

Corruption and Human Security: Prepare for the Rainy Day or be Prepared to Drain the Swamp

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Abstract: *The paper makes three central arguments: First, sudden influxes of official development aid into countries with unprepared governance institutions hinder their long-term economic and structural development. I analogize to the "resource curse" of countries rich in natural sources that cannot effectively absorb newly realized resource rents stemming therefrom, highlighting recent international experience in this regard; Second, "raining" significant development aid on an economy before helping it develop basic capacity (i.e., competence) to govern is not only counter-productive, but is corrupting. In such cases, the aid is, in effect, a supply-side appeal to (and institutionalization of) monopolistic rent-taking tendencies. Thus, the aid does long-term damage to the country by perverting its governance system and converting localized petty corruption into institutionalized grand corruption – corruption that is difficult (or impossible) to reverse through traditional anti-corruption campaigns. Third, in situations where official development aid has induced the institutionalization of grand corruption, traditional cleanup efforts – focused on ex ante public awareness, anti-corruption committees, and punitive sanctions – have proven to be virtually worthless. Therefore, in cases of grand corruption institutionalism, rather than focus on ineffective punitive sanctions, I propose ex ante anti-corruption cleanup efforts concentrate on regularizing the rent taker's future behavior. Such inducements to regularization could include amnesty programs designed to bring the underground economy into the open.*

Keywords: *development assistance; aid; natural resources; human rights; international law*

*Blow, winds, and crack your cheeks! rage! blow!
 You cataracts and hurricanoes, spout
 Till you have drench'd our steeples, drown'd the cocks!
 You sulphurous and thought-executing fires,
 Vaunt-couriers to oak-cleaving thunderbolts,
 Singe my white head!
 And thou, all-shaking thunder,
 Smite flat the thick rotundity o' the world!
 Crack nature's moulds, all germens spill at once,
 That make ingrateful man!*

“When you’re up to your (neck) in alligators, it’s hard to remember your mission was to drain the swamp.”²²

Introduction

In 2011 non-military foreign aid from official sources (i.e., Official Development Assistance, or “ODA”)³ to developing countries amounted to \$133.5 billion, up from \$128.7 billion in 2010.⁴ And – for the period of 1995 to 2009 – it exceeded \$1.6.5 trillion (measured in 2009 dollars).⁵ Supporters of this type of aid have argued that it has been critical for worldwide economic development, poverty alleviation, and health improvement.⁶ Similarly, in the context of debating the proposed nature of the post-2015 Millennium Development Goals (MDGs), they have argued that this aid should be increased.⁷ However, whether it has *generally* promoted economic development and welfare, or enhanced human security, has been the matter of much academic⁸ – and political⁹ – debate. While this paper does not *directly* engage this debate, it does suggest that the way in which official development assistance has routinely been administered has had a corrupting influence on the societies in which it has been administered and, when left uncorrected, has inevitably led to grand corruption. In short, this paper argues that raining significant amounts of financial aid on the ill-prepared ground of ineffective local governance institutions inevitably leads to damaging floods for which only the most organized – and corrupt – are prepared to benefit. The greater the rain, the greater the flood, the greater the damage. And, once irreparably damaged, options for mitigating the damaging effects are few; so few that only the corrupt may be in any real position to mop up the mess.

Official Development Assistance (“ODA”)

Throughout the Cold War, western-funded bi-lateral non-military foreign aid was primarily linked to security-driven geo-political calculations, vice ideologically based social and economic development strategies.¹⁰ However, since the early 1990s, security-driven systemic foreign aid goals have *gradually* begun giving way to more ideologically focused state-centered models of development.¹¹ These state-centric development initiatives substantially increased following the unsuccessful structural adjustment programs initiated in developing countries by international financial institutions during the 1980s;¹² as well as in response to the adoption of the 2002 United Nations (UN) Millennium Declaration and its operationalizing Millennium Development Goals (MDGs),¹³ designed to attain certain development and poverty eradication benchmarks by 2015.¹⁴ It is in the context of this shift in emphasis to development, as well as in response to the substantial increase in the amount of post-Cold War ODA being administered,¹⁵ that a virtual cottage industry arose evaluating the putative (in)effectiveness of international aid practices.¹⁶

One result of these myriad studies – and the international conversations they have provoked – has been an incremental shifting of aid administration ideology, leading to an increasing consensus that “good governance”¹⁷ is fundamental to the successful allocation of development aid.¹⁸ As a result, model foreign development aid policies have recently begun undergoing reconsideration and revision,¹⁹ as evidenced by the wide endorsement of international standards of practice, such as found in: the *Monterrey Consensus on Financing for Development* (2002);²⁰ the *Rome Declaration on Harmonization* (2003);²¹ the *Paris Declaration on Aid Effectiveness* (2005);²² the *Accra Agenda for Action* (2008);²³ and the *Busan Partnership Statement* (2011).²⁴ Taken together,

adoption of these standards will ultimately require fundamental shifts in the way donors manage aid; particularly with regard to conceptualizing local governance capacity development.²⁵

Given this recent attention to good governance, we are currently seeing early indications that some states and global institutions are *beginning* to be more selective in their aid allocations;²⁶ with a *gradual shift*²⁷ toward requiring some level of good governance within developing countries as a prerequisite for receiving development aid.²⁸ This said, geo-strategic security and commercial motives continue to matter for many donors.²⁹ In fact, recent studies indicate that large bi-lateral aid disbursements *continue* to be determined – at least partly – by the commercial and political self-interests of individual donor countries. One recent study, for example, found that the United States, France, Japan, and certain other major donors, were continuing to make their aid allocations based primarily on their own trade-related interests, vice demonstrated determinations of basic recipient governance capacity. The report classified these countries as “egoistic donors.”³⁰ Another study found that, “the direction of foreign aid (has been) dictated as much by political and strategic considerations, as by the economic needs and policy performance of the recipients.”³¹ And yet another noted, “(i)t is widely agreed in the aid allocation literature that donors are not purely altruistic but also pursue self-interests by using aid as a means to promote exports and gain political support from recipient countries.”³²

Given these circumstances – and notwithstanding repeated calls from within the “international aid community”³³ for increased aid selectivity and/or conditionality³⁴ – it is apparent that with current geo-politics being *what they are*,³⁵ and with large-scale aid donors being *who they are*,³⁶ countries exhibiting poor governance and weak institutions³⁷ will continue to receive significant ODA.³⁸ In fact, as was highlighted in one recent study, it seems the world’s *most corrupt* countries may well *continue* receiving the *highest amounts* of foreign aid.³⁹ Therefore – unless donor aid administration policies, procedures and processes toward these countries improve⁴⁰ – if the current governance-blind ODA trend continues, it will come as no surprise if and/or when the results of these future development programs prove less than optimal. Instead, just the opposite will be true: as current economic studies of politically-motivated ODA-funded programs uniformly demonstrate, these types of programs will *continue* to cause reductions in growth in recipient countries and – in any case – will be universally “less effective than average” aid programing.⁴¹ Furthermore, unless aid practices change, the “tsunamis of cash”⁴² these programs will rain on unprepared economies and will continue to fuel rampant corruption⁴³ within recipient countries.⁴⁴ As such, while there is always *hope* that such future programing *might* do well – *without change this hope is simply aspirational*.⁴⁵

A. Inconclusive Economic Benefits of ODA on Intended

Beneficiaries: In fifty years of administering ODA, virtually no *disaggregated* macro-economic data has ever been made available regarding the actual *impact* of the aid on intended *beneficiaries*.⁴⁶ As a result, available studies do not empirically *prove* that any particular aid quality or aid practice is *directly* related to macro-economic effectiveness (i.e., growth).⁴⁷ Instead, studies examining the *indirect* relationship between foreign aid and growth – utilizing econometric analysis of cross-country (i.e., macro) data – are increasingly demonstrating that over the last half-century, development aid has either been economically ineffective,⁴⁸ or proof of its putative effectiveness has been “inconclusive or contradictory.”⁴⁹ In the meantime, while the findings of these macro-economic studies have proved to be (in the words of at least one commentator) “*sad*,”

there has been a growing body of research demonstrating that – on a micro level – *some individual* project activities have often been effective in achieving their *outcomes*. Regarding this “micro-macro paradox,” one observer has noted:

(This) paradox reflects the fact that the vast majority of micro-level studies (*i.e.* those focused on individual projects or programs) find aid to be effective, while a wide variety of macro-level analysis (*i.e.* econometric analysis of cross-national data sets) report aid to have negligible, no observable or negative impact. In other words, “many aid-funded projects report positive micro-level economic returns (and yet are) somehow undetectable at the macro-level” . . . There are two important conclusions to be drawn from . . . micro-level studies . . . The first is that aid certainly can and does work. The second is that these studies do not attempt to answer the general question “is aid effective?” Rather, they assume that sometimes it is and sometimes it is not, and try to identify the conditions and policies which lead to more and *less* effective results.⁵⁰

Thus, given the vagaries inherent in trying to answer the question of whether aid is effective, it may be more useful to ask three different questions: What are the main deterrents to aid effectiveness? Does ineffective preparation to overcome these deterrents create long-lasting harm? And, if so, how should the international community help local governments mitigate the damaging effects?⁵¹

B. Conclusive Negative Impact Of ODA on Economic Growth and Local Governance Development:

a. The Natural Resource Curse: Theoretically, countries with abundant natural resources should have greater opportunities for economic growth than their resource-constrained counterparts.⁵² However, for at least two decades, economists have routinely empirically demonstrated that the presence of abundant natural resources generally produces negative economic growth,⁵³ lower incomes,⁵⁴ and weaker political institutions,⁵⁵ as compared to economies without similar resources.⁵⁶ Furthermore, the rent seeking behavior produced by these resources often degrade local governance capacity,⁵⁷ as well as help create more authoritarian political regimes,⁵⁸ institutionalize corruption⁵⁹ and – in some cases – lead to physical conflict⁶⁰ and civil war.⁶¹ The connection between these negative consequences and natural resource abundance has been labeled the “resource curse.”⁶²

b. The “Unnatural Resource Curse” - ODA: As with natural resources, empirical studies examining the macro-economic benefits of official development aid on intended beneficiaries have also been “discouraging.”⁶³ One reason for this is that large influxes of development aid have routinely been shown to “fuel” corruption.⁶⁴ This, of course, has implications for the donor community, particularly with regard to its willingness to make future contributions in a resource-constrained economy. Meanwhile, there is increasing evidence that the administration of aid has been detrimental to the *social and economic development* of

the countries in which it has been administered. In short, recent studies demonstrate that, “(f)oreign aid provides a windfall of resources to recipient countries and may result in the same rent seeking behavior as documented in the ‘curse of natural resources’ literature. Therefore, there may be also the ‘curse of unnatural resources.’”⁶⁵ One may reasonably conclude, therefore, the greater the aid, the greater the curse.⁶⁶

In their seminal study, “*The Curse of Aid*,” economists Simeon Djankov, Jose Garcia-Montalvo and Marta Reynal-Querol, examined data from 108 recipient countries receiving ODA during the period of 1960 to 1999. They found that natural resources and foreign aid shared a common characteristic: they could be appropriated by corrupt politicians without having to resort to unpopular, and normally less profitable, measures like taxation.⁶⁷ As a consequence, not only did foreign aid reduce growth and increase rent-seeking corruption, but it also had a net negative impact on democracy. In fact, they concluded that foreign aid was “a bigger curse than oil.”⁶⁸ In explanation, the authors theorized that high levels of aid made it more difficult to solve the “collective action problems” inherent in reform efforts, and created “moral hazards” for both recipients and donors by perpetuating “soft budget constraints” and a “tragedy of the commons” problem with regard to future budgeting, thereby weakening the development of local pressures for accountability and reform.⁶⁹ In extreme cases, the extent of large-scale aid-inducing rent seeking activity could lead to civil conflict.⁷⁰ Thus, they concluded: “This is not to say that promoting democracy should be the objective of foreign aid. However . . . at a minimum donors and international agencies should abide by the Hippocratic oath: do no harm.”⁷¹

Notwithstanding cautionary admonitions about “doing no harm,” it appears the international aid community – particularly its major donors – are not generally improving their foreign aid administration practices.⁷² In fact, if anything, current studies report a declining trend regarding the on-going effectiveness of aid development programs *vis-à-vis* recipients’ growth and democracy.⁷³ For example, a 2012 economic impact study examined the effectiveness of foreign aid in improving governmental institutions in 52 African countries. The study’s findings suggested that – for the period between 1996 and 2010 – development assistance generally continued to have a deteriorating impact on recipient government quality, dynamics of corruption-control, political-stability, rule of law, regulation quality, voice, and accountability and government effectiveness.⁷⁴

While these findings should give the international aid community cause for reflection, all may not be bleak; a number of *other* studies have shown that while *general* economic development aid has demonstrated little or no positive effect on democratic consolidation, *targeted democracy and governance aid has consistently shown itself to produce a positive effect on democratic consolidation and corruption abatement.*⁷⁵ In short, recent studies demonstrate that strong governance institutions can and do make a significant difference regarding the effectiveness of aid; they can and do make a difference regarding corruption mitigation and abatement; they can and do make a difference regarding democracy development. Furthermore, where such institutions

are lacking technical assistance to improve them can and does work, so long as local governance institutions are systematically and carefully strengthened *before* significant ODA pre-maturely flows in⁷⁶ and permanently degrades them.⁷⁷

Regarding Corruption

A. Definitions of Corruption: When examining corruption in the context of development aid administration, one significant difficulty quickly arising is that corruption's definition within the economic, political science, and legal literature varies widely, a fact certainly explaining the varying "modeling and measuring" criteria utilized in the findings resulting from academic studies.⁷⁸

a. General Definition: Professor Arvind Jain has written extensively on the subject of corruption and commented that, "almost everyone who writes about it first tries to define it." He found these various definitions conflicting, but nonetheless concluded there was at least *some* consensus among scholars and practitioners that corruption *generally* referred to acts in which the power of public office was used for personal gain in a manner that "contravened the rules of the game."⁷⁹ Thus, focusing on public officials, he described corruption as involving the use of powers delegated to them by the public to, "further their own economic interests at the expense of the common good." "If discovered," he said, "these activities would, at worst, be considered illegal and, at best, entail strong public disapproval."⁸⁰

b. Petty and Grand Corruption: Working within this general definition, Jain and others have emphasized that at least two sub-categories of corruption can be identified:⁸¹ "bureaucratic (or petty) corruption," involving corrupt acts of appointed bureaucrats when dealing with their superiors (i.e., political elites) and/or the public; and "grand corruption," involving acts of political elites through which they exploit their power to make economic policies.⁸² Petty corruption usually involves bureaucrats taking bribes from the public as a *quid pro quo* for providing bureaucratic services to which the public is *already* entitled - or taking bribes to perform services for which the public is otherwise *not* entitled. In the case of grand corruption, however, political elites in positions to change national policies to serve their own economic and/or political interests use this power to make resource allocations that serve their personal interests. In such circumstances, public spending is often diverted to those sectors where gains from the corruption will be greatest and little attention is paid to the needs of the collectivity. This type of corruption is difficult to identify and measure, but undoubtedly creates the most serious negative consequences for a society, particularly in extreme situations where political leaders make little distinction between their own wealth and that of the state.⁸³

While petty corruption often occurs during routine business activities or ordinary life,⁸⁴ and while societies *do* pay a price for this type of "grabbing" activity,⁸⁵ grand corruption – involving, as it does, political leaders and their close associates in positions where they are able to award major contracts, concessions, and the privatization of state enterprises – impose larger costs on ordinary people by diverting funds to top political leaders in exchange for sweetheart deals with big

foreign and domestic businesses.⁸⁶ “Consider the officials’ decision calculus,” observes corruption expert Susan Rose-Ackerman, “(c)orrupt rulers favor capital intensive public projects over other types of public expenditures and will favor public investment over private investment. They will frequently support ‘white elephant’ projects with little value in promoting economic development.”⁸⁷

One outcome of this rentier *modus operandi* is that it creates perverse incentives for public officials working throughout their governments’ various bureaucracies to become corrupt. Simply put, corruption is “contagious.”⁸⁸ Thus, given what they see happening above them, and knowing that the rule of law is non-operative in their jurisdictions, public employees may be tempted to either abscond with monies under their own control, or stand by and watch as funds are either stolen by others or wasted on virtually worthless public works projects.⁸⁹ The choice for many is simple: take the money. However, once this type of contagion catches on, it has a cascading effect on others, societal grand corruption ensues, and the corruption problem becomes socially “sticky;” meaning it may *never* go away.⁹⁰

The situation in Afghanistan reflects but one implication of this type of “stickiness.” As highlighted in a April 2013 report issued by the U.S. Special Inspector General for Afghanistan Reconstruction (SIGAR),⁹¹ after more than a decade of receiving billions of dollars⁹² of (admittedly ill-planned,⁹³ ill-managed,⁹⁴ and uncoordinated⁹⁵) official development assistance from the international aid community, the Afghan government *still* lacks the institutional capacity to effectively manage the money pledged to it by the international community. This is particularly troubling given that most of these “direct assistance funds” will undoubtedly be subjected to less oversight than funds provided through projects directly implemented by U.S. and other donor government agencies. As a result, considering what SIGAR referred to as, “the pervasiveness of corruption in Afghanistan,” not only has much of the international aid community’s past funding been squandered, but in all likelihood its *future* funding will similarly not achieve its intended purpose – to help the people of Afghanistan.⁹⁶

The *bottom line* is that “raining” millions – or billions – of development aid dollars on economies before even beginning to help them develop the basic institutional capacities to effectively and legitimately absorb the money inevitably leads to grand corruption; and grand corruption, which inevitably endangers human security and development.⁹⁷ This is, perhaps, something worth keeping in mind as we consider the future of development assistance.

