1988), 136. It is important to note that Liaquat was assassinated in October of 1951, and although religious extremists were believed to be behind the assassination it has also been argued that his modesty and unwillingness to rush to rash decisions led many to want his death. Despite his inability to foster political cooperation, he was seen by many as “an honest man” and the last true connection to Jinnah. See, e.g. Hamid Khan, *Constitutional and Political History of Pakistan* (Oxford, UK: Oxford University Press, 2009), 88-89.

<sup>195</sup> Talbot, *Pakistan: A Modern History*, 137.

<sup>196</sup> Talbot, *Pakistan: A Modern History*, 127.

<sup>197</sup> Khan, “Corruption and the Decline of the State in Pakistan,” 227.

<sup>198</sup> Khan, “Corruption and the Decline of the State in Pakistan,” 228. This became known as “The Munir Report.”



“neither independent nor honest,” would defer to the executive and legislative branches when pushed.<sup>199</sup> Because there is no true system of checks and balances, and because any attempts on behalf of the Supreme Court to assert its constitutional powers were quickly checked, corruption in the broad sense permeated even the highest courts in the country. Interestingly enough, only recently (since the mid-2000s) had the Supreme Court, under the ever-assertive Chief Justice Chaudhry, been able to appropriately assert its independence and force powerful members of the executive and legislative branches to submit to their authority.

A survey of “Letters to the Editor” of the English-language newspaper *Dawn* in the early years of the state show many connections to the complaints still being heard today: bureaucratic incompetency; inability to provide basic goods and especially services to the people, such as employment, food, electricity and sanitary living conditions; and, of course, the looting of public coffers for private enrichment.<sup>200</sup> By the early 1950s press reports about corrupt officials being arrested became common, and soon “ordinary Pakistanis found themselves coming face to face on a daily basis with what they frequently termed ‘graft’.”<sup>201</sup> This no doubt affected how ordinary Pakistanis interacted with all levels of their government, how they trusted the judicial system, and how they interpreted their ability to flex the democratic muscles they believed came with the creation of the nation. To many citizens there was an obvious disconnect between

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<sup>199</sup> Khan, “Corruption and the Decline of the State in Pakistan,” 228-230.

<sup>200</sup> Ansari, “Everyday Expectations of the Pakistani State,” 159-173. It is important to note that *Dawn* is an English-language newspaper read primarily in Karachi (the national capital) at this time, and thus there is clear concern as to whether the complaints expressed by their readership truly represent the perceptions of the ‘average’ Pakistani at the time. Ansari addresses this critique in the early part of this article.

<sup>201</sup> Ansari, “Everyday Expectations of the Pakistani State,” 174.

what had been promised by the creation of the state and what was being delivered, and in some ways this disconnect has plagued Pakistan ever since. Using patronage to secure support for the regime had been a key asset for the British during colonial times, but surprisingly enough the “massive expansion” of this system soon “made it appear as if the power to dispense, with no accountability whatsoever, ever-increasing official patronage *was almost the sole reason for governing*” in Pakistan.<sup>202</sup>

Another argument for how corruption became systemic in Pakistan relates to the competition for resources in the post-partition period and how evacuees’ property was redistributed as a way of securing political and other power. Ilyas Chattha argues that it was the appropriation – or rather misappropriation – of property abandoned by migrating Sikhs and Hindus that helped institutionalize corruption in Pakistan.<sup>203</sup> Simply stated, Chattha argues that “the legacy of Partition forms a common backdrop” to a wide variety of corrupt activities, from individual acts of misappropriation of funds and nepotism to more systemic or “gross administrative corruption.”<sup>204</sup> Partition and the flood of refugees (in both directions) created a situation ripe for corruption in South Asia, in which civil servants, politicians, local elites and, of course, the military sought to enrich themselves at the expense of those who left or had just arrived. Even counting the amount of property left behind – which included land (arable and otherwise), urban and rural

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<sup>202</sup> Khan, “Corruption and the Decline of the State in Pakistan,” 227 (emphasis added).

<sup>203</sup> Ilyas Chattha, “Competition for Resources: Partition’s Evacuee Property and the Sustenance of Corruption in Pakistan,” *Modern Asian Studies* 46, no. 5 (2012), 1182-1211.

<sup>204</sup> Chattha, “Competition for Resources: Partition’s Evacuee Property and the Sustenance of Corruption in Pakistan,” 1183.

dwellings, shops, factories and raw materials – proved to be a contentious issue between India and Pakistan and helped fawn the flames of a conflict that to this day continues.<sup>205</sup>

From a legal standpoint, the official transfer of any amount of evacuee property could not be finalized until India and Pakistan resolved the myriad issues surrounding it. Considering the tense relationship between the two young nations (which continues today), this process could not function as smoothly as hoped or planned. Although both states created agencies to deal with evacuee property, and both claimed to spend years making sure the property was permanently allotted to its rightful owners, “it is clear from both documentary and oral sources that local residents, as well as officials and politicians [for years] attempted to enrich themselves or their relatives by occupying evacuee territory.”<sup>206</sup> Thus the struggle played out between all the various peoples occupying the land that was now Pakistan, and helped foment divisions between otherwise likeminded groups. In turn this helped establish a situation where corruption cannot be viewed in the simple, Western sense of simple greed for money or political power. As Anatol Lieven makes clear, corruption took on kinship dimensions of “collective solidarity and defence [*sic*]”; to this day:

“Defence of honour and the interests of the kinship group usually outweighs loyalty to a party, to the state, or to any code of professional ethics, not only for ordinary Pakistanis but for most politicians and officials. It is important to understand therefore that much Pakistani corruption is the result not of a lack of values (as it is seen usually in the West) but of the positive and ancient value of loyalty to family and clan.”<sup>207</sup>

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<sup>205</sup> Chattha, “Competition for Resources: Partition’s Evacuee Property and the Sustenance of Corruption in Pakistan,” 1188-1189.

<sup>206</sup> Chattha, “Competition for Resources: Partition’s Evacuee Property and the Sustenance of Corruption in Pakistan,” 1192.

<sup>207</sup> Anatol Lieven, *Pakistan: A Hard Country* (New York, NY: PublicAffairs, 2011), 14.

