

Corruption and its challenges: the battle to stop a universal problem

Low compliance with the law imposes burdens on judicial systems

By Hiram Chodosh

Friday, September 25, 2009



Corruption is increasingly seen as a universal problem, deeply embedded in many national legal systems, and also transnational in nature. It is so endemic that it has generated its own special vernacular, such as “Code 1,000” in Honduras (a reference to the 1,000 lempira note), “mordida” in Mexico, “arreglo” in the Philippines, “baksheesh” in Egypt, “dash” in Kenya, or “pot de vin” in France. Classical Islamic law textbooks for judges are emphatic about avoiding “rashwa.”

Increasingly, varied constituencies recognize the serious consequences of corruption on class stratification, poverty, commerce, economic development, democracy, equality, health care, education, the environment, other public services, women, indigenous peoples, and cultural identity. Development organizations find that shockingly large portions of loans or grants never reach their intended beneficiaries. Economists have observed (when compared to high taxation) greater negative impacts of corruption on growth. Investors do not have confidence in corrupt legal systems.

Corruption also deteriorates trust in democratic institutions. It advantages the powerful over the weak, and creates resentment between the “haves” and “have nots.” Gaining access to health care or good schools is frequently conditioned on making additional payments. If polluters can buy their way out of environmental controls, the ecology of clean air. Anti-drug enforcement, as another example, is riddled with corruption.

The requirement of an illicit payment to facilitate the provision by an official of birth or death certificates increases the cost and blocks access to basic services. Corrupt practices are often falsely and harmfully internalized as a cultural attribute of the country in which they have flourished. Officials who practice corruption are themselves demoralized.

Beyond these more general effects, corruption undermines the very institutions, including the judicial and legal system which are responsible for enforcing anti-

corruption norms. In those countries where corruption is profoundly institutionalized, litigants with meritorious claims or defenses cannot rely on the judicial process to produce a correct and effective result and have a higher incentive for employing extra-legal means to win cases. Instead of hiring a better lawyer to obtain a meritorious result, litigants have a strong incentive to retain a less ethical one merely as an intermediary for illicit payments to judges.

The ease with which the law is undermined weakens the incentives for compliance. Low compliance with the law in turn imposes an additional burden on the judicial system to resolve greater numbers of conflicts arising from violations of public and private rights and obligations.

This produces a vicious cycle of low compliance, more disputes, corrupt practices, and inconsistent, if not illegal, outcomes, which in turn reduces further the incentives to comply with the law. The seemingly interactive nature of corruption and low levels of development raise the prospect of a vicious cycle, thus making it difficult to understand precisely how the effects of corruption – under- or mal-development – may simultaneously contribute to corruption.

The institutional response to corruption is now nearly as pervasive as the linguistic usage around the world. NGOs like Transparency International, founded in 1993, have increasingly drawn attention to the problem. Development banks (such as the World Bank and Regional Development Banks), aid agencies (USAID), and other international institutions (the International Monetary Fund and the United Nations and its affiliated groups and units) have for many years conditioned aid to developing countries on their commitment to anti-corruption reforms. These national and international governmental and non-governmental organizations simultaneously provide technical assistance to those countries in search of help.

On a normative level, national, transnational, regional, and international law prohibits corruption and requires that countries take affirmative steps to prevent and prosecute it. Chapter II, Article 5, Paragraph 3 of the United Nations Convention against Corruption provides that “Each State Party shall endeavor to establish and promote effective practices aimed at the prevention of corruption.” Many national governments have enacted new domestic laws that increasingly reach extraterritorial conduct, (e.g., the US Foreign Corrupt Practices Act) and multilateral treaties (e.g., OECD) that seek to restrain actors from arbitrating more permissive national laws and enforcement capacities in weaker regimes within the global economy. This flood of national, transnational, and international legislative activity is worldwide in its ambition for a comprehensive approach to combat corrupt practices in various branches and agencies of government, including customs, tax, and other regulatory and licensing authorities.

Overall, however, the positive effects of these anti-corruption interventions are difficult to observe. Why? In subsequent essays in this series, I will describe in further detail five primary reasons. First, we are still unclear about conceptions and definitions of the precise behavior we wish to curtail. Second, we struggle to measure levels of corruption with sufficient empirical accuracy. Third, we have not grasped and reconciled the three competing theories (political, economic, and ethical) of what produces corruption. Fourth, we have not appreciated the underlying weak

foundations for legal reforms to work effectively. And finally, our approaches to reform have not developed or applied new theories individual or institutional behavior. Before we complete this outstanding global homework, we will have little hope of tackling the very troubling problem of corruption in our societies.

***Professor Hiram E. Chodosh** is Dean of the S.J. Quinney College of Law at the University of Utah. He is a noted world expert on comparative law and on international global justice.*