

THE FIVE “W”S OF CORRUPTION: AN ANALYSIS OF THE DISEASE OF CORRUPTION IN SOUTH AMERICA AND HOW THE SEARCH FOR A CURE MAY IMPACT THE GLOBAL RULE OF LAW

I. INTRODUCTION

Our world has contracted a disease. It is manmade; we brought this disease to life. The strain has mutated over time and is practically immune to every type of antidote or treatment. Every member of society has been, is, and will somehow be affected. Every human is a carrier of this disease and a possible epicenter for a pandemic. This disease spreads through human contact and takes very little time to incubate. The symptoms of the disease can manifest both externally or internally, making a diagnosis nearly impossible without extensively invasive procedures. The symptoms of this disease can be extreme pain, depression, anxiety and other emotional trauma including suicidal tendencies. Unquenchable thirst, rage, hate, and other mental instability may follow. In many cases this disease results in death. This disease has no known cure, and the symptoms can, at present, only be delayed or minimally reduced.

There is no reason, however, to alert the Center for Disease Control. This disease is not one within their purview. The American government is well aware of this, as are 170 nations of the world who have joined together to help defeat this problem.¹ One wonders if almost every known country in the world has attempted to solve this pandemic, how does such a prolific issue continue to evade control? The answer is simple. It is our fault, every human being. This disease is corruption, and we are the source. There are no bacteria to destroy. There is no source beyond the contemptible heart of man from which we may remove the problem. If only it were as simple as cleaning the local water supply or inventing a new medicine, corruption may have been destroyed many years ago leaving the inhabitants of earth to enjoy a utopian paradise. This is not the case. Corruption in our societies

¹ *United Nations Convention against Corruption Signature and Ratification Status as of 29 November 2013*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (last visited Jan. 9, 2014) [hereinafter *Signatories to UNCC*].

is the result of the people of this world making a concerted choice to abide within the precepts of pride, lust, hate, fear, envy, and greed.

Thesis and Roadmap

The purpose of this analysis is to decipher the who, what, where, when, why, and how of corruption. By first defining the structure, then identifying the cause(s), and finally showcasing modern solutions used by practitioners in the field, a greater perspective on corruption may be gained to better comprehend the steps necessary to stop it. Corruption, however, is not limited to a specific region or any one particular aspect of human interaction. In order to analyze the effects of corruption and deduce solutions of a utilitarian nature, analysis must be done at a level from which practical solutions may be extracted.

This analysis will be macro in scope focusing on the regions of South America, only addressing particular countries as they arise. Though identifying specific problems within each nation that may not apply to another is important, there exist broader concepts applicable to every nation collectively. The three primary focus areas of particular importance to the cultures of these regions are transparency of governments, both local and national, campaign finance law, and international and domestic bribery. By defining corrupt practices and utilizing the three fields of campaign finance, governmental transparency, and bribery to identify general concepts, solutions have been and can be established to combat corruption in South America, and the knowledge gained can create lasting reform to benefit the global rule of law.

II. WHO DOES CORRUPTION HURT?

Before you believe this to be mere hyperbole or seek to cast away this view as irrational or an overdramatic apocalyptic perspective, look beyond the initial characterization to draw your own conclusions. The World Bank currently asserts that corruption “is the single greatest obstacle to economic and social development,” and it is estimated that nearly one trillion dollars of worldwide transactions are “tainted.”² The cost of corruption in Columbia alone is estimated at USD \$2.6

² Joshua V. Barr et al., A Legal Perspective on the Use of Models in the Fight Against Corruption, 8 S.C.J. INT’L L. & BUS. 267, 267-68 (Spring 2012). See J. Nolan McWilliams, Tug of War: The World Bank’s New Governance and Anticorruption Efforts, 17 KAN. J.L. & PUB. POL’Y 1, 2 (Fall 2007).

billion per year.³ These numbers, and many like them, show people bear the burden corruption brings upon society, and South America is no exception.⁴

The people of Ecuador currently face some of the gravest effects of corruption as more than fifty percent of the population lives on less than two dollars a day, one of the “poorest populations in South America.”⁵ In 2012 Transparency International (TI), a well-known organization dedicated to compiling and publicizing corruption statistics worldwide, conducted a corruption perception survey measuring “the perceived levels of public sector corruption” in countries worldwide.⁶ Countries were then expertly scored on a scale from 0 (highly corrupt) to 100 (very clean). Out of the 176 countries examined, two-thirds of the target countries scored below a fifty.⁷ Brazil placed sixty-ninth with a score of forty-three.⁸ Bolivia placed 105th with a score of thirty-four. Ecuador placed 118th with a score of thirty-two.⁹ Paraguay placed 150th with a score of twenty-five.¹⁰ Finally, Venezuela placed 165th with a score of nineteen, placing, only eight ranks below the lowest ranked country of Somalia at 174th with a score of 8.¹¹

There are three primary consequences of corruption, particularly in governments.¹² First, corruption impairs the ability of the people to receive delivery of services, especially the poor.¹³ This is due to corruption “increasing the transaction costs of performing business,”

³ Shiloh Hoggard, *Preventing Corruption in Colombia: The Need for an Enhanced State-Level Approach*, 21 ARIZ. J. INT'L & COMP. L. 577, 582 (Summer 2004).

⁴ The President of the Columbian Chamber of Representatives was charged with misappropriating USD \$2.5 million that were supposed to go to improvements on the congressional headquarters that were never made. *Id.*

⁵ Valeria Merino Dirani, The Role of Civil Society in Promoting Transparency and Fighting Corruption in Ecuador, 10 SW. J. L. & TRADE AM. 319, 321 (Summer 2004).

⁶ *Corruption Perceptions Index 2012*, TRANSPARENCY INTERNATIONAL, <http://www.transparency.org/cpi2012/results> (last visited Jan. 9, 2014).

⁷ *Id.* No countries received a perfect score of 100. The highest scores were given to Denmark, Finland, and New Zealand, which each received scores of ninety. The United States of America scored nineteenth. *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Steven E. Hendrix, New Approaches to Addressing Corruption in the Context of U.S. Foreign Assistance with Examples from Latin America and the Caribbean, 12 SW. J. L. & TRADE AM. 1, 5 (2005).

¹³ *Id.*

leading to “a decrease in the amount of government funding [thereby reducing] the amount of goods that citizens . . . receive.”¹⁴ Secondly, corruption “cripples” the democracy of the affected region.¹⁵ With the presence of rampant corruption, the citizenry suffer from an extreme disillusionment with their government, especially in Latin America. This “weakens both the legitimacy and effectiveness of new democracies by undermining democratic values of citizenship, accountability, justice, and fairness . . . ”¹⁶ This disillusionment translates to low citizen morale resulting in increased involvement in crime,¹⁷ most commonly represented in South America by drug trade.¹⁸

Finally, corruption impedes the economic growth and development of a particular region by distorting public investment, deterring foreign investments, and encouraging firms and local institutions to operate informally, resulting in “the [auction] of property rights, [the] deform of trade, and [ultimately a weakened] rule of law.”¹⁹ Evidence suggests a direct and negative correlation between the level of corruption in a particular region and the rates of growth and per capita incomes.²⁰ This is in part caused by the lack of foreign direct investments.²¹ If a host country is fraught with all manner of corrupt practices, foreign investors seeking to infuse the local economy with capital will be deterred by the apparent risks involved.²² The increased cost of doing business with a corrupt infrastructure in combination with the historically unstable sociopolitical atmosphere of corrupt regions will cause foreign investors to seek less risky avenues of investment, thereby inhibiting the region’s economic growth.²³

¹⁴ Barr, *supra* note 2, at 272.

¹⁵ Hendrix, *supra* note 12.

¹⁶ *Id.*

¹⁷ Barr, *supra* note 2, at 272.