B. Notional Worldwide Scope of Corruption: In order to discuss the scope of the corruption problem, one should have at least *some* approximation of the size or scope of the worldwide “corruption industry.”⁹⁸ However, given the hidden nature of corruption in general, and grand corruption in particular,⁹⁹ official estimates are virtually impossible to obtain and unofficial estimates are inherently unreliable.¹⁰⁰ This said, various semi-authoritative *indirect* measurements of corruption-related phenomena *do* exist, giving *some* insight into the scope of the overall problem.¹⁰¹

a. With regard to petty corruption, aggregated enterprise and household surveys seeking quantitative estimates of petty bribery have recently allowed economists to make reasonably accurate worldwide extrapolations of the phenomena. The findings of these calculations are staggering: the annual value of worldwide transactions tainted by petty corruption – i.e., situations not involving budgetary leakages or asset thefts from within the public sector – is estimated to range between \$600 billion and \$1.5 trillion;¹⁰²

b. Public officials receiving such bribes and/or siphoning-off state/development aid assets seldom pay tax on these “earnings.” Therefore, recent tax evasion studies provide insight into the prevalence of corruption in developing countries. One report, issued by the Tax Justice Network (TJN), found that as of 2011, approximately \$21-32 trillion had accumulated in untaxed offshore wealth; of this amount, approximately 25-30% (i.e., \$5.3–9.6 trillion) was thought to be from developing countries. The TJN concluded that *each year* developing countries probably lost more in *interest* on this missing tax capital than they lost to new capital flight;¹⁰³

c. With regard to money laundering, NGO studies examining illicit capital outflows from the developing world have also provided at least some insight into the corruption industry. For example, a December 2012 study, conducted by Global Financial Integrity (GFI), analyzed illicit financial flows from developing countries between the years 2000 and 2010. Utilizing a World Bank Residual model, it concluded illicit financial flows cost developing countries approximately \$5.86 trillion during the decade, and for the year 2010 GFI estimated illicit flows ranged between \$783 billion to \$1,138 billion, up significantly from 2009. The report opined, “(w)hatever strengthened financial regulations may be in place or may be contemplated cannot yet be seen to have an effect on the continued passage of funds out of poorer countries, through the global shadow financial system, and ultimately into richer western economies”;¹⁰⁴

d. In addition to the lost opportunity costs incurred through this type of capital flight, there may be other pernicious consequences, such as debt. As noted by the European Network on Debt and Development (EURODAD), in a report it issued in 2013, “(i)llicit outflows are a major explanation for developing country debt.” EURODAD cited a 2011 study that found, subsequent to 1970, sub-Saharan Africa had lost approximately \$700 billion to illicit capital flight, dwarfing its outstanding debt of \$175 billion. The authors noted, “(f)or every dollar of foreign borrowing, on average more than 50 cents (left) the borrower country in the same year. This tight relationship suggests that Africa’s public external debts and private external assets are connected by a financial revolving door.”¹⁰⁵

Under the totality of the circumstances, public sector grand corruption may well be the greatest obstacle to development a fragile country faces. The cost is not simply the loss of funds, but a “profound demoralization of society at large.”¹⁰⁶ Public sector corruption directly affects economic growth by negatively shifting the allocation of public funds and indirectly affects growth by changing incentives, prices and

opportunities that entrepreneurs face. It dramatically and negatively affects investment levels,¹⁰⁷ income distribution, and state efficiency.¹⁰⁸ And it perverts the design and implementation of rules regulating access to in-country assets. In short, *how well* the government spends its resources – including its ODA funding – is significantly more important than how much or on what it spends its money.¹⁰⁹

C. Corruption as a Human Rights Issue: Corruption denies people a better quality of life, taking away vital food, medicine, education and support. Moreover, it always hits the poor the hardest.¹¹⁰ A 2009 International Council on Human Rights Policy (ICHRP) paper – jointly issued by Transparency International – made the case that *in addition* to being an economic and/or criminal law matter, corruption should also be addressed as a human rights issue.¹¹¹ In support of this contention, the ICHRP reminded readers that the term “corruption” derived from the Latin word *corruptio*, meaning, “moral decay, wicked behavior, putridity or rottenness.” Thus, the ICHRP argued that the legal and/or technical definitions of corruption needed to include the concept of, “(p)erversion or destruction of integrity in the discharge of public duties by bribery or favour.” Further, the ICHRP emphasized that numerous studies had demonstrated perversions of public integrity disproportionately affected the vulnerable and marginalised – women, children, and minority groups – who often suffered corruption’s harshest consequences. Likewise, in dealings with police, judges, hospitals, schools, and other basic public services, poor citizens tended to suffer more violations than the rich and see a larger share of their resources “eaten away.”¹¹² In short, the ICHRP concluded that where grand corruption prevailed, notwithstanding any *other* legal amelioration mechanisms that might be brought to bear, it needed to be addressed as a violation of International Human Rights Law.¹¹³

D. Corruption as a Human Security Issue: Meanwhile, there has also been increasing international recognition of the interdependent and mutually reinforcing relationships between the universal principles underlying the impetus to nurture human development, enhance the rule of law, promote democracy, respect for human rights, and the need to ensure peace and human security.¹¹⁴ Therefore, the on-going negotiations over the nature of the post-2015 Millennium Development Goal (MDG) framework provide an opportunity for the international aid community to develop targets that will reflect a more nuanced understanding of the challenges inherent in fostering human development, particularly with regard to the critical role peace and security play in that endeavor.¹¹⁵ Moreover, within the context of the post-2015 development goals debate, there is also the opportunity to consider the extent to which the concept of security may extend beyond laconic references to armed violence. In short, we in the development community have the opportunity to consider the inherent connection between human development and human security, as well as to comprehensively debate and define what we mean by those terms. In doing so, however, we should be mindful of the mutual obligations “the united nations” have under customary international law to advance the tenets of “the United Nations” Universal Declaration of Human Rights, particularly with regard to ensuring freedom from fear and want.¹¹⁶

Admittedly, human security – vice national security – is an evolving concept, but one that fundamentally seeks to place the individual, as opposed to the state, as the referent of the security. It does so against a background of evolving transnational norms relating to security and governance, as well as the development of scientific understanding that challenges orthodox conceptions of security.¹¹⁷ Its objective is to safeguard the “vital core of all human lives from critical pervasive threats, without impeding long-term human fulfillment.”¹¹⁸ In short, as noted in the 1994 UNDP Human Development Report:

The concept of security has for too long been interpreted narrowly: as security of territory from external aggression, or as protection of national interests in foreign policy or as global security from the threat of a nuclear holocaust. It has been related more to nation-states than to people . . . who sought security in their daily lives. *For many of them, security symbolizes protection from the threat of disease, hunger, unemployment, crime, social conflict, political repression and environmental hazards* (emphasis added).¹¹⁹

In keeping with the tenor of the UNDP Human Development Report, Shahrbanou Tadjbakhsh, Director of the Programme for Peace and Human Security at CERI, has written eloquently on the subject of human security and made a compelling case for taking a broad view of the concept’s definitional sub-components. He notes, in particular, that human security as a concept represents a redefinition of traditional understandings of security and development.

It entails:

- The recognition of new threats to security beyond those that are military, including factors such as underdevelopment and human rights violations;
- The recognition that efforts to provide security have to go beyond dealing with state governments to deal directly with the people concerned;
- The recognition that intervention can have positive effects, but that it can also have negative effects if not properly conceived and carried out.

Human security requires:

- The recognition of the interconnections between development, security and human rights;
- The adoption of multi-dimensional solutions based on an inter-disciplinary approach;
- Making use of academic research in the framing of policy proposals.

In short, human security provides a framework that, “puts individuals at the center of both analysis and action” and serves as a means to, “evaluate threats, foresee crises, analyze the cause of discord and propose solutions entailing a redistribution of

responsibilities.” Thus, human security is not only an analytic concept, but it signifies shared political and moral values.¹²⁰

With regard to inclusion of anti-corruption within the definitional context of the development, human rights, and human security agenda, former UN Secretary Kofi Annan has given voice to the international community’s increasing recognition that corruption causes enormous harm to people and respects no borders. He has categorically stated that corruption impoverishes national economies, threatens democratic institutions, undermines the rule of law, and facilitates other threats to human security, including organized crime and terrorism.¹²¹ It is, in fact, under the very backdrop of such international recognition of the interdependent connections between human rights, corruption, human development, and human security that the UNCAC arose as an instrument emanating from the recognition that *corruption is a problem of transnational human security significance*.¹²²

While recognizing that some *might* object to including human security as a specific post-2015 development goal,¹²³ it is, nonetheless, the position of this author to forcefully advocate for its inclusion in the post-2015 framework. Further, while some commentators *might* argue against including an amorphous concept such as anti-corruption within the definitional parameters of a specific human security-related development goal (perhaps arguing that its parameters would be too difficult to pin down), this author would simply note that regional security organizations and individual nation states – supported by academic studies¹²⁴ – have already begun defining and measuring corruption within a security context.¹²⁵ In so doing, they have already determined that corruption within “fragile states”¹²⁶ is a matter of grave international security concern, as well as a matter of national security significance for many individual countries. Likewise, individual countries, including, but not limited to, the United States, have reached this same conclusion, finding – through harsh experience – that corruption not only impairs the physical security and well-being of countless citizens, but substantially increases the probability that fragile states will degenerate into failed states – with all that implies in our inter-connected world.¹²⁷ Consider, for a moment, these recent regional security assessments:

- In the face of ethnic divisions, boundary disputes, politicised armed forces and deeply institutionalised corruption, most of the countries of **Southeast Asia** face serious problems in establishing stronger states, even though they are not now suffering from the intense competing foreign interventions of the Cold War;¹²⁸
- **Africa’s** irregular threat dynamics sustain black markets directly linked to state corruption, divert attention from democratization efforts, generate or fuel civil wars, drive state collapse, and create safe havens that allow terrorists and more criminals to operate. Combined with the inability or unwillingness of African governments to provide for public security, the result of these threats has been labeled a “retreat from the state” by large segments of African societies;¹²⁹
- Conflicts in the (**Latin American**) region today are related to the stability of democratic regimes, which may be threatened by weak political institutions and

the ability of non-state players to threaten governments, and in the level of corruption in the civil service;¹³⁰ and

- **Central Asian countries** suffer from limited or poor accountability in public decision-making and policy, pervasive corruption, smuggling, and drug trade, all of which serve the interests of the governing elites and undermine their willingness and ability to control security forces and border control agents effectively. Accordingly, governments find it difficult to implement their stated intentions to pursue the goals of improved border management, control of drug trafficking, and reduced behind-the-border harassment of private business and investors.¹³¹

The bottom line is that the current international security environment has prompted state and regional security officials to rethink their assumptions about corruption. And they have largely come to the conclusion that corruption is not a second-tier amorphous problem; it is a specifically definable (and treatable) problem of global strategic proportions.¹³² That said, the international security community has also (perhaps belatedly) come to realize that militarizing the problem is not the solution.¹³³ Simply put, the myriad complex issues surrounding human security – including corruption – require different modes of redress than those traditionally used in national security or international security frameworks. And the time to carefully consider the ramifications of this reality is *now*.¹³⁴

Under these circumstances, if the international security community can find ways to define *attainable* anti-corruption goals in an international security context, we in the international aid community should be able to do the same in a human security and human development context. Failing to do so during the on-going post-2015 development goals debate would be the squandering of an historic opportunity to help develop less kinetic, more nuanced, more sustainable, and *more development-oriented* approaches to sustainable human welfare.¹³⁵

Regarding Current Anti-Corruption Efforts:

A. Background: Ex Post Anti-Corruption Efforts Vice Ex Ante Prevention: Efforts to combat corruption are about as old as corruption itself.¹³⁶ Yet, at present, we still do not have solid disaggregated macro-level data regarding the relative effectiveness of most current corruption *reform* programs.¹³⁷ Instead, what we have are mostly anecdotal case studies describing *ex post* anti-corruption programming, most of which evidence “disturbing” results.¹³⁸ Simply put, the record (such as it is) indicates that *ex post facto*, anti-corruption efforts seldom work.¹³⁹ One reason for this is that – rhetoric aside – *sustained* international aid community commitment to address the matter has been “rather dubious,”¹⁴⁰ with anti-corruption efforts often being designed more with an eye toward placating donors than actually stemming systemic abuse.¹⁴¹ However, this lack of success may also be partly attributable to ignorance,¹⁴² owing to an underlying lack of knowledge regarding the actual causes, effects, and cures of corruption.¹⁴³ Alternatively, given the typically short-term duration of many donor-funded development and/or anti-corruption projects, it may simply be a lack of patience,

for while successful democracy development aid *may* reduce corruption in the *long-run*, it usually has little impact in the *short-run*.¹⁴⁴

B. Anti-Corruption Campaigns: Most traditional *ex post* anti-corruption campaigns are of the “one-size-fits-all,”¹⁴⁵ “rules-based” (vice principles-based and/or capacity-based),¹⁴⁶ “top-down” variety.¹⁴⁷ Thus, the approaches utilized typically emphasize (at least theoretically) law enforcement and regulation, with two underlying dimensions: repression, and limits on administrative discretion.¹⁴⁸ Repression has normally been conceptualized as being backed by severe legal penalties and increased probabilities of malfeasance detection. This type of approach is based on the theory that, “a fully rational, risk-neutral actor opts for criminal behavior if the expected benefit exceeds the sanction multiplied by the probability of being convicted;” thus emphasizing a “sober balancing of pros and cons.”¹⁴⁹ The second dimension of typical rules-based anti-corruption approaches – i.e., imposed limits on discretion – is usually based on the assumption that governmental corruption is enabled by public office holders exercising excessive leeway in carrying out their tasks and basing their decisions on monetary inducements rather than civic duty. Approaches for limiting such discretion often entail staff rotations, separation of functions, standardization of rules/procedures, internal/external audits, and etc.¹⁵⁰ As noted, these approaches seldom work.¹⁵¹ The reason typically given for such failures being *a lack of “political will.”*¹⁵²

C. Proposed *Pro Ante* Institution Building:

a. Political Will: As noted, most economic and political science research focuses on incentives, information, and enforcement as being the determinants or limitations motivating or deterring the corrupt practices that influence efficiency in resource allocation and welfare.¹⁵³ Key to this literature is the assumption that individuals face a choice between two different action modalities: production or rent-seeking.¹⁵⁴ Thus, the literature pre-supposes that *if* individuals have the *will* to act in non-corrupt ways – induced through adequate incentives or *disincentives* – *they will, in fact, act non-corruptly.*¹⁵⁵ However, while willingness may be a *necessary* predicate for relatively efficient, non-wasteful, and non-corrupt governmental administration, it is *insufficient* to predict such outcomes.¹⁵⁶ Instead, to achieve these outcomes, public officials must be both willing and able to perform.¹⁵⁷ As Derick Brinkerhoff, a Distinguished Fellow at the Anti-Corruption Centre, put it:

As the familiar phrase, “willing and able,” conveys, *will and capacity are closely connected* . . . (Scholars) note that country decision-makers’ assessments of their capacity to implement reforms influence their willingness to make upfront commitments. *Thus, what may look to outsiders like a lack of political will can be linked instead to insufficient capacity. The political calculus is, “best not to try if we aren’t sure we have the means to make progress”.* The simple fact is that pro-development aid and policy improvements require *cap(able)* institutional frameworks in order to be effective. Good economic policies, standing alone, are insufficient for productive development or corruption prevention. Thus,

*institutional reform is a fundamental precondition for effective corruption prevention and/or abatement.*¹⁵⁸

b. Pro Ante Anti-Corruption Programing: The World Bank confirms that an effective anti-corruption strategy requires – as a pre-condition – the development of basic governance capacity mechanisms through *multi-pronged* and *phased* interventions tailored “to the specific patterns of behavior and experience encountered in the setting towards which the interventions are being targeted.”¹⁵⁹ Co-authors Mirjana Stanković and Robert Sundberg have expanded on this theme and argued that any effective multi-pronged approach must recognize that, “corrupt systems need to be ‘healed’ via mainly *technical interventions* aimed at corruption’s *root causes* through an economics-based approach that incorporates ethics strategies as *one part* of a more *holistic* intervention.”¹⁶⁰ Therefore, they recommend moving away from “legislated ethics”¹⁶¹ anti-corruption approaches and toward anti-corruption activities that do not primarily rely on the “conscience of individuals.”¹⁶² In reaching this conclusion, they admitted that compared with most standard anti-corruption strategies “currently in vogue,” increasing the capacity, stature, and professionalism of government institutions, “which coexist or contain ‘corruption focal points,’ may not seem to be a dynamic or attractive course of action.”¹⁶³ However, they argued that “when institutions are built up in terms of training, normalized staff positions with adequate compensation, formal legal standing *vis-à-vis* other institutions and political leadership, and are given the legal and regulatory tools with which to effectively carry out their clearly defined responsibilities, such institutions may become effective mechanisms upon which other reform strategies may be based and which effectively tie together the entire, multi-pronged strategy.”¹⁶⁴

Admittedly, one recognizes that *in the real world* donor-applied pressure to immediately reduce levels of local corruption *may* leave little choice but to implement traditional rules-based anti-corruption mechanisms.¹⁶⁵ And, in some cases, these programs *may* have some marginal functionality.¹⁶⁶ But the ultimate ends to these means cannot and will not be justified unless culturally sensitive,¹⁶⁷ functionally sustainable,¹⁶⁸ *ex ante*, attention is also given to developing other institutional governance capacities that will serve to support the formal anti-corruption mechanisms, and do so by establishing the necessary *preconditions* for accelerating and sustaining growth. In short, while *ex post* curative measures might be expected to be a component of almost any externally-funded anti-corruption strategy,¹⁶⁹ excessive focus on *ex post facto* legal and institutional enforcement perspectives – at the expense of *ex ante* “whole of functional government” institutional development preventive approaches – will simply not work.¹⁷⁰

c. Pro Ante Governance Capacity Development – The Rest Of The Comprehensive Anti-Corruption Approach: Studies overwhelmingly demonstrate that in a development aid environment, capable institutions are necessary to support growth and stem corruption. *But what institutions?* As a 2008 study succinctly framed the issue, “whilst there are a multitude of studies showing the value of good governance, research remains to be done on what good governance really entails, what specific institutional forms that can follow from the

above mentioned basic norm, and how change from low to high QoG (i.e., “quality of government”) can be obtained . . . Thus, although research points to the value of achieving QoG, a “one size fits all” approach is likely not the way forward.¹⁷¹ So, the answer to the question, “what institutions?,” is: *it will depend on the circumstances found at the intervention location.*

Clearly, one must prioritize, but any effective anti-corruption approach will take more than simply setting up stand-alone anti-corruption agencies, training criminal law judges with formulistic rules-based criminal law materials, lecturing public employees about ethics, and/or providing awareness training to civil society organizations – all with a primary emphasis on punishment. It will take a *prioritized, phased, effective, sustainable and holistic* governance capacity development plan of action. And it will also take pragmatically-focused discourse – in concert with local partners – on the meaning and implementation of *both top-down and bottom-up*¹⁷² capacity-building approaches.

