

# MARKETS, MORALS, AND THE MAINTENANCE OF GOVERNMENT

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It is accepted as a seeming truism that corruption and regime change usually go hand-in-hand. Indeed, links between corruption, political instability, and regime change have been drawn by many observers.<sup>1</sup> The relationship between corruption and regime change is often described in almost symbiotic terms. Corruption provokes regime change and then, once political upheaval begins, corruption increases as the institutions that might control corruption are themselves victims of the resulting political turmoil.<sup>2</sup>

The reasons why corruption can *provoke* regime change are obvious. Corruption is associated with illegality, grasping, and the secret enrichment of some at the expense of others. If such actions are believed to characterize government officials, public outrage can set afire previously simmering economic and social dissatisfactions.

The reasons for an *increase* in corruption as regime change gains momentum are more opaque. Even if the ultimate governmental outcome includes reforms that are classically associated with less corrupt, democratic governments—such as the adoption of a free press, an independent judiciary, less bureaucratic discretion, and greater transparency in gov-

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<sup>1</sup> See, e.g., Robert B. Charlick, *Corruption in Political Transition: A Governance Perspective*, 7 CORRUPTION AND REFORM: AN INT'L J. 177 (1993); Kimberly A. Elliott, *Corruption as an International Policy Problem: Overview and Recommendations*, in CORRUPTION & GLOB. ECON. 175, 198 (Kimberly A. Elliott ed., 1997); Patrick Glynn, Stephen J. Kobrin & Moises Naim, *The Globalization of Corruption*, in CORRUPTION & GLOB. ECON. 7, 8-10. Particular case studies that have supported this linkage have involved countries in Latin America, Eastern Europe, the former Soviet Union, Sierra Leone, Mozambique, Burundi, Uganda, and the former Zaire. See, e.g., Steve Askin & Carole Collins, *External Collusion with Kleptocracy: Can Zaire Recapture Its Stolen Wealth?*, 57 REV. AFR. POL. ECON. 72 (1993); Glynn et al. *supra*, at 10; Daniel Kaufmann, *Revisiting Anti-Corruption Strategies: Tilt Towards Incentive-Driven Approaches?*, in UNITED NATIONS DEV. PROGRAMME & OECD DEV. CENTRE, CORRUPTION & INTEGRITY IMPROVEMENT INITIATIVES IN DEVELOPING COUNTRIES 63, 75 (1998); Quentin Reed, *Dysfunctionality and Change in the Czech and Slovak Republics*, 22 CRIME, L. AND SOC. CHANGE 323, 326-31 (1994); Susan Rose-Ackerman, *Corruption in the Wake of Domestic Conflict*, in CORRUPTION, GLOB. SEC. & WORLD ORDER 66, 71, 76-82 (Robert I. Rotberg ed., 2009); Augustine Ruzindana, *The Importance of Leadership in Fighting Corruption in Uganda*, in CORRUPTION & GLOB. ECON., 133, 134-36 (Kimberly A. Elliott ed., 1997); David Stasavage, *Causes and Consequences of Corruption: Mozambique in Transition*, in CORRUPTION & DEMOCRATISATION 65, 65 (Alan Doig & Robin Theobald eds., 2000).

<sup>2</sup> See Elliott, *supra* note 1, at 198; Glynn et al., *supra* note 1, at 8-10.

ernment—an increase in corruption during the transitional period is rarely avoided. It seems that in order to *reduce* corruption, societies must often go through a period of *increased* corruption. It is a seeming paradox.

Commentators generally offer explanations that are associated with the upheaval of regime change itself. For instance, during a time of (often violent) regime change, political and legal institutions that have provided some modicum of protection against corruption and the exploitation of power might fail. New institutions, even if theoretically superior, might go unfunded as revenue collection is suspended. In other words, even corrupt regimes generally exert some control over lawlessness. With the removal of authoritarian controls, there can be an explosion of corrupt behavior just as there can be riots in the streets.

Such theories undoubtedly identify important factors. However, in this Article I will advance a different thesis. Corruption, I will argue, is—most essentially—a *moral* phenomenon. Whether a society is riddled with corruption will be directly related to the degree to which citizens have internalized norms of self-restraint (or “moral”) norms. Although it is conceivable that governmental upheaval will—out of the starting gate—strengthen moral standards, it is more likely that it will be accompanied by social upheaval and the destabilization of pre-existing norms. In addition, when regime change includes movement toward a market economy, this can be a decidedly aggravating factor. This is because there are *intrinsic* characteristics of a market model that encourage a corrupt ethos.

Finally, I shall argue that these dynamics illustrate a deeper and broader truth, which extends beyond the particular situation of regime change and the recent adoption of market-based, capitalistic reforms. We often seem to assume that certain “process” or “structural” guarantees—such as popular voting and the maintenance of a market economy—will provide what is necessary for the creation and maintenance of a liberal democracy. In fact, focus on corruption’s growth during times of democratic regime change and the transition to a market-based economic system illustrate the fallacy of this claim. Corruption—and its relation to moral values—illustrates that far more is needed to sustain what we consider to be an acceptable liberal democratic order.

## I. THE NATURE OF CORRUPTION, AND ITS MEANING FOR GOVERNMENT

To develop the thesis that this Article presents, we must begin with what corruption *is*, and its meaning for government.

Corruption is an incredibly powerful idea in popular and academic writing. Corruption is a word that carries immediate meaning, and its

mere mention has immense stigmatic power. As I have previously written, “[c]harges of corruption in public life have condemned men, destroyed the lives of women, and accelerated the decline and fall of governments. Corruption is something that human beings instinctively loathe, and that we try to excise from our midst. The word itself conjures something that is powerful, insidious, and destructive of human lives and institutions.”<sup>3</sup>

The word is odd, however, in that its precise meaning—despite our visceral certainty of it—is elusive. In the governmental context, some have posited that it means a violation of law.<sup>4</sup> This is often coupled with the idea that the illegal act is for private gain.<sup>5</sup> Others have asserted that corruption by government officials involves a breach of duty, in particular, the breach of a public duty that the government official was sworn to uphold.<sup>6</sup> Still others describe governmental corruption as “involv[ing] the subversion of the public interest”<sup>7</sup> or as a general “abuse of power.”<sup>8</sup>

Although the characteristics that these definitions stress are often associated with corrupt acts, “corruption”—as we commonly understand it—involves more. An act can be illegal, or in breach of a public duty, or involve a subversion of the public interest, and that characteristic will not—standing alone—render that act “corrupt.” There is more to the idea of corruption, something that triggers the deep, visceral response that the

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<sup>3</sup> LAURA S. UNDERKUFFLER, CAPTURED BY EVIL: THE MEANING OF CORRUPTION IN LAW 1 (2013).