¹⁸ Hoggard, *supra* note 3, at 581-82. Drug cartels are a serious problem in Latin American democracies and have been the cause of a great deal of political unrest. In 1990, cartels were responsible for a triple assassination of Columbian presidential candidates, one of whom was actively against the drug trade. *Id.* at 582.

¹⁹ Hendrix, *supra* note 12, at 6. This economic freeze occurs in part because “[c]orruption distorts the market by promoting competition for bribes, rather than competition for quality” Hoggard, *supra* note 3, at 581.

²⁰ Juan I. Sanchez et al., *A Value-based Framework for Understanding Managerial Tolerance of Bribery in Latin America*, 83 J. BUS. ETHICS 341, 341 (Dec. 2008).

²¹ Christopher J. Robertson & Andrew Watson, *Corruption and Change: The Impact of Foreign Direct Investment*, 25 STRATEGIC MGMT. J. 385, 385 (Apr. 2004).

²² *Id.* at 386.

²³ *Id.*

III. WHAT IS CORRUPTION?

In order to analyze the issue of corruption and properly deduce a solution, a definition must be given. Without maintaining a proper perspective, the problem and possible solutions drawn will be too nebulous for practitioners to comprehend or implement. Initially, corruption can manifest itself in many ways, from large-scale business transactions or “misappropriation” of federal money to minimal bribes, kickbacks, or “economic privilege accorded to special” interest groups.²⁴ It is without question that “many countries in Latin America now face corruption as a major national issue”; however, regardless of what corruption may be, corruption is most assuredly not “a homogeneous phenomenon.”²⁵

Although corruption has been classified in a multitude of fashions, there are two fundamental forms corruption may take.²⁶ The first is “grand corruption.”²⁷ This form often occurs at the highest levels of power and distorts and exploits the whole of a particular system for the benefit of private interests.²⁸ Common examples of grand corruption are “exchanges of resources, access to rents, and other competitive advantages for privileged firms and their networks.”²⁹ The second form is “administrative corruption.”³⁰ These transactions often involve smaller transactions with middle or lower level government officials and “reflects specific weaknesses within the [individual systems].”³¹ This is the most visible dimension of corruption and often involves payment of money or services in the form of bribes to these officials for the benefit of private interests at the expense of public good.³²

²⁴ Patricio Maldonado & Gerardo D. Berthin, *Transparency and Developing Legal Frameworks to Combat Corruption in Latin America*, 10 SW. J.L. & TRADE AM. 243, 244 (2004).

²⁵ *Id.*

²⁶ Hendrix, *supra* note 12, at 4.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* Another way to classify corrupt behavior is into three categories: 1) Administrative Corruption in the form of bribes, 2) State Capture in the form of corporations purchasing beneficial law and policies, and 3) Public Procurement in the form of kickbacks paid to officials to ensure the award of contracts. McWilliams, *supra* note 2. The classifications of state capture and public procurement would fit, however, within the context of grand corruption.

Corruption is many things. A crime against development and prosperity, a crime against democracy, a crime against the environment, a crime against health, a crime against education – these are all applications of corruption.³³ Is a true definition or classification of corrupt behavior an easy target to hit?³⁴ What corruption is often becomes a judgment of values.³⁵ Many cultural scholars would hesitate before defining a particular practice corrupt, even though said action may be illegal, given the cultural acceptance of the practice.³⁶ A number of cultural practices around the world would be deemed corrupt, but are justified by the social norms of the region.³⁷

³³ U.N. Office on Drugs and Crime [UNODC], *Action Against Corruption, Economic Fraud, and Identity-Related Crime* (2012-2015) 5–6, available at http://www.unodc.org/documents/corruption/Thematic_Programme/Thematic_Programme_on_Corruption_-2012-2015_sept12.pdf (last visited Jan. 19, 2014) [hereinafter *Thematic Report*]. Development identifies examples of “surcharge from civil servants,” bribes, or other actions that transfer “large sums of money in directions that do not address poverty.” Democracy identifies distortions of the “electoral processes.” The environment includes corrupt behavior in the “initial stages of the resource exploitation process as well as during operations.” Health includes “depleting already scarce public resources [or] diverting resources from areas where they are needed most.” Education, being a very large budget expense, is “devastating” and leads to “poor quality education, inferior performance and drop out [sic] rates, which in turn can lead to increased levels of poverty.” *Id.*

³⁴ Kenneth U. Surjadinata, *Revisiting Corrupt Practices from a Market Perspective*, 12 EMORY INT'L L. REV. 1021, 1021–22 (Spring 1998). Corruption is in fact a hard target because many [effects of corruption] will be delayed and the connection to a corrupt practice or behavior may not be attributable. One example of this could be a gift given to a child at her wedding as payment for a previous favor from her father. This is particularly popular in collectivist, family oriented societies such as in Latin America. *Id.*

³⁵ *Id.* at 1022, 1036.

³⁶ Susan Rose-Ackerman, *Corruption: Greed, Culture, and the State*, 120 YALE L.J. ONLINE 125, 128 (2010). Some scholars believe for this reason corruption should not be defined morally as the western cultures do, but rather on the basis of efficiency. “Efficiency perspective instructively distinguishes between welfare-maximizing and welfare-eroding practices, thereby providing a means of choosing one set of practices over another.” Surjadinata, *supra* note 34, at 1046. This assumes for the sake of argument that all corrupt practices are in fact inefficient.

³⁷ Rose-Ackerman, *supra* note 36. Examples of these practices include nepotism and gift giving that western thought would consider to be corrupt. In these cultures, however, a failure to participate in these practices would be terribly rude and seen as a breach of loyalty to family or tradition, with little to no consideration as to whether these practices are “corrupt.” “[I]f social norms help to justify the behavior, economic motives . . . often motivate the transaction” or perhaps motivate the inaction to remove them from society. *Id.* at 128–29. See also Surjadinata, *supra* note 34, at 1036.

This, however, does not justify the actions of parties engaging in what will be referred to as corrupt behavior. “Corruption is not the inevitable result of history and culture,”³⁸ and societal change is possible through many avenues, some to be discussed in later portions of this article. It is imperative, however, to understand and remember cultural applications will not be homogenous and not all solutions will be sufficient for all parties concerned.

Despite the problematic nature of a perfect definition, for purposes of the following analysis, corruption will be defined and classified as, “the abuse of public roles and resources for private benefit or the misuse of office for nonofficial ends.”³⁹

IV. WHERE AND WHEN IS CORRUPTION FOUND?

This analysis will identify three specific areas to decipher the origin of and solutions for combating the corrupt practices found within. Though these areas appear to be of particular importance to South America, they are not the complete spectrum.⁴⁰ The impacts of corruption are felt differently in every country.⁴¹ The *when* of corruption will be assumed for the purposes of this argument as “always,” but there are certain factors that encourage cultivation. “In Latin America, . . . the legacy of an environment of non-democratic regimes, weak institutions, inadequate checks and balances . . . patronage systems . . . and poverty are often cited as key elements where corrupt behaviors can operate with practical impunity.”⁴² The following are a number of factors that encourage corruption: 1) internal controls are ineffective or disregarded,⁴³ 2) public officials are given great discretion with little accountability, and 3) civil society institutions are weak, politicized, or nonexistent.⁴⁴

³⁸ Rose-Ackerman, *supra* note 36, at 130. If corruption was the inevitable result of culture, “pervasive corruption will inexorably undermine respect for the rule of law.” *Id.*

³⁹ Robertson & Watson, *supra* note 21, at 386.

⁴⁰ For example, in Guatemala specifically, the three largest contributors to corruption are international drug cartels, organized crime, and gangs. Justin Rearick-Hoefflicker, *C/CIG's Anti-Corruption Approach in Guatemala*, 14 GONZ. J. INT'L L. 2, 3 (2010).