This notion of a corrupt bureaucracy, led by politicians who dole out favors for their kinship group or an alliance of those who support them, became the common theme for decades of elections and multiple military coups. As mentioned earlier, the first coup in 1958 was justified as a response to corrupt and inept public officials. The *Proclamation of a State of Emergency* stated that the Constituent Assembly had “lost the confidence of the people and can no longer function,” but some Pakistani scholars argue that regardless of whether this was justifiable the dissolution of the legislative body “threw the country into chaos and confusion by reviving old rivalries and reopening old controversies.”<sup>208</sup> Not surprisingly, the coup did not fix the problems of the previous government, and left the population under a state of Martial Law with no political parties. The next wave of democratic activism (the anti-Ayub campaign of November 1968) was led by two slogans: “Death to the Servant King” and “End Corruption.”<sup>209</sup> The rise of the Pakistan Peoples’ Party (PPP) and its leader Zulfikar Ali Bhutto in the late 1960s and the PPP in the early 1970s enlivened the Pakistani populace and re-opened floodgates of civic engagement, yet like the politics of the past the PPP built itself not on democratic principles but on the utilization of patronage.<sup>210</sup> Despite promises to reform the bureaucracy and revive Pakistan’s place on the international state, foreign and domestic concerns<sup>211</sup> created further violence within Pakistan and ultimately led to another

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<sup>208</sup> Khan, *Constitutional and Political History of Pakistan*, 103.

<sup>209</sup> Talbot, *Pakistan: A Modern History*, 227.

<sup>210</sup> Talbot, *Pakistan: A Modern History*, 218.

<sup>211</sup> Bhutto’s quest to secure a Pakistani bomb affected not only the economic situation of the state but also its standing in the international community, and the rise of the Pakistan National Alliance (PNA) led to increased political infighting within the country. See Talbot, *Pakistan: A Modern History*, chapter 8 for more details.

bloodless coup on July 5, 1977. The Army Commander-in-Chief General Zia-ul-Haq, despite promises of elections in 90 days, tried and executed the once-popular Bhutto on trumped up murder charges and presided over the longest period of military rule in Pakistan's history, 11 years.<sup>212</sup> Judicial corruption became apparent once again when Bhutto's wife, Nusrat, challenged the validity of the military detention of the governing PPP members before the Supreme Court and lost; just as two decades earlier with Ayub Khan, Zia's extra-constitutional assumption of power was ruled legitimate on the doctrine of state necessity by the one body that had the duty and legitimate authority to overrule it.<sup>213</sup>

Military rule suited the country economically and provided a stable base for the United States to work in the tail end of the Cold War, but it in no way changed the level or nature of corruption. In fact, as has been shown in countries such as China, South Korea, and Taiwan, high levels of corruption and close connections between state entities and private corporations are counter-intuitively compatible with significant economic growth.<sup>214</sup> In certain cases, especially societies in transition that lack stable democratic institutions and have low levels of civic engagement, some corrupt acts can even lead to a net social benefit; unfortunately the line is quite thin and even in these cases corruption generally leads to "inefficiency, injustice, and inequity."<sup>215</sup> Thus despite the Pakistani military's ability to distance itself somewhat from kinship interests and the corruption

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<sup>212</sup> Talbot, *Pakistan: A Modern History*, 245.

<sup>213</sup> Talbot, *Pakistan: A Modern History*, 257.

<sup>214</sup> Lieven, *Pakistan: A Hard Country*, 171.

<sup>215</sup> Klitgaard et. al, *Corrupt Cities*, 2.

that come with them, in many ways it has only been able to do this by “turning itself into a sort of giant kinship group, extracting patronage from the state and distributing it to its members” in the same way that powerful clan leaders turned politicians do.<sup>216</sup> This was seen in many other parts of the world where authoritarian regimes that rely on financial and military support offered by wealthier states have a long track record of milking the system for the benefit of a few while violently repressing the masses (e.g. El Salvador, Argentina, the Philippines, etc.).

Despite lagging in many economic and development indicators Pakistan increased privatization under Zia, a process that led to the influx of foreign capital and technology. This far outpaced the building and strengthening of civic institutions needed to monitor, track, and distribute the new technology and the wealth associated with it, which no doubt increased the temptations and payouts available to those in a position to abuse the system for personal enrichment. By the time democracy was restored in 1988, with the return of the PPP and the election of Benazir Bhutto as Prime Minister, high hopes of a new era did not diminish the fact notion that “the wielding of political power and corruption [were by this time] synonymous in Pakistan’s public mind.”<sup>217</sup> Unfortunately, the return to democracy did not change this whatsoever.

ii. *Corruption in the Contemporary Context: Benazir Bhutto to the Present*

As first female head of state of a Muslim nation, Benazir Bhutto came to power with immense international and domestic expectations. Some argue that the failures of her government must be analyzed alongside the impossible expectations placed upon her

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<sup>216</sup> Lieven, *Pakistan: A Hard Country*, 167.

<sup>217</sup> Talbot, *Pakistan: A Modern History*, 290.

and the incredible political problems she inherited.<sup>218</sup> Regardless, Bhutto's presidency and her dismissal for corruption by President Ghulam Ishaq Khan in 1990 quickly returned the Pakistani public to a state of disillusionment. Not only did she fail to achieve many of the successes that were expected of her, such as improving bilateral relations with Rajiv Gandhi's India, but she was also constantly assailed with increasingly damaging charges of corruption, incompetence, and intimidation.<sup>219</sup> Of course, these kinds of accusations are common in Pakistani politics, and even by this time false corruption claims used against political rivals made the term corruption and its use as an accusatory weapon almost a cliché. Yet in Bhutto's case there seems to be significant evidence to support at least some of the accusations against her and her husband, and a brief review of key events shows how these old corruption charges continue to cloud over Pakistan's government and citizenry today.

Throughout the 1990s the political pattern remained largely the same with respect to corruption, at least until the end of the decade. Adding fuel to the fire set by her enemies, Bhutto's husband Asif Ali Zardari attracted increasing amounts of negative attention at home and abroad and was rumored to have built a net worth of tens if not hundreds of millions of dollars; he was jailed on corruption charges by his wife's successor, Nawaz Sharif, and Swiss Authorities opened a corruption investigation against

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<sup>218</sup> These problems included, but were not limited to, the entrenchment of the military and intelligence services during the previous administration of Zia-ul-Haq, the loss of women's rights under Islamization programs, the war in Afghanistan and other international events, such as oil crises. See Talbot *Pakistan: A Modern History*, 287-326, for an in-depth discussion of the problems confronting Bhutto and later Nawaz Sharif.

<sup>219</sup> Talbot, *Pakistan: A Modern History*, 293.

him in early 1995 at the request of Nawaz's government.<sup>220</sup> Many Pakistanis were fed up by this point with the Bhuttos and hoping for reform, but unfortunately "Nawaz Sharif's [first] tenure (1990-1993) saw a continuation of confrontational politics . . . and claims of corruption" similar to those of his predecessor(s).<sup>221</sup> He further liberalized the country's economic system and pushed several populist programs intended to improve the lives of the poor, but his administration was increasingly under attack for financial mismanagement and he was eventually dismissed in 1993 by the same President – and under the same charges - that dismissed Benazir Bhutto three years earlier.<sup>222</sup>

The period 1993-1997 saw increased economic despair, continued political infighting, and a lack of checks and balances between the branches of government. Many prominent experts in international affairs – including U.S. foreign policy staff – began to wonder out loud whether Pakistan was already or soon to be a failed state.<sup>223</sup> Between 1988 and 1999 Benazir Bhutto and Nawaz Sharif each served two nonconsecutive terms as Prime Minister, making up what one scholar argues are the four most corrupt administrations in Pakistan's history.<sup>224</sup> For example, constant public outcry<sup>225</sup> against

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<sup>220</sup> John F. Burns, "The Bhutto Millions," *The New York Times*, January 9, 1988. Although he has yet to be convicted of corruption charges in Pakistan or elsewhere, the Swiss investigations that began in the 1990s continue to haunt now President Zardari and are the focus of an ongoing battle between him and the Supreme Court.