<sup>4</sup> See, e.g., SUSAN ROSE-ACKERMAN, CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM 9 (1999) (“Payments are corrupt if they are illegally made to public agents with the goal of obtaining a benefit or avoiding a cost”); MICHAEL JOHNSTON, POLITICAL CORRUPTION AND PUBLIC POLICY IN AMERICA 8 (1982) (“Corruption is abuse of a public role for private benefit in such a way as to break the law (or other formal administrative regulations . . . .)”) (emphasis deleted).

<sup>5</sup> See, e.g., JOHNSTON, *supra* note 4.

<sup>6</sup> See, e.g., David H. Bayley, *The Effects of Corruption in a Developing Nation*, in POLITICAL CORRUPTION: READINGS IN COMPARATIVE ANALYSIS 521, 522 (Arnold J. Heidenheimer ed., 1978) (describing corruption as “the misuse of authority”); Arnold J. Heidenheimer, *The Context of Analysis*, in POLITICAL CORRUPTION: READINGS IN COMPARATIVE ANALYSIS at 3, 4 (Arnold J. Heidenheimer ed., 1978) (describing corruption as the “lack of integrity in the discharge of public duties”); J. S. Nye, *Corruption and Political Development: A Cost-Benefit Analysis*, in 61 AM. POL. SCI. REV. 417, 419 (1967); Morris Szeftel, *Corruption and the Spoils System in Zambia*, in CORRUPTION: CAUSES, CONSEQUENCES, AND CONTROL 163, 165 (Michael Clarke ed., 1983) (calling corruption the deviation from the “formal duties” of a public role).

<sup>7</sup> Robert Williams, *Corruption: New Concepts for Old?*, in 20 THIRD WORLD Q. 503, 505 (1999). See also Robert C. Brooks, *Apologies for Political Corruption*, in POLITICAL CORRUPTION: READINGS IN COMPARATIVE ANALYSIS, *supra* note 6, at 501, 507 (“The very essence of corruption is self-interest regardless of public interest.”).

<sup>8</sup> See, e.g., Franklin E. Zimring & David T. Johnson, *On the Comparative Study of Corruption*, 45 BRIT. J. CRIMINOLOGY 793, 807 (2005); Peter Csonka, *Corruption: The Council of Europe’s Approach*, in CORRUPTION: THE ENEMY WITHIN 343, 350 (Barty Rider ed., 1997).

word “corruption” conveys. Corruption, as an idea, denotes shame;<sup>9</sup> it denotes depravity;<sup>10</sup> it signals something that is dangerous or rotten to the core.<sup>11</sup>

What is missing from understandings that draw upon illegality, breach-of-duty, and other neutral concepts—and which is captured by more impassioned characterizations—is that corruption is a deeply moral notion. Some contemporary commentators recognize this, and state flatly that political corruption “is marked by immorality and perversion; [the corrupt person] is depraved; venal; dishonest.”<sup>12</sup> Corruption, other contemporary analysts of political corruption write, is the “scarlet thread of bribery” and other acts in the “jungle of nepotism and temptation.”<sup>13</sup>

In short, the articulation of public duties, understandings of public interests, and so on might incorporate the underlying moral convictions that are at stake in corruption cases, or they might not; but it is the power of the underlying moral notion that makes an allegation of corruption so powerful. Corruption is not something about which we are ambivalent, or about which we seek technical definitions or explanations. Corruption is a moral evil. It is powerful. It is something that threatens political and legal institutions.

What is this moral evil, that corruption so well identifies? Historically corruption has been associated with the violation of transcendent

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<sup>9</sup> See, e.g., JOHN T. NOONAN JR., BRIBES 702–03 (1984) (shame associated with corrupt actions prevents “briber and bribee from parading their exchange”).

<sup>10</sup> See, e.g., *Arthur Anderson LLP v. United States*, 544 U.S. 696, 705 (2005) (interpreting 18 U.S.C. §1512(b)) (corruption involves “depraved” or “evil” acts); Heidenheimer, *supra* note 6, at 4 (corruption means “depravity,” “moral deterioration,” and “decay”).

<sup>11</sup> See, e.g., Edward A. Gargan, *Corruption’s Many Tentacles Are Choking India’s Growth*, N.Y. TIMES (Nov. 10, 1992), <http://www.nytimes.com/1992/11/10/world/corruption-s-many-tentacles-are-choking-india.html> (corruption is a “cancer”); Yufan Hao & Michael Johnston, *Corruption and the Future of Economic Reform in China*, in POLITICAL CORRUPTION: CONCEPTS & CONTEXTS 583, 584 (Arnold J. Heidenheimer & Michael Johnston ed., 2002) (corruption “is like a virus invading the body of the party and the state”) (quoting former Chinese Communist Party chief Jiang Zemin); Martin Shapiro, *Corruption, Freedom and Equality in Campaign Financing*, 18 HOFSTRA L. REV. 385, 393 (1989) (corruption in the form of excessive political influence is a “pathology” to be “excised”).

<sup>12</sup> See Wilmer Parker III, *Every Person Has a Price?*, in CORRUPTION: THE ENEMY WITHIN, *supra* note 8, at 87, 87 (footnote omitted); see also Colin Leys, *New States and the Concept of Corruption*, in POLITICAL CORRUPTION: READINGS IN COMPARATIVE ANALYSIS, *supra* note 6, at 341, 341 (corruption is an assault on “moral rules”).