⁴¹ Maldonado & Berthin, *supra* note 24.

⁴² *Id.* at 245.

⁴³ *Id.* at 246.

⁴⁴ *Id.* Chile is a good example of a nation that must specifically limit the discretion of its governmental administrators to “declare its activities secret” in order to align themselves with the more advanced nations of the world. Alejandro Ferreiro,

The focus will now turn to the *where* of corruption. Where in South American culture and society can the effects of corruption be found, and what can be done to solve those problems?

A. Transparency of Government

The issue of transparency is a struggle of balance between the need for governmental secrets and the need for citizens to be informed of government action in order to maintain accountability.⁴⁵ Merriam Webster defines “transparent” as “characterized by visibility or accessibility of information . . .”⁴⁶ As applied to government, transparency is the “aspirational goal” of openness with the public and the problematic “separation between the state and public.”⁴⁷ It is considered one of the most prevailing characteristics of a good government, but also differentiates which countries are able to prevent corruption more effectively than others. Though the detriments of transparency are often as strong as its benefits,⁴⁸ there is little debate that a certain modicum of

Corruption, Transparency, and Political Financing: Some Reflections on the Experience in Chile, 10 SW. J. L. & TRADE AM. 345, 360 (2004).

⁴⁵ The infamous Cardinal Richelieu of 17th Century France believed “secrecy” to be “the first essential in affairs of state.” Some scholars, however, would hold a different view similar to Jeremy Bentham’s, that secrecy is “an instrument of conspiracy [and] ought not[,] therefore, be the system of a regular government.” Note, *Mechanisms of Secrecy*, 121 HARV. L. REV. 1556, 1556 (2008) [hereinafter *Mechanisms*]. The America founders struggled with this notion as well in their writings. Federalist 37 depicted the difficult task of placing the “partition” between the state and the people, while the antifederalists dismissed the notion of transparency all together. Mark Fenster, *Seeing the State: Transparency as Metaphor*, 62 ADMIN. L. REV. 617, 633 (Summer 2010). Alexander Hamilton described the issue in geographic terms arguing that by nature, those who lived closer to the seat of power would enjoy greater access. THE FEDERALIST NO. 84 (Alexander Hamilton).

⁴⁶ *Transparent*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/transparent> (last visited Jan. 9, 2014).

⁴⁷ Fenster, *supra* note 45, at 620. “Government, transparency assumes the existence of a gap that arises naturally between the state and its public.” *Id.* at 619.

⁴⁸ Some benefits of secrecy include national security, law enforcement strategy, individual privacy, and reduced corruption in voting practice. See *Mechanisms*, *supra* note 45, at 1558–62. Some detriments of secrecy are the trade of secrets, increased power without citizen consent, less efficient internal operations, and the large monitoring costs on the citizenry to ensure governmental conformity to the rule of law. *Id.* at 1558, 1562–63. For example, the Freedom of Information Act, an American process by which citizens may receive data from the government, cost the American people USD \$398 million and required the “equivalent” of 5509 full time employees. *Id.* at 1564.

secrecy is required. It is the extent and the nature of this secrecy and the cost upon the citizens that is central to the debate.⁴⁹

It is the absence of transparency, rather than the balance, however, which is the central focus of this argument because the “lack of transparency in government affairs allows instances of corruption to be hidden effectively from the public.”⁵⁰ Transparency should not be viewed as a tool of the wicked, but rather as a window for the good. “Without access to the government the public can neither evaluate the government’s performance in the past, nor hold the government accountable in the present, nor deliberate over the government’s future . . .”⁵¹ The people of Chile, for example, have witnessed great strides in this field in recent decades. With the passage of the Law of Administrative Integrity in 1999, the Chilean people confronted the issue of corruption now requiring their leaders to defend the transparency and integrity of the political bodies.⁵² Therefore, if transparency “abhors the distance between the state and public,” it is necessary to develop methods by which the government may be made visible to the people and “overcome the organizational . . . distances that arise naturally.”⁵³

Solutions:

There are two basic theories from which can be extrapolated three applicable solutions, the choice between them depending upon the specific needs of the target country or culture. Transparency can be

⁴⁹ “Government often needs to operate in secret in order to shape and execute socially desirable policies, and excessive transparency requirements can have an ossifying effect that prevents government from responding in innovative ways to changed circumstances.” *Id.* 1556. This is most commonly exemplified in national security and military operations where popular knowledge of certain facts and or actions would cause more harm, however; this power is and should not be unchallenged. There is also an argument that transparency will allow for “bad accountability” or rather the ability of interest groups to distort government decision making and make officials less likely to satisfy the preference of the general public. *Id.* at 1565.

⁵⁰ David Morrissey, *The Fight Against Corruption by International Organizations*, 39 GEO. WASH. INT’L L. REV. 165, 166 (2007). This in turn will cause the public disillusionment previously mentioned “leading to the exit of the masses from the political system, which further facilitates corruption.” The cycle is difficult to overcome once it has become institutionalized. *Id.*

⁵¹ Fenster, *supra* note 45, at 619. “Therefore, the clear and close correlation [between transparency and integrity] . . . should compel politicians to consider the impact of public transparency as a determinative factor . . .” Ferreiro, *supra* note 44, at 346–47.

⁵² Ferreiro, *supra* note 44, at 351, 353.

⁵³ Fenster, *supra* note 45, at 635.

achieved by either 1) “allow[ing] the public to view the state directly or [2]) require[ing] the state to make its work available for the public to review.”⁵⁴ The three recommended applicable solutions are as follows: 1) proxy monitoring, 2) bottom-line disclosure, or 3) delayed disclosure.⁵⁵

Proxy monitoring refers to an individual that is chosen by the populous and placed in a position to “monitor the behavior of government actors.”⁵⁶ This individual could exercise two types of oversight. The first is the proxy would not be placed in authority over the government but would primarily act as a “fire alarm” to inform the people of corrupt practices. The second would be to give the proxy certain authority or power over the monitored group. The proxy could then make decisions on behalf of the citizenry.⁵⁷ One example of this in the United States is that the judicial branch has the authority to gather intelligence on individuals in the United States suspected of being foreign intelligence operatives.⁵⁸ The latter proxy is more desirable over the former because the will of the people is not placed in a single person who could become subject to outside influences.

The second practice proffered is bottom-line transparency or bottom-line disclosure. This form would only require the government to disclose to the people the ends and objectives of particular actions or policies.⁵⁹ This is akin to the business judgment rule of corporate law. Just as the court will defer to the business decisions of officers or directors of a corporation, so will the monitors defer to the judgment of the government provided final objectives or intentions of the government are outlined. One example of this in American legislation is the Patriot Act.⁶⁰ The legislature of the United States informed the American people of its intentions to do what was necessary to find and stop terrorism.⁶¹ This style of transparency is flawed because it assumes the

⁵⁴ *Id.* at 621.

⁵⁵ *Mechanisms, supra* note 45, at 1567–75.

⁵⁶ *Id.* at 1567.

⁵⁷ *Id.* at 1567–68.

⁵⁸ *Id.* at 1568. See generally Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008, Pub. L. No. 110-261, 122 Stat. 2436, available at <http://www.intelligence.senate.gov/laws/pl110261.pdf>.

⁵⁹ *Mechanisms, supra* note 45, at 1570–71.

⁶⁰ *Id.* at 1571, 1573.

⁶¹ The Patriot Act came not without a great deal of complications from litigation brought by the citizens of the United States. The use of the Patriot Act as an example of bottom-line transparency is to show the government gave the citizens of the United States the bottom-line that certain things would be done to ensure domestic safety and protection against terror. *Id.* at 1573–74.

citizenry will be satisfied with the ethical dilemma of approving the ends at the expense of the means. A corrupt government can be seeking appropriate ends, but the means could be in direct conflict with the needs, benefits, or morals of the people. In the fight against corrupt practices it is imperative the focus not solely be on the outcome of a particular behavior, but the behavior itself.