<sup>221</sup> Talbot, *Pakistan: A Modern History*, 315.

<sup>222</sup> Talbot, *Pakistan: A Modern History*, 318, 326.

<sup>223</sup> Talbot, *Pakistan: A Modern History*, 327; Khan, "Corruption and the Decline of the State in Pakistan," 219.

<sup>224</sup> Khan, "Corruption and the Decline of the State in Pakistan," 238.

<sup>225</sup> It is interesting to note that the popular Pakistani Cricket star, Imran Khan, launched a political movement in April of 1996 that, among other things, called for the accountability of corrupt officials and the return of public funds that had been stolen.



the corrupt practices of Benazir's government led to her second administration being dismissed in 1996 in a similar fashion as the first, and the Ehtesab Ordinance (aka the "Law of Accountability") passed in less than two weeks after her government dissolved.<sup>226</sup> Unfortunately for Pakistan this attempt at reform, like so many others that came before it, failed to curb the levels or extent of corruption in the country. This is at least partly because it would have required the elites – precisely those individuals that benefited from corruption – to enforce such laws. At the same time the Pakistani government became increasingly isolated from international support as it suffered from terrorist attacks and what many still argue is an internal alliance between terrorist organizations and the powerful Pakistani intelligence agency, the Inter-Services Intelligence Agency (ISI). This was the backdrop for the Kargil War in Kashmir during the summer of 1999.

Amid this backdrop of economic and security-related chaos General Pervez Musharraf ousted Nawaz Sharif and took power in a coup in October, 1999. Musharraf, like all other coup leaders before, cited corruption and bureaucratic ineptitude as justification for the coup, but he also made key promises (at home and abroad) to finally go after those responsible for violence in the region and corruption at home. In the beginning things actually seemed different with Musharraf at least with respect to pursuing the promises he made. For example, he appointed popular public activists to his cabinet, began some aggressive moves against terrorist organizations operating within Pakistan and created the National Accountability Bureau (NAB) to once and for all bring

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<sup>226</sup> Khan, *Constitutional and Political History of Pakistan*, 610-611.

those charged with corruption to answer for their crimes.<sup>227</sup> Despite initial efforts by NAB to pursue or at least publicize accounts of Pakistanis who became rich milking the state, its enforcement mechanisms were never as strong as they needed to be. Creating the anti-corruption agency was a step in the right direction but unfortunately had little effect in the short-term. Allegations of corruption against politicians remained commonplace and other sectors of the government, including but not limited to the National Institute of Health,<sup>228</sup> the military, and the Islamabad police<sup>229</sup> also received national and international condemnation for misuse of public office. NAB itself is a “totally non-transparent institution” that was used very selectively by Musharraf’s administration as a political tool.<sup>230</sup>

The September 11, 2001 terrorist attacks in the United States shocked the world and changed the state of Pakistani politics once again. The U.S. government needed Musharraf’s help against al Qaeda in Afghanistan and was willing to pay for it, yet they feared alignment with what some argued was a simple military dictatorship and thus helped Musharraf become ‘elected’ as leader of the country in 2002. Once again, history repeated itself. In 1993, after Nawaz Sharif was dismissed and an interim ‘caretaker’ government was installed (under the leadership of former World Bank Vice President Moeen Qureishi) there was a major attempt to pursue wealthy industrialists who were

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<sup>227</sup> Khan, *Constitutional and Political History of Pakistan*, 238-240.

<sup>228</sup> See, e.g. Kabir Ahmad, “Senior Health Officials in Pakistan Arrested on Corruption Charges,” *The Lancet* 358 (August 4, 2001).

<sup>229</sup> “Islamabad’s Finest,” *The Atlantic* (October 2008), 27.

<sup>230</sup> Khan, *Constitutional and Political History of Pakistan*, 671.

guilty of defaulting on government loans.<sup>231</sup> However, when Bhutto was elected (again) in 1993 that effort was sidelined by her administration's unwillingness to pursue the policy, and the same failed attempt at reform became apparent when Musharraf officially assumed the Presidency in 2002.

Although many believe that Musharraf's government was 'cleaner' than the elected governments of the previous decade, by the mid-2000s any progress that had been made quickly backpedalled. The concern was always that Musharraf now held two offices simultaneously, something that was not allowed by the Pakistani Constitution. For this and other reasons Musharraf despised the Supreme Court since the beginning of his assumption of power and had initially tried to force the Justices to sign an oath that they would not make rulings against the military; several refused and resigned, and the conflict between the branches continued.<sup>232</sup> The Court early on ruled the military takeover constitutional and rejected the petitions filed by Nawaz and his ruling PML(N) party, which challenged the military's takeover and reinstate the Assemblies,<sup>233</sup> yet by the elections of 2002 Musharraf's fears seemed grounded in the logical assumption that the court – if acting freely and according to the letter of the law - would rule it unconstitutional for Musharraf to pursue a 2<sup>nd</sup> five-year term as President while also serving as the Army's Chief. Despite a long history of Pakistani justices deferring to the executive branch, the new judiciary began pushing back amid pressure from Musharraf. This came to a head when in March 2007 Chief Justice Chaudhry refused to accept the

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<sup>231</sup> Khan, *Constitutional and Political History of Pakistan*, 239.

<sup>232</sup> Fareed Zakaria and Ron Moreau, "Pakistan's Pinstripe Revolution," *Newsweek* 150, no. 21 (November 19, 2007), 27.

<sup>233</sup> Khan, *Constitutional and Political History of Pakistan*, 653.

now elected Musharraf's 'request' that he tender his resignation and the President suspended him on accusations of misuse of office. Only after this sparked an 80,000-strong lawyers movement that protested the suspension and extra-constitutional powers assumed by the President was Chaudhry reinstated.<sup>234</sup> Although some believed this would be the downfall of the Chief Justice it instead greatly improved his popularity, and he has remained popular and assertive on an unprecedented level since being reinstated as Chief Justice in 2009.