<sup>13</sup> RONALD WRAITH & EDGAR SIMPKINS, CORRUPTION IN DEVELOPING COUNTRIES 11, 13 (1963).

moral norms,<sup>14</sup> and contemporary academic and popular accounts often draw upon that idea.<sup>15</sup>

When it comes to corruption and government, the best understanding of corruption is somewhat different. Although corruption as a social and governmental phenomenon can include an individual's engaging in individually immoral acts, its deeper meaning is rooted in the relationship of the individual to the social fabric of which he or she is a part. The moral evil that corruption captures is best described as *self-involvement, self-indulgence, and the loosening and discarding of the restraints of social bonds*.

Consider, for instance, a study of a corrupt society in Italy, which researchers concluded was governed by the ethic of the "amoral familist," in which "no one will further the interest of the group or community except as it is to his private advantage to do so."<sup>16</sup> Identification of one's destiny with the destiny of others, beyond the family group, is missing; in such cultures, "the hope of material gain in the short-run will be the only motive for concern with public affairs."<sup>17</sup> The inducements that generally lead people to sacrifice for larger organizational or societal goals—such as the conviction that one's lot is bound up with others—are absent.<sup>18</sup> The social and political cohesion necessary for collective life and voluntary adherence to societal norms is missing; there is an atmosphere of societal distrust, and self-seeking, in which each person grabs for himself or herself or for the small family group or clan to whom the individual owes loyalty.<sup>19</sup>

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<sup>14</sup> See, e.g., CARL J. FRIEDRICH, *THE PATHOLOGY OF POLITICS: VIOLENCE, BETRAYAL, CORRUPTION, SECRECY, AND PROPAGANDA* 130–31 (1972); J. Peter Euben, *Corruption*, in *POLITICAL INNOVATION AND CONCEPTUAL CHANGE* 220, 223–42 (Terence Ball, James Farr, & Russell L. Hanson eds., 1989).

<sup>15</sup> For instance, Carl Fredrich wrote that corruption has "a religious root, [which] . . . is typically Western and Christian. It harks back to the notion of the two kingdoms . . . , the earthly and the heavenly city," and the susceptibility of humans to the power of moral depravity and moral decay. FRIEDRICH, *supra* note 14, at 128. References to transcendent norms are often found in the judicial context as well. See, e.g., *Bracy v. Gramley*, 81 F.3d 684, 700 (7th Cir. 1986) (Rovner, J., dissenting) (the corrupt judge's "deviation from the path of righteousness was not momentary and uncharacteristic; it was cold, calculated, and spanned a period of years . . .").

<sup>16</sup> Edward C. Banfield, *The Moral Basis of a Backward Society*, in *POLITICAL CORRUPTION: READINGS IN COMPARATIVE ANALYSIS*, *supra* note 6, at 129, 129 (emphasis deleted).

<sup>17</sup> *Id.*

<sup>18</sup> See *id.* at 131. See also Jeremy Boissevain, *Patronage in Sicily*, in *POLITICAL CORRUPTION: READINGS IN COMPARATIVE ANALYSIS*, *supra* note 6, at 138, 139 (in heavily patronage-dependent communities in Sicily, "[t]he central institution of . . . society is the nuclear family"; "[t]he rights and obligations which derive from membership in it provide the individual with his basic moral code." "Other values and organizational principles are of secondary importance.").

<sup>19</sup> See Robert I. Rotberg, *How Corruption Compromises World Peace and Stability*, in *CORRUPTION, GLOBAL SECURITY, AND WORLD ORDER*, *supra* note 1, at 1, 4 (discussing how the moral fabric of any society is rent by corruption); see also Gunnar Myrdal, *Corruption: Its*

Indeed, corruption is insidious not only because it involves the *transgression* of norms; it is insidious because it involves the *changing* of norms. Generally, the fact that a particular kind of lawbreaking is common does not result in the serious erosion of the underlying norm. For instance, when burglary is widespread, we do not generally find that burglary becomes more acceptable.

However, it is precisely that response that corruption, whether petty or serious, often provokes. If most people cheat on taxes, it becomes acceptable to do so. If the acceptance of gifts or “speed money” by officials is widespread, it becomes acceptable to do so. In a gradual process of erosion, the reprehensible nature of corrupt acts in the public mind becomes more and more acceptable. Loyalty to larger, societally protective ideas—such as belief in the rule of law, for its own sake—fades. It is replaced by increasing involvement in corrupt activities, lest the actors miss the benefits of corruption reaped by others. As political scientist Melanie Manion has written: “what most fundamentally distinguishes countries with rampant corruption from those where corrupt activities are unusual is not the content of rules but their relevance . . . . Moral squeamishness about acting corruptly (and illegally) is likely to be little or great, depending on whether such violations are common or exceptional. If public officials and ordinary citizens obtain their information about social values by observing the pattern of transactions around them, then what is normal (in a descriptive sense) may become acceptable (in a moral sense).”<sup>20</sup>

There are many costs that corruption imposes on societies and governments. Many studies have demonstrated that corruption involves diversion of public moneys or other government assets to private individuals, resulting in the waste or theft of public resources;<sup>21</sup> ruins government efficiency, as officials demand bribes to perform their duties;<sup>22</sup> cripples the implementation of merit systems in public employment;<sup>23</sup> and enriches the privileged at the expense of the poor and

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*Causes and Effects*, in POLITICAL CORRUPTION: READINGS IN COMPARATIVE ANALYSIS, *supra* note 6, at 238 (corruption involves “stronger loyalty to less inclusive groups—family, caste, ethnic, religious, or linguistic community . . . and class,” rather than to the larger community).

<sup>20</sup> MELANIE MANION, CORRUPTION BY DESIGN: BUILDING CLEAN GOVERNMENT IN MAINLAND CHINA AND HONG KONG 13 (2004).