The final practice identified is delayed disclosure.⁶² This refers to the releasing of information once the actions have been completed. After a specific amount of time has passed, both the objectives and means would be simultaneously provided to the citizens for review.⁶³ This is by far the worst idea of the three because of the reactionary posture taken with the government. If the people are only informed of the actions after they have happened, there is no opportunity to solve problems before they arise. Once something has occurred, the damage is done and all the citizens can do is attempt to stop the bleeding. This practice alone would not be in the best interest of any people. The Latin American populations, given their current infrastructure and relatively new attempts at government transparency, do not have the requisite ability to respond to the types of problems that arise from government corruption. They need to prevent or mitigate corruption in the earliest stages possible in order to prevent massive social, political, and economic causalities.

If we are honest with ourselves, we realize that more often than not our judgments of our own actions are myopic and flawed. By judging others by their actions and ourselves by our intentions, we fail to distinguish between our opinions and objective reasoning. A government staffed with people is no different, regardless of the form that government may take. “It is here transparency as a public function can come to our assistance.”⁶⁴ The need for transparency is clear; “open and [transparent] . . . democracies . . . contribute to the opportunities and capacities to control corruption.”⁶⁵ Given the necessity for transparency, the best form of the practices discussed would be a hybrid of the two proxy forms with a solid delayed disclosure platform in place to permit access to documents. Bottom-line and delayed disclosure alone permit the government to hide intentions far too easily and do not pre-

⁶² *Id.* at 1577.

⁶³ *Id.* at 1574–75.

⁶⁴ Ferreiro, *supra* note 44, at 357.

⁶⁵ Hendrix, *supra* note 12, at 6. “A government that is free to operate in secret is free to do both good and bad things without fear of reproach.” *Mechanisms*, *supra* note 45.

vent corrupt practices from arising. In the United States we have established transparency through the Article III courts, executive regulatory and non-governmental watchdog organizations, and the Freedom of Information Act (FOIA). These and more examples of our unique separation of powers are not perfect or for every culture. For the nations of South America, however, it is imperative the citizens of each country create some measure of transparency to ensure their governments, entrusted with their protection, are held accountable. “[T]here is no better policy than public disclosure or a better disinfectant than sunlight.”⁶⁶

B. Campaign Finance

Within transparency there is a key attribute of a democratic system of government that, if not made public, will continue to thwart all efforts of anti-corruption initiatives. This is the arena of campaign financing. In order for a prospective candidate to inform the public of his or her intentions to be involved in the political arena, it is necessary for them to run a campaign. Campaigns in South America are very similar to how politicians from the United States would vie for popular votes. Campaigns include public speeches, town hall meetings, radio broadcasts, television commercials, pamphlets and other print media – these are just a few of the ways in which a candidate could seek the necessary backing to enter the political sphere.

There is, however, one major problem. Campaigns require money. Money is necessary to buy airtime, to hire campaign workers, to organize public meetings, and not to earn a daily wage for the required time to conduct a campaign. Because of this need, campaigns often dissolve from “a debate about ideas . . . [into] a publicity campaign and the construction of images. Form tends to prevail over substance. The relative insignificance of ideology has led to electoral marketing and its financing being the critical factor in the success or failure of a campaign.”⁶⁷

From the perspective of the payor, however, money is not the issue. Campaigns are financed like all other market transactions with the limited exception that money is rarely expected in return.⁶⁸ The incen-

⁶⁶ Ferreiro, *supra* note 44, at 356.

⁶⁷ *Id.* at 355.

⁶⁸ Matthew T. Sanderson, Note, *Voodoo Economics: A Look Abroad for a Supply-Side Solution to America's Campaign Finance Riddle*, 41 VAND. J. TRANSNAT'L L. 937, 942 (May 2008).

tive to donate the necessary funds for political campaigning is access.⁶⁹ “Access appears to motivate those who contribute to unopposed candidates, to opposing candidates, or to election winners with campaign debt”⁷⁰ This is the foothold of corruption.⁷¹ “Obtaining illicit wealth [or power by gaining political office] through abuse of public administration constitutes the essence of corruption.”⁷² The erosion of political independence and the promotion of favor trading – these are the consequences of withholding accountability from the financing of political candidates. The result is diminished public welfare in exchange for providing personal access to powerful decision makers.⁷³

Solutions:

Hope is not lost. There are ways to stop the incessant siphoning of wealth into the coffers of political elites seeking power. Latin America is not without those who wish to change. By comparison, Chile has not permitted this corruption from weakening their political institutions.⁷⁴ Despite “thoughtless and even negligent delay of urgent solutions to key areas of governance . . . [,]” the Chilean people have sought a change.⁷⁵ The Law of Administrative Integrity, here as well, has provided the necessary muscle to push against ill-gotten political monies.⁷⁶ Though the Chilean people have seen some successes, thereby improving their citizen’s trust and confidence in their government, improvements can still be made.⁷⁷

It is here the United States may be able to provide an adequate remedy. After multiple scandals involving candidates and current members of the highest offices, including “two governors, two sena-

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Ferreiro, *supra* note 44, at 354. Corruption, however, is not strictly limited to this trade of money for access. Corruption in campaign finance may manifest itself in “the form of improper influence, bribery, or misuse of public resources with [any] resultant benefit to the one with political power.” *Id.*

⁷² *Id.* See also Rose-Ackerman, *supra* note 36, at 128–29 (giving another look at corruption through politician’s use of their office).

⁷³ Ferreiro, *supra* note 44, at 355.

⁷⁴ *Id.* at 352.

⁷⁵ *Id.* at 353.

⁷⁶ *Id.* at 349–50.

⁷⁷ *Id.*

tors, and nineteen state legislators all in a matter of ten years . . .”⁷⁸ totaling over USD \$3 billion in corrupt financing, the state of Arizona realized change was needed.⁷⁹ “[T]raditional campaign finance reform [was] no longer a viable and effective means of combating corruption . . .”⁸⁰ In response, the state of Arizona developed a program in 1998 to help in this effort called the Citizens Clean Elections Act.⁸¹ The term “clean elections” defines a system of campaign financing wherein a candidate funds his or her campaign solely on public financing without raising any private donations.⁸² All markets, including campaign financing, are controlled by the basic economic rule of supply and demand.⁸³ The purpose of the clean election system is to control this market by physically controlling the supply of money going to the candidate. This reduces the demand for contributions. Without candidate demand for contributions, candidates are much less likely to make promises or accept illicit payments in return for access.

There are a few key characteristics of a clean elections system. It is important to initially note the funds given to the candidate are given from the state and are not the product of taxation.⁸⁴ They are the result of a surcharge attached to traffic violations and private donations that citizens may include on their annual tax return or voter registration.⁸⁵ First, candidates are required to raise a certain number of “qualifying” five dollars contribution to qualify to run as a clean elections candidate.⁸⁶ Because this program is voluntary, candidates must choose early in the election cycle whether they wish to run with private or public

⁷⁸ Andrew Spencer, Note, *Cleaning Elections*, 54 ARIZ. L. REV. 277, 309 (Spring 2012).

⁷⁹ *Id.* at 279–80.

⁸⁰ *Id.* at 281.

⁸¹ *Id.* The following is a portion of the preamble to the Citizens Clean Elections Act: “The people of Arizona declare our intent to create a clean elections system that will improve the integrity of Arizona State government by diminishing the influence of special-interest money . . .” *Id.* Prudence dictates I inform you of the possibility of personal bias in recommending this particular program because I am both a citizen of the United States, and also a native of Arizona.

