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## The Psychic Costs of Violating Corruption Laws

Philip M. Nichols

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# The Psychic Costs of Violating Corruption Laws

Philip M. Nichols\*

## ABSTRACT

*Understanding corruption is imperative for legal scholarship, both as an intellectual subject and because corruption impedes the operation of law in much of the world and inflicts damage on well-being, governance, and quality of life. Legal scholars have contributed substantial quantitative research on corruption; this paper adopts a qualitative methodology. The similarities and differences between Singapore and Malaysia present opportunities for research. Interviews with discussants in those two countries indicate a real difference in the degree to which corruption laws have been internalized. Differences in the degree of internalization suggest differences in the psychic costs imposed by violation of corruption laws. Discussions also reveal other costs considered by actors contemplating violation of the laws. Discussions also indicate that corruption manifests itself differently in each country, which does not comport with quantitative analyses that treat corruption as a unified, linear phenomenon. Finally, discussions suggest that corruption can be controlled.*

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Why is Singapore less corrupt than Malaysia? Singapore and Malaysia have implemented similar legal regimes to control corruption, the countries are geographically proximate, and even share much history. Observers perceive substantially less corruption in Singapore and Malaysia than in other countries in the region, but perceive far less in Singapore than in Malaysia. The difference in corrupt activity compels inquiry into one question: why?

The proximity and similarity in legal regimes is fortuitous for legal scholars. The answer to the question “why?” cannot be found in just the words that constitute the laws, because those words are quite

similar.<sup>1</sup> The answer probably cannot be found in the structure of the agencies tasked with investigations pursuant to those laws because those, too, have strong similarities.<sup>2</sup> The reasons for the difference in outcomes must lie elsewhere. Seeking those reasons may cast insights into effective implementation or administration of law in general and of corruption regimes in particular.

Inquiry into corruption regimes has both intellectual and practical merit. Corruption strikes at the very heart of an effective legal and administrative system, but often does so from the shadows.<sup>3</sup> It exposes tension at the juncture of law, business, government and civil society. Corruption also constitutes one of the greatest threats to overall improvement in law, economies, and quality of life.<sup>4</sup> Corruption bedevils Southeast Asia as it bedevils many regions of the world, and Singapore's and Malaysia's abilities to ameliorate corruption merit close study to evaluate the exportability of their corruption control programs.<sup>5</sup>

At the global level, scholars have conducted a great deal of quantitative empirical research on corruption. Researchers have surveyed attitudes of local persons toward corruption and corruption regimes in a number of countries and regions<sup>6</sup> and even in discrete

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1. See *infra* notes 166, 191 and accompanying text.

2. See *infra* notes 170–90, 194–207 and accompanying text.

3. See Christiana Ochoa, *From Odious Debt to Odious Finance: Avoiding the Externalities of a Functional Odious Debt Doctrine*, 49 HARV. INT'L L.J. 109, 145 (2008) (“[C]orruption operates for the most part in secret.”).

4. In the foreword to a publication that outlines empirical support for this proposition, then World Bank President James Wolfensohn summarized: “The international community simply must deal with the cancer of corruption, because it is a major barrier to sustainable and equitable development.” James D. Wolfensohn, *Foreword to THE WORLD BANK, HELPING COUNTRIES COMBAT CORRUPTION: THE ROLE OF THE WORLD BANK (1997)*; see Benjamin B. Wagner & Leslie Gielow Jacobs, *Retooling Law Enforcement to Investigate and Prosecute Entrenched Corruption: Key Criminal Procedure Reforms for Indonesia and Other Nations*, 30 U. PA. J. INT'L L. 183, 190–92 & n.19 (2008) (reporting research that demonstrates the “devastating effects of corruption on economics, political stability, and human rights” and providing a list of international bodies that have concluded that corruption impedes development).

5. See Simon S. C. Tay & Maria Seda, *The Enemy Within: Combating Corruption in Asia*, in *THE ENEMY WITHIN: COMBATING CORRUPTION IN ASIA* 1, 23 (Simon S. C. Tay & Maria Seda eds., 2003) (suggesting that Singapore's success in controlling corruption provides insights for the successful implementation of other corruption regimes); see also Anthony B. L. Cheung & Ian Scott, *Governance and Public Sector Reform in Asia: Paradigms, Paradoxes and Dilemmas*, in *GOVERNANCE AND PUBLIC SECTOR REFORM IN ASIA: PARADIGMS, PARADOXES AND DILEMMAS* 1, 1 (Anthony B. L. Cheung & Ian Scott eds., 2003) (discussing the tremendous appetite for bureaucratic reform in Asia); Simon S. C. Tay, *Corruption After the Crisis: Governance, Asian Values and International Instruments*, in *THE ENEMY WITHIN: COMBATING CORRUPTION IN ASIA*, *supra*, at 37, 37 (reporting that concern about corruption is “close to the very top of the agenda” in Asia).

6. See, e.g., SAHR JOHN KPUNDEH, *POLITICS AND CORRUPTION IN AFRICA: A CASE STUDY OF SIERRA LEONE (1995)*; *LATIN AMERICAN CORRUPTION SURVEY (2008)*, available at <http://www.millerchevalier.com/portalresource/2008LatinCorruptionSurveyReport>;

business sectors.<sup>7</sup> Financial institutions such as the World Bank attempt to measure the costs of corruption in monetary terms.<sup>8</sup> Legal scholars attempt to quantify the effect of corruption on other relationships, such as settlement of conflicts<sup>9</sup> or human rights,<sup>10</sup> or the effect of base legal systems on corruption.<sup>11</sup> Economists and others attempt to quantify the impact of corruption on other phenomena, such as direct foreign investment<sup>12</sup> or currency exchange rates.<sup>13</sup>

The Asian Development Bank points out, however, that while useful “[n]o one instrument or method can provide a complete picture. Each survey tool has its utility and its limitations.”<sup>14</sup> A thorough understanding of the implementation of corruption laws requires more than surveys and quantitative analyses.

The research described in this paper attempts to provide another perspective on corruption regimes. This research undertakes a qualitative rather than quantitative evaluation. The author of this paper discussed corruption with government officials, businesspeople,

MARIA SHKARATAN, BOSNIA AND HERZEGOVINA: DIAGNOSTIC SURVEYS OF CORRUPTION (2001), available at <http://www1.worldbank.org/publicsector/anticorrupt/Bosnianticorruption.pdf>; WORLD BANK, DIAGNOSTIC SURVEYS OF CORRUPTION IN ROMANIA (2001), available at <http://www1.worldbank.org/publicsector/anticorrupt/romenglish.pdf>; Philip M. Nichols, *The Fit Between Changes to the Global Corruption Regime and Indigenous Perceptions of Corruption in Kazakhstan*, 22 U. PENN. J. INT’L ECON. L. 863 (2001); Philip M. Nichols, George J. Siedel & Matthew Kasdin, *Corruption as a Pan-Cultural Phenomenon: An Empirical Study in Countries at Opposite Ends of the Former Soviet Empire*, 39 TEX. INT’L L.J. 215 (2004).

7. See, e.g., THE CHARTERED INST. OF BLDG., CORRUPTION IN THE UK CONSTRUCTION INDUSTRY: SURVEY 2006 (2006), available at <http://www.ciob.org.uk/sites/ciob.org.uk/files/WEB-INF/files/documents/CIOBCorruption.pdf>.

8. See, e.g., WORLD BANK, WORLD DEVELOPMENT REPORT 2002: BUILDING INSTITUTIONS FOR MARKETS (2002), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/12/13/000094946\\_9909231233424/Rendered/PDF/multi\\_page.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/12/13/000094946_9909231233424/Rendered/PDF/multi_page.pdf).

9. See, e.g., Timothy L. Fort & Cindy A. Schipani, *The Role of the Corporation in Fostering Sustainable Peace*, 35 VAND. J. TRANSNAT’L L. 389, 394–98 (2002) (comparing data from the Corruption Perceptions Index to other data to determine correlation between corruption and frequency of peaceful settlement of conflicts).

10. See, e.g., Ndiva Kofele-Kale, *Change of the Illusion of Change: The War Against Official Corruption in Africa*, 38 GEO. WASH. INT’L L. REV. 697, 743 (2006) (correlating data on corruption with reputations on human rights).

11. See, e.g., Keith N. Hylton & Vikramaditya Khanna, *A Public Choice Theory of Criminal Procedure*, 15 SUP. CT. ECON. REV. 61, 110–11 (2007) (finding “that corruption is significantly lower where a common law system is in place”).

12. See, e.g., Paolo Mauro, *Corruption and Growth*, 110 Q.J. ECON. 681 (1995).

13. See, e.g., Mohsen Bahmani-Oskooee & Abm Nasir, *Corruption, Law and Order, Bureaucracy, and Real Exchange Rates*, 50 ECON. DEV. & CULTURAL CHANGE 1021 (2002).

14. ASIAN DEV. BANK & ORG. FOR ECON. CO-OPERATION & DEV. [OECD], ANTI-CORRUPTION INITIATIVE FOR ASIA AND THE PACIFIC 106 (2007).

and members of civic organizations in Singapore and Malaysia.<sup>15</sup> Individual discussions do not produce the amount or type of data needed for quantitative treatment of a subject; qualitative treatment can, however, reveal relationships and attitudes not discerned through quantitative measures.<sup>16</sup>

In this instance, discussions in Singapore and Malaysia reveal a subtle but stark difference. Singaporean discussants exhibit a viscerally negative reaction to corruption, whereas Malaysian discussants exhibit thoughtful negativity.<sup>17</sup> This difference may be attributable to the extent to which members of each group have internalized corruption laws. Internalization of corruption laws, in turn, may increase the psychic costs calculated by an actor contemplating violation of those laws, which would decrease the frequency of violation.<sup>18</sup>

If actors do evaluate the potential benefits and costs of violating corruption laws, then psychic costs are not the only costs taken into consideration. Actors will also take measure of potential social costs and of the likelihood of detection and prosecution in the criminal system. Discussions of corruption in Singapore and Malaysia reveal differences with respect to each of these potential costs as well.<sup>19</sup>

These discussions also challenge fundamental assumptions often made about corruption scholarship and corruption regimes. First, the variety of interactions discussants have with corruption call into question the lack of distinctions among types of or experiences with corruption when corruption is evaluated through quantitative measures—measures used extensively in legal scholarship.<sup>20</sup> Second, these discussions, particularly with Singaporean discussants, disaffirm the notion that corruption cannot be controlled.<sup>21</sup>

Before arriving at that happy conclusion, this paper first examines the extent to which corruption actually constitutes a serious problem. It does so by focusing on Singapore and Malaysia as situated within Southeast Asia.

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15. Not all discussants were initially aware of the interviewer's interest in corruption, but all were assured that the conversation would be held in complete confidence. All discussants were eventually told of the purpose of the research and that an explication of the results would be made public; each was also assured that when made public explication of the discussions would contain no identifying information. Methodology is described *infra* notes 219–21 and accompanying text.

16. See *infra* notes 209–13 and accompanying text.

17. See *infra* notes 222–36 and accompanying text.

18. See *infra* notes 303–09 and accompanying text.

19. See *infra* notes 272–302 and accompanying text.

20. See *infra* notes 312–42 and accompanying text.

21. See *infra* notes 343–60 and accompanying text.

## I. CORRUPTION PRESENTS SIGNIFICANT ISSUES

Singapore's and Malaysia's integrity diverge markedly from other countries in the region. Corruption pervades Southeast Asia and imposes critical difficulties on the region.<sup>22</sup> Indeed, Tran Duc Luong, former President of Viet Nam, despaired that "Corruption is taking place every day and every hour, at all places, all the time."<sup>23</sup> No region of the world has escaped the "eruption of corruption" described by Moisés Naím to have taken place over the last few decades.<sup>24</sup> The extreme differences in Southeast Asia, however, present interesting possibilities for study.

A. *Endemic Corruption*

Corruption escapes easy measure; most scholars turn to Transparency International's Corruption Perceptions Index for an indication of the amount of corruption in a particular country or region.<sup>25</sup> This paper starts with the Corruption Perceptions Index scores for Southeast Asian countries, but corroborates Transparency International's scores by turning also to the Opacity Index and the Global Competitiveness Index.

Transparency International's Corruption Perceptions Index uses logarithms developed by Johann Lambsdorff to produce a score based on several disparate sources of information about corruption.<sup>26</sup> A score of ten would indicate a perception that no corruption occurs

22. See William Case, *Political Mistrust in Southeast Asia*, 4 COMP. SOC. 81, 82 (2005) ("This is a region characterised by divided societies, emerging economies, sprawling and ramshackle, but intrusive state apparatuses, and hybrid forms of pseudo-, semi-, and low-quality democracy . . . Political parties, state bureaucracies, legislatures, and security forces are widely dismissed as corrupt and inefficient."); Richard Falk, Book Review, 92 AM. J. INT'L L. 579, 582 (1998) (discussing a "haze" of corruption over Southeast Asia).

23. JON S.T. QUAH, NATIONAL INTEGRITY SYSTEM: TRANSPARENCY INTERNATIONAL REGIONAL OVERVIEW REPORT: EAST AND SOUTHEAST ASIA 2006, at 8 (2007) (quoting Tran Duc Luong).

24. See Moisés Naím, *Corruption Eruption*, 2 BROWN J. WORLD AFF. 245, 245-47 (1995) (describing the increase in perceived corruption around the world).

25. See Sara Sun Beale, *Governmental and Academic Integrity at Home and Abroad*, 72 FORDHAM L. REV. 405, 414 (2003) (discussing the "incredibly interesting" Corruption Perceptions Index); Beverley Earle & Anita Cava, *Are Anti-Corruption Efforts Paying Off? International and National Measures in the Asia-Pacific Region and Their Impact on India and Multinational Corporations*, 31 U. HAW. L. REV. 59, 70 (2008) (describing the Corruption Perceptions Index as a "particularly relevant" measure of corruption).

26. These evaluations include surveys, political risk assessments, and country competitiveness rankings. Johann Lambsdorff explains and defends the index in JOHANN GRAF LAMBSORFF, HOW PRECISE ARE PERCEIVED LEVELS OF CORRUPTION? (2001).

within the country, a score of zero would indicate absolute corruption, and a score of three or less suggests “rampant” corruption.<sup>27</sup>

Singapore scores 9.3 on this scale.<sup>28</sup> This score places Singapore third among the countries evaluated, behind only Denmark and New Zealand.<sup>29</sup> Singapore effectively is among those countries with the least amount of perceived corruption in the world.<sup>30</sup> Within Southeast Asia, Malaysia has the second-highest score at 4.4.<sup>31</sup> This score ranks fifty-sixth among the one hundred and seventy-eight countries evaluated.<sup>32</sup> Southeast Asian scores fall precipitously from that point.

**Table 1**<sup>33</sup>

CPI scores for Southeast Asian countries		
Country	Score	Rank
Singapore	9.3	3
Malaysia	4.4	56
China	3.5	78
Thailand	3.5	78
Indonesia	2.8	110
Viet Nam	2.7	116
Philippines	2.4	134
Cambodia	2.1	154
Laos	2.1	154
Burma	1.4	176

Indexes that do not focus exclusively on corruption corroborate the Corruption Perceptions Index’s bleak portrayal of Southeast Asia. The Opacity Index, developed by Joel Kurtzman and Glenn Yago,<sup>34</sup> “draws upon 65 objective variables from 41 sources” in order to compile comparable data on the level of opacity in numerous

27. See Frans Viljoen & Lirette Louw, *State Compliance with the Recommendations of the African Commission on Human and People’s Rights*, 101 AM. J. INT’L L. 1, 27 (2007) (explaining scores).

28. *Corruption Perceptions Index 2010 Results*, TRANSPARENCY INT’L, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results) (last visited Dec. 26, 2011).

29. *Id.*

30. See John Norton Moore, *Beyond the Democratic Peace: Solving the War Puzzle*, 44 VA. J. INT’L L. 341, 350 (2004) (discussing Singapore’s unusual status as one of the least corrupt countries in the world).

31. *Corruption Perceptions Index 2010 Results*, *supra* note 28.

32. See Mathews Thomas, *Is Malaysia’s MyKad the “One Card to Rule Them All”? The Urgent Need to Develop a Proper Legal Framework for the Protection of Personal Information in Malaysia*, 28 MELB. U. L. REV. 474, 488–89 (2004) (discussing Malaysia’s score and levels of corruption in the country).

33. *Corruption Perceptions Index 2010 Results*, *supra* note 28.

34. JOEL KURTZMAN & GLENN YAGO, *GLOBAL EDGE: USING THE OPACITY INDEX TO MANAGE THE RISKS OF CROSS-BORDER BUSINESS* (2007).

countries.<sup>35</sup> Kurtzman and Yago define opacity as a “lack of clear, accurate, formal, clear-cut, and widely accepted practices in the broad arena where business, finance, and government meet.”<sup>36</sup> The score assigned to each country in the Opacity Index is a simple average of scores on five sub-indices, the first of which is corruption.<sup>37</sup> Thus, the Opacity Index provides a separate score for corruption in each evaluated country.<sup>38</sup> Legal and other scholars use the Opacity Index as a source of quantitative data for the purpose of comparing countries.<sup>39</sup>

Although not all Southeast Asian countries are included in the Opacity Index, the index corroborates the picture of Southeast Asia painted by the Corruption Perceptions Index. In the Opacity Index a high score indicates high levels of corruption and of opacity; unlike the Corruption Perceptions Index, low scores are preferable. Singapore once again ranks among the least corrupt and least opaque of the countries evaluated, while other Southeast Asian countries rank among the most opaque of the forty-eight countries evaluated.<sup>40</sup>

35. Joel Kurtzman, Glenn Yago & Triphon Phumiwasana, *The Global Cost of Opacity*, MIT SLOAN MGMT. REV., Fall 2004, at 3, 10.

36. KURTZMAN & YAGO, *supra* note 34, at xiii.

37. *Id.* at 62. Kurtzman and Yago define corruption as “the abuse of entrusted power for private gain.” *Id.*

38. The corruption sub-index evaluates not only the frequency of corruption but also the degree to which corruption is predictable or arbitrary. *Id.* at 62–68. Corruption scholars strenuously debate the effects of the arbitrariness or predictability of corruption. Alvaro Cuervo-Cazurra, for example, argues that while all types of corruption have a negative influence on foreign investment, investors prefer the uncertainty of arbitrary corruption. Alvaro Cuervo-Cazurra, *Better the Devil You Don't Know: Types of Corruption and FDI in Transition Economies*, 14 J. INT'L MGMT. 12, 24–25 (2008). Edgardo Campos, Donald Lien, and Sanjay Pradhan, on the other hand, suggest that while all forms of corruption have a negative effect on foreign investment predictable corruption has less of a negative effect. J. Edgardo Campos, Donald Lien & Sanjay Pradhan, *Impact of Corruption on Investment: Predictability Matters*, 27 WORLD DEV. 1059, 1065 (1999).

39. See, e.g., Raquel Fonseca, Pierre-Carl Michaud & Thepthida Sopraseuth, *The Economics of Entrepreneurship: Entrepreneurship, Wealth, Liquidity Constraints, and Start-Up Costs*, 28 COMP. LAB. L. & POL'Y J. 637, 646 (2007) (using the Opacity Index to compare countries); Vince Hooper & Suk-Joong Kim, *The Determinants of Capital Inflows: Does Opacity of Recipient Country Explain the Flows?*, 31 ECON. SYSTEMS 35, 35–36 (2007) (discussing effect of the Opacity Index on foreign capital investments); see also Jerry Ellig & Houman B. Shadab, *Talking the Talk, or Walking the Walk? Outcome-Based Regulation of Transnational Investment*, 41 N.Y.U. J. INT'L L. & POL. 265, 306–07 (2009) (recognizing the Opacity Index as a mechanism “to easily compare the relative transparency of numerous different regimes”).

40. JOEL KURTZMAN & GLENN YAGO, OPACITY INDEX 2009: MEASURING GLOBAL RISK 2–4 (2009), available at [http://www.milkeninstitute.org/pdf/InstituteOpacityIndex\\_Apr8.pdf](http://www.milkeninstitute.org/pdf/InstituteOpacityIndex_Apr8.pdf).

**Table 2<sup>41</sup>**

<b>Opacity Index scores for Southeast Asian countries</b>			
<b>Country</b>	<b>Corruption Score</b>	<b>Opacity Score</b>	<b>Opacity Rank</b>
Singapore	14	14	3
Malaysia	47	32	27
Indonesia	49	40	35
China	57	42	38
Thailand	61	37	33
Philippines	66	45	44

The World Economic Forum, assembled as perhaps the largest nongovernment organization of business leaders and operating as a forum for world leaders in civil society, business and government,<sup>42</sup> promulgates the Global Competitiveness Index. The Global Competitiveness Index rates the business environment of countries, using surveys to evaluate those countries on twelve separate characteristics.<sup>43</sup> The Global Competitiveness Index is widely used to compare countries, as are the evaluations of the twelve characteristics that make up the index.<sup>44</sup> “Institutions” constitute one of those characteristics, and the level of corruption plays a role in the evaluation of the strength and viability of institutions.<sup>45</sup> The

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41. *Id.*

42. See Alejandro Posadas, *Combating Corruption Under International Law*, 10 DUKE J. COMP. & INT'L L. 345, 408 (2000) (noting that the World Economic Forum constitutes “the largest international organization of business executives”); *About Us: Leadership Team*, WORLD ECON. FORUM, <http://www.weforum.org/content/leadership-team> (last visited Dec. 26, 2011) (“The World Economic Forum is an independent international organization committed to improving the state of the world by engaging leaders in partnerships to shape global, regional and industry agendas. Incorporated as a not-for-profit foundation in 1971, and headquartered in Geneva, Switzerland, the Forum is tied to no political, partisan or national interests.”).

43. See XAVIER SALA-I-MARTIN, *THE GLOBAL COMPETITIVENESS REPORT 2010–2011*, at 4 (2010) (defining “competitiveness as the set of institutions, policies, and factors that determine the level of productivity of a country”).

44. See, e.g., Thomas D. Hopkins, *An Assessment of Cross-National Regulatory Burden Comparisons*, 33 FORDHAM URB. L.J. 1139, 1146–47 (2006) (describing the Global Competitiveness Index and using it and components of it to compare countries); Nurhan Sural, *Wrongful Dismissal and Managerial Prerogative: Economic Implications of Employment Protection Legislation in Turkey: Has Turkey Found Its Juste Milieu?*, 30 COMP. LAB. L. & POL'Y J. 335, 367 (2009) (describing and using the Global Competitiveness Index and components).

45. See SALA-I-MARTIN, *supra* note 43, at 4 (stating that the evaluation of institutions includes “the legal and administrative framework” and “excessive bureaucracy and red tape, overregulation, corruption, dishonesty in dealing with public contracts, lack of transparency and trustworthiness, and the political dependence of the judicial system”).

“Institutions” component of the Global Competitiveness Index, therefore, provides indirect quantitative data on relative levels of corruption.

The Global Competitiveness Index evaluates 139 countries.<sup>46</sup> Of those countries, Singapore ranks first with respect to the strength of its institutions.<sup>47</sup> The remainder of Southeast Asian countries fare much worse.<sup>48</sup> The Global Competitiveness Index, therefore, suggests that Southeast Asian countries other than Singapore generally possess weak institutions and indirectly suggests that corruption plays a significant role in that weakness.

**Table 3<sup>49</sup>**

<b>GCI Institution scores for Southeast Asian countries</b>		
<b>Country</b>	<b>Score</b>	<b>Overall Institution Rank</b>
Singapore	6.13	1
Malaysia	4.62	42
China	4.37	49
Indonesia	3.98	61
Thailand	3.95	64
Viet Nam	3.80	74
Cambodia	3.56	94
Philippines	3.14	125

Quantitative data from Southeast Asia consistently supports the same interpretation. Singapore possesses one of the least corrupt governments in the world. The Malaysian government manages corruption, but corruption still manifests itself to an extensive degree. In other Southeast Asian countries, corruption appears endemic. As countries that differ from the norm, but differ to different degrees, Singapore and Malaysia beg for closer examination.