<sup>21</sup> See, e.g., Bayley, *supra* note 6, at 526; M. McMullan, *Corruption in the Public Services of British Colonies and Ex-Colonies in West Africa*, in POLITICAL CORRUPTION: READINGS IN COMPARATIVE ANALYSIS, *supra* note 6, at 317, 318 (“Corruption in the government involves the ultimate transfer of public funds to the pockets of politicians or officials. The businessman who has to bribe to get a government contract ultimately charges the bribe to public funds.”). Corrupt procurement practices have been estimated to add a 20 to 100 percent surcharge in payment for goods and services. See ROBERT KLITGAARD, CONTROLLING CORRUPTION 39 (1988).

<sup>22</sup> See KLITGAARD, *supra* note 21, at 44; Myrdal, *supra* note 19, at 541.

<sup>23</sup> See McMullan, *supra* note 21, at 317–18.

disadvantaged.<sup>24</sup> However, perhaps even more profoundly, corruption destroys the underlying social fabric of trust and identification with larger public goals upon which the cohesion of societies and governments depend. Fundamental to the idea of government by law is the assurance that publicly enacted rules and regulations are followed by all. The essence of corruption is the reaping of benefits in a manner that is contrary to announced rules. Persistent and widespread violation of official rules leads to popular cynicism, distrust, and the conviction that the rule of law has no meaning.<sup>25</sup> “When officials openly and routinely ignore rules about allocation of goods and services requiring their actions, then the system of order that in theory is backed up by government’s coercive power loses its meaning. Some alternative system of order [—i.e., corruption—] then exists.”<sup>26</sup>

The connection between corruption, trust, and internalized moral norms extends to prescriptions for corruption’s cure as well as to its diagnosis. Moral norms, internalized by the population, are critical for corruption’s prevention and abatement. Structured institutional strategies—such as reducing discretion in bureaucratic decision-making, changing systems of rewards and penalties, and increased monitoring of civil servants<sup>27</sup>—are of limited usefulness if attitudes toward societal moral values remain unchanged.<sup>28</sup> Syed Hussein Alatas, a keen observer of corrupt societies, has leveled trenchant criticism at those whom he calls “structuralists,” who attribute the existence of corruption to external causes such as the legacy of colonial rule and the rise of bureaucratic government. The problem, he writes, is one of moral values constraining the self-seeking nature of human beings.<sup>29</sup> Robert Rotberg, who has long studied corrupt societies, agrees. “Corruption begets more corruption. . . . [There is a] natural human tendency to put self-interest over national interest and emulation over conscience.” “[I]t is only from the establishment of political cultures that enshrine values antithetical to corruption that effective institutions of accountability and oversight emerge.”<sup>30</sup>

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<sup>24</sup> See KLITGAARD, *supra* note 21, at 41.

<sup>25</sup> See, e.g., Bayley, *supra* note 6, at 527 (“Corruption in government, perceived by the people, lowers respect for constituted authority [and] . . . undercuts popular faith in government to deal evenhandedly.”).

<sup>26</sup> MANION, *supra* note 20, at 4.

<sup>27</sup> See generally KLITGAARD, *supra* note 21, at 74–95 (discussing various general policies for reducing corruption, and their various weaknesses).

<sup>28</sup> See *id.* at 90–97.

<sup>29</sup> See SYED HUSSEIN ALATAS, *CORRUPTION: ITS NATURE, CAUSES, AND FUNCTIONS* 122 (1990).

<sup>30</sup> Robert I. Rotberg, *Leadership Alters Corrupt Behavior*, in *CORRUPTION, GLOB. SEC. & WORLD ORDER*, *supra* note 1, at 343, 350. See also Michel Cahen, *Nationalism and Ethnicities: Lessons from Mozambique*, in *ETHNICITY KILLS? THE POLITICS OF WAR, PEACE, AND ETHNICITY IN SUB-SAHARAN AFRICA* 163, 163 (Einar Braathen, Morten Boas, & Gjermund Saether eds., 2000); Alan Doig & Stephen Riley, *Corruption and Anti-Corruption Strategies:*

Corruption presents an alternative moral system which reinforces individual self-seeking in derogation of societal trust, societal identification, and the constraints of moral norms. It thrives as previously existing social and moral constraints are discarded by the populace in favor of short-term grabbing and the pursuit of material gain by individuals for themselves, their families, and clans. Because of this character, corruption can be particularly problematic in situations involving regime change, democratization efforts, and the establishment of market-based reforms.

## II. CORRUPTION, MARKET SYSTEMS, AND NEOLIBERAL POLITICAL REFORM

As noted above, links between corruption and regime change have been drawn by many observers.<sup>31</sup> Of particular interest has been the counterintuitive observation that democratic reforms—instituted in response to popular outrage—often seem to intensify corruption as they progress. Even though the ultimate governmental outcome—for instance, the adoption of a democratic system, with a free press and an independent judiciary—might “engender powerful antibodies against corruption,”<sup>32</sup> corruption will often intensify in the short or medium term.<sup>33</sup>

Of course, there is no guarantee that democratic or neoliberal political reforms will be “curative” of corruption in any setting. As Michael Johnston observes, although democratic strategies such as “[c]hecks and balances, accountable leaders, liberal markets, competitive elections, and administrative transparency” are associated with countries where corrup-

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*Issues and Case Studies from Developing Countries*, in CORRUPTION & INTEGRITY IMPROVEMENT INITIATIVES IN DEVELOPING COUNTRIES, *supra* note 1, at 45, 50–55.

One of the most interesting examples of this insight is the successful anti-corruption effort undertaken in Hong Kong. Along with structural institutional changes, anticorruption efforts included educational campaigns to change underlying norms. “From the outset,” Melanie Manion writes, “the governor [of Hong Kong] recognized that the success of the anticorruption effort could not rely on enforcement and prevention alone . . . [It was recognized that officials must] ‘educate the public against the evils of corruption’ and ‘enlist . . . public support’ in fighting corruption.” Fostering social disapproval of corrupt activities included moral education, in an effort to change private values. The goal was to create a belief among the people “that [the corrupt] . . . and their kind are unacceptable in decent society, that they are without honour and are not wanted in Hong Kong.” MANION, *supra* note 20, at 43, 48 (quoting INDEPENDENT COMMISSION AGAINST CORRUPTION, ANNUAL REPORT BY THE COMMISSIONER OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION 8 (1977)).