Amid all the turmoil surrounding Chief Justice Chaudhry, one of President Musharraf's most controversial laws was challenged by a group of Pakistani Lawyers. In October 2007 the President issued the National Reconciliation Ordinance (NRO), a law that granted immunity to all politicians, civil servants, and bureaucrats who were accused of corruption, embezzlement, money laundering, murder and terrorism between January 1986 and October 12<sup>th</sup>, 1999. Many considered the law an attempt to allow former Prime Minister Benazir Bhutto to return to Pakistan to run in upcoming elections without the fear of being persecuted on charges of corruption. Shortly thereafter, on November 3<sup>rd</sup>, 2007, Musharraf issued a state of emergency and cited recent decisions by the Supreme Court and terrorist attacks as justification. Unfortunately and ironically, Bhutto returned to Pakistan on October 13<sup>th</sup> only to be assassinated on December 27<sup>th</sup> while running as a leading opposition candidate. Her husband, Asif Ali Zardari – the previously nicknamed "Mr. Ten Percent" – took the mantle of Bhutto's PPP and won the general elections for President in September 2008.

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<sup>234</sup> Ali Khan, "The Lawyer's Movement in Pakistan: Law Beyond Politics," (2007), SSRN 1078727, Accessed Jan 18, 2012, <http://ssrn.com/abstract=1078727>.

Regardless of the fact that for nearly the entire existence of the Pakistani state the executive was able to exert incredible control over the Pakistan Supreme Court, the NRO was quickly challenged on constitutional grounds and Chaudhry, the same Chief Justice whom Musharraf attempted to dismiss two years earlier, ruled parts of the law unconstitutional in late 2009. President Zardari, not surprisingly, opposed the reinstatement of the Chief Justice that same year and they have been at odds ever since.<sup>235</sup> For the last few years the Supreme Court has been pressuring the Swiss government to re-open the corruption cases against President Zardari while also pressuring his administration to participate in and answer questions about the allegations of wrongdoing while Zardari was a cabinet minister in his late wife's administration. This came to a head in June 2012 when Chief Justice Chaudhry and his Supreme Court dismissed Prime Minister Yousaf Raza Gilani for refusing to follow the court's orders and pursue the Swiss corruption inquiries against President Zardari. The next Prime Minister, Raja Pervez Ashraf, faced similar pressure and charges of contempt of court if he, like Gilani, refuses to move forward with the investigation into Zardari's past corruption charges.

*iii. National and International Implications for Corruption in Pakistan*

The pervasive level of corruption in Pakistan threatens to keep the country in the economic, political, and developmental stagnation it has known for so long. In Transparency International's 2011 Corruption Perceptions Index Pakistan was tied as the 134<sup>th</sup> most corrupt country in the world, which, despite putting it in close company with notoriously corrupt nations such as Niger, Sierra Leone, and Belarus, is actually an

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<sup>235</sup> Declan Walsh, "Political Instability Rises as Pakistani Court Ousts Premier," *The New York Times*, June 19, 2012. It is important to note that if not for the 2<sup>nd</sup> round of the Lawyers Movement, which started in 2007 and was revived in 2009, Chief Justice Chaudhry would likely never have been reinstated and thus the NRO may have remained in effect.

improvement from its 2010 score.<sup>236</sup> It is widely understood that the level of corruption in Pakistan hurts both its ability to attract foreign direct investment – something that Pakistan sorely needs – and its ability to properly receive and take advantage of large amounts of international development assistance. Additionally, as has been shown above, the mere perception of corruption in Pakistan has caused repeated political and diplomatic crises, including but not limited to constant inter-branch disputes and repeated military coups. International allies have and continue to question Pakistan’s willingness to confront its own security and development concerns, and the general public of its most powerful ‘ally’ – the United States – has increasingly become critical of the gap between the amount of military and economic aid given Pakistan and the failure to reach the expectations attached to it.

Due to these and other concerns the legitimacy of the state itself has been constantly called into question since its creation nearly sixty-five years ago, and current Pakistanis confront some level of corruption (or at least perceived corruption) on a daily basis. At the time of this writing a considerable confrontation between the Chief Justice Chaudry’s judiciary and the executive branch continues to make news both domestically and abroad, and despite much international support for the assertiveness of the court many worry that reopening the corruption case(s) against President Zardari could throw the country into future turmoil.

Additionally, domestic anger over drone strikes and other perceived injustices done by the United States on Pakistani soil (or to Muslim countries in general) has further stressed an already tense relationship. There is no clear resolution in sight for the conflict

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<sup>236</sup> “Corruption Perceptions Index 2011 Results,” *Transparency International*, Accessed March 14, 2012, <http://cpi.transparency.org/cpi2011/results/>.

between the United States and Pakistan, nor does there seem to be any hope for a resolution to the continuing plague of corruption in the country. I argue that the latter problem drastically affects the former conflict, and that the widespread belief among Pakistanis that their government is corrupt adds to the dysfunction and violence seen throughout the country. Despite the presence of NAB and the increasing support for Pakistani politicians who push anti-corruption initiatives,<sup>237</sup> corruption remains entrenched within all aspects of Pakistani governance. Sadly, it is hard for even the most hopeful to argue with the views of the legal and political scholar, Hamid Khan, when he states that:

Unfortunately, the lesson of fifty years of chequered [*sic*] constitutional and political history is that governments in Pakistan do not learn from history. Successive governments have adopted the same course, repeated the same mistakes, and pushed the country deeper and deeper into the morass of uncertainty and insecurity.<sup>238</sup>

## *B. RESEARCH FINDINGS*

### *i. Initial Assumptions*

Before turning to discuss my findings, I want to first briefly highlight some assumptions and aspects of my overall research experience that were particularly surprising. First, although Pakistanis from all classes and political parties are quick to comment on the extent of corruption in politics and the civil service, that did not necessarily mean that they wish to see the system changed in ways that may seem obvious to Westerners. Here it is important to realize that while corruption as a concept is negative, and thus when people speak about corruption or a “corrupt” individual they

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<sup>237</sup> See, e.g. Pankaj Mishra, , “Imran Khan Must Be Doing Something Right,” *The New York Times* August 16, 2012, Accessed May 5, 2014, [http://www.nytimes.com/2012/08/19/magazine/pakistans-imran-khan-must-be-doing-something-right.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2012/08/19/magazine/pakistans-imran-khan-must-be-doing-something-right.html?_r=1&pagewanted=all)

<sup>238</sup> Khan, *Constitutional and Political History in Pakistan*, 732.

are using the term derogatorily, the “corrupt” rules that keep society functioning provide positive and expected benefits that many Pakistanis are hesitant to live without. For example, when someone would comment on how rampant corruption in some government agency was, or describe the corrupt dealings of their local political party leader, I would ask them whether they would rather continue the status quo or switch to a completely free, fair, and transparent democracy where corrupt leaders were quickly investigated and punished. Put another way, would they rather continue living in a system where corruption was rampant but, when their candidate won, they could get what they wanted or needed; or would they rather switch to a democratic model where politicians were clean if that meant that they couldn’t rely on connections or small bribes to get what they needed.<sup>239</sup> Generally, the interview subject balked at this point, yet in many cases they clearly stated that they would rather keep the current system because at least they would know how to get what they needed when they needed it. This is surely due, at least in part, to the lack of faith that most Pakistanis have in their government ever being free and fair, but I believe it also speaks to a larger and more deep-seated understanding of how politics is supposed to work. In this sense Pakistanis complain about corrupt politicians not because they think patronage or political corruption is per-se wrong, but rather because they are tired of their leaders stealing large sums of money instead of funneling it to their often poor constituencies. On the local level, at least, many people understand and are comfortable with the rules, and chose only to complain about the corruption when their political foe is in power.