⁸² *Id.* at 288. There are two types of contributions: donations and outlays. Donations are monies that candidates possess meaningful control over in their expenditure. Outlays are contributions the candidates do not have any control over in their expenditure. These generally refer to independent expenditures by private parties on behalf of the candidate. Sanderson, *supra* note 68, at 943.

⁸³ Sanderson, *supra* note 68, at 944.

⁸⁴ Spencer, *supra* note 78, at 289.

⁸⁵ *Id.*

⁸⁶ *Id.*

funding.⁸⁷ They will then receive two lump sum payments from the state to conduct a primary and then a general election if applicable.⁸⁸ Candidates who choose to run under public funds are then completely restricted, under penalty of disqualification, from raising private contributions and are very limited in their personal expenditures.⁸⁹ It is interesting to note additional funds not used or raised in excess to what the state will provide is placed in the general fund and has to date raised USD \$64 million.⁹⁰ A fair inference can be drawn that public opinion is behind this program exemplified by the increase in morale of an involved citizenry.

This is not to say clean election systems are without imperfections. One major detriment is the program is currently voluntary.⁹¹ Therefore the most dangerous opponent to a clean elections candidate is one running under private funding. Additionally, clean elections fail to account for expenditures from private citizens on behalf of the candidate.⁹² Citizens are still free to campaign for candidates at their own expense without recourse.⁹³ These private expenditures may also include corporations or special interest groups, which may be at the request of the candidate in return for delayed gratification to the contributor.⁹⁴ Despite these objections to a clean elections system, "the perfect should not be the enemy of the good."⁹⁵ A clean elections system increases competition, controls the cost of elections, increases public participation by broadening electorate representation, and enhances voter education by requiring debates and publishing statements submitted by candidates.⁹⁶ Clean election systems may be flawed and in need of improvement; however, they provide a portion of the necessary checks to corrupt practices. Perhaps the people of South America will be able to continue the work begun and provide Arizona with the second half of the solution.⁹⁷

⁸⁷ *Id.* at 288–89.

⁸⁸ *Id.* at 288.

⁸⁹ *Id.* at 288–89.

⁹⁰ *Id.* at 289–90.

⁹¹ *See id.* at 289.

⁹² *Id.* at 293.

⁹³ *See Id.* at 289.

⁹⁴ *Id.* at 295. This, however, would also be a disqualifying transgression if discovered.

⁹⁵ *Id.* at 294.

⁹⁶ *Id.* at 292.

⁹⁷ The rest of the world is not without possible solutions. Both Germany and Canada have implemented tax incentives to private citizens who wish to donate to political campaigns. "In the absence of a tax deduction, individuals with high taxable

C. International and Domestic Bribery

This analysis will now take its final turn to focus on what has been described as the “most fundamental form of corruption . . .”⁹⁸ Bribery appears to be at the foundation of all corrupt practices, and no anti-corruption initiative or analysis can be complete without discussing this phenomenon. Bribery is often synonymous with the term corruption itself. One definition of bribery is a “payment, in money or in kind, that involves a reciprocal obligation, and that aims to [induce] the unethical behavior of the person receiving the bribe.”⁹⁹ This begs the question, however, why is bribery wrong? Unless we as a society are going to strictly make a moral judgment or even a judgment from a biblical perspective, are there ways to conclude bribery to be inappropriate?¹⁰⁰ Though moral determinations should not, and will not, be ignored, there are two fundamental arguments in opposition to corruption.

First, corruption lowers incentives for investment into a particular region by increasing the potential risk for investors and raising transaction costs of doing business.¹⁰¹ There is a direct negative relation-

incomes are already more likely to give political donations . . . [t]o effectively expand donation supply and widen the donor base, a donation-incentive program should appeal to a broader demographic.” Sanderson, *supra* note 68, at 982–83. Sadly, for the people of South America, tax incentives will only provide incentives when the average wage increases. Tax incentives also do not solve the problem of permitting candidates to rally for and collect private contributions.

⁹⁸ Hoggard, *supra* note 3, at 580. The most common form of bribery is companies using improper contribution to high ranking officials intended to secure influence over policy, regulatory, and legislative decisions. DEBRAH HARDOON & FINN HEINRICH, BRIBE PAYERS INDEX 2011, 19 (Transparency Int'l ed., 2011), available at <http://www.transparency.org/bpi2011/results/> [hereinafter *Bribe Index*]. This exemplifies the inextricable link between the need for reforms in both campaign finance and anti-bribery initiatives.

⁹⁹ Sanchez, *supra* note 20. Bribery is also not limited in its scope. It may be representative of “misuse of company assets for political favors, kickbacks and protection of money for police . . . sympathetic articles in return for advertising revenue, free junkets for government officials and journalists, secret price fixing agreements, insider dealing, and the improper use of the ‘old boy’ networks.” Leo Ryan, *Combating Corruption: The 21st Century Ethical Challenge*, 10 BUS. ETHICS Q. 331, 333–34 (2000).

¹⁰⁰ It is not likely that a moral or biblical judgment against bribery would survive in the public sphere. Many see, as I do, bribery as morally wrong because of its inherent self-dealing at the expense of others, often secretive and deceitful methods, and the basic illegitimate means of acquiring wealth or power by stealing what would rightfully be another’s.

¹⁰¹ Robertson & Watson, *supra* note 21, at 386.

ship between the levels of perceived corruption and regional investment by foreign entities.¹⁰² Secondly, corruption has “distortionary effects.”¹⁰³ Bribery is rarely an efficient use of resources and often results in fewer monies being spent to benefit citizens.¹⁰⁴ If bribes are being used to direct the flow of resources, that money is not spent on improving that resource, and the direction may not be in the best interest of the people.

It is without question that the interests of the people in South America are low on someone’s list of priorities. The Organization of Economic Co-Operation and Development (OECD), a non-governmental organization dedicated “to promot[ing] policies that will improve the economic and social well-being of people around the world,” has conducted numerous surveys and other forms of research to classify the extent of the problem.¹⁰⁵ Sadly, out of the fifteen countries that comprise South America, only four have signed and ratified the OECD Anti-Bribery Convention.¹⁰⁶ Out of the forty signatories to the convention Argentina, is ranked as having moderate enforcement, and both Brazil and Chile are classified as having very little enforcement of the convention.¹⁰⁷ Brazil is a striking problem because only one case of bribery has been investigated under the convention.¹⁰⁸ Another startling statistic is Brazil currently shares 1.3% of the entire world’s exports.¹⁰⁹ Transparency International (TI) has also conducted additional studies to identify the bribery problem. In 2012, TI compiled its fifth International Bribe Payers Index, in which TI ranked twenty-eight of the world’s largest economies according to the per-

¹⁰² Sanchez, *supra* note 20.

¹⁰³ Robertson & Watson, *supra* note 21, at 386.

¹⁰⁴ *Id.*

¹⁰⁵ ORGANIZATION FOR ECONOMIC CORPORATION AND DEVELOPMENT, <http://www.oecd.org/about/> (last visited Jan. 25, 2014). “The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems. We work with governments to understand what drives economic, social and environmental change.” *Id.*

¹⁰⁶ ORGANIZATION FOR ECONOMIC CORPORATION AND DEVELOPMENT, <http://www.oecd.org/daf/anti-bribery/antibriberyconventionratification.pdf> (last visited Jan. 25, 2014).

¹⁰⁷ FRIST HEINMANN & GILLIAN DELL, EXPORTING CORRUPTION? COUNTRY ENFORCEMENT OF THE OECD ANTI-BRIBERY CONVENTION PROGRESS REPORT 6 (Transparency Int’l ed., 2d ed. 2012), available at http://www.transparency.org/whatwedo/pub/exportingcorruption_country_enforcement_of_the_oecd_anti_bribery_convention.

¹⁰⁸ *Id.* at 9.