<sup>31</sup> See generally sources cited *supra* note 1 and accompanying text. For studies that associate corruption with political stability and regime change, see, e.g., Michael Nacht, *Internal Change and Regime Stability*, in ADELPHI PAPERS NO. 166: THIRD-WORLD CONFLICT AND INTERNATIONAL SECURITY 52 (1981); KLITGAARD, *supra* note 21, at 45–46; McMullan, *supra* note 21, at 318; Sinnathamby Rajaratnam, *Bureaucracy versus Kleptocracy*, in POLITICAL CORRUPTION: READINGS IN COMPARATIVE ANALYSIS, *supra* note 6, at 546, 546–48.

<sup>32</sup> See Glynn et al., *supra* note 1, at 11.

<sup>33</sup> See, e.g., *id.*; Elliott, *supra* note 1, at 198.

tion is the exception rather than the rule, “[i]t does not follow . . . that putting [such factors] in place will control the problem.”<sup>34</sup> One could simply believe that in the particular cases involving regime change and increased corruption, democratic/neo-liberal reforms simply failed (for whatever reason) to cure the pre-existing problem.

However, the stakes are such that most analysts have probed more deeply. Democratic and market reforms might fail—but in these cases there is, at least arguably, more than failure. Corruption in these cases does not simply continue; it seems to worsen with the implementation of reforms. To what might this phenomenon be attributed?

Some observers stress explanations that are rooted in the general conditions that regime change presents. Typical explanations for corruption’s increase during such times include the weakening of legal and political (even authoritarian) controlling institutions, the suspension of resources for corruption-fighting efforts, and greater opportunities for corruption as the result of bureaucratic breakdown and governmental authority being up for grabs.<sup>35</sup>

There is another characteristic of conditions during times of regime change that adds powerfully to the toxic milieu in which corruption thrives. As described above, the existence of corruption in a particular society is directly related to the degree of anticorruption norm-internalization and adherence among citizens. Although it is conceivable that the turbulence of regime change will strengthen moral standards, it is more likely that it will destabilize existing norms. In an atmosphere of uncertainty and rejection of the prior governmental order, individuals will be adrift as new normative pronouncements replace the old and new ideas replace what were contrary (if often flawed) social and cultural commitments. In an atmosphere of uncertainty and a rejection of the prior social order, there is often little to inhibit the grasping impulse to participate in spoils that—it is believed—others are extorting.

The association of societal-norm breakdown with the growth of corruption has been observed in the modernization of traditional societies,<sup>36</sup> the experience of post-colonial societies,<sup>37</sup> and post-socialist transi-

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<sup>34</sup> MICHAEL JOHNSTON, SYNDROMES OF CORRUPTION: WEALTH, POWER, AND DEMOCRACY 22 (2005).

<sup>35</sup> See, e.g., Elliott, *supra* note 1, at 198; Glynn et al., *supra* note 1, at 8, 10; Robert Legvold, *Corruption, the Criminalized State, and Post-Soviet Transitions*, in CORRUPTION, GLOB. SEC. & WORLD ORDER, *supra* note 1, at 194, 201–02; Szeftel, *supra* note 6, at 163.

<sup>36</sup> See, e.g., Charlick, *supra* note 1, at 183; Sarah Dix & Emmanuel Pok, *Combating Corruption in Traditional Societies: Papua New Guinea*, in CORRUPTION, GLOB. SEC. & WORLD ORDER, *supra* note 1, at 239; Nick Smart, *Classes, Clients and Corruption in Sicily*, in CORRUPTION: CAUSES, CONSEQUENCES, AND CONTROL, *supra* note 6, at 127, 132–34.

<sup>37</sup> See, e.g., USAID, FIGHTING CORRUPTION AND RESTORING ACCOUNTABILITY IN BURUNDI (2006); Rose-Ackerman, *supra* note 1; Stasavage, *supra* note 1, at 65–66, 85–86;

tions.<sup>38</sup> Conditions in post-Soviet Russia, Robert Legvold observes, were the product of corrupt practices under the prior Soviet regime and its subsequent collapse. In the Soviet Union, corruption flourished due to conditions of “scarcity and clientelism, . . . combined with the moral decay arising from the long-lost ideological idealism.” “Hence, the Soviet Union provided a base for the criminalized state, but not its essence. That required the collapse of the Soviet Union, and the chaotic transition from one economic order to another.”<sup>39</sup> Similar dynamics have been observed in contemporary Nigeria. Corruption in that country has been strongly identified with the transition from a traditional moral economy, in which reciprocity, kinship, and personal allegiance dictated forms of sociability and social obligation, to one governed by the ethos of a neoliberal, postcolonial governmental system.<sup>40</sup> In the resulting confusion between traditional and neoliberal moral codes, “Nigerians sense that their state and society have become increasingly amoral—with elites pursuing wealth and power without regard for the consequences, and ordinary people seeking money by all means available.”<sup>41</sup>

The role of ethical confusion in regime-change corruption is well described by political sociologist Claus Offe “[t]he characteristic weakness of the functioning of post-authoritarian new democracies,” he writes, “is often analyzed to be the scarcity of [inter-personal trust] and the prevalence of [ethical] cynicism . . . .” New regimes often “consist of an incoherent patchwork of old and new rules without any evident underlying principle. The widely publicized and highly visible experience of corruption [and] . . . contested domains . . . [reflects the] failure to generate credible commitments to any meaningful Gestalt of principles, ideas, and [institutional] functions . . . .”<sup>42</sup>

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Daniel Jordan Smith, *The Paradoxes of Popular Participation in Corruption in Nigeria*, in CORRUPTION, GLOB. SEC. & WORLD ORDER, *supra* note 1, at 283, 287–306.

