

THE FIT BETWEEN CHANGES TO THE INTERNATIONAL  
CORRUPTION REGIME AND INDIGENOUS PERCEPTIONS  
OF CORRUPTION IN KAZAKHSTAN

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The study of corruption by both scholars and policymakers has undergone a startling transformation in the last decade. What once underwent almost no scholarly examination now inspires dozens of articles and books.<sup>1</sup> What once was not even mentioned in international financial institutions is now a centerpiece of reform efforts.<sup>2</sup> What once played virtually no role in legal theory now rep-

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<sup>1</sup> See Arvind K. Jain, *Preface* to *ECONOMICS OF CORRUPTION*, at vii, vii (Arvind K. Jain ed., 1998).

The industry for the study of corruption went into a long decline after Kautilya [an Indian scholar who wrote 2,500 years ago] . . . . Fortunately, there now appears to have been a sea change in the attitude[s] . . . toward[] corruption. The number of articles and books being devoted to this subject has grown exponentially in the 1990s.

*Id.*

<sup>2</sup> See James Wolfensohn, Plenary Address at the 9th International Anti-Corruption Conference 1-3 (Oct. 10, 1999), at [http://www.transparency.org/iacc/9th\\_iacc/papers/day1/plenary/d1p1\\_jwolfensohn.html](http://www.transparency.org/iacc/9th_iacc/papers/day1/plenary/d1p1_jwolfensohn.html) (President of the World Bank referring both to the transformation of corruption from the unspoken "c

resents—in the form of an overwhelming international consensus that transnational bribery should be criminalized and that other legal reforms should be undertaken—a dramatic change in the international legal regime.<sup>3</sup>

The focussing of theoretical attention on corruption and the change in international policymakers' attitudes have not been accompanied by a similar surge in the empirical study of corruption.<sup>4</sup> The lack of empirical research, particularly into attitudes and perceptions toward corruption, is unfortunate for at least three reasons. First, legal scholars and policymakers must have an empirical understanding in order to effectuate the changes to law and policy demanded by the change in the international regime.<sup>5</sup> Second, as a theoretical matter—particularly with respect to theoretical explanations of international regime changes—an understanding of other attitudes and perceptions is necessary to deal with issues of imperialism, economic efficiency and allocation, and institutional choice.<sup>6</sup> Third, and most interesting, the anecdotal but

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word" to a subject of scrutiny, and to the fact that "so far as our institution is concerned, there is nothing more important than the issue of corruption"); *see also infra* notes 81-83 and accompanying text (discussing the actions of the World Bank and the International Monetary Fund with respect to corruption). As Susan Rose-Ackerman points out, "[t]he study of corruption forces scholars and policy makers to focus on the tension between self-seeking behavior and public values. Those worried about the development failures common throughout the world must confront the problem of corruption and the weak and arbitrary state structures that feed it." SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM*, at xi (1999).

<sup>3</sup> *See* David Kennedy, *The International Anti-Corruption Campaign*, 14 *CONN. J. INT'L L.* 455, 455 (1999) (noting that opposition to corruption seems to unite international commentators); *see also infra* notes 76-95 and accompanying text (discussing the changes to the international regime).

<sup>4</sup> *See* Edgardo Buscaglia & Maria Dakolias, *An Analysis of the Causes of Corruption in the Judiciary*, 30 *LAW & POL'Y INT'L BUS.* 95, 96, 99 (Supp. 1999) (explaining the need for empirical study of the causes of corruption and noting that no such empirical work exists); Kennedy, *supra* note 3, at 464 (stating that "to engage in detailed examination of various legal regimes and rules" would be terrific); John K.M. Ohnesorge, *"Ratch"eting Up the Anti-Corruption Drive: Could a Look at Recent History Cure a Case of Theory-Determinism?*, 14 *CONN. J. INT'L L.* 467, 467 (1999) (criticizing the lack of empirical historical research on corruption); Steven R. Salbu, *Battling Global Corruption in the New Millennium*, 31 *LAW & POL'Y INT'L BUS.* 47, 77 (1999) (calling for empirical study of corruption).

<sup>5</sup> *See infra* notes 57-117 and accompanying text (discussing the need for an empirical understanding of attitudes and perceptions of corruption).

<sup>6</sup> Three different theories explaining the international regime change, each of which creates demands for empirical understanding of perceptions and attitudes toward corruption, are discussed *infra* notes 96-116.

very persistent notion that corruption is embraced and accepted by some cultures—that it is a normal way of doing business in some places—cries out for empirical testing.<sup>7</sup>

This Article reports on and analyzes the results of a survey conducted in the Republic of Kazakhstan, a former republic of the Soviet Union located in Central Asia. Much of the survey asked questions regarding attitudes towards and perceptions of corruption. For those who are interested in non-Western attitudes toward corruption, Kazakhstan represents an excellent source of information. Kazakhstan is culturally distinct from the West and from Asia, a distinction amplified by Central Asia's physical isolation. Kazakhstani ideas of government and other institutions differ markedly from those in the West. Central Asia as a whole has been physically and politically isolated from the West for several generations.

Rather than simply asking Kazakhstani respondents whether they embrace corruption or whether corruption is part of the inherent Kazakhstani culture,<sup>8</sup> the questions in this survey can be analyzed in four different ways: absolute evaluations of the amount of corruption, relative evaluations of changes in the amounts of corruption, the public salience or importance of corruption, and support for anticorruption regimes.<sup>9</sup> These four

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<sup>7</sup> See David Hess & Thomas W. Dunfee, *Fighting Corruption: A Principled Approach: The C2 Principles (Combating Corruption)*, 33 CORNELL INT'L L.J. 593, 611-16 (2000) (discussing the anecdotal but persistent belief that corruption is ethically justified). A few scholars have made similar arguments. See H. Lowell Brown, *The Extraterritorial Reach of the U.S. Government's Campaign Against International Bribery*, 22 HASTINGS INT'L & COMP. L. REV. 407, 473 n.248 (1999) (suggesting that corruption is a way of life in some cultures); Kim Lane Scheppelle, *The Inevitable Corruption of Transition*, 14 CONN. J. INT'L L. 509, 520 (1999) (stating that in the former Soviet Union people have solid values but those values are different with respect to corruption than those in the West). The Author of this Article has been told by several high-level government officials, including officials in Kazakhstan, that corruption is part of their culture. One high-level Kazakhstani official in particular, praised changes to the foreign investment code of his country because, in his opinion, it made more clear to foreign investors who they should bribe. He too stated that bribery is an accepted part of Kazakhstani culture.

<sup>8</sup> Daniel Jun draws an important distinction between a practice that occurs in a culture and a practice that is accepted in a culture when he notes that "bribery has become a cultural ritual [in Korea] only in the sense that it is a prevalent practice, but not in the sense that it is a morally accepted practice." Daniel Y. Jun, *Bribery Among the Korean Elite: Putting an End to a Cultural Ritual and Restoring Honor*, 29 VAND. J. TRANSNAT'L L. 1071, 1085 (1996).

<sup>9</sup> This four-pronged scheme of analysis is suggested and used by Robert Mattes in his own work in South Africa. Robert Mattes & Cherrel Africa, *Corrup-*

means of analyzing the responses indicate that corruption is overwhelmingly condemned in Kazakhstan and that the vast majority of Kazakhstani support anticorruption reforms. These findings are particularly robust because they cut across ethnic, gender, income, education, and settlement lines; even when respondents are sorted according to these characteristics the rejection of corruption is still overwhelming.

These findings have obvious importance to those engaged in the study or implementation of the new global anticorruption regime. The findings lend little support to theories that explain regime change in terms of dictates by hegemons. The findings indicate broad support for anticorruption measures in Kazakhstan and even indicate specific measures that might be undertaken. Before discussing the specific findings, however, it is necessary first to discuss the general nature of corruption.

## 1. THE NATURE OF CORRUPTION

### 1.1. *Corruption and Bribery*

The predominant conception of corruption in Western<sup>10</sup> literature is reflected in a definition crafted thirty years ago by Joseph Nye, which can be paraphrased as follows: corruption involves the misuse of authority or a position of authority for some self-

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tion – *The Attitudinal Component: Tracking Public Perceptions of Official Corruption in South Africa, 1995-1998*, at 1-4 (Oct. 12, 1999), at [http://www.transparency.org/iacc/9th\\_iacc/papers/day2/ws1/d2ws1\\_cafricarmattes.html](http://www.transparency.org/iacc/9th_iacc/papers/day2/ws1/d2ws1_cafricarmattes.html).

<sup>10</sup> This is not meant to imply that other cultures do not share this conception of corruption. Frené Ginwalla, then Speaker of the South African Parliament, takes umbrage at those who argue that African culture embraces different attitudes toward corruption than Western culture. See Anver Versi, *On Corruption and Corrupters*, AFR. BUS., Nov. 1996, at 7, 7 (quoting Dr. Frené Ginwalla: “attributing corruption to our [African] cultures is both arrogant and racist, as well as convenient and self-serving”). From Asia, Daniel Jun argues that “Korean people share the same moral standards as the Western culture regarding bribery. They are equally capable of distinguishing between what is intended to be gratuitous and what is intended to wrongfully influence another person.” Jun, *supra* note 8, at 1084-85; see also JOHN T. NOONAN, JR., BRIBES 703 (1984) (“[I]t is often the Westerner with ethnocentric prejudice who supposes that a modern Asian or African society does not regard the act of bribery as shameful in the way Westerners regard it”). The reference in this Article to a Western conception of corruption reflects only a willingness to explore the possibility that certain behaviors condemned in Western literature are accepted in other cultures.

interested purpose.<sup>11</sup> This definition of corruption obviously encompasses a variety of different behaviors. Corrupt behavior includes bribery, theft and misappropriation, and nepotism.<sup>12</sup> Corruption can occur in both the public sector and the private sector.<sup>13</sup> The study described in this Article examines public sector corruption rather than private sector corruption, even though corruption in the private sector presents real and significant issues.<sup>14</sup> The study focuses on public corruption for two reasons: first, interna-

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<sup>11</sup> Joseph Nye defines corruption as "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." J. S. Nye, *Corruption and Political Development: A Cost-Benefit Analysis*, 61 AM. POL. SCI. REV. 417, 419 (1967); see Thomas F. Burke, *The Concept of Corruption in Campaign Finance Law*, 14 CONST. COMMENT. 127, 129 n.9 (1997) (citing Nye's definition); Claire Moore Dickerson, *Political Corruption: Free-Flowing Opportunism*, 14 CONN. J. INT'L L. 393, 396 (1999) (same); cf. Saladin Al-Jurf, *Citizens, National Governments, and International Financial Institutions: Changing Conceptions of Development in the 1990s*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 193, 196 (1999) (stating that the World Bank's definition of corruption is "[t]he abuse of public office for private gain"); David H. Bayley, *The Effects of Corruption in a Developing Nation*, 19 W. POL. Q. 719, 720 (1966) (Corruption is the "misuse of authority as a result of considerations of personal gain, which need not be monetary."); Philip B. Heymann, *Democracy and Corruption*, 20 FORDHAM INT'L L.J. 323, 325 (1996) (describing "[c]orruption, as secretly receiving private benefits to affect a decision that is supposed to be made in the interests of others and uninfluenced by private gain . . .").

Vito Tanzi offers a more specific definition; he defines corruption as "the intentional non-compliance with the arm's-length principle aimed at deriving some advantage for oneself or for related individuals from this behavior." Vito Tanzi, *Corruption: Arm's-Length Relationships and Markets*, in THE ECONOMICS OF ORGANIZED CRIME 161, 167 (Gianluca Fiorentini & Sam Peltzman eds., 1995). John Ohnesorge correctly criticizes this definition as both too dependent on an unrealistic perfect market model and as Western-centric in its orientation. Ohnesorge, *supra* note 4, at 468-69 (discussing and criticizing Tanzi's definition). To this list of criticisms might be added the fact that Tanzi's definition only deals with economic decisions by officials and not the myriad other ways in which governments interact with persons.

<sup>12</sup> See SUSAN ROSE-ACKERMAN, *CORRUPTION: A STUDY IN POLITICAL ECONOMY* 4 (1978) (discussing a variety of corrupt behaviors).

<sup>13</sup> See Heymann, *supra* note 11, at 325 (noting that corruption "is certainly not a problem solely of democracies").

<sup>14</sup> See generally 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); Francois Vincke, *The State and the Civil Society in the Fight Against Corruption: The Business Community's Attitude Towards Corruption. Special Focus on Private-to-Private Corruption* (Sept. 1997), at <http://www.oecd.org/daf/nocorruption/pdf/vincke.pdf> (discussing at length private sector corruption).

tional regimes as well as most scholarly discourse focus primarily on public rather than private corruption,<sup>15</sup> and second, including questions about private corruption in the survey might have confused respondents and caused them to give less reliable responses.<sup>16</sup>

Of the different forms of corruption, bribery receives the most attention in Western literature. Susan Rose-Ackerman, one of the most respected Western thinkers with respect to corruption, flatly states "I shall always keep bribery in the analytical foreground."<sup>17</sup> Bribery also receives the most attention as a problem in the commercial relationships involving the West.<sup>18</sup> Transnational bribery

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<sup>15</sup> Many argue that this disparate attention is justified by the fact that public sector corruption is far more harmful than private sector corruption. See C. Edwin Baker, *The Media That Citizens Need*, 147 U. PA. L. REV. 317, 325 (1998) (stating that "the danger created by the potential of private evil arguably does not compare to that created by governments"); John C. Coffee, Jr., *Modern Mail Fraud: The Restoration of the Public/Private Distinction*, 35 AM. CRIM. L. REV. 427, 463 (1998) ("The absence of exit or other forms of loss protection (i.e., diversification, insurance, etc.) provides some justification for less tolerance for public corruption relative to private corruption. Also, ugly as this truth is, sometimes private corruption maximizes value for shareholders . . ."). It must be noted that not all regulatory regimes distinguish between the two types or focus only on public sector corruption. See, e.g., David A. Gantz, *Globalizing Sanctions Against Foreign Bribery: The Emergence of a New International Legal Consensus*, 18 NW. J. INT'L L. & BUS. 457, 473 (1998) (stating that the Council of the European Union has discussed a proposal to criminalize transnational private sector corruption); Eugene Kheng-Boon Tan, *Law and Values in Governance: The Singapore Way*, 30 HONG KONG L.J. 91, 111 (2000) (stating that "the Corrupt Practices Investigation Bureau . . . investigates and aims to prevent corruption in the public and private sectors in Singapore").

<sup>16</sup> See ROBERT A. PETERSON, *CONSTRUCTING EFFECTIVE QUESTIONNAIRES* 18-19 (2000) (discussing research that suggests respondents must be able to understand the literal and pragmatic meaning of a question or they will not provide a meaningful answer); ROGER TOURANGEAU ET AL., *THE PSYCHOLOGY OF SURVEY RESPONSE* 61 (2000) (stressing the importance of keeping survey questions simple).

<sup>17</sup> ROSE-ACKERMAN, *supra* note 12, at 4; see V.T. Le Vine, *Book Review*, 37 CHOICE: CURRENT REV. FOR ACAD. LIBRS. 1166 (2000) (reviewing SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM* (1999)) (lauding the book and Susan Rose-Ackerman); Stephen Williams, *Book Reviews*, AFR. BUS., Jan. 2000, at 40 (same); see also Bruce E. Cain, *Moralism and Realism in Campaign Finance Reform*, 1995 U. CHI. LEGAL F. 111, 113 ("Bribery defined in the traditional sense . . . is the paradigmatic instance of political corruption."); Dickerson, *supra* note 11, at 396 (arguing that other forms of corruption can be reduced to bribery).

<sup>18</sup> Graham Wood, *Ethics at the Purchasing/Sales Interface: An International Perspective*, INT'L MARKETING REV., No. 4, 1995, at 7, 16 ("Bribery is seen being as the most significant problem, particularly, though not exclusively, in trade between North and South.").

is the focal point of the bulk of legal literature and of the international regimes.<sup>19</sup>

A bribe is a transaction that occurs in an extralegal setting.<sup>20</sup> In this transaction the bribe giver transfers a benefit—consisting of anything of value to the bribe taker—to the bribe taker as *quid pro quo* for preferential treatment by the bribe taker.<sup>21</sup> The preferential treatment constitutes the abuse or misuse of power identified as central to corruption by Joseph Nye.<sup>22</sup>

Using these definitions, one can draw distinctions between behaviors that are corrupt and behaviors that are not.<sup>23</sup> Giving a government official a holiday gift, even if given more in hopes of creating goodwill than out of a genuine affection, is not corrupt be-

<sup>19</sup> As described *infra* notes 81-92 and accompanying text, those regimes include treaties and regulations promulgated by the Organization of American States, the Organization for Economic Cooperation and Development, and the European Community as well as policy change in the World Bank and the International Monetary Fund. Activities by nongovernmental entities such as the International Chamber of Commerce and Transparency International also contribute to the changes in the global regime.

<sup>20</sup> See Bryan W. Husted, *Honor Among Thieves: A Transaction-Cost Interpretation of Corruption in Third World Countries*, 4 BUS. ETHICS Q. 17, 18-19 (1994) (describing corruption in transaction terms).

<sup>21</sup> See James Lindgren, *The Elusive Distinction Between Bribery and Extortion: From the Common Law to the Hobbs Act*, 35 UCLA L. REV. 815, 823 (1988) (noting that a bribe is given in exchange for preferential treatment); Frank J. Sorauf, *Politics, Experience and the First Amendment: The Case of American Campaign Finance*, 94 COLUM. L. REV. 1348, 1350 (1994) ("*quid pro quo*" is a "vital element of any definition of bribery"); Vito Tanzi, *Corruption, Governmental Activities, and Markets*, FIN. & DEV., Dec. 1995, at 24, 24 ("[T]he benefit derived must be seen as a direct *quid pro quo* for the specific act of 'corruption.'"). "A gift of nominal value . . . generally lacks the element of a *quid pro quo*" and thus does not constitute a bribe. DON ZARIN, DOING BUSINESS UNDER THE FOREIGN CORRUPT PRACTICES ACT 6-19 (1995).

<sup>22</sup> This simple definition of bribery comports with most statutory definitions of the crime of bribery. See Lindgren, *supra* note 21, at 823 (looking at statutory definitions); James Lindgren, *The Theory, History, and Practice of the Bribery-Extortion Distinction*, 141 U. PA. L. REV. 1695, 1725 (1993) (looking at statutory definitions and concluding that the "central kind of bribery" is "takings to pervert official decisionmaking").

<sup>23</sup> Obviously, in practice it is sometimes difficult to draw these distinctions. See NOONAN, *supra* note 10, at 698 (stating that "borderline cases exist"); Lindgren, *supra* note 22, at 1707 (noting the difficulty in practice of distinguishing bribes from other conferrals). The difficulty presented by some factual situations, however, does not detract from the conceptual distinction. See NOONAN, *supra* note 10, at 698 ("The difficulty of the judgment does not destroy the moral nature of the concept being employed."); Lindgren, *supra* note 22, at 1707 (noting that the practical difficulty is not a refutation of the distinctions).

cause there is no quid pro quo for misuse of office.<sup>24</sup> Tipping a waiter after a meal is not a bribe because there is no expectation; one will be served—albeit begrudgingly—if one does not pay a tip.<sup>25</sup> On the other hand, providing an official's son with a scholar-

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<sup>24</sup> In her excellent discussion of the social degradation that occurs when social science commodifies all human interaction, Margaret Jane Radin lambastes the idea that all gifts are given for ulterior purposes. Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849, 1907 (1987) ("A better view of personhood should conceive of gifts not as disguised sales, but rather as expressions of the interrelationships between the self and others."). Nonetheless, it is possible that some gifts are given with a variety of motives. See Steven R. Salbu, *Extraterritorial Restriction of Bribery: A Premature Evocation of the Normative Global Village*, 24 YALE J. INT'L L. 223, 234-40 (1999) (noting that gifts may be given for more than one reason, including the desire to create goodwill). Indeed, in order to avoid the appearance of impropriety, many statutes simply prohibit the receipt of gifts. See Beth Nolan, *Public Interest, Private Income: Conflicts and Control Limits on the Outside Income of Government Officials*, 87 NW. U. L. REV. 57, 114-16 (1992) (discussing statutory restrictions on gifts). Nonetheless, courts presented with the task of distinguishing between gifts and bribes are quite capable of doing so. See *United States v. Dozier*, 672 F.2d 531, 537 (5th Cir. 1982) (distinguishing between gifts, which may represent "vague expectation of future benefits," and bribes, given "in return for some act of official grace"); *United States v. Johnson*, 621 F.2d 1073, 1076 (10th Cir. 1980) (stating that a gift must be offered with something more specific than a "generalized hope or expectation of ultimate benefit" in order to be considered a bribe) (citation omitted).

<sup>25</sup> See ROSE-ACKERMAN, *supra* note 2, at 92-96 (discussing the distinction between bribes, gifts, tips, and price); Lawrence Lessig, *The Regulation of Social Meaning*, 62 U. CHI. L. REV. 943, 952 (1995) (noting that although the distinctions of whom to tip and whom not to tip are complex, "these distinctions seem completely obvious" to persons living in the United States). The U.S. custom of tipping has not always been accepted as morally innocent; earlier in the last century social commentators decried it as demeaning and even corrosive of democratic institutions. See WILLIAM SCOTT, *THE ITCHING PALM: A STUDY OF THE HABIT OF TIPPING IN AMERICA* 38 (1916) ("Every tip given in the United States is a blow at our experiment in democracy. The custom announces to the world that at heart we are aristocratic."); VIVIANA A. ZELIZER, *THE SOCIAL MEANING OF MONEY* 96 (1994) (noting that in the early 1900s tipping was "denounced as socially demeaning"). With respect to public officeholders, some argue that any tip given to a public official—even a librarian—constitutes a bribe. Kelly Kunsch, *Tip Jars at the Law Library Reference Desk*, 86 LAW LIBR. J. 369, 371 (1994) (noting the argument that a tip to a public officeholder constitutes bribery). Many statutes forbid public officeholders from receiving tips. See, e.g., 5 U.S.C. § 7353(a) (1994) (prohibiting the solicitation or acceptance of gifts by federal employees). Moreover, bribe givers sometime characterize their payment as a "tip" for services rendered rather than as a bribe. See Nolan, *supra* note 24, at 115 (observing the many names by which transfers are made but arguing that it is "how a transfer functions" that is important rather than the name). Nonetheless, courts are able to distinguish between tips to public officeholders and bribes and do not always find the former to be objectionable. See, e.g., *United States v. McNeive*, 536 F.2d 1245, 1251 (8th Cir. 1976) (holding that an officeholder who received tips that did not interfere with his discretionary duties fell outside the reach of the mail fraud statutes); *see also*

ship with the understanding that the official will award a contract to the giver is bribery and is corrupt.<sup>26</sup>

Voluminous literature outlines the damage done by corruption, and those discussions will not be repeated here. Briefly, the literature indicates that public corruption distorts economic decisions (which, in statist countries, can distort the entire economy),<sup>27</sup> impedes transnational commercial relationships,<sup>28</sup> degrades bureau-

NOONAN, *supra* note 10, at 698 (“[G]ifts, tips, contributions, and bribes to officeholders . . . can be masked as one another; but the masks are removable.”).

<sup>26</sup> Such was the case in the award of the 2002 Winter Olympic Games to Salt Lake City in the United States. Revelations about these improper transactions have led to criminal and internal investigations and to a change in the institutional culture of the Olympic Committee. See Mary K. FitzGerald, *The Court of Arbitration for Sport: Dealing With Doping and Due Process During the Olympics*, 7 SPORTS LAW. J. 213, 214 (2000) (describing the investigation into the Winter 2002 Olympics bribery scandal and its aftermath); Matthew Shabat, Comment, *SEC Regulation of Attorneys Under the Foreign Corrupt Practices Act: Decisions on Efficiency and Their Role in International Anti-Bribery Efforts*, 20 U. PA. J. INT’L ECON. L. 987, 1023 (1999) (same).

<sup>27</sup> Bribery alters economic decision-making in market economies. Rather than purchasing a good or service based on the price, quality and fit of that good or service, the purchase is based on the size of the bribe. 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). Manufacturers and providers have little incentive to produce high quality, low cost goods and services and instead are rewarded when they divert money from production to the payment of bribes. M. Shahid Alam, *Anatomy of Corruption: An Approach to the Political Economy of Underdevelopment*, 48 AM. J. ECON. & SOC. 441, 448-52 (1989); see also Stanley Sporkin, *The Worldwide Banning of Schmiergeld: A Look at the Foreign Corrupt Practices Act on its Twentieth Birthday*, 18 NW. J. INT’L L. & BUS. 269, 280 (1998) (describing possibilities of low quality construction due to corruption). Endemic bribery also distorts economies by diverting large amounts of money. See Andrei Shleifer & Robert W. Vishny, *Corruption*, 108 Q.J. ECON. 599, 611-15 (1993) (stating that corruption is more distortionary than heavy taxation because of the added imperative of secrecy); SHANG-JIN WEI, WHY IS CORRUPTION SO MUCH MORE TAXING THAN TAX? ARBITRARINESS KILLS 1-2 (NBER, Working Paper No. W6255, Nov. 1997) (finding empirically that corruption severely distorts economies).

<sup>28</sup> Corruption impedes transnational commercial relationships in at least two ways. First, rather than opening up markets, bribery is more often used to exclude competitors and create monopolies. See Frederick M. Abbott, *Foundation-Building for Western Hemispheric Integration*, 17 NW. J. INT’L L. & BUS. 900, 914 (1996-1997) (“Governmental corruption and non-transparency are likely to benefit inefficient local operators over efficient multinational operators.”); Franklin A. Gevurtz, *Commercial Bribery and the Sherman Act: The Case for Per Se Illegality*, 42 U. MIAMI L. REV. 365, 390-91 (1987) (noting the inefficiencies created when firms bribe to create monopolies); Herbert Hovenkamp, *Antitrust’s Protected Classes*, 88 MICH. L. REV. 1, 16 (1989) (providing examples of how bribes are used to obtain or retain monopolies). The *Slaughterhouse Cases* familiar to every student of constitutional law resulted from bribes paid in New Orleans to secure a monopoly in

cratic systems,<sup>29</sup> and severely corrodes social structures.<sup>30</sup> A thin strand of literature continues to argue that corruption can, in some

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slaughterhouses. 83 U.S. (16 Wall.) 36 (1872); see Mark Tushnet, *Conservative Constitutional Theory*, 59 TUL. L. REV. 910, 922 (1985) (describing the bribery that took place in the Slaughterhouse Cases). The creation of monopolies is exacerbated by the fact that government officials will only accept bribes, and therefore allow entry, to those whom they trust. See Alam, *supra* note 27, at 449 (stating that bribetaking officials limit entry to those whom they trust). The second way that corruption impedes transnational relationships is by creating environments in which foreign businesspeople simply do not want to work. The most well known empirical work demonstrating this effect is that of Paolo Mauro, which found a "negative association between corruption and investment, as well as growth, [that] is significant in both a statistical and an economic sense." Paolo Mauro, *Corruption and Growth*, 110 Q.J. ECON. 681, 705 (1995); see also Paolo Mauro, *The Effects of Corruption on Growth, Investment, and Government Expenditure: A Cross Country Analysis*, in CORRUPTION AND THE GLOBAL ECONOMY 83, 91 (Kimberly Ann Elliott ed., 1996) (finding that a measurable decrease in corruption in a country would increase its investment to gross domestic product ratio by almost 4% and the annual growth of its gross domestic product per capita by almost half a percent). Edgardo Campos and others find that while the negative effect is lessened if a corrupt government is predictable, there is still a negative effect. J. Edgardo Campos et al., *The Impact of Corruption on Investment: Predictability Matters*, 27 WORLD DEV. 1059, 1065 (1999).

<sup>29</sup> Capable and honest persons tend to avoid corrupt bureaucracies. 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, 57 (1975) (observing that capable and honest persons avoid government work for moral reasons when corruption is pervasive); Tanzi, *supra* note 21, at 26 (observing that people will seek jobs that pay good bribes rather than jobs for which they are qualified); Francisco E. Thoumi, *Some Implications of the Growth of the Underground Economy in Columbia*, 29 J. INT'L STUD. & WORLD AFF. 35, 44 (1987) (stating that over time an honest individual in a corrupt system adapts and becomes more dishonest). Resources will be diverted to hide illicit activity. See M.S. Alam, *A Theory of Limits on Corruption and Some Applications*, 48 KYKLOS: INT'L REV. FOR SOC. SCI. 419, 431 (1995) (noting that resources are diverted and wasted to hide illicit activities). Bureaucrats hold back information and resources in order to extract larger bribes for each. See Alam, *supra* note 27, at 449 (stating that "bribery may impose costs because of the official's efforts to maximize the offer of bribes by creating false uncertainties"). In his classic empirical study of corruption in the Irrigation Department of a State in southern India, Robert Wade observed each of these effects of bribery. See Robert Wade, *Irrigation Reform in Conditions of Populist Anarchy: An Indian Case*, 14 J. DEV. ECON. 285 (1984); Robert Wade, *The System of Administrative and Political Corruption: Canal Irrigation in South India*, 18 J. DEV. STUD. 287, 287, 291 (1982). Wade also found that senior officials raised further money by selling government posts to junior officials, thus perpetuating the entry into bureaucratic service of dishonest and incapable persons. 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).

<sup>30</sup> Susan Rose-Ackerman summarizes the social affects of corruption: "Corruption undermines the legitimacy of governments, especially democracies . . . . Citizens may come to believe that the government is simply for sale to the highest

circumstances, be economically beneficial,<sup>31</sup> although this literature is usually criticized for analyzing corruption statically rather than dynamically or for not taking into account all of the damage done by corruption.<sup>32</sup> The most plausible argument in favor of corrup-

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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." Susan Rose-Ackerman, *The Political Economy of Corruption*, in CORRUPTION AND THE GLOBAL ECONOMY, *supra* note 28, at 31, 44; *see also* Nancy Zucker Boswell, *Combatting 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) (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.").