In short, as this author has previously noted, experience has shown that stand-alone sector-specific trainings (e.g. trainings of judges) are insufficient to create “rule of law societies.” In fact, when poorly timed, poorly coordinated, poorly conducted, and/or inadequately reinforced, they may actually be counter-productive. Instead, capacity building needs to be context-specific and more facilitative rather than interventionist. And yet, millions of dollars and years of effort continue to be expended on such means and mechanisms as military/contractor-driven anti-corruption and rule of law trainings of judicial and other law enforcement personnel. This must change.¹⁷³

Before initiating any plan of action, thoughtful assessment of local culture, capacities, needs, and resources must be undertaken – and done in conjunction with local partners. While it is beyond the scope of this paper to provide a thorough explanation of how such assessments should be conducted, suffice to say, there are any number of assessment templates that may be useful starting points.¹⁷⁴ However, caution is urged when relying on such pre-packaged tools. One reason for this has been highlighted by a number of capacity-development experts, including Harvard Professor Dani Rodrick, whose own studies have found that the international aid community’s predilection for trying to build local institutions based on putative international “best-practices” has been ineffective for at least two reasons: first, it has inevitably led to non-culturally specific, one-size-fits-all, approaches that have seldom gained local commitment and, therefore, have seldom worked; second, international best-practice mechanisms are often unsuitable and/or unsustainable in local contexts. Therefore, Roderick, *et al.*, have argued that the most appropriate institutions for developing countries are “*second-best institutions*,” those that take context-specific markets and government capacities into account. These institutions will often diverge greatly from theoretical best practices.¹⁷⁵

While “one-size-fits-all” approaches are to be avoided, experience has shown that with regard to the *types* of capacities and capabilities that should be considered and evaluated before initiating development and anti-corruption programs, one should

start with the commonly found “structural drivers of corruption” that often operate in developing countries. These drivers of corruption include:

- Deleterious property rights protection mechanisms;¹⁷⁶
- Inept regulatory schemes;¹⁷⁷
- Anemic managerial,¹⁷⁸ human resource management,¹⁷⁹ and operational planning practices;¹⁸⁰
- Ineffectual public administrative capabilities;¹⁸¹
- Inefficient and/or non-transparent procurement,¹⁸² contracting,¹⁸³ and logistical support systems;¹⁸⁴
- Arcane fiscal budgeting,¹⁸⁵ accounting, and audit capacities;¹⁸⁶
- Antiquated educational pedagogies,¹⁸⁷ including but not limited to law school teaching methodologies;¹⁸⁸ and
- Dickensque court systems.¹⁸⁹

Infestation with even a few of these institutional structural weaknesses portend that aggregate corruption will likely remain in the developing country. But the “raining” – or even worse – the “storming” of development aid onto such countries will simply swamp their nascent governance systems, inevitably exacerbating and structurally institutionalizing any indigenous corruption;¹⁹⁰ that is, unless *prioritized, targeted, phased, bottom-up/top-down and jointly planned/jointly executed, predicate institutional development strategies* are thoughtfully developed and executed.¹⁹¹ It is only through such collaborative processes that developing countries will be able to navigate around the structural drivers of corruption, fraud, waste, and abuse, and to do so in ways that will enable *sustained* economic development and create the necessary conditions for sustained improvement in good governance, public welfare and human security.¹⁹²

Until that happens, the current governance and anti-corruption agendas, supported by international agencies, will not achieve these results precisely because they do not identify the structural drivers of corruption or create feasible responses that are likely to improve development prospects in particular countries. More worryingly, by setting broad anti-corruption and good governance goals they may be doing actual damage by setting unachievable targets for developing countries and diverting attention from critical governance reforms.¹⁹³

In light of this situation, rather than repeating the admonition, first do no harm, one would be better served to recommend: **physician, heal thyself.**

Draining the Swamp: Amnesty in Return for Investment:

A. Asset Recovery Mechanisms – International Mutual Assistance:

Because local *ex ante* anti-corruption efforts seldom work in developing countries,¹⁹⁴ many in the international community maintain that “international mutual assistance” mechanisms, utilizing international-law-based civil asset recovery powers, in conjunction with the compulsion powers of criminal law enforcement agencies, can step in to help dam the tide of grand corruption.¹⁹⁵ This contention is ill-founded for at least three reasons: first, the current international legal regimen – lacking as it is in substantive enforcement capabilities – is structurally inadequate to meet the complex challenges faced by local nations and the international community in combating grand corruption; second, there is little evidence that the international community has the political will to *systematically* employ the even half-hearted international mutual assistance anti-corruption mechanisms currently available; and third, even if international mutual-assistance mechanisms were successful in (routinely) returning recovered assets to their intended beneficiaries, there is simply no reason to believe that any such assets – returned to same ill-prepared, ill-governed, economies from whence they were first rained (and appropriated) – would be any better utilized the second time around. Therefore, unless comprehensive remedial governance capacity-developments were undertaken before the recovered assets were returned to the intended beneficiary countries, the returned assets would *again* serve as “a supply-side appeal to (and institutionalization of) monopolistic rent-taking tendencies” still in place. Thus, alternative approaches to corruption abatement and asset recovery must be considered.

a. International Law: The case for the systematic application of international mutual assistance and international law to combat corruption is much in vogue. Admittedly, as a number of commentators have rightfully pointed-out, “great steps” have been taken over the last decade to establish an international legal regimen to combat bribery and corruption. These commentators routinely cite as examples thereof: the United Nations Convention Against Corruption (UNCAC), which came into effect on December 14, 2005; the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1977; and the Stolen Asset Recovery Initiative, launched jointly by the United Nations Office on Drugs and Crime and the World Bank in 2007.¹⁹⁶ However, while internally comprehensive, given current political and economic realities, systematic application of these laws is often unrealistic; consequently, they are simply incapable of stemming and/or ameliorating grand corruption.

The assumption underlying reliance on these legal mechanisms as a buttress against grand corruption appears to reside in logic similar to that espoused by Nicolò Machiavelli, who once observed, “(a)nyone who would order the laws of a republic must assume that all men are wicked . . . laws make them good.”¹⁹⁷ But Machiavelli was wrong.¹⁹⁸ First, as an instrument of coercion, law *alone* is insufficient to “make people good;” law requires *enforcement and enforcement requires political will*. In short, “force and enforcement are part of the very essence of legality.”¹⁹⁹ Or, as Abraham Lincoln once observed, “law without enforcement is only good advice.” However, as

it currently stands in the arena of anti-corruption, the invocation of *criminal liability* – normally a matter within the jurisdiction of national law – is subject to the same practical imitations as found in other state-based anti-corruption measures; to wit: the necessity of securing local political will.²⁰⁰ As we have seen, though, local political will to prosecute grand corruption is routinely lacking. Therefore, enforcement normally “boils down” to asset recovery, and asset recovery requires *international mutual assistance*. Unfortunately, the political will of the international community to provide this assistance is also *all too often lacking*.²⁰¹

Dr. Liliya Gelemerova, an asset recovery and money laundering expert, has observed that “bad money” often goes to “good countries,” much of it leaving developing countries and transiting through complex money laundering mechanisms on the way to the US, UK and elsewhere in the West.²⁰² Gelemerova noted that regardless of the complex mechanisms used to transit the money, once it found its way to the West, it seldom returned “home.” Instead stripped governmental and international development aid assets routinely remain in Western developed economies, *and not the developing countries where the assets belonged*.²⁰³ Because of this reality, Gelemerova concluded that the international asset recovery regimens had simply come “to little avail.”²⁰⁴

Others would concur. In fact, according to recent studies, the situation may be getting worse, for notwithstanding supposedly robust national and international asset recovery and anti-money-laundering legal regimens currently in place – including those found within the UNCAC – law enforcement agencies are reporting ever increasing volumes of illicit money being laundered.²⁰⁵ As a result, the fight against corruption in developing countries remains seriously hindered and there is “a wide gap between governments’ anti-corruption rhetoric and the impunity enjoyed by public officials.”²⁰⁶

One *potential* response to this situation would be to fortify international asset recovery and anti-money-laundering legal regimens. However, there are at least two seemingly insurmountable obstacles in doing so: first, given the history of its ratification, the international will to alter the current UNCAC framework appears tepid, at best;²⁰⁷ and second, as the current international legal regimen was never *conceptualized* to deal with grand corruption, it is ill-suited to the task.²⁰⁸ Instead, the current anti-money laundering and asset recovery systems were conceptualized to stem illicit narcotics activity, human trafficking and terrorism. They were simply not designed to impede financial crimes such as large-scale rent looting by political elites from developing countries, many of whom first gained access to the funds in question because of their geo-political importance to major international aid donors.²⁰⁹ Under the circumstances, the likelihood of the current international legal regimen being significantly altered so as to stand as a bulwark against grand corruption appears bleak,²¹⁰ an opinion echoed in a report issued by the U4 Anti-Corruption Resource Centre:

Our political economy analysis of UNCAC indicates that the Convention, with its preventive and criminal provisions, provides a basis

on which some elements of grand corruption could be addressed. UNCAC in fact provides a quite comprehensive view of areas that might be involved in grand corruption schemes: notably, it addresses public officials (including high-level bureaucrats and politicians), the private sector, and the international cooperation necessary to recover assets and fugitives. However, important provisions on criminal offences, asset recovery, and political corruption are arguably not strong enough nor clearly defined. Thus, our preliminary conclusion is that *UNCAC has just enough breadth, depth, and leverage to make corrupt elites uneasy, but perhaps little more than this*, as the Convention leaves considerable scope for undermining effective enforcement at the country level. With a strong focus on technical anti-corruption measures but significant weaknesses in providing for the more structural and potentially constitutional checks and balances of a national integrity system—most notably, independence of the judiciary and legislature—UNCAC has important limitations (emphasis added).²¹¹

As is the case with many national anti-corruption legal regimens, international political will to utilize asset recovery programs and asset repatriation is significantly lacking. Consider, for a moment, the 2009 findings of a study undertaken by the Basel Institute of Governance into international cooperation *vis-à-vis* asset recovery.²¹²

There is a large gap between the rhetorical commitment of many governments towards international cooperation in asset recovery matters and their actual willingness to make it happen. It has been argued that this discrepancy reflects unfavorable constellations of political and economic interests in both requesting and requested countries. The focus on commitment problems has revealed a central dilemma that must be overcome if the asset recovery agenda is to ultimately succeed. *In the absence of mechanisms that signal sustained credible commitment, international agreements, such as the UNCAC, will not be trusted and therefore remain ineffective . . .* In the absence of bilateral agreements, requests for legal cooperation will mainly depend on the goodwill of the authorities in requested countries, or the ability of governments in requesting countries to come up with mutually beneficial deals. Consequently, the outcome of ARPs become *less predictable* because they depend on the specific context rather than on internationally agreed legal rules and standards (emphasis added).²¹³

Given these findings, it is not surprising that the Basel Institute concluded that, “**the major successful asset recovery cases . . . are behind us. For almost a decade now, few new cases have been brought to light.**”²¹⁴ The bottom line is that difficulties lie not in the complexities of the law, but rather in the rent-seeking behaviors and calculations of prominent officials, all highly sensitive areas of concern where the prosperity of countries, sovereignty issues and national interests are at stake.²¹⁵ Bearing that in mind, national/international judicial authorities and

international development actors should attempt *forge new alliances* to overcome the hidden obstacles to asset recovery.²¹⁶

b. Institutional Incentives: In addition to mischaracterizing law for coercion, Machiavelli may have also missed a point or two regarding incentives and institutions. At their base, legal rules and regulations are rationalized by appeal to the incentives they create.²¹⁷ However, legal incentives often crowd out natural motivations of citizens to “engage in socially valued behavior as a sense of civic duty, a commitment to personal growth and charity towards others.”²¹⁸ In short, the punitive sanctions created by national and international anti-corruption legal regimens offer no *ex post facto* incentives for corrupt wrongdoers to “come clean” and/or “go legit.” In fact, just the opposite.

Illegality associated with corruption usually necessitates the perpetrator undertaking additional efforts to avoid detection and punishment, thereby leading to further corruption by such means as pay-offs, hush-money, threats, violence, and etc. Given these consequences, empirical studies routinely demonstrate that current punitive anti-corruption policies often cause “corruption to be more distortionary than taxes.”²¹⁹ Notwithstanding these findings, Machiavellian punitivists advocating for the current international anti-corruption regimen continue to assume that a one-size-fits-all coercive legal environment remains the best way to combat corruption. Their faith in coercion is misguided; one reason being that while the existence of wide-spread corruption always reduces growth, such negative effects exhibit *nonlinearities*, as they are more pronounced in less developed economies. As a result, the effectiveness of coercive anti-corruption policies depends on the state of development of the particular economy in question, with institution building tending to be a far more effective approach to corruption abatement in less developed countries, and stricter enforcement (i.e., stricter penalties) tending to be more effective in more developed countries.²²⁰

c. Personal Incentives: Professor Petrus Van Duyne has written extensively about underground economies, money laundering, and international anti-money-laundering legal regimens.²²¹ Significantly, for the purposes of this paper, he has observed that an asset-appropriator’s underlying purpose (i.e., incentive) in engaging in “money laundering is to try to attain the misleading appearance of “cleanness or legitimacy” for illegally acquired assets;²²² that is, to “*turn black money white*” so that it may be moved to the above-ground economy and used openly by the appropriator.²²³ The anti-money-laundering (AML) legal regimen, in contrast, is devised to thwart this design, with the underlying international policy impetus being: “*Ill gotten goods (should) never thrive.*” Van Duyne has opined, however, that “(a)s with many proverbs, this is pious wishful thinking of the ‘righteous’. . . history invariably proves them wrong.”²²⁴ Van Duyne’s point is that the proceeds of “loot and plunder” (and many other forms of illegal enrichment) have, in the past, *and often still do*, prosper; citing as examples “American robber barons” and their “modern Russian counterparts.” His most salient point, however, is that when platitudes have been set aside - and *when given the chance* - many “robber barons” have used their ill gotten funds to establish charitable foundations, legitimate industries and other socially acceptable institutions, including

universities. As a consequence, once these funds became “gentrified,” misdeeds were “forgiven.”²²⁵ However, today, the “ill gotten goods (will) never thrive” canard has morphed into international policy, culminating in the enactment of ineffectual anti-money laundering regimens,²²⁶ the unintended effect being that “ill gotten gains” from grand corruption are seldom recovered, put to effective use and/or otherwise gentrified.²²⁷

John McDowell and Gary Novis, policy advisors with the US State Department, have also written about un-surfaced, non-gentrified, non-integrated, black money, and noted that from an economic standpoint, “corruption money” is seldom put to efficient use. That is, because of risks associated with the international anti-money laundering regime, asset appropriators are not interested in profit generation and/or efficient investments, but rather in protecting their proceeds.²²⁸ Thus they seldom invest their funds in activities that are economically beneficial – even to the countries where the funds are located.²²⁹ Instead, to the extent they invest at all, they often do so in “low-quality” ventures that simply hide their proceeds; usually to the detriment of local growth. In fact, in some countries, entire industries, such as construction and hotels, have been financed not because of actual demand, but because of the short-term interests of money launderers. When these industries no longer suit the money launderers, they abandon them, causing a collapse of these sectors and immense damage to economies that could ill afford these losses.²³⁰

There are, of course, a number of implications to this state of affairs; one being that the amount of black money being kept in the underground economy appears to be sufficient to help prop-up or derail some governments. In fact, “(e)stimations of the level of money laundering reach up to 2 to 5% of world GDP, raising the question where all this money goes.”²³¹ *Where indeed? Why has this money not been “surfaced” and “integrated” into the above-ground economy? After all, as Van Duyne’s observed, trying to make illicit black-money white should be the main concern of “crime-entrepreneurs” and law enforcement officials alike.*

The answer, of course, resides in the fact that the largely dysfunctional international asset recovery regimen has not demonstrated the concerted will to routinely make corruption-related black money white, nor has it demonstrated the will to routinely return appropriated assets to their originally intended economies – *fragile states*. Instead, the international asset recovery legal regimen demonstrates just enough enforcement capacity to intimidate corrupt asset appropriators, but not enough capacity to *force* the divestiture of these ill-gotten assets. As a result, the perverse impact of the current international anti-money laundering legal regimen is that it induces corrupt capital appropriators to keep their assets hidden, where its is poorly utilized, rather than *surfaced* into the “legitimate economy” where it could be integrated, gentrified and effectively put to work.²³² In short, the money is in purgatory.

Meanwhile, while laundered money typically does little good where it is hidden, at least it is (usually) safe. Thus, at some point, it could theoretically be used for what it was initially intended – fragile state economic development. This said, as a matter of economic reality, it is hard to rationally argue that the money should immediately be

returned to the fragile states for which it was initially intended *if no effective institutional capacity reforms have been internalized*. Whether ironic or not, all money – including crime money – eschews instability, mal-governance and institutional corruption. Therefore, without an intention to change, there is no rational reason why purloined money should be shifted to these inherently economically unstable jurisdictions.²³³

Regardless, as the situation now stands, even assuming, *arguendo*, local governments *do* demonstrate the will to effectuate institutional change, and assuming they could effectively put the purloined money to good use, the international anti-money-laundering regimen is impeding billions of dollars from doing what it was intended to do – enhance stability, develop fragile economies and ensure human security. *Development* was the money's original mission, but this mission cannot be accomplished because the money is mired in a purgatorial legal "swamp," with all the "alligators" circling.²³⁴ *It is time to drain this swamp*.

B. An Alternative To Mutual Support - Self-Help:

a. The Color of Money: Grand corruption is a social, not individualistic, problem. Its roots are grounded in a country's social and cultural history, political and economic development, bureaucratic traditions and policies. It is a symptom of "deep institutional weaknesses."²³⁵ Or, as Roman David has described it, grand corruption is a part of a "cultural ethos," where various environmental factors incentivize individual actors to act in a corrupt way.²³⁶ Thus, attitudes and decisions regarding corruption are "largely derived from shared social perceptions," as well as "people's beliefs about corruption and the emotions attached to those beliefs, which have been reflected in the term 'folklore of corruption.'"²³⁷

Laws, though, are typically designed to deal with individuals – *not cultures*. Therefore, to the extent laws are intended to be normative, they pre-suppose a culture of basic compliance, not widespread impunity. Thus, one major difficulty with prevailing anti-corruption legal paradigms is that they do not appropriately address the root causes of the problem; culture. Even more significantly, because they are "on the books" but unenforced, and because they are often imposed from outside, they add to a culture of cynicism, a culture that begins to view law as hubris. In short, unenforced and unenforceable anti-corruption laws substantially degrade the rule of law.²³⁸ It is in this context that we must reconsider the "color" of corruption money, as well as the methods to recapture it by fragile economies.

In a 2012 study commissioned by the World Bank, University of London Economists Stephanie Blankenburg and Mustaq Khan examined the impact illicit capital flows had on developing countries. While recognizing that flows *could*, in fact, do real harm to fragile states, Blankenburg and Khan nonetheless found that outflows were often indicative of "deeper structural problems of political governance" within those countries and needed to be evaluated in a context-specific manner. Thus, even though the flows could be considered "illicit" under international legal paradigms, or illegal under national frameworks, from a development economics impact standpoint (i.e., harm analysis), Blankenburg and Khan would only label these out flows as

“illicit” if “all *direct* and *indirect* effects in the context of the *specific political economy* of the society (were) taken into account.”²³⁹ The authors stressed that indirect effects depended on the interplay between the economic and political structures of the country; they also varied widely across contexts:

What constitutes damage in the sense of a negative developmental impact depends on how we define development. When illicit capital flows are equated with illegal outflows . . . the implicit suggestion is that adherence to prevailing legal rules is sufficient for promoting the social good . . . Yet, the use of the notion of illicitness also suggests that damaging developmental outcomes may not always correspond to violations of the law and that, therefore, social, economic, and political damage needs to be more precisely defined. Moreover, if we are not to suffer the criticism of paternalism, our criteria have to be widely accepted as legitimate in that society. In practice, it is difficult to establish the criteria that measure development and therefore can be used to identify damage in any society, but particularly in developing ones. *A social consensus may not exist if there are deep divisions about social goals* (emphasis added).²⁴⁰

In further examining the reasons for capital flight, Blankenburg and Khan evaluated the flows stemming from a variety of contextual standpoints, including criminality, economic self-interest, and lack of confidence in governance structures. They also evaluated the efficacy of efforts to block outflows through such mechanisms as criminal punishment and asset recovery.²⁴¹ Their findings led them to advocate for alternative frameworks to deal with flows driven by political and economic actors, contending that an obvious reason why political actors in developing countries engaged in capital flight was over concerns that their political opponents would expropriate their assets if they came to power. Blankenburg and Khan argued that the *realpolitik* nature of political settlements in many developing countries meant that blocking financial outflows would probably not lead to “*liberal rule of law*” because any new ruling coalitions would probably require off-budget resources to maintain political stability and will keep resources available for elections and for their own accumulation. In short, “*(e)xpropriating the financial resources of former politicians may therefore have the paradoxical effect of increasing instability . . . we should not consider all capital outflows by political actors to be illicit in these contexts.*”²⁴²

Given their findings, Blankenburg and Khan argued that international efforts should be expended into trying to block capital flight. *Rather, international policy focus should be on helping design local policies to address low productivity and absorb new technologies, as well as to align regulations across similarly situated developing countries.* Blocking financial outflows without addressing these matters, they noted, will not improve social outcomes as “*(t)he problem is not the capital flight, but the growth-reducing arrangements that induce it.*”²⁴³

In conclusion, Blankenburg and Khan argued that from an economic standpoint, expropriation of government assets could well serve a social interest in that it

could lower the “cost of politics” *and/or* preserve assets that would otherwise be lost permanently to governmental waste and mismanagement. In this context, societies may not be hurt by capital flight as the monies were simply diverted to safer, more efficient, economies. And, by this logic, the economic challenge for developing economies with expropriated asset outflows is to rationally align their policies – and their institutions – so as to re-attract the expropriated capital.

b. Correlation and Cause – They Are Not The Same: Political Scientist Roman David has observed that the factors keeping a “democracy stable may not be the same as those that brought it into existence; thus, explanations of democracy must distinguish between function and genesis.”²⁴⁴ David attributed his reasoning to Dankwart Rustow’s influential work, “Transitions to Democracy: Toward a Dynamic Model.”²⁴⁵ In it, Rustow examined the assumptions underlying functional studies of democracy and proposed a, “dynamic theory of democracy” that distinguished between “*correlate*” and “*cause*.”²⁴⁶ In expounding on this concept, David noted, “the association between these measures and clean government has led many to believe that anticorruption measures are causes, not correlates, of clean government, albeit that they represent function rather than genesis.” David opined, however, that claiming the establishment of anti-corruption mechanisms – in themselves – generated shifts to clean government was similar to claiming that, “holding free elections ensured a clear passage to democracy.” “Scholars of democratization,” David observed, “would probably disagree with that.”²⁴⁷

Drawing on his democratisation research, David concluded that the factors that keep government clean are necessary, but not sufficient, for transformation towards clean government.²⁴⁸ Thus, while anti-corruption law enforcement mechanisms *might* be able to keep a clean society clean, they were typically incapable of “cleaning” a society with an ingrained culture of corruption. In such cases, only *positive* incentive mechanisms, such as amnesty, have the capacity to play a crucial role in establishing clean government by *transforming the political culture in particular society*. As Roman observed, “clean and corrupt governments are qualitatively different situations that require different methods of dealing with corruption.”²⁴⁹

David argued that anti-corruption mechanisms operating within cultures harboring a “folklore of corruption” – i.e., cultures of *grand corruption* – need to be structured entirely differently from those operating in predominately clean environments; in societies with cultures of corruption, “the potential that sanctions have to facilitate a value-normative shift towards clean government is limited.” Instead, “in the short term, the absence of sanctions and penalties can act as a greater catalyst to transformation than their immediate imposition.” Thus, he concluded, amnesties could serve as “transformative measures,” encouraging “the transformation of political culture during the process of democratisation” and also be “useful in the process of changing the culture of corruption.”²⁵⁰

c. An Immodest Proposal – Amnesty: Assuming an economically rational economy, one of the most pernicious impacts corruption has on a developing

country is that it results in a loss of resources available for investment or, as economists might say, “capital accumulation is depressed.” Thus, the costs of corruption are significant, especially since it would take only minor changes in growth rates of developing countries to produce substantial cumulative gains in output and welfare.²⁵¹ In a perfect world, the answer to this problem would be asset recovery and repatriation; assuming, of course, the economy in question was finally institutionally capable of absorbing the repatriated cash. However, the world is not perfect and international mutual assistance has not (yet) proven itself to be an effective instrument to systematically make significant repatriation a reality.