<sup>38</sup> See, e.g., JOHNSTON, *supra* note 34, at 195–99; Legvold, *supra* note 35, at 195–96; Ewa Letowska, *Corruption: Towards Greater Transparency?*, paper cited in Alexandra Mills, *Strengthening Domestic Institutions against Corruption: A Public Ethics Checklist*, in CORRUPTION & INTEGRITY IMPROVEMENT INITIATIVES IN DEVELOPING COUNTRIES, *supra* note 1, at 141, 142; Kim Lane Scheppelle, *The Inevitable Corruption of Transition*, 14 CONN. J. INT’L L. 509, 514–16 (1999).

<sup>39</sup> Legvold, *supra* note 35, at 204.

<sup>40</sup> See Smith, *supra* note 37, at 305–06.

<sup>41</sup> *Id.* at 305.

<sup>42</sup> Claus Offe, *How Can We Trust Our Fellow Citizens?*, in DEMOCRACY & TRUST 42, 77–78 (Mark E. Warren ed., 1999). Similar dynamics have been observed in post-Maoist China. Corruption was certainly prevalent in China prior to that time; but the end of the Maoist era was accompanied by a “fantastic increase” in corrupt irregularities, “as well as the emergence and growth of new forms of corruption.” MANION, *supra* note 20, at 94–95 (quoting Wojtek Zafanollo, *A Brief Outline of China’s Second Economy*, in TRANSFORMING CHINA’S ECONOMY IN THE EIGHTIES, vol. 2, MGMT., INDUS., & URBAN ECON. 138, 139 (Stephen Feuchtwang, Athar Hussain, & Thierry Pairault eds., 1988)). Attempts to curb corruption during this time by exhorting moral standards were made difficult by confusion over changing

This situation can be aggravated by the common complimentary objective of democratic reform: the move to a market-based economic system. The reasoning here is straightforward. Democratic reforms and the implementation of a market system are generally linked in the West, with the idea that they are mutually reinforcing phenomena. Free elections, majoritarian democratic control, judicial independence, a free press, and other hallmarks of a liberal democratic system are premised upon a model of individual consent and autonomous choice, and a free market reinforces and encourages this ethos. In the liberal democratic model, individuals (in the aggregate) should determine what their government should be, and should be protected—in important ways—from the tyranny of government. This foundational value of individual freedom and autonomy is reified by the existence of a free market economy, through which individuals can express their preferences and life goals in a way that is most important in their lives. An ethos of freedom in one sphere requires the aspiration of an ethos of freedom in the other.

This may indeed be true, as an abstract matter; however, a disconcerting observation about the effects of the move to a market economy in times of regime change has been made. In many important instances, the transition to market capitalism has been associated with *increased* corruption.<sup>43</sup> This is counterintuitive, in view of the fact that free market reforms are often reforms that decrease bureaucratic red tape and other opportunities for the exaction of corrupt payments.<sup>44</sup> Why would such reforms be associated with an *increase* in personal and governmental corruption?

In the traditional literature, reasons advanced for the link between market-economic transition and corruption have focused on the underdevelopment of complimentary institutions.<sup>45</sup> Just as in discussions of corruption during regime change as a general matter, it is pointed out that market-based transitions during times of regime change are made when policing and law-enforcement controls are weak. That atmosphere, to-

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values, and the resulting “lower psychic costs for officials choosing to engage in corruption.” *Id.* at 94. See also Yan Sun, *The Chinese Protests of 1989: The Issue of Corruption*, 31 *ASIAN SURVEY* 762, 772 (1991).

<sup>43</sup> See, e.g., Doig & Riley, *supra* note 30, at 54; Alan Doig & Robin Theobald, *Introduction: Why Corruption?*, to *CORRUPTION AND DEMOCRATISATION*, *supra* note 1, at 1, 7; Elliott, *supra* note 1, at 198, 208–09; Barbara Harriss-White & Gordon White, *Corruption, Liberalization and Democracy*, 27 *IDS BULL.* 1, 2–3 (1996); JOHNSTON, *supra* note 34, at 9; Kaufmann, *supra* note 1, at 72; Rose-Ackerman, *supra* note 1, at 77–78; Stasavage, *supra* note 1, at 69–70, 85–86; Hartmut Schweitzer, *Corruption: Its Spread and Decline*, in *THE NEW INSTITUTIONAL ECONOMICS OF CORRUPTION* 16, 34–35 (Johann Graf Lansdorff, Markus Tauber, & Matthias Schramm eds., 2005).

<sup>44</sup> See Elliott, *supra* note 1, at 208; Doig & Riley, *supra* note 30, at 50 (“For developing countries, [a] . . . consensus suggests that democratisation, public sector ‘downsizing’ and deregulation are . . . a useful means to reduce . . . corruption.”).

<sup>45</sup> See, e.g., Elliott, *supra* note 1, at 198; Kaufmann, *supra* note 1, at 72–73.

gether with the new opportunities for corruption that a market economy can present, are theorized to create the conditions for increased corruption.<sup>46</sup>

Such explanations undoubtedly identify important factors that can foster the growth of corruption in any setting. The question that I will explore here is different. It is this: Is there anything that is *intrinsic* to the market model that can, uniquely, encourage a corrupt ethos?

This is a difficult question. However, there is important evidence that promotion of a market system—whatever its economic promise—can undermine the values that are important in the containment of corruption. This is particularly true when a market ethos is suddenly instituted under conditions of regime change, in which—almost invariably—the fundamental values of a society are in disarray.

As noted above, corruption—as a general matter—involves the privileging of self-involvement, self-indulgence, and the discarding of the restraints of social bonds. The essence of corruption is the replacement of societal identification and restraints by an atmosphere of intense distrust, in which individuals grab for themselves or for the small group to which they owe loyalty.<sup>47</sup> Formal rules that are supposed to generate social-welfare goods—including justice, long-term goals, and some measure of equal opportunity—lose their legitimacy, as they have little or no relevance to the successful pursuit of individual advantage.<sup>48</sup> As Peter Euben has written, “corruption is a disease of the body politic. It has less to do with individual malfeasance than with systematic and systemic degeneration of those practices and commitments that provide the terms of collective self-understanding and shared purpose.”<sup>49</sup>

Enter, at this point, the ethos of markets. In its rawest or most primitive form, market capitalism encourages unrestrained competition and individual gain as the foundational values and over-arching objectives of both individual and collective life. Individuals succeed when—through intelligence, initiative, craft, and even ruthlessness—they outwit others in the competition for resources and advantage. The triumph of a market ethos in a society threatened by corruption can be easily seen by the populace as underscoring the irrelevance of contrary public ideas and commitments, and reinforcing the ethic of individual grabbing that governmental chaos and the growth of corrupt forces have produced.