¹⁰⁹ *Id.*

ceived likelihood of companies in these countries to pay bribes abroad based on surveyed business professionals.¹¹⁰ Some key finds were that no lasting improvements have been made over time to the bribery problem, bribery can be found in all business sectors from agriculture to aerospace, and there is clear evidence to show that equally as much private to private bribery occurs as public-to-public or public-to-private.¹¹¹ Additionally, ranked countries included Brazil at fourteenth of twenty-eight and Argentina at twenty-third.

Why is bribery so prevalent? Aside from the simplistic answer of finite man exemplifying his imperfection, there are characteristics, specifically of South American cultures, that appear to encourage bribery. The greatest of these is culture. Studies to this point have primarily focused their attention on “inappropriate laws, weak systems of checks and balances, and protectionism measures . . .”¹¹² This macro focus is often cited; however, deeper cultural applications are necessary. Weak legal institutions may provide the opportunity for corrupt practices, and low wages do provide a level of motivation, but for the people of South America, deep cultural loyalty is key.¹¹³ This should be both applauded and condemned. As in any collectivist society, South American cultures being some of them, the whole is focused upon more than the individual. “[L]arge family-dominated business groups create close support networks that fill the institutional voids left by the lack of regulatory bodies and specialized intermediaries.”¹¹⁴ All collectivists tend to favor their in-group. This in turn will influence a member of that group, most often family, to engage in bribery if he feels that his group will benefit.¹¹⁵ This practice will then evolve into a tolerance of bribery on the part of both the participant and supervisors.¹¹⁶ “In [South] America work is seen as the means to one goal, that of providing a good quality of life for . . . [ones] family. Thus a manager in [South] America is less likely to hold a negative attitude

¹¹⁰ *Bribe Index*, *supra* note 98, at 6. The highest scoring country with the fewest perceived bribes was the Netherlands followed by Switzerland. The United States ranked tenth. Other large economies included the United Kingdom ranking eighth, Japan at fourth, Taiwan at nineteenth, China at twenty-seventh, and Russia at twenty-eight. *Id.*

¹¹¹ *Id.*

¹¹² Sanchez, *supra* note 20, at 343.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 344.

¹¹⁶ *Id.*

towards bribery under this belief that the corrupt act might benefit the employee's in-group.”¹¹⁷

Solutions:

This problem is not without a solution. If culture is the issue, then culture is the key. It will be necessary to influence the cultural beliefs and mores of each of the varied South American cultures, in order to eliminate bribery. These changes, however, must not be sought quickly. Though change must come, great patience must be kept in attempts to change any cultural belief. Attempts at violent, swift change of cultural underpinnings will only result in a direct rejection of any proposition and continue to drive the target farther from development. These “values are so ingrained in the cultural fiber that any organizational intervention intended to rapidly change them may be seen as an euphemism.”¹¹⁸

This is where non-governmental organizations truly shine. NGOs are not limited by governmental regulatory bodies in their scope and can therefore work on the ground level in and among the people without public distrust. These organizations can send relief workers, business professionals, ethics advisors, and professionals from every sector to help educate the people directly. This takes time and money; however, NGOs are only limited in the amount of funds they can spend based on the amount they raise. NGOs need not worry about their respective governments sending a monthly check. They are free to operate in whatever means necessary to gain the necessary means to complete their task. NGOs and other enmeshment style initiatives are the answer to the gradual cultural change necessary in these regions.

The private sector is not the only area that needs renovation. This fight will consist of a double envelopment on two flanks of the enemy. If Bob Woodward was to “follow the money,”¹¹⁹ then so should we.

¹¹⁷ *Id.* “[M]anagers who tend to attribute their followers’ corrupt behavior . . . to internal causes [greed, etc.] may [also] punish them more severely than those managers whose tendency is attributing this behavior to external causes [such as low wages.]” *Id.* at 345.

¹¹⁸ *Id.* at 348. In addition to seeking solutions too quickly, many entities “often seek to implement reforms across a spectrum far too broad to be either manageable or sustainable.” David Morrissey, Note, *The Fight Against Corruption by International Organizations*, 39 GEO. WASH. INT'L L. REV. 165, 186 (2007). Regions with “serious” problems should narrow the scope of their focus to the “most problematic sources of corruption and address them first. The achievement of early success is a key factor in [overall] success.” *Id.*

¹¹⁹ ALL THE PRESIDENT’S MEN (Warner Brothers 1976).

Much is being done to assist the public corporate sphere in its fight to reduce bribery's influence in public business transactions.¹²⁰ The World Bank and the International Monetary Fund (IMF) have made great efforts to work in this field. The IMF is an international institution founded in 1945 to "promote international monetary cooperation, exchange stability and orderly exchange arrangements, to foster economic growth . . . and to provide temporary financial assistance to countries to help ease balance of payments adjustment."¹²¹ The IMF has in recent years primarily focused on creating "dialogues" with foreign governments to help educate on the "national and international consequences of their economic and financial policies."¹²² The IMF has recently seemed to focus primarily on infusing "troubled economies" with capital investment in the hope of jump-starting local economies and "restor[ing] private sector confidence . . . and attract investment . . ."¹²³ By nature of being a creditor, the IMF has the opportunity to ensure loan recipients engage in anti-corruption practices, require certain reporting procedures, and demand a high level of transparency regarding where and how each dollar of IMF money is spent.¹²⁴

The IMF is not alone in its work. The World Bank is also on the front lines combating public sector corruption. Very similar to the tactics of the IMF, the Bank also has great power to determine the requirements necessary for the receipt of loans. In fact, "the Bank is obligated under its [c]harter to ensure that loan funds are used and dis-

¹²⁰ High standards of corporate integrity are essential to reducing foreign bribery. These standards require leadership and employee commitment to a business culture that does not tolerate bribery or corruption. *Bribe Index*, *supra* note 98, at 10.

¹²¹ Juan Carlos Linares, After the Argentine Crisis: Can the IMF Prevent Corruption in its Lending? A Model Approach, 5 RICH. J. GLOBAL L. & BUS. 13, 16 (Winter 2005).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 17. The IMF, however, has not been perfect in its application of these anti-corruption measures. A severe lack of accountability and regulation has appeared to be one key aspect in how Argentina in 2001 took the single largest loan default in world history with USD \$141 billion. "The default was a culmination of years of failed economic strategies and what many saw as excessive influence from the IMF." *Id.* at 18–19. Though true fault is undetermined, "a major cause of the collapse resulted from the steadfast tradition of internal corruption amongst the region's elites. *Id.* at 21. Inadequate restraints were adopted to curtail corruption, where . . . traditional distrust for the state led to disrespect for the rule of law . . ." *Id.* The people of Argentina now bear the burden of this collapse. *Id.*

bursed for the purposes for which such loans were granted.”¹²⁵ This opportunity to trail the expenditure of every dollar loaned will provide greater accountability for the governments of South America, in turn benefiting the citizenry who actually get what was originally intended for them. Good governance must focus on transparency and a reduction in the incentives to participate in corrupt behavior. These practices will provide just that. The bank will continue to remain involved in corrupt nations but limit its financial assistance. The bank will conversely increase lending to leaders increasing reform while maintain its own integrity through greater transparency.¹²⁶

V. WHY IS CORRUPTION SO PREVALENT?

Though it has been discussed in many parts throughout, the analysis will now turn to a brief discussion of why corruption has advanced to its current extent. The moral and philosophical foundations, though often discounted, are the true foundation of the problem.¹²⁷ Man is broken.¹²⁸ The heart of man will naturally seek after evil and seek to satisfy his own desires; “who can understand it?”¹²⁹ This is the product of a fallen world.¹³⁰ Since the very beginning perfection has been lost and we are forced to live a life of concerted effort to withdraw from these desires. Yet there are some who choose to not make that decision. There are those who seek to better themselves at the expense of others. This is why our mission is so important. “Learn to do right; seek justice. Defend the oppressed. Take up the cause of the fatherless; [and] plead the case of the widow.”¹³¹ There exist many facts that influence and encourage large scale corruption, “the most pervasive [of

¹²⁵ McWilliams, *supra* note 2, at 9.