<sup>31</sup> *See* Ibrahim F.I. Shihata, *Corruption - A General Review With an Emphasis on the Role of the World Bank*, 15 DICK. J. INT'L L. 451, 454 (1997) (describing pro-corruption arguments in the literature, including capital formation, predictability in government relationships, and "efficient" escape from burdensome regulations). Ironically, Claire Dickerson has suggested that the Author of this Article has also argued that facilitation payments can be desirable. Dickerson, *supra* note 11, at 397 n.17. That, of course, is not true, and the passage that Dickerson refers to merely points out that some officials ask for bribes to perform the task that they are supposed to perform (which is sometimes referred to as an "according-to-rule" benefit to the bribe giver), as opposed to officials who ask for bribes to perform tasks they are not supposed to undertake (which is sometimes referred to as an "against-rule-benefit"). *See* Philip M. Nichols, *Outlawing Transnational Bribery Through the World Trade Organization*, 28 LAW & POL'Y INT'L BUS. 305, 315-16 (1996) (citing Philip Oldenburg, *Middlemen in Third-World Corruption: Implications of an Indian Case*, 39 WORLD POL. 508 (1987)).

<sup>32</sup> *See* Buscaglia & Dakolias, *supra* note 4, at 112 (noting that "present corruption decreases future productivity, thereby reducing dynamic efficiency"); Salbu, *supra* note 4, at 49 ("The once-popular 'functionalist' view of bribery, under which corruption purportedly yields benefits of allocative efficiency and optimal capital formation, retains little favor among today's academics."); Shihata, *supra* note 31, at 454-55 (noting the consensus among scholars that the long term damage done by corruption far outweighs any immediate benefits). Salim Rashid provides an example of how static and dynamic analyses of corruption might lead to different conclusions regarding corruption's benefits and harms. Salim Rashid, *Public Utilities in Egalitarian LDC's: The Role of Bribery in Achieving Pareto Efficiency*, 34 KYKLOS: INT'L REV. FOR SOC. SCI. 448, 448-55 (1981). Rashid studied bribes to obtain telephone service in India; his original premise was that the bribes would help to differentiate customers in a system that otherwise was completely egalitarian, and thus bribes would allow for Pareto optimization. *Id.* Rashid found that while this may at first have been the case, over time bureaucrats came to expect bribes and also created inefficiencies in order to extract more and larger bribes; rather than contributing to Pareto optimality bribery degraded the system. *Id.*

tion is that under conditions of authoritarian repression, internal corruption can facilitate the creation of channels through which goods and services reach ordinary people.<sup>33</sup>

### 1.2. *The Extent of Corruption and Bribery*

The extent of corruption is impossible to gauge with precision. Those who act corruptly rarely open their activities to public scrutiny, and those who make corrupt payments are equally reticent to expose themselves.<sup>34</sup>

The literature on corruption is not unanimous as to whether the amount of corruption worldwide is increasing. Moisés Naim's characterization of a "corruption eruption," in which the weaknesses of postcolonial institutions combined with the freedoms brought on by more recent democratization has unleashed a tor-

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Some people suggest that examples of corrupt but economically successful countries in Asia undermine the argument made concerning the economic damage caused by corruption. *See, e.g., Ohnesorge, supra* note 4, at 471 (noting that Northeast Asia has had high economic growth while the bureaucracy also had growing levels of corruption). Others counter that corruption has seriously damaged the political and economic stability of several of those countries. *See* Joseph Onek, Remarks at Roundtable on Global Corruption, in 31 *LAW & POL'Y INT'L BUS.* 205, 205 (1999) (noting that corruption played a major role in the banking crisis of Indonesia).

<sup>33</sup> *See* Ohnesorge, *supra* note 4, at 473 (noting that in repressive politics, corruption opens the door for desired consumer goods); Scheppele, *supra* note 7, at 515-18 (describing in detail how people adapted to the Soviet system with behaviors that would be considered corrupt in other systems); Paul B. Stephan, *Rationality and Corruption in the Post-Socialist World*, 14 *CONN. J. INT'L L.* 533, 533 (1999) (describing adaption to corruption as a survival skill in the Soviet system).

<sup>34</sup> George Moody-Stuart points out that in addition to the difficulties of measuring an activity that is intentionally hidden, scholars are dissuaded from vigorously exploring discrete cases of corruption because of the risk of libel suits. GEORGE MOODY-STUART, *TRANSPARENCY INTERNATIONAL, THE GOOD BUSINESS GUIDE TO BRIBERY: GRAND CORRUPTION IN THIRD WORLD DEVELOPMENT 1-3* (1994). Shahid Alam disagrees, suggesting that "conventional tools of research" would yield valuable measurements of levels of corruption—for example by using interviews with retired customs officials. Alam, *supra* note 27, at 443. In a previous article, the Author of this Article noted that twenty-six countries, accounting in the aggregate for over twenty percent of the world's transnational trade, were considered to be at least as corrupt as they were not corrupt. *See* Philip M. Nichols, *Corruption in the World Trade Organization: Discerning the Limits of the World Trade Organization's Authority*, 28 *N.Y.U. J. INT'L L. & POL.* 711, 776-77 (1996). More recently, in 1997, using an extremely rough estimate that five percent of foreign investment and trade actually constitutes bribes, the World Bank has calculated that the dollar value of corruption is U.S. \$80 billion per year. Hess & Dunfee, *supra* note 7, at 596.

rent of both corrupt activity and awareness of corrupt activity,<sup>35</sup> exemplifies the dominant stream of literature.<sup>36</sup> George Moody-Stuart, who himself has decades of experience in business and policymaking, states that "the incidence of grand corruption has increased tremendously during the last decade. What used to concern a relatively small number of people working in a relatively small number of countries has now become a major South-wide problem."<sup>37</sup>

While there is not unanimity on the matter of whether or not corruption is increasing, there is no meaningful strand of literature that argues that corruption is negligible in the world. Corruption is a significant phenomenon throughout the world. Indeed, the sheer frequency of corruption could be one source of the persistent claim that corruption is acceptable in some cultures.

### 1.3. General Objections to the Hypothesis that Corruption is Acceptable

This paper, among other things, empirically tests that hypothesis, that the widespread phenomenon of corruption is acceptable in some cultures. While widespread, this hypothesis faces several general objections. First, every country in the world prohibits at least the bribery of its own officials.<sup>38</sup> Kazakhstan, the country in

<sup>35</sup> Moisés Naím, *The Corruption Eruption*, 11 BROWN J. WORLD AFF. 245 (1995).

<sup>36</sup> See Konyin Ajayi, *On the Trail of a Spectre – Destabilisation of Developing and Transitional Economies: A Case Study of Corruption in Nigeria*, 15 DICK. J. INT'L L. 545, 545 (1997) (noting the recent "astronomical" increase in the level of corruption); Maria Dakolias & Kim Thachuk, *Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform*, 18 WIS. INT'L L.J. 353, 357 (2000) (referring to Naím's observations regarding a corruption eruption); Gantz, *supra* note 15, at 463 (noting that globally corruption has become "disturbingly common"); Shihata, *supra* note 31, at 461 (referring to the eruption of corruption); Wesberry, *supra* note 14, at 499-500 & n.1 (noting that over the last fifty years corruption has become "pervasive").

<sup>37</sup> MOODY-STUART, *supra* note 34, at 2. Moody-Stuart concludes that by "general consensus, there has been a tremendous deterioration in the last ten years, with grand corruption becoming the general rule, rather than the exception, in major government-influenced contracts in the South." *Id.* at 2.

<sup>38</sup> FRITZ F. HEIMANN, TRANSPARENCY INTERNATIONAL, SHOULD FOREIGN BRIBERY BE A CRIME 2 (1994). Even the most ancient laws proscribe bribery. The Code of Hammurabi (Babylon 2200 B.C.) and the Edict of Harmab (Egypt 1200 B.C.), for example, made the taking of bribes illegal. See THE CODE OF HAMMURABI § 4 (Robert F. Harper trans., 1904) ("If a man (in a case) bear witness for grain or money (as a bribe), he shall himself bear the penalty imposed in that case."); JAMES HENRY BREASTED, A HISTORY OF EGYPT: FROM THE EARLIEST TIMES TO THE PERSIAN CONQUEST 405-06 (2nd ed. 1919) (describing the Edict of Harmab). Judge Noonan, in his

which the survey discussed in this Article was conducted, has laws criminalizing the acceptance and payment of bribes.<sup>39</sup>

The existence of a law, however, is not proof of a norm.<sup>40</sup> Although there is a dynamic relationship between law and morality, the two are not necessarily coincident.<sup>41</sup> In the United States, for example, morals laws prohibit most forms of sexual contact.<sup>42</sup> These laws are given almost no notice in U.S. practice and culture.<sup>43</sup> The general objection that corruption is illegal in every

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comprehensive intellectual history of the concept of bribery, argues that the Edict of Horemheb "is the first law with a secular penalty for a form of bribe-taking." NOONAN, *supra* note 10, at 11. He believes that interpretations of the Code of Hammurabi that seem to indicate a concern for bribery are actually reflections of the interpreters' Western bias. *Id.* at 10. Nonetheless, non-Western scholars have interpreted the Code in a similar manner. See, e.g., SHAIKAT ALI, CORRUPTION: A THIRD WORLD PERSPECTIVE 2-3 (1985) (arguing that several sections of the Code of Hammurabi dealt obliquely with corruption). In either case, laws prohibiting bribery are very old.

<sup>39</sup> See The Criminal Code of the Kazakh Soviet Socialist Republic of 1959, art. 147 (July 22, 1959, amended June 12, 1986); Decree No. 9 of the Plenum of the Supreme Court of the Republic of Kaz., "On the Practice of the Application by Courts of the Legislation on Responsibility for Corruption" (Dec. 22, 1995).

<sup>40</sup> See Dickerson, *supra* note 11, at 394 (stating that the existence of an anti-corruption law is not proof of a norm against corruption).

<sup>41</sup> Lynn Sharp Paine argues this point in her characterization of the relationship between law and ethics as "dynamic and interrelated" rather than as either correspondent or separate from one another. Lynn Sharp Paine, *Law, Ethics and Managerial Judgment*, 12 J. LEGAL STUD. EDUC. 153, 165 (1994). Paine suggests that "[i]n truth, the relationship between [law and ethics] is in flux: the prescriptions of law and the prescriptions of ethics . . . coincide to different degrees at different times and in different societies." *Id.* Paine goes on to suggest that ethics generally leads to changes in the law. See *id.* (suggesting that "what is legally permissible but ethically questionable today may be legally restricted or prohibited tomorrow"); *id.* at 167 (stating that "[l]aw is most often a lagging indicator of social ethics"). The converse often, however, is equally true: the Author of this Article, for example, observed how changes in law lead to changes in business practices in Kazakhstan. See Philip M. Nichols, *The Viability of Transplanted Law: Kazakhstani Reception of a Transplanted Foreign Investment Code*, 18 U. PA. J. INT'L ECON. L. 1235 (1997). Whether law leads or follows changes in social norms, it clearly is not always coincident with them.

<sup>42</sup> See RICHARD A. POSNER, SEX AND REASON 260-61 & n.44 (1992) (discussing prohibitions of all forms of sexual contact between unmarried persons); Yao Apasu-Gbotsu et al., *Survey on the Constitutional Right to Privacy In the Context of Homosexual Activity*, 40 U. MIAMI L. REV. 521, 524-25 & n.9 (1986) (discussing prohibitions of many common forms of sexual contact between all persons including married, consenting adults).

<sup>43</sup> ALBERT D. KLASSEN ET AL., SEX AND MORALITY IN THE U.S.: AN EMPIRICAL ENQUIRY UNDER THE AUSPICES OF THE KINSEY INSTITUTE (Hubert J. O'Gorman ed., 1989) (reporting that the vast majority of persons in the United States engage in the proscribed behaviors).

country, therefore, certainly is not insurmountable by those who claim that corruption is acceptable in some cultures.

The proposition that corruption is acceptable in some cultures also faces the general objection that corruption is condemned and proscribed by each of the major religious and moral schools of thought. Buddhism, Christianity, Confucianism, Hinduism, Islam, Judaism, Sikhism, and Taoism each proscribe corruption.<sup>44</sup> Islam, which is by a slight margin the predominant religion in Kazakhstan,<sup>45</sup> has an especially harsh attitude toward corruption:

Islam as a religious doctrine has waged a constant war against all forms of corruption . . . . According to Islam, corruption is a sin for which there is no atonement. The Quran in unmistakable terms has pointed out that all those who indulge in corruption will be subjected to eternal chastisement. Corruption is an immoral activity which deserves universal condemnation.<sup>46</sup>

Christianity, the second largest religion in Kazakhstan, also condemns corruption, although less harshly.<sup>47</sup>

Again, this general objection is not insurmountable by those who claim that corruption is accepted in particular cultures. In the first place, religion can be integrated into the fabric of a society in

<sup>44</sup> See Nichols, *supra* note 31, at 321-22 (citing primary sources from each of the major religions condemning corruption).

<sup>45</sup> The Central Intelligence Agency *Factbook* estimates that 47% of the population is nominally Muslim, and 46% of the population is Christian. Central Intelligence Agency, *The World Factbook 2000*, available at <http://www.odci.gov/cia/publications/factbook/geos/kz.html#People> (last modified Oct. 27, 2000).

<sup>46</sup> ALL, *supra* note 38, at 49; see QUR'AN, *Sura 2:184* ("Consume not your property amongst you in vanity, and do not dangle it before the judges that ye may in guilt consume a part of the wealth of the people, knowingly."); QUR'AN, *Sura 28:77* ("Allah loveth not those who cause corruption.").

<sup>47</sup> *Exodus 23:8* ("And you shall take no bribe, for a bribe blinds the officials . . ."); *Ecclesiastes 7:7* ("[A]nd a bribe corrupts the mind."); see David Neff, *When Economists Pray*, CHRISTIANITY TODAY, Apr. 9, 1990, at 13 (quoting Oxford Declaration on Christian Faith and Economics, that "Corruption . . . so undermines society that there is a virtual breakdown of legitimate order."). Judaism, which has a measurable presence in Kazakhstan, also condemns corruption. See *Deuteronomy 16:19* ("[A]nd you shall not take a bribe."); 1 SÈFER HAHINUCH, THE BOOK OF EDUCATION 325 (1978) ("Among the laws of the precept, there is what our Sages of blessed memory said, that both the one who gives and the one who accepts [the bribe] violate a negative precept . . .").

varying degrees.<sup>48</sup> Indeed, Islam is not deeply integrated in Kazakhstan.<sup>49</sup> In the second place, religious proscriptions do not seem to preclude corruption. Saudi Arabia, for example, is a Muslim theocracy in which people identify closely with Islam,<sup>50</sup> yet corruption constitutes an endemic problem in Saudi Arabia.<sup>51</sup>

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<sup>48</sup> Patrick Primeaux, speaking of religious identification in the West, suggests that the West's concentration on commerce has marginalized faith. See Patrick Primeaux, *Connecting: Trust and Faith for Religion and Business*, in PERSPECTIVES IN BUSINESS ETHICS 220, 222 (Laura Pincus Hartman ed., 1998) (stating that faith "does not fit the criteria of cost-benefit analysis, and when pursued from this utilitarian frame of reference, that faith is reduced and minimized"). Primeaux refers to Joseph Campbell's architectural metaphor of the marginalizing of faith. "You can tell what's informing a society by what the tallest building is. When you approach a medieval town, the cathedral is the tallest thing in the place. When you approach an eighteenth-century town, it is the political palace that's the tallest thing in the place. And when you approach a modern city, the tallest places are the office buildings, the centers of economic life." JOSEPH CAMPBELL, *THE POWER OF MYTH* 95-96 (Betty Sue Flowers ed., 1988).

Although both Primeaux and Campbell discuss the West, each of their observations illustrates a more generalizable point: that religion can be integrated into the fabric of a society in varying degrees. Similarly, individual persons incorporate religion into their own identities in varying degrees if at all. See Michael E. Nielsen, *Operationalizing Religious Orientation: Iron Rods and Compasses*, 129 J. PSYCHOL. 485, 492 (1995) (finding that different people in a study had different ideas on the role of faith in dealing with existential questions and attempting to explain the differences according to other orientations); Jeffrey L. Sanders, *Religious Ego Identity and Its Relationship to Faith Maturity*, 132 J. PSYCHOL. 653, 657-58 (1998) (finding different levels of identification with religion among college students).

<sup>49</sup> In 1993 Patrick Johnstone's worldwide database indicated that 32.6% of the population of Kazakhstan was in fact not religious at all, and that even though 40% of the population was nominally Muslim, only 5% were practicing Muslims. PATRICK JOHNSTONE, *OPERATION WORLD* (1993); see also Edward Allworth, *The New Central Asians*, in CENTRAL ASIA: 130 YEARS OF RUSSIAN DOMINANCE, A HISTORICAL OVERVIEW 527, 562 (Edward Allworth ed., 3d ed. 1994) (noting that Islam was not strongly embraced in the northern part of Central Asia). The Head of Administrative Law Department, Higher Law School "Adilet," in Almaty, Kazakhstan, states that "[i]t is necessary to note that Kazakhstan has never been a country affected by particularly strong religious sentiments or powerful religious forces." Roman Podoprigora, *Religion in Kazakhstan: A General View*, 1999 BYU L. REV. 581, 581 (1999).

<sup>50</sup> See Joseph Nevo, *Religion and National Identity in Saudi Arabia*, MIDDLE E. STUD., July 1998, at 34, 35 (describing Saudi Arabia as the most theocratic of the Arab states and stating that "religion (primarily the Wahhabi version of Sunni Islam) has played a prominent role not only in moulding the individual's private and collective identities but also in consolidating his national values"); A. Michael Tarazi, *Saudi Arabia's New Basic Laws: The Struggle for Participatory Islamic Government*, 34 HARV. INT'L L.J. 258, 264 (1993) (noting that the Basic Law of Saudi Arabia "affirms the Shari'a as the fundamental law of Saudi Arabia and stresses the relationship between political rule and religious belief"). It should be noted that

A third general objection to the claim that corruption is acceptable in some cultures is the presumption of a universal efficiency norm. Thomas Donaldson and Thomas Dunfee, the two leading scholars in the field of international business ethics, suggest the existence of a universal norm for the efficient allocation and distribution of necessary social resources.<sup>52</sup> Donaldson and Dunfee go

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while Saudi Arabia's Basic Law emphasizes the centrality of Islam, it also places a great deal of power in the hands of the Monarch. See Tarazi, *supra*, at 264 (noting that "[t]he Basic Law has been severely criticized as giving the King unbridled power"); see also Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash With a Construct?*, 15 MICH. J. INT'L L. 307, 354 (1994) (describing the Basic Law's statement that the government has not supplanted Islam as a "pretense"). Nonetheless, religion clearly is more integrated into society and identity in Saudi Arabia than it is in the West.

<sup>51</sup> See Saïd Aburish, *Good Luck and Allah Bless*, INDEX ON CENSORSHIP, July-Aug. 1996, at 84, 84-87 (including serious corruption as one of the major social problems in Saudi Arabia); Oliver A. Houck, *With Charity For All*, 93 YALE L.J. 1415, 1509-10 (1984) (discussing corruption in Saudi Arabia).

<sup>52</sup> See THOMAS DONALDSON & THOMAS W. DUNFEE, TIES THAT BIND: A SOCIAL CONTRACTS APPROACH TO BUSINESS ETHICS 117-38 (1999). Tom Dunfee continues this line of analysis in Thomas W. Dunfee et al., *Social Contracts and Marketing Ethics*, 63 J. MARKETING 14 (1999). Donaldson and Dunfee utilize a distributive rather than economic definition of efficiency: they consider an action or policy efficient "when it contributes toward the provision of necessary social goods sufficient to sustain the least well-off members of society at a level of reasonable possibility concerning liberty, health, food, housing, education, and just treatment." DONALDSON & DUNFEE, *supra*, at 119 (emphasis omitted). Necessary social goods include fairness and aggregate welfare. *Id.* at 121.

Dunfee and Donaldson offer efficiency as a hypernorm that fits into their Integrative Social Contract theory of business ethics. Integrative Social Contract theory unites two distinct types of social contracts. See Thomas Donaldson & Thomas W. Dunfee, *Toward a Unified Conception of Business Ethics: Integrative Social Contracts Theory*, 19 ACAD. MGMT. REV. 252, 254 (1994) [hereinafter *Unified Conception*] (explaining the unification). The first is a hypothetical macrosocial contract among all of the members of a given society, the contents of which are all of the economic rules to which all of the members would agree. See Thomas Donaldson & Thomas W. Dunfee, *Integrative Social Contracts Theory: A Communitarian Conception of Economic Ethics*, 11 ECON. & PHIL. 85, 93 (1995) [hereinafter *Communitarian Conception*] (explaining the hypothetical macrosocial contract). Obviously, this will not be a large number of rules. Therefore, within the hypothetical macrosocial contract there is a great deal of moral free space. See *Unified Conception*, *supra*, at 260-62 (discussing moral free space). Within that moral free space, economic communities are free to enter into the second type of social contract: empirical contracts that provide more detailed rules concerning ethical behavior in economic life. See *Communitarian Conception*, *supra*, at 93-95 (discussing empirical microsocial contracts that exist in the moral free space). These microsocial contracts are bound by only two things. One limit is a requirement that individual members have consented to the contract. *Communitarian Conception*, *supra*, at 98. Consent can be indicated by, among other means, not taking advantage of an opportunity to exit. See *id.* at 99-100. The other limit is formed by hypernorms, which

on to point out that bribery violates this universal norm and therefore should not be accepted in any society.<sup>53</sup> The observation that bribery violates an efficiency norm is echoed, albeit with less sophistication, in legal scholarship.<sup>54</sup>

This objection also is not insurmountable. In the first place, the existence of such a universal norm is certainly debatable: human history suggests that inefficiency is at least if not more normal than efficiency.<sup>55</sup> Moreover, as Donaldson and Dunfee themselves point out, the existence of a universal efficiency norm would not preclude the existence of isolated local norms that accept corruption.<sup>55</sup>

The three general objections to the suggestion that corruption is acceptable in some cultures are daunting but not insurmountable. Given the significance of corruption as a policy issue in the world, therefore, the hypothesis that corruption is acceptable in some societies must be given close empirical scrutiny.

are "principles so fundamental to human existence that they serve as a guide in evaluating lower level moral norms." *Unified Conception, supra*, at 265. Because "[h]ypernorms are defined as norms so fundamental to human existence that they will be reflected in a convergence of religious, political, and philosophical thought. Hypernorms thus represent core or fundamental values common to many cultures." Thomas W. Dunfee, *The Role of Ethics in International Business, in BUSINESS ETHICS: JAPAN AND THE GLOBAL ECONOMY*, 63, 69 (Thomas W. Dunfee & Yukimasa Nagayasu eds., 1993).

<sup>53</sup> See DONALDSON & DUNFEE, *supra* note 52, at 228-29.

<sup>54</sup> See Dickerson, *supra* note 11, at 396-401 (arguing that corruption is inefficient and therefore that it violates a norm and thus should be curtailed). The international financial institutions also use efficiency arguments to undergird their approaches to corruption. See Chantal Thomas, *Does the "Good Governance Policy" of the International Financial Institutions Privilege Markets at the Expense of Democracy?*, 14 CONN. J. INT'L L. 551, 552 (1999) (noting that international financial institutions emphasize efficiency as both a means and goal of eliminating corruption). Balakrishnan Rajagopal finds this emphasis by scholars and institutions troubling, as it may marginalize other important values. Balakrishnan Rajagopal, *Corruption, Legitimacy and Human Rights: The Dialectic of the Relationship*, 14 CONN. J. INT'L L. 495, 497 n.9 (1999) ("[T]he corruption discourse remains in an uneasy relationship with its sibling, the human rights discourse. This is partly because the corruption discourse is largely concerned with the promotion of an efficient and humane free market, even if it is achieved at the cost of some human rights.").

<sup>55</sup> David Landes has written an entire book illustrating the commonness of inefficiency. DAVID S. LANDES, *THE WEALTH AND POVERTY OF NATIONS: WHY ARE SOME SO RICH AND OTHERS SO POOR?* (1998). Mancur Olson's final book also provides ample illustration that inefficiency is more normal than efficiency. MANCUR OLSON, *POWER AND PROSPERITY: OUTGROWING COMMUNIST AND CAPITALIST DICTATORSHIPS* (2000); see also Mancur Olson, Jr., *Big Bills Left on the Sidewalk: Why Some Nations are Rich, and Others Poor*, 10 J. ECON. PERSP. 3, 3-24 (Spring 1996) (discussing inefficient social institutions in many countries around the world).

<sup>56</sup> DONALDSON & DUNFEE, *supra* note 52, at 230.

## 2. THE NEED FOR AN UNDERSTANDING OF INDIGENOUS ATTITUDES TOWARD CORRUPTION

Indeed, the claim that corruption is accepted in some cultures cries out for empirical validation. As mentioned in the Introduction, however, that is but the third reason for empirical analysis. There are at least two other reasons for deep concern by legal scholars about actual indigenous attitudes toward corruption. The first is that corruption is an embedded component of the structure of many transition economies,<sup>57</sup> and, therefore, must be taken into account by any person effectuating legal changes in those countries.<sup>58</sup> The second is that the global legal environment is in the process of taking a much more aggressive position with respect to corruption, inducing concerns of moral and legal imperialism and theoretical legitimacy.<sup>59</sup>

### 2.1. *Corruption as a Structural Component That Must be Taken Into Account*

The extent of corruption, as has been discussed, cannot be measured with accuracy.<sup>60</sup> Nonetheless, the consensus in the literature discussing emerging and transition economies is that corruption is or can be deeply embedded within many of those countries.<sup>61</sup> Kim Scheppele suggests that corruption is inevitable when

<sup>57</sup> For a theoretical approach to transition economies, see, for example, Philip M. Nichols, *A Legal Theory of Emerging Economies*, 39 VA. J. INT'L L. 229 (1999).

<sup>58</sup> For pragmatic or prescriptive treatments of transition economies, see, for example, Bernard Black & Reinier Kraakman, *A Self-Enforcing Model of Corporate Law*, 109 HARV. L. REV. 1911 (1996); see also Richard T. De George, "Sullivan-Type" Principles for U.S. Multinationals in Emerging Economies, 18 U. PA. J. INT'L ECON. L. 1193 (1997) (prescribing ethical rules for companies investing in Russia and perhaps other transition economies); Michael A. Heller, *The Tragedy of the Anticommons: Property in the Transition from Marx to Markets*, 111 HARV. L. REV. 622 (1998) (prescribing methods of dealing with unclear property ownership in Russia); Ann Seidman & Robert B. Seidman, *Drafting Legislation for Development: Lessons from a Chinese Project*, 44 AM. J. COMP. L. 1 (1996) (prescribing antitrust legislation in emerging economies).

<sup>59</sup> See Kennedy, *supra* note 3, at 458 (warning that echoes of colonialism and imperialism might blunt anticorruption efforts).

<sup>60</sup> See *supra* note 34 and accompanying text.

<sup>61</sup> See Robert Williams, *The New Politics of Corruption*, 20 THIRD WORLD Q. 487, 487 (1999) (stating, in the introduction to a special series on corruption in developing countries, that political corruption has become a prominent element in developing countries during the 1990s); see also Ting Gong, *Forms and Characteristics of China's Corruption in the 1990s: Change With Continuity*, 30 COMMUNIST & POST-COMMUNIST STUD. 277, 277-90 (1997) (noting that corruption in China merely

a country moves from an authoritarian system in which corruption was the only reliable means of obtaining basic goods to a market oriented system.<sup>62</sup> Patrick Glynn, Stephen Kobrin, and Moisés Naím suggest that “systemic political change has weakened or destroyed social, political, and legal institutions, opening the way to new abuses.”<sup>63</sup> Others suggest that the process of privatization itself facilitates corruption.<sup>64</sup>

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changes form when the economy moves from controlled to market orientation); John Mukum Mbaku, *Bureaucratic Corruption and Policy Reform in Africa*, 19 J. SOC., POL. & ECON. STUD. 149, 149-50 (1994) (suggesting that economic regulation and state ownership in African countries has led to systemic corruption and prevented economic development); Hilton Root, *Corruption in China: Has It Become Systemic?*, 36 ASIAN SURV. 741, 741-43 (1996) (stating that the present relationship-based trade in China has effected system-wide corruption).

Transition economies are countries in transition from nonmarket (usually socialist) orientation to market orientation. They form a subset of emerging economies, which are countries whose commercial institutions are changing from a relational orientation, which limits relationships to those with the requisite status and preexisting relationships, to a formal orientation, which allow relationships to be created and enforced among strangers. These and other appellations allow for more precise discussion than the broadly inclusive term “developing countries.” See Nichols, *supra* note 57, at 235 n.22 & 278-86 (discussing these definitions).

<sup>62</sup> Scheppele, *supra* note 7, at 520. Steven Cheung, although making the questionable assumption that all persons are individually oriented self-maximizers, intelligently cautions that while corruption can offset some of the problems in authoritarian systems it can also become institutionalized and prevent any further economic growth, even if the country moves from an authoritarian to a market system. Steven N. S. Cheung, *A Simplistic General Equilibrium Theory of Corruption*, CONTEMP. ECON. POL’Y, July 1996, at 1, 1-4.