Meanwhile, corrupt appropriators of developing country assets appear to be holding hundreds of millions (if not billions) of dollars in disposable assets. And though they may be *prepared* to keep their ill-gotten gains hidden – or *prepared* to invest two illegitimately earned black dollars in a speculative money-laundering scheme in return for the hope of receiving one semi-legitimate white dollar – does not mean they are *disinterested* in receiving the highest returns possible.²⁵² Just the opposite is probably true. It would seem, therefore, that synergies of interest may well exist between developing countries and their corrupt (former) leaders; synergies that could be played out in the context of amnesty programs.²⁵³ In order for these synergies to constructively pan out, however, the economies in question would not only have to offer amnesty, but they would undoubtedly have to institutionally restructure themselves in a way that would make them a conducive place for (re)investment and growth.

It is for another time to expound in-depth on the exact nature corruption amnesty programs could or should take. But, at least preliminarily, one could envision the broad parameters of such potential programing entailing the following:

- First, as “all politics is local,”²⁵⁴ in order to be politically palatable, any amnesty program would undoubtedly require a national consensus that corruption had previously been so systemic, culturally ingrained and widespread that criminal prosecutions under local national law of all/most expropriators would be unrealistic. This would require a significant public outreach component;²⁵⁵
- Second, *somewhat* akin to an “exhaustion of remedies” theory, any effective amnesty program would probably need to be preceded with a consensus within the government and political elites that international asset recovery mechanisms had proven to be too cumbersome, ineffective or expensive for practical use by the nation. This would probably best be demonstrated through actual past attempts to engage these mechanisms;²⁵⁶
- Third, to be most effective, amnesties should be accompanied by some sort of lustration mechanism not dissimilar to that used by prosecutors/courts in jurisdictions that allow plea bargaining. Such a system could require expropriators to provided information about their crimes and/or accomplices, thereby providing an additional incentive for others to come forward;²⁵⁷ and

- Fourth, in order to achieve the development goals originally intended for the money in question, expropriators would probably need to be required to repatriate the assets to the country to which they were intended, and be integrated (i.e., invested) into socially beneficial growth-enhancing endeavors. In this event, a taxation system could appropriately tax the repatriated assets, as well as the future profits from the endeavors. Further, in order to prevent volatility, one would presume that some sort mandatory investment period would need to be structured.²⁵⁸

Conclusion

This paper has demonstrated three central propositions.

First, that sudden influxes of official development aid into countries with unprepared governance institutions hinder their long-term economic and structural development. I analogized to the resource curse of countries rich in natural sources that cannot effectively absorb newly realized resource rents stemming from those resources. I highlighted recent international experience in this regard and showed that the primary impediment to effective growth was a lack of governance capacity.

Second, I demonstrated that raining significant official development aid on an economy before helping it develop basic capacity (i.e., competence) to govern was not only counter-productive, but was corrupting. In such cases, the aid becomes, in effect, a supply-side appeal to (and institutionalization of) monopolistic rent-taking tendencies. Thus, the aid does long-term damage to the country by perverting its governance system and converting localized petty corruption into institutionalized grand corruption; corruption that is virtually impossible to reverse through traditional anti-corruption campaigns.

Third, I demonstrated that in situations where official development aid had induced the institutionalization of grand corruption, traditional cleanup efforts – focused as they are on *ex ante* public awareness, anti-corruption committees and punitive sanctions – have proven to be virtually worthless. Therefore, in cases of grand corruption institutionalism, rather than focus on ineffective punitive sanctions and mutual assistance asset recovery mechanisms, I proposed undertaking *ex ante* anti-corruption cleanup efforts, revolving around comprehensive amnesty programs, in order to spur growth and investment, as well as regularize the rent taker's future behavior.

About the author

Major General (USAF, Ret.) **Charles Tucker**, serves as Executive Director of two International Non-Governmental Organizations: the Sustainable Capacity International Institute, Arezzo, Italy; and the World Engagement Institute, Chicago, IL, USA. In these capacities, he designs and manages institutional capacity building programs throughout the world. He likewise promotes the economic and legal development of people through education, research, documentation, and advocacy. In addition, Gen. Tucker serves as a Senior Fellow of the Center for the Study of the Middle East (CSME), School of Global & International Studies, Indiana University, Bloomington, as well as the International Projects Director for the National Strategy

Forum, a non-partisan training institute and think-tank located in Chicago. He also he serves as a Member of the Board of Directors of the International Code of Conduct for Private Security Service Providers' Association (ICoCA), Geneva, Switzerland, where, as the United States Government representative on the 12-member Board, he is charged with promoting, governing and overseeing the implementation of the International Code of Conduct for Private Security Service Providers to promote the responsible provision of private security services and respect for human rights and national and international law by exercising independent governance and oversight of the ICoC. Professor Tucker has been an educator, international legal expert, and institutional capacity development practitioner for more than thirty years. Throughout his career, he has routinely served with the US State Department, United Nations and various International Organizations in numerous countries. His academic career has included teaching positions in International Law for the University of Colorado (1999-2002) and DePaul University (2008-2011). He attained the rank of Assistant Professor of Law at the US Air Force Academy and served as Course Director of the Academy's Comparative International Law Program (1999-2002). He was the founding Co-Editor of the USAFA Journal of Legal Studies and the DePaul University Rule of Law Journal. Prof. Tucker has also served as Adjunct Professor of Business and Labor Management for Bradley University (2002-2008), as Adjunct Professor of Political Science for the University of Maryland (1984-1989), and as Adjunct Professor of Government for Wayland University (1982-1984). Prof. Tucker currently serves as the Co-Course Director of the United Nations' Annual International Humanitarian Law Symposium. He has lectured as a Visiting Professor at the Vietnam National University (Đại học Quốc gia Hà Nội); the Universität Heidelberg (Germany); the University of Zagreb (Sveučilištu u Zagrebu, Croatia); the University of Sarajevo (Univerziteta u Sarajevu, Bosnia and Herzegovina); Ankara Üniversitesi (Turkey); the University of Sulaimani (السلليمانية جامعة, Sulaymaniyah, Iraq); and Duhok University (دهوك جامعة, Duhok, Iraq). Prior to retiring from his active duty and reserve military career, Gen. Tucker served as the National Guard's Director of Joint Doctrine, Training and Force Development. He was responsible for overseeing the National Guard's various Joint Education and Training Centers, as well as its entire Joint Professional Education Program and curricula development efforts. Since his military retirement, he has assisted the Vietnamese, Kenyan and Somali governments with their constitutional and legal development and has published widely on these subjects. He is a 1979 graduate of the University of Notre Dame (B.A., Government) and a 1982 graduate of the DePaul University College of Law (Juris Doctor).

Notes

¹ William Shakespeare, King Lear, Act 3, Scene 2.

² Quote attributable to Charles E. Tucker, Sr. (1933-1993), as recalled – and modified – by author. The adage may not have originated with the speaker. See: Popik, Barry. "Origin and history of 'drain the swamp' (Mother Jones, Reagan, Rumsfeld, Pelosi)." Red State Member Diary Online. (July 29, 2010), at: <http://www.redstate.com/barrypopik/2010/07/29/origin-and-history-of-drain-the-swamp-mother-jones-reagan-rumsfeld-pelosi/> (accessed 26 March 2013).

³ The Development Assistance Committee (DAC) of the Organization for Economic Co-operation and Development (OECD) defines ODA as:

. . . flows to countries and territories on the DAC List of ODA Recipients and to multilateral institutions which are: i. provided by official agencies, including state and local governments, or

by their executive agencies; and ii. each transaction of which: a) is administered with the promotion of the economic development and welfare of developing countries as its main objective; and b) is concessional in character and conveys a grant element of at least 25 % (calculated at a rate of discount of 10 %).

See, OECD website, "Official development assistance – definition and coverage," available at <http://www.oecd.org/dac/stats/officialdevelopmentassistancedefinitionandcoverage.htm> (accessed 11 March 2013).

⁴ In 2011, DAC members provided \$133.5 billion in ODA, representing 0.315 % of their combined gross national income (GNI). See, OECD aid statistics and databases: "All about numbers - who spends what, where?" at: <http://www.oecd.org/dac/stats/50060310.pdf> (accessed 11 March 2013).

⁵ United Nations Development Programme (UNDP). "Towards human resilience: Sustaining MDG progress in an age of economic uncertainty. Ch. 5, Official Development Assistance." (2011): 146. And see: Census Bureau. Statistical Abstract of the United States, 2012. Books Express Pub. 2011: Table 1297. U.S. Government Foreign Grants and Credits by Type and Country: 2000 to 2010.

⁶ Jeffrey Sachs, *The End of Poverty: Economic Possibilities for Our Time*, Penguin Press, 2005.

⁷ See, e.g., Jeffrey D. Sachs, "From Millennium Development Goals to Sustainable Development Goals," *The Lancet* 379, no. 9832 (2012): 2206-2211 (proposing organisation of the post-2015 MGD goals into the broad categories of economic development, environmental sustainability, and social inclusion, as well as "good governance at all levels, local, national, regional, and global." *Id.* at 2208).

⁸ See, Evelyn Wamboye and Abel Adekola, "Foreign Aid, Legal Origin, Economic Growth and Africa's Least Developed Countries," (2013): 19 ("issue of foreign aid effectiveness in developing countries has continued to puzzle many policy makers and donors alike"); and Susan Harkness, "Social and Political Indicators of Human Well-being," *UNU-WIDER* No. 2004/33, Research Paper, United Nations University (UNU), 2004 (describing problems inherent in devising unambiguous, uncontroversial, measurements of political and civil rights. *Id.* at 16).

⁹ Eric Werker, "The Political Economy of Bilateral Foreign Aid," *Harvard Business School BGIE Unit Working Paper* 13-026 (2012).

¹⁰ Steven Radelet, "A Primer on Foreign Aid," *Center for Global Development Working Paper* 92 (2006).

¹¹ James Meernik, Eric L. Krueger, and Steven C. Poe, "Testing Models of US Foreign Policy: Foreign Aid During and after the Cold War," *The Journal of Politics* 60, no. 01 (1998): 63-85.

¹² Pierre Landell-Mills, Ramgopal Agarwala, Stanley Please, and Banque Mondiale, *Sub-Saharan Africa: From Crisis to Sustainable Growth: A Long-term Perspective Study*, World Bank, 1989.

¹³ David Booth, "Aid Effectiveness: Bringing Country Ownership (and Politics) Back In." *Conflict, Security & Development* 12, no. 5 (2012): 537-558.

¹⁴ The attacks of 11 September 2001 played a part in alerting the West to costs of failed states and the need for development assistance. On 14 March 2002, President Bush announced a 50% increase in US ODA. See, William Easterly, *The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done so much Ill and so little Good*. Penguin (2006): 47. And see, Robert K. Fleck and Christopher Kilby, "Changing Aid Regimes? US Foreign Aid from the Cold War to the War on Terror," *Journal of Development Economics* 91, no. 2 (2010): 185-197 (U.S. aid flows to developing countries increased during "War on Terror," but emphasis placed on need steadily fell).

¹⁵ ODA volumes in the mid- and late-nineties were, in real terms, at the same level as during the mid-eighties. In or around 2000, they began to increase and by 2006 ODA was 60% above 1999 levels. See, Stephen Howes, "An Overview of Aid Effectiveness, Determinants and Strategies." (2011): 1.

¹⁶ For example, see:

- James Putzel, *Do No Harm: International Support for Statebuilding*, Organization for Economic Cooperation and Development, 2010 (by promoting institutional arrangements that are ideologically congenial to the donors' citizens, but ill-adapted to the specific donee context, ODA can fuel conflict and human insecurity);
- Simplice Anutechia Asongu, *Reversed Economics and Inhumanity of Development Assistance in Africa*, University Library of Munich, Germany, 2012 (development assistance is detrimental to GDP growth, GDP per capita growth and inequality adjusted human development);
- Todd Moss, Gunilla Pettersson, and Nicolas van de Walle, "A Review Essay on Aid Dependency and State Building in Sub-Saharan Africa: An Aid-Institutions Paradox," Washington DC, 2006 (large and sustained volumes of aid can have negative impacts on development of good public institutions); and
- Bräutigam, Deborah., and Stephen Knack. "Foreign Aid, Institutions and Governance in Sub-Saharan Africa," *Economic Development and Cultural Change*, (2004), 52, 2: 255-285 (aid creates long-term client-state dependencies).

¹⁷ The term “governance” was introduced in the literature via a 1989 World Bank publication. See, World Bank. “Sub-Saharan Africa: From Crisis to Sustainable Development,” Washington, DC, 1989. Another early paper using the term defined it as, “the use of political authority and exercise of control over a society and the management of its resources for development.” See, Pierre Landell-Mills, and Ismail Serageldin, “Governance and the External Factor,” In *Proceedings of the World Bank Annual Conference on Development Economics*, pp. 303-20, 1991. Currently, the World Bank equates “good governance” with “sound development management.” Governance areas evaluated by the Bank include: public sector management; accountability; legal framework for development; and information and transparency. See, World Bank. *Governance and development*. Washington, DC: World Bank, 1992: 1-4. *But see*: Heather Marquette, “Corruption, Democracy and the World Bank,” *Crime, Law and Social Change* 36, no. 4 (2001) (governments may be honest but inefficient and narrow elites may capture the state and exert excess influence on policy. *Id.* at 396).

¹⁸ Gil S. Epstein and Ira N. Gang, “Good Governance and Good Aid Allocation,” *Journal of Development Economics* 89, no. 1 (2009): 12-18.

¹⁹ Seiki Tanaka and Masanori Yoshikawa, “Establishing Good Governance in Fragile States Through Reconstruction Projects—Lessons from Iraq,” Brookings Working paper 56 (2013).

²⁰ Monterrey Consensus Report of the International Conference on Financing for Development Monterrey, Mexico, 18-22 March 2002, available at: <http://www.un.org/esa/ffd/monterrey/MonterreyConsensus.pdf> (accessed 10 May 2013)(role of development aid in range of domestic and external resource flows needed to achieve the MDGs).

²¹ OECD (2003) Rome declaration on harmonization. In High-Level Forum I on aid effectiveness, 24–25 February 2003. OECD, Rome. http://www.who.int/hdp/publications/lb_rome_declaration.pdf (accessed 10 May 2013)(DAC donors’ agreement to better harmonize aid interventions).

²² OECD (2005) Paris declaration on aid effectiveness. In High Level Forum II on aid effectiveness, 28 February–2 March 2005. OECD, Paris, available at: http://www.unrol.org/doc.aspx?doc_id=2148 (accessed 10 May 2013)(outlining the “rules of the game” for delivering aid).

²³ OECD (2008) Accra agenda for action. In High Level Forum III on aid effectiveness, 2–4 September 2008. OECD, Accra, Ghana. <http://siteresources.worldbank.org/ACCRAEXT/Resources/4700790-1217425866038/AAA-4-SEPTEMBER-FINAL-16h00.pdf> (accessed 10 May 2013 (mid-point evaluation of Paris Declaration; reflected input from more than 3000 Civil Society Organizations: and set accelerated agenda toward improving quality and effectiveness of ODA).

²⁴ OECD (2011) Busan partnership for effective development cooperation. In Fourth High Level Forum on Aid Effectiveness, Busan, South Korea, 29 November–1 December 2011. OECD, Busan, South Korea, available at: <http://www.oecd.org/dac/effectiveness/49650173.pdf> (recognized importance of country ownership, donor alignment, harmonization, managing for results and mutual accountability, with a significant focus on transparency and the use of country systems).

²⁵ *But note*, Gerry Mackie, “Effective Rule of Law Requires Construction of A Social Norm of Legal Obedience.” (2012) (international institutions seldom undertake the harmonization of moral-social-legal engagements carefully designed to respect autonomy and to minimize harm. *Id.* at 12).

²⁶ William Easterly and Claudia R. Williamson, “Rhetoric versus Reality: The Best and Worst of Aid Agency Practices,” *World Development* 39, no. 11 (2011) (authors identified “five best practice dimensions,” for aid disbursement: agency transparency; minimal overhead costs; fragmentation of aid; delivery to more effective channels: and allocation to less corrupt, more democratically free, poor countries. *Id.* at 1930 1931).

²⁷ OECD-DAC, “Managing Aid: Practices of DAC Member Countries,” *Better Aid Series*, 2009. (The pace and depth of aid reform are not yet consistent across donor programmes. *Id.* at 76-77.)

²⁸ *Id.*, Tanaka and Yoshikawa, *supra*, note 19, at 2.

²⁹ Axel Dreher, Peter Nunnenkamp, and Maya Schmaljohann, *The Allocation of German aid: Self-interest and Government Ideology*, No. 1817, Kiel Working Paper, 2013 (geo-strategic and commercial motives matter for the allocation of German aid.)

³⁰ Jean-Claude Berthélemy, “Bilateral Donors’ Interest vs. Recipients’ Development Motives in Aid Allocation: Do all Donors Behave the Same?” *Review of Development Economics* 10, no. 2 (2006): 179-194. Aid agencies that received the worst overall scores included the US and Greece.

³¹ Alberto Alesina and David Dollar. “Who Gives Foreign Aid to Whom and Why?” *Journal of Economic Growth* 5, no. 1 (2000): 33-63. (“Inefficient, economically closed, mismanaged non-democratic former colony politically friendly to its former colonizer, receives more foreign aid than another country with similar level of poverty, a superior policy stance, but without a past as a colony.”) Accord, Ilyana Kuziemko and Eric Werker, “How Much Is a

Seat on the Security Council Worth? Foreign Aid and Bribery at the United Nations,” *Journal of Political Economy* 114, no. 5 (2006) (U.S. aid increased by 59% when country held a temporary seat on the UNSC; its UN aid increased by 8%).