Singapore, Malaysia, and Southeast Asia also represent a microcosm of the entire world. Throughout the world, a handful of countries avoid corruption almost completely. Of the 178 countries evaluated by Transparency International, for example, only thirteen have scores greater than 8.0 and only twenty-five have scores greater than 6.5.<sup>50</sup> A greater number enjoy modest success in controlling corruption. A dozen countries have scores in the range of Malaysia.<sup>51</sup>

46. Klaus Schwab, *Preface to SALI-I-MARTIN*, *supra* note 43, at xi.

47. SALI-I-MARTIN, *supra* note 43, at 14.

48. *Id.* at 15–16, 18–19.

49. *Id.*

50. *Corruption Perceptions Index 2010 Results*, *supra* note 28.

51. *Id.* This includes countries with scores ranging from 4.3 to 4.7

One hundred and thirty-three countries score 5.0 or less;<sup>52</sup> of those countries, seventy-four score below 3.0, indicating a perception of endemic corruption.<sup>53</sup> According to this data, in Southeast Asia more than 500 million people live under conditions of endemic corruption, and around the world more than two and a quarter billion people live in polities that endure rampant corruption.<sup>54</sup>

### B. Corruption Inflicts Substantial Damage

To say that corruption exists in Southeast Asia, and throughout the world, does not, however, fully explain the necessity of its study by legal scholars. Corruption is deeply fascinating as an intellectual subject that brings together concepts of law, morality, economics, effective governance, and social structure. More importantly, however, corruption as a real phenomenon directly affects the lives and well-being of billions of people and thousands of organizations.

Southeast Asia is more dynamic than many other parts of the world.<sup>55</sup> Southeast Asia, however, faces substantial challenges. These challenges include weak governments that make poor decisions regarding infrastructure and other allocations of the public fisc; economic fragility; a profound disconnection between those governments and the people who constitute the countries of the region—particularly manifested by abuses of the basic rights of those peoples; and endemic poverty and poor standards of living.<sup>56</sup> Each of these challenges is directly related to, if not in fact caused by,

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52. *Id.*

53. *Id.*

54. These numbers are based on countries that receive a score of 3.0 or lower on Transparency International's *Corruption Perceptions Index*, *supra* note 28, and population estimates in the *World Factbook*. The precise number in Southeast Asia is 513,175,103 and around the world is 2,269,722,702. *The World Factbook*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/index.html> (last visited Dec. 26, 2011).

55. See Neil Renwick, *Millennium Development Goal 1: Poverty, Hunger and Decent Work in Southeast Asia*, 32 *THIRD WORLD Q.* 65, 66–67 (2011) (describing dynamic economies of Southeast Asia).

56. See George Abonyi & David M. Van Slyke, *Governing on the Edges: Globalization of Production and the Challenge to Public Administration in the Twenty-First Century*, 70 *PUB. ADMIN. REV.* 1, 2–3 (Supp. 2010) (describing particular challenges for Southeast Asian governments under conditions of globalization); Lee Jones, *ASEAN's Unchanged Melody? The Theory and Practice of "Non-Interference" in Southeast Asia*, 23 *PAC. REV.* 479 (2010) (describing dysfunctional governments in Southeast Asia); Hao Duy Phan, *Institutions for the Protection of Human Rights in Southeast Asia: A Survey Report*, 31 *CONTEMP. SOUTHEAST ASIA: J. INT'L & STRATEGIC AFF.* 468, 490 (2009) (describing a survey in which 100 percent of respondents in Southeast Asia agreed that greatest obstacle to human rights agencies supported by the populations is a lack of political will and potential interference from various government agencies, particularly the military); Renwick, *supra* note 55, at 85 (concluding that notwithstanding economic growth, Southeast Asia faces substantial challenges including poverty, lack of empowerment and poor governance).

corruption. The effects of corruption in Southeast Asia illustrate the damage inflicted by corruption everywhere that it occurs.

### 1. Weak Governments that Make Poor Decisions

Corruption is not a matter of some otherwise competent, underpaid bureaucrats “getting their share.” Corruption substantially weakens governments, and distorts the process by which governments make decisions.

#### a. Corruption Affects the Composition of Decision Makers

The sale of public office (through bribery) to unqualified persons who seek office for the purpose of extracting bribes from others has a long history.<sup>57</sup> Wherever it occurs, the payment of bribes to secure positions leads directly to

various forms of contract kickbacks, payment from staff in exchange for positions and hiring on projects, loan accounts structured to earn interest by the agency, provision of ghost services, inflated invoicing in collusion with contractors, procedures for tax avoidance, irregular payments for health and education services, bribes to police officers and judges, and speed money to obtain formal papers and permits.<sup>58</sup>

Corruption clearly eviscerates the capacity of legal regimes to operate. In general, corruption significantly diminishes the quality of the pool of public decision makers.<sup>59</sup> In endemically corrupt systems, decisions regarding the appointment of public servants are no less affected by corruption than any other type of decision. Applicants secure government appointment by paying bribes to those who approve appointments or hires.<sup>60</sup> When supervisors appoint candidates to positions on the basis of the quality of bribes paid by applicants rather than the actual qualifications of those applicants,

57. Stein Kristiansen & Muhid Ramli, *Buying an Income: The Market for Civil Service Positions in Indonesia*, 28 CONTEMP. SOUTHEAST ASIA: J. INT'L & STRATEGIC AFF. 207, 209 (2006); see David S. Jones, *Curbing Corruption in Government Procurement in Southeast Asia: Challenges and Constraints*, 17 ASIAN J. POL. SCI. 145, 148 (2009) (discussing crony politics in Southeast Asia).

58. Kristiansen & Ramli, *supra* note 57, at 218.

59. See Omotunde E.G. Johnson, *An Economic Analysis of Corrupt Government, with Special Application to Less Developed Countries*, 28 KYKLOS: INT'L REV. FOR SOC. SCI. 47, 56–57 (1975) (describing many ways in which sale of office degrades the pool of decision makers).

60. Ajit Mishra, *Persistence of Corruption: Some Theoretical Perspectives*, 34 WORLD DEV. 349, 350 (2005) (stating that corruption affects decisions about appointments and noting that “pervasiveness of corruption contributes to its persistence in a significant way”).

those appointed will possess skills at producing bribes but not necessarily any other skills.<sup>61</sup>

Those applicants who pay bribes to secure a government position need to recoup their investments. The bribe paid often exceeds the salary secured.<sup>62</sup> Receipt of bribes constitutes the most reliable means of recovering the initial investment as well as profiting from that investment.<sup>63</sup> Thus, in systems in which persons pay bribes to obtain government jobs, government officials almost by definition lack appropriate skills to make good decisions and have a strong incentive to make those decisions for their own benefit rather than in the interest of the public.<sup>64</sup>

#### b. Corruption Distorts the Decision-Making Process

The very definition of corruption describes the manner in which bribery distorts discrete decisions. Using the most common definition, public sector corruption consists of the use or misuse of public office or trust for personal, rather than public benefit.<sup>65</sup> Instead of making a decision for public benefit, a corrupt public servant makes a decision that inures to his or her own benefit.

David Jones studied the effects of corruption on public procurement in Southeast Asia. He concludes that

In most of the states of Southeast Asia, corruption within government administration has particularly affected the public procurement of goods, services and public works. This has in turn undermined the standard of public services and the quality of large public works or infrastructure projects. The upshot has been to defeat the normal

61. Thomas B. Pepinsky, *Malaysia: Turnover Without Change*, 18 J. DEMOCRACY 113, 116 (2007) (noting that people spend vast sums of money to secure government positions for the sole purpose of extracting bribes); Vito Tanzi, *Corruption, Governmental Activities, and Markets*, FIN. & DEV., Dec. 1995, at 24, 26 (observing that people will seek jobs that pay good bribes rather than jobs for which they are qualified).

62. See Kristiansen & Ramli, *supra* note 57, at 221 (reporting that in Indonesia “[t]he amount needed to buy a position is thus approximately two-and-half years’ full salary”).

63. Robert Wade observed this phenomenon while studying irrigation systems in South India. Robert Wade, *The Market for Public Office: Why the Indian State Is Not Better at Development*, 13 WORLD DEV. 467, 474–80 (1985) (describing the sale of offices in a south Indian state).

64. See Koenrad Wolfer Swart, *The Sale of Public Offices*, in POLITICAL CORRUPTION: CONCEPTS AND CONTEXT 95, 102 (Arnold J. Heidenheimer & Michael Johnston eds., 3d ed. 2001) (describing this as “undemocratic”).

65. See J.S. Nye, *Corruption and Political Development: A Cost-Benefit Analysis*, 61 AM. POL. SCI. REV. 417, 419 & n.10 (1967) (“Corruption is behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence.”); see also Patrick X. Delaney, *Transnational Corruption: Regulation Across Borders*, 47 VA. J. INT’L L. 413, 417 (2007) (describing Nye’s “classic” definition as “a useful starting point” when studying corruption).

objectives of procurement policy, *viz.* providing well-resourced public services and a high quality infrastructure, ensuring value for money, avoiding financial waste, and promoting equal and fair access for suppliers/contractors.<sup>66</sup>

Poor decision making and misallocation are hallmarks of corrupt governments throughout the world.<sup>67</sup> When a responsible decision maker makes decisions for the benefit of society, that public official will take into consideration factors such as costs associated with a decision (both direct and indirect), the appropriateness of an action, and quality of results—the same types of factors that determine hypothetical indifference curves in economic analyses of markets.<sup>68</sup> Indeed, the social benefit of markets is in part predicated on the notion that rational consumers (in this case government officials making decisions for the benefit of the public) will reward producers who most effectively use resources to produce appropriate goods or services of the desired quality at an acceptable price.<sup>69</sup>

66. David S. Jones, *Curbing Corruption in Government Procurement in Southeast Asia: Challenges and Constraints*, 17 *ASIAN J. POL. SCI.* 145, 146 (2009).

67. See Odysseas Katsaitis & Dimitris Doulos, *The Impact of EU Structural Funds on FDI*, 62 *KYKLOS: INT'L REV. FOR SOC. SCI.* 563, 571 (2009) (extensively evaluating the effect of corruption on European Union aid from its Structural Fund and concluding that corruption is so distortive to decisions regarding that aid that endemically corrupt countries are actually worse off after receiving it).

68. See Robert Cooter & Melvin Aron Eisenberg, *Damages for Breach of Contract*, 73 *CALIF. L. REV.* 1432, 1438 (1985) (explaining indifference curves); Jill E. Fisch, *Lawyers on the Auction Block: Evaluating the Selection of Class Counsel by Auction*, 102 *COLUM. L. REV.* 650, 685 (2002) (describing the manner in which clients make decisions on basis of quality and price); Jeanne L. Schroeder, *The End of the Market: A Psychoanalysis of Law and Economics*, 112 *HARV. L. REV.* 483, 547 & n.229 (1998) (describing indifference curves). This paper does not intend to reduce complex economic insights into single sentences; even the mechanism by which consumers evaluate and compare the qualities of goods and services has generated complex theories. See, e.g., Steven Berry & Ariel Pakes, *The Pure Characteristics Demand Model*, 48 *INT'L ECON. REV.* 1193, 1193–94 (2007) (using “[r]ecent advances in econometric technique, computing power, and data availability” to develop a model that “consider[s] estimation of a class of discrete choice models in which consumers care about a finite set of product characteristics”). Moreover, the traditional neoclassical conception of a rational consumer interested only in quality and price must be tempered with an understanding of the actual operation of the human mind. See Christine Jolls, Cass R. Sunstein & Richard Thaler, *A Behavioral Approach to Law and Economics*, 50 *STAN. L. REV.* 1471, 1476–81 (1998) (discussing bounded rationality, bounded willpower, and bounded self-interest as factors that also affect decision making). For purposes of comparing responsible and corrupt decision makers, however, a straightforward analysis provides sufficient insight.

69. See Daniel R. Ortiz, *Duopoly Versus Autonomy: How the Two-Party System Harms the Major Parties*, 100 *COLUM. L. REV.* 753, 763 (2000) (analyzing democracy within the framework of a market economy). Again, the actual means by and extent to which this occurs engenders extensive debate. See, e.g., James S. Liebman, *Voice, Not Choice*, 101 *YALE L.J.* 259, 292 (1991) (discussing application of market theory to the allocation of education). Once again, the straightforward premise suffices for purposes of illustrating the effects of corruption.

A corrupt decision maker, however, uses public office for personal rather than public benefit. Rather than evaluating factors such as costs, appropriateness, and quality, the corrupt decision maker evaluates the quality of the bribe.<sup>70</sup> The fact that the object of the decision may be of low quality does not matter to the decision maker.<sup>71</sup> Indeed, a pernicious effect of endemic bribery is that by rewarding those who produce high quality bribes rather than high quality products, it encourages “rational” producers to allocate resources to bribes rather than the goods or services themselves.<sup>72</sup>

Singular examples of the damage caused by this distorted decision-making process abound.<sup>73</sup> Unnecessary and poorly conceived construction projects litter emerging economies, the products of corrupt construction contract awards.<sup>74</sup> People sicken or die after consuming tainted products, released for consumption when inspectors approved the product on the basis of bribes rather than actual efficacy.<sup>75</sup> Houses and shopping centers collapse, crushing those inside, when building inspectors certify a building on the basis of the bribe paid rather than actual compliance with building codes.<sup>76</sup> Each of these poor—and harmful—decisions resulted from a process that valued personal gain rather than public interest.

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70. See Mark B. Bader & Bill Shaw, *Amendment of the Foreign Corrupt Practices Act*, 15 N.Y.U. J. INT'L L. & POL. 627, 627 (1983) (“[B]ribery . . . necessarily hinders the operation of this basic tenet by distorting the relationships between price and quality.”).

71. *Id.*

72. See A. Cooper Drury, Jonathan Kriekhaus & Michael Lusztig, *Corruption, Democracy, and Economic Growth*, 27 INT'L POL. SCI. REV. 121, 123 (“[P]olicymakers may promote initiatives . . . not to satisfy social need, but because such projects increase opportunities for bribes.”); René Véron et al., *Decentralized Corruption of Corrupt Decentralization? Community Monitoring of Poverty-Alleviation Schemes in Eastern India*, 34 WORLD DEV. 1922, 1925 (2006) (warning of “less effective and less well targeted” decisions).

73. Alvaro Escribano, J. Luis Guasch, Manuel de Orte & Jorge Pena, *Investment Climate Assessment in Indonesia, Malaysia, the Philippines and Thailand: Results from Pooling Firm-Level Data*, 54 SING. ECON. REV. 335, 357 (2009) (discussing relationship between corruption and numerous ills throughout Southeast Asia).

74. Charles Kenny, *Transport Construction, Corruption and Developing Countries*, 29 TRANSPORT REVIEWS 21 (2009) (discussing infrastructure problems created by corruption).

75. See David Bandurski, *Jousting with China's Monsters*, FAR E. ECON. REV., Mar. 2009, at 46, 46–50 (discussing deaths due to foods approved by corrupt inspectors); E. Y. Y. Chan, S. M. Griffiths & C. W. Chan, *Public-Health Risks of Melamine in Milk Products*, 372 LANCET 1444, 1444–45 (2008) (discussing health concerns raised by the payment of bribes to regulators).

76. David Hess & Thomas W. Dunfee, *Fighting Corruption: A Principled Approach; The C2 Principles (Combating Corruption)*, 33 CORNELL INT'L L.J. 593, 612 (2000) (“In China, the state bank financed projects designed to improve the infrastructure and boost the economy, but the projects were so riddled with corruption that bridges, buildings, dikes, roads, and other works collapsed almost as soon as they were completed, killing and injuring hundreds of people.”).

## 2. Corruption Causes Economic Fragility

Southeast Asia is an economically dynamic region.<sup>77</sup> It may seem counterintuitive, therefore, to suggest that its corruption contributes to economic fragility. The case of Indonesia, however, provides instruction as well as an exhortation to every other economically corrupt system.

Twenty years ago, observers hailed Indonesia as an economic powerhouse.<sup>78</sup> Some analysts even used Indonesia's supposed economic strength as an argument that corruption might not impose economic harm.<sup>79</sup> A downturn in the value of Southeast Asian currencies, however, proved too much of a shock for an economy riddled by corruption.<sup>80</sup> Indonesia's economy collapsed, its dictator—Suharto—fled, and the country has yet to approach financial or economic stability.<sup>81</sup>

Indonesia is not an anomaly. Since the 1990s, a plethora of empirical studies have found that corruption negatively affects economies in general.<sup>82</sup> Simon Tay and Maria Seda studied the means by which corruption weakens economies and renders them susceptible to external shock. They emphasize five means by which

77. See Yui Suzuki, *Binding Constraint on Economic Growth Under Export-Oriented Industrialization and Globalization*, 44 *APPLIED ECON.* 2569, 2569–70 (2012) (noting and explaining Southeast Asia's economic dynamism).

78. See STEVEN SCHLOSSTEIN, *ASIA'S NEW LITTLE DRAGONS: THE DYNAMIC EMERGENCE OF INDONESIA, THAILAND, AND MALAYSIA* 54 (1991) (noting that the average real rate of growth in manufacturing was 33.8 percent a year between 1982 and 1986).

79. See, e.g., Ross H. McLeod, *Soeharto's Indonesia: A Better Class of Corruption*, 7 *AGENDA: J. POL'Y ANALYSIS & REFORM* 99, 99 (2000) ("Unlike many [other countries] that are regarded as highly corrupt, however, [Indonesia's corruption] was not incompatible with rapid economic progress over three decades."); see also Robert D. Tronnes, Note, *Ensuring Uniformity in the Implementation of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, 33 *GEO. WASH. INT'L L. REV.* 97, 103–04 (2000) (describing the arguments made using Indonesia as an example of growth, and noting that all analysts now agree that corruption rendered Indonesia's growth unstable).

80. See WORLD BANK E. ASIA POVERTY REDUCTION AND ECON. MGMT. UNIT, *COMBATING CORRUPTION IN INDONESIA: ENHANCING ACCOUNTABILITY FOR DEVELOPMENT* 8 (2003), available at <http://siteresources.worldbank.org/INTINDONESIA/Resources/Publication/03-Publication/Combating+Corruption+in+Indonesia-Oct15.pdf> (discussing the fragility of the Indonesian economy despite outward appearances and noting that "[d]ecades of collusion between business and government had resulted in a distorted economy").

81. *Id.* (discussing the collapse of Indonesia's fragile economy); Natasha Hamilton-Hart, *Anti-Corruption Strategies in Indonesia*, 37 *BULL. INDONESIAN ECON. STUD.* 65, 65–66 (2001) (discussing the vulnerability of Indonesia's corruption-ridden economy and its inability to withstand shocks despite outward appearances of growth).

82. See Drury, Kriekhaus & Lusztig, *supra* note 72, at 131 (reporting and summarizing research). Pak Hung Mo finds that a 1 percent increase in levels of corruption decreases growth in gross domestic product by almost 0.75 percent. Pak Hung Mo, *Corruption and Economic Growth*, 29 *J. COMP. ECON.* 66, 66 (2001).

corruption inflicts damage: (1) reduction in productive investment and growth; (2) macro-fiscal costs, in particular the “loss of massive amounts of public revenues from taxes, customs duties, and privatization programs”; (3) redistributive/social costs; (4) economic inefficiency, particularly through the protection of affined firms and the discouragement of entrepreneurs and competitor firms; and (5) distortion or loss of foreign aid and debt relief programs.<sup>83</sup>

A largely unexplored form of economic damage occurs when people in a corrupt system turn to parallel institutions to accomplish tasks normally associated with state institutions. Parallel institutions often come into existence as a reaction to failures in state-sanctioned institutions, as people attempt to cobble together means of getting done what the state cannot or will not do for them.<sup>84</sup> Patently failed states, like the rump states of the former Yugoslavia, engender numerous parallel institutions, such as shadow economies, informal schools, and ethnicity-based “underground” distribution networks.<sup>85</sup> Bribery also stimulates the creation of parallel institutions because corrupt institutions are dysfunctional; corrupt state-sanctioned institutions often do not work, or work in ways

83. Tay & Seda, *supra* note 5, at 7–8.

84. George Priest describes, in great detail, the creation of various types of black markets as responses to failures in formal markets. George L. Priest, *The Ambiguous Moral Foundations of the Underground Economy*, 103 YALE L.J. 2259 (1994); see also Jon D. Hanson & Kyle D. Logue, *The Costs of Cigarettes: The Economic Case for Ex Post Incentive-Based Regulation*, 107 YALE L.J. 1163, 1298–300 (1998) (describing the creation of black markets in cigarettes as a response to overregulation of the formal market). Similarly, Regina Austin describes the creation of a market for loan sharks when needy persons do not have access to formal sources of credit. Regina Austin, *Of Predatory Lending and the Democratization of Credit: Preserving the Social Safety Net of Informality in Small-Loan Transactions*, 53 AM. U. L. REV. 1217, 1238–39 (2004); see also *Perez v. United States*, 402 U.S. 146, 157 (1971) (observing that loan sharking is a national problem in the United States).

85. See Elizabeth Abraham, *The Sins of the Savior: Holding the United Nations Accountable to International Human Rights Standards for Executive Order Detentions in Its Missions in Kosovo*, 52 AM. U. L. REV. 1291, 1323 (2003) (describing the creation of parallel institutions by ethnic Albanians in Kosovo and noting the “knowledge gap” between those who worked in the formal sector and those who worked in the informal sector); Jeffrey S. Morton, *The Legality of NATO’s Intervention in Yugoslavia in 1999: Implications for the Progressive Development of International Law*, 9 ILSA J. INT’L & COMP. L. 75, 77 (2002) (describing parallel institutions created by repressed Albanians in Kosovo); Henry H. Perritt, *Final Status for Kosovo*, 80 CHI.–KENT. L. REV. 3, 15 (2005) (describing parallel institutions in Kosovo); Adam Raviv, *Jigsaw Sovereignty: The Economic Consequences of Decentralization in Post-Dayton Bosnia*, 37 GEO. WASH. INT’L L. REV. 109, 113–16 (2005) (describing the creation of “pseudo-governmental structures,” “para-states,” and “ghost municipalities” in Croatia and Herzegovina and noting that “[t]he continuing existence of parallel institutions, and the accompanying corruption that is endemic to them, can serve as a barrier to foreign investment”); Hansjörg Strohmeyer, *Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor*, 95 AM. J. INT’L L. 46, 56 n.44 (2001) (describing the creation of parallel institutions among ethnic Albanians in Kosovo, including the creation of an underground school of law).

counter to their stated purpose.<sup>86</sup> Private actors do not trust corrupt state-sanctioned institutions and will not use them if it is possible not to.<sup>87</sup> These actors can avoid the necessity of using corrupt state-sanctioned institutions by creating parallel institutions in the private realm or in social space bought through the payment of bribes.<sup>88</sup>

In some ways, parallel institutions provide a service by allowing people to do that which the state will not let them do.<sup>89</sup> The creation and maintenance of these institutions, however, imposes costs on a state or society.<sup>90</sup> The existence of a parallel institution essentially means that a country spends more than it would spend if the state-sanctioned institution functioned properly; the money diverted to the parallel institutions is money that is not spent on infrastructure or development.<sup>91</sup>

86. See Bernard Black & Reinier Kraakman, *A Self-Enforcing Model of Corporate Law*, 109 HARV. L. REV. 1911, 1915 (1996) (describing corruption as dysfunctional); Ángel Ricardo Oquendo, *Corruption and Legitimation Crises in Latin America*, 14 CONN. J. INT'L L. 475, 488 (1999) ("Moreover, it is precisely the culture of corruption that, to a significant extent, renders them dysfunctional and illegitimate.").

87. See James M. Cooper, *Access to Justice 1.1*, 30 CAL. W. INT'L L.J. 429, 430–31 (2000) (discussing the withdrawal of Latin Americans from use of the judicial system because it is corrupt); Jerold S. Kayden, *Market-Based and Regulatory Approaches: A Comparative Discussion of Environmental and Land Use Techniques in the United States*, 19 B.C. ENVTL. AFF. L. REV. 565, 573 (1992) ("Why should some individuals observe the law when others can pay to elude it? If the rule of law isn't the rule of law, can anarchy be far behind?"); Susan Rose-Ackerman, *The Political Economy of Corruption*, in CORRUPTION AND THE GLOBAL ECONOMY 31, 44 (Kimberly Ann Elliott ed., 1997) (discussing people's mistrust toward corrupt institutions).