<sup>63</sup> Patrick Glynn et al., *The Globalization of Corruption*, in CORRUPTION AND THE GLOBAL ECONOMY, *supra* note 28, at 7, 8. These scholars, who are each members of the World Economic Forum’s Davos Group, acknowledge that there is a greater awareness and exposure of corruption, but also state that actual levels of corruption in emerging and transition economies have increased. *Id.*

<sup>64</sup> See Michelle Celarier, *Privatization: A Case Study in Corruption*, 50 J. INT’L AFF. 531, 531-34 (1997) (stating that privatization has fueled widespread graft and corruption in a number of countries including Russia, India, and Mexico); Daniel Kaufmann & Paul Siegelbaum, *Privatization and Corruption in Transition Economies*, 50 J. INT’L AFF. 419 (1997) (stating that although the degree of corruption in Central and Eastern Europe is probably less than would have occurred without any privatization at all, certain privatization techniques, such as management-employee buyouts and spontaneous privatization, foster corruption). With respect to Kazakhstan, corruption has certainly been a facet of the privatization program. See Philip M. Nichols, *Creating a Market Along the Silk Road: A Comparison of Privatization Techniques in Central Asia*, 29 N.Y.U. J. INT’L L. & POL. 299, 312-20 (1997) (discussing allegations of corruption in association with privatization in Kazakhstan). In conversations with people in Kazakhstan, the relationship between privatization and corruption has frequently been mentioned to the Author.

While not all emerging or transition economies experience corruption, the possibility that corruption is embedded in the structure of most transition and emerging economies is of great consequence to legal scholars and practitioners. An enormous number of Western advisors assist in the creation of legal regimes in emerging and transition economies. Jacques deLisle, in his critical treatment of only the United States, lists over a dozen agencies and other entities providing technical legal advice.<sup>65</sup> The collapses of so many authoritarian governments around the world<sup>66</sup> have left a void into which Western advisors are being called.<sup>67</sup> Often, techni-

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<sup>65</sup> See Jacques deLisle, *Lex Americana?: United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond*, 20 U. PA. J. INT'L ECON. L. 179, 184 (1999).

Federal government agencies and large private foundations have established substantial programs to extend legal assistance and offer legal advice abroad. They have been joined in this effort by countless U.S. institutions and individuals who have undertaken broadly similar but smaller scale projects, and by Americans who have participated in other modes of offering advice and spreading U.S. legal ideas and ideals.

*Id.*

The institutions that deLisle mentions include the U.S. Agency for International Development, the Support for Eastern European Democracy Act, the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act, the U.S. Information Agency, the U.S. Department of State, the Administrative Conference of the United States, the National Endowment for Democracy, the Committee on International Judicial Relations of the Judicial Conference of the United States, the Commercial Law Development Program, the Central and Eastern European Law Initiative of the American Bar Association, the U.S. Chamber of Commerce, the Federal Bar Association's Democracy Development Initiative, the Ford Foundation, and the Soros Foundation. *Id.* at 185-91. Universities also provide significant amounts of legal technical advice. *Id.* at 199. Less institutional entities that provide a significant amount of technical legal advice include major accounting firms, local bar associations, private voluntary organizations, and individual experts. *Id.* at 196. While recounting such a list may seem heavy-handed, deLisle makes mention of a directory of entities providing technical legal assistance that is 200 pages in length. *Id.* at 184 n.3 (citing A.E. DICK HOWARD, *DEMOCRACY'S DAWN: A DIRECTORY OF AMERICAN INITIATIVES ON CONSTITUTIONALISM, DEMOCRACY, AND THE RULE OF LAW IN CENTRAL AND EASTERN EUROPE* (1991)). Similar lists could be drafted for European-based entities.

<sup>66</sup> See generally JEANNE J. KIRKPATRICK, *THE WHITHERING AWAY OF THE TOTALITARIAN STATE . . . AND OTHER SURPRISES* (1991) (describing and discussing the collapse of authoritarian regimes around the world).

<sup>67</sup> See John Linarelli, *Anglo-American Jurisprudence and Latin America*, 20 *FORDHAM INT'L L.J.* 50, 52 n.15 (1996) (discussing the squadrons of technical legal advisors sent to Latin America as Latin America democratized). For a discussion of technical legal aid provided to Kazakhstan, see Jim Cashel & Christopher Kedzie, *Kazakhstan: Programs and Prospects*, *CENT. ASIA MONITOR*, No.2 1993, at 5, 5-8.

cal advisors are asked to create entire legal systems and just as often they are asked to effectively transplant legal systems from more stable and legalistic countries.<sup>68</sup>

The provision of technical legal advice and particularly the transplant of law require awareness of the indigenous culture, including perceptions of issues related to the laws in question.<sup>69</sup> This statement, of course, is not uncontested: Alan Watson argues convincingly that legal transplants are viable and constitute the most important source of change in legal systems.<sup>70</sup> He points to the reception of Roman law throughout Western Europe as evidence of his proposition that law may be influenced without regard to indigenous perceptions and attitudes.<sup>71</sup> Most legal scholars, however, argue that sensitivity to other perspectives is critical to successful structuring of legal regimes and transplants from more developed systems.<sup>72</sup> Rather than looking to the successful trans-

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<sup>68</sup> See Gianmaria Ajani, *By Chance and Prestige: Legal Transplants in Russia and Eastern Europe*, 43 AM. J. COMP. L. 93 (1995).

<sup>69</sup> Indeed, deLisle's primary criticism of the technical legal advice provided through U.S. entities is the ethnocentrism and lack of cultural sensitivity evidenced by that advice. See deLisle, *supra* note 65, at 180. A similar criticism has been made of technical legal advice provided to Kazakhstan. See Barnabas Johnson, *The Role of the United States in the Erosion and Collapse of Constitutional Governance in Kazakhstan*, CENT. ASIA MONITOR, No. 6 1995, at 14 (arguing that aid to Kazakhstan is U.S.-centric and does not take Kazakhstan's considerations into account). The same criticisms are leveled colloquially against aid provided by other countries. A very colorful account of cultural insensitivity is found in Matt Bivens, *Aboard the Gravy Train: In Kazakhstan, the farce that is U.S. foreign aid*, HARPER'S MAG., Aug. 1997, at 69 (providing criticisms of a former National Media Coordinator for the U.S. Agency for International Development in Kazakhstan). The Author of this Article's personal observations would tend to be far less harsh than either of these authors, and the Author of this Article notes the personal commitment evidenced by and real hardships endured by dozens of technical legal advisors in Central Asia.

<sup>70</sup> See Alan Watson, *Aspects of Reception of Law*, 44 AM. J. COMP. L. 335, 335 (1995) ("In most places at most times borrowing is the most fruitful source of legal change."). Watson speaks of borrowing from both internal (from one branch of law to another branch within the same legal system) and external (from one polity to another) sources. *Id.*

<sup>71</sup> See Alan Watson, *Legal Transplants and Law Reform*, 92 LAW Q. REV. 79, 80-82 (1976) (using late nineteenth century Japan to show that modern legal rules "may be successfully transplanted to a country with very different traditions").

<sup>72</sup> See, e.g., Ross Cranston, *The Transplant of Commercial Law; Security Law in Sri Lanka*, 19 CANADIAN BUS. L.J. 296, 298 (1991) (stating that without correspondence to the host society a transplanted law will not "survive as a living, working instrument"); Liana Fiol-Matta, *Civil Law and Common Law in the Legal Method of Puerto Rico: Anomalies and Contradictions in Legal Discourse*, 24 CAP. U. L. REV. 153, 206 (1995) (stating that successful legal transplants depend on selecting laws that

plantation of Roman law fifteen hundred years ago,<sup>73</sup> these theorists look instead to the failure of the most recent large-scale attempt to create viable legal regimes throughout the world—the law and development movement of the 1960s.<sup>74</sup> Most retrospectives of the movement, including those by leading figures in the movement, suggest that it failed due to ethnocentricity and a failure to consider other perspectives.<sup>75</sup>

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are culturally compatible); Tamar Frankel, *Foreword to A Recipe for Effecting Institutional Changes to Achieve Privatization*, 13 B.U. INT'L L.J. 295, 295-305 (1995) (stating that without cultural similarity a transplant most likely will fail to take roots); Ronald St. J. MacDonald, Book Review, 86 AM. J. INT'L L. 192, 197 (1992) (stating that cultural similarity is very important to successful transplant of law); Ugo Mattei, *Three Patterns of Law: Taxonomy and Change in the World's Legal Systems*, 45 AM. J. COMP. L. 5, 7 (1997) (noting that a transplant when cultures differ is often really "legal imperialism" and stating that such transplants are usually rejected); Edward A. Mearns, *Emerging Trends in International Constitutionalism: A Comparative Approach*, 28 CASE W. RES. J. INT'L L. 1, 1 (1996) ("Most scholars now know that legal institutions cannot simply be 'transplanted.' Nations, like living organs, have mechanisms that reject the transplanting of foreign law into their legal systems."); William T. Pizzi, *Understanding Prosecutorial Discretion in the United States: The Limits of Comparative Criminal Procedure as an Instrument of Reform*, 54 OHIO ST. L.J. 1325, 1327 (1993) (noting that law that works well in one environment is not likely to work well in a different environment, and noting particularly that a law that is ideologically different will not be supported in the host environment); James F. Smith, *Confronting Differences in the United States and Mexican Legal Systems in the Era of NAFTA*, 1 U.S.-MEX. L.J. 85, 92 (1993) (arguing that a transplant to a different culture is "destined to fail").

<sup>73</sup> A success that Otto Kahn-Freund, Watson's antagonist in their seminal debate on the viability of transplants in the 1970s, would probably attribute to "*un grand hazard*"—a great coincidence. O. Kahn-Freund, *On Uses and Misuses of Comparative Law*, 37 MOD. L. REV. 1, 6 (1974) (citing CHARLES DE MONTESQUIEU, *DE L'ESPRIT DES LOIS*, bk. I, ch. 3 (1750) ("Les lois politiques et civiles de chaque nation . . . doivent être tellement propres au peuple pour lequel elles sont faites, que c'est un très grand hasard si celles d'une nation peuvent convenir à une autre.")). Watson responds that "Montesquieu badly—very badly—underestimated the amount of successful borrowing which had been going on, and was going on, in his day." Watson, *supra* note 71, at 80; see Eric Stein, *Uses, Misuses – and Nonuses of Comparative Law*, 72 NW. U. L. REV. 198 (1977) (summarizing the debate between Otto Kahn-Freund and Watson).

<sup>74</sup> See John Henry Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement*, 25 AM. J. COMP. L. 457, 457-58 n.4 (1977) (discussing the beginning of the law and development movement in the 1960s); Brian Z. Tamanaha, Book Review, 89 AM. J. INT'L L. 473 (1995) (discussing the history of the law and development movement); David M. Trubek, *Back to the Future: The Short, Happy Life of the Law and Society Movement*, 18 FLA. ST. U. L. REV. 4 (1990) (discussing the law and development movement).

<sup>75</sup> See Maria Dakolias, *A Strategy for Judicial Reform: The Experience in Latin America*, 36 VA. J. INT'L L. 167, 229-30 (1995) (arguing that the law and development movement failed because it tried to transplant legal codes from developed

Corruption is deeply embedded in many of the regimes in which legal scholars and practitioners are or will be called upon to provide technical legal advice and may in fact play an instrumental role in determining whether new legal systems will function properly. It is critical, therefore, that those who will influence the development of law have some understanding of the attitudes of persons in other cultures toward corruption.

## 2.2. *Changes in the Global Legal Regime*

### 2.2.1. *Regime Changes*

The last decade has seen a tremendous change in legal regimes regarding corruption. Not surprisingly, the activity of policymakers has been reflected in the writings of legal scholars; a great number of expository articles describe the various regimes that have emerged and it is to these articles that readers should turn for descriptive accounts of each regime. These regimes have emerged at the global, regional, and local level and are propounded by both governmental and nongovernmental entities.<sup>76</sup>

At the global level, the United Nations adopted in 1996 a Declaration Against Corruption and Bribery in International Commercial Transactions, which calls upon members of the United Nations to criminalize transnational bribery.<sup>77</sup> The International Chamber

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countries into Latin America without taking into account culture and extant legal systems); Trubek, *supra* note 74, at 37 (noting that the law and development movement attempted to transplant law from the West to developing countries with little regard for the cultures of Africa, Asia, or Latin America); David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, *Wis. L. REV.* 1062, 1080 (1974) (arguing that the law and development movement failed because it was ethnocentric); Jane Kaufman Winn, *How to Make Poor Countries Rich and How to Enrich Our Poor*, 77 *IOWA L. REV.* 899, 922 (1992) (arguing that the law and development movement failed because the U.S. system was resisted by local cultures). David Trubek and Marc Galanter were intellectual leaders in the law and development movement.

<sup>76</sup> See Kennedy, *supra* note 3, at 455 (noting that opposition to corruption seems to unite international commentators).

<sup>77</sup> *United Nations Declaration Against Corruption and Bribery in International Commercial Transactions*, G.A. Res. 51/191, U.N. GAOR, 51st Sess., Annex, Agenda Item 12, para. 2, U.N. Doc. A/RES/51/191 (1997). In 1998, the United Nations again called upon members to implement the provisions of the Declaration. *Action Against Corruption and Bribery in International Commercial Transactions*, G.A. Res. 53/176, U.N. GAOR, 53d Sess., 91st plen. mtg., para. 4, U.N. Doc. A/RES/53/176 para. 4 (1999). These resolutions follow a 1976 resolution con-

of Congress, a nongovernmental organization with nearly global reach,<sup>78</sup> issued the Rules of Conduct in 1996 to Combat Extortion and Bribery in International Business Transactions.<sup>79</sup> Perhaps the most important global actor is the nongovernmental group Transparency International, which has, since 1995, succeeded in making corruption a highly visible issue without making it an overly political issue.<sup>80</sup>

Important changes at the global level have been facilitated in less direct ways by financial institutions and by the World Trade Organization. The President of the World Bank, for example, has stated that no issue is more important to his organization than cor-

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demning transnational bribery and requesting unilateral and multilateral action against bribery. Measures Against Corrupt Practices of Transnational and Other Corporations, Their Intermediaries and Others Involved, G.A. Res. 3514, U.N. GAOR, 30th Sess., Supp. No. 34, at 69, U.N. Doc. A/10034 (1976).

<sup>78</sup> See W. LAURENCE CRAIG ET AL., INTERNATIONAL CHAMBER OF COMMERCE ARBITRATION 25 (2d ed. 1990) (describing the Chamber as a nongovernmental "association of internationally-oriented enterprises and their national organizations" that works to "promote international commerce worldwide"); Boris Kozolchyk, *The Immunization of Fraudulently Procured Letter of Credit Acceptances: All Services Exportacao, Importacao Comercio, S.A. v. Banco Bamerindus Do Brazil, S.A. and First Commercial v. Gotham Originals*, 58 BROOK. L. REV. 369, 380 n.32 (1992) ("Many instruments sent for international collection are made subject to the International Chamber of Commerce Rules."). The Chamber was founded in 1919 and has over 7,000 members. CRAIG, *supra*, at 25.

<sup>79</sup> The Rules of Conduct to Combat Extortion and Bribery in International Business Transactions can be found in *Extortion and Bribery in International Business Transactions*, Ad Hoc Committee on Extortion and Bribery in International Business Transactions, ICC Doc. No. 193/15 (Mar. 26, 1996). The Rules of Conduct to Combat Extortion and Bribery in International Business Transactions prohibit the offer or acceptance of any bribe or kickback, require companies to control payments by their agents, and require recordkeeping sufficient to prevent the hiding of illicit payments or of secret funds. Rules of Conduct to Combat Extortion and Bribery in International Business Transactions arts. 1 ("No one may, directly or indirectly, demand or accept a bribe."), 2 ("No enterprise may, directly or indirectly, offer or give a bribe and any demands for such a bribe must be rejected."), & 4 (imposing financial recording and auditing requirements on enterprises).

<sup>80</sup> See Alejandro Posadas, *Combating Corruption Under International Law*, 10 DUKE J. COMP. & INT'L L. 345, 404-05 (2000) (describing Transparency International and stating that its creation is "[o]ne of the most promising developments" in anticorruption efforts); see also Brown, *supra* note 7, at 479-80 (describing Transparency International). Transparency International is best known for its annual Corruption Perception Index and more recently for the Bribe Payers Index. Transparency International also supports chapters dedicated to eliminating corruption in individual countries, supports research into corruption, and has promoted a commitment for companies to sign called "The Integrity Pact." See Posadas, *supra*, at 405-07 (describing the activities of Transparency International).

ruption,<sup>81</sup> and the Bank has published procurement guidelines, banned bribe-giving contractors from further work on Bank-funded projects, and canceled loans to bribe-soliciting countries.<sup>82</sup> The International Monetary Fund instructs its advisors to take a proactive role in dealing with corruption and will take action, including withdrawal of Fund support, in the event of corruption.<sup>83</sup> The World Trade Organization has established a Working Group on Transparency in Government Procurement.<sup>84</sup>

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<sup>81</sup> Wolfensohn, *supra* note 2, at 1.

<sup>82</sup> See Helmut Sohmen, *Critical Importance of Controlling Corruption*, 33 INT'L LAW. 863, 865 (1999) (discussing activity of the World Bank). Section 1.15 of the *Guidelines for Procurement Under IBRD Loans and IDA Credits* states that any firm that offers or gives a bribe will be ineligible for bank financed contracts; at least fifty-three firms have been declared ineligible. See World Bank Listing of Ineligible Firms Fraud and Corruption, available at <http://www.worldbank.org/html/opr/procure/debarr.html> (last updated July 9, 2001) (providing a current list of ineligible firms). Section 1.25 of the *Guidelines for the Selection and Employment of Consultants under IBRD Loans and IDA Credits* states that any consultant that offers or gives a bribe may be ineligible for future Bank-funded work; at least one consultant firm has received a letter initiating that process. See *id.* (providing a current list of consultants under investigation).

<sup>83</sup> See INTERNATIONAL MONETARY FUND, *GOOD GOVERNANCE: THE IMF'S ROLE 2-8* (1997) (describing its more proactive role and stating that the Fund will not support corrupt governments); see also Sohmen, *supra* note 82, at 866 (stating that the Fund now limits its involvement in countries where corruption negatively affects domestic economic growth). Section 1.2.2 of the Fund's *Code of Good Practices on Fiscal Transparency* states that "[t]axes, duties, fees, and charges should have an explicit legal basis," while section 1.2.3 states "[e]thical standards of behavior for public servants should be clear and well publicized." International Monetary Fund, *Code of Good Practices on Fiscal Transparency*, available at <http://www.imf.org/external/np/fad/trans/code.htm> (last visited Nov. 2, 2001). The code, in section 4.2.1 also suggests that "[a] national audit body or equivalent organization, which is independent of the executive, should provide timely reports for the legislature and public on the financial integrity of government accounts." *Id.* Chantal Thomas provides an excellent discussion of the anticorruption activities of the World Bank and the International Monetary Fund. Thomas, *supra* note 54, at 552-56. She also points out that the international financial institutions concentrate on corruption in the financing of projects rather than general political corruption. *Id.* at 560.

<sup>84</sup> See Report of the Ministerial Meeting, WT/MIN[96]/DEC, at 7 (Nov. 19, 1996) (declaration of the Ministerial Conference creating the Working Group on Transparency in Government Procurement). Posadas acknowledges the importance of the World Trade Organization's actions, but suggests that "the scope is still limited and many questions remain in the area." Posadas, *supra* note 80, at 404. That the World Trade Organization could do even this, however, is surprising, given the insistence by some members that corruption is not an appropriate issue for the Organization. See Nichols, *supra* note 31, at 364-77 (discussing objections made by developing countries and emerging and mature economies). See generally Philip M. Nichols, *Corruption in the World Trade Organization: Discerning the Limits of the World Trade Organization's Authority*, 28 N.Y.U. J. INT'L L. & POL.

At the regional level, in 1996, the Organization of American States promulgated a treaty that requires its members to take certain actions with respect to transnational bribery, including the criminalization of bribery of foreign officials.<sup>85</sup> The treaty also requires signatories to cooperate with one another in the prosecution of corrupt officials and bribe givers.<sup>86</sup> The European Union has also agreed upon a treaty that requires its members to criminalize

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711 (1996) (exploring the authority of the World Trade Organization to deal with the issue of corruption). The ambivalence of the members is reflected in a report of the working group, which states that the working group is a product of the membership's commitment to combating corruption and bribery, but also reports the view of some members that the goal of fighting corruption and bribery should not be mentioned explicitly in any agreement that the working group produces. See Report to the General Council, WT/WGTGP/3, at 36-37 (Oct. 12, 1999). The Working Group is considering a *Draft Text for an Agreement on Transparency in Government Procurement*, which is a consolidation of four different drafts circulated by Hungary, South Korea, Singapore and the United States. See *The WTO's Contribution to Transparency in Government Procurement: Communication from Hungary, Korea, Singapore and the United States*, WT/GC/W/385 WT/WGTGP/W/27, at 3-9 (Nov. 9, 1999) (transmitting the draft text).

<sup>85</sup> Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724, art. 5; see Lucinda A. Low et al., *The Inter-American Convention Against Corruption: A Comparison With the United States Foreign Corrupt Practices Act*, 38 VA. J. INT'L L. 243, 247-49 (1998) (discussing the requirement); Rex J. Zedalis, *Internationalizing Prohibitions on Foreign Corrupt Practices: The OAS Convention and the OECD Revised Recommendation*, 31 J. WORLD TRADE, Dec. 1997, 45, 55 (1997) (discussing the treaty).

<sup>86</sup> The treaty requires signatories to allow extradition of bribe givers and bribe-taking officials and contains a pledge that signatories will not invoke bank secrecy laws to impede investigations into corruption. Inter-American Convention Against Corruption, *supra* note 85, art. XIII (extradition), art. XVI (bank secrecy). The provision with respect to extradition is particularly important in Latin America, which has a very strong tradition of providing asylum to government officials from other countries. See Rane K. L. Panjabi, *Terror at the Emperor's Birthday Party: An Analysis of the Hostage-Taking Incident at the Japanese Embassy in Lima, Peru*, 16 DICK. J. INT'L L. 1, 64 (1997) (noting that the idea of asylum is most strongly advocated in Latin America). The prohibition on the use of bank secrecy laws to thwart investigations is also "potentially very important." Low, *supra* note 85, at 254. The treaty also requires signatories to make it a crime for a government official to possess or acquire assets that the official "cannot reasonably explain in relation to his lawful earnings during the performance of his functions." Inter-American Convention Against Corruption, *supra* note 85, art. IX. The Convention has been signed by Argentina, Bolivia, Brazil, Canada, Chile, Columbia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, United States, Uruguay, and Venezuela. Low, *supra* note 85, at 245.

transnational bribery.<sup>87</sup> This treaty, however, only requires members to criminalize bribery involving officials of other European Union countries.<sup>88</sup>

The Organization for Economic Cooperation and Development does not represent a geographic region but instead represents countries with high levels of wealth and well-developed market institutions.<sup>89</sup> In 1997, the Organization promulgated a treaty requiring member countries to criminalize transnational bribery.<sup>90</sup> Signatories are also required to assist one another in the investigation of bribery and to allow extradition of bribe givers.<sup>91</sup> Because of the changes that this treaty has precipitated at the local level it is considered perhaps the most significant event to date in the evolution of the global regime change with respect to corruption, and it

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<sup>87</sup> Convention Drawn Up on The Basis of Article K.3(2)(c) of the Treaty on European Union on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, 1997 O.J. (C 195), 37 I.L.M. 15 (1997); see Gantz, *supra* note 15, at 472-73 (discussing the European Union's convention).

<sup>88</sup> Gantz, *supra* note 15, at 472-73.

<sup>89</sup> The twenty-one members are Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Ayesha Qayyum, *New Anti-Bribery Treaty Analyzed*, INT'L COM. LITIG., Mar. 1998, at 27. Five other countries—Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic—signed the treaty under discussion. *Id.*

<sup>90</sup> OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 18, 1997, 37 I.L.M. 1 (1998), art. 1.1 [hereinafter OECD Convention]. Penalties for transnational bribes must be proportionate to the penalties for domestic bribery. See *id.* art. 3.1. Germany's implementing legislation provides perhaps the most vigorous example of this requirement. See Gesetz zu dem Übereinkommen über die Bekämpfung der Bestechung ausländischer Amsträger im internationalen Geschäftsverkehr [Act on Combating Bribery of Foreign Public Officials in International Business Transactions] (Internationalenbestechungsgesetz), v. 10.9.1998 (BGB1. II S.2327), art. 3, § 1 (stating that the bribery of foreign and domestic public officials will be treated equally under German law and making the bribery of foreign officials illegal by simply incorporating such behavior into the existing laws concerning bribery). Similarly, Norway implemented the Convention by adding a paragraph to its existing code that says "[t]he term public servant in the first paragraph also includes foreign public servants and servants of public international organizations." Nor. Penal Code, ch. 12, para. 128.

<sup>91</sup> See OECD Convention, *supra* note 90, art. 9 (mutual legal assistance), art. 10 (extradition); see also Dominic Bencivenga, *Anti-Bribery Pact: 34 Nations Agree to Prosecute Business Payoffs*, N.Y. L.J., Jan. 15, 1998, at 5 (characterizing these provisions as "critical").

certainly evidences a significant change in the global legal culture.<sup>92</sup>

There has been significant activity at the domestic level. At the national level, at least twenty-four countries have to date passed legislation criminalizing transnational bribery.<sup>93</sup> Cities and other

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<sup>92</sup> See Barbara Crutchfield George et al., *The 1998 OECD Convention: An Impetus for Worldwide Changes in Attitudes Toward Corruption in Business Transactions*, 37 AM. BUS. L.J. 485, 485 (2000) (stating that the Convention "provides an impetus for worldwide changes" and "heralds the beginning of a new era"). Paul Stephan, it should be noted, takes issue with the Convention both for what he perceives to be its imperialism and out of pragmatic concerns. Stephan, *supra* note 33, at 540. Frank Anechiarico also criticizes approaches such as that of the Convention as panoptic, relying on more rules, more surveillance, and more prosecution. See Frank Anechiarico, *End-Runs and Hairy Eyeballs: The Costs of Corruption Control in Market Democracies*, 14 CONN. J. INT'L L. 379, 383-86 (1999) (discussing what he characterizes as a panoptic vision of corruption control in New York City).

<sup>93</sup> Those countries are: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States. See OECD, Anti-Corruption Division, *Implementation of OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, available at <http://www1.oecd.org/daf/nocorruption/annex2.htm> (last visited Nov. 2, 2001). The United States amended the Foreign Corrupt Practices Act so that it would comply with the requirements of the OECD Convention. Act to Amend the Securities Act of 1934 and the Foreign Corrupt Practices Act of 1977, S. 2375, 105th Cong. (1998). The laws adopted by other countries are extremely varied in their approaches to corruption. Some, such as the Canadian law, describe a behavior and prohibit its citizens to engage in that behavior anyplace in the world. The Canadian law reads:

Every Person commits an offence who, in order to obtain or retain an advantage in the cause of business, directly or indirectly gives, offers or agrees to give or offer a loan, reward, advantage or benefit of any kind to a foreign public official or to any person for the benefit of a foreign public official (a) as consideration for an act or omission by the official in connection with the performance of the official's duties or functions; or (b) to induce the foreign official to use his or her position to influence any acts or decisions of the foreign state or public international organization for which the official performs duties or functions.

Corruption of Foreign Officials Act, 1998, S-21, 1st sess., 36th parl., 46 & 47 Eliz. II, c.34 (Can.).

Others make reference to local law and prohibit their citizens from engaging in behavior that violates local laws. Hungarian and Icelandic law provide examples of such legislation. Hungarian law punishes an actor who "gives or promises the favour so that the foreign official person violates his official duty, exceeds his competence or otherwise abuses his official position." Büntető Törvénykönyv [BTK] [Penal Code] tit. VII, § 258/B(2) (Hung.). Icelandic law, similarly, prosecutes an act that would be punishable according to Icelandic law "and provided it

subnational polities are also actively developing anticorruption regimes.<sup>94</sup> Companies have, in increasing numbers, adopted corporate codes dealing with corrupt transactions by employees and agents.<sup>95</sup>

### 2.2.2. *Theories of the Change*

Three theories have been offered to explain the change in corruption regimes.<sup>96</sup> The first, and simplest, very much reflects the positivist school that dominated international legal theory until the last decade:<sup>97</sup> that the hegemon United States “bullied” the rest of the world into adopting legislation similar to its Foreign Corrupt Practices Act.<sup>98</sup> This explanation fits nicely into realism theory but empirically fails to satisfy. The Organization of American States’ treaty, for example, is considered the result of efforts by Latin America;<sup>99</sup> the European Union does not get “bullied” by the

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was also punishable under the laws of that state.” GENERAL PENAL CODE [GPC], Law No. 19/1940, § 5(2) (Ice.). Hungarian legislation is also unusual in that it extends Hungarian jurisdiction to foreign officials who accept or solicit bribes. Criminal Code Title VII section 258/C. For a discussion of the benefits and disadvantages of the various types of legislation, see Philip M. Nichols, *The Myth of Anti-Bribery Laws as Transnational Intrusion*, 33 CORNELL INT’L L.J. 627, 641-45 (2000).

<sup>94</sup> See, e.g., Goh Kun, *A Systematic Approach to Anti-Corruption: The Case of the Seoul Metropolitan Government* 2-4 (Oct. 14, 1999) (describing the program of the City of Seoul, South Korea), available at [http://www.transparency.org/iacc/9th\\_iacc/papers/day4/plenary/d4pl\\_kgoh.html](http://www.transparency.org/iacc/9th_iacc/papers/day4/plenary/d4pl_kgoh.html). Unfortunately, efforts at the subnational level have not yet received critical legal evaluation, although some scholars, such as Balakrishnan Rajagopal, argue that anticorruption efforts must be local. Rajagopal, *supra* note 54, at 507.