¹²⁶ *Id.* at 20.

¹²⁷ Some claim “[t]he causes of corruption are numerous and interrelated. They consist primarily of the irresponsible attitude and behavior of a few individuals and their insatiable ambition for political and economic power in clear and direct detriment of the common good.” Maldonado & Berthin, *supra* note 24, at 245. The truth is, however, these attitudes and behaviors are themselves representative of the cause, not its source.

¹²⁸ See *Romans* 3:23 (New International Version).

¹²⁹ *Jeremiah* 17:9 (New International Version).

¹³⁰ “For everything in the world – the lust of the flesh, the lust of the eyes, and the pride of life – comes not from the Father but from the world.” *1 John* 2:16 (New International Version).

¹³¹ *Isaiah* 1:17 (New International Version).

which] is a ‘culture of corruption . . .’”¹³² It is only the corruptible heart of man, however, that lies at the foundation. We must first identify the proper cause of the disease to procure the appropriate cure. “[W]e have seen and testify that the Father has sent his Son to be the Savior of the world.”¹³³

VI. HOW IS THE WORLD SEARCHING FOR A CURE?

These problems and the solutions discussed are not without champions who seek to implement them in meaningful ways. There are many developing new and unique ways of combating corruption as a whole and providing security across the spectrum of human existence. The following sections will highlight additional areas where advancements are being or could be made and will showcase some success stories of actors making a difference.

A. The Law

It is true the world does not need any more laws. The world needs good laws. It is also true the law alone cannot effect change. Laws must be accompanied by good men and women who are willing to enforce them. Laws are the necessary and required foundation from which any system must be built. Without a proper foundation, the house will fall.¹³⁴ There are three rationales identifying the imperative nature of the law. First, new laws come from existing laws and the issues that arise.¹³⁵ This is distinguished from the precedent of a common law system because the failures of bad law can and do lead to better ones. Laws become better as legislators become better informed to change current laws.¹³⁶ Secondly, by analyzing the laws adopted by a particular country, those observing can acquire a good impression as to the nation’s perception of corruption.¹³⁷ With this knowledge, lawmakers can identify the proper fix necessary to fill the institutional gaps that allow corruption to permeate a society.

¹³² Morrissey, *supra* note 118, at 166. “It [speaking directly of corruption] is a natural consequence of the often-symbolic relationship between business and government, and its elimination is impossible” *Id.* at 165.

¹³³ 1 John 4:14 (New International Version).

¹³⁴ See Matthew 7:24-27 (New International Version).

¹³⁵ Homer Moyer, *The Role of Law in Combating Official Corruption: Recent U.S. Enforcement and Evolving International Standards*, 98 AM. SOC’Y INT’L L. PROC. 169, 171 (2004).

¹³⁶ *Id.*

¹³⁷ Surjadinata, *supra* note 34.

Finally, it is also necessary to ensure the rule of law governs. Given corruption is often the tool of those in power, the “success of fighting corruption” hinges on our ability to ensure all men are held equally accountable under the law.¹³⁸ For example, in 1998, a series of bank frauds were committed in Ecuador. “[N]ot only [were the perpetrators] permitted to flee the country, but [they] are still at large without real prospects of extradition and therefore effective sanction.”¹³⁹ This is unacceptable. It is no small wonder why the citizens of South America have become as disillusioned and apathetic as in recent decades. The law must rule or chaos and anarchy will take its place, and the cycle of corruption and public discouragement will never end.

B. Mathematics

Great strides are also being made to further anti-corruption in the realm of mathematics. The language of science has a great deal to say in regards to what has mostly been a sociological study.¹⁴⁰ Mathematics is not being used to directly change or stamp out corruption, but rather to understand and investigate. Very similar to the way a meteorologist would use a computer simulation or model to identify various weather patterns, mathematicians have been able to graph the motivations and influences of corruption.¹⁴¹ Models are simply representations of the system you intend to study. By first studying and then re-creating the world around us through the methods and motivations of man, mathematicians are able to identify patterns of behavior that can then be used to preempt or predict corrupt behavior.¹⁴² “Corruption models are used to understand the prevalence of corruption and the causes and effects of corruption for the purpose of reducing corruption.”¹⁴³ These models, however, must be used on a very microscopic level if they are to work. “Corruption as an overarching concept is too vague to have a single model attempt to measure every type of corrup-

¹³⁸ Ferreiro, *supra* note 44, at 348.

¹³⁹ Dirani, *supra* note 5, at 333. This is a major problem specifically in Ecuador. Coordination between national offices is “minimal” and “the message to everyone is clear.” *Id.* “It is virtually certain that the corrupt, especially the rich amongst them, will not be punished.” *Id.*

¹⁴⁰ Barr, *supra* note 2, at 268.

¹⁴¹ *Id.* at 277.

¹⁴² *Id.* at 268–69.

¹⁴³ *Id.* at 269.

tion in one singular study.”¹⁴⁴ For example, a corruption model could not be used to identify the various forms even mentioned throughout this article. One model could, however, focus on campaign financing in Ecuador to identify and graph patterns of behavior in a scientific way. By combining the fields of game theory, chaos theory, and computer simulations of complex systems through models, reformers are provided another tool to help in their fight.¹⁴⁵

C. Information Technology

Though inventing the “longer lasting light bulb”¹⁴⁶ may not solve all our current problems, advances in the realm of information technology could provide significant opportunities to halt corruption.¹⁴⁷ The ability to improve on an institutional level is far more efficient than the relatively slow and costly progress made through conventional legislative reform.¹⁴⁸ Information technology is an imperative piece in the requisite institutional changes necessary to curb corruption.¹⁴⁹ With the advent of the Internet and telecommunications networks, data that at one time took weeks to compile and disseminate can be done in a matter of days.¹⁵⁰ Computerized databases allow reformers to locate and download reports, articles, comparison charts, and other related documentation in seconds.¹⁵¹

¹⁴⁴ *Id.* at 284. “The more focused a model is, the more reliable the results will be.” *Id.* It is important to note, “due to the intentionally secretive nature of corrupt acts, any data collected on a particular corrupt act will be incomplete and possibly flawed. Therefore, any model . . . should use multi-angular data collection strategy.” *Id.* at 295.

¹⁴⁵ See generally Partha Gangopadhyay et al. Application of Theories of Complexity and Chaos to Economic Misgovernance, 7 J. OF MATHEMATICS & STAT. 239 (2011).

¹⁴⁶ SAVING PRIVATE RYAN (Paramount Pictures 1998).

¹⁴⁷ Steven Salbu, dean and professor at Georgia Tech, would recommend a complete focal shift from “extraterritorial legislation to institutional change generally and to global information technology (“IT”) diffusion specifically.” Steven R. Salbu, *Information Technology in the War Against International Bribery and Corruption: The Next Frontier of Institutional Reform*, 38 HARV. J. ON LEGIS. 67, 67–68 (2001).

¹⁴⁸ *Id.* at 87. “Institutional reform is self-enforcing by its nature” *Id.*

¹⁴⁹ *Id.* at 91.

¹⁵⁰ *Id.* at 95.

¹⁵¹ *Id.* at 94–95. “It is not surprising the global war against corruption escalated in the late 1980s, a period of expanded freedom and democratization of the world. Conversely, the most egregious corruption often thrives in closed or formerly-closed markets and in nations that lag in the technology revolution.” *Id.* at 91.