88. See Manash Ranjan Gupta & Sarbajit Chaudhuri, *Formal Credit, Corruption and the Informal Credit Market in Agriculture: A Theoretical Analysis*, 64 ECONOMICA 331, 340 (1997) (noting that when farmers have to bribe officials to get loans they go to a moneylender); Joachim J. Savelsberg, *Contradictions, Law, and State Socialism*, 25 LAW & SOC. INQUIRY 1021, 1033–34 (2000) (describing relationship between corruption, market failure and the creation of black markets in the Soviet Union); see also Ariel Porat, *Enforcing Contracts in Dysfunctional Legal Systems: The Close Relationship Between Public and Private Orders: A Reply to McMillan and Woodruff*, 98 MICH. L. REV. 2459, 2478 (2000) ("Hence, if legal systems are dysfunctional due to the corruption of the judges, we may expect all forms of the private order to emerge: relational contracts, arbitration, business networks, trade associations, and social networks.").

89. See Priest, *supra* note 84, at 2288 (suggesting that parallel institutions' capacity to accomplish necessary tasks which government institutions do not creates a moral justification for parallel institutions).

90. See WORLD BANK, *THE STATE IN A CHANGING WORLD* 13–14 (1997) (finding that emerging economies spend a disproportionate amount of their budget on institutions); Marina Ottaway & Theresa Chung, *Toward a New Paradigm*, 10 J. DEMOCRACY 99, 99 (1999) (stating that institutions are expensive, and questioning whether some developing countries can afford the institutions that support democracy); Montrose M. Wolf, *The Development of the Teaching-Family Model*, 30 J. APPLIED BEHAV. ANALYSIS 381, 381 (1997) (comparing the costs of different models of institutions).

91. See Philip M. Nichols, *Corruption as an Assurance Problem*, 19 AM. U. INT'L L. REV. 1307, 1313–16 (2004) (discussing the costs of parallel institutions); see also Maria Dakolias, *A Strategy for Judicial Reform: The Experience in Latin America*, 36

### 3. Corruption Degrades the Connection Between Governments and People

Persons who reside in Southeast Asia do not trust governments or legal regimes.<sup>92</sup> William Case, who has studied political mistrust and disengagement in Southeast Asia, concludes that “[p]olitical parties, state bureaucracies, legislatures, and security forces are widely dismissed as corrupt and inefficient.”<sup>93</sup> Evidence of political mistrust and disengagement emerges almost daily in the form of protests, demonstrations, and political turmoil throughout the region.<sup>94</sup>

Corruption obviously undermines the connection between democratic governments and their constituencies. As Bruce Ackerman points out, “A failure to control [corruption] undermines the very legitimacy of democratic government. If payoffs are a routine part of life, ordinary people will despair of the very idea that they, together with their fellow citizens, can control their destinies through the democratic rule of law.”<sup>95</sup> Regardless of whether a country purports to democracy, corruption severely undermines any connection a government might have to its people, conversely generating mistrust of government.<sup>96</sup> When persons within a polity know that government officials make decisions based on bribes, those persons understand that those decisions are neither impartial nor made for the benefit of the country or its people.<sup>97</sup>

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VA. J. INT’L L. 167, 187 (1995) (noting that the expenditure of resources to work around corrupt courts severely limits the financial ability to develop other institutions in Latin America).

92. See, e.g., QUAH, *supra* note 23, at 7 (discussing the attitudes of Cambodians toward government); *id.* at 8 (noting that the government of Viet Nam “identified corruption as a major threat to its survival”).

93. Case, *supra* note 22, at 82.

94. See Linda Y.C. Lim & Aaron Stern, *State Power and Private Profit: The Political Economy of Corruption in Southeast Asia*, 16 ASIAN-PAC. ECON. LITERATURE 18, 20 (2002) (describing anticorruption movements throughout Southeast Asia).

95. Bruce Ackerman, *The New Separation of Powers*, 113 HARV. L. REV. 633, 694 (2000).

96. See Christopher J. Anderson & Yuliya V. Tverdova, *Corruption, Political Allegiances, and Attitudes Toward Government in Contemporary Democracies*, 47 AM. J. POL. SCI. 91, 99 (2003) (finding “unambiguous evidence in support of our main hypothesis: individuals in countries with higher levels of corruption evaluate the performance of the political system more negatively”); *id.* at 102 (finding “extremely robust” evidence that “point[s] to a significant corroding effect of corruption on trust in civil servants”).

97. Rose-Ackerman, *supra* note 87, at 45 (“[C]orruption undermines the legitimacy of governments, especially democracies. Citizens may come to believe that the government is simply for sale to the highest bidder. Corruption undermines claims that the government is substituting democratic values for decisions based on ability to pay. It can lead to coups by undemocratic leaders.”); see George D. Brown, *The Gratuities Offense and the RICO Approach to Independent Counsel Jurisdiction*, 86 GEO. L.J. 2045, 2069 (1998) (stating that bribery “creates the impression that

Empirical observation bears out the hypothesis that corruption undermines trust in government.<sup>98</sup> Many social scientists consider corruption to be the single greatest threat to the development of democracy in emerging economies.<sup>99</sup> In some polities corruption vitiates support for market and economic reform,<sup>100</sup> and—when it accompanies democratic reform—perversely legitimizes the previous authoritarian regimes and even creates a nostalgic longing for those regimes.<sup>101</sup>

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government is for sale”); Roderick M. Hills, Jr., *Corruption and Federalism: (When) Do Federal Criminal Prosecutions Improve Non-Federal Democracy?*, 6 THEORETICAL INQUIRIES L. 113, 153 (2005) (“Corruption erodes democracy through secret influence of private interests.”); Bill Shaw, *The Foreign Corrupt Practices Act and Progeny: Morally Unassailable*, 33 CORNELL INT’L L.J. 689, 692 (2000) (“Bribery also undermines democracies by effectively relating to the public that the government is for sale. Corruption further undermines governments by suggesting that bribes will undo attempts to accomplish societal goals.”).

98. Nancy Zucker Boswell, *Combating Corruption: Focus on Latin America*, 3 SW. J.L. & TRADE AM. 179, 184 (1996) (“Perhaps the greatest casualty of . . . corruption has been the erosion of public trust in public institutions and leaders, the foundation of democracy.”); A. W. Cragg, *Business, Globalization, and the Logic and Ethics of Corruption*, 53 INT’L J. 643, 654 (1998) (Can.) (noting that respect for law and legal institutions is a “casualty” of bribery); Herbert H. Werlin, *The Consequences of Corruption: The Ghanaian Experience*, 88 POL. SCI. Q. 71, 79 (1973) (“The effect of corruption is to generate an atmosphere of distrust which pervades all levels of administration.”).

99. See, e.g., LARRY DIAMOND, *DEVELOPING DEMOCRACY: TOWARD CONSOLIDATION* 92 (1999) (stating that corruption poses a serious threat to the consolidation of democracy); Alexandru Grigorescu, *The Corruption Eruption in East-Central Europe: The Increased Salience of Corruption and the Role of Intergovernmental Organizations*, 20 E. EUR. POL. & SOCIETIES 516, 519 (2006) (“[Corruption] is now seen as one of the greatest threats to the survival of new democracies around the world.”); Mitchell A. Seligson, *The Measurement and Impact of Corruption Victimization: Survey Evidence from Latin America*, 34 WORLD DEV. 381, 381 (2005) (“Widespread corruption is increasingly seen as one of the most significant threats to deepening democratization in Latin America (and indeed much of the democratizing Third World).”).

100. See Cheryl W. Gray & William W. Jarosz, *Law and the Regulation of Foreign Direct Investment: The Experience from Central and Eastern Europe*, 32 COLUM. J. TRANSNAT’L L. 1, 28 (1995) (“Charges of bribery and corruption can easily erode popular support for economic reform in general, and foreign investment in particular.”); Karl M. Meessen, *Fighting Corruption Across the Border*, 18 FORDHAM INT’L L.J. 1647, 1647 (1995) (“Corruption both in government and private business has no little role in discrediting freshly installed democratic procedures and freshly installed free market systems.”).

101. See Grigorescu, *supra* note 99, at 519 (discussing the corrosion of support for democracy and the nostalgia for authoritarian regimes engendered by corruption); Seligson, *supra* note 99, at 382 (discussing the erosion of support for democratic reforms and the use of public disgust with democracy by authoritarian leaders). Several studies empirically measure the decrease in support for democracy that accompanies increases in corruption in emerging economies. E.g., Anderson & Tverdova, *supra* note 96, at 91 (demonstrating that citizens in countries with higher levels of corruption express more negative evaluations of the performance of the political system and exhibit lower levels of trust in civil servants); William Mishler & Richard Rose, *What Are the Origins of Political Trust? Testing Institutional and*

At a micro level, corruption encourages behaviors in bureaucrats that sever the connection with the public and that also induce mistrust.<sup>102</sup> Corruption creates incentives on the parts of bureaucrats to delay, hinder, and obfuscate.<sup>103</sup> By making information or services more difficult to obtain the bureaucrats increase the value of information and services, which enables them to extract larger bribes for providing such information or services.<sup>104</sup>

#### 4. Corruption Degrades the Quality of Life

Corruption degrades the quality of life in the polities in which it occurs.<sup>105</sup> Just as corruption distorts economies, so too does it distort the social and regulatory environment. Numerous scholars have measured various means through which corruption degrades the quality of life. Sanjeev Gupta, Hamid Davoodi, and Erwin Tiongson, for example, find that corruption increases child mortality rates, lowers child birth weight, and increases the dropout rate of children from primary school.<sup>106</sup> Similarly, Maureen Lewis finds strong negative relationships between corruption and the performance and viability of healthcare systems.<sup>107</sup> Lorenzo Pelligrini and Reyer

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*Cultural Theories in Post-Communist Societies*, 34 COMP. POL. STUD. 30, 33 (2001) (finding that the expected utility of institutions performing satisfactorily best explains the origins of political trust in new democracies); Donatella Della Porta & Yves Mény, *Conclusion*, in DEMOCRACY AND CORRUPTION IN EUROPE 179 (Donatella Della Porta & Yves Mény eds., 1996) (listing results of a comparative analysis that details mechanisms through which corruption weakens democracy).

102. See Vito Tanzi, *supra* note 61, at 24, 26 (“[T]he larger the role of the state, the greater the probability that its instruments will be used by public officials and civil servants to favor particular groups in addition to themselves. When this happens, the cost of government rises while the ability of government to correct the shortcomings of the market falls.”).

103. See Pranab Bardhan, *Corruption and Development: A Review of Issues*, 35 J. ECON. LITERATURE 1320, 1323 (1997) (finding that corrupt officials may actually cause administrative delay in order to attract more bribes); Rose-Ackerman, *supra* note 87, at 43 (noting that officials may raise a firm’s cost by introducing delays as a way to induce payoffs).

104. Wade, *supra* note 63, at 474.

105. See Simon Chesterman, *Imposed Constitutions, Imposed Constitutionalism, and Ownership*, 37 CONN. L. REV. 947, 949 (2005) (stating that corruption in Bosnia jeopardized quality of life); Steven R. Salbu, *Transnational Bribery: The Big Questions*, 21 NW. J. INT’L L. & BUS. 435, 470 (2001) (arguing that all sectors of modern global society—businesses, governments, local communities, nongovernmental organizations, small groups, and individuals—will be affected by the proliferation of corruption).

106. Sanjeev Gupta, Hamid Davoodi & Erwin Tiongson, *Corruption and the Provision of Health Care and Education Services* 24 (Int’l Monetary Fund, Working Paper No. 116, 2000).

107. Maureen Lewis, *Governance and Corruption in Public Health Care Systems* 44–45 (Ctr. for Global Dev., Working Paper No. 78, 2006).

Gerlagh find that corruption negatively affects environmental policy and the quality of the environment.<sup>108</sup>

A study of the issuance of driving licenses in Delhi, India demonstrates the variety of pernicious influences corruption has on governance, and how they affect the quality of life.<sup>109</sup> In an endemically corrupt setting, the investigators found that 71 percent of those issued driving licenses did not even take a driving examination, and that 62 percent of those given licenses could not drive.<sup>110</sup> At the same time, the investigators found that bureaucrats created artificial barriers and delays, probably for the purpose of extracting payments from applicants.<sup>111</sup> While poor decisions in approving driving licenses may seem trivial, traffic accidents are a significant cause of death in India.<sup>112</sup>

## II. CORRUPTION CONTROL IN MALAYSIA AND SINGAPORE

Malaysia and Singapore present a valuable opportunity for a comparison of corruption control. The two polities emerge from a similar, although certainly not identical history, and indeed were once part of the same country. Each has adopted laws to fight corruption, and each has created an agency to investigate violations of those laws. Each has experienced some success in constraining corruption; Singapore, however, has experienced markedly more success. Differences between the two countries, therefore, might provide insights into the successful administration of legal regimes intended to control corruption.

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108. Lorenzo Pellegrini & Reyer Gerlagh, *Corruption, Democracy, and Environmental Policy: An Empirical Contribution to the Debate*, 15 J. ENV'T & DEV. 332, 333 (2006); see Nejat Anbarci, Monica Escaleras & Charles A. Register, *The Ill Effects of Public Sector Corruption in the Water and Sanitation Sector*, 85 LAND ECON. 363, 375 (2009) (finding that corruption significantly decreases access to clean water).

109. Marianne Bertrand et al., *Obtaining a Driving License in India: An Experimental Approach to Studying Corruption*, 122 Q.J. ECON. 1639 (2007).

110. *Id.* at 1652.

111. *Id.* at 1642.

112. Clare Kapp, *WHO Acts on Road Safety to Reverse Accident Trends*, 362 LANCET 1125, 1125 (2003).

### A. *The Historical Context of Malaysia and Singapore*<sup>113</sup>

The territory of the country of Malaysia consists of the southern portion of the Malay Peninsula and the northern portion of the island of Borneo.<sup>114</sup> Singapore consists of an island at the tip of the Malay Peninsula.<sup>115</sup> The physical territory now known as the country of Malaysia did not constitute a single, unitary polity until 1948, at which time the British combined several different polities they controlled.<sup>116</sup> Prior to European influence, the area fell at times under the loose influence of Thai and Indonesian Kingdoms and supported a variety of forms of political organization.<sup>117</sup>

Ethnic Malay peoples have lived on the peninsula for thousands of years and now constitute over half of the population of Malaysia.<sup>118</sup> Indigenous peoples have lived on the island of Borneo for just as long and now make up around 11 percent of the population of the country.<sup>119</sup> Southeast Asia, however, sits at the crossroads of the sea route between India and China and for over two thousand years each of those regions created trade *entrepôts* and areas of political influence on the peninsula.<sup>120</sup> Today, approximately 23 percent of Malaysia's population is of Chinese ethnicity and approximately 7

113. Tunku Abdul Aziz, the director of Transparency International Malaysia, states that "[i]n my experience, it is impossible for us to even begin to understand the impact of corruption on a country without our being acquainted, however superficially, with that country's social, economic and political background. I make no apology, therefore, for delving a little into Malaysia's recent history . . ." Tunku Abdul Aziz, *International Case Study: Stamping Out Corruption in Malaysia*, 56 RESOURCE MATERIAL SERIES (United Nations Asia & Far E. Inst. for the Prevention of Crime and the Treatment of Offenders, Tokyo, Japan), Dec. 2000, at 393, 393, available at <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019124.pdf>.

114. *The World Factbook: Malaysia*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html> (last visited Dec. 26, 2011).

115. *Id.*

116. NEIL JOSEPH RYAN, *A HISTORY OF MALAYSIA AND SINGAPORE* 254 (1976). Arguably, Japan also created a single unitary polity during its period of occupation during the Second World War, although it is not clear that the administrative apparatus created by the Japanese could be described as a polity. See CHEAH BOON KHENG, *RED STAR OVER MALAYA: RESISTANCE AND SOCIAL CONFLICT DURING AND AFTER THE JAPANESE OCCUPATION OF MALAYA, 1941-1946*, at 266 (3d ed. 2003) (describing Japanese consolidation of administration during occupation).

117. See RYAN, *supra* note 116, at 10-14 (describing early Thai and Javan control over various polities located in the Malay Peninsula).

118. *Id.*

119. See BARBARA WATSON ANDAYA & LEONARD Y. ANDAYA, *A HISTORY OF MALAYSIA* 9-11 (2d ed. 2001) (describing migrations and inflows); RYAN, *supra* note 116, at 4-6 (describing Proto-Malays and early immigrants into the peninsula); see also L.W. JONES, *POPULATIONS OF BORNEO: A STUDY OF THE PEOPLES OF SARAWAK, SABAH AND BRUNEI* 12-16 (1966) (describing indigenous populations of Sabah and Sarawak).

120. See ANDAYA & ANDAYA, *supra* note 119, at 14-24 (describing Indian and Chinese influences); RYAN, *supra* note 116, at 1 (noting competing influences of India and China).

percent of Indian, while around 77 percent of Singapore's population is of Chinese ethnicity and 8 percent is of Indian ethnicity.<sup>121</sup>

For most of the history of the region, European traders had a negligible role in the complex and sophisticated ocean trade network.<sup>122</sup> In 1511, however, Portuguese traders reached and conquered the port city of Malacca,<sup>123</sup> setting off a long struggle among foreign powers and local Sultanates for control over the sea lanes near the peninsula.<sup>124</sup> Eventually, through a combination of military victories in Europe and political alliances throughout the peninsula, Britain won control over the region.<sup>125</sup> Britain administered the region through control of or alliances with nine Sultanates and other local governments.<sup>126</sup>

Historical texts mention the island that now constitutes the physical territory of the nation of Singapore, but that island did not play an important role in the politics of the region.<sup>127</sup> Few people lived on or cared about the island until Stamford Raffles took an interest in 1819.<sup>128</sup> Although nominally under the control of the Sultan of Johor, real control of the area passed from the Portuguese to the Dutch and eventually—due to Raffle's persistence—to the British.<sup>129</sup> Control of Singapore enabled Britain to counteract Dutch hegemony in the region, and Singapore quickly became one of the

121. *The World Factbook: Malaysia*, *supra* note 114.

122. Harry Gelber describes this network: "Long before the 1500s, then, there was a sophisticated and what now would be called entirely multi-cultural network of merchants, sailors, officials and cut-throats in ports and settlements from China to mainland Southeast Asia, to Java, India, and to the coasts of Arabia and East Africa." HARRY G. GELBER, *NATIONS OUT OF EMPIRES: EUROPEAN NATIONALISM AND THE TRANSFORMATION OF ASIA* 10 (2001).

123. *See id.* at 24–27 (describing the conquest and its cultural consequences); RYAN, *supra* note 116, at 46–49 (describing the fall of Malacca). "So decisive was the Portuguese victory that the fall of Meleka in 1511 has usually been seen as the end of a chapter in Malay history." ANDAYA & ANDAYA, *supra* note 119, at 37.

124. *See GELBER, supra* note 122, at 27–49 (describing the contests among European powers).

125. *See id.* at 53–88 (describing British consolidation of influence in the Malay Peninsula); RYAN, *supra* note 116, at 107 (describing Treaty of London, 1824, which delineated the areas of Southeast Asia over which Britain and the Netherlands could attempt to exert influence). Harry Gelber emphasizes that "[u]p to the end of the Napoleonic wars (and again later) the expansion of British and France, in particular, was driven by Anglo-French contention in Europe more than by developments in Asia." GELBER, *supra* note 122, at 88.

126. *See ANDAYA & ANDAYA, supra* note 119, at 126 (describing period and stating that Britain sought influence rather than territory); GELBER, *supra* note 122, at 130–31 (describing period and suggesting that Britain sought to decrease costly strife among Malay polities).

127. *See* Arthur Lim Joo-Jock, *Geographical Setting*, in *A HISTORY OF SINGAPORE* 3, 3–10 (Ernest C. T. Chew & Edwin Lee eds., 1991). A settlement called Temasek existed on the island. *Id.* at 4.

128. *Id.* at 10; *see* RYAN, *supra* note 116, at 106 (stating that approximately 150 people lived on the island).

129. *See* RYAN, *supra* note 116 at 103–08 (describing succession).

most important ports in Southeast Asia.<sup>130</sup> For the British it acted as an *entrepôt* between India and China, for Arab and other traders it offered respite from the high tariffs charged by the Dutch in ports under their control.<sup>131</sup> The port grew rapidly, with ethnic Chinese comprising the largest part of the new population.<sup>132</sup>

Britain governed the settlement somewhat loosely, and Singapore gained a reputation for lawlessness, drugs, and prostitution.<sup>133</sup> Nonetheless the importance of Singapore to Britain continued to grow, and by the advent of the Second World War Singapore housed the command structure for much of the British military defenses of Southeast Asia.<sup>134</sup>

During the Second World War, Japan occupied almost all of Southeast Asia; the Japanese military crushed European resistance, including that based in Singapore.<sup>135</sup> The thorough victory over European power deflated the myth of European superiority,<sup>136</sup> while the heavy-handed occupation itself strengthened the local peoples' sense of solidarity and community and eventually their desire for independence.<sup>137</sup> After the war, Britain consolidated all of the

130. *Id.* at 105.

131. *See id.* at 126 (stating that its free trade policy was the most important factor in Singapore's growth).

132. *Id.* at 126–27 (“Singapore . . . had grown in fifty years from a small fishing village to the most important trading centre in Southeast Asia.”).

133. *See id.* at 127–28 (discussing loose administration, scarcity of police, and abundance of organized crime).

134. *See* BRIAN P. FARRELL, JOHN N. MIKSIC, MALCOLM H. MURFETT & CHIANG MING SHUN, *BETWEEN TWO OCEANS: A MILITARY HISTORY OF SINGAPORE FROM FIRST SETTLEMENT TO FINAL BRITISH WITHDRAWAL 145–70* (2004) (discussing the “Singapore Strategy” and Singapore's role in British defense in the inter-war years).

135. For thorough discussions of the Japanese occupation of Southeast Asia, see generally BOON KHENG, *supra* note 116 (noting the racial conflicts and social unrest during and after Japanese occupation); PAUL H. KRATOSKA, *THE JAPANESE OCCUPATION OF MALAYA: A SOCIAL AND ECONOMIC HISTORY* (1997) (discussing Japanese occupation from a political and economic perspective). Paul Kratoska notes that the Japanese occupation engenders many misconceptions and stereotypes. KRATOSKA, *supra*, at 1–2.

136. *See* ANDAYA & ANDAYA, *supra* note 119, at 257–58 (describing defeat of the British and the “irreparable harm to British prestige”). Gelber states,

The trend towards imperial dissolution was therefore set well before 1939. But the Second World War accelerated it decisively. Pearl Harbor, the fall of Singapore, the Japanese occupation of Hong Kong, Malaya, Indonesia and Burma, all demonstrated that the West was not invincible. European prestige and power in Southeast Asia were destroyed.

GELBER, *supra* note 122, at 162.

137. *See* BOON KHENG, *supra* note 116, at 20–25 (describing atrocities of occupation); KRATOSKA, *supra* note 135, at 348–49 (describing sense of nationalism and community that arose during occupation); RYAN, *supra* note 116, at 282 (describing suffering of Singapore during occupation).

peninsular polities under its control except Singapore<sup>138</sup> into a single Crown Colony, the Malayan Union, but popular resistance led to the replacement of the Union with the Federation of Malaya, which restored some authority to local Sultanates.<sup>139</sup>

Independence movements continued to fight for autonomy, and in 1957 Britain granted independence to the Federation of Malaya.<sup>140</sup> The British retained Singapore as a Crown Colony, but the colony took on increasing amounts of self-rule and continued to argue for independence.<sup>141</sup> In 1963, the Crown Colony of Singapore, along with the Crown Colonies of Sabah and Sarawak on the island of Borneo, joined the Federation of Malaya, which then changed its official name to simply "Malaysia."<sup>142</sup> In 1965 Singapore withdrew from Malaysia and became a separate independent nation.<sup>143</sup> What had once been a collection of Sultanates, communities, and a barely inhabited island now stood as two independent nations equal to all in the Westphalian community of nations.