³² Andreas Fuchs, Peter Nunnenkamp, and Hannes Öhler, *Why Donors of Foreign Aid do not Coordinate: The Role of Competition for Export Markets and Political Support*, No. 1825. Kiel Working Paper, 2013: 22-23. And see: Axel Dreher, Stephan Klasen, James Raymond, and Eric Werker, "The Costs of Favoritism: Is Politically-driven Aid Less Effective?" (2010).

³³ The term, “international aid community,” appears throughout the development aid literature. At least one prominent economist uses the term interchangeably with the terms “international aid bureaucracy,” “international aid agencies,” and “cartel.” See, William Easterly, "The Cartel of Good Intentions: The Problem of Bureaucracy in Foreign Aid," *The Journal of Policy Reform* 5, no. 4 (2002): 223-250. (“The members of this cartel are the world’s leading foreign aid organizations, which constitute a near-monopoly relative to the powerless global poor.”) In further describing this “community” the author opined:

A group of well-meaning national and international bureaucracies dispensed foreign aid under conditions in which bureaucracy does not work well. The hostile environment under which such aid agencies functioned induced them to organize a cartel that increased inefficiency and reduced effective supply of development services, frustrating the good intentions and dedication of development professionals. The cartel of good intentions allows rich country politicians to feel that they are doing all in their power to help the world’s poor, supports rich nations’ foreign policy goals, preserves a panoply of large national and international institutions, and provides resources to poor country politicians with which to buy political support. In short, foreign aid works for everyone except for those whom it was intended to help. *Id.* at 224 – 225.

³⁴ The issue of “conditionality” is controversial in that it implies a connection between “acceptance” of the conditions and “ownership” of the programing involved. Ownership is not the same as commitment, and studies verify conditionality has not been an effective instrument to, “get governments to do something they do not want to do.” See, Morrissey, Oliver, and Arjan Verschoor. "What does ownership mean in practice?" *The IMF, World Bank and Policy Reform* (2006): 276.

³⁵ For an insightful discussion of the linkages between U.S. foreign aid allocations and U.S. geo-political foreign policy goals, see: Te-Yu Wang, “U.S. Foreign Aid and UN Voting: An Analysis of Important Issues,” *International Studies Quarterly* 43, no. 1 (1999): 199-210. (The U.S. successfully utilized foreign aid programs to induce foreign policy compliance in UN on issues vital to its national interest.)

³⁶ In 2012, the world’s largest ODA donors, by volume, were the United States, the United Kingdom, Germany, France and Japan. See list of ODA donors, by gross funding allocations, at OECD website: <http://www.oecd.org/dac/stats/aidtopoorcountrieslipsfurtherasgovernmentstightenbudgets.htm>

³⁷ Economists Daron Acemoglu, Simon Johnson, and James Robinson have defined “good institutions” as, “corresponding to a social organization which ensures that a broad cross-section of the society have effective property rights.” See, Daron Acemoglu, Simon Johnson, and James A. Robinson, *An African Success Story: Botswana*, No. 3219, CEPR Discussion Papers, 2002: 1.

³⁸ *Id.*, Easterly and Williamson, 2011, *supra*, note 26, at 1945.

³⁹ David de la Croix and Clara Delavallade, "Why Corrupt Governments may Receive more Foreign Aid," *Oxford Economic Papers*, 2013.

⁴⁰ Development aid is different from other forms of non-tax revenue because aid comes with a “donor attached.” Bermeo, Sarah. "The Curse of Aid? Re-Examining the Impact of Aid on Regime Change." In *Re-Examining the Impact of Aid on Regime Change* (September 14, 2009). APSA 2009 Toronto Meeting Paper. 2009: 19 (study found donor intent and not an unintended curse associated with increased financial flows, influenced the relationship between foreign aid and local political elites). Accord, Tanaka and Yoshikawa, *supra*, note 19, at 20 (quality of donor intervention found to lead to more positive results than the quantity of intervention).

⁴¹ *Id.*, Axel Dreher, Vera Eichenauer, and Kai Gehring, 2013. Accord, Matteo Bobba and Andrew Powell, *Aid Effectiveness: Politics Matters*, No. 601, Working paper/Inter-American Development Bank, Research Department, 2007 (aid allocated to political allies ineffective for growth: aid extended to countries that are non-allies was highly effective. *Id.* at 24).

⁴² “Throwing money at the problem exacerbates the problem,” says Andrew Wilder, an expert at Tufts University who has studied the effect of aid in southern Afghanistan. “A tsunami of cash fuels corruption, delegitimizes the government and creates an environment where we’re picking winners and losers.” See, Michael Hastings, “The

Runaway General,” *Rolling Stone* 1108, no. 1109 (2010): 8-22. As Professor Wilder explained in an earlier piece for *Foreign Policy Magazine*:

The most destabilizing aspect of aid, however, is its role in fueling corruption. And here, Western donor governments have been slow to acknowledge their contribution to this problem. Our research suggests that the failure to win Afghan hearts and minds is not because too little money has been spent. In fact, money has been part of the problem. Spending too much too quickly with too little oversight in insecure environments is a recipe for fueling corruption, delegitimizing the Afghan government, and undermining the credibility of international actors. But policymakers also ignore the most obvious, effective, and quickest way to reduce corruption: reduce funding, especially in the most insecure areas, to levels more in line with what Afghanistan can absorb. Future benchmarks for success, as well as incentive structures for both military and civilian institutions, should be changed from the number of projects implemented and amounts of money spent to ensuring accountability and the quality and impact of programs. *Id.*

See, Andrew Wilder and Stuart Gordon, "Money Can't Buy America Love," *Foreign Policy*, Washington DC 1 (2009): 11.

⁴³ In post-conflict countries, the presence of international peacekeepers and aid providers may contribute to corruption rather than prevent it, owing to the large volumes of cash that follow them into war-ravaged economies. See, Alix Boucher, William Durch, Margaret Midyette, Sarah Rose, and Jason Terry. "Mapping and Fighting Corruption in War-Torn States." (2010): 23.

⁴⁴ See, for example:

- Arjan De Haan and Ward Warmerdam, "The Politics of Aid Revisited: A Review of Evidence on State Capacity and Elite Commitment," *Effective States and Inclusive Development Research Centre Working Paper 7* (2012). ("Aid frees central government resources for spending on current consumption, which in turn fuels corruption");
- D. Moyo, *Dead Aid: Why Aid Is Not Working and How There Is a Better Way for Africa*, London: Penguin Books, 2009. (Citing a World Bank study finding nearly 85% of aid money was either diverted or channeled for "unproductive" or "grotesque" ventures);
- Margaret Kelly Wilkie, "The Effects of Foreign Aid on Perceptions of Political Corruption in Sub-Saharan Africa," PhD diss., University of Central Florida Orlando, Florida, 2008. (ODA given to corrupt governments "only fuels corruption"); and
- Michal Chervin and Sweder Van Wijnbergen, "Economic Growth and the Volatility of Foreign Aid." (2010). (Aid volatility "fuels corruption").

⁴⁵ David H. Bearce and Daniel C. Tirone, "Foreign Aid Effectiveness and the Strategic Goals of Donor Governments," *The Journal of Politics* 72, no. 3 (2010): 837-851. (When the strategic benefits are large for donors, foreign aid becomes ineffective because Western governments cannot credibly enforce their conditions for economic reform. *Id.* at 837).

⁴⁶ *Id.*, Easterly and Williamson, 2011, *supra*, note 26 (current studies leave out any direct measurement of the impact of aid dollars on the intended beneficiaries and, therefore, "there are simply no reliable impact measures available across agencies." *Id.* at 1930-1932).

⁴⁷ *Id.* at 1930-1949. Easterly also notes that aid beneficiaries have few means to provide feedback or influence the behavior of the international aid bureaucracy, and aid agencies are "typically not transparent" about their operating costs and/or how they spend the aid money.

⁴⁸ Hristos Doucouliagos and Martin Paldam, "The Aid Effectiveness Literature: The Sad Results of 40 years of Research," *Journal of Economic Surveys* 23, no. 3 (2009): 433-461. (The aid effectiveness literature has not managed to show there is a significantly positive effect of aid. *Id.* at 461.) And see, Hristos Doucouliagos and Martin Paldam, "The Ineffectiveness of Development Aid on Growth: An Update," *European Journal of Political Economy* 27, no. 2 (2011): 399-404 ("analysis of the results of decades of research suggests that, on average, aggregate development aid flows are ineffective in generating growth." *Id.* at 401).

⁴⁹ See, e.g., William Easterly and Tobias Pfutze. "Where Does the Money Go? Best and Worst Practices in Foreign Aid," *Journal of Economic Perspectives* 22, no. 2 (2008). ("It is a sad reflection on the aid establishment that knowing where the money goes is still so difficult and that the picture available from partial knowledge remains so disturbing." *Id.* at 23).

⁵⁰ Daniel Miller, "Sachs, Easterly and the Banality of the Aid Effectiveness Debate: Time to Move On," *Mapping Politics* 3 (2012): 78, citing: Paul Mosley, *Overseas Aid: Its Defence and Reform*, Wheatsheaf Books, 1987; and Michael

Clemens, Steven Radelet, and Rikhil Bhavnani, "Counting Chickens when they Hatch: The Short Term Effect of Aid on Growth." Center for Global Development working paper 44 (2004).

⁵¹ For a useful discussion of the generalized determinants of aid effectiveness and strategies for making aid more useful, see Howes, *supra*, note 15, at 8.

⁵² Richard M. Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis*, Psychology Press, 1993.

⁵³ See, e.g., Xavier Sala-i-Martin and Arvind Subramanian. *Addressing the Natural Resource Curse: An Illustration from Nigeria*. No. 9804. International Monetary Fund, 2003 (natural resources exert a negative and nonlinear impact on growth via their deleterious impact on institutional quality).

⁵⁴ Thorvaldur Gylfason, "Natural Resources, Education, and Economic Development," *European economic review* 45, no. 4 (2001): 847-859.

⁵⁵ Michael L. Ross, "Does Oil Hinder Democracy?" *World Politics* 53, no. 3 (2001): 325-361; and Jeffrey D. Sachs and Andrew M. Warner, "The Curse of Natural Resources," *European Economic Review* 45, no. 4 (2001): 827-838. But see, Halvor Mehlum, Karl Moene, and Ragnar Torvik, "Institutions and the Resource Curse," *The Economic Journal* 116, no. 508 (2006): 1-20 (quality of institutions determines whether countries avoid the resource curse. *Id.* at 16).

⁵⁶ *Id.*, Sachs and Warner, 2001, *supra*, note 55, at 827-838.

⁵⁷ Arye L. Hillman, "Rent Seeking," *The Elgar Companion to Public Choice*, 2nd Edition, Cheltenham UK: Edward Elgar, 2011, citing: Gordon Tullock, "Welfare Costs of Tariffs, Monopolies and Theft," *J. Reprints Antitrust L. & Econ.* 16 (1986): 459; and Anne O. Krueger, "The Political Economy of the Rent-seeking Society," *The American Economic Review* 64, no. 3 (1974): 291-303.

⁵⁸ Michael L. Ross, "The Natural Resource Curse: How Wealth can Make You Poor," *Natural Resources and Violent Conflict: Options and Actions* (2003): 17-42. (Since mid-1990s there has been growing research on the causes of civil wars. One of the most surprising and important findings: "natural resources play a key role in triggering, prolonging, and financing these conflicts.")

⁵⁹ Nazgul Eralieva and Jie Qin, "An Examination of the Natural Resource Curse after the 1990s," *立命館経済学* 61, no. 3 (2012): 405-423. And see, Margareta Sollenberg, "A Scramble for Rents: Foreign Aid and Armed Conflict," *PhD diss.*, Uppsala University, 2012 ("this dissertation is the first to stress the potential of aid to produce incentive structures for elite rent-seeking scrambles and to specify conditions under which such incentives may translate into increasingly competitive rent-seeking raising the probability of conflict." *Id.* at 32.)

⁶⁰ Roland Hodler, "The Curse of Natural Resources in Fractionalized Countries," *European Economic Review* 50, no. 6 (2006): 1367-1386.

⁶¹ Simeon Djankov, Jose Garcia-Montalvo, and Marta Reynal-Querol, "Does Foreign Aid Help?" Available at SSRN 896550 (2006): 7. See also, Michael Ross, "Natural Resources and Civil War: An Overview with some Policy Options." In a draft report prepared for The Governance of Natural Resources Revenues Conference, sponsored by the World Bank and the Agence Française de Développement, Paris, pp. 9-10. 2002. (Resource dependence promotes civil war in four ways: by harming a country's economic performance; by making its government weaker, more corrupt, and less accountable; by giving people who live in resource-rich regions an incentive to form an independent state; and by helping finance rebel movements.) And see, Paul Collier and Anke Hoeffler, "Greed and Grievance in Civil War," *Oxford Economic Papers* 56, no. 4 (2004): 563-595. (Authors tested "greed theory," focusing on the ability to finance rebellion, against a "grievance theory," focusing on ethnic and religious divisions, political repression and inequality. Found: greed considerably outperformed grievance.)

⁶² *Id.*, Auty, *supra*, note 52. But see: Christa N. Brunnschweiler, and Erwin H. Bulte, "The Resource Curse Revisited and Revised: A Rale of Paradoxes and Red Herrings," *Journal of Environmental Economics and Management* 55, no. 3 (2008): 248-264. ("we find that (i) resource abundance, constitutions and institutions determine resource dependence." *Id.* at 23.) But note: The resource curse is confirmed many economists emphasizing the fact that natural resources do not, by themselves, harm growth; they only become a problem in the absence of good institutions (referred to as "institutional appropriability"). See: Anne Boschini, Jan Pettersson, and Jesper Roine, "The Resource Curse and its Potential Reversal," *World Development* (2012); and Anne D. Boschini, Jan Pettersson, and Jesper Roine, "Resource Curse or Not: A Question of Appropriability," *The Scandinavian Journal of Economics* 109, no. 3 (2007): 593-617. And see, Robert T. Deacon and Ashwin Rode, "Rent Seeking and the Resource Curse," 2012 (empirical studies indicate that rent-seeking can be constrained by effective governance institutions and that a resource curse only applies to societies with poor governance institutions. *Id.* at 25).

⁶³ *Id.*, Djankov, *et al.*, 2006, *supra*, note 61 ("the empirical evidence on the effectiveness of foreign aid is discouraging." *Id.* at 1). And see: Simplice A. Asongu, *The Political Economy of Development Assistance: Peril to Government Quality Dynamics in Africa*, University Library of Munich, Germany, 2012 (development assistance

deteriorates government quality dynamics of corruption-control, political-stability, rule of law, regulation quality, voice and accountability and government effectiveness. *Id.* at 24-25).

⁶⁴ Simplicé A. Asongu, "On the Effect of Foreign Aid on Corruption," *Economics Bulletin* 32, no. 3 (2012): 2174-2180. ("Development aid fuels corruption in Africa," refuting findings of Keisuke Okada and Sovannroeun Samreth, "The Effect of Foreign Aid on Corruption: A Quantile Regression Approach," *Economics Letters* 115, no. 2 (2012): 240-243.)

⁶⁵ *Id.*, Djankov, et al., 2006, *supra*, note 61, at 1.

⁶⁶ Simeon Djankov, Jose G. Montalvo, and Marta Reynal-Querol, "The Curse of Aid," *Journal of Economic Growth* 13, no. 3 (2008): 169-194.

⁶⁷ Djankov, Montalvo, and Reynal-Querol found if the foreign aid a country received over a period of five years reached the 75th percentile of its GDP, then a 10-point index of democracy was reduced between 0.6 and one point. As a comparison, they measured the effect of oil rents on political institution and found the fall in democracy when oil revenues reached the 75th percentile was smaller. *Id.* at 172.

⁶⁸ *Id.* at 172.

⁶⁹ *Id.* at 173, citing Bräutigam and Knack (2004), *supra*, note 16, at 255-285 (statistically significant, negative relationship between aid intensity and quality of governance). Accord, Deborah Bräutigam, *Aid Dependence and Governance*, Vol. 1. Expert Group on Development Issues, 2000.

⁷⁰ *Id.*, citing Michael Maren, "The Road to Hell: How International Charity & Food Aid Damage the Third World," 1997 (Somalia's civil war caused by the desire of factions to control food aid). And see, Djankov, et al. (2006), *supra*, note 61 (foreign aid "windfalls" can lead to increased corruption, rent-seeking activities and civil war).

⁷¹ *Id.* at 174, citing Paul Collier and David Dollar, "Development Effectiveness: What Have We Learnt?" *Economic Journal* 114, no. 496 (2004)(emphasis added). And see, Franklin D. Kramer and Melanne Civic, "Strategic Realities in Irregular Conflict. Ch. 3," 2013 (NGOs that rush to establish humanitarian and development programs without assessing local conflict dynamics inadvertently do harm as humanitarian resources transferred into a local context fuel conflict between groups and can be hijacked by local armed groups to buy more weapons. *Id.* at 30).

⁷² See, e.g., Jessica Martini, Roch Mongo, Hyppolite Kalambay, Anne Fromont, Nathalie Ribesse, and Bruno Dujardin, "Aid Effectiveness from Rome to Busan: Some Progress but Lacking Bottom-up Approaches or Behaviour Changes," *Tropical Medicine & International Health* 17, no. 7 (2012): 931-933 (Decision-making should be based on bottom-up approaches, such as country-led mechanisms of planning, implementation and evaluation, taking stock of and scaling up local experiences. *Id.* at 932.)

⁷³ *Id.*, Doucouliagos and Paldam, 2011, *supra*, note 48. (Authors confirmed a "striking pattern": as the number of estimates has increased, the partial correlation of aid and growth keeps declining. Authors' meta-analysis had detected this declining aid effectiveness. *Id.* at 402.)

⁷⁴ *Id.*, Asongu, 2012, *supra*, note 63.

⁷⁵ Simone Dietrich and Joseph Wright, *Foreign Aid and Democratic Development in Africa*, UNU-WIDER Research Paper WP2012/20, 2012 (democracy and governance aid, focused on capacity building, have a consistently positive effect on democratic consolidation; economic aid has no effect on democratic consolidation). *Id.*, at 28 – 29.

⁷⁶ "Strong commitments of aid should follow, not lead, the indicators of effort being made to achieve better macroeconomic stability, and better governance." Deborah Bräutigam, *Aid Dependence and Governance*, Vol. 1, Expert Group on Development Issues, 2000: 55.

⁷⁷ Oxford Economics Professor Paul Collier evaluated the state of development in 58 countries; mostly in Africa. He argued for continued financial development assistance, taking a middle position between Jeffrey Sachs (calling for a "big bang" to double official development assistance and end poverty) and William Easterly (who has been deeply skeptical of the aid business). Collier contended aid could work under limited circumstances. He cited, as an example, aid applied to reinforce institutional development already underway, such as the US's Millennium Challenge Account that has provided countries with incentives to reform policies. However, he warned that providing large amounts of development aid to new leaders – or to those economies at the very beginnings of a reform process – often created disincentives to complete reforms. Collier recommended a "go slow" approach. See, Paul Collier, *Bottom Billion*, Blackwell Publishing Ltd, 2007.

⁷⁸ Arvind K. Jain, "Models of Corruption," *Economics of Corruption* 65 (1998): 13.

⁷⁹ There are, of course, dissenters from the consensus; chiefly citing to cultural and economic differences. See, e.g., Kalin Ivanov, "The Limits of a Global Campaign against Corruption," *Corruption and Development: The Anti-corruption Campaigns* (2007): 28-45 (author raised "doubts about the feasibility of a global fight against corruption, divorced from the local context," because the "global agenda's technocratic approach" failed to understand that local views

of corruption “may reflect alternative normative frameworks such as familial duties, ethnic or religious loyalties, fidelity to friends, or norms of reciprocity.” *Id.* at 35).