The Internet and other forms of information technology also provide the average citizen with the necessary tools to keep their governments accountable. Citizens Participation Ecuador (PCE) uses the local media to publish campaign expenditures of candidates running for political office.¹⁵² PCE has been able to prevent candidates from exceeding permitted amounts by using the media as both a shield and a sword to seek sanction from the national electoral tribunal if necessary.¹⁵³ Another example is Licitenet.com. This website was created by a nonprofit organization in Ecuador as a tool to consolidate all notification of bidding opportunities. This not only gives citizens and enterprises reasonable access to this information, but also allows for public scrutiny of contracts awarded by the government.¹⁵⁴ These are just a small portion of the advances information technology can provide.

D. The United Nations

The United Nations is of course the most obvious figure in anti-corruption work. A great many pages could be, and have been consumed in the discussion of all of the UN objectives. The most prevalent action taken by the UN was adopted by the General Assembly on October 31, 2003, as the UN Convention Against Corruption.¹⁵⁵ Since then, over 170 nations have joined as state parties with 140 signatories.¹⁵⁶ The purpose of the convention was “[t]o promote and strengthen measures to prevent and combat corruption . . .” to “support international cooperation . . .” and “[t]o promote integrity, accountability and proper management of public affairs . . .”¹⁵⁷ This is mainly achieved through a number of obligations within. These include the development of legal constructs, collaboration with regional organizations,¹⁵⁸ and the promotion of transparency, public access to information, and the promotion of the freedom to “seek, receive, publish and disseminate information concerning corruption.”¹⁵⁹

¹⁵² Dirani, *supra* note 5, at 342.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 339.

¹⁵⁵ Signatories to the UNCC, *supra* note 1.

¹⁵⁶ *Id.*

¹⁵⁷ United Nations Convention Against Corruption, G.A. Res. 58/4, at 5, U.N. Doc. A/RES/58/4 (Nov. 21, 2003).

¹⁵⁸ *Id.* at 7.

¹⁵⁹ *Id.* at 11.

E. Non-Governmental Organizations (NGOs)

NGOs are the backbone of the anti-corruption movement. These organizations are the link between many international actors and local governments, and between local governments and the people they serve. They are the premier fighting force and the front line defense in the fight against corruption and have proved themselves an invaluable piece on the board.¹⁶⁰ NGOs are not-for-profit organizations relying heavily on volunteer involvement and are “organized on local, national or international level[s] to address issues in support of the public good.”¹⁶¹ There are primarily three types of NGOs, “the Operational NGOs (ONGOs), the Advocacy NGO (ANGOs), and the Hybrid NGO (HNGOs).”¹⁶²

ONGOs are apolitical organizations that primarily work in sectors outside the professional sphere, such as medical relief agencies.¹⁶³ ANGOs are conversely “driven by politics and ideologies and use confrontational techniques by writing scathing reports about a state’s record . . .” on the topic of value to the organization.¹⁶⁴ HNGOs, as the name implies, perform a combination of tasks but characteristically possess a “high degree of sophistication” utilizing “context-dependent” strategies influenced by their mission.¹⁶⁵ One of the most successful ANGOs in the field of anti-corruption is Transparency International (TI). One branch of TI, specific to South America, has seen great progress in many fields, specifically the information technology discusses above.

The Latin American Corporation for Development (CLD-TI) was the developer of Licitenet.com. This chapter continues to provide ways the people can involve themselves in anti-corruption initiatives.¹⁶⁶ The International Commission against Impunity in Guatemala (CICIG) has also seen great advancements through its mission to bring groups linked to illegal action generating corruption in the Guatemalan government to light. The CICIG is even an UN supported instrument

¹⁶⁰ See Indira Carr & Opi Outhwaite, *The Role of Non-Governmental Organizations (NGOs) in Combating Corruption: Theory and Practice*, 44 SUFFOLK U. L. REV. 615, 617–18 (2011).

¹⁶¹ *Id.* at 620.

¹⁶² *Id.* at 620–21.

¹⁶³ *Id.* at 621.

¹⁶⁴ *Id.* These organizations also focus on attaining the moral high ground in most situations. *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Dirani, *supra* note 5, at 336.

and has been praised as “represent[ing] a significant force of anti-corruption in the state.”¹⁶⁷

NGOs provide a link in the chain of solutions. The UN has even published a tool kit for NGOs identifying their various roles that include raising awareness, engaging stakeholders, research, and advocacy and monitoring.¹⁶⁸ Though NGOs should not replace “state-centered instruments,”¹⁶⁹ NGOs in key positions provide invaluable independent oversight of not only the sources of corruption, but the regulatory process itself.¹⁷⁰ “In order to prevent leaders from exploiting anti-corruption initiatives, therefore, anti-corruption organizations must present programs that necessarily translate language to action.”¹⁷¹

VII. CONCLUSION

Corruption is without question an evil that good men must resist. Sadly, in our world the complete elimination of corrupt practices from our societies is neither possible, nor even a reasonable goal. Until the earth is cleansed once more from the curse upon it, we as its inhabitants will be forced to live with the knowledge our world is without cure. We are not, however, without hope. Much has been done. Much still can be done. Most will, however, continue to fail unless a proper perspective is maintained. Man is the foundation of corruption. Men and women are the source of this disease, not a consequence. Therefore, in order to influence the world, certain steps must be taken by men and women toward men and women. “Few sanctions are more

¹⁶⁷ Rearick-Hoefflicker, *supra* note 40, at 16. See generally United Nations Office of Drugs and Crime. Thematic Program: Action Against Corruption, Economic Fraud, and Identify Crime (2012-2015) (Sept. 3, 2012), http://www.unodc.org/documents/corruption/Thematic_Programme/Thematic_Programme_on_Corruption_-2012-2015_sept12.pdf (showing how the United Nations combats corruption). The Organization for Economic Cooperation and Development (OECD) has developed incredible opportunities through their Latin America Anti-Corruption Program to promote integrity in Latin America. Primarily through developing dialogues and collaboration within the Latin America business community, the OECD creates mechanisms that focus on the prevention of corruption in international business. *Id.*

¹⁶⁸ Carr & Outhwaite, *supra* note 160, at 622.

¹⁶⁹ Patrick X. Delaney, *Transnational Corruption: Regulation Across Borders*, 47 VA. J. INT'L L. 413, 431 (Winter 2007). “State-centered instruments remain an integral part of anti-corruption regimes and should not be criticized on the basis of a misguided sense of cultural sensitivity.” *Id.*

¹⁷⁰ *Id.* at 455.

¹⁷¹ Morrissey, *supra* note 118, at 167.

severe than those applied by the judgment of an informed community which is intolerant of corruption.”¹⁷²

Laws must be written to create the framework from which citizens and government alike may operate. These laws will provide the baseline rules identifying prohibited actions. The government must then be held accountable for violations. Examples must be set and leaders must lead by them if corruption is to be adequately restricted. Accountability will most readily come from an informed populace. The people of South America and the world must know the risks involved in complacency.¹⁷³ NGOs and similar enmeshment initiatives will provide this education. State and international actors must also cooperate with each other and NGOs in order to provide the united and consistent front required. “[T]he combination of popular protest, international pressure, and government reform may supply the antidote to the current epidemic of corruption.”¹⁷⁴

Our world is sick, and it always will be. This is why we must never give up. We must continue to drive evil from wherever it can be found. Corruption may be an undefeatable foe, but we can work to limit its power. “Let us not become weary in doing good for at the proper time we will reap the harvest if we do not give up.”¹⁷⁵

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¹⁷² Ferreiro, *supra* note 44, at 356.

¹⁷³ *Bribe Index*, *supra* note 98, at 10.

¹⁷⁴ Morrissey, *supra* note 118.

¹⁷⁵ *Galatians* 6:9 (New International Version).