Singapore styled itself as a democracy, although one political party has dominated all Singaporean elections.<sup>144</sup> Lee Kuan Yew ruled the country as Prime Minister from independence until 1990.<sup>145</sup> Two other members of the People's Action Party have served as Prime Minister since then.<sup>146</sup> Lee Kuan Yew and the People's Action Party undertook numerous projects aimed at improving Singapore's enfeebled economy.<sup>147</sup> Singapore has enjoyed significant economic

138. The British considered Singapore too valuable both as a naval base and as a trade *entrepôt*. ANDAYA & ANDAYA, *supra* note 119, at 265.

139. Britain conceived of the Malay Union during the war, which made consultation with local persons inside the occupied peninsula impossible. RYAN, *supra* note 116, at 254. The Federation of Malaya, designed in response to local demands, not only gave some degree of power to Sultans, it also restored a degree of sovereignty to states and accorded special privilege to indigenous Malays. See ANDAYA & ANDAYA, *supra* note 119, at 265–68 (describing the Union and Federation); RYAN, *supra* note 116, at 254–60 (describing Union and Federation).

140. RYAN, *supra* note 116, at 281.

141. See *id.* at 282–90 (describing period and movement for independence).

142. See ANDAYA & ANDAYA, *supra* note 119, at 285–86. The concern over the effect of Singapore's Chinese population was mitigated by the addition of the populations of Sabah and Sarawak. *Id.* at 283.

143. RYAN, *supra* note 116, at 301.

144. Chua Beng Huat, *Political Culturalism, Representation and the People's Action Party of Singapore*, 14 DEMOCRATIZATION 911, 913 (2007).

145. Hong Lysa, *The Lee Kuan Yew Story as Singapore's History*, 33 J. SOUTHEAST ASIAN STUD. 545, 545 (2002).

146. Kenneth Paul Tan, *Singapore's National Day Rally Speech: A Site of Ideological Negotiation*, 37 J. CONTEMP. ASIA 292, 297 (2007).

147. See Hussin Mutalib, *Illiberal Democracy and the Future of Opposition in Singapore*, 21 THIRD WORLD Q. 313, 313–15 (2000) (discussing growth policies of Lee's government).

growth, but is not considered fully democratic and does not offer its residents a full panoply of freedoms.<sup>148</sup>

Malaysia has not been ruled by a single party; instead, a coalition, the Barisan Nasional, has controlled the Parliament since independence.<sup>149</sup> Mahathir bin Mohamad held the office of Prime Minister from 1982 to 2004, exerting as much influence on Malaysia as Lee in Singapore.<sup>150</sup> Mahathir introduced numerous projects to modernize Malaysia's economy, and is widely credited with the significant economic growth the country has enjoyed.<sup>151</sup> More controversially, Mahathir introduced the New Economic Policy, which among other things, attempts to diminish the gap between affluent ethnic Chinese and less affluent ethnic Malay peoples by privileging indigenous Malaysian persons.<sup>152</sup>

### B. Corruption Control in Malaysia and Singapore

Malaysia initially experienced little corruption.<sup>153</sup> Tunku Abdul Aziz speculates that corruption began to flourish in Malaysia with the advent of the New Economic Policy in the 1970s.<sup>154</sup> In its attempt to manipulate the economy in favor of the native peoples of the Malaysian archipelago, the New Economic Policy places a great deal of economic discretion in government officials; that power may be used corruptly.<sup>155</sup> Regardless of the cause, corruption eventually became endemic in the new country.<sup>156</sup>

148. ECONOMIST INTELLIGENCE UNIT, DEMOCRACY INDEX 2010: DEMOCRACY IN RETREAT (2010), available at [http://graphics.eiu.com/PDF/Democracy\\_Index\\_2010\\_web.pdf](http://graphics.eiu.com/PDF/Democracy_Index_2010_web.pdf).

149. Chin-Huat Wong, James Chin & Norani Othman, *Malaysia—Towards a Topology of an Electoral One-Party State*, 17 DEMOCRATIZATION 920, 923 (2010).

150. See Pepinsky, *supra* note 61, at 114–19 (discussing political control by and policies of the Barisan Nasional party).

151. See Jomo S.K. & Chang Yii Tan, *The Political Economy of Post-Colonial Transformation*, in LAW, INSTITUTIONS AND MALAYSIAN ECONOMIC DEVELOPMENT 22, 30–47 (Jomo K.S. & Wong Sau Ngan eds., 2008) (explaining and evaluating Mahathir's economic policies).

152. See Li-Ann Thio, *Constitutional Accommodation of the Rights of Ethnic and Religious Minorities in Plural Democracies: Lessons and Cautionary Tales from South-East Asia*, 22 PACE INT'L L. REV. 43, 63–64 (2010) (describing the New Economic Program).

153. Many persons operate under the misconception that corruption has always pervaded economies throughout the world. Widespread, pervasive corruption is actually a relatively recent phenomenon; Moisés Naím famously refers to its advent as the “corruption eruption.” Naím, *supra* note 24, at 245.

154. Aziz, *supra* note 113, at 393–94.

155. See Hanming Fang & Peter Norman, *Government-Mandated Discriminatory Policies: Theory and Evidence*, INT'L ECON. REV. 361, 364–65 (2006) (describing great amounts of discretion in the New Economic Policy).

156. See R.S. Milne, *Levels of Corruption in Malaysia: A Comment on the Case of Bumiputra Malaysia Finance*, 9 ASIAN J. PUBL. ADMIN. 56, 56 (1987) (discussing the

In Singapore, on the other hand, corruption flourished from the founding of the colony to its independence.<sup>157</sup> In its earliest years, the British cared little for establishing law in Singapore, tolerating even the trafficking of women.<sup>158</sup> During the Japanese occupation, poor economic conditions fueled rampant corruption.<sup>159</sup> The British Military Administration following Japanese occupation lived on corruption.<sup>160</sup> By the time Singapore was granted independence, the People's Action Party was able to reveal that their opponents in the general election had accepted bribes from the U.S. government, a revelation that swept the Party into power.<sup>161</sup>

Countries faced with extensive or highly public corruption often respond by creating within the government a formal institution that specifically targets corruption. In the United States, for example, special prosecutors are appointed and given extraordinary power when corruption is alleged to have occurred at senior levels of the federal government.<sup>162</sup> Many emerging economies have standing agencies to investigate or prosecute corruption. In East Asia, the Hong Kong Independent Commission Against Corruption may be the best known such agency, and often serves as a model for other emerging economies.<sup>163</sup> Both Malaysia and Singapore have created such agencies.<sup>164</sup> Each has also engaged in the international regime that has evolved to combat corruption.<sup>165</sup>

growth of corruption in Malaysia and attributing it not only to the New Economic Plan but also to exploitation of natural resources).

157. See Jon S.T. Quah, *Combating Corruption in Singapore: What Can Be Learned?*, 9 J. CONTINGENCIES & CRISIS MGMT. 29, 29 (2001) (describing corruption as "a way of life" in colonial Singapore).

158. See JON S. T. QUAH, *CURBING CORRUPTION IN ASIA: A COMPARATIVE STUDY OF SIX COUNTRIES* 109–10 (2003) (describing rampant corruption and lawlessness in early Singapore); JAMES FRANCIS WARREN, *AH KU AND KARAYUKI-SAN: PROSTITUTION IN SINGAPORE 1870–1940*, at 68–71 (1993) (describing the trafficking of women and noting that Singapore "offered practically unrestricted possibilities to traffickers").

159. See Quah, *supra* note 157, at 30 (describing corruption during Japanese occupation).

160. See QUAH, *supra* note 158, at 110 (noting that the British Military Administration was nicknamed the "Black Market Administration").

161. *Id.* at 114.

162. See Donald C. Smaltz, *The Independent Counsel: A View from Inside*, 86 GEO. L.J. 2307, 2310–21 (1998) (describing appointments of independent counsel in the United States).

163. See C. Raj Kumar, *Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia*, 16 MICH. ST. J. INT'L L. 475, 507 (2008) (referring to Hong Kong's agency as a "model" for other countries); Bertrand de Speville, *Anticorruption Commissions: The "Hong Kong Model" Revisited*, 17 ASIA-PAC. REV. 47, 47–48 (2010) (suggesting that the Hong Kong Independent Commission Against Corruption (ICAC) should serve as a model).

164. See *infra* notes 171–89 and accompanying text (describing Malaysia's Anti-Corruption Commission Act); *infra* notes 195–208 and accompanying text (describing Singapore's Corrupt Practices Investigation Bureau).

165. See *infra* notes 169–70, 193–94.

## 1. Malaysia

Malaysian law criminalizes many forms of corruption, including bribery. The Malaysian Anti-Corruption Commission Act, for example, makes criminal the conduct of any person who:

(a) corruptly solicits or receives or agrees to receive for himself or for any other person; or (b) corruptly gives, promises or offers to any person whether for the benefit of that person or of another person, any gratification as an inducement to or a reward for, or otherwise on account of – (A) any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place; or (B) any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned.<sup>166</sup>

Numerous other laws exist, covering actions such as nepotism and diversion of government funds.<sup>167</sup>

Malaysia is a signatory to the United Nations Anti-Corruption Convention, and ratified the Convention in 2008.<sup>168</sup> Malaysia also endorsed the Asian Development Bank–Organization for Economic Development and Cooperation Anti-Corruption Action Plan.<sup>169</sup>

At the time this research was conducted, the Anti-Corruption Agency (ACA) (in Malay, *Badan Pencegah Rasuah*) was tasked with combating corruption. The ACA was founded in 1967 by bringing together a number of existing bodies, such as the Anti-Corruption Unit and special investigative departments in the policing system.<sup>170</sup> The ACA was within the Prime Minister's office: the Director General of the ACA was appointed by the King<sup>171</sup> on advice of the Prime

166. Malaysian Anti-Corruption Commission Act 2009, s. 16 (No. 694/2009) (Malay.).

167. Elections Offences Act 1954, s. 10 (No. 5/1954) (Malay.); Malaysian Anti-Corruption Commission Act 2009 s. 16 (Malay.).

168. See *United Nations Convention Against Corruption: Signature/Ratification Status*, UNITED NATIONS OFF. ON DRUGS & CRIME, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (last visited Dec. 26, 2011) (listing Malaysia as a signatory and its ratification date as the 24th of September, 2008).

169. See Asian Dev. Bank, OECD & Anti-Corruption Initiative for Asia & the Pacific, *The Initiative's Member Countries and Economies*, OECD, [http://www.oecd.org/document/23/0,3746,en\\_34982156\\_35315367\\_35030743\\_1\\_1\\_1\\_1\\_0.html](http://www.oecd.org/document/23/0,3746,en_34982156_35315367_35030743_1_1_1_1_0.html) (last visited Dec. 26, 2011) (listing Malaysia as one of twenty-eight countries in the Asia-Pacific region that has formally endorsed the Action Plan and committed to its goals).

170. See Patrick Meagher, *Anti-Corruption Agencies: Rhetoric Versus Reality*, 8 J. POL'Y REFORM 69, 76 (2005) (describing the creation of the ACA).

171. Malaysia is a constitutional monarchy; the nominal head of state is a King elected for a five-year term by and from the hereditary rulers of the nine states still ruled by hereditary rulers. Aaron D. Davidson, Note, "I Want My Censored MTV": *Malaysia's Censorship Regime Collides with the Economic Realities of the Twenty-First Century*, 31 VAND. J. TRANSNAT'L L. 97, 125 (1998). The role of the King is largely ceremonial; power resides with the Prime Minister. *Id.*

Minister, and its budget resided with the office of the Prime Minister.<sup>172</sup>

The ACA was divided into six divisions: Prosecution, Investigation, Information, Prevention, Training, and an Administrative Division.<sup>173</sup> This organization's tasks included detecting and investigating incidents of corruption, monitoring the behavior of public officials, and preventing corruption in government.<sup>174</sup> The ACA received and processed thousands of anonymous tips each year.<sup>175</sup> The Investigation Division was very active, producing a steady stream of investigations and referrals for prosecution.<sup>176</sup> The ACA also engaged in several programs to educate the public on issues of corruption, rally public opinion against corruption, and persuade members of the public to take positive action against corruption.<sup>177</sup> The agency also made appeals to family well-being, self-respect, love of country, morality, and religion.<sup>178</sup> Programs run by the ACA included advertising, educational videos, and a television show.<sup>179</sup>

The ACA did not prosecute corruption cases. Instead, a Department of the Prosecution Division of the Office of the Attorney General was devoted to working with the ACA to prosecute those cases.<sup>180</sup> That Department made the final determination as to whether a case would or would not be prosecuted.<sup>181</sup> Cases were prosecuted by a Deputy Public Prosecutor, under the direction of the Attorney General of Malaysia.<sup>182</sup> The Attorney General is appointed by the King, on the advice of the Prime Minister.<sup>183</sup>

172. See Meagher, *supra* note 170, at 95 (describing appointment process).

173. See UNITED NATIONS DEV. PROGRAM [UNDP] PARAGON, CASE STUDY: ACTION AGAINST CORRUPTION: MALAYSIA (2000), available at <http://unpan1.un.org/intradoc/groups/public/documents/eropa/unpan002690.pdf>.

174. See Nik Rosnah Wan Abdullah, *Eradicating Corruption: The Malaysian Experience*, 3 J. ADMIN. & GOVERNANCE 42, 46 (2008) (describing functions of the ACA).

175. See UNDP PARAGON, *supra* note 173, at 3 (noting that the ACA receives over 8000 reports a year and that informants must be anonymous).

176. See Aziz, *supra* note 113, at 398 (describing functions of the ACA).

177. See PATRICK MEAGHER & CARYN VOLAND, U.S. AGENCY FOR INT'L DEV., ANTICORRUPTION AGENCIES (ACAS): ANTICORRUPTION PROGRAM BRIEF 25 (2006), available at [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/ACA\\_508c.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/ACA_508c.pdf) (providing data on case flow); Meagher, *supra* note 170, at 95 (noting the rate of activity of the ACA).

178. Discussants knowledgeable about the ACA's programs described these and other initiatives.

179. UNDP PARAGON, *supra* note 173, at 1.

180. See MEAGHER & VOLAND, *supra* note 177, at 9 (describing arrangement); Abdullah, *supra* note 174, at 47 (describing decision to prosecute).

181. TRANSPARENCY INT'L MALAY., TOWARD A CORRUPTION FREE MALAYSIA 13 (2006), available at <http://www.transparency.org.my/documents/TOWARDS%20A%20CORRUPTION%20FREE%20MALAYSIA.pdf>.

182. *Id.* at 14.

183. See Abdullah, *supra* note 174, at 47 (describing and expressing concern over this arrangement).

Malaysia has recently replaced the ACA with the Malaysian Anticorruption Commission (MACC) (in Malay, *Suruhanjaya Pencegaha Rasuah Malaysia*).<sup>184</sup> Then Prime Minister Abdullah Badawi proposed formation of the MACC to rectify perceived weaknesses in the ACA by granting the MACC independence and giving it real authority.<sup>185</sup> Several members of Parliament expressed concern that the MACC would make groundless but damaging accusations and that it would become a politicized agency.<sup>186</sup> Their concerns lead to three compromises by the Prime Minister: the MACC is subject to strict budget oversight by the Parliament; an independent board oversees the MACC; and as was the case with the ACA, the MACC itself does not prosecute corruption.<sup>187</sup> Instead, the Public Prosecutor of Malaysia has responsibility to prosecute allegations of corruption.<sup>188</sup> The MACC has full investigatory powers, and recommends cases for prosecution to the Public Prosecutor.<sup>189</sup> Nonetheless, the Public Prosecutor does not have to abide by a recommendation of the MACC.<sup>190</sup>

## 2. Singapore

Singapore criminalizes many forms of corruption, including bribery. The Prevention of Corruption Act, for example, subjects to criminal prosecution:

Any person who shall by himself or by or in conjunction with any other person — (a) corruptly solicit or receive, or agree to receive for himself, or for any other person; or (b) corruptly give, promise or offer to any person whether for the benefit of that person or of another person, any gratification as an inducement to or reward for, or otherwise on account

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184. *MACC Background*, MALAYSIAN ANTI-CORRUPTION COMMISSION, <http://www.sprm.gov.my> (last updated Sept. 3, 2011).

185. Prime Minister Abdullah owed much of his electoral success in 2003 to his popular image as someone who could combat corruption; a survey conducted in 2008 found that the public had grown deeply suspicious of his anticorruption credentials. See MERDEKA CTR. FOR OP. RESEARCH, Q2 2008 PENINSULA MALAYSIA VOTER OPINION POLL 7 (2008), available at [http://www.merdeka.org/v2/index.php?option=com\\_jotloader&section=files&task=download&cid=38\\_1cf7a8c16ad4d356102e55795621dc15&Itemid=68](http://www.merdeka.org/v2/index.php?option=com_jotloader&section=files&task=download&cid=38_1cf7a8c16ad4d356102e55795621dc15&Itemid=68) (providing graph showing “corruption and abuse of power” as one of the “most important problems affecting Malaysia” according to respondents).

186. As related to the author by parties involved in the discussions in Parliament.

187. See Noore Alam Siddiquee, *Combating Corruption and Managing Integrity in Malaysia: A Critical Overview of Recent Strategies and Initiatives*, 10 PUB. ORG. REV. 153, 161 (2010) (describing the oversight committees and the lack of prosecutorial powers).

188. Datuk K.C. Vohrah, *MACC and the Prosecution Issue*, STAR (Dec. 12, 2010) (Malay.), available at [http://www.malaysianbar.org.my/members\\_opinions\\_and\\_comments/macc\\_and\\_the\\_prosecution\\_issue.html](http://www.malaysianbar.org.my/members_opinions_and_comments/macc_and_the_prosecution_issue.html).

189. See MALAYSIAN ANTI-CORRUPTION COMMISSION, <http://www.sprm.gov.my> (last visited Dec. 26, 2011).

190. *Id.*

of — (i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or (ii) any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned.<sup>191</sup>

Singapore is a signatory to the United Nations Convention Against Corruption, and ratified the Convention in 2009.<sup>192</sup> Singapore has endorsed the Asian Development Bank–Organization for Economic Development and Cooperation Anti-Corruption Action Plan.<sup>193</sup>

Singapore uses an agency similar to the MACC to investigate corruption. The Corrupt Practices Investigation Bureau (CPIB) was formed in 1952 as an agency distinct from other investigatory agencies.<sup>194</sup> Prior to the creation of the CPIB, corruption fell within the jurisdiction of a special branch of the Singapore Police Force.<sup>195</sup> At that time, Singapore experienced rampant and pervasive corruption, to the extent that the British colonial government felt that corruption posed a threat to Singapore's position as a trade *entrepôt*.<sup>196</sup>

The CPIB shares a lack of independence with the MACC. The Prime Minister's Office has budget oversight over the CPIB, and the Director of the CPIB reports directly to the Prime Minister.<sup>197</sup> The CPIB is independent of other policing bodies and government agencies.<sup>198</sup>

The CPIB's primary mission is to investigate corruption.<sup>199</sup> The Investigation Department has two divisions, one that investigates public sector corruption and one that investigates private sector

191. Prevention of Corruption Act, 1960, c. 241, § 5 (Sing.).

192. See *United Nations Convention Against Corruption: Signature/Ratification Status*, *supra* note 168 (listing Singapore as a signatory and its ratification date as the 6th of November, 2009).

193. See Asian Dev. Bank, OECD & Anti-Corruption Initiative for Asia & the Pacific, *supra* note 169 (listing Singapore as one of twenty-eight countries in the Asia-Pacific region that has formally endorsed the Action Plan and committed to its goals).

194. At this time Singapore was administered as a British colony. Singapore joined the Malaysian Federation in 1963, and became a separate, independent nation in 1965. The CPIB survived each of these changes. Under British rule the CPIB was not effective; it became effective when restructured by Lee's Political Action Party. See QUAH, *supra* note 158, at 113–14 (describing British attempt and failure).

195. Quah, *supra* note 157, at 32.

196. For an uncritical history of its role in reversing endemic corruption in Singapore, published by the CPIB, see CORRUPT PRACTICES INVESTIGATION BUREAU, SWIFT AND SURE ACTION – FOUR DECADES OF ANTI-CORRUPTION WORK (2003).

197. See Rafael X. Zahraiddin-Aravena, *Chile and Singapore: The Individual and the Collective*, 12 EMORY INT'L L. REV. 739, 782 (1998) (describing control of the CPIB); Jon S. T. Quah, *Globalization and Corruption Control in Asian Countries: The Case for Divergence*, 3 PUB. MGMT. REV. 453, 463 (2001) (same).

198. Eugene Kheng-Boon Tan, *Law and Values in Governance: The Singapore Way*, 30 H.K. L.J. 91, 111 (2000).

199. See Quah, *supra* note 197, at 463 (describing duties of the CPIB).

corruption.<sup>200</sup> The Operations Department also conducts investigations through its Intelligence Division, which obtains and processes information regarding specific cases and corruption in general.<sup>201</sup>

The CPIB does not prosecute cases but instead refers cases to the Attorney General's Office.<sup>202</sup> The Attorney General makes determinations regarding prosecution and manages the prosecution of cases that go forward.<sup>203</sup>

The CPIB also reviews the practices of government offices in Singapore in order to identify weaknesses or practices that might facilitate corruption and to make recommendations to rectify those weaknesses.<sup>204</sup> Government offices have no obligation to institute these recommendations, but an office that does not risks approbation from other government officials.<sup>205</sup>

Although the CPIB possess somewhat more structure, the CPIB and the ACA (now MACC) are quite similar. Both answer to the Prime Minister, both are independent of other investigatory agencies but must rely on an Attorney General to actually prosecute cases, both are tasked with strengthening existing structures and attitudes, and both exist for the purpose of controlling corruption. Both are also regarded as successes.<sup>206</sup> Singapore, however, has experienced more success than has Malaysia.<sup>207</sup> Exploration into that difference might yield insight into the effective implementation and enforcement of corruption laws.

### III. DISCUSSIONS ON CORRUPTION IN SINGAPORE AND MALAYSIA

This paper relies on a qualitative methodology. Qualitative methodologies are used far less than quantitative methodologies in

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200. See *About Us*, CORRUPT PRACTICES INVESTIGATION BUREAU, [http://app.cpi.gov.sg/cpi\\_new/user/default.aspx?pgID=123](http://app.cpi.gov.sg/cpi_new/user/default.aspx?pgID=123) (last visited Dec. 26, 2011).

201. *Id.*

202. *Id.*

203. See NAT'L INTEGRITY SYS., TRANSPARENCY INTERNATIONAL COUNTRY STUDY REPORT – SINGAPORE 2006, at 7 (2007), available at [http://www.transparency.org/content/download/12597/123955/file/Singapore\\_NIS\\_2006.pdf](http://www.transparency.org/content/download/12597/123955/file/Singapore_NIS_2006.pdf) (discussing relationship of the CPIB to prosecution of cases).

204. Tan, *supra* note 198, at 111.

205. See ROBERT KLITGAARD, CONTROLLING CORRUPTION 127 (1988) (reporting that the CPIB causes “fear and trembling”).

206. See *id.* at 126–27 (praising the CPIB); Craig P. Ehrlich & Dae Seob Kang, *Independence and Corruption in Korea*, 16 COLUM. J. ASIAN L. 1, 46 (2002) (noting the “notable success” of the CPIB); Meagher, *supra* note 170, at 100 (including the ACA in a group of agencies “significantly more successful than the others have been”); Quah, *supra* note 197, at 467 (noting success of the ACA).

207. See *supra* notes 28–48 and accompanying text (discussing corruption in Singapore and Malaysia).

both legal and international relations scholarship.<sup>208</sup> A brief explanation of the use of the qualitative methodology is therefore in order.