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<sup>239</sup> With respect to this line of questioning, I am indebted to Professor Matthew Nelson for the guidance and support he provided early in my research in Islamabad.



The second assumption I had to dismiss follows naturally out of the first, and that is that the belief that corruption is a problem in Pakistan does not necessarily lead to the desire for help in changing the system. This should not be overly surprising, given Pakistan's historically nationalistic perspective and (especially recent) distrust of Western powers. But it was surprising for me, especially because it was in contrast to opinions I've heard in other countries with high levels of corruption and similar historical reasons for distrusting the U.S. or the West. For example, I've spoken about corruption with self-proclaimed socialists in Guatemala and El Salvador who distrust foreign actors and the United States in particular, individuals whose anti-Western ideology goes far beyond mere complaints about past injustices. Yet even these individuals, when discussing the corrupt and dysfunctional judiciary in their countries, are open to and at times even desperate for regional and international support for reform, training, and institutional capacity building. In their eyes, external funding and support is necessary to create strong and legitimate institutions, which could in turn help off-set long-standing harms that they often believe were caused by the United States. However, not a single person in Pakistan (other than one person who had previously worked with USAID) told me that they wanted support for anti-corruption initiatives from international organizations or foreign government agencies. In many cases, the proposal of a USAID funded rule of law program or a UN-sponsored anti-corruption initiative was resisted even by those who just finished saying how hopelessly corrupt their government was.

My third and final assumption is somewhat counter-intuitive in light of what I have just said, and that is that most Pakistanis I interacted with – even those who openly criticized and critiqued US policies whenever possible – were welcoming, kind, and

receptive to my presence. Despite the seemingly relentless distrust and animosity they held towards the US government, everyone I spoke to believed that increased person-to-person cultural and academic exchanges between Americans and Pakistanis were both a positive and necessary next step. This was the silver lining in every uncomfortable experience I had, as nearly all of the people I spoke with wished for better relations between the US and Pakistani governments, and a deeper understanding between Americans and Pakistanis in general.

One overriding conclusion I came to in my research is that there is a major division between how the older generation (namely people above age 45) view corruption vs. how young Pakistanis view it. It didn't matter whether we were speaking about causes or consequences of corruption, the extent or types of corruption, whether it could/should/would be combated by the government, or even who was to blame for the corruption problem in the first place – the older generation had strong opinions on every one of these topics that did not correspond with (and in some cases directly contradicted that of) the younger generation's views. By and large, younger research subjects were far more likely to place the blame for corruption on Pakistanis themselves, to desire a free and fair system even if it meant the inability to use connections, and to believe that democracy and government in general was improving in Pakistan, albeit slowly. For time and space purposes I will not go deeper into this right now, but I will say two things: In my perspective this is more than simple youthful optimism, and the perspectives I heard from students and young professionals make me optimistic about Pakistan's ability to reduce corruption and increase institutional legitimacy in the coming decades.

ii. Two Types of Corruption in Pakistan

I'd like to begin the discussion of my findings with one key distinction between two types of corruption in Pakistan, supplemented by a hypothetical example of how this process plays out in Pakistani politics. Then I will highlight several related but somewhat tangential findings that I believe speak to how perceptions of corruption are changing and what that means for Pakistanis and those with economic or strategic interests in the country.

After several weeks of interviews it became clear to me that when speaking about corruption with Pakistanis it is important to distinguish between two distinct types of actions. First, you have situations where powerful elites (politicians, family members of politicians, business leaders, high ranking military officials, etc.) steal whatever they can from their position, usually money, land, or political influence. These are the “mega-corruption” scandals that are regularly exposed in the media and, at least in theory, these are the types of cases that the National Accountability Bureau (Pakistan’s domestic anti-corruption agency) is tasked with investigating. People unanimously denounce this type of corruption, and much of the anti-corruption rhetoric in local media will focus on these mega scandals. Yet, however damaging these scandals are to general Pakistanis, they involve a very small number of powerful people and often only indirectly touch the populace. Strong arguments have been made that this type of corruption impedes development and reduces respect for the rule of law, but for those on the ground there is little incentive to investigate or punish leaders who steal at this level. When the government or independent journalists do investigate these types of scandals they often get nowhere, and sometimes get killed. I’ll call these mega scandals Type A Corruption,

and perhaps its most infamous example is the former President Zardari, though Nawaz Sharif is by no means considered clean in this respect.

On the other end of the spectrum you have the corruption that most Pakistanis experience on a near-daily basis, and what some might call local patronage networks or influence peddling. This type of corruption is less about stealing large sums of money or resources in single transactions, and more about sustaining power through local patronage and the cashing in of favors; landowners, politicians, and even religious figures use their position to provide constituents with benefits in exchange for continued support. These benefits can be wide-ranging in form, and include government and private sector jobs, expedited passports and visas, region or town-specific development projects, or a even manipulation of the legal system to get someone out of jail. I'll call these corrupt acts type B corruption. Everyone admits the existence of type B corruption, and nearly everyone says they have experienced both its positive and negative consequences.

The key distinction is this: While nearly all Pakistanis complain about Type A corruption (the mega scandals), most seem ready and willing to support type B corruption, even when they understand how it hurts them. And even when confronted with the reality that wide-spread type B corruption reinforces the mega scandals in type A corruption, many Pakistanis have a hard time imagining a completely free and fair system that does not involve some form of illegal patronage. People justify their support for type B corruption along many grounds, but almost always their support is grounded in a desire for certainty. Put simply, the system may be broken, but they know the rules and how to get what they need from it. Some even go so far to argue that this type of patronage

politics is the truest form of democracy (a point several prominent scholars of corruption have agreed with).