<sup>95</sup> See John Brademas & Fritz Heimann, *Tackling International Corruption: No Longer Taboo*, FOREIGN AFF., Sept.-Oct. 1998, at 17, 21-22 (predicting that companies operating under the new antibribery laws will adopt codes of conduct); Harvey L. Pitt & Karl A. Groskaufmanis, *Minimizing Corporate Civil and Criminal Liability: A Second Look at Corporate Codes of Conduct*, 78 GEO. L.J. 1559 (1990) (discussing the use of corporate codes to facilitate compliance with laws criminalizing transnational bribery).

<sup>96</sup> Frank Anechiarico’s interesting discussion of the evolution of anticorruption activities, which examines anticorruption activities in New York City, is a history rather than a theory. See Anechiarico, *supra* note 92, at 380-87.

<sup>97</sup> See David Kennedy & Chris Tennant, *New Approaches to International Law: A Bibliography*, 35 HARV. INT’L L.J. 417, 418 (1994) (noting the dominance of positivism but also noting new theories of international law).

<sup>98</sup> See Steven R. Salbu, *The Foreign Corrupt Practices Act as a Threat to Global Harmony*, 20 MICH. J. INT’L L. 419, 441 (1999) (making this argument).

<sup>99</sup> See Bruce Zagaris & Shaila Lakhani Ohri, *The Emergence of an International Enforcement Regime on Transnational Corruption in the Americas*, 30 L. & POL’Y INT’L

United States over commercial issues, which would include the Organization of Economic Cooperation and Development's treaty;<sup>100</sup> and Transparency International was founded by a German national who left the World Bank, because he was not satisfied with that organization's efforts.<sup>101</sup>

Nonetheless, the possibility—however small—that the realist theory is correct creates a need for an empirical understanding of local attitudes toward corruption. The imposition of a global anti-corruption regime by a hegemon on a culture that embraces and accepts corruption could constitute a form of moral imperialism.<sup>102</sup>

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Bus. 53, 65 (1999) (stating that Venezuelan President Rafael Caldera promoted the treaty for years following the failure of major banks in Venezuela because of corruption); Charles A. Cerami, *Nations Plan Ambitious Campaign to Curb Graft*, WASH. TIMES, Feb. 5, 1996, at 14 (stating that Venezuela assumed the lead role in persuading Latin American countries to adopt the treaty); see also A GLOBAL FORUM ON FIGHTING CORRUPTION: FINAL CONFERENCE REPORT 19 (1999) (statement of Jorge Fernando Quiroga Ramirez, Vice President of Bolivia, that "it [is] important that countries not tolerate abroad what they would not tolerate at home"); *id.* (statement of Carlos Rukhauf, Vice President of Argentina, supporting the OECD Convention); *id.* at 22 (statement of Jaime David Fernandez Mirabel, Vice President of the Dominican Republic, "call[ing] on all Western Hemisphere countries that had not done so to ratify the Inter-American Convention Against Corruption"); *id.* at 35 (statement of Luis Alfonso Davila, President of the Congress of Venezuela, stating that the fight against corruption requires the will of neighboring countries).

<sup>100</sup> The European Union is considered the most powerful of the "quad countries," the four countries that are considered the most powerful within the World Trade Organization. See Philip M. Nichols, *Forgotten Linkages - Historical Institutionalism and Sociological Institutionalism and Analysis of the World Trade Organization*, 19 U. PA. J. INT'L ECON. L. 461, 492 (1998) (discussing the quad countries); see also Zagaris & Ohri, *supra* note 99, at 76 (stating that much of the leadership for implementation of the Organization of Economic Cooperation and Development's treaty came from the European Union). Indeed, the arguments of many U.S. policymakers that anticorruption efforts make U.S. products more competitive seems very unlikely to persuade the United States' European trading partners. See Philip M. Nichols, *Corruption in Asia*, in PROCEEDINGS: CONFERENCE ON ANTI-CORRUPTION IN ASIA: FOSTERING INTEGRITY IN BUSINESS AND GOVERNMENT 29-30 (Johns Hopkins University School of Advanced International Studies, Apr. 19, 2000) (noting both the argument and its unpersuasiveness).

<sup>101</sup> Peter Eigen, Founder and Chair of Transparency International, Remarks at the Conference on Legal and Ethical Issues in Emerging Economies, University of Pennsylvania (May 1997) (on file with author); see Brown, *supra* note 7, at 480 (stating that Transparency International was instrumental in obtaining support for the Organization of Economic Cooperation and Development's treaty).

<sup>102</sup> See Rajagopal, *supra* note 54, at 496 (stating that the anticorruption movement is "elitist, statist, and Eurocentric"); Steven R. Salbu, *Bribery in the Global Market: A Critical Analysis of the Foreign Corrupt Practices Act*, 54 WASH. & LEE L.

Both legal scholars and policymakers should be aware of this possibility.<sup>103</sup>

A second explanation for the change in the global regime is that the dialogue on corruption has metamorphosized from a moral discourse to an economic discourse.<sup>104</sup> This transformation has allowed the discourse to sidestep awkward issues of moral relativism and moral imperialism and positions it instead within the fictitious neutrality of economics. In many ways this argument fits into the more recently vibrant regime theory of international law.<sup>105</sup>

While this theory does explain much of the observable development of the corruption discourse, it remains troubling for two reasons. First, the theory does not explain the connection between individuals and the changes in the regimes—how the issue of corruption was transformed in the minds of scholars, policymakers, and the hundreds of thousands of persons whose lives it touches.<sup>106</sup> Second, the theory marginalizes noneconomic impetuses for the change in the international legal environment and thus possibly does not fully explain why those regimes have changed.<sup>107</sup>

If this theory is correct, however, and if corruption is now treated as an economic issue rather than as a moral or social issue,

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REV. 229, 239 (1997) (arguing that “efforts to control bribery in other nations constitute moral imperialism”).

<sup>103</sup> Of course, the fact that an action might be labeled as moral imperialism does not necessarily mean that the action should not be taken. Imposing a global antislavery regime on a culture that embraces slavery might be considered morally imperialistic but would be a good thing to do. Similarly, a country that imposes global accounting standards on its companies when they do business outside of its borders might be acting in a legally imperialistic manner but few would object. The possibility of moral imperialism must be examined seriously, but Ann Scales’ admonition is noted. See Ann Scales, *Feminist Legal Method: Not So Scary*, 2 UCLA WOMEN’S L.J. 1, 9-10 (1992) (“The air is too thick these days with charges of . . . moral imperialism . . . . Though each of these charges has a legitimate place, more often their invocation keeps the discussion from digging deeper.”).

<sup>104</sup> 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, 906 (2000).

<sup>105</sup> See W. Michael Reisman, Book Review, 85 AM. J. INT’L L. 205, 206 (1991) (describing regime theory as “the current rage in the United States”).

<sup>106</sup> See Ann-Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, 87 AM. J. INT’L L. 205, 225-26 (1993) (criticizing regime theory for its failure to account for the relationship between the individual and the state).

<sup>107</sup> Cf. Rajagopal, *supra* note 54, at 496 (condemning the economic focus of the anticorruption movement); Thomas, *supra* note 54, at 560 (expressing concern over the economic focus of the World Bank and the International Monetary Fund).

then there is still a need for an understanding of indigenous attitudes toward corruption. At the basic level, to the extent that a culture embraces and accepts corruption, then concerns regarding moral, legal, and now economic imperialism are still valid.<sup>108</sup> At a more refined level, if the focus of the anticorruption movement must be economic, then it will have to at some point choose among a "multitude of different economically efficient states."<sup>109</sup> The values and attitudes of a culture are a critical factor in determining which economic outcome to seek.<sup>110</sup>

A final explanation for the change in the global regime is exemplified by Mark Pieth. He suggests that, just as the United States' Foreign Corrupt Practices Act was a reaction to revelations of large amounts of domestic and foreign bribery while the United States was still questioning the meaning of the collapse of the Nixon presidency,<sup>111</sup> so too are the changes in European regimes attributable to endemic corruption scandals and the proximity of

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<sup>108</sup> See *supra* note 102 and accompanying text (discussing moral and legal imperialism); see also Salbu, *supra* note 98, at 442 (stating that as the global anticorruption regime changes, "nations are now likely to resent U.S. economic imperialism. The resentment will be exacerbated when nations fear that their culture is at risk of being supplanted by U.S. culture."). The emphasis on the United States is, of course, misplaced, as the regime change is both global and the product of many actors and cultures other than the United States. Nonetheless, if one generalizes the concern, then as a theoretical matter it is possible that, if there were a culture that embraced and accepted corruption, the global regime change could be perceived as a form of economic imperialism.

<sup>109</sup> Barbara White, *Coase and the Courts: Economics for the Common Man*, 72 IOWA L. REV. 577, 603 n.103 (1987); see Richard A. Westin, *When One-Eyed Accountants are Kings: A Primer on Microeconomics, Income Taxes and the Shibboleth of Efficiency*, 69 MINN. L. REV. 1099, 1106 (1985) ("Economists do not define 'optimal' as the unique best, its Latin root notwithstanding. Instead, they mean one of an infinite number of 'best' allocations."). Classical economic theory, of course, should be applied with caution in transition economies. See Aviezer Tucker, Book Review, *Beyond Economic Absolutism: The Post-communist Transition From a Sociological Perspective*, 23 J. SOC., POL. & ECON. STUD. 349 (1998) (noting that Western economists studying transition in former communist countries are realizing the limitations of classical economic theories when applied to such countries).

<sup>110</sup> See Francis M. Bator, *The Simple Analytics of Welfare Maximization*, 47 AM. ECON. REV. 22, 56 (1957) ("Allocation and distribution interact in countless ways with the politics and sociology of a society . . . 'everything depends on everything.'"); White, *supra* note 109, at 607 ("[T]he economically efficient state reached results in large part from the value choices that society makes with respect to the initial endowments.").

<sup>111</sup> Alejandro Posadas provides a nicely detailed explanation of the connection between the United States' Foreign Corrupt Practices Act and the collapse of the Nixon administration. Posadas, *supra* note 80, at 348-59.

the damage done in Eastern and Central Europe by corruption.<sup>112</sup> Indeed, Europe and much of the world have been deeply shaken by corruption scandals in the last decade.<sup>113</sup> This explanation for the change in the global regime does not fit comfortably into any of the more commonly used legal theories, but it does resonate with some sociological schools of thought. Historical institutionalism, for example, emphasizes the importance of the path taken in the development of regimes.<sup>114</sup> Pathways are marked by critical junctures—such as major corruption scandals—that present opportunities for new paths.<sup>115</sup> The paths that are possible and that are viable are dependent both on antecedent conditions and on the nature of the critical juncture.<sup>116</sup>

The theory that a series of corruption scandals and a growing sense of concern and outrage resulted in the change to the global regime also calls for an understanding of other views regarding

<sup>112</sup> Mark Pieth, *International Efforts to Combat Corruption, in THE FOREIGN CORRUPT PRACTICES ACT: HOW TO COMPLY UNDER THE NEW AMENDMENTS AND THE OECD CONVENTION E-1, E-1* (ABA-CLE ed., 1999); see Bradesman & Heimann, *supra* note 95, at 17 (attributing the OECD Convention to a convergence of political and economic pressures).

<sup>113</sup> See A GLOBAL FORUM ON FIGHTING CORRUPTION: FINAL REPORT 117 (1999) (statement of Guy de Vel, Director of Legal Affairs of the Council of Europe, that “[i]n the 1990’s, countries in all parts of Europe and the world were shaken by huge corruption scandals”).

<sup>114</sup> See Seymour Martin Lipset & Stein Rokkan, *Cleavage Structures, Party Systems, and Voter Alignments: An Introduction, in PARTY SYSTEMS AND VOTER ALIGNMENTS: CROSS-NATIONAL PERSPECTIVES* 1, 37 (Seymour M. Lipset & Stein Rokkan eds., 1967) (discussing the importance of paths); see also Maxwell L. Stearns, *Standing and Social Choice: Historical Evidence*, 144 U. PA. L. REV. 309 (1995) (using path dependency to analyze standing).

<sup>115</sup> See RUTH BERINS COLLIER & DAVID COLLIER, *SHAPING THE POLITICAL ARENA: CRITICAL JUNCTURES, THE LABOR MOVEMENT, AND REGIME DYNAMICS IN LATIN AMERICA* 29-30 (1991) (describing critical junctures). “A critical juncture may be defined as a period of significant change, which typically occurs in distinct ways in different countries . . . and which is hypothesized to produce distinct legacies.” *Id.* at 29.

<sup>116</sup> As Stephen Krasner explains when describing the school of historical institutionalism:

Historical developments are path dependent; once certain choices are made, they constrain future possibilities. The range of options available to policymakers at any given point in time is a function of institutional capabilities that were put in place in [sic] at some earlier period, possibly in response to very different environmental pressures.

Stephen D. Krasner, *Sovereignty: An Institutional Perspective*, 21 COMP. POL. STUD. 66, 67 (1988); see JAMES GLICK, *CHAOS* 8 (1987) (emphasizing the “sensitive dependence on initial conditions” of changes in regimes).

corruption. On the one hand, the legitimacy of the change may depend on actual outrage in the countries in which behaviors are targeted. On the other hand, if attitudes toward corruption are markedly different, then either the range of choices for new paths is limited or those attitudes themselves have to be changed (again raising questions of imperialism).<sup>117</sup>

### 2.3. *The Need to Understand Other Attitudes*

An understanding of indigenous attitudes toward corruption is critical for both the creation and understanding of regimes. Those who will be asked to create the new rules dealing with corrupt activities must understand indigenous attitudes toward corruption, because indigenous attitudes almost certainly will play a role in determining the viability of the local regimes that emerge in the immediate future. Those who analyze the global regime change through theoretical prisms—whether that prism is realism, regime, or sociological theories—must also understand indigenous attitudes toward corruption, either out of concerns of moral imperialism, economic efficiency and allocation, or institutional choice and viability. Finally, the assertion that some cultures embrace corruption should be tested when possible. In each of these cases, Kazakhstan presents unusual opportunities for understanding indigenous attitudes.

## 3. KAZAKHSTAN

Given the goal of finding attitudes and perceptions that differ from those in the West, and given the general objections to the hypothesis that corruption is acceptable in some countries, the most fruitful empirical work is likely to be conducted in a culture that is likely to accept corruption. A country chosen for empirical study should have, therefore, at least two characteristics. First, the country should be culturally separate from the West. This is not because the West is morally superior in any way to other cultures

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<sup>117</sup> Some scholar/advocates have no hesitation in endorsing fundamental cultural changes in order to combat corruption. Edgardo Buscaglia and Maria Dakolias, for example, flatly state that “[i]t is essential to change the culture where roles and relationships prevail over rules and regulations.” Buscaglia & Dakolias, *supra* note 4, at 96. While many countries have undertaken this type of change somewhat voluntarily, the significance of such a change—particularly if forced—cannot be overstated. See Nichols, *supra* note 57, at 278-98 (discussing institutional change in many countries).

and thus less likely to accept corruption, nor is it because corruption does not occur in the West—it occurs, in alarming levels. Rather, it is because data, anecdotes, and impression already indicate that corruption is not accepted in Western culture.

Second, there should be a nontrivial amount of corruption in the selected country and preferably corruption in which the population at large participates to some degree. Finland, for example, would be a meaningless place to look for subtle or different attitudes toward corruption because little corruption seems to occur there.<sup>118</sup>

Kazakhstan satisfies both of these requirements—it is culturally distinct from the West, and corruption occurs with some regularity.

### 3.1. *The Culture and Laws of Kazakhstan*

#### 3.1.1. *The Historical Context of Kazakhstan*

The relevance of pre-Soviet Kazakh culture engenders some debate.<sup>119</sup> Some argue that the Soviets so thoroughly eradicated the extant Kazakh culture that only the Soviet and post-Soviet periods have any bearing on modern Kazakh identity. Most, however, argue that pre-Soviet culture influences modern Kazakh identity and distinguishes it from European culture.<sup>120</sup> Moreover, Kazakhstan has undertaken a conscious effort to rebuild its society on the basis of traditional Kazakh culture.<sup>121</sup>

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<sup>118</sup> In the Year 2001 Corruption Perceptions Index released by Transparency International, Finland is given a score of 9.9 out of 10, which indicates that persons inside and outside of Finland perceive there to be virtually no corruption in Finland. See Transparency International, *The Year 2001 Corruption Perceptions Index*, at <http://www.transparency.org/documents/cpi/2001/cpi2001.html> (last updated June 27, 2001).

<sup>119</sup> See SHIRIN AKINER, *THE FORMATION OF KAZAKH IDENTITY: FROM TRIBE TO NATION-STATE* 1-4 (1995).

<sup>120</sup> See *id.* at 52-53 (discussing cultural survivals, including the method of social interaction); GREGORY GLEASON, *THE CENTRAL ASIAN STATES: DISCOVERING INDEPENDENCE* 35 (Alexander J. Motyl ed., 1997) (noting that the past lives in the present in Central Asia). Gleason in particular suggests that “the influence of modernizing Europe gave new impulse to earlier Central Asian traditions. As European political and economic concepts were introduced in a much-reinterpreted Russian form, the intellectuals of Central Asia responded not by adopting these new ideas but by rehabilitating their own ideas.” *Id.*

<sup>121</sup> See Karen Odgaard & Jens Simonsen, *The New Kazak Elite*, in *CONTEMPORARY KAZAKS: CULTURAL AND SOCIAL PERSPECTIVES* 17, 22 (Ingvar Svan-

Kazakhstan—or any part of Central Asia in general<sup>122</sup>—cannot be discussed without mention of geography.<sup>123</sup> Central Asia, of which Kazakhstan is physically the largest country,<sup>124</sup> is dominated by geography: to the south and east are the highest mountain ranges in the world, to the south and west are some of the most arid deserts in the world, to the north are immense steppes and beyond those the forests and tundra of Siberia.<sup>125</sup> Kazakhstan itself is bordered by high mountains, arid deserts, Siberian forests, and the Caspian Sea; high steppes, however, comprise the bulk of Kazakhstan's territory.<sup>126</sup>

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berg ed., 1999) (noting that modern Kazakhstan was “founded on a reconstruction of Kazak tradition and culture”).

<sup>122</sup> Discussing this region in terms of countries reflects a Eurocentric perspective. See GLEASON, *supra* note 120, at 5. Central Asia as a whole, on the other hand, constitutes a natural unit. See RICHARD POMFRET, *THE ECONOMIES OF CENTRAL ASIA* 5 (1995).

<sup>123</sup> See AKINER, *supra* note 119, at 5 (noting that the physical environment “plays a decisive role in the life of the modern Kazakh state” and that “the land itself is seen as part of the national identity”); GLEASON, *supra* note 120, at 5 (suggesting that a better “way to analyze the groups of people in Central Asia is to conceive of them not as nations on their way to statehood but rather in terms of their own natural history, which is connected to the physical features of Central Asia”). Legal scholars have also noted the importance of geography to the development of distinct legal cultures. See Bernhard Grossfeld, *Geography and Law*, 82 MICH. L. REV. 1510, 1518-19 (1984) (“Any in-depth comparative research must take [geography] into account.”).

<sup>124</sup> Kazakhstan is the largest country in Central Asia and the ninth largest country in the world. See Shirin Akiner, *Post-Soviet Central Asia: Past is Prologue*, in *THE NEW STATES OF CENTRAL ASIA AND THEIR NEIGHBOURS* 4, 5 (Peter Ferdinand ed., 1994) (describing the ordinal size of Kazakhstan and noting that Kazakhstan encompasses an area of 2,717,300 square kilometers); Michael Mandelbaum, *Introduction*, in *CENTRAL ASIA AND THE WORLD: KAZAKHSTAN, UZBEKISTAN, TAJIKISTAN, KYRGYZSTAN, AND TURKMENISTAN* 1, 6 (Michael Mandelbaum ed., 1994) (noting that the single country of Kazakhstan is larger than the entirety of Western Europe); Ingvar Svanberg, *The Kazak Nation*, in *CONTEMPORARY KAZAKS: CULTURAL AND SOCIAL PERSPECTIVES*, *supra* note 121, at 1, 4-7 (commenting on the geography and size of Kazakhstan as well as the importance of geography to the Kazakh identity).

<sup>125</sup> See GLEASON, *supra* note 120, at 26-27 (describing the geography of Central Asia and emphasizing the important relationship between that geography and the cultures of Central Asia); see also G.M. MIR, *REGIONAL GEOGRAPHY OF CENTRAL ASIA* 15-44 (1993) (discussing the physical geography of Central Asia); Peter Sinnott, *The Physical Geography of Soviet Central Asia and the Aral Sea Problem*, in *GEOGRAPHIC PERSPECTIVES ON SOVIET CENTRAL ASIA* 74, 76-82 (Robert A. Lewis ed., 1992) (same).

<sup>126</sup> See NATIONAL TECHNICAL INFORMATION SERVICE, *KAZAKHSTAN: AN ECONOMIC PROFILE* 1 (1993) (describing the physical geography of Kazakhstan, in-

Those interested in a thorough explication of Central Asian history should avail themselves of René Grousset's *The Empire of the Steppes*.<sup>127</sup> In briefest summary, the origin of the modern Kazakh people is unclear.<sup>128</sup> Nomadic peoples of differing ethnicities and political allegiances inhabited the land that makes up modern Kazakhstan for thousands of years,<sup>129</sup> sometimes spilling out as far as Europe and China, sometimes contracting in response to invaders from outside Central Asia.<sup>130</sup> Arab invaders conquered much of Kazakhstan in the eighth century, bringing with them the Islamic religion.<sup>131</sup> By the late 1300s the area was peopled by Turkic

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cluding its steppes). The immensity of the steppes must be experienced to be appreciated.

<sup>127</sup> RENÉ GROUSSET, *THE EMPIRE OF THE STEPPES: A HISTORY OF CENTRAL ASIA* (Naomi Walford trans., 1970).

<sup>128</sup> See MARTHA BRILL OLCOTT, *THE KAZAKHS* 3 (2d ed. 1995) (noting a lack of "agreement on how the Kazakh people were formed"); Peter Charanis, *Foreword* to *THE EMPIRE OF THE STEPPES: A HISTORY OF CENTRAL ASIA*, *supra* note 127, at v (stating that the early history of Central Asia is shrouded in obscurity). One problem is the lack of reliable primary material throughout the early periods. See OLCOTT, *supra*, at 3 (noting a lack of contemporary sources); see also JOHN R. GARDINER-GARDEN, *KTESIAS ON EARLY CENTRAL ASIAN HISTORY AND ETHNOGRAPHY* (1987) (debating value of the writings of a Greek physician who accompanied the Persian military invasions in Central Asia in 400 B.C.). This problem is particularly acute with respect to the nonliterate nomads of Kazakhstan. See AKINER, *supra* note 119, at 3-4.

<sup>129</sup> See GEORGE J. DEMKO, *THE RUSSIAN COLONIZATION OF KAZAKHSTAN 1896-1916*, at 22 (Thomas A. Sebeok ed., 1969) ("From the earliest period of recorded history [nomadic peoples] roamed the desert and steppe north of the ancient Emirates of Khiva and Bukhara.").

<sup>130</sup> Andre Frank refers to waves of migration or invasion occurring roughly from 4300-4200 B.C., 3400-3200 B.C., 3000-2800 B.C., 1700-1500 B.C., 1200-900 B.C., 500 B.C., 0 A.D., 500 A.D., 1000 A.D., and 1200-1500 A.D. ANDRE GUNDER FRANK, *THE CENTRALITY OF CENTRAL ASIA* 9-10 (1992). These waves of migration or invasion involved civilizations such as the Hittite, the Hyksos, the Indo-Europeans, the Phoenicians, the Arameans, the Dorians and possibly the Huns. *Id.* Military leaders included Ghengis Khan and Timur. It is also believed that Central Asians crossed the Bering Strait to settle the New World. *Id.* L.S. Stavrianos states that "[t]he ancient, the classical, and the medieval periods of pre-1500 Eurasian history . . . were heralded by major turning points primarily attributable to these nomadic invasions." L.S. STAVRIANOS, *THE WORLD TO 1500: A GLOBAL HISTORY* 7 (1970).

<sup>131</sup> See RICHARD C. FOLTZ, *RELIGIONS OF THE SILK ROAD: OVERLAND TRADE AND CULTURAL EXCHANGE FROM ANTIQUITY TO THE FIFTEENTH CENTURY* 56 (1999) (describing the effects of the Arab conquest); OLCOTT, *supra* note 128, at 5 (discussing the Arabian conquest). Olcott notes that most Kazakhs did not embrace Islam until the eleventh century, and even then they did so in a loose manner. OLCOTT, *supra* note 128, at 18-19; see also AKINER, *supra* note 119, at 17 ("The religious world of the Kazakh tribes was informed by two sets of beliefs: a substratum of animism onto which was gradually grafted a veneer of Islam.").

nomads organized largely by ruling Mongols, whose rule ended with the victories of Timur.<sup>132</sup> The indigenous Turkic people, called Uzbeks, divided into two hordes: a nomadic horde to the north (in what is now Kazakhstan) and a more sedentary group in the south (in what is now Uzbekistan). The rivalry that developed between the nomadic and sedentary hordes split the Uzbeks and gave birth to the idea of a Kazakh people; hostilities with the Uzbek Khanate coalesced the Kazakh nomads into one people and led to the formation of the Kazakh Khanate in the late 1400s.<sup>133</sup> The Kazakh Khanate existed as a loose "political union" of nomads from the fifteenth to the eighteenth centuries.<sup>134</sup> At the end of the eighteenth century, Russia began to acquire control of Kazakhstan. The first stage of its acquisition involved absorption: Russia built lines of fortresses in southward succession that resulted in huge swaths of Kazakhstan coming under Russian control.<sup>135</sup> The second stage of Russia's acquisition involved military conquest. By 1864, Kazakhstan was no longer independent.<sup>136</sup>

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<sup>132</sup> See OLCOTT, *supra* note 128, at 4-7. See generally BEATRICE FORBES MANZ, *THE RISE AND RULE OF TAMERLANE* (1989) (providing a thorough discussion of Timurlane).

<sup>133</sup> See OLCOTT, *supra* note 128, at 7-9.

<sup>134</sup> *Id.* at 9-10. By the sixteenth century, the nomadic clans and tribes that made up the political union had coalesced into three organizational units usually referred to as "Hordes." DEMKO, *supra* note 129, at 25; Akiner, *supra* note 120, at 9. For a very brief history of Kazakhstan prior to the Russian invasion, see GALI ODA TEALAKH, *BRIEF HISTORY OF THE CENTRAL ASIAN REPUBLICS AND AZERBAIJAN* 41-42 (1992). In the eighteenth century, the three Hordes became virtually sovereign Khanates of their own, although Kazakhs continued to think of themselves as one people. OLCOTT, *supra* note 128, at 11. For an interesting discussion of the period, see Alan Bodger, *Change and Tradition in Eighteenth-Century Kazakhstan: The Dynastic Factor*, in *CULTURAL CHANGE AND CONTINUITY IN CENTRAL ASIA* 344 (Shirin Akiner ed., 1991). The import of this aspect of Kazakhstan's history is that the Western concept of nation-states never arose in Kazakhstan, nor did the consequent political, bureaucratic, or cultural structures. See GLEASON, *supra* note 120, at 25-26 (discussing the multiple identities of persons in Central Asia); MARTHA BRILL OLCOTT, *CENTRAL ASIA'S NEW STATES: INDEPENDENCE, FOREIGN POLICY, AND REGIONAL SECURITY* 8 (1996) (stating that the concept of nation-states is not indigenous to Central Asia but also noting that it is a concept that now applies to the region).

<sup>135</sup> See RICHARD A. PIERCE, *RUSSIAN CENTRAL ASIA 1867-1917: A STUDY IN COLONIAL RULE* 18-21 (1960) (describing the envelopment of the Kazakh Steppe); Seymour Becker, *The Russian Conquest of Central Asia and Kazakhstan: Motives, Methods, Consequences*, in *CENTRAL ASIA: ITS STRATEGIC IMPORTANCE AND FUTURE PROSPECTS* 21, 22 (Hafeez Malik ed., 1994) (same).

<sup>136</sup> See H el ene Carr ere d'Encausse, *Systematic Conquest, 1865 to 1884*, in *CENTRAL ASIA: 130 YEARS OF RUSSIAN DOMINANCE, A HISTORICAL OVERVIEW* 131,

Even this thumbnail sketch of Kazakhstan's pre-Soviet history shows the importance of that history on the modern Kazakh identity, distinguishing it from other cultures. Shirin Akiner states that four factors, easily traced to pre-Soviet times, define the modern Kazakh identity: connection to the land, nominal Islam, Turkicness, and a nomadic heritage.<sup>137</sup> Those who look for a foundation for corrupt behavior also find much interest in this history. Nomadic life facilitates very fluid political institutions: if a family dislikes a polity they simply move.<sup>138</sup> Lacking any coercive power, leaders give gifts to entice followers.<sup>139</sup> Some scholars consider gift giving to be acceptable while other cultures consider it bribery.<sup>140</sup> Indeed, after conducting an impressionistic study of gift giving and bribery in Kazakhstan, Cynthia Werner suggests that Kazakhstani people would not support anticorruption legislation because it would infringe on their tradition of gift giving.<sup>141</sup> Nomadic Kazakh culture also emphasized hospitality and etiquette.<sup>142</sup> Hos-

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131 (Edward Allworth ed., 3d ed. 1994); Ralph S. Clem, *The Frontier and Colonialism in Russian and Soviet Central Asia*, in GEOGRAPHIC PERSPECTIVES ON SOVIET CENTRAL ASIA, *supra* note 125, at 19, 28-33 (describing Russian conquest of Kazakhstan).

<sup>137</sup> AKINER, *supra* note 119, at 64-68.

<sup>138</sup> See GLEASON, *supra* note 120, at 6 (noting that in Kazakhstan those dissatisfied with a ruler could "simply wander[] off"). The rise to power of Ghengis Khan was replete with, and in many ways was only accomplished through, the numerous defections to and from the various nomadic groups across the steppes. See THE SECRET HISTORY OF THE MONGOLS (Francis Woodman Cleaves ed. & trans., 1982).