Qualitative methodologies are usually described in contrast to quantitative methodologies: qualitative methodologies primarily analyze data in the form of words while quantitative methodologies primarily analyze data in the form of numbers.<sup>209</sup> Quantitative methodologies provide insights into meta structures and allow manipulation and processing of large amounts of data. Quantitative research has provided valuable insights into corruption.<sup>210</sup> As is true of any methodology, however, quantitative research does have limitations and may not fully discern subtleties.<sup>211</sup> Many scholars who conduct research on social phenomenon, therefore, suggest utility in both quantitative and qualitative methodologies when attempting to comprehend complex social phenomenon.<sup>212</sup> Understanding nuances in the creation, implementation and effects of legal regimes requires multiple methodologies, especially in emerging economies.<sup>213</sup>

208. See Lois Gander, Diana Lowe & Mary Stratton, *The Civil Justice System and the Public: Highlights of the Alberta Pilots*, 42 ALTA. L. REV. 803, 804 n.5 (2005) (Can.) (discussing prejudices against qualitative research); Sarosh Kuruvilla, *Industrial Relations Theory*, 53 INDUS. & LAB. REL. REV. 522, 523 (2000) (book review) (discussing problems created by international relations scholarship that elevates quantitative research over qualitative).

209. See Roger Bullock, Michael Little & Spencer Millham, *The Relationships Between Quantitative and Qualitative Approaches in Social Policy Research*, in MIXING METHODS: QUALITATIVE AND QUANTITATIVE RESEARCH 81, 85 (Julia Brannen ed., 1992) (discussing differences and similarities between qualitative and quantitative methodologies).

210. E.g., KPUNDEH, *supra* note 6 (reporting and analyzing data from surveys conducted in Sierra Leone); Paolo Mauro, *Corruption and Growth*, 110 Q.J. ECON. 681 (1995) (using quantitative measures of corruption to determine that corruption negatively affects foreign direct investment and thus economic growth). These are merely examples of groundbreaking quantitative research; to list all outstanding quantitative research would overwhelm this paper.

211. I. Glenn Cohen & Daniel L. Chen, *Trading-Off Reproductive Technology and Adoption: Does Subsidizing IVF Decrease Adoption Rates and Should It Matter?*, 95 MINN. L. REV. 485, 573 (2010) (“Studying human behavior through [quantitative] data on behavior is a useful complement, but not a substitute to more qualitative methods.”); Linda Ross Meyer, *Just the Facts?*, 106 YALE L.J. 1269, 1270 (1997) (book review) (“[Q]uantitative empirical research . . . may overlook the style, setting, normative gait, and human quirkiness of . . . law”).

212. See Scott Burris, *Law and the Social Risk of Health Care: Lessons from HIV Testing*, 61 ALB. L. REV. 831, 892 (1998) (“Qualitative and quantitative research are highly interdependent.”); Hazel Qureshi, *Integrating Methods in Applied Research in Social Policy: A Case Study of Careers*, in MIXING METHODS: QUALITATIVE AND QUANTITATIVE RESEARCH, *supra* note 209, at 101, 120 (discussing the need for a variety of methodologies).

213. See Susan D. Franck, *Empiricism and International Law: Insights for Investment Treaty Dispute Resolution*, 48 VA. J. INT’L L. 767, 785 (2008) (advocating a “mixed-methods approach” and arguing that “[e]ncouraging scholarship from multiple scholars with a broad set of perspectives and skill sets can promote nuanced

Quantitative methodologies have already been applied to corruption in Singapore, Malaysia, and Southeast Asia. Indeed, the first section of this paper relies on treatments of quantitative data to evaluate the existence and persistence of corruption in the region.<sup>214</sup> As the Asian Development Bank points out, however, “[n]o one instrument or method can provide a complete picture [of corruption regimes]. Each survey tool has its utility and its limitations.”<sup>215</sup>

While quantitative methods provide insights into meta structures, correlations and causality, qualitative methods provide insights into the nuances of structures, attitudes and relationships.<sup>216</sup> As Linda Ross Meyer suggests, qualitative methods can discern the “style, setting, normative gait, and human quirkiness of . . . law.”<sup>217</sup> Thus, when attempting to understand differences in perceived effectiveness of corruption control regimes it seems distinctly possible that qualitative methods may reveal insights not illuminated by

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understandings of population parameters and encourage the replication and convergence of research”); Gander, Lowe & Stratton, *supra* note 208, at 804 (stressing the need for multiple methodologies for understanding the context of legal change); Jens Meierhenrich, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone*, 102 AM. J. INT’L L. 696, 699 (2008) (book review) (“International legal scholarship is ignoring, at its own peril, the significance of qualitative research . . .”); Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1565 (2003) (suggesting that understanding of legal institutions is acquired through “using whichever tools seem most appropriate to each subtopic” and through “put[ting] these sources in generative conversation with each other”); see also Jeremy J. Kingsley, *Legal Transplantation: Is This What the Doctor Ordered and Are the Blood Types Compatible? The Application of Interdisciplinary Research to Law Reform in the Developing World – A Case Study of Corporate Governance in Indonesia*, 21 ARIZ. J. INT’L & COMP. L. 493, 522 (2004) (describing the usefulness of qualitative methodologies in understanding emerging economies).

214. See *supra* notes 27–41 and accompanying text (discussing levels of corruption in Southeast Asia).

215. ASIAN DEV. BANK & OECD, *supra* note 14, at 106.

216. Tom Baker & Sean J. Griffith, *Predicting Corporate Governance Risk: Evidence from the Directors’ & Officers’ Liability Insurance Market*, 74 U. CHI. L. REV. 487, 491 (2007) (qualitative methods offer a “nuanced view inside a field that quantitative data cannot provide”); Bullock, Little & Millham, *supra* note 209, at 86 (“Qualitative research, in contrast, provides ‘greater understanding of the meaning and context of behaviours and the processes that take place within observed patterns of interrelated factors’ and enables researchers to examine the perceptions different participants have of the same situation.”); Patricia Fernandez-Kelly, *Social Mechanisms: The Back Pocket Map: Social Class and Cultural Capital as Transferable Assets in the Advancement of Second-Generation Immigrants*, 620 ANNALS 116, 120 (2008) (lauding quantitative methods but noting that “it is only through qualitative means that exceptions may be properly explained”); Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 144 (1997) (“[Q]ualitative research assumes that variables are complex, interwoven, and difficult to measure . . .”).

217. Meyer, *supra* note 211, at 1270.

quantitative methods.<sup>218</sup> This paper relies on data collected through qualitative methods.

The research described in this paper involves interviews and discussions conducted by the author with government officials, businesspeople, and, in the case of Malaysia, members of civil society. Interviews were conducted in a variety of settings, usually at the suggestion of each discussant. The interviewer did not use a standard set of questions, although each interview involved roughly the same material. The amount of time spent on interviews varied.<sup>219</sup>

Discussants were not always informed at the outset that subjects to be discussed included corruption, but every discussant was given emphatic assurances of absolute confidentiality. Out of respect for the discussants, any possible identifying characteristics have been removed from this paper. Discussants generally approached the topic openly, although differences in the manner in which discussants reacted are worth analyzing.<sup>220</sup>

The research does not pretend to encompass a sample size that would satisfy a quantitative study, nor does it claim comprehensive breadth (particularly with respect to Malaysia). In Malaysia, the author talked with discussants in Kuala Lumpur, Johor Bahru, and Sabah.<sup>221</sup> Conversations were not recorded, and the author has by agreement destroyed all notes taken during the conversations.

Discussions revealed three differences that merit further study: attitudes among government officials towards corruption, manners in which corruption manifests itself, and reactions toward agency responses to corruption.

#### A. Attitudes Toward Corruption

The first observation is also the most subtle, and in some ways the most difficult to describe in a scholarly manner. It is also the

218. The author does not suggest that qualitative methods alone suffice in fully describing corruption; the author has engaged in quantitative research within this field. *E.g.*, Philip M. Nichols, *Who Allows Facilitating Payments?*, 14 AGORA WITHOUT FRONTIERS 303, 303–23 (2009) (Greece) (using quantitative methods to evaluate corporate codes of conduct); Nichols, *supra* note 6 (using a survey conducted throughout Kazakhstan to find insights into Kazakhstani attitudes toward corruption); Nichols, Siedel & Kasdin, *supra* note 6 (using surveys to illustrate similar attitudes toward corruption).

219. The author of this paper has conducted hundreds of interviews in West Africa, Central Asia, East Asia, South Asia, Central America, South America, Central Europe, East Europe, and the former Soviet Union. No two interviews have been the same.

220. See *infra* notes 222–71 and accompanying text.

221. The author wants to make clear that he met and talked with people in Malaysia about subjects other than corruption. No conclusions regarding topics of conversation should be drawn from the fact that the author met and talked with a given person.

observation that may provide the greatest insight into the different degrees to which Singapore and Malaysia have been successful in their efforts to control corruption. This observation has to do with the manner in which Singaporean and Malaysian discussants reacted to the topic of corruption.

### 1. Singapore

Discussing corruption with Singaporean officials is slightly different than similar discussions with officials in other countries. In general, people are surprisingly open to discussions of corruption.<sup>222</sup> Obviously, the issue of corruption can at times engender caution, but far more often the topic is broached candidly. The author of this paper has listened to hundreds of first-hand accounts of illicit behavior, often unsolicited.<sup>223</sup> When discussing corruption with Singaporean officials, however, one encounters a reaction that almost certainly plays a significant role in how Singapore effectively deals with corruption. Yet this reaction becomes almost anecdotal when described.

The initial reaction of most Singaporean officials to discussions of corruption is visceral, rather than intellectual. The reaction usually begins with a spontaneous look of distaste on the official's face, a pulling back of the body from the zone of interaction with the interviewer, a short hesitation before speaking, and a comment such as "oh, we don't do that" or "well, corruption is wrong." The official does not immediately respond with observations about the illegality of corruption, the negative consequences of engaging in corrupt acts, or the harm that corruption inflicts on society. After the initial reaction, officials are quite able to engage in lengthy and thoughtful discussions.

Research on the precise meaning of body language is difficult and faces real limits.<sup>224</sup> Nonetheless, research suggests that nonverbal signals constitute a critically important facet of communication.<sup>225</sup> In particular, nonverbal indicators can convey

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222. See Akhil Gupta, *Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State*, 22 AM. ETHNOLOGIST 375, 375-76 (1995) (describing the ease with which discussants discussed corruption).

223. See Michael Rowe, *Tripping over Molehills: Ethics and the Ethnography of Police Work*, 10 INT'L J. SOC. RES. METHODOLOGY 37, 44-47 (2007) (discussing ethical and other problems when encountering corruption in fieldwork).

224. See Miles L. Patterson, *Strategic Functions of Nonverbal Exchange*, in STRATEGIC INTERPERSONAL COMMUNICATION 273, 276 (John A. Daly & John M. Wiemann eds., 1994) (discussing behavioral research and its limitations).

225. Ezequiel Morsella, Lindsay R. L. Larson & John A. Bargh, *Indirect Cognitive Control, Working-Memory-Related Movements, and Sources of Automatisms*, in EXPRESSING ONESELF / EXPRESSING ONE'S SELF: COMMUNICATION, COGNITION, LANGUAGE AND IDENTITY 61, 61-62 (Ezequiel Morsella ed., 2010).

both communicative and informative signals: communicative signals are under the control of the actor while informative signals are tied to processes much deeper in that actor's mind.<sup>226</sup> In general, nonverbal signals can reflect processes deeply embedded within a person.<sup>227</sup>

The behaviors of Singaporean respondents seemed first to indicate a visceral, almost emotional response to corruption rather than a fully thought-out response.<sup>228</sup> The posture and body movements of the respondents seemed to indicate repugnance at the thought of corruption. The facial expression briefly registered disgust.<sup>229</sup> The immediacy of the reaction also suggests an automatic response rather than a carefully analyzed response.<sup>230</sup> The automaticity of this visceral reaction suggests that the response to corruption is embedded in the consciousness of the respondents.<sup>231</sup>

Comparison could be made to a suggestion to a person that the person kill someone. The vast, vast majority of persons in most cultures do not kill other persons. Interestingly, the reason that most people do not kill has nothing to do with an analysis of the potential consequences or the possible harm to society; most people do not intellectually process decisions to kill or not to kill.<sup>232</sup> Rather, most people do not kill because the idea that killing is wrong is ingrained into their psyche and their sense of self.<sup>233</sup> A suggestion that they kill someone would almost certainly be met with an initial visceral reaction.<sup>234</sup>

226. Randall A. Gordon, Daniel Druckman, Richard M. Rozelle & James C. Baxter, *Non-Verbal Behaviour as Communication: Approaches, Issues and Research*, in THE HANDBOOK OF COMMUNICATION SKILLS 73, 81–82 (Owen Hargie ed., 2006).

227. See *id.* at 74 (discussing connection); Patterson, *supra* note 224, at 273 (same).

228. See Ursula Hess & Robert E. Kleck, *Differentiating Emotion Elicited and Deliberate Emotional Facial Expressions*, 20 EUR. J. SOC. PSYCH. 369, 370 (1990) (differentiating between body language that is the product of an emotional response and body language that is the product of a thoughtful response).

229. See Rosario Montiroso et al., *The Development of Dynamic Facial Expression Recognition at Different Intensities in 4- to 18-Year-Olds*, 19 SOC. DEV. 71, 78 (2010) (displaying photographs of facial expression indicating disgust).

230. Hess & Kleck, *supra* note 228, at 370; Patterson, *supra* note 224, at 274.

231. John A. Bargh, *Automatic Information Processing: Implications for Communication and Affect*, in COMMUNICATION, SOCIAL COGNITION, AND AFFECT 9, 11–12 (Lewis Donohew, Howard E. Sypher & E. Tory Higgins eds., 1988); Gordon, Druckman, Rozelle & Baxter, *supra* note 226, at 74.

232. See Daniel T. Ostas, *When Fraud Pays: Executive Self-Dealing and the Failure of Self-Restraint*, 44 AM. BUS. L.J. 571, 600 (2007) (“[M]ost people would not commit murder even if there were no law against it.”).

233. Tom R. Tyler & John M. Darley, *Taking Public Views About Morality and the Legitimacy of Legal Authorities into Account When Formulating Substantive Law*, 28 HOFSTRA L. REV. 707, 716 (2000) (“Even if murder were suddenly made legal, most people would not commit murders because murdering someone would still be contrary to their own sense of what is right and wrong.”).

234. See Geoffrey Neri, Note, *Sticky Fingers or Sticky Norms? Unauthorized Music Downloading and Unsettled Social Norms*, 93 GEO. L.J. 733, 746 (2005) (“[T]he

Discussants in Singapore did discuss corruption, articulately and with much thought. One often-heard comment, which reveals much about Singaporean attitudes toward corruption, evaluated the job prospects for a hypothetical Singaporean official dismissed from office for accepting a bribe. Discussants universally suggested that such a person would not be able to procure employment in the private sector. Although all agreed that such a person had acted in an immoral and illegal manner, that person's inability to find employment did not seem attributable to a moral judgment by discussants. Instead, discussants suggested that as a purely objective matter such a person could not be expected to behave properly, and thus would constitute a risk to the operability of a private enterprise.

## 2. Malaysia

Almost all Malaysian officials also find corruption wrong. The initial reaction of Malaysian officials, however, differs markedly from that of Singaporean officials. Malaysian officials do not react in a visceral manner; rather, their reaction is intellectual. Malaysian officials respond almost immediately either by noting that corruption is illegal or with a discussion either of how corruption harms Malaysia or why government officials yield to the temptation of corruption.

When asked about corruption, Malaysian officials do not pull away. Their posture tends to remain constant, or, if corruption is a subject of particular interest to them, they may lean toward the interviewer. Discussants who feel that they have seen corruption damage projects or offices with which they were associated may initially register disgust with corruption. Those who have spent a great deal of time thinking about solutions to corruption in Malaysia may become more and more animated as they expound their solution. Those who believe that anticorruption efforts have been co-opted as a political weapon may adopt a cynical, almost slumping posture.

Malaysian officials seem to display thoughtful reactions to corruption rather than automatic reactions.<sup>235</sup> The interviewer could discern no nonverbal signals in common among all of the Malaysian discussants, nor was there a sense that their reactions reflected deeply embedded respect for law or disgust with the concept of

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prohibition against these behaviors is unambiguously internalized in most modern cultures—obeying the law with regard to murder, for example, has become a part of most individuals' intrinsic preferences such that they generally heed the prohibition, independent of the consequences of doing so.”)

235. See Bargh, *supra* note 231, at 21 (differentiating between reactions).

corruption. Instead, attitudes toward corruption seem to have been learned rather than being embedded.<sup>236</sup>

As with Singaporean discussants, Malaysian discussants spoke thoughtfully and eloquently about corruption. And as with Singaporean discussants, one response common among discussants may reveal underlying attitudes toward corruption and corruption laws. Malaysian discussants in general condemned corruption. When asked if they had ever or would ever eat dinner with a person who accrued wealth through corruption, most respondents indicated that they had attended such dinners. These respondents reiterated their criticisms of corruption, but suggested that it would be rude to turn down such a dinner invitation. When asked about their peers and colleagues, discussants suggested that dinners with wealthy persons are attractive, regardless of how that person accumulated wealth.

### B. *Manifestation of and Experience with Corruption*

Observers often treat corruption as a unitary phenomenon.<sup>237</sup> Discussants, however, had very different stories regarding their interactions with corruption.

#### 1. Singapore

Every discussant in Singapore had definite and comprehensible feelings about corruption. Other than businesspeople who work outside of the country, however, relatively few had actual experience with corruption.<sup>238</sup> None of the discussants had paid or received a bribe in Singapore or had witnessed payment or receipt of a bribe.

In the discussants' opinions, to the extent that corruption exists in Singapore it mainly occurs in ways that do not directly touch the lives of most Singaporeans. To the extent that public sector corruption ever were to occur, most discussants maintained it would

236. Learned attitudes toward corruption can be useful in controlling corruption. See generally Esther Hauk & Maria Saez-Marti, *On the Cultural Transmission of Corruption*, 107 J. ECON. THEORY 311 (2002) (discussing research that indicates that education plays an important role in disrupting the cultural transmission of corruption).

237. See *infra* notes 323–26 and accompanying text (discussing and providing examples of the treatment of corruption).

238. Many discussants who work outside of Singapore reported receiving bribe requests. In general Singaporeans are reluctant to pay bribes overseas. Transparency International, which compiles the Corruption Perceptions Index, *supra* notes 25–27 and accompanying text, also publishes a Bribe Payers Index. In the most recent Briber Payers Index, posted in 2008, Singaporean businesspeople received a score of 8.1 out of 10.0, indicating little perceived payment of transnational bribes. Press Release, Transparency Int'l, TI Report: Emerging Economic Giants Show High Levels of Corporate Bribery Overseas (Dec. 9, 2008), available at [http://www.transparency.org/news\\_room/latest\\_news/press\\_releases/2008/bpi\\_2008\\_en](http://www.transparency.org/news_room/latest_news/press_releases/2008/bpi_2008_en).

be most likely to occur in large transactions between foreign businesses and procuring or licensing agencies in Singapore. Several discussants pointed to the Siemens prosecution as exemplary of this type of corruption.<sup>239</sup> Discussants were unable to describe this in a systematic way; rather, they offered these types of bribes as more likely to occur than others but had no knowledge or even suspicions of the actual existence of this type of corruption.

Discussants felt that private sector corruption, although rare, was more prevalent than public sector corruption.<sup>240</sup> Private sector nepotism and cronyism figured prominently in these discussions, kickback and misappropriation less so.<sup>241</sup> While most respondents felt that Singapore remains a place where qualified persons could find rewarding opportunities,<sup>242</sup> some also felt that relatives of well-placed business officers were just as likely to find opportunities regardless of

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239. Although it occurred more than a decade earlier, the Siemens case was surprisingly fresh in the minds of discussants. In 1997 Siemens, as well as BICC (Britain), Pirelli (Italy), Tomen (Japan), and Marubeni (Japan) were each banned from government contracts in Singapore for a period of five years because each had been involved in the bribery of the Chief Executive of the Public Utility Board (who was himself sentenced to fifteen years in prison). Michael A. Almond & Scott D. Syfert, *Beyond Compliance: Corruption, Corporate Responsibility and Ethical Standards in the New Global Economy*, 22 N.C. J. INT'L L. & COM. REG. 389, 435 (1997). U.S. and European authorities investigated Siemens' global activities for more than a decade, during which time the discussions described in this paper took place. As of the time this paper was written, Siemens has agreed to pay fines totaling more than one billion seven hundred million dollars—the largest aggregate fine ever imposed for corrupt activities. See Natalya Shnitser, *A Free Pass for Foreign Firms? An Assessment of SEC and Private Enforcement Against Foreign Issuers*, 119 YALE L.J. 1638, 1682 (2010) (discussing the Siemens investigation and prosecution); Robert W. Tarun & Peter P. Tomczak, *A Proposal for a United States Department of Justice Foreign Corrupt Practices Leniency Policy*, 47 AM. CRIM. L. REV. 153, 161 (2010) (reporting that total fines levied against Siemens exceeded U.S. \$1.7 billion); Matt A. Vega, *The Sarbanes-Oxley Act and the Culture of Bribery: Expanding the Scope of Private Whistleblower Suits to Overseas Employees*, HARV. J. ON LEGIS. 425, 448–54 (2009) (discussing U.S. and European prosecution of Siemens).

240. Just as public corruption consists of use or misuse of public office or trust for personal rather than public benefit, private sector corruption consists of the abuse or misuse of a privately conferred relationship for personal benefit rather than the purpose for which the relationship was created. See James P. Wesberry, Jr., *International Financial Institutions Face the Corruption Eruption: If the IFIs Put Their Muscle and Money Where Their Mouth Is, the Corruption Eruption May Be Capped*, 18 NW. J. INT'L L. & BUS. 498, 508 (1998) (describing private sector corruption).

241. Cronyism refers to limiting business relationships to or giving preferences to members of a preconfigured group with pre-existing relationships. Nepotism refers to awarding positions within an organization on the basis of affinity rather than merit. The term “kickbacks” describes private sector bribes, usually paid to purchasing agents in return for purchase of the bribe-payers products or services. Misappropriation refers to illicit obtainment of an organization's property, for example through theft or embezzlement.

242. Within the public sector, meritocracy is a core principal that is virtually never violated. See Thomas J. Bellows, *Meritocracy and the Singapore Political System*, 17 ASIAN J. POL. SCI. 22, 31 (2009) (describing the institutionalization of meritocracy in Singapore).

their personal qualifications. Some discussants also suggested that business relationships in Singapore were increasingly based on reciprocity rather than business sense.

Mention of reciprocity in an East Asian context inevitably leads to discussions of *guanxi*. *Guanxi* denotes institutionalized networks of “relationships that include mutual obligation, reciprocity, goodwill and personal affection.”<sup>243</sup> *Guanxi*, therefore, consists of the same type of networking practiced by businesspeople in almost every culture.<sup>244</sup> Commentators from outside Chinese cultures, however, frequently distill the complexity of Chinese social phenomenon into a stylized conception of *guanxi*, and treat that conception as something foreign and somewhat distasteful.<sup>245</sup>

No Singaporean discussant initiated conversations regarding *guanxi*. When *guanxi* was mentioned, discussants understood the concept (to a greater extent than the interviewer) and discussed it with great facility. Discussants did not, however, conflate *guanxi* with corruption, nor did they consider *guanxi* to involve undue reciprocity. Rather, when voicing concerns regarding reciprocity in the business environment in Singapore, some discussants opined that observed exchanges of business favors did not comport with Singapore’s emphasis on merit-based business decisions.<sup>246</sup> Singapore, it should be noted, does not have a reputation for cronyism.<sup>247</sup>

Petty corruption plays almost no role in the lives of the discussants.<sup>248</sup> None of the discussants had ever paid a bribe to a police officer, or to a customs officer, or any licensing agency, or for

243. Patricia Pattison & Daniel Herron, *The Mountains Are High and the Emperor Is Far Away: The Sanctity of Contract in China*, 40 AM. BUS. L.J. 459, 484 (2003).