In contemporary China, for instance, it has been argued that the rise of market capitalism intensified the “crisis of values” produced by the

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<sup>46</sup> See Robert Leiken, *Controlling the Global Corruption Epidemic*, 105 FOREIGN POL’Y 55, 68, 72 (1996); Kaufmann, *supra* note 1, at 72–73; Elliott, *supra* note 1, at 209.

<sup>47</sup> See *supra* notes 16–19 and accompanying text.

<sup>48</sup> See JOHNSTON, *supra* note 34, at 36–48.

<sup>49</sup> Euben, *supra* note 14, at 222–23.

collapse of the prior Maoist regime.<sup>50</sup> Rejection of the prior Maoist economic policy transformed the normative environment, and “Maoist rhetoric of economic equality [was replaced] with a ‘trickle-down’ economic strategy that unabashedly encouraged some to get rich first (and others later).”<sup>51</sup> “Official corruption . . . contributed to the deepening moral vacuum and cynicism felt by many ordinary Chinese when making money is paramount.”<sup>52</sup> “In the post-Cultural Revolution context, the ‘transformation of economic ethics [was] nothing short of astonishing . . . .’ [There was] a ‘general blurring of boundaries between legitimate and illegitimate economic and social behavior and . . . an increasing sense of normlessness.’” In the new normative climate, those “who chose to engage in corruption had less cause for moral qualms about it.”<sup>53</sup>

Market transitions in other countries have been associated with similar phenomena. In Mozambique, for example, corruption spread rapidly with the abrupt shift from socialism to capitalism in 1987. Commentators have observed that concurrently with this shift, corruption became acceptable in a way that it was not ten years before.<sup>54</sup> Identified reasons include the installation of “a particularly unbridled form of capitalism” that legitimated an ethos of unrestrained self-seeking to get ahead.<sup>55</sup> In the former Soviet bloc countries, it has been observed that the public sphere was something that was neither cultivated nor respected by the citizenry during the socialist years.<sup>56</sup> With the transition to a market economy, identification with public values became even more uncertain.<sup>57</sup> The interpersonal norms of a market system did not present a compelling, competing ideology to individual self-seeking; if anything, they appeared (from the popular point of view) to institutionalize it.<sup>58</sup>

The existence of a market system is not necessarily incompatible with the existence of a robust public ethic, with which the populace clearly identifies; indeed, in many countries, markets function concurrently with strong public identification and widely accepted public-goods objectives. In these cases, it is accepted that public norms and institutions

<sup>50</sup> See JOHNSTON, *supra* note 34, at 162.

<sup>51</sup> MANION, *supra* note 20, at 94.

<sup>52</sup> Jim Yardley, *The Chinese Go After Corruption, Corruptly*, N.Y. TIMES (Oct. 22, 2006), <http://www.nytimes.com/2006/10/22/weekinreview/22yardley.html?mtref=www.bing.com>.

<sup>53</sup> MANION, *supra* note 20, at 94–95 (quoting He Qinglian, ZHONGGUO DE XIANJING [China’s Pitfall] 195 (1997), and ANDREW J. NATHAN, CHINA’S CRISIS: DILEMMAS OF REFORM AND PROSPECTS FOR DEMOCRACY 108 (1990)) (footnotes omitted).

<sup>54</sup> See Stasavage, *supra* note 1, at 85.

<sup>55</sup> See *id.* at 86.

<sup>56</sup> See Scheppele, *supra* note 38, at 516.

<sup>57</sup> See *id.* at 521–22.

<sup>58</sup> See *id.*

both support and restrain the operation of markets.<sup>59</sup> On the supportive side, public laws enforce market contracts and provide venues for dispute resolution. On the restraining side, public laws establish standards for fair play, and are concerned with distributional issues of societal wealth and power.<sup>60</sup> The difference is that in these cases, there are concurrently existing, robust public ideals and institutions which citizens believe are as important to the quality of their lives as the self-seeking, individualistic ethic of the capitalist market system.

The tension between an individualistic (market) ethos and the maintenance of public or other-regarding ideals is aptly described by Michael Johnston. “Liberal political and economic processes,” he writes: “are *asymmetrical* in significant ways. Democratic politics rests not only on open competition, but also on normative assumptions about equality and fair play . . . . Self-interest generally drives the process, but contention among such interests must stay within certain boundaries . . . . Markets, by contrast, incorporate few presumptions of equality, in process or outcome . . . . Gains are presumed to be private and separable, rather than public and aggregated.”<sup>61</sup> If the line between public norms and private norms fades, or if market ideas fill a vacuum left by discredited public institutions, the result can be unrestrained self-seeking and competition for spoils. “If politics has become a mere extension of markets—or if a substantial proportion of people *believe* that it has—the system risks losing the trust of citizens and its ability to . . . make legitimate, genuinely *public* policies.” “[T]he opportunities and guarantees supposedly provided to citizens” by collective agreement become a simple question of supply and demand, dictated only by wealth and power.<sup>62</sup>

For implementation of a capitalist market system to work together with liberal democratic ideals, there must be “[c]lear and accepted boundaries and distinctions . . . between state and society; public and private roles and resources; [and] personal and collective interests . . . .”<sup>63</sup> In a noncorrupt governmental order, certain societal norms and public goods are placed beyond the ethos of individual determination, competition, and grabbing. It is when the lines between public interests and unrestrained self-seeking are blurred that there is an acceleration of descent into a corrupt spiral.

It has been stated that “corruption essentially privatizes moral life.” In a corrupt society, “[s]ocial relations are dominated by self-interest. . . .