⁸⁰ Arvind K. Jain, “Corruption: A Review,” *Journal of Economic Surveys* 15, no. 1 (2001): 71-121; 71-72. *But see*, Jens Chr. Andvig, Odd-Helge Fjeldstad, Inge Amundsen, Tone Sissener, and Tina Søreide, “Corruption. A Review of Contemporary Research.” *Chr. Michelsen Institute*, 2001: 5-49. Andvig argues that the legal public definition of corruption is problematic because it assumes laws prohibit corrupt behavior, legal frameworks are neutral and non-political, all corrupt behavior is covered by laws, and there was a non-varying correspondence between legality and morality. Andvig concludes that the legality of various practices varies across jurisdictions as corruption is a “social act;” it “is now a legal one, now illegal, depending upon the social context” (emphasis added). *Id.* at 49.

⁸¹ Professor Petrus Van Duyne has identified nine sub-divisions of corruption, assuming there to be a, differentiation between corrupter and corruptee; between the person who induces or initiates the corrupt exchange and the person who accepts it. However, Van Duyne concedes, “(i)n general it is difficult to make such a differentiation.” See, Petrus C. Van Duyne, “Will Caligula Go Transparent?” *United Nations Centre for International Crime Prevention* 1, no. 2 (2001): 73, 77.

⁸² Prior to 1990, countries now identified as “corrupt” were simply referred to as “authoritarian” or “totalitarian.” Sarah Bracking, *Political Development and Corruption: Why “Right Here, Right Now!” Corruption and Development. The Anti-Corruption Campaigns*. Basingstoke, Hampshire: Palgrave Macmillan (2007): 3-27, at 9.

⁸³ *Id.*, Jain, 2001, *supra*, note 80, at 71 - 72. Others sometimes refer to this form of corruption as, “state capture.” See, e.g., Rose-Ackerman, Susan. The challenge of poor governance and corruption. Copenhagen Consensus, 2004 (“state capture” implies that the state itself can be characterized as largely serving the interests of a narrow group of business people and politicians, sometimes with criminal elements mixed in. *Id.* at 12). See also, Joel Hellman, Geraint Jones, and Daniel Kaufmann. “Seize the State, Seize the Day: State Capture, Corruption and Influence in Transition,” 2000: 35.

⁸⁴ One study found only 16 cents of every aid dollar directed to Ugandan primary school education reached its intended target. U. Myint, “Corruption: Causes, Consequences and Cures,” *Asia Pacific Development Journal* 7, no. 2 (2000): 33-58. *And see*, Ritva Reinikka and Jakob Svensson, “Local Capture: Evidence from a Central Government Transfer Program in Uganda,” *The Quarterly Journal of Economics* 119, no. 2 (2004): 679-705: 679 (data revealed during 1991-1995, Ugandan schools, on average, received only 13% of international grant funding. Most schools received nothing. The bulk of the funding was captured by local officials and politicians). See, also, Benjamin A. Olken, “Direct Democracy and Local Public Goods: Evidence from a Field Experiment in Indonesia.” No. w14123. National Bureau of Economic Research, 2008 (finding 24-28% of Indonesian community-development infrastructure project had been lost to corruption).

⁸⁵ See, Halvor Mehlum, Karl Moene, and Ragnar Torvik. “Cursed by Resources or Institutions?” *The World Economy* 29, no. 8 (2006): 1117-1131. (Rent-seeking outside the productive economy pays off when institutions are bad, “or grabber friendly.” *Id.* at 123 – 124).

⁸⁶ Susan Rose-Ackerman, “Corruption: Greed, Culture, and the State,” *Yale LJ Online* 2010 (2010): 125-140 (corruption at the top of the state hierarchy typically imposes large costs on ordinary people by diverting funds to top political leaders. *Id.* at 132).

⁸⁷ *Id.*, Rose-Ackerman, 2004, *supra*, note 83, at 27 (citations omitted).

⁸⁸ Olivier Cadot, “Corruption as a Gamble,” *Journal of Public Economics* 33, no. 2 (1987): 223-244 (corruption is a “highly contagious phenomenon” *Id.* at 239).

⁸⁹ Regarding waste, see, Susan Rose-Ackerman and Rory Truex, “Corruption and Policy Reform,” 2012, SSRN 2007152 (endemic corruption creates incentives for officials to create unneeded projects to hide monopoly gains; in such cases the loss to society is not just the bribes paid; it is the total of wasted resources spent on the project. *Id.* at 25).

⁹⁰ Bo Rothstein, “Anti-Corruption—A Big Bang Theory,” *QoG Working Paper Series*, no. 3 (2007): 3. (Problem with corruption is that is a phenomenon that seems to be very “sticky.” Most empirical research shows that “once the system gets there, it stays there.”) *Accord*, Eric M. Uslaner, “The Bulging Pocket and the Rule of Law: Corruption, Inequality, and Trust,” in Conference on The Quality of Government: What It Is, How to Get It, Why It Matters, 2005, pp. 17-19 (“Corruption is remarkably sticky over time”); *And see*, Myint, *supra*, note 84 (when systemic corruption takes hold of a country, the institutions, rules and peoples’ behaviour and attitudes become adapted to the corrupt way of doing things and corruption becomes a way of life. *Id.* at 41).

⁹¹ Special Inspector General for Afghan Reconstruction, Quarterly Report to the United States Congress, April 2013.

⁹² Since 2002, Congress has provided nearly \$93 billion to rebuild Afghanistan, making it the most costly effort to reconstruct a single country in US. This number does not yet include all Afghanistan reconstruction funding for Fiscal Year 2013 because final appropriation amounts have not been determined for many accounts, including State and USAID accounts. *Id.* at 3 – 4.

⁹³ The April 2013 SIGAR report commented extensively on ineffective development aid programing, noting that in the 21 audit reports, it had highlighted numerous instances of inadequate planning, poor quality assurance, lack of Afghan capacity, and questionable sustainability. *Id.* at 8.

⁹⁴ For example, SIGAR emphasized that Afghan government institutions, particularly those involved in infrastructure projects, lacked technical and managerial capacity to monitor projects, resulting in deficient work. *Id.* at 19.

⁹⁵ Statistics reveal that at least 80% of international aid has been spent by donor agencies and their implementing partners with little consultation with the Afghan government. As a result, the Afghan government, “has little incentive to sustain these donor-funded projects.” *Id.* at 13.

⁹⁶ *Id.* at 20.

⁹⁷ Selçuk Akçay, “Corruption and Human Development,” *Cato J.* 26 (2006) (statistically significant negative relationship between corruption indexes and human development; more corrupt countries tend to have lower levels of human development. *Id.* at 29).

⁹⁸ See, Olatunde Julius Otusanya, “The Role of Multinational Companies in Corrupt Practices: The Case of Nigeria,” *International Journal of Critical Accounting* 3, no. 2 (2011): 171-203.

⁹⁹ See, e.g., Global Witness, “Grave Secrecy: How a Dead Man Can Own a UK Company and other Hair-raising Stories about Hidden Company Ownership from Kyrgyzstan and Beyond,” (2012) (\$64 million in Kyrgyz funds funneled out of country with assistance of Western banks. *Id.* at 5).

¹⁰⁰ There is on-going debate about the accuracy of corruption and money laundering statistics. See, e.g., Petrus C. Van Duyne, “Organised Crime, Laundering and the Congregation of the Gullible,” 2011; Petrus C. Van Duyne and Georgios A. Antonopoulos, *Cross-border Crime Inroads on Integrity in Europe*, Wolf Legal Publishers, 2010: Introduction; and Petrus C. Van Duyne, “Criminal finances and state of the art. Case for concern?” *Crime Business and Crime Money in Europe*, Nijmegen: Wolf Legal, 2007: 69-95. Accord, Antoinette Verhage, “The Holy Grail of Money Laundering Statistics: Input and Outcome of the Belgian AML System,” (2010): 143-168 (it is surprising that after almost two decades, no valid data are available and no one knows the magnitude of the crime. *Id.* at 150).

¹⁰¹ As the accuracy of corruption and money laundering statistics is open to question, the figures noted herein are considered notional and cited for discussion purposes only.

¹⁰² Daniel Kaufmann, “Myths and Realities of Governance and Corruption,” 2005, SSRN 829244.

¹⁰³ James S. Henry, “The Price of Offshore Revisited,” *Tax Justice Network. & Christian Aid (2008) Death and taxes: the true toll of tax dodging. Christian Aid (2012).*

¹⁰⁴ Dev Kar and Sarah Freitas, “Illicit Financial Flows From Developing Countries: 2001-2010,” (2012): i, 27.

¹⁰⁵ Alex Marriage, “Secret Structures, Hidden Crimes: Urgent Steps to Address Hidden Ownership, Money Laundering and Tax Evasion from Developing Countries,” (2013): 6.

¹⁰⁶ *Id.*, Landell-Mills, et al., *supra*, note 12.

¹⁰⁷ Paolo Mauro, “Corruption and Growth,” *The Quarterly Journal of Economics* 110, no. 3 (1995): 681-712.

¹⁰⁸ Pranab Bardhan, “Corruption and Development: A Review of Issues,” *Journal of Economic Literature* 35, no. 3 (1997): 1320-1346.

¹⁰⁹ Arvind K. Jain, “Corruption: A Review,” *Journal of Economic Surveys* 15, no. 1 (2001): 71-121, at pp. 71-72; citing: Lant Pritchett and Daniel Kaufmann, “Civil Liberties, Democracy, and the Performance of Government Projects,” *Finance and Development* 35 (1998): 26-29; and Aymo Brunetti, Gregory Kisunko, and Beatrice Weder. “Credibility of Rules and Economic Growth: Evidence from a Worldwide Survey of the Private Sector,” *The World Bank Economic Review* 12, no. 3 (1998): 353-384.

¹¹⁰ Robin Hodess, J. Banfield, and T. Wolfe, “Transparency International, Global Corruption Report 2003,” *Berlin, Germany: Transparency International (2003).* Accord, Arvind K. Jain, “Corruption: Theory, Evidence and Policy,” *CESifo DICE Report* 9, no. 2 (2005): 3-9 (corruption introduces costs and benefits that create a bias against the poor. *Id.* at 6-7).

¹¹¹ International Council on Human Rights Policy (ICHRP), and Sweden, “Corruption and Human Rights: Making the Connection,” ISBN 2-940259-85-2 (2009): 115; citing the Oxford English Dictionary, 1978, at 1024-1025.

¹¹² *Id.* at v. The ICHPR estimated that in Mexico approximately 25% of income earned by poor households was lost to petty corruption. It estimated in Bangladesh that 33% of girls trying to enroll in a government stipend scheme for extremely poor students had to pay bribes, while half had to make a payment before collecting their awarded

scholarship. And, in Madagascar, 25% of all households were forced to cover school enrollment fees although all primary education was free.

¹¹³ *Id.*, at 115. Accord, Shrivastava Ashish and Dixit Kusum, "Corruption is Dangerous for Human Rights: A Study," 2013, noting:

An analysis of corruption that draws on human rights will emphasize the harm to individuals that corruption causes. From this perspective, it is often taken for granted that corruption "violates" human rights. When people make this claim, they have a range of issues in mind. They mean that, when corruption is widespread, people do not have access to justice, are not secure and cannot protect their livelihoods. Court officials and the police pay more heed to bribes than to law. Hospitals do not heal people because the medical staff give better treatment to patients who pay backhanders or because clinics lack supplies due to corrupt public contracting procedures. Poor families cannot feed themselves because social security programmes are corrupt or distorted to support a patronage network. Schools cannot offer their students a sound education because the education budget has been looted and as a result teachers cannot be paid and books cannot be purchased. Farmers and market sellers cannot earn a living because police take a cut of their produce and sales. In numerous ways like these, corruption encourages discrimination, deprives vulnerable people of income, and prevents people from fulfilling their political, civil, social, cultural and economic rights. *Id.* at 2.

¹¹⁴ Katja Samuel, Nigel D. White, and Ana Maria Salinas de Frias, "World Justice Project Counter-Terrorism Expert Network: Report of Key Findings and Recommendations on the Rule of Law and Counter-Terrorism." (2012): 8, citing: the Report of the Secretary-General, "In Larger Freedom: Towards Development, Security and Human Rights for All," (2005) UN Doc A/59/2005 (In Larger Freedom Report), paras 127-8; and World Summit Outcome, UNGA Res 60/1 (16 September 2005) UN Doc A/RES/60/1, para. 119; UNSC Res 1674 (28 April 2006) UN Doc S/RES/1674, para. 2. For a discussion of emerging challenges for development in security-constrained environments, see, Ana María Salinas de Frias, Katja Samuel, and Nigel White, eds. *Counter-Terrorism: International Law and Practice*, Oxford University Press: Oxford, 2012.

¹¹⁵ Lisa Denney, "Security: The Missing Bottom of the Millennium Development Goals?" (2012): 2 (advocating for inclusion of security in the post 2015 MDGs, but with a narrow focus on armed violence. *Id.* at 7).

¹¹⁶ See, UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 16 May 2013]: preamble.

¹¹⁷ Edward Newman, "Human Security and Constructivism," *International Studies Perspectives* 2, no. 3 (2001): 239-251.

¹¹⁸ Sabina Alkire, "A Conceptual Framework for Human Security," (2003).

¹¹⁹ Jennifer Leaning and Sam Arie, "Human Security: A Framework for Assessment in Conflict and Transition," *United States Agency for International Development/Complex Emergency Response and Transition Initiative*, Washington, 2000.

¹²⁰ Shahrbanou Tadjbakhsh, "Human Security: Concepts and Implications," *Les Etudes du CERI* - n° 117-118 (2005): 53. Accord, Shahrbanou Tadjbakhsh and Anuradha Chenoy, *Human Security: Concepts and Implications*, Vol. 51, Routledge, 2007.

¹²¹ Kofi Annan, Secretary-General, "Message to the Third Global Forum on Fighting Corruption and Safeguarding Integrity," delivered by Dileep Nair (Under-Secretary-General for Internal Oversight Services), 29–31 May 2003.

¹²² Philippa Webb, "The United Nations Convention against Corruption Global Achievement or Missed Opportunity?" *Journal of International Economic Law* 8, no. 1 (2005): 191-229.

¹²³ See, e.g., David Chandler, "Human Security: The Dog that Didn't Bark." *Security Dialogue* 39, no. 4 (2008): 427-438.

¹²⁴ See, Simplice A. Asongu and Kodila-Tedika Oasis. *Fighting African Conflicts and Crimes: Which Governance Tools Matter?* No. 44044, University Library of Munich, Germany, 2013. Asongu and Kodila-Tedikam evaluated 38 African countries, utilizing a data sample of African Development Indicators (ADI) from the World Bank (WB) and the Institute for Economics and Peace (IEP). Their findings confirmed a direct connection between pervasive corruption and conflict, noting that corruption-control efforts would, "go a long way" not only to improving the quality of life and wellbeing of citizens, but also by creating "ideal conditions" for sustainable economic growth. The authors concluded that, "(u)ltimately, the measure will prevent organized criminal groups from corrupting, colluding with and/or penetrating state structures." *Id.* at 6, 13, 14.

¹²⁵ See, e.g., Mohd Masoom Stanekzai and Masaki Kudo, "Security Sector Reform in Afghanistan." *Toward Bringing Stability in Afghanistan: A Review of the Peacebuilding Strategy*, 2008 (important that SSR in post-conflict countries be approached from a human-security perspective. *Id.* at 39).

¹²⁶ “State fragility” may be characterized as, “weak governments, insufficient security and legal frameworks, ineffective administration, poor public services, high rates of conflicts and civil wars, growing extreme poverty. See, Oasis Kodila-Tedika and Simplice A. Asongu, “State Fragility, Rent Seeking and Lobbying: Evidence from African Data,” (2013): 1, 3. (“Rent seeking and lobbying increase the probability of state fragility by mitigating the effectiveness of governance capacity.” *Id.* at 15.)

¹²⁷ See, e.g., White House. *National Security Strategy*, 2010: 47, available at: http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf (accessed 16 May 2013), and Kaufmann, Daniel. “Corruption, governance and security: challenges for the rich countries and the world.” *Available at SSRN 605801* (2004): 95.

¹²⁸ Barry Buzan and Gerald Segal, “Rethinking East Asian Security,” *Survival* 36, no. 2 (1994): 3-21.

¹²⁹ Andre Le Sage, “Africa’s Irregular Security Threats: Challenges for US Engagement.” *Institute for National Strategic Studies* (2010).

¹³⁰ Diamint, Rut. “Security Challenges in Latin America.” *Bulletin of Latin American Research*, 23, no. 1. (2004): 43-62, at 59 (emphasis added).

¹³¹ Johannes Linn, “Reality or Mirage?” *BBK 65.9 E 91* (2012): 96 (emphasis added).

¹³² Kimberley Thachuk, “Corruption and International Security.” *SAIS Review* 25, no. 1 (2005): 143-152.

¹³³ Paul Fishstein and Andrew Wilder, “Winning Hearts and Minds? Examining the Relationship between Aid and Security in Afghanistan.” *Feinstein International Center, Tufts University, Medford, MA* (2012) (most destabilizing aspect for post-war-aid economies is large development spending that fuels massive corruption and delegitimizes government. *Id.* at 2-3).

¹³⁴ T. S. Allen, “Addressing an Ignored Imperative: Rural Corruption in Afghanistan,” *Small Wars Journal On-Line* | February 17 (2013): 2:30am, available at: <http://smallwarsjournal.com/jrnl/art/addressing-an-ignored-imperative-rural-corruption-in-afghanistan> (accessed 12 May 2013) (“Now is . . . an appropriate time to consider the ramifications of military-led efforts to fight corruption.” *Id.*). Allen’s article assumes the existence of “out-of-uniform” organizations capable of solving such political problems; he may presume too much. See: Robert Hoekstra and Charles E. Tucker, Jr., “Adjusting to Stabilization and Reconstruction Operations,” *Prism* 1, no. 2. (2010); and Robert Hoekstra and Charles E. Tucker Jr., “Adjusting to Stabilization and Reconstruction Operations,” *JCOA Mission Statement*: 23, 37.

¹³⁵ Roland Paris, “Human Security: Paradigm Shift or Hot Air?” *International Security* 26, no. 2 (2001): 87-102; and Selçuk Akçay, “Corruption and Human Development,” *Cato J.* 26 (2006): 29.

¹³⁶ These efforts have sparked an “anti-corruption industry.” See, Steven Sampson, “The Anti-corruption Industry: from Movement to Institution.” *Global Crime* 11, no. 2. (2010): 261-278; and Stephen P. Riley, “The Political Economy of Anti-corruption Strategies in Africa.” *The European Journal of Development Research* 10, no. 1 (1998): 129-159, 132. Some question whether this industry is biased toward perpetuating itself, despite poor outcomes. See, e.g., Sarah Bracking (ed.), *Corruption and Development*, Palgrave Macmillan, 2007: 236 – 257; and Bracking (2007), *supra*, note 82, at 3-27.

¹³⁷ See, Tine Søreide, “Democracy’s Shortcomings in Anti-corruption.” *CMI Working Paper* (2012): 1, and Rose-Ackerman and Truex (2012), *supra*, note 89, at 14).