244. See Steven R. Salbu, *Extraterritorial Restriction of Bribery: A Premature Evocation of the Normative Global Village*, 24 YALE J. INT’L L. 223, 250 (1999) (describing *guanxi* as “China’s analogue to American networking”); Frank K. Upham, *Who Will Find the Defendant if He Stays with His Sheep? Justice in Rural China*, 114 YALE L.J. 1675, 1678 n.2 (2005) (“*Guanxi* essentially means the use of interpersonal relationships for personal or institutional advantage. As such, it exists everywhere . . .”).

245. See Pattison & Herron, *supra* note 243, at 484 (noting that outsiders often mischaracterize *guanxi* as “no more than cronyism tainted by bribery and corruption”); Upham, *supra* note 244, at 1677–78 (dismissing Western overreliance on the concept of *guanxi* as essentializing complex social phenomena in China).

246. See Simon S.C. Tay, *Human Rights, Culture, and the Singapore Example*, 41 MCGILL L.J. 743, 773 (1996) (“Singapore has entrenched the belief in equality and fairness of opportunity, called ‘meritocracy.’”); see also Hilary Hardcastle, *Minority Rights in Asia: A Comparative Legal Analysis*, 35 INT’L J. LEGAL INFO. 298, 298 (2007) (contrasting Singapore’s meritocracy with Malaysia’s preferences for native Malaysians).

247. See Linda Low, Book Review, 24 ASEAN ECON. BULL. 282, 284 (2007) (contrasting Singapore with Indonesia and Malaysia).

248. Petty corruption refers to small bribes paid for basic services or to avoid small fines. See Earle & Cava, *supra* note 25, at 79–80 (discussing definitions of petty corruption).

the purpose of expediting any action by a government official in Singapore. Almost all respondents were aware of petty corruption in other countries in the region, but reported that Singapore is substantially different in that respect. Some discussants suggested that petty corruption (or perhaps systematic corruption) occurs in the prostitution industry in areas such as Geylang;<sup>249</sup> discussants noted that this was mere speculation on their part and that they had no first-hand knowledge.<sup>250</sup> When pressed, none could explain their impression that corruption might occur in that industry other than as a vague impression that some activities in the prostitution industry are hidden from general view.<sup>251</sup>

Singaporean discussants interacted with corruption at a distance. All were aware of corruption, but few had actual experience with corruption.<sup>252</sup> The fact that they interacted with corruption from a distance, however, did not dilute their attitudes toward the phenomenon. All respondents expressed very strong negative feelings about corruption.

## 2. Malaysia

Malaysian discussants were much more open and at times voluble about interactions with corruption. The majority of discussants claimed first-hand knowledge of corruption. Most claimed to have paid bribes, most claimed to have witnessed the payment of bribes, and some discussants indicated a willingness to accept bribes.

Malaysian discussants suggested that bribery touches people's lives both directly and indirectly. As in the case of Singapore, Malaysian discussants suggested the existence of corruption in large transactions. Malaysian discussants, however, felt that bribery in such transactions may be somewhat regular; moreover, they

249. Licensed and monitored prostitution is legal in Singapore; procurement, solicitation, transportation of persons for purposes of prostitution, and unlicensed prostitution are felonies. Penal Code, 1871, c. 224, §§ 373–373A (Sing.).

250. The author could not find persons involved in the prostitution industry willing to engage in discussions of corruption. Two daytime walks through Geylang working on unproductive leads revealed activities that on the surface appeared questionable. For thorough discussions of this industry, see James Francis Warren, *Chinese Prostitution in Singapore: Recruitment and Brothel Organisation*, in *WOMEN AND CHINESE PATRIARCHY: SUBMISSION, SERVITUDE, AND ESCAPE* 77–107 (Maria Jaschok & Suzanne Miers eds., 1994); Yang Joel Wong, *Brothels, Pimps and Prostitutes: The Administration of Criminal Justice vis-à-vis Prostitution*, 17 SING. L. REV. 154 (1996) (discussing Singaporean law and police enforcement regarding prostitution).

251. Interestingly, these observations resonate with Robert Klitgaard's suggestion that an abundance of precise record keeping contributes to Singapore's success in controlling corruption; these records expose illicit activity to enforcer's scrutiny. KLITGAARD, *supra* note 205, at 127.

252. Those who experienced corruption did so outside of Singapore.

suggested that Malaysian as well as foreign businesses could be involved. Interestingly, almost all discussants considered large scale bribery harmful, and specifically listed among the potential harms that such corruption renders Malaysia less desirable as a destination for foreign investors.

Malaysian discussants described systemic corruption in which businesspeople could expect bribe requests of regular sizes for procurement contracts and for service contracts, and bribe requests of regular but larger size for construction contracts. Most discussants, particularly outside of the capital city Kuala Lumpur, felt that bribe requests were more likely in regional governments. Several discussants pointed to the evasion of environmental regulation as a frequent objective of bribery.<sup>253</sup>

In addition to bribery, some discussants opined that government officials, and in particular local government officials, collude with private business to exploit resources or markets for their personal benefit. Discussants speculated that looting of public office occurs, although most suggested that if it occurs it does so with far less frequency than in the past. Discussants had a variety of opinions regarding nepotism in public offices: some suggested that nepotism occurs with some frequency while others suggested that Malaysia's rules regarding cultural and ethnic diversity render nepotism difficult.

Discussant's conversations regarding private sector corruption were interesting but somewhat poorly informed. Discussants had a range of opinions regarding the competency of Malaysian businesses,<sup>254</sup> but to the extent that opinions converged, they converged on a less than favorable opinion. Discussants often confused perceived incompetence with corruption.<sup>255</sup> Corruption is the abuse or misuse of trust for personal gain rather than the benefit of the parties granting that trust.<sup>256</sup> To include every undesirable behavior within the rubric of corruption dilutes the meaning of the word "corruption" and makes focused analysis more difficult. Indeed, Malaysian discussants at times seemed to discuss levels of trust

253. See Julia Amrock, Note, *Challenges for Private Sector Conservation: Sanderson's The Future of Conservation in Tierra del Fuego*, 13 IND. J. GLOBAL LEGAL STUD. 595, 601 (2006) (noting a relationship between corruption and environmental degradation in developing countries).

254. Businesspeople shared in the breadth of opinion.

255. The author has frequently observed the confusion of corruption with any undesirable conduct in interviews conducted around the world. See Debbie Orpin, *Corpus Linguistics and Critical Discourse Analysis: Examining the Ideology of Sleaze*, 10 INT'L J. CORPUS LINGUISTICS 37, 51 (2005) (finding that "incompetence," "inefficiency," and "mismanagement" are lexical collates of "corruption").

256. ASIAN DEV. BANK, ANTICORRUPTION: OUR POLICIES AND STRATEGIES 9 (2000), available at <http://www.adb.org/Documents/Policies/Anticorruption/anticorruption.pdf>; see Nye, *supra* note 65, at 419 n.10.

rather than levels of corruption: Malaysian businesspeople appeared to distrust business in general.<sup>257</sup>

In general, discussants had positive attitudes toward individual government officials in Malaysia; negative attitudes were often associated with petty corruption.<sup>258</sup> Discussants emphasized that corrupt behaviors are not universal and often excused corrupt behaviors by explaining that government officials do not receive adequate salaries,<sup>259</sup> or that they are under pressure from peers or superiors to demand or accept bribes. At the same time, discussants explained that this corruption did have an effect on the manner in which discussants conduct business. Most discussants attempted to avoid reliance on government institutions to the extent possible. In this, discussants reflected the disengagement predicted by Susan Rose-Ackerman and others.<sup>260</sup>

Many discussants from business sectors also explained—usually emphatically—that in operating their businesses they preferred to limit business relationships to persons well known by or somehow affined to themselves. When presented with a hypothetical business relationship with a stranger that could be beneficial, respondents usually asked whether the hypothetical stranger was Malaysian or foreign.<sup>261</sup> If told the stranger was Malaysian, discussants usually then talked about the risks associated with entering into business relationships with strangers. It was not clear that these discussants had created parallel institutions to support their affined

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257. Frank Cross observes that, “Trust is surely important for reasons beyond the mere economic. It is regarded as ‘one essential source of social order.’” Frank B. Cross, *Law and Trust*, 93 GEO. L.J. 1457, 1481 (2005) (quoting BERNARD BARBER, *THE LOGIC AND LIMITS OF TRUST* 166 (1983)). Cross further explains:

Comparative studies have found that generalized trust of other people is ‘an important correlate of stable democratic government.’ Internationally, higher trust is associated ‘with higher ratings on subjective measures of governmental efficiency, corruption, and infrastructure quality.’ Another study found that trust was associated with less corruption, bureaucratic quality, tax compliance, civic participation, and better education.

*Id.* (citations omitted).

258. See discussion *infra* notes 264–65 and accompanying text.

259. Jeremy Pope vehemently denies a connection between low government salaries and corruption. See JEREMY POPE, *CONFRONTING CORRUPTION: THE ELEMENTS OF A NATIONAL INTEGRITY SYSTEM* 9–10 (2000), available at <http://www.transparency.org/sourcebook/index.html> (describing the common wisdom that low salaries cause corruption as a “myth” and stating that “the evidence is all to the contrary”). Pope points out that some wealthy countries experience serious corruption, and equates linkages between income and corruption “as being little short of a blanket defamation of the poor.” *Id.* at 7.

260. See *supra* note 87.

261. If told the stranger was foreign, discussants asked more questions that, without using this terminology, attempted to assess the institutions that might support a relationship with that stranger.

relationships.<sup>262</sup> Rather, discussants spoke of the importance of knowing how someone would behave, the quality of trustworthiness, and the importance to their own businesses of having a good reputation among friends and colleagues.

Malaysian discussants believed that petty corruption pervades Malaysia. Discussants reported petty corruption throughout the nation—in interactions with police, licensing agencies, low level bureaucracies, and education. Discussants did not describe petty corruption as ubiquitous—they did not believe that all or even most interactions involved corruption; rather, they believed in or had experienced the occurrence of petty corruption on occasion in a variety of different transactions.

With respect to petty corruption, discussants exhibited a contemptuous attitude toward government officials. One sample bias in this study involves the income level of discussants—none of the discussants experience poverty.<sup>263</sup> Thus the discussants could easily satisfy requests for petty bribes. Almost all discussants, however, found requests for petty bribes annoying rather than convenient. Discussants felt that petty bribery degrades government services, and many voiced suspicions that bureaucrats created artificial delays for the purpose of demanding petty bribes.<sup>264</sup>

Government officials openly discussed the existence of petty corruption. Officials realized the danger posed to Malaysia by petty corruption, and expressed a desire to curb or eliminate the practice. Some explained the existence of petty corruption as a result of proximity to countries in which corruption runs rampant, and some attributed petty corruption to the difficulty in controlling dispersed local governments within a federal system.<sup>265</sup>

Discussants voiced concern over the danger posed to Malaysia by corruption in general. At the same time, discussants expressed pride in Malaysia and in the degree to which it has controlled corruption. Discussants rarely mentioned Singapore, but made frequent reference to endemic corruption in other Southeast Asian countries.

262. See *supra* notes 84–91 and accompanying text (discussing parallel institutions).

263. Fewer than 6 percent of Malaysians live below the poverty line. *The World Factbook: Malaysia*, *supra* note 114.

264. See *supra* notes 106–07 and accompanying text (discussing effects of corruption on government services).

265. Malaysia consists of thirteen states and one federal territory. Nine of the federal states have hereditary rulers, four have governors appointed by the federal government. The two states on the island of Borneo—Sabah and Sarawak—which joined Malaysia more as a function of British colonial occupation and administration than through cultural or historical affinity, maintain distinct rights, such as control of immigration. *The World Factbook: Malaysia*, *supra* note 114; see *supra* notes 138–42 and accompanying text (discussing political history of Malaysia).

Compared to these neighbors, discussants argued, Malaysia should be perceived as a well-governed state.

### C. Responses to Corruption Agencies

As discussed above, Malaysia and Singapore have each created semi-independent agencies to investigate allegations or complaints of corruption and to recommend prosecution of those found engaging in corruption.<sup>266</sup> While the agencies exhibit many similarities, reaction to those agencies differs.

#### 1. Singapore

Discussants expressed confidence in the Corrupt Practices Investigation Bureau. Discussants described the CPIB as generally fair and quite scrupulous in its activities. No discussants claimed that the CPIB acts as a tool of the party in control of the government;<sup>267</sup> nor did any claim that it acted in an impartial manner. Discussants did not hail the CPIB as a savior of Singapore,<sup>268</sup> probably because corruption does not threaten Singapore as it does other countries in Southeast Asia.<sup>269</sup> Rather, discussants seemed to consider the CPIB as a competent, noncontroversial agency that functions as well as other agencies in the government.

Discussants generally reported a belief that corrupt acts would be discovered and corrupt actors prosecuted. When discussing their own behavior, however, the possibility of detection and prosecution did not play a major role. Compliance with laws regarding corruption seemed to be assumed; discussants did not volunteer explanations of their behavior. When asked, businesspeople generally offered a three-pronged answer. First, they responded that bribery was not part of the Singaporean manner of conducting business. Second, businesspeople opined that the offer of a bribe could not be kept secret and would seriously damage their reputation and standing in the community. Third, they pointed out that a bribe offer would have

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266. *Supra* notes 184–90, 194–204 and accompanying text.

267. Although the People's Action Party has controlled the government since Singapore acquired self-rule, Singapore does enjoy a multiparty democracy. *The World Factbook: Malaysia*, *supra* note 114.

268. *Contra* KLITGAARD, *supra* note 205, at 126 (crediting the CPIB with a “dramatic turnaround” in Singapore).

269. Interestingly, persons outside of Singapore heap far more approbation on the CPIB than do the discussants inside Singapore. *See, e.g.*, Leslie Gielow Jacobs & Benjamin B. Wagner, *Limits to the Independent Anti-Corruption Commission Model of Corruption Reform: Lessons from Indonesia*, 20 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 327, 328 (2007) (noting that both the ICAC and the CPIB are “widely hailed as success stories”); Zahraiddin-Aravena, *supra* note 197, at 782 (stating that the CPIB has “been critical to the development of Singapore”).

little effect, because government officials would be extremely unlikely to accept. Somewhat jokingly, a few discussants suggested that at most a bribe offer would place them in front of the CPIB.

## 2. Malaysia

Discussants in Malaysia held generally unfavorable opinions of the Anti-Corruption Agency. The Agency was often described as toothless. Discussants complained that the Agency pursued only *ikan bilis*—small fish—and did not pursue serious corruption committed by senior government officials or wealthy businesspeople.<sup>270</sup> Many people construed the failure to prosecute senior officials as evidence that the ACA was a tool of the ruling political coalition rather than an independent body.<sup>271</sup>

The attitudes of discussants presented an interesting conundrum. On the one hand, discussants disapproved of corruption, found corruption harmful, desired an active program to combat corruption, and felt genuine pride in Malaysia's successes in controlling corruption. On the other hand, discussants reported skepticism about the agency tasked with combating corruption and expressed little desire to cooperate with that agency. To cooperate with the agency was perceived by some discussants as complicity with selective prosecution aimed at consolidating political power rather than impartially combating corruption.

Paradoxically, the ACA was mentioned when discussants explained their own behavior. Even discussants who described the ACA as toothless expressed concern that corrupt behavior might be detected and investigated by the ACA. That concern was not expressed as a certainty, but instead as a possibility. Discussants uniformly expressed a belief that investigation by the ACA would be burdensome; none expressed any confidence that they could use connections or bribes to influence the ACA. Others, they believed, could do so, but not themselves.

Potential investigation by the ACA was not the only factor that discussants reported as influencing their behavior with respect to corruption. Those who did not engage in corruption referred to the harms that corruption could inflict on Malaysia; more than half of this subgroup also expressed solidarity with national movements to

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270. Cf. Milne, *supra* note 156, at 57 (reporting that the ACA had a reputation for not going after "big fish").

271. Malaysia has an active democratic government. The federal government, however, has been controlled by the same political coalition, the United Malays National Organization (*Pertubuhan Kebangsaan Melayu Bersatu*), since Malaysia obtained independence from British occupation in 1957. *The World Factbook*, *supra* note 114.

control corruption. A handful of discussants also mentioned concern about the effect corruption would have on their reputations.

Government officials mentioned the ACA somewhat less when discussing their own behaviors. Those who engaged in corruption expressed doubt that the ACA would concern itself with their activities. On the other hand, those who did not engage in corruption generally believed that the ACA could discover corrupt activities and that prosecution would ensue. More frequently, however, those discussants that did not engage in corruption referred to professionalism, self-respect, and their responsibility to conduct themselves in a manner that inured to the benefit of Malaysia.

#### IV. THE IMPLEMENTATION OF CORRUPTION LAWS

The interviews described in this paper do not produce large sets of data that can be employed to find the broad shapes of corruption in Singapore and Malaysia. The interviews do, however, shed light on aspects of corruption in these countries that quantitative studies might not initially discover. These insights, in turn, suggest areas in which scholars and policymakers might focus more attention. In particular, the discussions indicate that the psychic costs associated with a corrupt act may be greater in Singapore. The discussions also highlight the fact that corruption is not a unitary phenomenon. On a positive note, the discussions serve as a reminder that legal regimes can effectively control corruption.

##### A. *Internalization of Corruption Controls*

Why does Singapore succeed at controlling corruption? Many theories attempt to explain crime and thus the means of its control.<sup>272</sup> Robert Lilly, Francis Cullen, and Richard Ball point out, however, that these theories simply predict whether people are more likely to commit more crime.<sup>273</sup> They observe that:

[I]n the end, crime is not simply due to underlying motivations or dispositions; it also involves a concrete *choice*—or, in fact a *sequence of choices*—that must be made if these motivations are to result in an actual criminal act.<sup>274</sup>

A different way to ask the same question, therefore, would be: why do fewer people in Singapore choose to act corruptly? The discussions

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272. Several of these theories are explained in FRED A ADLER, GERHARD O. W. MUELLER & WILLIAM S. LAUFER, *CRIMINOLOGY* 85–223 (6th ed. 2007).

273. J. ROBERT LILLY, FRANCIS T. CULLEN & RICHARD A. BALL, *CRIMINOLOGICAL THEORY: CONTEXT AND CONSEQUENCES* 341–42 (5th ed. 2011).

274. *Id.* at 341.

described in this paper may provide some insight. That insight involves psychic costs, which must be placed in the context of a theory regarding an individual decision to violate legal rules.

Gary Becker offers a rational choice theory to explain that decision.<sup>275</sup> Becker suggests that people consciously or unconsciously evaluate the potential costs and the potential gains before deciding to commit a crime.<sup>276</sup> This, of course, is not always true: some crimes are the result of blind passion or impulse, some crimes result from negligence or recklessness.<sup>277</sup> Moreover, each individual's choices occur within complex social structures that involve factors well outside of that individual's control.<sup>278</sup> Becker's insight should never be interpreted as a complete explanation of criminal behavior. Empirical research, however, indicates that for great numbers of criminal actors Becker's observation has a great deal of relevance.<sup>279</sup> This is particularly true with respect to "white collar" crimes such as corruption, and in particular the acceptance of a bribe.<sup>280</sup>

275. Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968); see Joanna Shepherd, *Blakely's Silver Lining: Sentencing Guidelines, Judicial Discretion, and Crime*, 58 HASTINGS L.J. 533, 544 (2007) (describing Becker's method as "one of the primary models for analyzing criminal behavior").

276. Becker, *supra* note 275, at 178. Becker suggested that the number of crimes a person would commit— $O_j$ —is equal to  $O_j(p_j, f_j, u_j)$ , where " $p_j$  [is] his probability of conviction per offense,  $f_j$  his punishment per offense, and  $u_j$  a portmanteau variable representing all these other influences." *Id.* at 177.

277. See Charles H. Whitebread & John Heilman, *Increasing Our Effectiveness Against Crime: Expanding the Limits of Law Enforcement*, 93 YALE L.J. 1399, 1412 n.75 (1984) (discussing crimes committed in "the heat of passion"); *Recent Case*, United States v. Woods, 576 F.3d 400 (7th Cir. 2009), 123 HARV. L. REV. 760, 763 (2010) ("[A] crime with a mens rea of recklessness does not involve purposeful conduct."). Robert Cooter and Thomas Ulen point also out that

criminals may not actually reason as in the economic model, but they may act as if they had. By saying that criminals act 'as if they had deliberated, we mean that, when presented with the opportunity to commit crimes, they respond immediately to benefits and risks as if they had weighed them.

ROBERT COOTER & THOMAS ULEN, LAW & ECONOMICS 442 (2003).

278. See LILLY, CULLEN & BALL, *supra* note 273, at 289 (discussing the complexity of attempting this calculation and the numerous influences not accounted for).

279. See Samuel Cameron, *The Economics of Crime Deterrence: A Survey of Theory and Evidence*, 41 KYKLOS: INT'L REV. FOR SOC. SCI. 301 (1988) (surveying empirical tests of models based on Becker's observations); Shepherd, *supra* note 275, at 545 (discussing the explanatory power of Becker's model).

280. Raymond Paternoster & Sally Simpson, *Sanction Threats and Appeals to Morality: Testing a Rational Choice Model of Corporate Crime*, 30 LAW & SOC'Y REV. 549 (1996); see Andrew Weissmann & Joshua A. Block, *White-Collar Defendants and White-Collar Crimes*, 116 YALE L.J. POCKET PART 286, 290 (2007) ("White-collar offenses are not generally crimes of passion."); see also Paul B. Stephan, *Rationality and Corruption in the Post-Socialist World*, 14 CONN. J. INT'L L. 533, 538 (1999) (stating that these theories apply to corruption). Becker himself applied his model to police misconduct, including corruption. Gary S. Becker & George J. Stigler, *Law*

Jin-Wook Choi utilizes the rational choice perspective in his comparison of Hong Kong's Independent Commission Against Corruption and Singapore's Corrupt Practices Investigation Bureau.<sup>281</sup> He suggests an individual decision about corruption can be depicted as

$$\text{Utility} = \text{Benefit} - p(\text{Detection}) \times \text{Sanction}$$

and explains that “[t]his equation implies that individual utility is determined by the expected benefits from corruption and disutility from the probability of being caught multiplied by the severity of ensuing sanctions.”<sup>282</sup> Choi’s description of the decision to violate corruption laws falls into a category that Lilly, Cullen, and Ball describe as “crass.”<sup>283</sup> This category of rational choice descriptions takes into consideration only the expected benefits and punishments, whereas in reality an actor takes into account “formal, informal, and self-imposed costs.”<sup>284</sup>

A somewhat more accurate depiction of the decision to act corruptly takes into account those and other costs:<sup>285</sup>

$$\text{Utility} = \text{Benefits} - (p \times \text{Criminal Penalties}) + (p \times \text{Social Penalties}) + \text{Cost of Favor} + \text{Psychic Costs}$$

This depiction takes into account the value of the offered benefit, but recognizes that the value to the offeree is a function of, among other things, the extent to which the bribe can be used—even a very large bribe is of no value if it cannot be used in secrecy.<sup>286</sup> Singapore has

*Enforcement, Malfeasance, and Compensation of Enforcers*, 3 J. LEGAL STUD. 1, 1 (1974); see Rafael di Tella & Ernesto Scharfrodsky, *The Role of Wages and Auditing During a Crackdown on Corruption in the City of Buenos Aires*, 46 J.L. & ECON. 269 (2003) (using Becker and Stigler’s analysis to evaluate efforts to reduce police corruption in Argentina).

281. Jin-Wook Choi, *Institutional Structures and Effectiveness of Anticorruption Agencies: A Comparative Analysis of South Korea and Hong Kong*, 17 ASIAN J. POL. SCI. 195 (2009).

282. *Id.* at 197.

283. LILLY, CULLEN & BALL, *supra* note 273, at 289.

284. See *id.* (describing other factors and noting that “people do not arrive at a point of decision as empty vessels devoid of all morality”).

285. A version of this depiction is put forward and explained at length in Philip M. Nichols, *The Perverse Effect of Campaign Contribution Limits: Reducing the Allowable Amounts Increases the Likelihood of Corruption in the Federal Legislature*, 48 AM. BUS. L.J. 77, 100–09 (2011).