These two types of corruption manifest in a very interesting (and expected) way during elections, and this speaks to the way that many of Pakistan's political dysfunctions are mutually reinforcing. For example, Politician number 1 uses type B corruption (local patronage) to secure his power base and reach a higher office, which is accepted by the public. Once in power, politician # 1 continues to use type B corruption by legally or illegally funneling resources and short-term benefits to his constituents. If done adequately, this will ensure that his supporters do not turn against him if he pursues type A corruption for personal enrichment (i.e. when he steals millions of dollars from the state coffers). At this point, so long as politician # 1 continues to reward his power base through type B corruption, no one complains about the mega-corruption scandals except for his political opponents and their supporters. And even his opponents, who regularly denounce politician # 1's type A corruption in public and in the media, may support and use type B corruption to secure their own power bases. In this instance even vocal anti-corruption activists, those who oppose politician # 1 for his mega corruption scandals, will support the use of type B corruption to get their own candidate, politician # 2, into office. Politician # 2 then uses a combination of type B corruption with respect to her own constituents, and allegations of type A corruption against her political opponent, to propel herself into office. This is a very effective way to unseat an otherwise popular incumbent. But the key to this system reinforcing itself is that even if he loses, politician # 1 need not fear allegations of corruption because there is little to no chance of ever being fully prosecuted or even barred from office; Once in power, politician # 2's

previously vocal anti-corruption crusade will likely fade, and she will often choose not to pursue investigations into politician # 1's type A corruption. This is because there is just as much incentive for corruption-related mudslinging during elections as there is for incumbents to avoid investigating their predecessors: everyone in power (past, present, and future) benefits from keeping the system's status quo. This is, of course, an overly simplistic view of the process, but it highlights the way we have witnessed the corruption debate play out in Pakistan during the last two elections.

This example leads to a somewhat unfortunate reality that I experienced: many Pakistanis, even those who regularly complain about corruption, are so skeptical of true reform that they would rather support the status quo than make a drastic break with the past; this is particularly true with the older generation. As previously stated, I often asked people whether they would prefer the current system, where they understand the rules and know how to get what they need (at least while their political leader was in power), or whether they would want a truly free and fair system where their connections meant nothing; few people chose the free and fair system outright, and most eventually admitted that the status quo was preferable to them. Pakistanis are angry that their leaders get away with stealing money and land, and that the judicial system fails to hold anyone with even moderate power accountable. Yet by and large these same individuals seem to resist the idea of a completely free and fair democratic process where every vote was equal, at least partly because few believed that that was possible. This is a long-winded way of explaining that many Pakistanis cannot conceive of a clean and fair government (by global standards), and others admitted that even if that was possible it was not necessarily what they would want.

There are also structural problems related to corruption in Pakistan, and these issues heavily influence how most Pakistanis perceive of state legitimacy (or, rather, the lack thereof). The bureaucratic labyrinth is nearly impossible for some to penetrate without a bribe or a favor, and simple administrative processes (getting building permits or passports) continue to exhaust the patience of otherwise law-abiding citizens. Lack of funding and infrastructure is of course an issue, as almost no one pays taxes or even utility bills, but this is too simplistic of an explanation for the near-complete inability of the state to provide citizens with basic services. In general, I found that corruption is not perceived to be worse now than in the past, but in most cases it isn't seen to be improving, either. The only place where people perceived of less corruption than before was in the processing and issuing of ID cards and drivers licenses (thanks in part to the new NADRA registry system), and in the Ministry of Higher Education where reforms have reduced the level of bribes and favors that have been common in the school admissions process. That being said, many university students and professors told me that wealthy and connected students continued to try (albeit sometimes unsuccessfully) to purchase their way into and out of degree programs.

Another corruption related structural problem is the way the Pakistani civil service recruits and retains employees. The recruitment process for new civil servants is perceived as heavily biased and based in patronage politics, and even highly educated and technologically sophisticated urban youth face major challenges finding jobs with the government. This is at least partly because, as one young computer programmer told me, most government agencies are still controlled by "technological dinosaurs," i.e. long-term civil servants who are resistant to change and the use of technology. In my experience

Pakistani students are better versed in new technology than many of their south Asian counterparts (with the exception of India), and many see technology as the key to increased development and freedom for their generation. However, few software engineers or computer programmers have access to promising careers in the domestic public or private sector, and those that do stay in Pakistan often work for foreign companies.

With respect to the judiciary, corruption and structural problems are evident at all levels. There is a general belief that almost no one respects the rule of law, and even law-abiding citizens have major doubts about the fairness and consistency of Pakistani judicial processes. Regardless of who I spoke with - lawyers, politicians, successful businessmen or struggling students - not one interview subject viewed the Pakistani judiciary as a well-functioning and legitimate state institution. Judges at the top are paid too much, while those at the bottom are paid too little and do not have their extracurricular activities monitored. Lower courts are seen as highly vulnerable to corruption, as individuals in both criminal and civil cases generally expect to bribe or otherwise act to influence the behavior of judges and other court officials. While I rarely heard of high-level judges being involved in corrupt practices per se, many Pakistanis see the higher courts as being too politically influenced and thus biased. Although my research subjects generally supported the current Chief Justice's judicial activism, this was more out of disgust with the benign role the Court previously held in government than a belief that judges do or should have the power to act in that way. Most lawyers that I spoke with approved, at least in theory, of the Supreme Court's attempt to reform government by investigating corrupt politicians, but they were equally concerned that the



court was overstepping its constitutional powers and losing touch with the needs of the people. Similarly, although many lawyers supported the 2007 Lawyer's Movement and the reforms it led to, most were equally concerned with the often violent and illegal behavior that has made Pakistani lawyers famous around the world. All of these problems reduce state and institutional legitimacy and serve to uphold the status quo.

*iii. Anti-Corruption Efforts: The National Accountability Bureau*

In the 2013 CPI Pakistan had a score of 28 out of 100.<sup>240</sup> This score tied it for the 127<sup>th</sup> most clean country in the world, an honor it shared with other bastions of transparency such as Russia, Azerbaijan, and Bangladesh. This ranking was, however, an improvement from the previous year, when it received a score of 27 and was ranked 139<sup>th</sup> out of 174. Due to these poor rankings, the proliferation of corruption-related media articles about Pakistan, and its strategic relationship with powerful states throughout the globe, Pakistan has in recent years funneled considerable amounts of money into its domestic anti-corruption agency, the National Accountability Bureau (NAB). While corruption-related prosecutions have increased in recent years in Pakistan, an overview of the structural problems related to NAB highlight how the CPI's ranking system leads to misguided and ineffective programs in home countries.

Like nearly every domestic anti-corruption agency, NAB suffers from a lack of funding, too few resources, and an unrealistic oversight structure that leaves its officials subject to decisions made by some of the very same people it is meant to investigate. Its decisions are often made strictly along political lines, which in practical terms means that every few years most cases are pushed aside and new politically important (or less

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<sup>240</sup> "Corruption Perceptions Index 2013," *Transparency International*, 4, <http://cpi.transparency.org/cpi2013/>.

politically sensitive) cases take their place. But beyond all these concerns, the internal investigative structure of NAB is problematic because by law it is only empowered to investigate corruption that can be defined in monetary terms, and thus NAB's main (and often only goal) is asset recovery.