¹³⁸ A sampling of studies finding “disturbing” trends in corruption and anti-corruption campaigns:

- Yuliya Zabyelina and Jana Arsovska. “Rediscovering Corruption’s Other Side: Bribing for Peace in Post-conflict Kosovo and Chechnya.” *Crime, Law and Social Change* (2013): 1-24. (Conventional anti-corruption approaches can impede successful war to peace transitions);
- Aili Mari Tripp, *Donor Assistance and Political Reform in Tanzania*, United Nations University, World Institute for Development Economics Research, 2012. (“Disturbing consequences” of donor supported aid and anti-corruption practices in Tanzania”)
- Olugbenga Olagunju, “Corruption Control in Nigeria: Holistic Approach.” *Advances in Arts, Social Sciences and Education Research* 2, no. 1 (2012): 1.
- Byaruhanga Julius, “Improving Service Delivery in Developing Countries; Approaches, Challenges and Methodologies Case Studies from Uganda,” (2011). (Corruption has into a global vice of disturbing proportions.);
- Martin Tisne and Daniel Smilov, “From the Ground Up. Assessing the Record of Anti-corruption Assistance in Southeastern Europe,” (2004): 51. (“It is a disturbing trend that national anti-corruption strategies should be applied from country to country with little regard as to whether the solution matches the problem . . . so little has been achieved.”);

- Mitchell A. Seligson, “The Measurement and Impact of Corruption Victimization: Survey Evidence from Latin America,” *World Development* 34, no. 2 (2006): 381-404 (results for Ecuador “very disturbing”); and
- Barbara George and Kathleen Lacey, “A Coalition of Industrialized Nations, Developing Nations, Multilateral Development Banks and Non-Governmental Organizations: A Pivotal Complement to Current Anti-Corruption Initiatives,” *Cornell International Law Journal* 33, no. 3 (2000): 547.

¹³⁹ Alina Mungiu-Pippidi, “Corruption: Diagnosis and Treatment,” *Journal of Democracy* 17, no. 3 (2006): 86-99 (In recent years, anticorruption has become “a major industry, with global expenditures growing to an estimated one hundred million dollars per year. “(T)here is little evidence that all this activity is accomplishing much.” *Id.* at 86).
Accord:

- Anna Persson, Bo Rothstein, and Jan Teorell, “The failure of Anti-Corruption Policies A Theoretical Mischaracterization of the Problem,” *QoG Working Paper Series* 19 (2010)(some corruption became more entrenched in response to efforts to curb it. *Id.* at 19);
- Anwar Shah, “Corruption and Decentralized Public Governance,” *World Bank Policy Research Working Paper* 3824 (2006)(many anti-corruption programs are simply “folk-remedies or “one size fits all” approaches that offer little chance of success. *Id.* at 4); and
- James Gathii, “Corruption and Donor Reforms: Expanding the Promises and Possibilities of the Rule of Law as an Anti-corruption Strategy in Kenya,” *Connecticut Journal of International Law* 14, no. 2. (1999)(dealing with corruption simply as a matter of procedural fairness is insufficient).

¹⁴⁰ *Id.*, Andvig, et al., *supra*, note 80.

¹⁴¹ Ed Brown, Jonathan Cloke, and José Luis Rocha, “Governance, Neoliberalism and Corruption in Nicaragua,” *Corruption and Development. The Anti-corruption Campaigns* (2007): 182-202 (anti-corruption campaign in Nicaragua was weakly pursued for geopolitical reasons and donor inconsistency “was breathtaking.” *Id.* at intro).

¹⁴² *Id.*, Rose-Ackerman and Rory Truex, 2012, *supra*, note 89, at 4.

¹⁴³ *Id.*, De Haan and Warmerdam, *supra*, note 44, at 23, concluding, “a better understanding of aid dynamics is necessary.”

¹⁴⁴ Daniel Treisman, “The Causes of Corruption: A Cross-national Study,” *Journal of Public Economics* 76, no. 3 (2000): 399-457; and Martin Paldam, “The Cross-country Pattern of Corruption: Economics, Culture and the Seesaw Dynamics,” *European Journal of Political Economy* 18, no. 2 (2002): 215-240.

¹⁴⁵ Richard Manning, “Working Paper No. 2012/24, WP/024. Aid as a Second-Best Solution: Seven Problems of Effectiveness and How to Tackle Them,” United Nations University-Wider, 2013, available at ISBN 978-92-9230-487-4.

¹⁴⁶ Johann Graf Lambsdorff, *The Organization of Anti-corruption: Getting Incentives Right!* Vol. 57, no. 08, Passauer Diskussionspapiere: Volkswirtschaftliche Reihe, 2008.

¹⁴⁷ *Id.*, Asongu, 2012, *supra*, note 63, at 12 (attempts by Western aid agencies to introduce top-down formal institutions “had not fared well in the complicated maze of bottom-up arrangements”).

¹⁴⁸ *Id.*, Bardhan, *supra*, note 108, at 1333-1336; Rose-Ackerman and Rory Truex, 2012, *supra*, note 89, at 23; and Cadot, *supra*, note 88, at 223-244.

¹⁴⁹ Johann Graf Lambsdorff, “Behavioral and Experimental Economics as a Guidance to Anticorruption,” (2012): 279-300. *And note*, the UN Convention Against Corruption (UNCAC) takes a rules-based/repression-based approach, particularly with regard to its proviso that signatory countries implement national criminal codes for countering corruption. See: UNODC website, at <http://www.unodc.org/unodc/en/corruption/index.html?ref=menuaside> (accessed on 13 May 2013).

¹⁵⁰ *Id.*, Lambsdorff, 2012, *supra*, note 149.

¹⁵¹ *Id.*, Lambsdorff, 2008, *supra*, note 146, at 3. For a discussion of such failures in Afghanistan, see: United Nations Office on Drugs and Crime (UNODC), “Corruption in Afghanistan: Recent Patterns and Trends,” (2012): 3-29; and Civil-Military Fusion Centre. “Corruption & Anti-corruption Issues in Afghanistan,” (2012): 6 (\$30 to \$60 billion of US funding was “wasted due to fraud, corruption, weak reporting and accountability mechanisms in Iraq and Afghanistan.” *Id.* at 23-25).

¹⁵² See, e.g., Derick W. Brinkerhoff, “Unpacking the Concept of Political Will to Confront Corruption,” *U4 Brief* 2010, no. 1 (2010). *Accord:* Patrick Meagher, “Anti-corruption Agencies: Rhetoric Versus Reality,” *The Journal of Policy Reform* 8, no. 1 (2005): 69-103; and John Mukum Mbaku, “Bureaucratic Corruption in Africa: The Futility of Cleanups,” *Cato J.* 16 (1996): 99-118 (traditional anti-corruption campaigns, focusing on societal, legal, market, and political strategies ineffective; to understand why people engage in corruption need to examine the rules that regulate the socio-political behavior of individuals; at 114.).

¹⁵³ Keith Blackburn, Niloy Bose, and M. Emranul Haque, “Endogenous Corruption in Economic Development,” *Journal of Economic Studies* 37, no. 1 (2010): 4-25.

¹⁵⁴ David de la Croix and Clara Delavallade, “Democracy, Rule of law, Corruption Incentives, and Growth,” *Journal of Public Economic Theory* 13, no. 2 (2011): 155-187.

¹⁵⁵ *Id.*, Boucher, et al., *supra*, note 43, at 47, noting a “comprehensive anti-corruption strategy . . . ends up looking like a comprehensive peace-building or state-building strategy.”

¹⁵⁶ *Id.*, Morrissey and Verschoor (2006), *supra*, note 34 (preferences and capacity give rise to local commitment to reform, but the ability to implement successfully will depend on administrative capability and institutional structures. *Id.* at 280-282).

¹⁵⁷ One might presume that being “willing but unable” is a *probable* prescription for systems failure; being “unwilling and unable” is an *undoubted* prescription for disaster. *Id.*, Brinkerhoff, 2010, *supra*, note 152, at 1.

¹⁵⁸ Derick W. Brinkerhoff, “Unpacking the Concept of Political Will to Confront Corruption,” *U4 Brief* 2010, no. 1 (2010), at 1 (emphasis added).

¹⁵⁹ World Bank, *Anticorruption in Transition - A Contribution to the Policy Debate*, Washington, DC, 2007.

¹⁶⁰ Mirjana Stanković and Robert Sundberg, “A Crime of Calculation—Addressing the Economic Bases of Corruption in Serbia,” in *16th NISPACEE Conference in Bratislava, Slovakia, 2008*: 1 (emphasis added). *And see*, Robert E. Klitgaard, Ronald MacLean Abaroa, and H. Lindsey Parris, *Corrupt Cities: Practical Guide to Cure and Prevention*, World Bank, 2000; and Kari K. Heggstad and Mona Frøystad, “The Basics of Integrity in Procurement,” *U4 Issue* 2011, no. 10 (2011): 16 (the challenge is not the creation of written codes of conduct, but putting the guidelines into practice).

¹⁶¹ Robert Sundberg and Mirjana Stanković, “Anticorruption Mechanisms in Serbian Local Government: Institutions which both Oppose and Are Resistant to Corruption,” in *15 NISPACEE Conference in Kyev. 2007*: 1-4, 2. (“Too often, anticorruption programs overlook the fact that ethics and legal systems alone are not sufficient to effectively address corruption. Rather, it is properly established institutions that prove to be powerful anticorruption mechanisms.” *Id.* at 1.)

¹⁶² *Id.*, Sundberg and Stanković, 2008, *supra*, note 160 at 3 (emphasis added). Authors noted that mere provision of legislation, ethical guidelines, training and institutional frameworks are insufficient; public officials cannot turn these into practice unless given appropriate process-oriented tools to distinguish among parts of the process and guide them to the desired outcomes. *Id.* at 12-13.

¹⁶³ *Id.*, Sundberg and Stanković, 2007, *supra*, note 161.

¹⁶⁴ *Ibid.* at 3.

¹⁶⁵ Traditional anti-corruption programs typically include judiciary, prosecutorial and/or anti-corruption commission development, as well as public oversight programs designed to spur successful utilization of these mechanisms. *See, Id.*, Dreher, et al., *supra*, note 29; and Petter Langseth, Rick Stapenhurst, and Jeremy Pope, “The Role of a National Integrity System in Fighting Corruption,” *Commonwealth Law Bulletin* 23, no. 1-2 (1997): 499-528.

¹⁶⁶ *Id.*, Rose-Ackerman and Rory Truex (2012), *supra*, note 89, citing Francesca Recanatini, “Anti-corruption Authorities—An Effective Tool to Curb Corruption?” in *International Handbook on the Economics of Corruption*, Vol. 2, edited by Rose-Ackerman & Søreide (Edward Edgar Publishing, 2011).

¹⁶⁷ Cultural contexts, as well as specific forms and determinants of corruption, will vary from country to country. Thus, *before* embarking on massive development aid programing, aid agencies must gain an understanding of the country-specific circumstances. To be effective, this will require close consultation with local actors (top-down and bottom-up) to help develop a *concise set of feasible – and sustainable – institutional development priorities*. Among the key variables that should be analyzed include: potential Rule of Law development, specifically including non-criminal law matters (3 protection of property rights); appropriateness of local regulations, regulatory discretion and bureaucratic red tape; economic policies; political variables (e.g., fracture politics, length of leader in power, democracy); Civil Liberties (and ability of civil society to play a role); professionalism and incentives of civil service; education and literacy; natural resources management; ethno-linguistic fragmentation; income distribution; and financial and accounting systems. *See*, Daniel Kaufmann, “Revisiting Anti-Corruption Strategies: Tilt Towards Incentive-Driven Approaches?” *Corruption and Integrity Improvement Initiatives in Developing Countries*. UNDP, 1998: 79.

¹⁶⁸ *Id.*, Manning, *supra*, note 145, at 15, noting, “donors need to take a clear-headed approach to the competence of local delivery systems, where decisions need to be taken on what it is reasonable for the state to attempt to deliver and what is best delivered through other channels (and in both cases what safeguards are essential to limit risks of misappropriation).”

¹⁶⁹ One is mindful that even if these programs are tactically successful, they are usually strategically problematical. See, Joseph Hanlon, "Do Donors Promote Corruption?: The Case of Mozambique," *Third World Quarterly* 25, no. 4 (2004): 747-763, at 757-758. And see, Barbara Jones, "UK gives £19million aid to South Africa - its president spends £17.5million on his palace," *Daily Mail Online* (23:50 GMT, 24 November 2012, Updated, 23:50 GMT, 24 November 2012), at: <http://www.dailymail.co.uk/news/article-2238017/UK-gives-19million-aid-South-Africa--president-spends-17-5million-palace.html#ixzz2TsWU4AAtm> (accessed on 15 May 2013)(predatory elites became highly skilled at ensuring that management of donor money was transparent and clear, but then stole from banks, skimmed public works contracts, demanded shares in investments, smuggled drugs and other goods and ensured the justice system did not work).

¹⁷⁰ *Id.*, Kaufmann (1998), *supra*, note 167, at 63.

¹⁷¹ Sören Holmberg, Bo Rothstein, and Nagemeh Nasiritousi, "Quality of Government: What you Get," *Annual Review of Political Science* 12 (2009): 135-161.

¹⁷² See, Marcel Fafchamps, *Market Institutions in Sub-Saharan Africa: Theory and Evidence*, Vol. 3. MIT Press, 2004. And see, William Easterly, "Institutions: Top down or bottom up?" *The American Economic Review* 98, no. 2 (2008): 95-99, 96; citing Avinash Dixit, "Lawlessness and Economics. Alternative Modes of Governance. Economics With and Without the Law," edited by A. Dixit, The Gorman Lectures, *ТЕОРИЯ И ИСТОРИЯ ГОСУДАРСТВА И ПРАВА* 1, no. 2 (2012): 358 (an agenda of gradual reform that recognizes the constraints of bottom up evolution will lead to more hopeful results than a delusory top down attempt to leap to institutional perfection. *Id.* at 96).

¹⁷³ See, Charles E. Tucker Jr., "Cabbages and Kings: Bridging the Gap for More Effective Capacity-Building," *University of Pennsylvania Journal of International Law* 32 (2010).

¹⁷⁴ To name but two:

For a comprehensive approach to multi-pronged capacity development, see: Kanni Wignaraja, "Capacity Development: A UNDP Primer," *New York: United Nations Development Programme* (2009), describing at length a multi-pronged, multi-layered approach to institutional capacity assessment;

The joint UN DPKO/OHCHR United Nations Rule of Law Indicators provide a detailed assessment guide for evaluating police, courts and prisons in fragile states. See, Office of the High Commissioner of Human Rights, Department of Peacekeeping, *The United Nations Rule of Law Indicators: Implementation Guide and Project Tools*, UN Sales No. E.11.I.13 (2011), at http://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf.

¹⁷⁵ See, Dani Rodrik, "Second-best institutions," No. w14050, National Bureau of Economic Research, 2008. *Accord: Id.*, Manning, *supra*, note 145; Merilee S. Grindle, "Good Enough Governance: Poverty Reduction and Reform in Developing Countries," *Governance* 17, no. 4 (2004): 525-548 (reform is a "process," thus calling for assessments of "foundations of existing capacity," and targeted incrementalism in institutional development); and Malebogo Bakwena, "Is it True that Good Institutions Alleviate the Resource Curse? A Re-assessment of Existing OLS Cross-country Evidence," *Botswana Journal of Economics* 10, no. 14 (2013): 2-26 (countries with even just "average" institutions resist the resource curse).

¹⁷⁶ Dani Rodrik, "Institutions for High-quality Growth: What They Are and How to Acquire Them," *Studies in Comparative International Development* (SCID) 35, no. 3 (2000): 3-31. Referencing post-Soviet privatization, Rodrik observed that establishing property rights protections is rarely a matter of simply passing laws, as legislation in itself will neither be necessary nor sufficient for the provision of secure control rights. He argues, in practice, control rights must be upheld by a combination of legislation, private enforcement, custom and tradition. For legislation to be effective, there must also be acceptable restrictions on acquiring property rights. This implies the need for an *effective regulatory scheme*. Rodrik emphasizes five types of market-supporting institutions: property rights; regulatory institutions; institutions for macroeconomic stabilization; institutions for social insurance; and institutions of conflict management. *Id.* at 26-27. And see, Acemoglu, *et al.*, *supra*, note 37 (Botswana's good economic policies, and therefore, its economic success, reflected its "*institutions of private property*" that protected property rights of actual and potential investors, provided political stability and ensured that the political elites were constrained.)

¹⁷⁷ Christian Daude and Ernesto Stein, "The Quality of Institutions and Foreign Direct Investment," *Economics & Politics* 19, no. 3 (2007): 317-344 (unpredictability of laws, regulations and policies, excessive regulatory burden, government instability and lack of commitment play a major role in deterring foreign direct investment); Uslaner, *supra*, note 90, at 17-19. 2005 (regulatory policy has a powerful effect on corruption and on the level of risk that determine how much money countries can borrow); Daniel, Kaufmann, Aart Kraay, and Massimo Mastruzzi, "Governance Matters VIII: Aggregate and Individual Governance Indicators, 1996-2008," *World Bank Policy Research Working Paper* 4978, 2009 (regulatory quality is defined as the "ability of the government to formulate and

implement sound policies and regulations that permit and promote private sector development”); and Rodrik, *supra*, note 176, at 14-15 (cautioning that regulatory institutions need to be developed locally, relying on hands-on experience, local knowledge, and experimentation).

¹⁷⁸ One reason for poor management is poor talent; and poor institutions attract poor talent. See, Timur Natkhov and Leonid Polishchuk, “Institutions and the Allocation of Talent,” *Higher School of Economics Research Paper No. WP BRP 15* (2012) (“public policies and reforms that repair faulty institutions direct talent towards socially productive activities and thereby reduce the gap between private incentives and social needs in human capital accumulation.” *Id.* at 32).

¹⁷⁹ *Id.*, OECD-DAC (2009), *supra*, note at 27. According to the OECD, “(t)here are three institutional challenges to implementing the aid effectiveness agenda: a) *decentralising* to the country level; b) *adjusting human resources management* . . . and c) *adapting procedures*.” Moreover: “(h)uman resources management often needs to be revamped to motivate staff to implement the aid effectiveness agenda, to develop appropriate training and to recruit more local staff. *Id.* at 76.

¹⁸⁰ Evans Osabuohien, Uchenna R. Efobi, and Adeleke Salami, “Planning to Fail Or Failing to Plan: Institutional Response to Nigeria's Development Question,” African Development Bank, 2012. (Effective policies are products of effective planning. Planning requires trained institutional structures to achieve macroeconomic objectives, which include: rapid economic growth and development; price stability; maintaining favorable external balances; and reducing unemployment. Institutional checks are fundamental to guiding plan implementers and guard against abuses.)

¹⁸¹ Administrative capacity explains much of the variance in developing countries' growth. See, L. G. Reynolds, *Economic Growth in the Third World, 1850–1980*, Yale University Press, 1985; and S. Knack and P. Keefer, “Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures,” *Economics and Politics* 7, no. 3. (1995): 207–227. (Econometric research suggests that the influence of high quality public institutions may exceed the impact of good economic policies in explaining development performance.) *And see*, Alan Doig and Stephen Riley, “Corruption and Anti-corruption Strategies: Issues and Case Studies from Developing Countries,” *Corruption and Integrity Improvement Initiatives in Developing Countries* 45 (1998). (“Lawyers, accountants and investigative journalists all need help. Enhanced professional skills, as well as political and managerial will to control corruption, are more likely to be seen in democratic societies where the pressures of political competition often force politicians to act. Democratisation is thus a necessary but not a sufficient condition for the reduction of corruption.” *Id.* at 60.)

¹⁸² Tina Søreide, *Corruption in Public Procurement. Causes, Consequences and Cures*, Chr. Michelsen Institute, 2002 (technical expertise among the public officials concentrates the competition to price offers and a more efficient result may prevail, thus supporting the recommendation to establish small, independent, procurement units with professional officials. *Id.* at 22-30). *See also*: Søreide, 2012, *supra*, note 137 (procurement reform, alone, insufficient; need strengthened anti-trust/competition authorities). *And see*, Rose-Ackerman and Rory Truex, 2012, *supra*, note 89 (procurement officials who lack capacity to appropriately estimate costs, technical difficulties and actual benefits of project, open the door to corrupt operatives who exploit this unreliability enrich themselves and to further the interest of their firms. *Id.* at 25-26).