<sup>139</sup> AKINER, *supra* note 119, at 16.

<sup>140</sup> See Steven R. Salbu, *Extraterritorial Restriction of Bribery: A Premature Evocation of the Normative Global Village*, 24 YALE J. INT'L L. 223, 234 (1999) (suggesting that the gift giving behavior of many cultures would be considered bribery in Western cultures); P. Steidlmeier, *Gift Giving, Bribery and Corruption: Ethical Management of Business Relationships in China*, 20 J. BUS. ETHICS 121, 124 (1999) (suggesting that there is little difference between gift giving and bribery in China).

<sup>141</sup> See Cynthia Werner, *Gifts, Bribes, and Development in Post-Soviet Kazakhstan*, 59 HUM. ORG. 11, 20 (2000). Werner, an anthropologist, conducted "haphazard" interviews in the southeastern (Shymkent to Almaty) region of Kazakhstan. *Id.* at 16. Her descriptions of the form and structure of bribery in Kazakhstan are uniquely invaluable to anyone studying corruption in Kazakhstan. This particular conclusion, however, is not borne out by the quantitative data from the whole country as reported in this Article.

<sup>142</sup> See AKINER, *supra* note 119, at 19. Werner lists ten different gifts, each with a different name, that are required on different social occasions. Werner, *supra* note 141, at 13. Gleason notes that the nomadic tradition of hospitality is even more pronounced among the desert nomads. GLEASON, *supra* note 120, at 6. In either case, most persons who have traveled through Kazakhstan will tell of the

pitality has also been linked by some scholars to an acceptance of what others label corrupt behavior.<sup>143</sup>

Tsarist Russia principally desired control of Central Asia to secure its borders and to act as a buffer against British expansion from India;<sup>144</sup> Russia ruled Kazakhstan with a relatively light hand.<sup>145</sup> The Soviet period, however, forced a great deal of change, and a great deal of hardship, onto the Kazakh people. The Soviets set about to make all Central Asians, including the nomadic Kazakhs, part of the family of Soviet man.<sup>146</sup> Shirin Akiner describes three prongs to the Soviet effort. In the first prong, the Soviets either reformed or created new social institutions. The Soviets reorganized law and property ownership, reformed law, emancipated women, mechanized and industrialized production, introduced

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grace and genuine hospitality of the people, even when the hosts themselves have little to offer.

<sup>143</sup> See Salbu, *supra* note 140, at 237-38; Alan Smart, *Gifts, Bribes and Guanxi: A Reconsideration of Bourdieu's Social Capital*, 8 CULTURAL ANTHROPOLOGY 388, 389-400 (1993).

<sup>144</sup> See Edward Allworth, *Encounter*, in CENTRAL ASIA: 130 YEARS OF RUSSIAN DOMINANCE, A HISTORICAL OVERVIEW, *supra* note 136, at 1, 53-59 (stating that Russia's motives included Kazakhstan's fertile agricultural land, religious colonization, control of trade, and the desire to create a buffer between Russia and British India). Interestingly, Russia's desire to conquer Central Asia as a whole was exacerbated by disruptions to Europe's supply of raw cotton that were caused by the U.S. Civil War. See d'Encausse, *supra* note 136, at 131.

<sup>145</sup> See Mandelbaum, *supra* note 124, at 3. Kazakhs did not, however, embrace Russian rule; in 1916 discontent exploded into violent rebellion. See OLCOTT, *supra* note 128, at 100-01 (describing the atmosphere that climaxed in the 1916 uprising). The immediate cause of the 1916 rebellion was the forced conscription of Central Asian men to supplement the Russian army, which at that point was in danger of losing the First World War. *Id.* at 119-20. The Bolshevik revolution in Russia, therefore, was welcomed by the Kazakhs, who took the opportunity to create an autonomous government. Within two years, however, the Bolsheviks had brought Kazakhstan firmly within Soviet control, where it remained until the dissolution of the Soviet Union. *Id.* at 129.

<sup>146</sup> See GLEASON, *supra* note 120, at 48-51 (describing national self-determination and how the Soviets applied it to Central Asia). Central Asia presented the Bolsheviks with a problem in that it was not composed of nation-states that could simply be transformed into "socialist states." *Id.* at 48-49. Ironically, the politics eventually created by the Soviets in Central Asia had little to do with Central Asia itself and more to do with power struggles in Moscow. See Stephen Blank, *Soviet Reconquest of Central Asia*, in CENTRAL ASIA: ITS STRATEGIC IMPORTANCE AND FUTURE PROSPECTS 39, 55 (Hafeez Malik ed., 1994) (stating that although "Stalin claimed that the delimitation made real nations and states feasible for the first time," the borders did not make cultural sense); Paul A. Goble, *Stalin Draws the Borders*, CENT. ASIAN MONITOR, No. 2 1995, at 12, 12-13 (arguing that Stalin drew the borders for the purpose of maintaining his own power).

health care and mass education, formed the trappings of a national identity, and created a vast bureaucracy.<sup>147</sup> Secondly, the Soviets collectivized and sedentarized the nomadic Kazakhs. The consequences of this prong, in conjunction with Stalin's union-wide purges of intelligentsia, cannot be overstated.

The cost of the collectivization campaign in terms of human and animal losses was calamitous: out of a Kazakh population of approximately 4,120,000 in 1930, some 1,750,000 had died from starvation, epidemics and executions by 1939—over 40 per cent of the entire population (this is in addition to deaths from natural causes); 200,000 fled into neighboring countries and remained there (another 400,000 fled, but later returned) and 453,000 took refuge in neighboring Soviet republics, also to remain there permanently . . . . The livestock losses were equally shocking: out of 6.5 million head of cattle in 1928, less than one million were left in 1932; the numbers of sheep fell from 18.5 million to 1.5 million during this same period; of horses from 3.5 million to well under half a million; and of camels from one million to 63,000 (in 1935).<sup>148</sup>

The wiping out of the nomadic people and culture was soon followed by the third prong, the "Virgin Lands" program, in which tens of millions of hectares of steppe land—the traditional grazing lands of the nomads—were cultivated and tens of thousands of Europeans were brought into Kazakhstan to operate the farms.<sup>149</sup> One result was that Kazakhstan became the only Central Asian

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<sup>147</sup> AKINER, *supra* note 119, at 40-43.

<sup>148</sup> *Id.* at 45-46. To place the death of forty percent of the Kazakh population in perspective, the Khmer Rouge's killing of twenty percent of the Cambodian population in a five-year period is called "one of this century's worst genocides." Irene Langran, *Cambodia in 1999*, *ASIAN SURV.*, Jan.-Feb. 2000, at 25, 26.

<sup>149</sup> See DILIP HIRO, *BETWEEN MARX AND MUHAMMAD: THE CHANGING FACE OF CENTRAL ASIA 106-07* (1995) (describing the Virgin Land program and the influx of European workers). Ingvar Svanberg states that "[d]uring the Stalinist years of the 1930s, [the Kazakhs] were almost annihilated; but the crushing final disintegration of traditional Kazak[h] culture was undoubtedly wrought by Krushchev's Virgin Soil Scheme of the 1950s." Svanberg, *supra* note 124, at 3.

country in which the nominal ethnic group does not constitute an absolute majority of the population.<sup>150</sup>

Despite the privation inflicted on Kazakhstan by Soviet rule, Kazakhstan became perhaps the most thoroughly Sovietized of the republics.<sup>151</sup> The suppression of its nomadic past, the influx of large numbers of non-ethnic citizens, unrelenting propaganda, pride in the accomplishments made during Soviet rule, and other factors worked in concert to produce the most conservative republic in the Union of Socialist Soviet Republics.<sup>152</sup> Indeed, the nationalism that swept through the other republics during the latter years of the Soviet Union barely surfaced in Kazakhstan,<sup>153</sup> and even

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<sup>150</sup> The estimated population of Kazakhstan as of July 2001, is 16,731,303, of which 53.4% are ethnic Kazakh. Central Intelligence Agency Factbook, *supra* note 45. Ethnic Russians constitute 30% of the population, Ukrainians 3.7%, Uzbeks 2.5%, Germans 2.4%, Uighurs 1.4%, and others—which would include neighboring Kyrgyz—constitute 6.6%. *See id.* (reporting estimates from 1999). Ethnic Russians and other non-Asians live throughout the country but tend to be concentrated in the north; ethnic Germans, deported by Stalin during the second World War, tend to be concentrated in the northeast. GLEASON, *supra* note 120, at 51-52. Available data shows an upward trend in the percentage of ethnic Kazakhs and a downward trend in the percentage of ethnic Russians since 1959. Robert J. Kaiser, *Nations and Homelands in Soviet Central Asia*, in GEOGRAPHIC PERSPECTIVES ON SOVIET CENTRAL ASIA, *supra* note 125, at 279, 291 tbl. 11.3 (1992).

<sup>151</sup> Shirin Akiner finds that, for “unfathomable reasons,” the genocide of the Kazakhs in the 1930s and the Virgin Land program do not impinge directly on the modern Kazakh identity. AKINER, *supra* note 119, at 63. She hypothesizes that possible reasons include the facts that few survivors were left to keep memories alive, that Soviet propaganda convinced the survivors that the episodes contributed to the creation of a strong and modern Kazakhstan, or even that the events were too horrible to be comprehended by the Kazakhs. *Id.* In any case, the events inflicted by the Soviets did not interfere with the creation of a Soviet identity.

<sup>152</sup> *See id.* at 48-50 (describing the process and the results); HIRO, *supra* note 149, at 108 (noting that the old village structure was replaced with a new socialist social structure). The Kazakh Soviet Socialist Republic was the last republic to leave the Soviet Union, eight days after Russia, Belarus, and Ukraine announced the formation of the Commonwealth of Independent States and the effective end of the Soviet Union on December 8, 1991. *See HIRO, supra* note 149, at 120-21.

<sup>153</sup> That is not to say that nationalism did not arise in Kazakhstan. In particular, concerns over testing of nuclear weapons in the Semipalatinsk region lead to the formation of the Semipalatinsk-Nevada movement, which had nationalistic overtones. *See GLEASON, supra* note 120, at 56 (describing the formation of the movement). Kazakh intellectuals and students also explored the idea of a Kazakh identity. A pivotal event in the nationalist movement in Kazakhstan occurred in December of 1986, when the Soviet Central Committee announced the replacement of Dinmukhamed Kunayev, an ethnic Kazakh, with Gennady Kolbin, an ethnic Russian, as First Party Secretary of the Communist Party of Kazakhstan. Over ten thousand people, mostly ethnic Kazakh students, demonstrated in Almaty to protest the replacement of an ethnic Kazakh by an ethnic Russian; several

then it was partly used as part of a subtle ploy by Nursultan Nazarbaev, the last president of the Kazakh Socialist Republic, to wrest control of local matters from Mikhail Gorbachev, the last president of the Soviet Union.<sup>154</sup> Thus, the collapse of the Soviet Union and the consequent unexpected and unwanted independence have been traumatic for Kazakhstan.<sup>155</sup> In addition to the need for again rebuilding most social institutions and for navigating an international community to which Kazakhstan has never before been exposed,<sup>156</sup> Kazakhstan borders two very powerful neighbors that each claim part of its territory,<sup>157</sup> it faces potential

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demonstrators were killed or wounded by police. The event is considered a turning point in the formation of a Kazakh identity among the ethnic Kazakh. AKINER, *supra* note 119, at 55-56 (stating that the demonstration was a turning point in the formation of a Kazakh identity); HIRO, *supra* note 149, at 113 (describing the demonstration as a watershed event in Kazakhstan's history). Interestingly, Nursultan Nazarbaev, Kazakhstan's current president, worked against Kunayev's interests at this time. Nazarbaev replaced Kolbin as First Secretary of Kazakhstan. See GLEASON, *supra* note 120, at 56.

<sup>154</sup> See MIKHAIL ALEXANDROV, *UNEASY ALLIANCE: RELATIONS BETWEEN RUSSIA AND KAZAKHSTAN IN THE POST-SOVIET ERA, 1992-1997*, at 1-55 (1999) (describing the struggle between Gorbachev and Nazarbaev and the use of nationalism).

<sup>155</sup> See AKINER, *supra* note 119, at 62 (noting that the collapse of the Soviet Union called all assumptions of modern Kazakhstan into question); GLEASON, *supra* note 120, at 2-3 ("The collapse of the USSR and the coming of independence swept through the lives of Central Asia's citizens" with the force of "powerful storm winds . . . aris[ing] suddenly and swiftly and sweep[ing] through the established order, leaving everyday life forever rearranged . . . [I]ndividuals are left to pick up their lives, to sort out the consequences on an individual level as best they can."); OLCOTT, *supra* note 134, at 3-4 (describing the abruptness and difficulty of independence and noting that "few states in the world have had as little advance warning prior to independence as did the five new states of Central Asia").

<sup>156</sup> The western concept of nationhood is not indigenous to Central Asia. See DEMKO, *supra* note 129, at 26 ("Political organization of a nation-state type was not common to the Kazakhs. Their organizational units were loosely defined and usually lacking in authority except at the lowest levels."). In particular, the concept of nationhood based on ethnicity or language is not indigenous to the region. See Graham E. Fuller, *The New Geopolitical Order*, in *THE NEW GEOFOLITICS OF CENTRAL ASIA AND ITS BORDERLANDS* 19, 20 (Ali Banuazizi & Myron Weiner eds., 1994) ("For the Central Asian states the very concept of Uzbek, Turkoman, Kazakh, Kyrgyz or Tajik as the basis of statehood was entirely new early under Leninist policies . . ."). Not everyone believes that the imposition of western concepts of nationhood are feasible in the region. See, e.g., Victor Ya. Porkhomovskiy, *Historical Origins of Interethnic Conflicts in Central Asia and Transcaucasia*, in *CENTRAL ASIA AND TRANSCAUCASIA: ETHNICITY AND CONFLICT* 1, 16 (Vitaly V. Naumkin ed., 1994) ("[T]he 'eastern way' of formation of the state system differs from the European one . . . it is clear that a sharp transition from the 'Eastern' type to 'European' cannot but cause ethnic tensions and conflicts.").

ethnic unrest,<sup>158</sup> and its economic infrastructure is in shambles.<sup>159</sup> Nursultan Nazarbaev, now President of the Republic of Kazakhstan, has guided Kazakhstan firmly through this traumatic period, and in the process, amassed power to his person rather than to his office.<sup>160</sup>

The Soviet and post-Soviet period obviously define modern Kazakhstan and are of critical importance in distinguishing Kazakhstan from the West. Those looking for evidence that corruption is accepted in Kazakhstan, however, will also find clues in this history. The inadequacies of the Soviet system resulted in the creation of an underground parallel economy in Kazakhstan, which in turn used bribery to avoid persecution by state authorities.<sup>161</sup> Social networks and contacts became more important than the state means of creating and enforcing relationships,<sup>162</sup> and gift

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<sup>157</sup> Ironically, just as the physical geography of Kazakhstan played a critical role in shaping the cultures that arose there, so too today does the political geography play a determinative role in Kazakhstan's political life. The proximity of Russia to the north and China to the east, both of whom claim land now held by Kazakhstan, as well as its great distance from any potential European ally, impose politically difficult demands on Kazakhstan and also place a premium on the personal relationships and skills of its President, Nursultan Nazarbaev. See HIRO, *supra* note 149, at 106-29 (describing Kazakhstan's geographic dilemma and the demands of China and Russia); OLCOTT, *supra* note 134, at 62-70 (discussing Kazakhstan's geographic situation and stating that "Kazakhstan's survival as an independent nation require[s] Russia's tolerance of Kazakh statehood.").

<sup>158</sup> See OLCOTT, *supra* note 134, at 58 (noting that ethnic balancing in Kazakhstan is almost impossible); see also *infra* note 214 (discussing ethnic divisions in Kazakhstan).

<sup>159</sup> The development of Kazakhstan's economic infrastructure was severely distorted by the skewed economic decision-making process of the Soviet Union, by the artificial interconnectedness of the Soviet republics, and by the intentional placing during Soviet times of massive industries far from both suppliers and consumers. See POMFRET, *supra* note 122, at 36 (describing the distortion of Central Asian economies during Soviet times).

<sup>160</sup> See GLEASON, *supra* note 120, at 83-90 (noting the role of Nazarbaev in modern Kazakhstan); HIRO, *supra* note 149, at 126 (stating that Nazarbaev has created a cult of personality in Kazakhstan rather than a political office); OLCOTT, *supra* note 134, at 83 (stating that Nazarbaev personally is more important than the office of President).

<sup>161</sup> See HIRO, *supra* note 149, at 110 (describing this process in Kazakhstan). Richard Pomfret describes this phenomenon across all of Central Asia as the creation of a corrupt neo-feudal society beneath the official society. POMFRET, *supra* note 122, at 32-33.

<sup>162</sup> See Odgaard & Simonsen, *supra* note 121, at 27-30 (describing the need among Kazakhstani during the Soviet times for strong social networks).

giving assumed an especially prominent role.<sup>163</sup> Post-Soviet Kazakhstan experiences turbulence, and power is vested in persons rather than in the political process. Western scholars have identified each of these factors as contributing to corruption and some scholars even suggest to an acceptance of corrupt behavior.<sup>164</sup>

Given one hundred and thirty years of domination by a European power, it may be tempting to consider Kazakhstan too westernized to satisfy the criteria of distinction from Western culture as set out in this Article. Such is not the case. Kazakhstan's cultural context could scarcely be more different than that of the West: Kazakhstan has a nomadic past, which was forcibly replaced by a communist culture, which itself collapsed leaving an uncertain present. These differences between Kazakhstan and the West have been amplified by its many years of isolation.<sup>165</sup> As Michael Mandelbaum notes:

Of all the parts of the former Soviet Union, Central Asia is the one where the presence of Western institutions and values is the thinnest. It is the one most distant from the West both geographically and culturally. The new states have no experience of democracy and almost none with market economies. All parts of the former Soviet Union—the Bal-

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<sup>163</sup> See Cynthia Ann Werner, *The Dynamics of Feasting and Gift Exchange in Rural Kazakhstan*, in CONTEMPORARY KAZAKS: CULTURAL AND SOCIAL PERSPECTIVES, *supra* note 121, at 47, 49.

<sup>164</sup> Keith Henderson attributes corruption in modern Kazakhstan to these factors. Keith E. Henderson, *Halfway Home and a Long Way to Go: Russian and Kazakh Roads to Sectoral and Political Corruption*, 8 DEMOKRATIZATSIYA 481, 489-94 (2000). Even one Russian scholar draws a connection between these factors and acceptance of corruption with respect to Kazakhstan. See ALEXANDROV, *supra* note 154, at 5-8 (suggesting that during the Soviet times corrupt behavior became the norm in Kazakhstan).

<sup>165</sup> At one time Central Asia played a significant role in the world; until trade by sea became predominant, Central Asia contained the major route for trade between East Asia and Europe, and also encompassed major routes for trade among Europe, the Middle East, and South Asia. See Beatrice F. Manz, *Historical Background*, in CENTRAL ASIA IN HISTORICAL PERSPECTIVE 4, 4 (Beatrice F. Manz ed., 1994) (Central Asia was "an important urban and agricultural center and a nexus for long distance trade. The main east-west trade route, the Silk Road, here intersected the northern and southern routes connecting the Middle East to India and to the northern forest-steppe region."). Transport by ship brought an end to land commerce across Central Asia; geography and then Soviet politics combined to isolate Central Asia from the rest of the world. See Svanberg, *supra* note 124, at 3 (describing that isolation).

tic, the Slavic states, the Caucasus, and Central Asia—have embarked, at least according to the rhetoric of those who now govern them, on the path to Western political and economic practices. Central Asia is the region for which that path will be longest and hardest.<sup>166</sup>

In short, Kazakhstani culture and institutions differ markedly from those in the West. Moreover, the history and present conditions of Kazakhstan would lead some scholars to suggest that corruption may be accepted in Kazakhstan. Kazakhstan, therefore, is a promising country from which to gather empirical information regarding indigenous attitudes toward corruption.

### 3.1.2. *Kazakhi Law*

The cultural distinctiveness of Kazakhstan exists with respect to law as well. As mentioned earlier, Islam did not establish deep roots among the nomadic Kazakhs.<sup>167</sup> Thus, while traces of the *fiqh* and *Shari'a* of Islam<sup>168</sup> can be found in indigenous Kazakh law, Islam does not constitute a significant part of Kazakhstan's legal heritage.<sup>169</sup> Mongol law, on the other hand, had a tremendous influence on Kazakh law. Valentin Riasanovsky, who has undertaken comparative analyses of all of the major indigenous laws of Central Asia and Siberia, has found several portions of Kazakh law that were taken directly from the Great *Yasa* (law) of the Mongols,<sup>170</sup> and has also illuminated other portions of Kazakh law on

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<sup>166</sup> Mandelbaum, *supra* note 124, at 5. Akiner also stresses that despite superficial similarities "[t]he political culture of Central Asia is very different from that of the West." Akiner, *supra* note 124, at 18.

<sup>167</sup> See OLCOTT, *supra* note 128, at 19 (noting that "the pastoral nomads (the Kazakh masses and most of the Kazakh nobility) had only the sketchiest knowledge of Muslim tenets and practices").

<sup>168</sup> Martha Brill Olcott argues that by the end of the seventeenth century Kazakh law evidenced some influence by the *Shari'a*. *Id.* at 19.

<sup>169</sup> See HIRO, *supra* note 149, at 109 (noting that in modern Kazakhstan indigenous law plays a much greater role than the *Shari'a*).

<sup>170</sup> For brief discussions of the *Yasa* and other customary law of the Mongols, see Saul Levmore, *Rethinking Comparative Law: Variety and Uniformity in Ancient and Modern Tort Law*, 61 TUL. L. REV. 235, 280-85 (1986); Saul Levmore, *Waiting for Rescue: An Essay on the Evolution and Incentive Structure of the Law of Affirmative Obligations*, 72 VA. L. REV. 879, 924-28 (1986).

which the Yasa had a significant effect.<sup>171</sup> The other major source of law was Kazakh custom.<sup>172</sup>

The most complete surviving record of Kazakh law is the Jhety Jharga—a compilation of laws ordered by Khan Tauke in the 1600s. The Jhety Jharga was kept and transmitted orally until the 1820s, when Mikhail Speransky recorded it as part of the Russian effort to promulgate laws in the conquered regions of Central Asia.<sup>173</sup>

Khan Tauke's code is fairly short—shorter even than the Code of Hammurabi, which predates Khan Tauke's code by several thousand years.<sup>174</sup> The bulk of the rules govern behavior that could be considered criminal or immoral, such as murder, regicide, incest, suicide, theft and insulting one's parents. The Code contains several hints that it was not intended to supplant relationships among families or communities. For example, "[i]ncest is punishable by death; this is substituted by the sentence of the family, since such crimes cannot be submitted for the consideration of outsiders."<sup>175</sup> A woman who killed her husband was to be put to death unless the relatives of her husband forgave her.<sup>176</sup> A son who insulted his parents was seated on a black cow and beaten by

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<sup>171</sup> See VALENTIN A. RIASANOVSKY, *CUSTOMARY LAW OF THE NOMADIC TRIBES OF SIBERIA* 21-24 (1965) (discussing Mongol influence on Kazakh law). Among other indicia are the great number of crimes punishable by death and the payment of fines in nines of cattle, horses, sheep, or camels. The penalty for adultery was almost identical to that contained in the Great Yasa—a husband who caught his wife committing adultery was allowed to kill his wife on the spot—which was unlike the penalty contained in the other Central Asian laws. *Id.* In fact, Raisanovsky opines that indigenous Kazakh law was more similar to Mongol law than any other law in the region. *Id.* at 21. Moreover, Kazakh law retained the severe nature of the Mongol law it experienced before its independence, and "did not come under . . . the later tendency of [Mongol] law to become milder." *Id.* at 21.

<sup>172</sup> See *id.* at 20-21 (describing influence of Kazakh custom on indigenous Kazakh law). Some of the more macabre evidences of custom were the means of carrying out death penalties, which included trampling by horses and freezing to death in water. *Id.* at 20.

<sup>173</sup> OLCOTT, *supra* note 128, at 15.

<sup>174</sup> The Code of Hammurabi was promulgated in Babylon in around 2250 B.C. See *THE CODE OF HAMMURABI* (Robert Francis Harper trans., 1904).

<sup>175</sup> Khan Tauke's Code art. 12.

<sup>176</sup> Khan Tauke's Code art. 4. In the non-community-oriented laws of the West, forgiveness by the relatives of a victim is meaningless. Interestingly, in Khan Tauke's code, a husband who killed his wife could pay a fine to avoid death—an option that was not available to wives who killed their husbands. See Khan Tauke's Code art. 4 (husband can escape death penalty by paying 100 horses, 2 servants, 2 camels and 2 suits of armor to his wife's family).

members of the community.<sup>177</sup> A daughter who insulted her parents faced a potentially more hazardous punishment: she was bound and delivered to her mother for her mother to punish as the mother saw fit.<sup>178</sup> Nothing within the surviving sections of the Jhety Jarga deals with issues of corruption or bribery.

The Russian scholars who followed Speransky also collected and memorialized other traditional laws, which included some commercial laws. These laws also do not deal with corruption or bribery.

In short, indigenous Kazakh law is primarily concerned with community and social order. The law reflects the importance to Kazakh culture of the centrality of family and community. The vitality of indigenous law is best evidenced by failed Soviet attempts to eradicate its use. In 1928, the Supreme Soviet of the Soviet Union ratified the Decree about the struggle against crimes based on customs.<sup>179</sup> The Decree prohibited many of the practices that were required or provided for in Kazakh law. In Kazakhstan, there were so many violations of the Decree that the Soviets had to set up special courts that dealt only with violations of the Decree.<sup>180</sup> These special courts continued to be active well into the 1960s.

### 3.2. Most Respondents Have Experience With Corruption

Kazakhstan is distinct. Most Kazakhstani have experience with corruption. At least two sources support this observation. The first is Kazakhstan's place in Transparency International's Corruption Perception Index. The Corruption Perception Index ranks countries in terms of the perceived amount of corruption that exists in that country. In the 2001 index, which compared ninety countries, Kazakhstan ranked seventy-first.<sup>181</sup> Moreover, Ka-

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<sup>177</sup> Khan Tauke's Code art 16.

<sup>178</sup> *Id.*

<sup>179</sup> THOMAS G. WINNER, THE ORAL ART AND LITERATURE OF THE KAZAKHS OF RUSSIAN CENTRAL ASIA 137-38 (1958). The Decree was submitted in 1924 but not ratified for four years.

<sup>180</sup> *See id.* at 138.

<sup>181</sup> Transparency International, *supra* note 118. The Corruption Perception Index is explained at great length by its creator in Johann Graf Lambsdorff, *Corruption in Comparative Perception*, in ECONOMICS OF CORRUPTION, *supra* note 1, at 81, 87-97.

zakhstan scored 2.7 out of a possible 10, with 10 representing no corruption and zero representing absolute corruption.<sup>182</sup>

The other source indicating that most Kazakhstani have experience with corruption is the survey discussed in this Article. The survey did not directly ask respondents if they have paid bribes.<sup>183</sup> Instead, the survey asked general questions about the necessity of bribery in general. One question asked whether respondents agreed with the statement: "bribery is the practical necessity for quick resolution of business issues." A great majority of respondents responded to this question in the affirmative; over seventy-three percent feel that bribery is necessary to resolve a business issue. Clearly, at least with respect to business matters, people who live in Kazakhstan feel that bribery is part of the environment.

*Do you agree with the statement that bribery is the practical necessity for quick resolution of business issues?*

	Freq.	Percent
Absolutely agree	232	33%
Agree	283	40.5
Don't agree	146	21
Absolutely not	39	5.5
Total	700	100%

Respondents also believe that bribery is necessary to resolve political issues. In this case, however, such a large number of respondents (17%) indicate that they are not sure that the percentage

<sup>182</sup> Transparency International, *supra* note 118. Transparency International's evaluation of Kazakhstan is borne out by the anecdotal reports from Werner and Henderson. Werner reports that most of the Kazakhstani people she spoke with were familiar with bribery in Kazakhstan. Werner, *supra* note 141, at 16. Werner is able to report, for example, on standardized prices for certain types of bribes. *See id.* at 18 (reporting that a forged document stating that a man was exempted from military duty costs U.S. \$500 and a forged document stating that a man served military duty costs U.S. \$1,500). Henderson tells a darker story, describing corruption as endemic in Kazakhstan. Henderson, *supra* note 164, at 494-96.

<sup>183</sup> The questionnaire did not ask whether the respondent had paid bribes due to concerns that directly examining respondents' behaviors would elicit defensive reactions and responses. *See* ROBERT M. GROVES & MIRK P. COUPER, NONRESPONSE IN HOUSEHOLD INTERVIEW SURVEYS 224-25 (1998) (stating that an interviewer's perceived intentions may affect the likelihood of response). In conversations, Kazakhstani generally state that they have paid bribes.

that agrees with the statement "bribery is the practical necessity for quick resolution of political issues" does not quite constitute an absolute majority. Nonetheless, of those with an opinion the majority (49%) agree while fewer (34%) disagree.

*Do you agree with the statement that bribery is the practical necessity for quick resolution of political issues?*

	Freq.	Percent
Absolutely agree	96	14%
Agree	248	35
Don't agree	185	26
Absolutely not	55	8
Not sure	116	17
Total	700	100%

The differences between these two sets of responses indicate a more subtle attitude toward corruption in Kazakhstan than simply a feeling that corruption exists. Two aspects of the second set of responses are noteworthy. First, more respondents (73.5%) believe that bribery is necessary when business interacts with government than when politicians interact with each other (in which case 49% believe bribery necessary). Clearly, Kazakhstani differentiate between the two types of interactions.<sup>184</sup> Second, a large number of respondents (17%) are unsure with respect to political issues. This group of respondents very much highlights the lack of participation by Kazakhstani in the political process in Kazakhstan.<sup>185</sup> The large number also indicates a willingness among respondents to admit to a lack of knowledge rather than fabricating answers simply to please the questioner.