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<sup>59</sup> See JOHNSTON, *supra* note 34, at 9; Michael Johnston & Yufan Hao, *China's Surge of Corruption*, 6 J. DEMOCRACY 80, 89–90 (1995).

<sup>60</sup> See JOHNSTON, *supra* note 34, at 9.

<sup>61</sup> *Id.* at 8.

<sup>62</sup> *Id.* at 73.

<sup>63</sup> *Id.* at 9.

[C]ivic virtue and social responsibility are displaced and discarded in favour of an intense competition for spoils.”<sup>64</sup> The introduction of a market system is not *necessarily* destructive of the idea of a public weal or public interest; indeed, in many countries, the two operate in an integrated manner, governing intertwined areas of human life. The problem occurs when—for whatever reason—the identification of citizens with the public weal is weak. In such cases, corruption—or unbridled self-seeking, in defiance of common interests—can be fueled by the intrinsic, self-interested core of the market model.

### III. CODA: SUSTAINING LIBERAL DEMOCRATIC GOVERNMENT

Corruption is a uniquely valuable lens through which the establishment and maintenance of liberal democratic government can be understood. Because corruption and government are deeply intertwined—because corruption is universally acknowledged to undermine government—what corruption is, and why it has this power, are illuminative of deep issues before us.

Controlling unbridled self-seeking, in a context of duties to others, is a fundamental issue in civic life and in the maintenance of government. Self-seeking is a part of human nature; indeed, without self-seeking, in the forms of appropriation of the means for living and the protection of one’s offspring, human life would cease. The goal is not to “eliminate” self-seeking; it is to control it and channel it within the construction of a broader social fabric.

Corruption is an idea that captures the failure of that process. Corruption represents the triumph of the ethic of individual self-involvement, self-indulgence, and the loosening and discarding of the restraints of social bonds. It is no accident that corruption is universally framed in moral terms. When individuals act corruptly, they pursue self-interested grabbing in disregard of the restraints (the “moral” restraints) that the society has established for its self-preservation. Social bonds, and the institutions that social bonds have created, are profoundly threatened by this process.

Corruption, thus, threatens existing governments. It also undermines transitions to “other” forms of government, including those that are believed to be a anti-corrupt or “more democratic” than pre-existing regimes. Because corruption is the *rejection* and *subordination* of societal obligations to individual impulses of self-seeking, it is also the manifestation of citizen alienation and rejection of social controls through government. It is also the manifestation of citizen perception that social controls—through the process of political upheaval or otherwise—lost

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<sup>64</sup> Williams, *supra* note 7, at 504.

the power to control the behavior of others. Corruption reflects the perception of a moral vacuum, which allows individuals to rationalize their yielding to the power of individual self-seeking.

In settings where the identification of citizens with the public weal is weak, corruption—or unbridled self-seeking—can be fueled by the self-interested ethos of the market norm. Markets celebrate the private and the individual, not the public and the aggregated. Whether for good or for ill, the essential message of a free-market system—as a raw idea, or in its prototypical form—is that individual monetary self-seeking is good; in fact, it is supreme; and that all of the hallmarks of individual success in life—happiness, individual security, envy by others—are achieved through individual self-seeking and its fruits. In their more sophisticated forms, of course, market systems reflect refinements and qualifications to this idea, represented by social regulation, “fairness” in bargains, and so on. But these are often internalized as quite secondary to the legitimation and reification of self-interested seeking that a “free-market” system supplies. If a man on the street in this country were asked, “which do you associate with a free market system—going after you want, or social controls?”, it would be a shocking poll indeed if it were to find that a majority of citizens identified the latter.

How is it, then, that so many liberal democratic countries seem to operate successfully with both free-market systems and strong public cultures and laws? Whatever the aggravation of corrupt or self-interested behavior that a free market system intrinsically encourages, it does not seem to seriously undermine the functioning of a robust public order in those countries. Individualistic impulses and collective objectives seem to coexist in a kind of equipoise, or—perhaps more accurately—collective objectives are internalized by individuals as a part of their individual goals. It is only in cases of governmental instability—such as those involving regime change, or radical movement from a non-market to a market system—that the self-interested ethos of a market system seems to present serious dangers to the existence of a restraining social order. As a result, we might believe that there is a lesson in this phenomenon for post-colonial societies, or post-communist societies, or other such societies that are in the process of governmental and economic transition—but there is no perceptible lesson in it for us.

In my view, adopting such a view would be dangerously naive. Maintenance of the conditions necessary for a liberal democratic governmental order—in which there is widespread belief and support for public institutions—is a much more difficult and tenuous enterprise than those of us who live in such environments want to admit. We are unaware of the need for this kind of foundational public commitment *precisely because* it is there. Democratic elections, a free press, the rule of law, and

the rest of the machinery of liberal democratic government mean little if there is no underlying commitment to basic values that restrain individual self-seeking in service of the larger communities of which we are a part. Indeed, current politics in the United States which exploit feelings of alienation, racial and ethnic hostility, and anger at those community members who exhibit difference are testaments to the fragility of the assumed social and political detente that underlies our liberal democratic order.

Thirty years ago, as a student at Yale University, I met the then-President of Argentina, Raoul Alfonsín. He was lawyer and teacher who dedicated his scholarly efforts and later his political career to the cause of the establishment of liberal democratic government. At the time that I met him, he had attempted to function for three years as Argentina's first democratically elected president after decades of military government, political corruption, and state-sponsored murder. As he sat with his bodyguards, he was asked how his work in Argentina was progressing. I will never forget his answer. The substance of it was this: "It is very difficult to maintain democratic government if the underlying values of a society have decayed."

Those of us who live in liberal democratic countries might believe that we are immune from a need to worry about the maintenance of underlying social identification and foundational moral norms. We might believe that the mechanics of citizen voting and the fruits of a market system will surely do it—that they will guarantee the maintenance of a genuinely liberal democratic government for ourselves and for our children. If we believe this, we should think again. We are not immune from the lessons of human history. We enjoy what we enjoy only *because of* the underlying values that constrain the self-seeking that our system otherwise allows.