An example of the NAB case process highlights these concerns: first, a complaint is brought, generally from outside government, and, if it can be verified by NAB officials, (i.e. the complainant provides enough legitimate proof of missing funds that NAB believes the complainant) NAB then writes to the accused and offers them a chance to return some or all of the money voluntarily. This is called voluntary return. If the accused declines to do so (or simply ignores NAB, which is more often the case) the inquiry process begins, which is where NAB pursues its own investigation into the matter to gather more proof. Once sufficient proof has been established, or rather once it is more than 50% likely that NAB can get a conviction, NAB contacts the person again to propose a plea bargain. In nearly all cases the plea bargain contains only 2 things: the willingness to return the amount of funds that NAB can prove were taken, along with some administrative slaps on the wrist (can't run for certain offices for certain period of time, unable to borrow money from the government, etc.). If the person refuses to go along with the plea bargain, and the evidence is strong enough (at this point NAB is looking for a near certain chance of conviction) then NAB lawyers present the case to the courts and asks for a criminal prosecution. At any point in this process the accused can voluntarily return the stolen funds with no questions asked and the investigation is completely stopped. And, of course, every step in the process is subject to political oversight, and NAB officials told me that they would not bring cases that they felt would

be thrown out of court for political reasons. Finally, NAB is not authorized to investigate corruption related to military officials, and they admit to fearing the judiciary's power; NAB officials directly told me that they would not investigate judges regardless of proof because it would be counterproductive. Finally, any complaint of corruption that did not come with proof of financial corruption (i.e. a complaint about unfair distributions of government contracts, meritless appointments or promotions, or even extensive influence peddling) were considered "frivolous" and outside the scope of NAB's mandate.

This structure offers little incentive for those accused of corruption to cooperate with investigations, and it certainly does not make would-be corrupt officials fear repercussions a NAB investigation. Similarly, the general public seems to think NAB is having little to no effect. Yet despite these concerns NAB officials are quite proud of their work and seem to believe that they do not need external support.

## CHAPTER VI

### CONCLUSION

My intent is to reframe corruption as a legal problem that inhibits the rule of law and promotes violence. Countless research agendas have created extensive literature surrounding bribery and the effects that ‘kleptocracies’ have on the economic and human development of their people.<sup>241</sup> There are, of course, numerous examples of these types of corrupt officials, and their negative impact cannot be denied. Yet I argue that this emphasis is narrow and misguided. More specifically, I argue that the focus on corruption as an economic and state-based problem helped spur policy-reforms, research, and development programs that focused too narrowly on measuring and combating one type of corruption: state officials extracting wealth from foreign governments and aid organizations through bribery, complex permitting schemes, or simply raiding the state coffers. This, in turn, favored those most damaged by this type of corruption, namely the multinational corporations, banks, and national or international development organizations whose work was inhibited by bribes, excessive regulation, and related issues. At the same time, the blame for continued underdevelopment was shifted away from the failure of international policy and onto corrupt and backward local leaders. The rhetoric and policies that flow from this narrow and misguided corruption paradigm provided further support to the often-critiqued but still entrenched development dogma; some countries are “poor”, “underdeveloped”, “backwards” and “corrupt” while others are “developed”, “modern”, “sophisticated” and built on a “legitimate” system of laws

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<sup>241</sup> Any of the previous scholarly works referenced in this thesis discuss the negative effects of corruption, but *see also*, e.g. Dawit Kiros Fantaya, “Fighting Corruption and Embezzlement in Third World Countries,” *Journal of Criminal Law* 170-176.

and institutions. This perspective puts all the blame for the problem on local leaders in developing countries while giving responsibility for the solution – and the expertise needed to find a solution – to the dominant Western development organizations.<sup>242</sup>

Corruption is an extremely sensitive problem in most countries, one that is at once both ubiquitous and amorphous. It is incredibly hard to define, measure, and combat. Transparency International (TI), the first and perhaps most important international anti-corruption organization, has led the way in the development of corruption-related research, methodological tools, and advocacy. Through the development and dissemination of reports such as the Corruption Perceptions Index, Transparency International has brought the corruption debate to the forefront of international law and development discussions. Good governance and anti-corruption reform, once a side-note to policy discussions, are now regularly included as parts of international and bi-lateral development programs. This was a positive step for the anti-corruption debate, yet it is a step built on a shaky and overly simplistic foundation.

Misguided approaches lead to flawed methodologies and an emphasis on the wrong data; this in turn leads to a misunderstanding of the problem, which later leads to ineffective or unrealistic laws and anti-corruption institutions. This is the problem with the CPI. I am not arguing that measuring perceptions is the wrong model – corruption is incredibly hard to measure in any form. Rather I argue that if we measure perceptions we cannot simply focus on the perceptions of elites (businessmen, academics, and policy makers) because this will necessarily skew the results and lead to the creation of laws that simply benefit those elites by combating the corruption they are most concerned about

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<sup>242</sup> Sundhya Pahuja, “Global Poverty and the Politics of Good Intentions,” in *In Transition: Human Rights, Development, and Restorative Justice*, eds. Ruth Buchanan and Peer Zumbansen, *Law* (Oxford, UK: Hart Publishers, 2011).

(e.g. by creating anti-corruption agencies designed as asset recovery tools). This is especially problematic if countries are ranked based on the perceptions of foreigners; if corruption is so detrimental to the daily lives of Salvadorans and Pakistanis, we should be measuring *their perceptions* of how corrupt their government is. Instead, reports like the CPI measure the perceptions of local and foreign elites who have different interests than the public, and then use those perceptions to rally support among the masses - by creating *misperceptions* of corruption - for policy changes that ultimately will not affect their daily lives.

Scholars and policy-makers that attempt to study corruption often do so because corruption is seen as detrimental to economic development, state legitimacy, violence and the rule of law in all countries.<sup>243</sup> Yet the framework they use, including the reliance on reports such as the CPI, is misguided and needs to be reformed.<sup>244</sup> I argue that the current CPI methodology does far more to shape perceptions and reinforce stereotypes within and across populations than it does to promote a uniform understanding of pre-existing perceptions about corruption in various countries. Thus, it is not surprising that the anti-corruption agencies created in the late 1990s and early 2000s are already receiving criticism for lack of effect (e.g. NAB in Pakistan). Misguided laws or legal institutions lead to unimpressive results and often-unexpected negative effects; law and development scholars know this all too well. This analysis of the CPI shows why it is (perhaps unfortunately) time for corruption scholars and policy makers to come to the same understanding about their work.

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<sup>243</sup> See, e.g., Fisman and Miguel, *Economic Gangsters: Corruption, Violence, and the Poverty of Nations* (Princeton, NJ: Princeton University Press, 2008).

<sup>244</sup> Brown and Cloke, "Neoliberal Reform, Governance and Corruption in the South: Assessing the International Anti-Corruption Crusade," 273-291.