Kazakhstan clearly satisfies the criteria for a fruitful place in which to study attitudes toward and perceptions of corruption: Kazakhstan is culturally distinct from and is relatively isolated

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<sup>184</sup> While this may seem obvious in retrospect, the differentiation seems to have escaped much of the legal commentary, which speaks only of corruption in general rather than parsing corruption with respect to different sorts of interactions. Of course, some legal literature does differentiate between different types of corruption. See, e.g., Dakolias & Thachuk, *supra* note 36, at 353 (concentrating on corruption in the judiciary).

<sup>185</sup> See OLCOTT, *supra* note 134, at 84 (noting President Nazarbaev's domestic policies that limit the development of Western style democratic institutions).

from the West, and the amount of corruption that appears to occur in Kazakhstan is not trivial. One method of ascertaining indigenous attitudes is through a quantitative survey.

#### 4. THE SURVEY

This survey was comprised of seventy-six questions<sup>186</sup> divided into eight parts.<sup>187</sup> An English translation of the survey is appended to this Article.<sup>188</sup>

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<sup>186</sup> There is a real and legitimate question, which the Author acknowledges, as to whether non-standardized interviews would have yielded a more meaningful understanding of Kazakhstani attitudes about corruption. *See generally* Paul Beatty, *Understanding the Standardized/Non-Standardized Interviewing Controversy*, 11 J. OFFICIAL STAT. 147, 147-60 (1995) (describing and contrasting the standardized survey technique with nonstandardized interviews). Corruption is a particularly complex issue; anthropologist Clifford Geertz argues persuasively for non-standardized interviews (ethnography, in anthropological terms):

[E]thnography is thick description. What the ethnographer is in fact faced with—except when [] he is pursuing the more automatized routines of data collection—is a multiplicity of complex conceptual structures, many of them superimposed upon or knotted into one another, which are at once strange, irregular, and inexplicit, and which he must contrive somehow first to grasp and then to render.

Clifford Geertz, *Thick Description: Toward an Interpretive Theory of Culture*, in *THE INTERPRETATION OF CULTURES: SELECTED ESSAYS* 3, 9-10 (1973).

Surveys in emerging economies present daunting logistical problems. *See* SIEGFRIED PAUSEWANG, *METHODS AND CONCEPTS OF SOCIAL RESEARCH IN A RURAL DEVELOPING SOCIETY* 106 (1973) (discussing the difficulty of administering a survey in a developing country). Moreover, when few surveys have been administered in a country, the survey designer—particularly if Western—cannot rely on types of questions or models of surveys that have been tested in previous surveys. *See* Mark A. Tessler, *Measuring Abstract Concepts in Tunisia*, in *SURVEY RESEARCH IN AFRICA: ITS APPLICATIONS AND LIMITS* 141, 141-42 (William M. O'Barr et al. eds., 1973) (discussing difficulty of designing a survey in areas where not many surveys have been administered and models have not been tested). Indeed, the Author of this study has preferred the nonstandardized interview methodology in other studies of attitudes toward and use of law in Kazakhstan. *See* Nichols, *supra* note 41, at 1263-64 (describing methodology).

The Author acknowledges these and other issues regarding surveys. This Article is no place for a defense of surveys; for general discussions of the benefits of surveys see ROGER SAPSFORD, *SURVEY RESEARCH* 1-10 (1999); Beatty, *supra*. Nor is this survey offered as a definitive explanation of all things concerned with corruption; instead it is intended to provide critical empirical insights from a usually ignored perspective into a very important global issue. *See* PAUL S. LEVY & STANLEY LEMESHOW, *SAMPLING OF POPULATIONS: METHODS AND APPLICATIONS* 3 (2d ed. 1991) (stating that surveys are "'snapshots' of a population at a singlepoint in time" and that they describe rather than explain). Moreover, even those who advocate the use of anthropological approaches in social research acknowledge that in some circumstances, such as cross-population studies, the survey method is

The survey was conducted in Kazakhstan in April and May of 1998. The survey was administered by Sange Research<sup>189</sup> in both rural and urban locations<sup>190</sup> in every area of Kazakhstan.<sup>191</sup> Seven hundred and one surveys were completed. In addition, the author of this paper conducted interviews throughout Kazakhstan.<sup>192</sup>

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more accurate than the nonstandardized interview. See Eleanor R. Gerber, *The View From Anthropology: Ethnography and the Cognitive Interview*, in COGNITION AND SURVEY RESEARCH 217, 219 (Monroe G. Sirken et al. eds., 1999) (stating that ethnography is not always as accurate as survey); see also LEVY & LEMESHOW, *supra*, at 1 (noting that a large scale survey is more feasible than large scale ethnography); SAPSFORD, *supra*, at 5 (noting that surveys have the advantage of asking precisely the question that the researcher wants answered over an entire population).

<sup>187</sup> The eight parts are labeled: 1) General Type Problems, 2) Questions Regarding Government Corruption in the Business Sphere, 3) In Your Opinion, Which of The Following May or May Not Harm the Society in General, 4) Give Your Opinion About the Following Statements, 5) Questions About Changes in Legislation, 6) Questions About the System of State Management, 7) Giver Short Answers to the Following, and 8) General Information. The awkwardness and apparent leading nature of some of these headings is due to the translation from Russian.

<sup>188</sup> See *infra* app. I. The Russian version is on file with the Author.

<sup>189</sup> Sange is a Kazakhstani group headquartered in Almaty. A local company was used because they far better understand the local context than does the Author or any Western survey company and also because they had access to and representatives in every area of Kazakhstan. See Michael F. Schober, *Making Sense of Questions: An Interactional Approach*, in COGNITION AND SURVEY RESEARCH, *supra* note 186, at 77, 90 (stating that respondents need to make sense of questions and will put them into a context). Sange was chosen from approximately one dozen possible groups based on the recommendations of Kazakhstani scholars, Western advisors, and companies that had worked in Kazakhstan. Sange's clients include large Western consumer product companies that need to understand consumer preferences and attitudes in Kazakhstan.

<sup>190</sup> See Thomas S. Weisner, *Studying Rural-Urban Ties: A Matched Network Sample from Kenya*, in SURVEY RESEARCH IN AFRICA: ITS APPLICATIONS AND LIMITS, *supra* note 186, at 122, 122-23 (emphasizing the importance of including rural respondents in surveys in developing countries).

<sup>191</sup> Kazakhstan is administratively divided into fourteen units (called *oblystar*, singular *oblysy*), and three cities. See Central Intelligence Agency Factbook, *supra* note 45 (listing the administrative units of Kazakhstan as the cities of Almaty, Astana, and Bayqongyr, and the *oblystar* of Almaty, Aqmola, Aqtobe, Atyrau, Batys Qazaqstan, Mangghystau, Ongtustik, Qazaqstan, Pavlodar, Qaraghandy, Qostanay, Qyzylorda, Shyghys Qazaqstan, Soltustik Qazaqstan, and Zhambyl). The data used in this survey, however, is divided by geographic area rather than by administrative *oblysy*.

<sup>192</sup> See PAUSEWANG, *supra* note 186, at 108-10 (suggesting that ethnographic supplements are very useful in conjunction with surveys in developing countries); Gerber, *supra* note 186, at 218 (suggesting that with most surveys nonstandardized interviews provide valuable complements).

The questions in the survey were modeled on a survey conducted in Sierra Leone by Sahr John Kpundeh in 1992.<sup>193</sup> Eventually this will allow for comparisons between the two studies: that comparison, however, is not undertaken in this Article. The questions were modified to fit conditions in Kazakhstan, and some questions were added. In order to mitigate bias, a variety of question forms were used (asking for agreement or disagreement, asking for opinion, and so forth) and questions were asked in the affirmative and in the negative. Sange Research translated the questions into Russian and also changed some questions, either so that they made sense in Russian or so that they fit conditions in Kazakhstan.<sup>194</sup> The Russian version was translated back into English for the use of this paper.<sup>195</sup>

## 5. THE FINDINGS: INDIGENOUS ATTITUDES TOWARD CORRUPTION IN KAZAKHSTAN

Robert Mattes and Cherrel Africa suggest that attitudes toward corruption can be divided into four categories: an absolute evaluation of corruption (that is, do people think corruption is good or bad), a relative regime evaluation (that is, do people think that there is more or less corruption now than in the past), the public salience of corruption (that is, is corruption a meaningful problem compared to other societal issues), and support for anti-corruption efforts (that is, are people willing to support efforts to decrease corruption).<sup>196</sup> This Article uses Mattes and Africa's scheme for parsing the results of the survey in Kazakhstan.

### 5.1. *Absolute Evaluation of Corruption*

In absolute terms, Kazakhstani perceive a great deal of bribery in their country. Eighty-three percent of the respondents agree

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<sup>193</sup> SAHR JOHN KPUNDEH, *POLITICS AND CORRUPTION IN AFRICA: A CASE STUDY OF SIERRA LEONE* 101, 108-14 (1995).

<sup>194</sup> Sange's contribution in this respect was critical and should make the responses more meaningful. Numerous studies have shown that the words that are used in a survey affect the respondent's abilities to answer questions. ROGER TOURANGEAU ET AL., *THE PSYCHOLOGY OF SURVEY RESPONSE* 59-60 (2000) (discussing the importance of the words in a survey). Sange's local knowledge helped make the survey more accessible to respondents.

<sup>195</sup> See *infra* app. I. The resulting English translation seems somewhat awkward in places but is closer to what respondents saw.

<sup>196</sup> Mattes & Africa, *supra* note 9, at 1-5.

with the statement that the majority of government officials take bribes.

*Give your opinion about the following: The majority of government officials accept bribes.*

	Freq.	Percent
Completely Agree	211	30%
Agree	372	53
Don't Agree	107	15
Absolutely Don't Agree	10	2
Total	700	100%

Throughout Kazakhstan, the issue of bribery arose repeatedly in interviews. Businesspeople referred to bribery as a requisite for virtually any action that required government approval. Other people spoke of bribery in more general term—as a part of obtaining housing, interacting with courts, acquiring diplomas or other credentials, or obtaining documents.<sup>197</sup> Some businesspersons had strategies for dealing with bribe requests, although most found it more expedient to pay the bribe and then complain bitterly among themselves.<sup>198</sup> Persons outside of business also had strategies for dealing with bribe requests, such as simply waiting out the bureaucrat, dealing with family or other relations in government positions, or using unofficial alternatives to the bureaucracy.<sup>199</sup>

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<sup>197</sup> According to most students with whom the Author spoke, the going rate for a passing grade in a university class is U.S. \$100. The Author spoke with many academics who stated that they did not sell grades but acknowledged the practice as widespread.

<sup>198</sup> Thomas Donaldson observed the same phenomenon in India; when he engaged in extensive discussions of bribery with Indian businesspersons in India he found that while most admitted to having paid bribes, all expressed outrage and disgust at the practice. DONALDSON & DUNFEE, *supra* note 52, at 226.

<sup>199</sup> Precedents exist for disengagement from state institutions when those institutions are corrupt. In response to the corruption of the Tsarist and Bolshevik police and judiciary, for example, Russian peasant *mir* sought justice in their own *samosud* and avoided the official court system. Mark Galeotti, *Criminal Russia: the Traditions Behind the Headlines*, 44 HIST. TODAY, Aug. 1994, at 12. The Author has spoken to many persons in Russia and Kazakhstan who presently use alternative forums for dispute resolution, including ethnic organizations sometimes referred to as mafia.

The fact that 83% of respondents agree that most government officials in Kazakhstan accept bribes should be of concern to those interested in a stable Kazakhstan. Most development theorists consider the perception of corruption to be a cause of instability.<sup>200</sup> Interestingly, however, while several of the persons interviewed found their government to be less than fully legitimate, very few suggested that an alternative government should be implemented.

A majority of respondents also believe that judges accept bribes. This question was written in the negative as part of the survey strategy to mix question types. Fifty-five percent of the respondents believe that judges accept bribes, as opposed to only 15% who believe that they do not. In interviews, it appeared that the smaller majority as well as the 30% who are not sure results from a lack of connection and interaction with the judiciary.

*Do you agree with the statement that judges accept bribes seldomly?*

	Freq.	Percent
Absolutely agree	26	4%
Agree	74	11
Don't agree	288	41
Absolutely not	101	14
Not sure	212	30
Total	701	100%

These responses also should give concern to those interested in a stable Kazakhstan. As Susan Rose-Ackerman points out, "A basic condition for corruption control is a viable legal framework that enforces the law without political favoritism or arbitrariness."<sup>201</sup> Clearly, many of the respondents do not agree that that requirement is met. Indeed, in interviews, many Kazakhstani were dismissive of the courts although some expressed sympathy for an underpaid and undertrained system.

With respect to a simple comparison of government and business, most people believe that government officials are more corrupt than are businesspeople. Sixty-seven percent of respon-

<sup>200</sup> See *supra* note 30 and accompanying text (discussing structural and social instability caused by corruption).

<sup>201</sup> Susan Rose-Ackerman, *The Role of the World Bank in Controlling Corruption*, 29 LAW & POL'Y INT'L BUS. 93, 106 (1997).

dents—more than two-thirds—agree that dishonesty is more widespread in politics than in business.

*Give your opinion about the following: Dishonesty is more widespread in politics than in the business sphere.*

	Freq.	Percent
Completely Agree	139	20%
Agree	330	47
Don't Agree	217	31
Absolutely Don't Agree	13	2
Total	699	100%

The perception of the businessperson in Kazakhstan (as in any of the more remote former republics) is complex and worthy of its own study. This Article is not the place for such a study. Briefly, perceptions of businesspersons are sometimes contradictory because of the symbolic role that the businessperson held during the Cold War. The Soviet system characterized businesspersons as ruthless, self-centered, and exploitative. The market system, which rhetorically has replaced the socialist system, lionizes the businessperson for many of the same reasons. "Cowboy capitalism" has indeed produced some miscreants, but the vast majority of persons in Kazakhstan who would be identified as businesspersons are honest and straightforward in their dealings.<sup>202</sup> The result of these conflicting images of businesspersons is a connotation associated with the term "businessperson" that sometimes eludes Westerners. Even given this contradictory image of businesspersons, however, Kazakhstani perceive businesspersons to be less corrupt than politicians.

In terms of an absolute evaluation of corruption, Kazakhstani find their government to be corrupt. Kazakhstani overwhelmingly believe that both the political government and the judiciary are corrupt. Moreover, Kazakhstani also tend to perceive politics as more corrupt than business.

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<sup>202</sup> See POMFRET, *supra* note 122, at 76 (describing the "wild west" nature of Kazakhstan's economy).

### 5.2. Relative Regime Evaluation

Only one question asked about relative levels of corruption (other questions asked about changes in other conditions in Kazakhstan). As part of the strategy of mixing question types to mitigate bias, this question appears in the negative. Nonetheless, at a minimum, the responses show that people believe—overwhelmingly—that levels of corruption have not changed. Only 8.5% of the respondents agree that corruption has declined in Kazakhstan.

*Give your opinion about the following: Corruption in this country has significantly declined.*

	Freq.	Percent
Completely Agree	10	1.5%
Agree	48	7
Don't Agree	415	59
Absolutely Don't Agree	227	32.5
Total	700	100%

In interviews, many Kazakhstani indicated their belief that corruption has actually increased in the last decade. Several persons suggested that a combination of privatization and the collapse of the basic economic infrastructure had allowed organized crime to insinuate itself into government (an observation that was made throughout Kazakhstan). Others responded that the exploitation of the Tengiz oilfields during the last few years of the Soviet period and the accompanying inflow of large amounts of hard currency had conditioned top officials to bribe seeking and that as economic conditions deteriorated lower-level officials emulated upper-level officials. A minority of ethnic Russians castigated ethnic Kazakhs in government positions. It should be noted that a sizeable percentage indicated that corruption was present during the Soviet times, although a number of those persons indicated that corruption was more manageable during that period.

### 5.3. Public Salience of Corruption

When asked to choose from a list of problems facing Kazakhstan, respondents do not in the aggregate choose corruption as the most significant problem the country faces. Given the severity

of Kazakhstan's situation, this result should not be a surprise. Kazakhstan's economy, which was a fairly artificial Soviet construct to begin with, was severely disrupted by the abrupt disconnection from the former Soviet Union.<sup>203</sup> Anyone who has traveled throughout Kazakhstan has heard hundreds of stories from dozens of professionals—doctors, surgeons, professors, clerks—who have not been paid in months or years.<sup>204</sup> Nonetheless, even though corruption is not considered the worst problem facing Kazakhstan, it is still considered a very serious problem facing the country. Corruption and organized crime virtually tie as the second most pressing problems.

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<sup>203</sup> Ali Banuazizi & Myron Weiner, *Introduction*, in *THE NEW GEOPOLITICS OF CENTRAL ASIA AND ITS BORDERLANDS* 1, 7 (Ali Banuazizi & Myron Weiner eds., 1994).

The economies of these states were made into adjuncts of the Soviet economy. Primarily producers of raw materials for the Russians, these economies were warped by Soviet domination, cut off from opportunities for independent development, and unable to engage in free trade with their immediate neighbours or others beyond the Soviet borders.

*Id.*

As one Kazakh politician notes: "Now we look for those huge warehouses, previously closed even to the Kazakhs themselves, and wonder what they were for?" TEALAKH, *supra* note 134, at 59 (quoting an unnamed politician). Numerical figures from the former Soviet republics are notoriously unreliable, but for an excellent description of the conditions of the Kazakhstani economy, see POMFRET, *supra* note 122, at 75-97.

<sup>204</sup> See OLCOTT, *supra* note 134, at 67 (discussing wage arrears in Kazakhstan). Karen Odgaard and Jens Simonsen examine the impact that this has had on academics and note that those who should now be at the peak of their earning potential are the hardest hit; the younger scholars can implement other earning strategies (such as leaving academia) and the older scholars are venerated as a source of accurate information on pre-Soviet Kazakh culture. Odgaard & Simonsen, *supra* note 121, at 37-40. This problem and the problem of unpaid backwages are not, of course, unique to Kazakhstan.

*Which social problem do you believe is the most important?*

	Freq.	Percent
Ethnical diversity of the population	51	7.25%
Corruption	102	14.50
Control over economy by foreign organizations and investors	74	10.50
Frequent government reshuffles	44	6.25
Economic decline	356	51.00
Organized Crime	74	10.50
Total	701	100%

*Which social problem do you believe is the second most important?*

	Freq.	Percent
Ethnical diversity of the population	33	4.75%
Corruption	144	20.50
Control over economy by foreign organizations and investors	93	13.25
Frequent government reshuffles	64	9.25
Economic decline	185	26.50
Organized Crime	180	25.75
Total	699	100%

Even though corruption may not be considered the single most serious issue in Kazakhstan, almost all of the respondents feel that corruption harms Kazakhstan. Indeed, the answers to this question are quite dramatic. In terms of harm, when simply asked if corruption is harmful, 93% of the people asked believe that corruption harms Kazakhstan; 64% believe that corruption does a lot of harm.

*How does bribery harm Kazakhstan?*

	Freq.	Percent
A lot of harm	452	64%
Enough harm	200	29
Some harm	39	6
No harm	9	1
Total	700	100%

This set of responses is compelling. Almost all Kazakhstani find corruption to be harmful. Those who argue that antagonism toward corruption is a Western construct based on Western ideals will find no support in Kazakhstan. As compelling as this set of responses is, however, it is important to refine the inquiry by asking about corrupt behaviors by specific actors.

When asked about specific actors, respondents also find that corruption is harmful. Ninety-one percent respond that a state employee who accepts bribes harms Kazakhstan.

*In your opinion, which of the following may or may not harm the society in general?*

*State employee who accepts bribe from local entrepreneur?*

	Freq.	Percent
A lot of harm to society	249	36%
Some harm	386	55
No harm	66	9
Total	701	100%

Clearly, Kazakhstani find that government officials who abuse their office by accepting bribes damage Kazakhstan—these responses support the arguments regarding systemic and social damage inflicted by corrupt bureaucrats.<sup>205</sup> Conversely, however, respondents also believe that a private entrepreneur who pays bribes causes harm to Kazakhstan. Blame for the damage caused by corruption seems to be shared between both the bribe giver and the bribe taker.

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<sup>205</sup> See *supra* notes 29-30 (discussing theories of systemic damage done to the bureaucracy and the corrosion of society by corruption).

*In your opinion, which of the following may or may not harm the society in general?*

*Entrepreneur who gives bribes to ensure preferential treatment during contract bidding?*

	Freq.	Percent
A lot of harm to society	246	35%
Some harm	358	51
No harm	95	14
Total	699	100%

One suggested rationale for corruption is that everyone in the community benefits from the capital accumulated by the corrupt leader.<sup>206</sup> Respondents did not accept this theoretical rationale; 82% of the respondents believe such behavior to be harmful to society.

*In your opinion, which of the following may or may not harm the society in general?*

*Local "boss"/government official who accepts a bribe, but does a lot of good for the community?*

	Freq.	Percent
A lot of harm to society	159	23%
Some harm	416	59
No harm	125	18
Total	700	100%

Another question regarding specific actors yields interesting responses. In Kazakhstan, and throughout Central Asia—indeed, throughout much of the world, traffic police accept small bribes to overlook minor (and large bribes to overlook major) infractions.<sup>207</sup>

<sup>206</sup> See Ernest Harsch, *Accumulators and Democrats: Challenging State Corruption in Africa*, 31 J. MODERN AFR. STUD. 31, 36 (1993) (referring to corruption as a "central" means of capital accumulation in Africa).

<sup>207</sup> See POMFRET, *supra* note 122, at 51 (describing bribe seeking by police in Central Asia); Henderson, *supra* note 164, at 494 (describing solicitation of bribes by police in Kazakhstan). Bribe seeking by police is so common in certain parts of the world that Robert Pelton's extremely useful guidebook for traveling in difficult places gives very detailed instructions on how to pay bribes to policemen as

Several Western scholars have suggested that this is an acceptable means of paying officials who otherwise are paid very little.<sup>208</sup> The majority of respondents in Kazakhstan, however, consider this behavior harmful, albeit by smaller percentages than the previously examined behavior.

*In your opinion, which of the following may or may not harm the society in general?*

*Bribing a traffic cop?*

	Freq.	Percent
A lot of harm to society	83	12%
Some harm	377	54
No harm	239	34
Total	699	100%

The antagonism toward bribe taking traffic police is interesting for at least two reasons. First, rather than appreciating a short cut around bureaucracy, most Kazakhstani appreciate the corrosive effects of a bribe taking culture among law enforcement officers. Second, the results highlight the importance of taking a dynamic rather than static approach to corruption. In the short run, it may be convenient to escape a traffic ticket. Over time, however, as police come to expect income from those whom they stop for traffic violations they will stop more and more people, often on fabricated charges.<sup>209</sup> Indeed, anyone who has traveled in Central Asia can tell numerous stories of fines paid to traffic police for infractions such as dirty headlights or unsafe turns.<sup>210</sup>

In short, Kazakhstani find corruption in general to be very harmful. When specific actors and specific behaviors are identified, the percentage finding harm declines slightly, but it is still a very large majority of the respondents. Even behaviors that some

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well as guidance on the normal size of payments. ROBERT YOUNG PELTON, *THE WORLD'S MOST DANGEROUS PLACES* 87-91 (4th ed. 2000).

<sup>208</sup> See *supra* note 7 and accompanying text; see also Steven R. Salbu, *A Delicate Balance: Legislation, Institutional Change, and Transnational Bribery*, 33 *CORNELL INT'L L.J.* 657 (2000) (arguing that small bribes are a means of paying civil servants).

<sup>209</sup> See *supra* note 32 and accompanying text (discussing the escalation of demands by bribe taking officials).

<sup>210</sup> The Author's own observation is that this particular behavior has improved substantially in Almaty in the last two years.

theorists might predict would be considered acceptable in a country such as Kazakhstan are considered very harmful.

#### 5.4. Anticorruption Efforts

Another way of looking at indigenous attitudes toward corruption is to ask whether people would like laws and law enforcement changed to control or eliminate corruption. When asked a general question about how important the government should consider the fight against corruption the vast majority of respondents, 96%, responded that fighting corruption should be a high government priority.

*How important should the government consider the fight against corruption?*

	Freq.	Percent
Top priority	392	56%
Significant	282	40
Secondary	27	4
Total	701	100%

When asked more specific questions, a majority again supports combating corruption, although the percentages are smaller. Seventy-eight percent, for example, support the creation of a special agency dedicated to fighting corruption.

*Should there be a special law enforcement agency dedicated to fighting corruption?*

	Freq.	Percent
Completely Agree	273	39%
Agree	273	39
Don't Agree	110	16
Absolutely Don't Agree	43	6
Total	699	100%

As discussed in Section 6 of this Article, this response is especially interesting for those persons involved with constructing anti-corruption regimes in Kazakhstan.<sup>211</sup>

Similarly, a law that would require political candidates to disclose income and assets also receives support from a majority, 76%, of respondents.

*Should all persons running for elected office be required by law to declare their personal income and savings?*

	Freq.	Percent
Completely Agree	224	32%
Agree	310	44
Don't Agree	134	19
Absolutely Don't Agree	32	5
Total	700	100%

This response also is interesting in the context of international efforts to combat corruption. The Inter-American Convention Against Corruption, for example, requires signatories to make it a crime for a government official to possess or acquire assets that the official "cannot reasonably explain in relation to his lawful earnings during the performance of his functions."<sup>212</sup> Rather than being perceived as imperialism, this change in the international regime would apparently be welcomed in Kazakhstan.

In short, Kazakhstani strongly support reforms aimed at eliminating corruption. Respondents suggest that fighting corruption should be a high government priority and they support specific measures such as an independent agency and disclosure of sources of income. This information has an obvious relevance to those who are effectuating reform at the local level.

<sup>211</sup> See *infra* notes 262-264 and accompanying text.

<sup>212</sup> Inter-American Convention Against Corruption, *supra* note 85, art. 9; see Low, *supra* note 85, at 247-49 (discussing the requirement); Zedalis, *supra* note 85, at 55 (discussing the treaty). Illicit enrichment provisions exist in other anticorruption legislation. See, e.g., Prevention of Corruption Act § 5(1)(e) (1988) (India) (preventing corruption).

### 5.5. Differences Among Respondent Groups

It is clear that as a whole, Kazakhstani respondents do not accept or embrace corruption and in fact find it harmful. Similarly, as a whole most Kazakhstani respondents welcome measures that would combat corruption. It is imperative, however, to refine the examination of responses by sorting respondents into relevant groups. Refinement is needed for several reasons. One very important question for those effectuating changes in the local regime is whether there are any structurally critical groups—such as the wealthy, the very poor, or the well educated—who will be particularly affected by a given change or who hold radically different perspectives about corruption. It is also theoretically and pragmatically interesting to ask if there are any subgroups that accept and embrace corruption. Concerns about moral, legal, or economic imperialism do not necessarily apply only to a nation as a whole.<sup>213</sup>

The following sections of this Article sort respondents by ethnicity and religion, rural or urban settlement, level of education and income, gender, and public or private employment.<sup>214</sup> Even when sorted by these characteristics, the rejection of corruption remains consistent across all categories, indicating the robustness of the claim that corruption is not accepted or embraced in Kazakhstani culture and mitigating concerns about imperialism.

#### 5.5.1. Ethnicity and Religion

Many people consider ethnic divisions to be the most serious issue facing post-Soviet Kazakhstan.<sup>215</sup> Whereas the concept of na-

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<sup>213</sup> Thomas Donaldson, for example, vigorously argues that foreign aid programs and structural adjustment requirements must be evaluated not in terms of what they accomplish for the country as a whole but instead in terms of the impact that the programs have on the poorest and most vulnerable groups in the country. Thomas Donaldson, *The Ethics of Conditionality in International Debt*, 20 MILLENNIUM: J. INT'L STUD. 155 (1991).

<sup>214</sup> The following sections do not reproduce all of the findings that indicate statistically significant differences. The Author concludes that differences among groups are minimal. In the interest of a full disclosure of the findings, all statistically significant differences (using a confidence interval of 0.05) that are not reported in the following sections are reproduced in Appendix II. Readers are encouraged to use this information in evaluating the Author's conclusions regarding the lack of meaningful differences when respondents are sorted by a variety of salient characteristics.

<sup>215</sup> See HIRO, *supra* note 149, at 118-19 (discussing the tension between ethnic Russians and ethnic Kazakhs in the northern portions of the country); OLCOTT, *supra* note 134, at 61 (noting that ethnicity affects all aspects of Kazakhstan);

tionhood is not indigenous to Central Asia, identification with an ethnic group very much is part of Central Asian culture.<sup>216</sup> Ethnic issues are particularly acute in Kazakhstan because no ethnic group has an absolute majority in the country.<sup>217</sup>

Sorting respondents by ethnicity, however, yields surprisingly few differences among answer sets; only three of the sixteen questions discussed in this Article show statistically significant differences.<sup>218</sup> Interestingly, two of these differences arise in the answers to questions concerning anticorruption efforts in Kazakhstan.<sup>219</sup> Most ethnic Kazakhs support anticorruption efforts. The support by Kazakhs for such efforts, however, is less than support by other large major ethnic groups. In particular, ethnic Russian support for such efforts is measurably greater.