286. If government officials accept bribes publicly, the parties face imprisonment. See DAVID CHAIKIN & J. C. SHARMAN, *CORRUPTION AND MONEY LAUNDERING* 23 (2009) (discussing the need for bribe recipients to launder their money so that the money can be used). Chaikin and Sharman note that “corruption and money laundering are symbiotic.” *Id.* at 1. Secret Swiss bank accounts are more than glamorous; they also make possible the laundering and subsequent use of large

been used in the past to hide illicit funds;<sup>287</sup> the extensive recordkeeping inherent to Singapore, however, could make the transfer of illicit funds difficult.<sup>288</sup> Because no Singaporean discussant had experience accepting bribes, conversations with those discussants did not reveal how bribes are accepted or used. Malaysian discussants simply referred to offshore accounts.<sup>289</sup>

This depiction also takes into account the perceived risk of detection and subsequent criminal penalties. *Perceived* risk of detection and prosecution actually has more impact on the actor's decision than does the bare-boned "probability" to which the crass depiction refers.<sup>290</sup> Discussants from both Singapore and Malaysia believed that corrupt activities could be detected and prosecuted.<sup>291</sup> Discussants from Singapore, however, expressed far greater respect for the Corrupt Practices Investigation Bureau than did Malaysian discussants for the Anti-Corruption Agency.<sup>292</sup> That respect undoubtedly plays a role in controlling corruption in Singapore by increasing the *perceived* costs when an actor contemplates a corrupt act.

Costs imposed by the criminal law do not consist only of incarceration or fines. This depiction recognizes that the cost borne by the offeree is affected by many factors, including the likelihood of prosecution, expenses incurred by mounting a defense, the mental and physical tolls associated with criminal litigation, and time lost

amounts of money. See Padideh Ala'i, *The Legacy of Geographical Morality and Colonialism: A Historical Assessment of the Current Crusade Against Corruption*, 33 VAND. J. TRANSNAT'L L. 877, 903 n.127 (2000) (noting that money accrued through corruption flows into secret Swiss bank accounts rather than into productive domestic uses).

287. See Paul D. Carrington, *Enforcing International Corrupt Practices Law*, 32 MICH. J. INT'L L. 129, 137 (2010) (describing flow of illegal money from Bangladesh).

288. See KLITGAARD, *supra* note 205, at 127 (discussing recordkeeping).

289. The fact that all of the Malaysian discussants referred to bribes in the form of currency—and then almost always in the form of Malaysian ringgits—is of some interest. Bribes occur in many forms: "The bribe may be anything having monetary value, including cash, liquor, lottery chances, and welfare benefits such as food stamps." CRAIG C. DONSANTO & NANCY L. SIMMONS, U.S. DEPT OF JUSTICE, FEDERAL PROSECUTION OF ELECTION OFFENSES 47 (7th rev. ed. 2007), available at <http://www.usdoj.gov/criminal/pin/docs/electbook-rvs0807.pdf>. Indeed, one of the most common forms of bribe that the author has encountered takes the form of college tuition for the bribe recipient's children. See Anand Giridharadas, *Indian to the Core, and an Oligarch*, N.Y. TIMES, June 15, 2008, at B1 (describing forms of bribery including paying college tuition for bureaucrats' children); Michael Janofsky, *Court Asked to Revive Case Against 2 in Salt Lake City Bid Scandal*, N.Y. TIMES, Jan. 24, 2002, at D1 (discussing bribes that were paid to Olympic Committee members by Salt Lake City, including U.S. college admission and tuition).

290. See Carol A. Heimer, *Social Structure, Psychology, and the Estimation of Risk*, 14 ANN. REV. SOC. 491 (1988) (explaining that actors make evaluations based on their perceptions rather than the objective probability).

291. See *supra* Part IV.C.1–2.

292. See *supra* Part IV.C.1–2.

from family and friends and other opportunity costs incurred while incarcerated.<sup>293</sup> Interestingly, conversations with discussants from Singapore revealed concerns about these costs: Singaporean discussants expressed concern that dismissal from government positions on grounds of corrupt activity would render them unemployable in the private sector.<sup>294</sup>

This depiction takes into account costs not represented in the “crass” model. Corruption will evoke social costs, which a rational decision maker will discount by the probability of social detection.<sup>295</sup> Social detection differs from detection by law enforcement agents; one’s neighbors may know what the police do not. Social costs include the informal penalties imposed by society in general, usually in the form of reputation and shame.<sup>296</sup> These penalties play a powerful role in controlling compliance with legal regimes: “the real power to gain compliance with society’s rules of prescribed conduct lies not in the threat or reality of official criminal sanction, but in . . . [t]he networks of interpersonal relationships in which people find themselves, [and] the social norms and prohibitions shared among those relationships.”<sup>297</sup> Discussants from both Singapore and Malaysia held corruption in contempt, but conversations with discussants revealed one way in which social costs in Singapore may be higher than in Malaysia. Malaysian discussants happily dine with those whom they strongly suspect of corruption, and even accord a degree of respect to

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293. See Pamela S. Karlan, *Contingent Fees and Criminal Cases*, 93 COLUM. L. REV. 595, 605 n.47 (1993) (discussing the costs associated with the criminal process); Shepherd, *supra* note 275, at 545–46 (discussing many costs, including some imposed by the criminal process).

294. See Becker & Stigler, *supra* note 280, at 1–18 (discussing opportunity costs of criminal acts).

295. See Patrick J. Keenan, *The New Deterrence: Crime and Policy in the Age of Globalization*, 91 IOWA L. REV. 505, 536 (2006) (discussing social costs including shame and social censure); Elizabeth Spahn, *International Bribery: The Moral Imperialism Critiques*, 18 MINN. J. INT’L L. 155, 179 (2009) (noting that corruption is universally condemned).

296. Ronet Bachman, Raymond Paternoster & Sally Ward, *The Rationality of Sexual Offending: Testing a Deterrence/Rational Choice Conception of Sexual Assault*, 26 LAW & SOC’Y REV. 343, 355 (1992); Patrick J. Keenan, *The New Deterrence: Crime and Policy in the Age of Globalization*, 91 IOWA L. REV. 505, 536 (2006); see ADLER, MUELLER & LAUFER, *supra* note 272, at 168 (stating that social controls include “laws, norms, customs, mores, ethics, and etiquette”).

297. Paul H. Robinson & John M. Darley, *The Utility of Desert*, 91 NW. U. L. REV. 453, 457 (1997); see Alessandro Balestrino, *It Is a Theft but Not a Crime*, 24 EUR. J. POL. ECON. 455, 456 (2008) (“A commonly advocated explanation for apparent deviations from rational behaviour is the existence of social norms that imply a stigma for those who do not adhere to them. For example, dodging taxes may be quite lucrative, and still many people may refrain from it because of the psychic costs associated with violating a custom that condemns such instances of anti-social behaviour.”).

such persons because of their wealth.<sup>298</sup> The absence of social consequences reduces the social costs associated with violation of corruption rules.<sup>299</sup>

A potential bribe-taker must take into consideration the cost of the performance that is required as quid pro quo for the bribe.<sup>300</sup> This is not an inconsequential cost: arguably, for example, the great ease with which an individual U.S. legislator can direct funds to an individual project has contributed to corruption in the U.S. legislature.<sup>301</sup> Malaysian discussants alluded to these costs in referring to the difficulty of controlling corruption in a decentralized system and in opining that more corruption occurs away from the central administration than within it.<sup>302</sup>

This depiction also takes into account psychic costs.<sup>303</sup> Psychic costs accrue from emotional, psychological, and other internal factors.<sup>304</sup> Whereas violation of social controls provokes reputational

298. In conversations that the author had with a group of Pakistani businesspeople, those businesspeople discussed the same phenomenon in Pakistan, which they referred to as the “big man syndrome.” These businesspeople very perceptively suggested that the big man syndrome makes corruption control more difficult in Pakistan, because even though corruption is roundly condemned, corrupt actors bear little real social condemnation for their actions. Other legal scholars have reported on similar “big man” issues in the application of law. See Vivek Maru, *Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide*, 31 YALE J. INT’L L. 427, 434–35 (2006) (discussing the difficulty of prosecuting “big men” in Sierra Leone); Walter Otto Weyrauch & Maureen Anne Bell, *Autonomous Lawmaking: The Case of the “Gypsies,”* 103 YALE L.J. 323, 352 (1993) (discussing the role of “big men” in Romani law).

299. See Marta Orviská, Anetta Čaplánová, Jozef Medved & John Hudson, *A Cross-Section Approach to Measuring the Shadow Economy*, 28 J. POL’Y MODELING 713, 721 (2006) (noting that the extent to which social stigma deters illicit behavior “depends upon the attitude of the community itself”).

300. See Shepherd, *supra* note 275, at 544–45 (discussing the “direct costs” of a decision to commit a crime).

301. Legislators can direct funds through the process of “earmarking,” a process that allows a single legislator to insert spending directions into general spending bills with no oversight and almost no debate. See Rebecca M. Kysar, *Listening to Congress: Earmark Rules and Statutory Interpretation*, 94 CORNELL L. REV. 519, 542–51 (2009) (describing a multitude of ways in which transparency rules governing earmarking are evaded by legislators); Thomas M. Susman & Margaret H. Martin, *Contingent Fee Lobbying: Inflaming Avarice or Facilitating Constitutional Rights?*, 31 SETON HALL LEGIS. J. 311, 343 (2007) (noting that earmarking “has been subject to strong condemnation for providing a fertile breeding ground for both congressional and lobbyist corruption”).

302. Other observations of Malaysian respondents are reported *supra* Part IV.B.2.

303. See Sanja Kutnjak Ivkovic, *To Serve and Collect: Measuring Police Corruption*, 93 J. CRIM. L. & CRIMINOLOGY 593, 599 (2003) (stating that a rational actor considers psychic costs when contemplating whether to act corruptly).

304. See ADLER, MUELLER & LAUFER, *supra* note 272, at 168 (describing sources of internal costs); see also Reza Fadaei-Tehrani & Thomas M. Green, *Crime and Society*, 29 INT’L J. SOC. ECON. 781, 784 (2002) (“[E]conomists agree that the gains and costs of criminal behavior include psychic elements. These psychic costs and benefits

shame, violation of these internal rules evokes personal feelings of guilt.<sup>305</sup> One very important psychic cost is the effort required to overcome these internal barriers to violation of the law.<sup>306</sup>

Empirical evaluation of psychic costs is difficult because determining the existence of these barriers is difficult.<sup>307</sup> Nonetheless, psychic costs are recognized as having powerful influence on an individual's decisions regarding compliance with law.<sup>308</sup> In reviewing empirical studies of crime, Lilly, Cullen, and Ball observe that "[m]orality appears to be the strongest predictor of the willingness to offend."<sup>309</sup>

Internal barriers to criminal behavior obviously have a close relationship to social rules and norms, because those rules and norms often serve as the source of internal attitudes toward a criminal action.<sup>310</sup> Katharine Baker describes this relationship as an "internalize[ation] of external legal proscription[s]."<sup>311</sup> The discussions reported in this paper suggest that Singaporeans have internalized laws regarding corruption to a far greater extent than have Malaysian discussants. Accordingly, psychic costs are higher for

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become a net for all kinds of psychological, sociological, and political phenomena."). See generally Jack P. Gibbs, *Social Control, Deterrence, and Perspectives on Social Order*, 56 SOC. FORCES 408 (1977) (discussing importance and variety of controls in personal decisions about crime).

305. Harold G. Grasmick & Robert J. Bursik, Jr., *Conscience, Significant Others, and Rational Choice: Extending the Deterrence Model*, 24 LAW & SOC'Y REV. 837, 840 (1990).

306. See Eric A. Posner, *Law, Economics, and Inefficient Norms*, 144 U. PA. L. REV. 1697, 1729 (1996) ("The amount of psychic cost depends on the kind and intensity of moral values held by observers.").

307. See John A. Bargh & Kimberly Barndollar, *Automaticity in Action: The Unconscious as Repository of Chronic Goals and Motive*, in *THE PSYCHOLOGY OF ACTION: LINKING COGNITION AND MOTIVATION TO BEHAVIOR* 457, 459 (Peter M. Gollwitzer & John A. Bargh eds., 1995) (describing difficulties of empirical research and techniques for discerning internal controls).

308. See Katharine K. Baker, *Sex, Rape, and Shame*, 79 B.U. L. REV. 663, 680 (1999) ("People obey the law because they internalize the external legal proscription.").

309. LILLY, CULLEN & BALL, *supra* note 273, at 289–90; see JOHN BRATHWAITE, *CRIME, SHAME AND REINTEGRATION* 71 (1989) ("[C]onscience is a much more powerful weapon to control misbehavior than punishment.").

310. Dan Kahan and Martha Nussbaum explain that "[i]ndividuals thus refrain from criminality not because they fear the threatened punishment but because they have no desire to engage in such behavior; and they have no desire to engage in such behavior because they know it is deemed worthy of criminal punishment." Dan M. Kahan & Martha C. Nussbaum, *Two Conceptions of Emotion in Criminal Law*, 96 COLUM. L. REV. 269, 356 (1996); see J. Mark Ramseyer, *The Costs of the Consensual Myth: Antitrust Enforcement and Institutional Barriers to Litigation in Japan*, 94 YALE L.J. 604, 644 (1985) ("An individual's culture provides him or her with psychic rewards for conforming his or her behavior to cultural norms and with psychic costs for doing otherwise, and this psychic calculus takes on a social dimension through communal action: acceptance and praise for appropriate behavior, rejection and scorn for any deviation.").

311. Baker, *supra* note 308, at 680.

Singaporean officials, which almost certainly contributes to the greater reluctance of Singaporean officials to demand or accept bribes.

### B. *Corruption Is Not Monolithic*

Transparency International's Corruption Perceptions Index in particular, and quantitative measures of corruption in general, have revolutionized the study of corruption and have engendered a plenitude of quantitative studies of corruption.<sup>312</sup> These indexes deserve substantial respect for their contributions to the general understanding of corruption.<sup>313</sup> Conversations with Singaporean and Malaysian discussants, however, suggest a serious limitation to the utility of these indexes: these indexes treat corruption as a monolithic, linear phenomenon, whereas discussants in each of the countries experienced corruption in a different manner. Corruption had little direct interaction with the lives of Singaporean discussants, but did constitute a regularly encountered feature for most Malaysian discussants.<sup>314</sup> The indexes do not account for these, or any, differences in how corruption manifests itself.

Other fieldwork conducted by the author of this paper supports this observation. The author of this paper has conducted extensive fieldwork on corruption in the countries of Kazakhstan and Mongolia.<sup>315</sup> The two countries receive very close scores, of 2.9 and 2.7, in the Corruption Perceptions Index.<sup>316</sup> Yet corruption manifests itself differently in each country. Grand corruption<sup>317</sup> in Mongolia

312. *E.g.*, Kenneth W. Abbott & Duncan Snidal, *Values and Interests: International Legalization in the Fight Against Corruption*, 31 J. LEGAL STUD. S141, S165 n.58 (2002) ("By establishing the well-known Corruption Perceptions Index in July 1995, [Transparency International] helped focus global public attention on corruption; this translated into support for restrictions on transnational bribery."); Staffan Andersson & Paul M. Heywood, *The Politics of Perception: Use and Abuse of Transparency International's Approach to Measuring Corruption*, 57 POL. STUD. 746, 747 (2009) (characterizing the Corruption Perceptions Index as "most influential" and "immensely important" and noting that the Index "offer[s] for the first time a systematic basis on which to compare perceptions of corruption across a range of different countries, . . . [without which] it is doubtful whether many secondary studies which seek to identify the causes of corruption would have been undertaken").

313. *See* Barbara Crutchfield George, Kathleen A. Lacey & Jutta Birmele, *The 1998 OECD Convention: An Impetus for Worldwide Changes in Attitudes Toward Corruption in Business Transactions*, 37 AM. BUS. L.J. 485, 494 n.55 (2000) (lauding the Corruption Perceptions Index).

314. *See supra* Part IV.B.1–2.

315. *See* Nichols, *supra* note 6, at 915–45 (discussing results of fieldwork in Kazakhstan); Nichols, Siedel & Kasdin, *supra* note 6, at 215–56 (comparing findings of author's fieldwork in Mongolia with findings of co-authors' fieldwork in Romania).

316. *Corruption Perceptions Index 2010 Results*, *supra* note 28.

317. "Grand corruption" consists of large payments made to politicians or bureaucrats with the power to make or influence discretionary decisions, usually for large projects or procurements. Ala'i, *supra* note 286, 930 n.268.

reflects the contest for power between Mongolia's two neighbors: informants allege that Chinese interests pay block bribes to the Mongolian People's Revolutionary Party, which then divides the money among MPRP politicians who are expected to act in favor of those interests. Informants allege that Russian interests, on the other hand, pay bribes to specific politicians, usually members of the Democratic Party, in exchange for favorable treatment in specific actions or approvals. Grand corruption in Kazakhstan tends to be bureaucratized and hierarchical.<sup>318</sup> Bribery is one of the main issues of concern in Mongolia, while Kazakhstanis tend to worry about theft by government actors and the relationship between government and organized crime.<sup>319</sup> The countries receive nearly the same score in the Corruption Perceptions Index, and may therefore be perceived to experience nearly the same raw amount of corruption. In reality, corruption manifests itself quite differently in each country.

The admonition that similar scores on corruption indexes can represent different manifestations of corruption has special application to legal scholarship, as legal scholars have comprehensively embraced the Corruption Perceptions Index. Legal scholars use the Corruption Perceptions Index to describe corruption in countries<sup>320</sup> or in groups of countries,<sup>321</sup> although it should be

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318. See Jakob Rigi, *Corruption in Post-Soviet Kazakhstan*, in BETWEEN MORALITY AND THE LAW: CORRUPTION, ANTHROPOLOGY AND COMPARATIVE SOCIETY 101, 102–14 (Italo Pardo ed., 2004) (describing corruption in Kazakhstan and providing case studies).

319. When asked to select among definitions of corruption, 60 percent of Mongolian respondents chose "acceptance of monetary rewards for services rendered." Nichols, Siedel & Kasdin, *supra* note 6, at 232–33. Kazakhstanis were asked the same question. Nichols, *supra* note 6, at 955–56. Fourteen percent also chose "acceptance of monetary rewards for services rendered." Twenty-one percent, however, selected "infiltration of government by organized crime." *Id.*

320. *E.g.*, Ackerman, *supra* note 95, at 715 n.202 (using the Corruption Perceptions Index score to describe India); Jianlin Chen, *Curbing Rent-Seeking and Inefficiency with Broad Takings Powers and Undercompensation: The Case of Singapore from a Givings Perspective*, 19 PAC. RIM L. & POL'Y J. 1, 18 (2010) (using the Corruption Perceptions Index to support the statement that "Singapore is one of the world's least corrupt nations"); Wendy N. Duong, *Partnerships with Monarchs – Two Case Studies: Case One: Partnerships with Monarchs in the Search for Oil: Unveiling and Re-Examining the Patterns of "Third World" Economic Development in the Petroleum Sector*, 25 U. PA. J. INT'L ECON. L. 1171, 1178 n.15 (2004) (using the Corruption Perceptions Index to describe Nigeria); Matthew Genasci & Sarah Pray, *Extracting Accountability: The Implications of the Resource Curse for CSR Theory and Practice*, 11 YALE HUM. RTS. & DEV. L.J. 37, 52 n.72 (2008) (using the Corruption Perceptions Index to describe Equatorial Guinea); C. Raj Kumar, *Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India*, 17 COLUM. J. ASIAN L. 31, 33 (2003) (using the Corruption Perceptions Index ranking to describe India); Michael A. Nemeroff, *The Limited Role of Campaign Finance Laws in Reducing Corruption by Elected Public Officials*, 49 HOW. L.J. 687, 714–15 (2006) (using the Corruption Perceptions Index to describe corruption in the United States); Ijeoma Opara, *Nigerian Anti-Corruption*

noted that some scholars use the Corruption Perceptions Index as only part of a more fulsome description of corruption in a particular country.<sup>322</sup> Legal scholars use the Corruption Perceptions Index as a means of or source of data for comparative analysis of countries and regions.<sup>323</sup> Legal scholars draw conclusions from changes in time in Corruption Perceptions Index scores,<sup>324</sup> they perform correlative

*Initiatives*, 6 J. INT'L BUS. & L. 65, 66 (2007) (using the Corruption Perceptions Index to describe corruption in Nigeria).

321. *E.g.*, Ilan Benshalom, *The New Poor at Our Gates: Global Justice Implications for International Trade and Tax Law*, 85 N.Y.U. L. REV. 1, 65 & n.164 (2010) (using Corruption Perceptions Index data to support characterization of various countries as corrupt); Timur Kuran, *The Provision of Public Goods Under Islamic Law: Origins, Impact, and Limitations of the Waqf System*, 35 LAW & SOC'Y REV. 841, 884 (2001) (using the Corruption Perceptions Index to describe corruption in North Africa). This paper uses the Corruption Perceptions Index and other indexes to support the proposition that corruption is a problem in Southeast Asia. *See supra* notes 25–28 and accompanying text.

322. *E.g.*, Bernard S. Black & Anna S. Tarassova, *Institutional Reform in Transition: A Case Study of Russia*, 10 SUP. CT. ECON. REV. 211, 233 (2003) (using the Corruption Perceptions Index as part of a more elaborate description of corruption in Russia); James Thuo Gathii, *Defining the Relationship Between Human Rights and Corruption*, 31 U. PA. J. INT'L L. 125, 150 (2009) (using the Corruption Perception Index to support analysis of corruption in Kenya); Jonathan D. Greenberg, *The Kremlin's Eye: The 21st Century Prokuratura in the Russian Authoritarian Tradition*, 45 STAN. J. INT'L L. 1, 34–35 (2009) (using the Corruption Perceptions Index as supplement to fulsome description of corruption in Russia); Matthew J. Spence, *American Prosecutors as Democracy Promoters: Prosecuting Corrupt Foreign Officials in U.S. Courts*, 114 YALE L.J. 1185, 1189 (2005) (using the Corruption Perceptions Index to highlight corruption in Ukraine).

323. *E.g.*, Giorleny D. Altamirano, *The Impact of the Inter-American Convention Against Corruption*, 38 U. MIAMI INTER-AM. L. REV. 487, 525–28 (2007) (relying extensively on the Corruption Perceptions Index for comparative data); Sanja Kutnjak Ivkovic, *To Serve and Collect: Measuring Police Corruption*, 93 J. CRIM. L. & CRIMINOLOGY 593, 612 (2003) (using the Corruption Perceptions Index to compare corruption among regions); Ehud Kamar, *Beyond Competition for Incorporations*, 94 GEO. L.J. 1725, 1751 & n.137 (2006) (using the Corruption Perceptions Index to compare levels of corruption within the European Union); David Kopel, Carlisle Moody & Howard Nemerov, *Is There a Relationship Between Guns and Freedom? Comparative Results from Fifty-Nine Nations*, 13 TEX. REV. L. & POL. 1, 3, 5 (2008) (explaining how the article will extensively use data from the Corruption Perceptions Index as part of a comparative analysis of fifty-nine countries); Eric A. Posner, *Human Welfare, Not Human Rights*, 108 COLUM. L. REV. 1758, 1791 (2008) (focusing on the Corruption Perceptions Index in comparison of human welfare); Andrew Brady Spalding, *Unwitting Sanctions: Understanding Anti-Bribery Legislation as Economic Sanctions Against Emerging Markets*, 62 FLA. L. REV. 351, 375–76 (2010) (using the Corruption Perceptions Index to compare levels of corruption in industrialized and emerging economies); Frans Viljoen & Lirette Louw, *State Compliance with the Recommendations of the African Commission on Human and Peoples' Rights, 1994–2004*, 101 AM. J. INT'L L. 1, 24, 27 (2007) (using the Corruption Perceptions Index as a source of data for comparative analysis of corruption); George H. Norris, Note, *Closer to Justice: Transferring Cases from the International Criminal Court*, 19 MINN. J. INT'L L. 201, 226 n.149 (2010) (using the Corruption Perceptions Index to compare several African countries).