### *A. SUGGESTIONS FOR REFRAMING THE DEBATE*

The goal of this research is to critique the mainstream anti-corruption debate by showing how ineffective policies stem from a limited understanding of the corruption's nuances. In some ways this critique is not new, as it parallels many critiques of international development efforts throughout the past half-century; built on good intentions and supported by international experts with degrees and experience, millions of dollars spent and years of effort extolled implementing policies often leads to unimpressive results. For the apologists of the dominant perspective, these results are explained by blaming local leaders or even entire societies for their failure to properly implement the otherwise strong economic and political policies provided to them. To these scholars and corruption 'experts', corruption is nothing more than a result of an imbalance in economic incentives coupled with over-regulation. This perspective treats corruption as solely a financial crime that is often synonymous with bribery. Reducing the size and strength of government while increasing transparency mechanisms will reduce rent-seeking opportunities and maximize chances that free trade and foreign investment will lead to economic growth. Yet this takes time, so countries can and should create anti-corruption institutions (often built with money from international donors) that are tasked with publically exposing corrupt behavior and seeking to recover assets from those who plunder the state. Those who espouse the dominant perspective believe that these two broad sets of actions will reduce corruption while simultaneously increasing economic and political development in even the most "backward" of societies.

This view is inadequate for at least three reasons, as has been shown by the examples of El Salvador and Pakistan. First, corruption varies in definition, form, and extent, yet at the same time it is a very moral and political problem; it ignites emotions and informs deeper understandings of the state-citizen relationship. The dominant perspective fails to consider how people define corruption within their own nation, culture, or even social group. Thus, defining corrupt behavior according to economics and legality may be valuable for standardization but often risks missing the point in individual contexts. For example, in many places in the world patronage is very different than bribery and lobbying seems like a legal form of extortion. I argue that any international effort to combat corruption must first consider re-defining the term. Granted, scholars and international organizations will likely not be comfortable combating a problem that is not or cannot be given some form of universal definition. Nonetheless, corruption can still be defined broadly enough to encompass a wide-range of acts that in any given context may or may not be considered corrupt by the local population. For this purpose I propose a defining corruption as “the abuse of trust by an individual or organization in a position of power that often, but not always, is in return for a pecuniary or other personal gain.” This definition is broad enough to include both public and private actors, and it could be expanded or contracted based upon local perceptions of what constitutes corrupt behavior. The focus is on trust, not money, which allows for a flexible approach defining the term based upon what makes corrupt behavior “bad” in a local context. This type of definition would allow each region, country, or even locality to choose which behavior they believe to be corrupt and initiate policies to prevent, detect, and punish such actions.



Second, the dominant perspective is built upon the foundation of tenets of neoliberal economics, a theory that has is no longer taken as the gospel truth. Limiting the size and strength of government often simply creates new incentives and avenues for corrupt behavior, and transparency mechanisms – despite their lofty goals – fail to address underlying societal problems that lead to corrupt behavior in the first place. Furthermore, the belief that economic or even political growth will necessarily limit corrupt behavior has been shown to be false; while many advanced, wealthy countries experience lower levels of corruption than many nations still struggling with economic and political underdevelopment, this does not prove causation. In some “clean” countries, such as the United States, behavior that was once considered corrupt (and still is considered that in other countries) is simply legalized and regulated alongside other normal government functions. Similarly, the “cleanest” countries are not those with the most limited government but nearly always include Scandinavian and other democratic-socialist states that certainly do not follow the “lean government” model. Therefore, anti-corruption platforms must be tailored upon the specific economic and political conditions of the state in which they are being implemented. In some cases anti-corruption efforts will require limiting the extent and role of government, yet in other cases anti-corruption efforts may require expanding and strengthening an otherwise ineffective bureaucracy. The latter will be especially true in countries that suffer from extreme underdevelopment, lack of resources and technology, or violence and civil conflict.

Third, anti-corruption institutions must be tailored to address the type of corruption that is most detrimental to the society in which the institution works. While there will always be political and economic limitations to any anti-corruption work, this

should not justify narrowing the mandate of an anti-corruption agency so much that it is essentially a toothless collections agent (e.g. NAB in Pakistan). If an anti-corruption agency does not have the political or financial support to conduct investigations and prosecute individuals it should focus its efforts elsewhere. For example, creating educational campaigns and working to increase civic engagement (e.g. TEG in El Salvador) may seem limiting and/or counter-productive to current corruption-related crises, but I argue that in the long run these programs will have a stronger effect than basic asset recovery mechanisms as practiced by NAB. This is because NAB's limited abilities and narrow mandate does little to change the culture of corruption in Pakistan; in fact, it may be part of the problem because it adds further support to the wide-spread cynicism related to fighting corruption and punishing corrupt officials. Sometimes, publicizing a minor slap on the wrist may actually limit deterrence by reinforcing stereotypes about how powerful people are untouchable. This was certainly the perspective I witnessed in Pakistan. Therefore, NAB either needs to be given a broader mandate so that it can actually investigate and punish corrupt officials or it needs to redirect its focus towards understanding and shaping public perceptions of corrupt behavior in the way that TEG does. In an ideal world, anti-corruption agencies would be able to do both, but until that happens each agency need to be focused around mandates that are politically possible and economically feasible in their own unique local context.

#### *B. SUGGESTIONS FOR FURTHER RESEARCH*

One of the key goals of this research was to better understand the link between corruption and violence so as to support the argument that corruption – or at least high perceptions of corruption – limit respect for the rule of law. Unfortunately, my research

was not sufficient to establish this link unequivocally. This may involve research into how corrupt societies perceive their judicial systems to be, which may be particularly important in post-conflict countries confronting serious human rights problems.

Tolerance of corrupt behavior, or cynicism about the possibility of curbing corrupt behavior, may clearly lead to a generalized distrust of government and willingness to break the law; in many cases this may encourage violence at the individual, societal, or even international level. However, my research did not solidify this connection to the extent that I had hoped, and thus more research needs to be completed to better understand the relationship between corruption and violence in individual societies. As stated above, this correlation was evident in El Salvador but less so in Pakistan, although I believe that some of this was due to time limitations and other research constraints (e.g. the geopolitical and security concerns surrounding the timing of my Pakistan trip, my inability to speak Urdu, etc.). I believe that drawing connections between corruption and violence is necessary both for a clearer understanding of the problem and for creating the political will necessary to combat it. If corrupt behavior was linked to violence, civil conflict, and even terrorism it may improve the public and political motivations for combating it. Many people are simply resigned to the fact that the rich get richer, the powerful stay powerful, etc. and I believe that this is why there is often limited support for – or faith in – individual anti-corruption efforts. However, if a clear link was drawn between corruption and impunity and the violence that effects large numbers of Salvadorans and Pakistanis, for example, there may be a stronger push from both the public and political leaders to devise solutions and combat this behavior. Much

more research needs to be completed on an individual country basis to understand how this complex yet widespread problem manifests in different environments.

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