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POMFRET, *supra* note 122, at 77 (noting the significance of the ethnicity issue in Kazakhstan). Recent legal scholarship reflects a similar general concern over possible consequences of ethnic divisions. See Ibrahim J. Gassama, *Transnational Critical Race Scholarship: Transcending Ethnic and National Chauvinism in the Era of Globalization*, 5 MICH. J. RACE & L. 133 (1999); David M. Kresock, "Ethnic Cleansing" in the Balkans: The Legal Foundations of Foreign Intervention, 27 CORNELL INT'L L.J. 203 (1994); Steven R. Ratner, *Does International Law Matter in Preventing Ethnic Conflict?*, 32 N.Y.U. J. INT'L L. & POL. 591 (2000); see also Elena Bonner, *Nationalism, Ethnic Strife and Human Rights*, 28 J. MARSHALL L. REV. 769 (1995) (discussing, from a social activist's rather than legal scholar's point of view, the relationship between ethnic division and human rights law in the former Soviet Union).

<sup>216</sup> See GLEASON, *supra* note 120, at 5-6 (warning that it would be "a Eurocentric mistake to conceive of these peoples and groups as nations" and discussing the importance of ethnic identification).

<sup>217</sup> See *supra* note 150 (describing the demographics of the country).

<sup>218</sup> Using a confidence interval of 0.05.

<sup>219</sup> The other question that shows a significant difference among answer sets is the question asking whether an entrepreneur who gives a bribe to ensure preferential treatment during contract bidding harms society. See *infra* app. II, tbl. A1. Kazakh respondents, who belong to the largest ethnic group, have the lowest percentage finding that the described behavior causes a lot of harm to society (30% as compared to 40% among ethnic Russian respondents and 52% among ethnic German respondents). The percentage of Kazakhs finding no harm to society (15%) is also twice that of the ethnic Russian respondents (7%). At only 15%, however, that percentage does not indicate that ethnic Kazakhs in general find this behavior harmless.

*How important should the government consider the fight against corruption?<sup>220</sup>*

	Kazakh	Russian
Top priority	51%	68%
Significant	44	31
Secondary	5	1
Total	100%	100%
(n)	(370)	(196)

Similarly, support by ethnic Kazakhs for a special agency to combat corruption is less than that of ethnic Russians.

*Should there be a special law enforcement agency dedicated to fighting corruption?<sup>221</sup>*

	Kazakh	Russian
Completely Agree	36%	46%
Agree	39	41
Don't Agree	17	10
Absolutely Don't Agree	8	3
Total	100%	100%
(n)	(368)	(196)

These answers do not indicate that ethnic Kazakhs do not support anticorruption efforts. The great majority do. Given, however, that ethnic Kazakhs and ethnic Russians constitute the two largest and most influential ethnic groups, any person attempting to implement reform in the Republic of Kazakhstan would benefit from an awareness of these slight differences.

Sorting respondents by religion also yielded few significant differences, again only three of the sixteen questions.<sup>222</sup> Interestingly,

<sup>220</sup> See also *infra* app. II, tbl. A2 (displaying the entire table including ethnic Uzbeks, Kyrgyz, German, Ukrainian, and others).

<sup>221</sup> See also *infra* app. II, tbl. A3 (displaying the entire table including ethnic Uzbeks, Kyrgyz, German, Ukrainian, and others).

<sup>222</sup> One question that showed significant differences in answers deals with relative regime evaluation: atheists (44%) absolutely don't agree more frequently with the statement that corruption has declined in Kazakhstan than do Muslims (27%) or Christians (35%). See *infra* app. II, tbl. A4. At least 90% of all three

one question that shows different answers deals with anticorruption efforts. When asked how important the government should consider the fight against corruption, a much higher percentage of both Christian respondents and atheist respondents than of Muslim respondents answer that the fight should be given top priority, and a higher percentage of Muslim respondents answer that the fight should be given secondary status.

*How important should the government consider the fight against corruption?*

	Religion					Total
	Muslim	Christian	Jewish	Other	Atheist	
Top priority	49%	65%	50%	40%	63%	56%
Significant	45	33	50	60	36	40
Secondary	6	2	0	0	1	4
Total (n)	100% (359)	100% (180)	100% (4)	100% (20)	100% (135)	100% (698)

*Pearson chi2(8) = 24.7766 Pr = 0.002*

Although a few questions yield statistically significant differences among response groups when respondents are sorted by ethnicity or religion, in the aggregate it would be difficult to argue that real differences exist. Interviews in Kazakhstan shed no light on why people of different ethnicities or religions do not have different attitudes towards corruption. The lack of differences, nonetheless, is important in itself for at least three reasons. First, the uniformity of responses when sorted by ethnicity and religion highlights the robustness of the rejection of corruption across Kazakhstan. Second, the fact that corruption is rejected by all ethnic and religious groups mitigates concerns that anticorruption regimes constitute some form of imperialism forced on a subgroup in

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groups, however, generally disagree with this statement. The second question that shows differences among groups asks whether an entrepreneur who pays a bribe harms society. Again, atheists (43%) more frequently find a lot of harm than do Muslims (30%) or Christians (37%), although again the great majority of each group find the behavior harmful. See *infra* app. II, tbl. A5.

Kazakhstan. Third, although there are differences of which advisors should be aware, the fact that all ethnic and religious groups support anticorruption efforts supports the legitimacy of such efforts if they are undertaken in Kazakhstan. From a nonlegal perspective, perhaps the most important conclusion to be drawn from this set of responses is that ethnic and religious stereotypes are not empirically supported with respect to corruption.

### 5.5.2. *Type of Settlement (Urban or Rural)*

Rural life is different than urban life in Kazakhstan. During the Soviet period, rural dwellers tended to be ethnic Kazakhs; Kazakhstani scholars now view these people as a source of primary information on Kazakh tradition and culture.<sup>223</sup> Following the Soviet period, a large percentage of the rural population emigrated to cities, creating an even greater distinction between those who choose to stay in rural settlements and those who choose to live in urban settlements.<sup>224</sup>

Nonetheless, sorting respondents by type of settlement does not produce many significant differences between answer sets. Rural respondents (19%) are more likely than urban respondents (11%) to agree with the statement that judges seldom accept bribes.<sup>225</sup> Interviews yielded little insight into this difference. One possibility is that because judges in the rural areas are more closely integrated into the community (as is everyone else), judges have less opportunity to either solicit or accept bribes.<sup>226</sup> This could be of use to those who structure anticorruption measures.<sup>227</sup>

Differences also occur with respect to support for anticorruption efforts. These differences, however, are more a matter of de-

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<sup>223</sup> Odgaard & Simonsen, *supra* note 121, at 23-24.

<sup>224</sup> See Richard H. Rowland, *Urban Population Trends in Kazakhstan During the 1990s*, 40 *POST-SOVIET GEOGRAPHY & ECON.* 519 (1999) (describing the trends).

<sup>225</sup> See *infra* app. II, tbl. A6. Whereas rural respondents are more trusting of judges than are urban respondents, rural respondents are more critical of government in general. When asked whether government is more corrupt than business, a larger percentage of rural (73%) than urban respondents (63%) agree that it is. See *infra* app. II, tbl. A7.

<sup>226</sup> The Author observed a similar phenomenon in the African country of Senegal. In Senegal, while many people expressed a grave concern about corruption, corruption did not play a visible role in their daily life—possibly because the low-level government officials with whom they have daily contact are also members of their families, villages, and other social groups.

<sup>227</sup> See *infra* notes 263-264 and accompanying text.

gree than of actual support for anticorruption measures. Rural respondents are more likely to completely support the creation of a special agency to combat corruption, although roughly the same percentage of rural (79%) and urban (77%) respondents support the creation of such an agency.<sup>228</sup> Similarly, rural respondents are more likely to support laws that require a candidate for office to disclose her income and assets, although again most urban respondents also support such a requirement.<sup>229</sup>

When respondents are sorted by type of settlement, differences exist with respect to a handful of questions. These few differences, however, do not indicate meaningful differences between rural and urban respondents. The responses to all of the questions in the aggregate clearly indicate that both rural and urban respondents reject corruption and support measures to combat corruption in Kazakhstan.

### 5.5.3. *Education and Income*

Education and income are often used to separate people into categories. With respect to corruption, however, sorting respondents by education and income does not yield many statistically significantly different sets of answers.

People with different levels of education often do perceive the world differently.<sup>230</sup> One might expect, therefore, that the level of education might provide clues as to how a respondent will answer questions regarding corruption. Such, however, is not the case. The results are fairly consistent across all levels of education, and respondents at every level of education generally do not accept corruption. What differences do exist are interesting in their inconsistency.<sup>231</sup> Less educated respondents, for example, are more likely to find a lot of harm to society in the act of a state employee

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<sup>228</sup> See *infra* app. II, tbl. A7(b).

<sup>229</sup> See *infra* app. II, tbl. A8(a).

<sup>230</sup> See Beverly Elmyra Johnson, *Learning in School: Facilitating the Child's Emerging Construction of Self*, 112 EDUC. 439, 439-41 (1992) (discussing the effect of education on how people perceive themselves and the world).

<sup>231</sup> In addition to the differences discussed in the text, respondents with less education are slightly more likely to disagree with the statement that corruption in Kazakhstan has declined. See *infra* app. II, tbl. A8(b).

accepting a bribe.<sup>232</sup> The same group, however, is less likely to find harm to be caused by an entrepreneur paying a bribe.<sup>233</sup>

Income<sup>234</sup> is no better a predictor than any other quality of a respondent. Majorities in all income groups find harm in bribery and in other ways do not accept corruption. Nonetheless, when respondents are sorted on the basis of income a few statistically significant differences do appear. With respect to these few cases, in general it is those with the lower incomes who are less tolerant of bribery. Indeed, in some cases the differences in responses march in observable steps from lower incomes through the higher incomes.

Interestingly, of the four sets of responses that present statistically significant differences among groups sorted by income, three occur with respect to questions about specific actors when evaluating the public salience of corruption.<sup>235</sup> Those with lower incomes, for example, find a state employee who accepts bribes to be more harmful than do those with higher incomes.

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<sup>232</sup> See *infra* app. II, tbl. A9. A great majority of respondents at each level of education find this behavior harmful.

<sup>233</sup> See *infra* app. II, tbl. A10. Again, a majority of respondents at each level of education finds the behavior harmful.

<sup>234</sup> Income reporting in surveys generally presents problems. See Jeffrey C. Moore et al., *Income Reporting in Surveys: Cognitive Issues and Measurement Error*, in COGNITION AND SURVEY RESEARCH, *supra* note 186, at 155, 156-59 (discussing problems with income reporting in surveys, including the facts that the definition of income is understood differently by different people, many people do not know their income, many people do not care what their income is, and many people do a poor job of reconstructing their income). In Central Asia the reporting of income is made more difficult by the facts that many people supplement their primary job with other jobs, that some income is paid in kind rather than in currency, that many people have jobs that in principle pay a salary but for which they may in fact not have been paid for several months or even years, and most especially that because so many people wish to avoid high taxes they are often reluctant to discuss their own income. Indeed, there was a high nonresponse rate for questions about income.

<sup>235</sup> The fourth occurs with respect to the question asking whether all persons running for elected office should be required to declare their personal income and savings. Although a majority of respondents at each income level supports this proposal, those with less income are more likely to support it than those with higher incomes. Indeed, 11% of the respondents in the highest income group absolutely disagreed with the suggestion, almost three times as many as any other income group. See *infra* app. II, tbl. A11.

*In your opinion, which of the following may or may not harm the society in general?*

*State employee who accepts bribe from local entrepreneur?*

	Income (in tenge) <sup>236</sup>								Total
	No Income	Under 2000	2000-3999	4000-7999	8000-15,999	16,000-31,999	More than 32,000	Refuse to answer	
Lot of harm	42%	66%	49%	32%	30%	41%	30%	18%	36%
Some harm	50	31	42	62	58	44	59	76	55
No harm	8	3	9	6	12	15	11	6	9
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%
(n)	(36)	(38)	(78)	(164)	(200)	(85)	(27)	(71)	(699)

*Pearson chi2(14) = 48.4866 Pr = 0.000*

Respondents also find a local boss who accepts a bribe but does good to be harmful.

<sup>236</sup> The exchange rate at the time that the survey was conducted was about seventy-five tenge for one U.S. dollar.

*Local "boss"/government official who accepts a bribe, but does a lot of good for the community?*

	Income (in tenge)								Total
	No Income	Under 2000	2000-3999	4000-7999	8000-15,999	16,000-31,999	More than 32,000	Refuse to answer	
Lot of harm	19%	37%	29%	23%	26%	13%	19%	13%	23%
Some harm	50	50	62	64	56	67	70	56	59
No harm	31	13	9	13	18	20	11	31	18
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%
(n)	(36)	(38)	(78)	(163)	(200)	(85)	(27)	(71)	(698)

*Pearson chi2(14) = 33.4892 Pr = 0.002*

Those surveyed even find bribing a traffic officer to be harmful.

In your opinion, which of the following may or may not harm the society in general?

Bribing a traffic cop?

	Income (in tenge)								Total
	No Income	Under 2000	2000-3999	4000-7999	8000-15,999	16,000-31,999	More than 32,000	Refuse to answer	
Lot of harm	30%	29%	12%	12%	12%	2%	0%	7%	12%
Some harm	56	58	56	57	48	61	56	52	54
No harm	14	13	32	31	40	37	44	41	34
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%
(n)	(36)	(38)	(77)	(164)	(200)	(84)	(27)	(71)	(697)

Pearson  $\chi^2(14) = 48.2695$   $Pr = 0.000$

The last set of responses is particularly interesting not only for the firmness with which respondents in the lower income groups find such conduct harmful, but also for the responses of the higher income groups. Whereas almost one-third of the respondents in the lowest income group stated that bribing traffic police causes a great deal of harm to society, not a single respondent in the highest income group assigned that level of harm to that behavior. Indeed, 44% of the respondents in the highest income group stated that this behavior causes no harm to society. Of all of the responses given in this survey, this constitutes the greatest percentage that did not find a corrupt behavior to be harmful.

#### 5.5.4. Gender

The roles of men and women differ in traditional Central Asian society.<sup>237</sup> Indeed, the roles assigned to men and women differ in

<sup>237</sup> See GLEASON, *supra* note 120, at 38 ("Personal life is family life in Central Asian societies: Property is communal, *palov* (the preferred Central Asian dish) is

modern Kazakhstan.<sup>238</sup> Russian society also continues to treat people of different genders differently.<sup>239</sup>

Given the different roles assigned to different genders, one might expect gender to influence respondents' answers to questions regarding corruption. That is not the case. Gender proved a surprisingly useless indicator of perceptions of corruption in this study. With respect to the questions regarding absolute evaluations, relative evaluations, public saliency and support for anticorruption laws, there are no statistically significant differences in the answers when the answers are sorted by the gender of the respondent.

#### 5.5.5. *Government Employees*

With respect to corruption, government employees constitute a critical subgroup. Government employees are most likely to be in a position to demand bribes. Moreover, any reforms will require the cooperation of government employees. It is very important, therefore, to closely scrutinize the answers of government employees.

Sorting respondents by government employment yields surprising results. Although not all of the questions yield statistically significant differences, quite a few do. In each case where there is a

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shared, elders are given deference without question, and women are subordinated."). Certain schools of legal thought, while not assigning women to a subordinate role, suggest that men and women have been conditioned to or assigned different roles in different cultures and therefore perceive or interact with the world differently. See ELISE BOULDING, *CULTURES OF PEACE: THE HIDDEN SIDE OF HISTORY* 107-22 (2000) (discussing the relationship between feminist legal theory and global social movements); CATHERINE ESCHLE, *GLOBAL DEMOCRACY, SOCIAL MOVEMENTS, AND FEMINISM* (2001) (same).

<sup>238</sup> Pauline Loung Jones and Erika Wisenthal have written several unpublished studies on this issue, which the Author has on file.

<sup>239</sup> See Eva Busza & Jeffrey Hahn, *Women and Politics in Russia: The Yaroslavl Study*, 16 *WOMEN & POL.* 55, 78 (1996) (concluding that gender accounts for the differences in the political role and behavior of men and women in the former Soviet Union); Satish P. Deshpande et al., *Perceptions of Proper Ethical Conduct of Male and Female Russian Managers*, 24 *J. BUS. ETHICS* 179, 181 (2000) (finding that women managers consider a broader range of behaviors to be unethical than do men managers); Robin Goodwin & Tatiana Emelyanova, *The Perestroika of the Family? Gender and Occupational Differences in Family Values in Modern Day Russia*, 32 *SEX ROLES: A JOURNAL OF RESEARCH* 337, 338-48 (1995) (finding that the greater openness in discussing inequalities between men and women has been accompanied by a more regressive harkening back to "traditional" gender roles).

difference, government employees are harsher in their attitudes toward corruption.

This particular set of responses must be caveated. Two hundred and sixty respondents (out of seven hundred and one) did not indicate whether they worked in the government or the private sector. When asked in interviews why they would not answer a question about their employment, many people said that they could not. Many people in Kazakhstan (and throughout all of the former Soviet Union) work out of necessity both in the private and in the public sector.<sup>240</sup> For those few who do have only one job, it is sometimes unclear, following the haphazard privatization that has occurred in Kazakhstan,<sup>241</sup> whether they work in the private or public sector. Thus, both the smaller sample and the questionable decision by respondents to place themselves in one category or another must be taken into consideration when evaluating these sets of responses. Nonetheless, if one assumes that those who place themselves in the government employee category have more experience in government than those who place themselves in the private employment category, the results are of great interest.

The majority of those who place themselves in the government category agree that bribery is necessary to resolve business issues, but it is a smaller majority (66%, with 28% absolutely agreeing) than among respondents who place themselves in the private employment category (79%, with 38% absolutely agreeing).

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<sup>240</sup> See Scheppele, *supra* note 7, at 514-18 (describing the need of public employees to also work in the private sector).

<sup>241</sup> See Nichols, *supra* note 64, at 312-20 (describing privatization in Kazakhstan).

*Do you agree with the statement that bribery is a practical necessity for quick resolution of business issues?*

	Occupation		Total <sup>242</sup>
	Gov't	Private Sector	
Absolutely agree	28%	38%	32%
Agree	38	41	39
Don't agree	26	17	22
Absolutely not	8	4	7
Total (n)	100% (276)	100% (165)	100% (441)

Pearson  $\chi^2(3) = 9.6799$   $Pr = 0.021$

Three possible explanations exist for this difference. The first is simply that government officials are either attempting to cover up their own misfeasance and malfeasance or they are answering questions in the manner they expect the interviewer to desire.<sup>243</sup> The second possibility is that government respondents fall victim to what Messick and Bazerman identify as the "Self-Serving Fairness Bias."<sup>244</sup> When reporting or evaluating their own actions, people tend to give themselves credit for their efforts as well as for their actions and sometimes justify or rationalize their actions on bases that others might not accept.<sup>245</sup>

A third possibility is that perhaps the government officials are correct and that the resolution of business issues does not require bribery as often as persons outside of government believe. Indeed, a number of government officials with whom the Author spoke pointed out that not every interaction between government and business involved bribe requests. These people, therefore, could

<sup>242</sup> Totals for this section are slightly different than country-wide totals because 260 out of 701 respondents are not included.

<sup>243</sup> See *supra* note 183 and accompanying text (discussing bias in answers regarding attitudes).

<sup>244</sup> David M. Messick & Max H. Bazerman, *Ethical Leadership and the Psychology of Decision Making*, SLOAN MGMT. REV., Winter 1996, at 9, 18.

<sup>245</sup> *Id.* at 18-19. Messick and Bazerman use the example of an executive who turns down an offer of a large bonus in exchange for "misrepresent[ing] the financial well-being of her firm," and who thereafter feels that the firm owes her for her moral heroism whereas others simply would credit her with following the rules. *Id.*

simply be reporting what they see in their own sphere of the government.

Given the responses of government employees to other questions, none of these explanations is satisfactory. Rather than perceiving corruption to be a manageable problem, government employees are more likely than others to find bribery harmful and are more likely than private sector employees to support efforts to reform corruption. Ultimately, the responses to this question point to the need for even more empirical research into the attitudes toward corruption in Kazakhstan.

With respect to the public salience of bribery, when there are differences among responses those who identify themselves as government employees are more likely to find that bribery causes harm to society. When asked whether an official who takes a bribe but does good for the community harms society, 86% of government workers responded that the behavior causes harm, compared to 73%<sup>246</sup> of private sector employees.<sup>247</sup> When asked whether bribing traffic police causes harm to society, again more respondents who identify themselves as working for the government found that it did (71% compared with 59% of private sector employees).<sup>248</sup>

With respect to support for combating corruption, government employees assign a much higher priority to these efforts in general. While large majorities of both groups state that the government should undertake such efforts, 61% of the respondents who identify themselves as government employees state that this fight should be given top priority, as opposed to 48% of private sector employees.

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<sup>246</sup> Still, it should be noted, a large majority.

<sup>247</sup> See *infra* app. II, tbl. A12.

<sup>248</sup> See *infra* app. II, tbl. A13.

*How important should the government consider the fight against corruption?*

	Occupation		Total
	Gov't	Private Sector	
Top priority	61%	48%	56%
Significant	36	44	39
Secondary	3	8	5
Total (n)	100% (276)	100% (165)	100% (441)

When asked the more specific question of whether persons running for office should be required to disclose their income, government employees again support such a requirement by a larger majority (78%) than do private sector employees (67%).

*Should all persons running for elected office be required by law to declare their personal income and savings?*

	Occupation		Total
	Gov't	Private Sector	
Completely Agree	33%	26%	30%
Agree	45	41	44
Don't Agree	20	24	22
Absolutely Don't Agree	2	9	4
Total (n)	100% (276)	100% (165)	100% (441)

These results seem counterintuitive. Government employees are the very persons engaged in public sector corruption, and yet they are more likely to find the behavior harmful and are more likely to support reform efforts.

One possible explanation for this disparity is that respondents who are government officials are simply trying to provide answers that they think the surveyor wants to hear or that they think fits into the general conception rather than answering in accordance with their own attitudes and practices. Discussions with government officials, however, tend to suggest another explanation.

Government officials with whom the Author spoke tended to fall into one of three groups: high-ranking government officials with a great degree of discretionary power,<sup>249</sup> low-level functionaries with some control over a public good,<sup>250</sup> and bureaucrats with limited public contact.<sup>251</sup> The first group, of course, is relatively small. It is also the group that spoke most favorably to the Author about bribery.<sup>252</sup> Members of this group openly spoke of accepting bribes. Some members of this group spoke of bribes as part of the way that business is conducted in Kazakhstan. Other members of this group spoke somewhat contemptuously of the proclivity for Western businesses to offer bribes and expressed satisfaction that they were in a position to benefit from this Western behavior.

Members of the second group rarely spoke to the Author about corruption, except when they were hassling him or soliciting bribes.<sup>253</sup> This group, also, cannot constitute the majority of government officials.

A majority probably falls into the third group, many of whom discussed corruption and bribery with the Author. Many of these bureaucrats are deeply committed to building viable institutions in Kazakhstan, most are well educated, and most would like to perform the job they have taken. These people may have positions of rank but no power over a business's daily life, such as an economist in a ministerial office, or they may have positions without rank and also without power over a business's daily life, such as a mailroom messenger or a chai lady. Even though these people do not have the type of authority that can be abused in exchange for a bribe, they are in close proximity to those that do. They witness decisions being taken or being changed for no convincing reasons; they witness some people being moved to the head of the line; they witness some people waiting months or years for approvals while others get them in hours; and they witness their own reform sug-

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<sup>249</sup> For example, a minister.

<sup>250</sup> For example, a police officer or the clerk who issues permits to travel to restricted areas.

<sup>251</sup> For example, secretaries, assistants, and managers.

<sup>252</sup> The Author emphasizes that he did not speak to large numbers of high-ranking government officials.

<sup>253</sup> The Author did spend an evening with a high-ranking police officer in a southern *oblys*, during which the police officer ostentatiously exhibited his wealth and hinted at his relationships with organized crime. One interview, however, hardly constitutes an indictment of police in Kazakhstan.

gestions to those above and their orders to those below being ignored or subverted. Conversations with these government employees and the responses of persons who identify themselves as government employees indicate their concern and frustration with the effects of what they have witnessed and their desire to change the system in which they work.

## 6. IMPLICATIONS OF THE FINDINGS

These findings do not represent the indigenous attitudes of the entire world; they represent only attitudes in the Republic of Kazakhstan. Nonetheless, these findings amply demonstrate the value of empirical knowledge, both to those who construct legal regimes and those who construct legal theories.

First, however, and most obviously, these findings strongly suggest that, contrary to the predictions of some Western scholars, corruption is not accepted in Kazakhstan.<sup>254</sup> Respondents in Kazakhstan find corruption—in general and with reference to specific acts—extremely harmful to their society and their country. Moreover, respondents overwhelmingly support proposed anticorruption actions, again both in general and with reference to specific actions.

The fact that no subgroup within Kazakhstan differentiates itself significantly from other groups or from the general findings highlights the robustness of Kazakhstani rejection of corruption. Groups described as problematically separate in Kazakhstan are essentially indistinguishable with respect to attitudes about corruption. Indeed, the profound degree to which all segments of Kazakhstani society reject corruption lends support to ethicists such as Donaldson and Dunfee who suggest condemnation of bribery as a global norm<sup>255</sup> or anticorruption advocates such as Fritz Heilmann, who suggest condemnation of bribery as a global value.<sup>256</sup>

The findings of the survey also have specific value with respect to those who are involved in the creation or effectuation of legal regimes, particularly in Kazakhstan, and those who consider from a theoretical perspective the change in the global corruption regimes.

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<sup>254</sup> See *supra* notes 7, 33, 140, 161-164 (setting out arguments that corruption might be accepted in Kazakhstan or countries similar to Kazakhstan).

<sup>255</sup> See DONALDSON & DUNFEE, *supra* note 52, at 228.

<sup>256</sup> HEIMANN, *supra* note 38, at 2.

### 6.1. Corruption as a Structural Component That Must be Taken Into Account

Almost all of the literature on legal change suggests that persons effectuating changes to legal regimes must take the local culture and attitudes into account.<sup>257</sup> A specific discussion of how the findings reported in this Article should be taken into account by those effectuating change in Kazakhstan would require specific plans for change. If and when Kazakhstan undertakes a comprehensive scheme to manage corrupt political behavior, the country would be well served by reference to the attitudes discussed in this Article. In the meantime, however, three general observations can be made.

First, Kazakhstani respondents perceive corruption to be thoroughly intertwined with the current political system. This perception applies to both the bureaucracy and the judicial system. Those attempting to effectuate legal change in Kazakhstan must understand and must work with this perception. A project to promote the "rule of law" in Kazakhstan, for example, would likely fail unless it took into account the fact that most Kazakhstani believe that most judges regularly accept bribes.<sup>258</sup> Similarly, efforts to change the enforcement of contract law are likely to founder unless those promoting such efforts take into account the fact that the majority of Kazakhstani believe that bribery is necessary to resolve business disputes.<sup>259</sup>

While those effectuating change in Kazakhstan must take into account the perception that corruption is embedded in the system, the perceptions of the behaviors of different actors could be used

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<sup>257</sup> See *supra* note 72 for a discussion of this literature.

<sup>258</sup> The Rule of Law Unit of the Organization for Security and Co-operation in Europe, for example, has undertaken projects to create a National Human Rights Institution and to train prison guards in Kazakhstan. See Organization for Security and Co-operation in Europe, *Annual Report 2000 on OSCE Activities*, at [http://www.osce.org/docs/english/misc/anrep00e\\_activ.htm](http://www.osce.org/docs/english/misc/anrep00e_activ.htm) (last visited Nov. 5, 2001).

<sup>259</sup> See Nichols, *supra* note 57, at 293-95 (discussing the reform of contract law in emerging economies). Given the deep mistrust of courts in Kazakhstan, one possibility might be to create a private and transparent system of dispute resolution. Another possibility would be to create a simple system of commercial relationships that is enforceable by the parties themselves without recourse to courts. See Black & Kraakman, *supra* note 58, at 1911 (suggesting a "self-enforcing" body of law for corporate governance in Russia). Alternatively, measures could be taken to increase trust in courts prior to the undertaking of measures to change the methods of enforcing contracts.

creatively. For example, the fact that most respondents believe that politicians are more corrupt than businesspersons suggests that businesspersons rather than politicians could be used as the agents of change or could be used to promote change.<sup>260</sup> Patrick Primeaux laments the fact that business is perhaps the most influential shaper of values in the West,<sup>261</sup> but in the case of Kazakhstan business it might be considered a positive influence on ethical behavior.<sup>262</sup>

Second, the responses indicate strong negative feelings toward corruption. These negative feelings exist not just with respect to corruption in general but also with respect to specific behaviors. A failure to deal proactively with possible corruption could render reform efforts illegitimate in the eyes of Kazakhstani citizens.<sup>263</sup> For example, technical legal advisors who work closely with corrupt local officials on the theory that because that official was doing good for the community they too would be accepted would probably be in fact rejected and discounted by the local residents.<sup>264</sup> Privatization agencies, for example, that overlook self-dealing by local officials on the grounds that it is part of the process of transferring assets to the private domain now must consider the cost to the system in terms of mistrust and ill will.

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<sup>260</sup> Creative use of social artifacts has already been used in the privatization process. For example, one of the most popular television soap operas in Kazakhstan was created to promote privatization in the nascent market economy. See Nichols, *supra* note 41, at 1274 n.161 (describing the soap opera).

<sup>261</sup> Primeaux, *supra* note 48, at 221 (discussing the role of business in defining values and noting that he finds "the sense of mystery, wonder and awe missing").

<sup>262</sup> A businessman in Poland who is tired of corrupt demands and who believes that most businesspeople would prefer to conduct themselves in a noncorrupt manner has instituted a program called "Manus Puris," whereby companies adopt internal codes forbidding the taking or offering of bribes and then publicize their participation in this program so that they can work with other "clean handed" companies. See John Reed, *Curbing Corruption: A Virtue Out of Corporate Vice*, FIN. TIMES, Jan. 17, 2001, at 13.