324. *E.g.*, Valeria Merino Dirani, *The Role of Civil Society in Promoting Transparency and Fighting Corruption in Ecuador*, 10 SW. J.L. & TRADE AM. 319, 326

analyses on scores,<sup>325</sup> and even conduct regression analysis.<sup>326</sup> Legal scholars have analyzed Corruption Perceptions Index data to find insights into the relationship between corruption and peaceful settlement of disputes,<sup>327</sup> compliance with environmental accords,<sup>328</sup> the relationship between judges' pay and corruption,<sup>329</sup> and observation of human rights.<sup>330</sup> In prescriptive writing, legal scholars propose the Corruptions Perceptions Index as a model for other

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(2004) (comparing Corruption Perceptions Index rankings and scores over a period of years to argue that "the situation in most countries has not improved. In some cases, it has actually worsened . . ."); Kathleen A. Lacey, Barbara Crutchfield George & Clyde Stoltenberg, *Assessing the Deterrent Effect of the Sarbanes-Oxley Act's Certification Provisions: A Comparative Analysis Using the Foreign Corrupt Practices Act*, 38 VAND. J. TRANSNAT'L L. 397, 433 (2005) (using Corruption Perception Index scores to measure changes in levels of corruption in the United States over a lengthy interval); Louise D. Williams, *Out of the Gray: Building the Case and the Conditions for Enterprises to Join the Formal Economy in Central America*, 12 SW. J.L. & TRADE AM. 329, 341 (2006) (using changes in Corruption Perceptions Index ranking to describe Costa Rica).

325. *E.g.*, Thomas W. Dunfee & Timothy L. Fort, *Corporate Hypergoals, Sustainable Peace, and the Adapted Firm*, 36 VAND. J. TRANSNAT'L L. 563, 586 (2003) (discussing correlative study using Corruption Perceptions Index data); John Norton Moore, *Beyond the Democratic Peace: Solving the War Puzzle*, 44 VA. J. INT'L L. 341, 350 (2004) (correlating Corruption Perceptions Index scores with other data); Matt A. Vega, *The Sarbanes-Oxley Act and the Culture of Bribery: Expanding the Scope of Private Whistleblower Suits to Overseas Employees*, 46 HARV. J. ON LEGIS. 425, 427 (2009) (referring to empirical research based on the Corruption Perceptions Index).

326. *E.g.*, Hylton & Khanna, *supra* note 11, at 110–11 (using a regression analysis of Corruption Perceptions Index scores: "The results indicate that corruption is significantly lower where a common law system is in place").

327. Fort & Schipani, *supra* note 9, at 394–99 (comparing data from the Corruption Perceptions Index to other data to determine correlation between corruption and frequency of peaceful settlement of conflicts).

328. Benedict Sheehy, *International Marine Environment Law: A Case Study in the Wider Caribbean Region*, 16 GEO. INT'L ENVTL. L. REV. 441, 464 n.179 (2004) (using Corruption Perceptions Index scores to evaluate effect of corruption on compliance with environmental accord).

329. Stephen J. Choi, G. Mitu Gulati & Eric A. Posner, *Are Judges Overpaid?: A Skeptical Response to the Judicial Salary Debate*, 1 J. LEGAL ANALYSIS 47, 62 (2009) (using Corruption Perceptions Index scores to support an argument that the pay of judges has little to do with levels of corruption).

330. Ndiva Kofele-Kale, *Change or the Illusion of Change: The War Against Official Corruption in Africa*, 38 GEO. WASH. INT'L L. REV. 697, 743 (2006) (discussing correlation between high score on the Corruption Perceptions Index and good reputations for human rights).

programs,<sup>331</sup> and admonish private sector actors to pay heed to the Index.<sup>332</sup>

Clearly, the Corruption Perceptions Index has become a widely-used tool for legal scholarship.<sup>333</sup> Empirical indexes provide legal scholarship with verifiable insights into corruption, as well as a source of empirical information for rigorous quantitative treatment of corruption.<sup>334</sup> It is critical, however, that legal scholars who use empirical indexes understand the meaning of the data. Similar scores do not mean that countries experience corruption in the same way; countries and other localities experience corruption in vastly different fashions.

Singapore receives a score of 9.3 in the Corruption Perceptions Index; Malaysia receives a score of 4.4.<sup>335</sup> If corruption were a monolithic phenomenon, if corruption occurred in a linear manner, then observers could permissibly conclude from these numbers that Singapore experiences roughly half of the corruption experienced in Malaysia and that the average individual Singaporean experiences half as much corruption as does the average individual Malaysian. One could conclude that if the average Malaysian encounters ten bribe requests in a week, then the average Singaporean encounters five; if the average Malaysian purchasing bureaucrat receives a thousand ringgit per month in bribes, then the average Singaporean bureaucrat receives two hundred Singaporean dollars. None of these

331. *E.g.*, Frank E.A. Sander, *Developing the MRI (Mediation Receptivity Index)*, 22 OHIO ST. J. ON DISP. RESOL. 599, 607–11 (2007) (proposing the Corruption Perceptions Index as a model for a mediation receptivity index); Martin Skladany, *Buying Our Way out of Corruption: Performance-Based Incentive Bonuses for Developing Country Politicians and Bureaucrats*, 12 YALE HUM. RTS. & DEV. L.J. 160, 169 (2009) (proposing the Corruption Perceptions Index as a “solid foundation” upon which to base the evaluation component of an incentive-based program to manage corruption at local levels).

332. *E.g.*, Priya Cherian Huskins, *FCPA Prosecutions: Liability Trend to Watch*, 60 STAN. L. REV. 1447, 1454 & n.26 (2008) (warning businesses to pay attention to the Corruption Perceptions Index).

333. *See* José C. García González, Rosa O. González Robles, Adolfo Mir Araujo & Araceli Garcia del Soto, *Public Sector Corruption in Mexico: Social Representations Among the Legal Community of the Federal District*, 37 U. MIAMI INTER-AM. L. REV. 231, 235 (2006) (“The non-governmental organization Transparency International (TI) produces the most comprehensive and recognized Corruption Perceptions Index (CPI) in the international sphere.”); Amichai Magen, *The Rule of Law and Its Promotion Abroad: Three Problems of Scope*, 45 STAN. J. INT’L L. 51, 111 (2009) (describing the “widely cited Corruption Perceptions Index”); Spalding, *supra* note 323, at 375 (“The most commonly cited gauge of public corruption is the Corruption Perception Index . . .”).

334. *See* Royce de R. Barondes, *The Limits of Quantitative Legal Analyses: Chaos in Legal Scholarship and FDIC v. W.R. Grace & Co.*, 48 RUTGERS L. REV. 161, 161–62 (1995) (stating that quantitative analysis could add much to legal scholarship but warning about the lack of rigor within the field).

335. *Corruption Perceptions Index 2010 Results*, *supra* note 28.

conclusions, of course, are true, as conversations with the discussants richly reveal.<sup>336</sup>

A study by Claire Moore Dickerson illustrates the hazards encountered when legal scholars treat quantitative data as representative of a unified, linear phenomenon.<sup>337</sup> The study attempts to evaluate the effectiveness of a cross-border business law regime in Africa in encouraging foreign investment.<sup>338</sup> Dickerson recognizes that factors other than the harmonization of laws may affect investment, and so attempts to factor out those influences in her analysis.<sup>339</sup> She baldly states that “We can also consider changes in Transparency International’s Corruption Perception Index (CPI) as a proxy for measuring the protection of private property.”<sup>340</sup>

Discussions in Singapore and Malaysia, however, call this assumption into question. Discussants in Malaysia expressed far more experience with corruption than discussants in Singapore, but that experience generally had to do with bribe requests for permissions and contracts rather than misappropriation of property.<sup>341</sup> Discussants in Singapore certainly did not report twice the property security experienced by discussants from Malaysia, nor did Malaysian discussants report twice as much concern. Corruption—the use or misuse of a position of trust or responsibility for personal gain rather than the intended benefit—can have a relationship with property security.<sup>342</sup> Clearly, discussants in Malaysia encounter more corruption, experience more corruption on a raw level than do discussants in Singapore. Corruption, however, exhibits numerous manifestations and the fact that more or less raw corruption exists in one location does not suggest the existence of more or less of a single iteration of corruption. Dickerson’s assumption that quantitative data represents uniform experience with one manifestation of corruption is erroneous, which renders use of that data as a proxy for property protection inappropriate.

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336. See *supra* notes 238–65 and accompanying text (reporting discussants’ experiences with corruption).

337. Claire Moore Dickerson, *Harmonizing Business Laws in Africa: OHADA Calls the Tune*, 44 COLUM. J. TRANSNAT’L L. 17 (2005).

338. *Id.* at 65–67.

339. *Id.* at 65.

340. *Id.* at 66.

341. Malaysian discussants’ general discussions of their experiences with corruption are reported *supra* Part IV.B.2.

342. See Elizabeth Spahn, *Nobody Gets Hurt?*, 41 GEO. J. INT’L L. 861, 880 (2010) (noting the relationship).

### C. Corruption Can Be Controlled

Some social observers suggest that corruption has always existed and always will.<sup>343</sup> Their observation is hardly unique to corruption: crimes have existed as long as states have existed to draft criminal rules, social ills have probably existed as long as societies, and predation predates *Homo sapiens*.<sup>344</sup> The observation that corruption has always existed, however, seems to imply futility in attempts to control corruption, and that social resources would better be used elsewhere.<sup>345</sup>

Far too often one hears that corruption is an ineluctable part of the culture in regions such as Southeast Asia, that corruption is simply the way things are done in such regions, and that corruption is too embedded to be removed.<sup>346</sup> Corruption, however, was

343. See, e.g., Ralph Blumenthal, *New Weapons Used in Drive on Corruption*, N.Y. TIMES, Nov. 7, 1984, at B1 (citing Rudolph Giuliani, then U.S. Attorney for the Southern District of New York, and quoting Patrick McGinley, New York City Investigation Commissioner, as saying, "There will always be corruption, just like there will always be narcotics"); see Steven R. Salbu, *A Delicate Balance: Legislation, Institutional Change, and Transnational Bribery*, 33 CORNELL INT'L L.J. 657, 680 (2000) ("While domestic anti-bribery laws are ubiquitous, the practice of bribery has obstinately remained."). Professor Salbu does, it should be noted, advocate local institutional reform. Some commentators, usually not from emerging or developing countries, argue that transnational efforts to control corruption constitute "moral imperialism," implying that corruption is culturally accepted in some polities. See, e.g., Christopher J. Duncan, Comment, *The 1998 Foreign Corrupt Practices Act Amendments: Moral Empiricism or Moral Imperialism*, 1 ASIAN-PAC. L. & POL'Y J. 16 (2000) (labeling global anticorruption efforts as moral imperialism).

344. See M. Cherif Bassiouni, *Perspectives on International Criminal Justice*, 50 VA. J. INT'L L. 269, 274 (2010) (discussing criminal codes that go back as far as history); Jeremiah E. Scott & Curtis W. Marean, *Paleolithic Hominin Remains from Eshkaft-e Gavi (Southern Zagros Mountains, Iran): Description, Affinities, and Evidence for Butchery*, 57 J. HUM. EVOLUTION 248, 248 (2009) (discussing evidence of cannibalism in early hominids); Doron Teichman, *The Market for Criminal Justice: Federalism, Crime Control, and Jurisdictional Competition*, 103 MICH. L. REV. 1831, 1850 (2005) (discussing crime in ancient India).

345. MELANIE MANION, CORRUPTION BY DESIGN: BUILDING CLEAN GOVERNMENT IN MAINLAND CHINA AND HONG KONG 4 (2004) ("[N]ot only is corruption control costly, but the 'pursuit of absolute integrity' is quite dysfunctional, distorting the purpose of government and its agencies."): Vincent R. Johnson, *America's Preoccupation with Ethics in Government*, 30 ST. MARY'S L.J. 717, 756 (1999) ("[E]thical conduct is not a free commodity; it comes at a cost. Every call for higher ethical standards diverts attention from other social problems. Every investigation of a government official entails expenses, not the least of which is distraction of the accused and others from the performance of official duties. Every dollar spent on ethics enforcement is money diverted from other worthy programs."). This line of reasoning would be considered odd, at best, if applied to other crimes and social ills such as murder, which has also always existed and which continues to exist despite the expenditure of considerable resources to control it.

346. See generally Hess & Dunfee, *supra* note 76, at 613–15 (discussing and dismissing the claim that bribery is justified because it is practiced in some communities).

ubiquitous in Singapore from the beginning of the colonial settlement to the creation of the Corrupt Practices Investigation Bureau.<sup>347</sup> Singapore is undeniably intertwined with the culture of Southeast Asia, and yet corruption has been steadily reduced and Singapore now stands as one of the least corrupt countries in the world.<sup>348</sup> Moreover, Singapore has done so while creating and maintaining tremendous amounts of national and personal wealth.<sup>349</sup> Singapore belies any assertion that corruption cannot be controlled in regions such as Southeast Asia, or anywhere in the world.

Singapore certainly is not the only polity to have experienced such a transformation. Just as Singapore, Hong Kong once endured endemic corruption.<sup>350</sup> Jin-Wook Choi notes that corruption

was present in almost every segment of society and constituted a way of life of Hong Kong people. Many observers characterize pre-1970s corruption in Hong Kong as being pathological and prevalent, with public services such as ambulances or firefighting not readily provided without “tea money” or “water money” payments.<sup>351</sup>

Today, however, “Hong Kong is known as one of the most corruption-free societies in the world.”<sup>352</sup> One important component of Hong Kong’s success has been changing the attitudes held by people in Hong Kong toward corruption.<sup>353</sup> Interestingly, Lee Kuan Yew also

347. See QUAH, *supra* note 158, at 109–14.

348. Jon Jordan, *The OECD’s Call for an End to “Corrosive” Facilitation Payments and the International Focus on the Facilitation Payments Exception Under the Foreign Corrupt Practices Act*, 13 U. PA. J. BUS. L. 881, 902 n.118 (2011) (noting Singapore’s high ranking in the Corruption Perceptions Index).

349. As of 2010, Singapore has a GDP per capita in purchasing power parity (ppp) in international dollars of \$57,936. This places Singapore ahead of the United States’ GDP per capita (ppp) of \$47,199. Malaysia trails behind with a GDP per capita (ppp) of \$14,731. To place things in perspective Cambodia ranks 188th with a GDP per capita (ppp) of \$2,194, Burma ranks two hundred and fifth with a GDP per capita (ppp) of \$1,950. *GDP per Capita, PPP (Current International \$)*, WORLD BANK, <http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD> (last visited Dec. 26, 2011).

350. See QUAH, *supra* note 158, at 133–35 (describing government-tolerated protection rackets, virulent police corruption, corruption in the education system, and rampant corruption in public services and regulation); Hauk & Saez-Marti, *supra* note 236, at 312 (describing Hong Kong as “a country plagued by corruption for centuries”).

351. Choi, *supra* note 281, at 200 (citation omitted).

352. *Id.*; see Jinhua Cheng, *Police Corruption Control in Hong Kong and New York City: A Dilemma of Checks and Balances in Combating Corruption*, 23 BYU J. PUB. L. 185, 192 (2009) (discussing the “widely appreciated” success of Hong Kong in controlling police corruption).

353. See Marina Kurkchiyan, *Judicial Corruption in the Context of Legal Culture*, in TRANSPARENCY INT’L, GLOBAL CORRUPTION REPORT 2007: CORRUPTION IN JUDICIAL SYSTEMS 99, 106 (Diana Rodriguez & Linda Ehrichs eds., 2007) (attributing Hong Kong’s “notable” success in controlling corruption to the “promot[ion of] ethical values against corruption”); Hauk & Saez-Marti, *supra* note 236, at 312 (using survey responses from different age groups to demonstrate that efforts to change attitudes toward corruption succeeded in Hong Kong); Grace O. M. Lee, *A De-Capacitated State?: Systemic Constraints on Governance in Hong Kong*, in GOVERNANCE AND PUBLIC

speaks of attitudes toward corruption, and of the commitment of leaders that corruption would not be tolerated:

When the [People's Action Party] took office in 1959, we set out to have a clean administration. We were sickened by the greed, corruption and decadence of many Asian leaders. . . . We made sure from the day we took office in June 1959 that every dollar in revenue would be properly accounted for and would reach the beneficiaries at the grass roots as one dollar, without being siphoned off along the way.<sup>354</sup>

Hong Kong and Singapore are not alone. Polities throughout the world, large and small, have experienced large and small successes in controlling corruption.<sup>355</sup> Indeed, the United States is one of those countries, having recovered from rampant corruption in the mid-1800s.<sup>356</sup>

Discussions with persons in Singapore and Malaysia suggest that attitudes toward, and the extent of internalization of, corruption laws play a consequential role in controlling corruption. Changes in attitudes toward corruption are well documented at the global level.<sup>357</sup> In the conclusion to his seminal work on corruption, Judge Noonan quite aptly describes the attitudinal change over a century of time, in which attitudes toward corruption shifted from a moral perspective to an economic perspective.<sup>358</sup> In the last twenty years, the attitudes of scholars, policymakers, and businesspeople toward corruption have changed.<sup>359</sup> In conversations with Singaporean

SECTOR REFORM IN ASIA, *supra* note 5, at 119 (describing the heavy investment in “promoting a culture of clean government”).

354. LEE KUAN YEW, *FROM THIRD WORLD TO FIRST: THE SINGAPORE STORY: 1965–2000*, at 157, 159 (2000).

355. See, e.g., Soonhee Kim, *Public Trust in Government in Japan and South Korea: Does the Rise of Critical Citizens Matter?*, 70 PUB. ADMIN. REV. 801, 802 (2010) (describing successes of Japanese legal reform and civil programs in reaction to a corruption crisis in national governance); *2011 Index of Economic Freedom: Barbados*, HERITAGE FOUND., <http://www.heritage.org/Index/country/Barbados> (last visited Dec. 26, 2011) (reporting that Barbados’ economic freedom score substantially improved “due to improvements in its freedom from corruption and monetary freedom scores”).

356. See ALAN LESSOFF, *THE NATION AND ITS CITY: POLITICS, “CORRUPTION,” AND PROGRESS IN WASHINGTON, D.C., 1861–1902* (1994) (describing recovery from period of rampant corruption); MARK W. SUMMERS, *THE PLUNDERING GENERATION: CORRUPTION AND THE CRISIS OF THE UNION, 1849–1861* (1987) (describing rampant corruption in the United States).

357. See Jeffrey L. Dunoff, *Linking International Markets and Global Justice*, 107 MICH. L. REV. 1039, 1045 (2009) (book review) (describing a “sea change” in international attitudes and activities regarding corruption).

358. See JOHN T. NOONAN, JR., *BRIBES* 683–85 (1984). *Bribes* broke ground in the study of corruption, particularly among legal scholars. See Daniel Hays Lowenstein, *For God, for Country, or for Me?*, 74 CALIF. L. REV. 1479, 1480 (1986) (book review) (describing *Bribes*, shortly after its publication, as “a major contribution, especially to a field as neglected as bribery”).

359. George, Lacey & Birmele, *supra* note 313, at 515–17 (describing significant changes in attitudes toward corruption); Robert E. Lutz, *On Combating the Culture of Corruption*, 10 SW. J.L. & TRADE AM. 263, 267 (2004) (describing significant changes in

discussants today, it is clear that Singaporean attitudes toward corruption have changed. The societal context in which laws are implemented displays a degree of plasticity.<sup>360</sup> Corruption, it seems, can be controlled.

## V. CONCLUSION

Law inhabits a central role in reform and development initiatives throughout the world.<sup>361</sup> In much of the world, however, corruption vitiates the efficacy of legal structures, rendering them useless and at times counterproductive.<sup>362</sup> Corruption not only undermines legal and governance structures, it also stunts growth and degrades the quality of life.<sup>363</sup> If legal scholars wish to understand the relationships between law and society, law and business, and law and government in much of the world, then legal scholars must understand corruption.<sup>364</sup> Corruption demands theoretical and empirical study by legal scholars.<sup>365</sup>

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attitudes toward corruption among transnational actors and recognition “that corruption is a cancer to viable governments and to a healthy international trading system”); Nii Lante Wallace-Bruce, *Corruption and Competitiveness in Global Business – The Dawn of a New Era*, 24 MELB. U. L. REV. 349, 362–66 (2000) (describing the changes in the attitudes of many constituencies with respect to corruption); Nora M. Rubin, Comment, *A Convergence of 1996 and 1997 Global Efforts to Curb Corruption and Bribery in International Business Transactions: The Legal Implications of the OECD Recommendations and Convention for the United States, Germany, and Switzerland*, 14 AM. U. INT’L L. REV. 257, 262 (1998) (discussing how international efforts to eliminate corruption in international business reflect a major change from traditional attitudes of corruption). Barbara George and Kathleen Lacey have written extensively on global changes in attitudes. See Barbara Crutchfield George & Kathleen A. Lacey, *A Coalition of Industrialized Nations, Developing Nations, Multilateral Development Banks, and Non-Governmental Organizations: A Pivotal Complement to Current Anti-Corruption Initiatives*, 33 CORNELL INT’L L.J. 547 (2000); Barbara Crutchfield George, Kathleen A. Lacey & Jutta Birmele, *On the Threshold of the Adoption of Global Antibribery Legislation: A Critical Analysis of Current Domestic and International Efforts Toward the Reduction of Business Corruption*, 32 VAND. J. TRANSNAT’L L. 1 (1999).

360. See Hauk & Saez-Marti, *supra* note 236, at 332 (stating that education of the young is a critical element in controlling corruption).

361. See Eric Brousseau, Yves Schemeil & Jérôme Sgard, *Bargaining on Law and Bureaucracies: A Constitutional Theory of Development*, 38 J. COMP. ECON. 253 (2010) (offering theoretical explanation for the central role of law).

362. Delaney, *supra* note 65, at 421 (2007) (noting that corruption undermines the rule of law); Susan Rose-Ackerman, *Corruption: Greed, Culture, and the State*, 120 YALE L.J. ONLINE 125, 130 (2010) (noting that corruption undermines rule of law and law reform); see Brent T. White, *Putting Aside the Rule of Law Myth: Corruption and the Case for Juries in Emerging Democracies*, 43 CORNELL INT’L L.J. 307, 308 (2010) (describing how corruption has undermined rule of law initiatives in Central Asia and Eastern Europe).

363. See *supra* notes 49–112 and accompanying text.

364. See KENNETH W. DAM, *THE LAW-GROWTH NEXUS: THE RULE OF LAW AND ECONOMIC DEVELOPMENT* 5 (2006) (“The search for new solutions led to an increasing

Quantitative study of corruption yields much information and insight. Qualitative research, however, is equally useful and may provide insights that quantitative study does not. This paper uses qualitative methods to study corruption, utilizing the opportunities presented by the similarities and differences in Singapore and Malaysia. Discussants in Singapore and Malaysia react differently to the topic of corruption. This difference likely reveals a difference in the degree to which each group has internalized corruption laws. Differences in the degree to which each group has internalized corruption laws suggests differences in the psychic costs that members of each group contemplates when considering whether or not to act corruptly. Theory suggests that members of the group contemplating higher psychic costs would be less likely to act corruptly: Singapore, where psychic costs seem to be higher, enjoys less corruption than Malaysia. Indeed, the observations of discussants support the notion that actors consider a variety of costs and benefits when determining whether to violate corruption laws.

Interviews with discussants provide other insights as well. Discussants experience corruption differently, and corruption manifests itself in a variety of manners—it is certainly not a unitary or linear phenomenon. Legal scholars thus must take care when using quantitative data that they do not place more meaning in that data than what such data allows. More positively, interviews with discussants, particularly Singaporean discussants, suggest that attitudes toward corruption can change. Singapore once suffered endemic corruption and now experiences almost none. Factual evidence demonstrates that corruption can be controlled.

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focus on how poorly many developing country governments functioned and especially on widespread inadequacies, even corruption, of public regulatory bodies and of the legal system.”).

365. See Spahn, *supra* note 295, at 222–23 (arguing for more research on corruption by legal scholars).