¹⁸³ Johann Graf Lambsdorff, “Making Corrupt Deals: Contracting in the Shadow of the Law,” *Journal of Economic Behavior & Organization* 48, no. 3 (2002): 221-241. *And see*: Søreide, 2012, *supra*, note 137 (cost-efficient results sought by International Competitive Bidding will be dependent on institutional qualities held by the state administration; when countries lack effective economic and human resources capacities, alternative procurement methods should be considered. *Id.* at 21).

¹⁸⁴ Howoilca Boost, “Curse or Cure? How Oil can Boost or Break Liberia's Post-war Recovery,” *Global Witness*, 2011. Boost investigated corrupt practices of the National Oil Company of Liberia. One the key finding was that neither the various ministries of the Liberian government nor the oil company had the basic managerial and logistical capacity to oversee the oil and gas industry. *Id.* at 38 – 56. *Accord*, Anthony H. Miller, “Providing Aid to Fragile or Failed States: A Short Argument for Moderation,” *Pepperdine Policy Review* 5, no. 1 (2012) (because they lack structured central governments with logistical capacity, aid to fragile or failed states should be restricted to in-kind aid and technical assistance. *Id.* at 4).

¹⁸⁵ *Id.*, Rose-Ackerman and Rory Truex, 2012, *supra*, note 89, at 6-7; citing Shawn Cole and Anh Tran, “Evidence from the Firm: A New Approach to Understanding Corruption,” *International Handbook on the Economics of Corruption* 2 (2011) (corruption dampens development is by inflating the budgetary costs of public goods and services because these costs incorporate kickbacks. Unless the procurement process is very competitive, this means individual projects and procurement contracts are excessively expensive and unproductive. *Id.* at 6-7).

¹⁸⁶ Benjamin A. Olken, *Monitoring Corruption: Evidence from a Field Experiment in Indonesia*, No. w11753. National Bureau of Economic Research, 2005 (formal and grassroots auditing capabilities reduced road construction corruption-based financial losses between 24-28%, even when these capabilities only increased the chances that a project would actually be audited. *Id.* at 23). *And see*, Deborah Bräutigam, *Aid Dependence and Governance*, Vol. 1, Expert Group on Development Issues, 2000 (donors often substitute their own accountants and reporting for those of local government auditors, as if an enclave of accountability can be created that can then somehow grow beyond its borders. In aid dependent countries, this has rarely been the case. *Id.* at 42).

¹⁸⁷ See:

- Mina Balamoune-Lutz, "Policy Reform and Aid Effectiveness in Africa," (2009) (in countries with weak social cohesion, aid donors must target education and health projects to reduce negative effects of ethnic fractionalization and social fragmentation. *Id.* at 9);
- David Elliot Bloom, David Canning, and Kevin Chan, *Higher Education and Economic Development in Africa*, No. 102, Washington, DC: World Bank, 2006, 19 (positive and statistically significant correlation between higher education enrollment rates and governance indicators, including absence of corruption, rule of law, absence of ethnic tensions, bureaucratic quality, low risk of repudiation of contracts by governments, and low risk of appropriation);
- Arvind K. Jain, "Corruption: Theory, Evidence and Policy," *CESifo DICE Report* 9, no. 2 (2005): 6-7 (government expenditures on education are negatively and significantly related to corruption);
- Abdiweli M. Ali and Hodan Said Isse, "Determinants of Economic Corruption: A Cross-country Comparison," *Cato J.* 22 (2002) (corruption is negatively and significantly correlated with the level of education, judicial efficiency, and economic freedom. *Id.* at 461);
- *Id.*, Gylfason (2001), *supra*, note 54 at 847-859 (education is good for growth); and
- Daniel Treisman, "The Causes of Corruption: A Cross-national Study," *Journal of Public Economics* 76, no. 3 (2000): 399-457 (education, makes abuses harder to conceal).

¹⁸⁸ Oduwole, Oluwakemi Titilayo. "Institutional Assessment as an Agent of Reform: An Analysis of Nigerian Legal Education." PhD diss., University of Toronto, 2012.

¹⁸⁹ See, Tucker, 2010, *supra*, note 173 (rule of law development requires going beyond traditional top-down approaches and focus on business law, family law, property law, legal education, creating for-profit and *pro bono* community-based/university-based law clinics, and linking formal legal institutions (including universities) with traditional civil society organizations and practices. *Id.* at 1351-1353.)

¹⁹⁰ *Id.*, Ali and Isse, *supra*, note 187. ("The interaction term between foreign aid and government expenditure shows that the marginal effect of government expenditure on corruption increases with the level of foreign aid." *Id.* at 460.)

¹⁹¹ The contemporary orientation to nation-building should be re-evaluated in favor of a more grass-roots, sociologically driven and institutionally based approach; the little things that guide and regulate human conduct in private or public sectors are just as consequential as the big ones. See, N. Kalu, "Institution-building, not Nation-building: A Structural-functional Model," *International Review of Administrative Sciences* 77, no. 1 (2011): 119-137, at 119-120.

¹⁹² Mushtaq H. Khan, "Governance and Anti-corruption Reforms in Developing Countries: Policies, Evidence and Ways Forward," (2009): vii, 14 - 21.

¹⁹³ *Id.* at vii (emphasis added).

¹⁹⁴ *Id.*, Doig and Riley, *supra*, note 181, at 60. *And see*, Agnes Batory, "Why do Anti-corruption Laws Fail in Central Eastern Europe? A Target Compliance Perspective," *Regulation & Governance* 6, no. 1 (2012): 66-82 (widespread failures of policy compliance signal there is something wrong with the policy, rather than something is wrong with the targets who are being uncooperative by failing to comply with it. *Id.* at 78-80).

¹⁹⁵ James Maton and Tim Daniel, "The Kleptocrat's Portfolio Decisions," *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (2012): 415.

¹⁹⁶ Accord, Bracking, 2007, *supra*, note 82, at 3-27.

¹⁹⁷ Niccolo Machiavelli, *Discourses on the First Decade of Titus Livius*, Kessinger Publishing, 2004.

¹⁹⁸ Samuel Bowles, "Machiavelli's Mistake: Why Good Laws Are No Substitute for Good Citizens," (2011).

¹⁹⁹ Costas Douzinas, "Violence, Justice, Deconstruction," *German LJ* 6 (2005): 171.

²⁰⁰ *Id.*, Maton and Daniel, *supra*, note 195, at 415. ("(A)fter initial enthusiasm for a recovery exercise within a state, political reality intervenes, interest wanes, people disperse, and instructions are increasingly difficult to obtain." *Id.* at conclusion, 446-448.)

²⁰¹ *Ibid.* at 415 (“international conventions recognize the need for concerted action, but, ultimately, the leaders in individual states have to summon the political will to tackle those who have gone before them and resist the temptation of simply following them, or nothing will ever change for the disadvantaged of this world.” *Id.*)

²⁰² Liliya Gelemerova, *The Anti-money Laundering System in the Context of Globalisation: A Panopticon Built on Quicksand?* Wolf Legal Publishers, 2011: 226. Gelemerova cited, for example, one report indicating that approximately 90% of Nigerian state governors owned property in the UK; payment for which had presumably come from Nigerian government assets stripped by the appropriators and trafficked (i.e., laundered) through the international business and banking systems. *Id.*, citing: Michael Peel, *Nigeria-related Financial Crime and its Links with Britain*, London: Chatham House, 2006: 19; and N. Alabi, “West Africa,” in *Global Corruption Report 2003*, edited by R. Hoddes, T. Inowlocki and T. Wolfe (London: Transparency International (Berlin) and Profile Books Ltd, 2003).

²⁰³ *Ibid.* at 253.

²⁰⁴ *Ibid.* at 4.

²⁰⁵ *Ibid.* at 253.

²⁰⁶ *Id.*, Alabi, *supra*, note 202, at 215.

²⁰⁷ Hannes Hechler, Gretta Fenner Zinkernagel, Lucy Koechlin, and Dominic Morris, “Can UNCAC Address Grand Corruption?” *U4 Report* 2011, no. 2 (2011). (“With UNCAC already in place . . . the remedy lies not in trying to improve the text of the Convention but in finding creative ways to apply it as written.) As noted by the authors:

. . . the *Convention* has a critical weakness in that it does not sufficiently address the nexus between power relations and corruption clearly, such as by addressing political and electoral corruption in a more detailed way and by making more provisions mandatory. The provisions for review mechanisms suffer from the same weakness, not taking into account the political and socio-economic dynamics surrounding anti-corruption reform, through mechanisms such as multi-stakeholder consultations. The Convention challenges the vested interests of dominant coalitions by criminalising the corrupt activities that sustain their systems. *But a major problem remains, in that it is precisely those dominant elites who are largely in charge of ensuring implementation.* The fact that UNCAC is a government-driven and government-owned convention, which also implicates politicians and public officials at all levels, poses difficult barriers to genuine implementation and bottom-up reform. *The solution must involve other domestic accountability actors* in a holistic reform approach, with attention to the weaknesses or biases of these actors as well as those of government officials (emphasis added). *Id.* at vii – viii.

²⁰⁸ Patrícia Galvão Ferreira, “Breaking the Weak Governance Curse: Global Regulation and Governance Reform in Resource-rich Developing Countries,” PhD diss., University of Toronto, 2012: 174; citing, W. Kenneth and Duncan Snidal, “Values and Interests: International Legalization in the Fight Against Corruption,” *The Journal of Legal Studies* 31, no. S1 (2002): S141-S177 (the conceptual underpinnings of the current system, including the UNCAC, were not predicated on the types of “grand corruption” outlined in the instant article. *Id.* at 174–175).

²⁰⁹ *Id.*, Gelemerova, *supra*, note 202, at 155, et seq. And see, Søreide, 2012, *supra*, note 137 (empirical assessment of the UN anti-corruption convention finds its impact is too dependent on political considerations. *Id.* at 3).

²¹⁰ Recent press reports indicate that “bags of money” have been delivered to President Hamid Karzai by the US. This money has been characterized as “foreign aid,” not corrupt bribe money. See, Sean Carberry, “Secret Cash to Afghan Leader: Corruption or Just Foreign Aid?” (1 May 2013, 3:01 PM). *National Public Radio Online* (accessed 19 May 2013) at: <http://www.npr.org/2013/05/01/180313502/secret-cash-to-afghan-leader-corruption-or-just-foreign-aid>. In the meantime, press reports indicate, “(m)ore than £2bn of cash has been openly flown out of Kabul airport since 2007, raising fears huge sums of British and American aid are being creamed off by corrupt officials.” See, e.g., Ben Farmer, “Aid cash feared lost as £2bn is flown out of Afghanistan,” *The London Telegraph Online* (28 Jun 2010, 5:27PM BST) (accessed 19 May 2013) at: <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/7859275/Aid-cash-feared-lost-as-2bn-is-flown-out-of-Afghanistan.html>. One need not be unreasonably cynical as to speculate that current and (undoubtedly) future international money laundering and asset recovery legal mechanisms will be insufficient to address this situation.

²¹¹ *Id.*, Hechler, et al., *supra*, note 207, at vi (limitations of UNCAC should not be taken as grounds for rejecting it as it can serve as a useful tool for societal stakeholders and external donors engaged in dialogue with governments. *Id.* at viii).

²¹² Ivan Pavletic, “The Political Economy of Asset Recovery Processes,” *International Centre for Asset Recovery* (2009): 5570284-1257172052492.

²¹³ *Ibid.* at 20. ARPs are Asset Recovery Processes.

²¹⁴ *Ibid.* at Preface.

²¹⁵ *Ibid.* at Preface.

²¹⁶ *Ibid.* at Preface.

²¹⁷ Incentives will not work, or will generate perverse results, in the absence of adequate institutions. See, Dani Rodrik, "Institutions for High-quality Growth: What They Are and How to Acquire Them," *Studies in Comparative International Development* (SCID) 35, no. 3 (2000): 3-31.

²¹⁸ Emad Atiq, "Why Motives Matter: Reframing the Crowding Out Effect of Legal Incentives," (2013).

²¹⁹ Detection-avoiding strategies may also fuel corruption by inducing some public officials to encourage the financing of projects for which the collection of bribes is easier. See, Andrei Shleifer and Robert W. Vishny, "Corruption," *The Quarterly Journal of Economics* 108, no. 3. (1993): 599-617.

²²⁰ Carlos Da Cunha and Jens Weidmann, "Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth," *Natural Resources, Corruption, and Economic Growth* (June 1999). *IMF Working Paper 99/85* (2001).

²²¹ Prof. Van Duyne believes the term, "money laundering," lacks empirical specificity. Therefore, he prefers the term, "criminal financial management." See, Petrus C. Van Duyne, Marc S. Groenhuijsen, and A. A. P. Schudelaro, "Balancing Financial Threats and Legal Interests in Money-laundering Policy," *Crime, Law and Social Change* 43, no. 2-3 (2005): 117-147, fn. 29 ("the essence of laundering still is making a 'black', illegal possession 'white.'" *Id.* at 135.

²²² Petrus C. Van Duyne and Hervy de Miranda, "The Emperor's Cloths of Disclosure: Hot Money and Suspect Disclosures," *Crime, Law and Social Change* 31, no. 3 (1999): 245-271, 262.

²²³ *Id.*, Van Duyne, et al., 2005, *supra*, note 221, at 117-147.

²²⁴ Petrus C. Van Duyne, "Money Laundering Policy: Fears and Facts," *Criminal Finance and Organizing Crime in Europe*, 2003.

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ As Prof. Van Duyne commented, "An abundance of crime-money need not be without effects . . . As a matter of fact, the financial system may even benefit from the *surfacing* and *integration* of crime-money." *Id.* at 124, *citing*: R. Thomas Naylor, "Drug Money, Hot Money, and Debt," *European Journal of International Affairs* 2, no. 3 (1989): 52-60; and Francisco E. Thoumi (ed.), *Political Economy & Illegal Drugs in Colombia*. Vol. 2, United Nations University Press, 1995. According to Van Duyne, one example of beneficial use of ill gotten gains is that the 1980s debt crisis in Latin America "was softened" by the return of narco-dollars. Van Duyne opined, "(i)t was a touchy subject, but none of the European creditor banks ever felt its integrity affected." *Id.*

²²⁸ John McDowell and Gary Novis, "The Consequences of Money Laundering and Financial Crime," *Economic Perspectives* 6, no. 2 (2001): 6-10.

²²⁹ *Ibid.*

²³⁰ *Ibid.*

²³¹ Joras Ferwerda, "The Multidisciplinary Economics of Money Laundering," *Tjalling C. Koopmans Dissertation Series*, 2012. *Accord*, John Walker, "How Big Is Global Money Laundering?" *Journal of Money Laundering Control* 3, no. 1 (1999): 25-3; and Brigitte Unger and Elena Madalina Busuioc, *The Scale and Impacts of Money Laundering*, Edward Elgar Publishing, 2007.

²³² *Id.*, Van Duyne, 2003, *supra*, note 224; Petrus C. Van Duyne, "Crime-entrepreneurs and Financial Management," *Upperworld and Underworld in Cross-Border Crime*, 2002; Van Duyne, 2007, *supra*, note 100 at 69-95; and Gelemerova, *supra*, note 204.

²³³ *Id.*, Gelemerova, *supra*, note 202, at 120. Van Duyne concedes that under the current construct, the money will eventually surface, but probably in the west and not in the economy that required it in the first place. See, Van Duyne, 2003, *supra*, note 224.

²³⁴ What one author refers to as, a veritable, "swamp full of dollars." See, Usman A. Tar, "A Swamp Full of Dollars: Pipelines and Paramilitaries in Nigeria's Oil Frontier," *Review of African Political Economy* 39, no. 131 (2012): 195-197.

²³⁵ Selçuk Akçay, "Corruption and Human Development," *Cato J.* 26 (2006): 29.

²³⁶ Roman David, "Transitions to Clean Government: Amnesty as an Anticorruption Measure," *Australian Journal of Political Science* 45, no. 3 (2010): 391-406, at 394.

²³⁷ *Ibid.*

²³⁸ *Ibid.*

²³⁹ *Ibid.* at 25.

²⁴⁰ *Ibid.* at 24.

²⁴¹ *Ibid.* at 37.

²⁴² *Ibid.* at 45-46.

²⁴³ *Ibid.* at 48 (Blocking financial outflows could, in extreme cases, lead to the consumption of capital by some investors. The appropriate response is to remove some of the underlying restrictions on investment).

²⁴⁴ *Id.*, Roman, *supra*, note 236, at 391.

²⁴⁵ Dankwart A. Rustow, "Transitions to Democracy: Toward a Dynamic Model," *Comparative Politics* 2, no. 3 (1970): 337-363.

²⁴⁶ *Ibid.* at 340, 346.

²⁴⁷ *Id.*, Roman, *supra*, note 236, at 391.

²⁴⁸ *Ibid.* at 392-393.

²⁴⁹ *Ibid.* at 392-393. Functional measures maintain a state of affairs, whereas transformative measures transform from one state of affairs to another. If the dualism between transformative and functional measures applies to anticorruption measures, then widespread corruption and clean government have to reflect two distinct states of affairs.

²⁵⁰ *Ibid.* at 395. David further noted:

. . . the major rationale for amnesties is to bring about rapid change to a qualitatively different situation. Amnesties may be applied under circumstances in which law enforcement agencies are unable to function effectively due to widespread delinquency among citizens. Amnesties are exceptional measures often adopted in critical situations when the state apparatus is unable to perform the functions of the day. They aspire to transforming an unsatisfactory situation into a state of affairs in which functional measures are adequate for keeping the situation under control. *Id.* at 396.

²⁵¹ *Id.*, Blackburn, *et al.*, *supra*, note 153, at 23.

²⁵² *Id.*, Gelemerova, *supra*, note 202.

²⁵³ See, generally, Petrus C. van Duyne and Stefano Donati, "In Search of Crime-money Management in Serbia," *European Crime-markets at Cross-roads. Extended and Extending Criminal Europe*, 2008.

²⁵⁴ A phrase attributable to former U.S. Speaker of the House of Representatives, Tip O'Neill.

²⁵⁵ The concept proposed is not dissimilar to recommendations that formal Anti-Corruption Agencies engage in public outreach. See, e.g., Recanatini, *supra*, note 166.

²⁵⁶ It is axiomatic that administrative remedies must be exhausted before resort is had to the courts. See, e.g., Raoul Berger, "Exhaustion of Administrative Remedies," *The Yale Law Journal* 48, no. 6 (1939): 981-1006. Here the concept is that in order to proceed with amnesty, the local government has reasonably pursued its rights under the UNCAC.

²⁵⁷ Amnesty conditional on the exchange of information, similar to the South African amnesty process or the Polish lustration system may create uncertainty among the corrupt. It effectively breaks the relationships of trust within the members of a criminal network.

²⁵⁸ *Id.*, Van Duyne, *et al.*, 2005, *supra*, note 221 (in 2004, the Belgian government announced a moderate tax amnesty together with more effective controls due to improved exchange of information with foreign banks in Europe; led to a massive repatriation of money and a huge spending on consumer articles and house improvement. *Id.* at endnote 14); and Sam Ashman, Ben Fine, and Susan Newman, "Amnesty International? The Nature, Scale and Impact of Capital Flight from South Africa," *Journal of Southern African Studies* 37, no. 01 (2011): 7-25. (In 2010, South African Reserve Bank introduced amnesty for illegal capital flight; for a flat rate fee of 10% of the value of the assets, corporations and individuals disclosing their prior illegal expatriation of capital received no further penalties and were allowed to keep their assets offshore under the Voluntary Disclosure Programme. This was "a first step towards the complete liberalisation of outflows" to ameliorate post-apartheid capital flight. *Id.* at abstract.)

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