<sup>263</sup> The failure of reform efforts in Eastern Europe to deal with corruption is considered one of the primary reasons that large numbers of Eastern Europeans have not embraced market reforms. See Cheryl W. Gray & William W. Jarosz, *Law and the Regulation of Foreign Direct Investment: The Experience from Central and Eastern Europe*, 33 COLUM. J. TRANSNAT'L L. 1, 28 (1995).

<sup>264</sup> The Author has observed aid agencies working with less than transparent government officials in a number of regions, including Central Asia and has at times heard the explanation that the local residents consider the corrupt official to be acceptable because that official does good things for the local residents.

Third, the findings reported in this Article do suggest specific action with respect to the creation of local legal regimes to deal with corruption. For example, a large majority of respondents favor the creation of a special agency to combat corruption. Central Asian countries, including Kazakhstan, respect and in some ways seek to imitate the economic tigers of Asia.<sup>265</sup> Hong Kong, which is one of those tigers, has had a great deal of success with an independent anticorruption agency.<sup>266</sup> These findings indicate that such an agency would have popular support from Kazakhstani citizens and that its creation would lend legitimacy to the government.<sup>267</sup>

Similarly, rural respondents indicate more trust in judges than do urban respondents. One possible explanation for this difference is that because judges in the rural areas are more closely integrated into the community (as is everyone else), judges have less opportunity to either solicit or accept bribes.<sup>268</sup> This could be of use to those who structure anticorruption measures; the strength of local knowledge and networks has been used successfully in other contexts.<sup>269</sup>

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<sup>265</sup> See OLCOTT, *supra* note 134, at 15; POMFRET, *supra* note 122, at 76. The Author has heard countless references to Southeast Asia in his discussions with Central Asian government officials.

<sup>266</sup> That agency, the Independent Commission Against Corruption, is credited with greatly reducing incidents of corruption in Hong Kong, with publicizing corruption reforms, and with changing public expectations of government officials' conduct. See 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, 43-44 (1999) (describing the work and successes of the Commission); Rose-Ackerman, *supra* note 201, at 106-07 (describing the work of the Commission and noting that it is considered one of the most successful anticorruption agencies in the world). See generally Max J. Skidmore, *Promise and Peril in Combatting Corruption: Hong Kong's ICAC*, 547 ANNALS AM. ACAD. POL. & SOC. SCI. 118, 122 (1996) (describing the Commission). The Commission has several programs to assist other countries in the development of anticorruption agencies. See George, *supra*, at 43-44 (describing these programs).

<sup>267</sup> Agencies in Korea have also enjoyed popular success. See *supra* note 94 (discussing action in Korea); see also Rajagopal, *supra* note 54, at 507 (discussing the need for local action to combat corruption).

<sup>268</sup> See *supra* note 226 and accompanying text (describing the finding and possible explanations for the difference).

<sup>269</sup> One of the more successful microenterprise lending institutions uses local relationships to make provision of credit to the poor viable. Grameen Bank, in Bangladesh, operates on a village level. Potential borrowers form groups, which monitor one another and perform other administrative functions. Loans are made only to one or two group members at a time; loans to other group members are

## 6.2. Theories of Regime Change

The findings described in this Article also have bearing on each of the three theories used to explain the change in the global corruption regime. The first and least satisfying theory suggests that the global regime change results from the actions of a hegemonistic United States.<sup>270</sup> Kazakhstan has not signed any treaty or other international instrument dealing with corruption. If it were to do so, however, the abhorrence of corruption found by this survey among Kazakhstani would support an argument that no hegemonistic persuasion was necessary and that the desire to embrace the international regime arose from within. In other words, the findings do not support theories based in realism.<sup>271</sup>

A concern raised by this theory for the international regime change—indeed a concern raised by each of the three theories—is that of moral imperialism. The findings discussed in this Article mitigate such concern with respect to Kazakhstan. Kazakhstani categorically reject corruption and find it harmful. In conversa-

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not given until the first loans are paid back or until a record of timely payments is established. Members who have already received loans cannot obtain new loans until all group members have paid back the first loans. See JAYANTA KUMAR RAY, *TO CHASE A MIRACLE: A STUDY OF THE GRAMEEN BANK OF BANGLADESH 19-23 (1987)* (describing the operation of Grameen Bank); Mahabub Hossain, *The Grameen Bank: Its Origins, Organization and Management Style*, in *THE GRAMEEN BANK: POVERTY RELIEF IN BANGLADESH* 9, 12 (Abu N.M. Wahid ed., 1993) (same); Philip M. Nichols, *Swapping Debt for Development: A Theoretical Application of Swaps to the Creation of Microenterprise Lending Institutions in Sub-Saharan Africa*, 27 *N.Y.U. J. INT'L L. & POL.* 43, 66-77 (1994) (same). Grameen Bank has a repayment rate of 98%, as compared to a commercial default rate of 70 to 90% in Bangladesh. Nichols, *supra*, at 67. Observers credit Grameen Bank's success to its use of local knowledge and relationships. See Garry Christensen, *The Limits to Informal Financial Intermediation*, 21 *WORLD DEV.* 721, 722 (1993) (noting that the use of people with local relationships overcomes limits as to knowledge); Joseph E. Stiglitz, *Peer Monitoring and Credit Markets*, 4 *WORLD BANK ECON. REV.* 351, 352 (1990) (discussing exploitation of local knowledge by Grameen Bank); Jacob Yaron, *What Makes Rural Finance Institutions Successful?*, 9 *WORLD BANK RES. OBSERVER* 49, 55 (1994) (attributing Grameen Bank's success to the use of local relationships).

<sup>270</sup> See *supra* note 98 and accompanying text (describing the theory based on realism). The argument that the United States is a global hegemon capable of forcing its will on countries such as Kazakhstan is weak on its face; the demands of Russia and China have a far greater impact on Kazakhstan than do those of the United States. Nonetheless, that is the realist argument.

<sup>271</sup> It should be noted, of course, that the findings do not contradict the realist theory. The fact that the local population would support anticorruption laws does not necessarily mean that the actual enactment of such laws does not occur at the insistence of a hegemon.

tions, respondents frequently mentioned that corruption degrades Kazakhstani society. If anything, Kazakhstani would probably perceive the willingness of Western countries to overlook bribery by their large companies of Kazakhstani government officials as a form of imperialism.<sup>272</sup>

The second theoretical explanation for the global regime change suggests that as the discussion of corruption changed from a moral discussion to an economic discussion an international anti-corruption regime became more palatable.<sup>273</sup> The findings provide limited support for this theory: the respondents clearly understand that corruption causes economic harm to Kazakhstan. But, if corruption were actually transformed from a moral issue to an economic issue in the minds of the Kazakhstani, then one would expect to find differences between the answer sets of the wealthy and the poor, the well educated and the less educated, and possibly between rural and urban respondents. Those fractures do not exist with respect to corruption. Again, the findings ultimately do not support this theory.<sup>274</sup>

To the extent that the theory of transformation retains vitality, it raises a concern of economic imperialism—that the change in the global regime actually constitutes the imposition of Western notions of accountability and transparency in economic decision-making by government bodies. The findings mitigate concerns of economic imperialism. Kazakhstani respondents demonstrate significant support for transparency and accountability. When asked directly whether they support particular reform measures, the overwhelming majority indicate support. Respondents by a large margin support disclosure of the income and assets of bureaucrats;

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<sup>272</sup> The survey discussed in this Article did not directly measure attitudes toward the global regime change. In conversations throughout Kazakhstan, many people were unaware of that change. The Author of this Article has had many interesting conversations with people in Africa and in Southeast Asia in which the person from that region laid the blame for endemic corruption squarely on Western companies that offered large bribes to local officials. Very few Kazakhstani with whom the Author spoke made similar accusations (except with respect to oil companies); most placed the blame on venal officials. Interestingly, the group most likely to mention Western companies' proclivity for offering bribes were government officials.

<sup>273</sup> See *supra* notes 104-105 and accompanying text (discussing this theory).

<sup>274</sup> And again, the findings do not explicitly invalidate the theory. The transformation of corruption into a purely economic issue *could* occur without differences among the responses of different socio-economic groups.

this includes the responses of those bureaucrats themselves. Claims of imperialism, therefore, are dubious.

The third theory suggests that the global regime change is a reaction to corruption scandals and an awareness of the damage done by corruption.<sup>275</sup> Kazakhstan is not a party to any global anticorruption regime. Nonetheless, the findings provide general support for this theory. Respondents clearly perceive a great deal of corruption in Kazakhstan, they clearly find that corruption harmful, and they clearly support reform of the existing system. Because Kazakhstan does not have a viable democracy or other means for general participation,<sup>276</sup> Kazakhstani citizens cannot channel their feelings about corruption into meaningful change. If such means were available, the findings suggest that Kazakhstani citizens would cause Kazakhstan to participate in the global anti-corruption efforts. As it stands, the findings suggest that Kazakhstani respondents would consider the global anticorruption efforts to be legitimate.

## 7. CONCLUSION

As the global community takes up corruption as an issue for reform, it is critical that the attitudes and perceptions of local communities be taken into consideration. An empirical understanding is necessary to effectuate the changes to law and policy demanded by the change in the international regime. Moreover, as a theoretical matter, an understanding of other attitudes and perceptions is necessary to deal with issues of imperialism, economic efficiency and allocation, and institutional choice. Most interesting is the need for an empirical evaluation of the anecdotal but very persistent notion that corruption is embraced and accepted by some cultures—that it is a normal way of doing business in some cultures.

The survey discussed in this Article examines the attitudes of a culture that is quite distinct from that of the West and in which corruption occurs on a regular basis. Examining responses along four lines—absolute regime evaluation, relative regime evaluation, public salience, and support for reforms aimed at corruption—reveals that Kazakhstani respondents do not accept or embrace cor-

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<sup>275</sup> See *supra* notes 111-113 (discussing this theory).

<sup>276</sup> See Henderson, *supra* note 164, at 497-98 (discussing the weak democratic institutions of Kazakhstan).

ruption and in fact find it an extremely harmful behavior which their government should combat. These findings are particularly interesting because they include behaviors that some Western scholars would predict to be acceptable in a culture such as Kazakhstan and because they include reform measures that are advocated in the global arena. Most interesting is the fact that respondents cannot meaningfully be distinguished by gender, education, income level, ethnicity, religion, or place of settlement. The rejection of corruption cuts across each of these groups, suggesting that it forms a very basic part of the Kazakhstani culture.

This survey does not prove that corruption is not accepted or embraced by any culture in the world, it only indicates that corruption is not accepted or embraced in Kazakhstan. The close fit, however, between global attitudes toward corruption and those held in the relatively isolated country of Kazakhstan may provide insights into the global regime change. These findings suggest that the global regime change is not simply the theoretical musings of the policymaking elite but instead reflects the attitudes of those who live each day with corruption.

## APPENDIX I

## TRANSLATION OF SURVEY

*Unit 1. General type problems*

1. Which social problem do you believe is the most important?
  1. Ethnic diversity of population
  2. Corruption
  3. Control over economy by foreign organizations and investors
  4. Frequent government reshuffles
  5. Economic decline
  6. Organized Crime
  
2. Which social problem do you believe is of the second importance?
  1. Ethnic diversity of population
  2. Corruption
  3. Control over economy by foreign organizations and investors
  4. Frequent government reshuffles
  5. Economic decline
  6. Organized Crime
  
3. What is your current position on the social and economic ladder? (10 = the best, 1 = the worst)
  - 10
  - 9
  - 8
  - 7
  - 6
  - 5
  - 4
  - 3
  - 2
  - 1
  
4. What was your position on the social and economic ladder 5 years ago? (10 = the best, 1 = the worst)
  - 10

9  
8  
7  
6  
5  
4  
3  
2  
1

5. In the best case scenario, what will be your position on the social and economic ladder in 5 years? (10 = the best, 1 = the worst)

10  
9  
8  
7  
6  
5  
4  
3  
2  
1

6. In regards to personal happiness and overall satisfaction, would you consider the situation improved, worsened, or unchanged compared to last year?

1. Became better
2. Approximately the same
3. Became worse

7. Where does Kazakhstan stand on the socioeconomic ladder at the present time? (1 = the worst situation, 10 = the best situation)

10  
9  
8  
7  
6  
5  
4

3  
2  
1

8. Where was Kazakhstan on the socioeconomic ladder 5 years ago? (1 = the worst situation, 10 = the best situation)

10  
9  
8  
7  
6  
5  
4  
3  
2  
1

9. Where will Kazakhstan be standing on the socioeconomic ladder in 5 years? (1 = the worst situation, 10 = the best situation)

10  
9  
8  
7  
6  
5  
4  
3  
2  
1

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*Unit 2. Questions regarding government corruption in the business sphere*

1. How do you interpret the word "corruption"?
  1. Participation of government officials in commercial ventures
  2. Acceptance of monetary rewards for services rendered
  3. Acceptance of birthday and other gifts
  4. Assisting relatives in their business activities

5. Assisting relatives in meeting influential people
  6. Helping relatives in getting a job/getting into schools
  7. Criminal use of authority
  8. Embezzlement
  9. Infiltration of government by organized crime
  10. Other
  11. Don't Know
2. How does bribery harm Kazakhstan?
    1. A lot of harm
    2. Enough harm
    3. Some harm
    4. No harm
  3. Do you agree with the statement that bribery is the practical necessity for quick resolution of business issues?
    1. Absolutely agree
    2. Agree
    3. Don't agree
    4. Absolutely not
    5. No pressure
    6. Don't work
  4. How do you respond to the statement that bribery is a practical necessity for getting things done quickly in politics?
    1. Absolutely agree
    2. Agree
    3. Don't agree
    4. Absolutely not
    5. Not sure
  5. How do you respond to the statement that judges rarely accept bribes?
    1. Absolutely agree
    2. Agree
    3. Don't agree
    4. Absolutely not
    5. Not sure
  6. Which profession or group of people do you think is the most corrupt in this country?

1. Entrepreneurs
  2. Banking/Financial Institution Employees
  3. Politicians
  4. Police
  5. Judiciary
  6. Government Officials
  7. Customs/Revenue Service Employees
  8. Institutions of Higher Education
  9. Mass Media
  10. Foreign Entrepreneurs
  11. Other
7. How much priority do you think the government should place on fighting corruption?
1. High priority
  2. Some priority
  3. No priority
8. How much pressure do you feel personally within your places of work to engage in what you perceive to be less corruption?
1. A lot of pressure
  2. A fair amount of pressure
  3. A little pressure
  4. No pressure at all
9. How much pressure do you feel to tolerate the corruption of others within your place of work?
1. A lot of pressure
  2. A fair amount of pressure
  3. A little pressure
  4. No pressure at all

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*Unit 3. In your opinion, which of the following may or may not harm the society in general?*

1. State employee who accepts bribe from local entrepreneur?
  1. A lot of harm to society
  2. Some harm
  3. No harm

2. State employee who gives a job to his relative even though he [relative] is not qualified for it?
  1. A lot of harm to society
  2. Some harm
  3. No harm
  
3. Foreign entrepreneur who bribes government employee to get an approval of his projects?
  1. A lot of harm to society
  2. Some harm
  3. No harm
  
4. Bribing a traffic cop?
  1. A lot of harm to society
  2. Some harm
  3. No harm
  
5. Local "boss"/government official who accepts a bribe, but does a lot of good for the community?
  1. A lot of harm to society
  2. Some harm
  3. No harm
  
6. Entrepreneur who gives bribes to ensure preferential treatment during contract bidding?
  1. A lot of harm to society
  2. Some harm
  3. No harm

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*Unit 4. Give your opinion about the following statements*

1. Dishonesty is more widespread in politics than in the business sphere.
  1. Completely agree
  2. Agree
  3. Don't agree
  4. Absolutely don't agree
  
2. Corruption in this country has significantly declined.

1. Completely agree
  2. Agree
  3. Don't agree
  4. Absolutely don't agree
3. Corruption in politics is widespread more in the cities than in the countryside.
1. Completely agree
  2. Agree
  3. Don't agree
  4. Absolutely don't agree
4. Nothing can be done to eradicate corruption in this country.
1. Completely agree
  2. Agree
  3. Don't agree
  4. Absolutely don't agree
5. The majority of government officials accept bribes.
1. Completely agree
  2. Agree
  3. Don't agree
  4. Absolutely don't agree
6. In this country, there are 2 interpretations of the law—one for the rich people, other for poor.
1. Completely agree
  2. Agree
  3. Don't agree
  4. Absolutely don't agree

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*Unit 5. Questions about the changes in legislation*

1. Should Kazakhstan copy legislation from economically developed countries rather than create its own legislation based on its own historical experience?
  1. Completely agree
  2. Agree
  3. Don't agree

4. Absolutely don't agree
2. Should all persons running for elected office be required by law to declare their personal income and savings?
  1. Completely agree
  2. Agree
  3. Don't agree
  4. Absolutely don't agree
3. Should there be a special law enforcement agency dedicated to fighting corruption?
  1. Completely agree
  2. Agree
  3. Don't agree
  4. Absolutely don't agree

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*Unit 6. Questions about the system of state management*

1. How much do you trust the legal judiciary system in this country?
  1. Fully trust
  2. Trust with caution
  3. Don't really trust
  4. Totally distrust
2. How much do you trust those politicians who occupy elective offices or run for the elections?
  1. Fully trust
  2. Trust with caution
  3. Don't really trust
  4. Totally distrust
3. How much do you trust the opinion that radio and TV report the news fully, precisely, and objectively?
  1. Fully trust
  2. Trust with caution
  3. Don't really trust
  4. Totally distrust

4. How much do you trust the opinion that printed press report the news fully, precisely, and objectively?
  1. Fully trust
  2. Trust with caution
  3. Don't really trust
  4. Totally distrust

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*Unit 7. Give short answers to the following*

1. In your opinion, what is going to happen with the corruption in Kazakhstan in the near future?
  1. Will increase
  2. Will stay the same
  3. Will decrease
  4. Will disappear
  5. Disagree that it exists
2. Why do you think so?
3. What should the state employee do if he becomes aware that a high-ranking official accepts a bribe from the entrepreneur?
  1. Disregard this fact
  2. Report to his immediate supervisor
  3. Report to the law enforcement institution
  4. Other
4. Why do you think so?
5. Can a single person do something to fight against corruption?
  1. Of course, yes
  2. Yes, but too much trouble
  3. Rather not
  4. No, it's hopeless
6. Why do you think so?
7. Do you feel it is necessary to help your relatives?
  1. Yes
  2. Yes, but only immediate relatives

3. No (skip to question 9)
8. What kind of help for your relatives do you consider possible?
  - I.
    - a. To close relatives, getting into schools (post-secondary):
      1. Yes
      2. No
    - b. To close relatives, help in paying for the education:
      1. Yes
      2. No
    - c. To close relatives, help to find a job:
      1. Yes
      2. No
    - d. To close relatives, help in the realization of commercial projects:
      1. Yes
      2. No
    - e. To close relatives, help in meeting influential people:
      1. Yes
      2. No
    - f. To close relatives, help with business advices:
      1. Yes
      2. No
    - g. To close relatives, monetary support
      1. Yes
      2. No
  - II.
    - a. To relatives, getting into schools (post-secondary):
      1. Yes
      2. No
    - b. To relatives, help in paying for the education:
      1. Yes
      2. No
    - c. To relatives, help to find a job:
      1. Yes
      2. No
    - d. To relatives, help in the realization of commercial projects:
      1. Yes
      2. No
    - e. To relatives, help in meeting influential people:
      1. Yes
      2. No

- f. To relatives, help with business advices:
    - 1. Yes
    - 2. No
  - g. To relatives, monetary support
    - 1. Yes
    - 2. No
9. According to which principle do you think that people get selected for the positions of authority?
- 1. Preferential treatment of relatives
  - 2. Preferential treatment of fellow countrymen
  - 3. Personal devotion
  - 4. Level of education
  - 5. Level of professionalism
  - 6. Other

\*\*\*\*\*

#### *Unit 8. General Information*

- 1. Gender
  - 1. Male
  - 2. Female
- 2. Age
- 3. Education
  - 1. Incomplete secondary
  - 2. Complete secondary
  - 3. Incomplete higher education
  - 4. Diploma of higher education
- 4. Ethnicity
  - 1. Kazakh
  - 2. Russian
  - 3. Uzbek
  - 4. Kirgyz
  - 5. Uigur
- 5. Present marital status
  - 1. Not married

2. Married
  3. Married but live separately
  4. Common marriage
  5. Divorced
  6. Widowed
6. Religion
1. Muslim
  2. Christian
  3. Jewish
  4. Other
  5. Atheist (skip to question 8)
7. The importance of religion for you:
1. Very important
  2. Moderately important
  3. Little importance
  4. Not important
8. Occupation
1. State employee
  2. Student
  3. Manager of enterprise
  4. Businessman
  5. Entrepreneur
  6. Non-working retired person (including handicapped)
  7. Unemployed
  8. House keeper
  9. Worker
9. Your main occupation—according to the place (governmental state of private sector)
1. Government
  2. Private business
10. How long have you worked at your present job?
11. How many people are under your supervision?
1. 0
  2. 1-3
  3. 4-7

4. 8-15
  5. More than 15
12. Do you have any relatives or friends who are high-ranking government officials?
1. Yes, I have one or several friends
  2. Yes, I have one or several relatives
  3. No, I have no friends or relatives there
13. Do you consider yourself wealthy, medium income, or a poor person?
1. Wealthy
  2. Medium income
  3. Poor
14. What is the approximate income of your family last month?
1. No income
  2. Under 2000 tenge
  3. 2000-3999 tenge
  4. 4000-7999 tenge
  5. 8000-15,999 tenge
  6. 16,000-31,999 tenge
  7. More than 32,000 tenge
  8. Refuse to answer
15. Type of settlement
1. City
  2. Village
16. Region (oblast)
1. Almaty
  2. Karaganda
  3. South Kazakhstan
  4. North Kazakhstan
  5. West Kazakhstan
  6. Akmola
  7. East Kazakhstan

## APPENDIX II

## TABLES

Table A1

In your opinion, which of the following may or may not harm the society in general?

Entrepreneur who gives bribes to ensure preferential treatment during contract bidding?

	Ethnicity							Total
	Kazakh	Russian	Uzbek	Kirgyz	German	Ukrainian	Other	
A lot of harm to society	30%	40%	43%	50%	52%	32%	45%	35%
Some harm	55	53	43	50	38	38	39	51
No harm	15	7	14	0	10	30	16	14
Total	100%	100%	100%	100%	100%	100%	100%	100%
(n)	(369)	(196)	(14)	(2)	(29)	(37)	(51)	(698)

Pearson  $\chi^2(12) = 28.7171$   $Pr = 0.004$

Table A2

How important should the government consider the fight against corruption?

	Ethnicity							Total
	Kazakh	Russian	Uzbek	Kirgyz	German	Ukrainian	Other	
Top priority	51%	68%	43%	50%	45%	45%	61%	56%
Significant	44	31	50	50	55	50	35	40
Secondary	5	1	7	0	0	5	4	4
Total	100%	100%	100%	100%	100%	100%	100%	100%
(n)	(370)	(196)	(14)	(2)	(29)	(38)	(51)	(700)

Pearson  $\chi^2(12) = 25.9898$   $Pr = 0.011$

Table A3

Should there be a special law enforcement agency dedicated to fighting corruption?

	Ethnicity							Total
	Kazakh	Russian	Uzbek	Kirgyz	German	Ukrainian	Other	
Completely Agree	36%	46%	14%	0%	45%	26%	43%	39%
Agree	39	41	36	50	24	50	31	39
Don't Agree	17	10	29	0	31	16	20	6
Absolutely Don't Agree	8	3	21	50	0	8	6	6
Total	100%	100%	100%	100%	100%	100%	100%	100%
(n)	(368)	(196)	(14)	(2)	(29)	(38)	(51)	(698)

*Pearson chi2(18) = 41.7328 Pr = 0.001*

Table A4

Give your opinion about the following: Corruption in this country has significantly declined.

	Religion					Total
	Muslim	Christian	Jewish	Other	Atheist	
Completely Agree	2%	0%	25%	5%	1%	1.5%
Agree	8	6	0	0	5	7
Don't Agree	63	59	50	60	50	59
Absolutely Don't Agree	27	35	25	35	44	32.5
Total (n)	100% (358)	100% (180)	100% (4)	100% (20)	100% (135)	100% (697)

Pearson  $\chi^2(12) = 37.9045$   $Pr = 0.000$

Table A5

In your opinion, which of the following may or may not harm the society in general?

Entrepreneur who gives bribes to ensure preferential treatment during contract bidding?

	Religion					Total
	Muslim	Christian	Jewish	Other	Atheist	
A lot of harm	30%	37%	50%	55%	43%	35%
Some harm	54	51	25	25	48	51
No harm	16	12	25	20	9	14
Total (n)	100% (358)	100% (179)	100% (4)	100% (20)	100% (135)	100% (696)

Pearson  $\chi^2(8) = 16.3600$   $Pr = 0.038$

Table A6

Do you agree with the statement that judges accept bribes seldomly?

	Type of Settlement		Total
	City	Village	
Absolutely agree	3%	5%	4%
Agree	8	14	11
Don't agree	46	35	41
Absolutely not	14	14	14
Not sure	29	32	30
Total (n)	100% (386)	100% (308)	100% (694)

Pearson  $\chi^2(4) = 13.6906$   $Pr = 0.008$

Table A7(a)

Give your opinion about the following: Dishonesty is more widespread in politics than in the business sphere.

	Type of Settlement		Total
	City	Village	
Completely agree	19%	21%	20%
Agree	44	52	47
Don't agree	35	26	31
Absolutely don't agree	2	1	2
Total (n)	100% (385)	100% (308)	100% (693)

Pearson  $\chi^2(3) = 7.9068$   $Pr = 0.048$

Table A7(b)

Should there be a special law enforcement agency dedicated to fighting corruption?

	Type of Settlement		Total
	City	Village	
Completely Agree	34%	44%	39%
Agree	43	35	39
Don't Agree	16	16	16
Absolutely Don't Agree	7	5	6
Total (n)	100% (384)	100% (308)	100% (692)

Pearson  $\chi^2(3) = 9.0659$   $Pr = 0.028$

Table A8(a)

Should all persons running for elected office be required by law to declare their personal income and savings?

	Type of Settlement		Total
	City	Village	
Completely Agree	36%	27%	32%
Agree	38	52	44
Don't Agree	20	18	19
Absolutely Don't Agree	6	3	5
Total (n)	100% (385)	100% (308)	100% (693)

Pearson  $\chi^2(3) = 16.6919$   $Pr = 0.001$

Table A8(b)

Give your opinion about the following: Corruption in this country has significantly declined.

	Education				Total
	Incomplete Secondary	Complete Secondary	Incomplete Higher Education	Complete Higher Education	
Completely Agree	0%	1%	2%	2%	1.5%
Agree	6	7	3	8	7.0
Don't Agree	73	54	58	63	59.0
Absolutely Don't Agree	21	38	37	27	32.5
Total (n)	100% (62)	100% (270)	100% (120)	100% (229)	100% (681)

Pearson  $\chi^2(9) = 19.3054$   $Pr = 0.023$

Table A9

In your opinion, which of the following may or may not harm the society in general?

State employee who accepts bribe from local entrepreneur?

	Education				Total
	Incomplete Secondary	Complete Secondary	Incomplete Higher Education	Complete Higher Education	
A lot of harm to society	53%	37%	33%	30%	36%
Some harm	45	54	57	58	55
No harm	2	9	10	12	9
Total (n)	100% (62)	100% (271)	100% (120)	100% (229)	100% (682)

Pearson  $\chi^2(6) = 14.2004$   $Pr = 0.027$

Table A10

In your opinion, which of the following may or may not harm the society in general?

Entrepreneur who gives bribes to ensure preferential treatment during contract bidding?

	Education				Total
	Incomplete Secondary	Complete Secondary	Incomplete Higher Education	Complete Higher Education	
A lot of harm to society	45%	39%	34%	28%	35%
Some harm	34	48	52	60	51
No harm	21	13	14	12	14
Total (n)	100% (62)	100% (271)	100% (120)	100% (227)	100% (680)

Pearson  $\chi^2(6) = 16.6262$   $Pr = 0.011$

Table A11

Should all persons running for elected office be required by law to declare their personal income and savings?

	Income (in tenge)								Total
	No income	Under 2000	2000-3999	4000-7999	8000-15,999	16,000-31,999	More than	Refuse to answer	
Completely Agree	67%	43%	35%	29%	30%	35%	19%	21%	32%
Agree	30	54	53	51	44	37	44	32	44
Don't Agree	3	3	11	17	22	26	26	30	19
Absol'y Don't Agree	0	0	1	3	4	2	11	17	5
Total (n)	100% (36)	100% (37)	100% (78)	100% (164)	100% (200)	100% (85)	100% (27)	100% (71)	100% (698)

Pearson  $\chi^2(21) = 82.7518$   $Pr = 0.000$

Table A12

In your opinion, which of the following may or may not harm the society in general?

Local "boss"/government official who accepts a bribe, but does a lot of good for the community?

	Occupation		Total
	Gov't	Private Sector	
A lot of harm	25%	15%	21%
Some harm	61	58	60
No harm	14	27	19
Total (n)	100% (276)	100% (165)	100% (441)

Pearson  $\chi^2(2) = 15.5184$   $Pr = 0.000$

Table A13

In your opinion, which of the following may or may not harm the society in general?

Bribing a traffic cop?

	Occupation		Total
	Gov't	Private Sector	
A lot of harm to society	14%	7%	12%
Some harm	57	52	55
No harm	29	41	33
Total (n)	100% (275)	100% (164)	100% (439)

*Pearson chi2(2) = 8.9420 Pr = 0.011*

\* \* \* \* \*