Corrupted

How Corporations Disrupted Anticorruption

Critical Corporate Theory Collection

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About the Critical Corporate Theory Collection

The Critical Corporate Theory Collection is part of the *Systemic Justice Journal*, published by the Systemic Justice Project at Harvard Law School. The Collection is comprised of papers that analyze the role of corporate law in systemic injustices. The authors are Harvard Law students who were enrolled in Professor Jon Hanson's Corporations course in the spring of 2021.

The Collection addresses the premise that corporate law is a core underlying cause of most systemic injustices and social problems we face today. Each article explores how corporate law facilitates the creation and maintenance of institutions with tremendous wealth and power and provides those institutions a shared, single interest in capturing institutions, policies, lawmakers, and norms, which in turn further enhance that power and legitimates its unjust effects in producing systems of oppression and exploitation.

For more information about the *Systemic Justice Journal* or to read other articles in the Critical Corporate Theory Collection, please visit the website at www.systemicjustice.org.

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ABSTRACT

The definition of corruption underwent a change beginning in the 1960s. This change was catalyzed by economists' hostility towards government regulation. That hostility translated into a bifurcated conception of corruption: public corruption (which ought to be prosecuted) and corporate corruption (which ought to be left alone). First, this definitional disruption was codified into law. Then, in concert with the burgeoning corporate intelligence movement, corporations popularized efforts to "measure" corruption in developing nations. However, the corruption measured by the corporate intelligence movement was the form promulgated by the definitional disruption of the mid-twentieth century. In effect, the current anticorruption regime—undergirded by rich NGOs like Transparency International and supranational organizations like the World Bank—measures only the forms of corruption which are endemic to developing nations. By not measuring corporate corruption, corporate facilitators of public corruption and the rich Western nations that harbor them go unpunished.

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INTRODUCTION

You and I go about our day more-or-less unaware of language. Such is the nature of fluency: to speak without concerted effort. Like the water that flows unconsciously from our kitchen sink, the structures of language are employed without much forethought. Only once in a blue moon are we jolted into linguistic awareness. Perhaps we catch ourselves senselessly repeating a word until it collapses as a linguistic construct. It becomes, merely, a sound. Or, rather, it *returns* to that state. We call this shock, *semantic satiation* (and, I bet, if you repeat *that* enough times, it too would return to the gobbledygook it once was).

Language—like many luxuries—goes unexamined. Everything considered, this is convenient. Imagine a world where every sandwich order was stalled by a customer pontificating the etymology of *turkey*. On occasion, however, our mindlessness can become dangerous. The hypothesis of linguistic relativity posits that our cognition (or, worldview; or, perception) is influenced by the structure of our language.[1] There is an abundance of positive empirical evidence that demonstrates the strength of this relationship.[2] In fact, the movement to adapt the English language to include non-gendered pronouns reflects much of the central tenets of this hypothesis: langauge is important because it affects the listener *and* the speaker. If our worldview is influenced by language and we think very little about our language, then it stands to reason that our worldview is quite vulnerable to the whims of those who would change it.

In the era of Trump, I found myself questioning the use of the word *corruption*. It began in much the same way a stoned college student might turn to his comrade-in-debauchery and ask, "Dude, did you know that *burrito* means little donkey in Spanish?" What began as an etymological rabbit hole of ancient roots ended in this: a heretofore

unexpressed hypothesis that implicates much of the anticorruption regime.

Corruption—as a concept and as a word—carries with it an everchanging moral valence. We might agree *generally* on what constitutes corruption, but if we throw campaign finance or K-street lunches into the mix, we might wind up arguing before the Supreme Court. The malleability of the concept renders it particularly susceptible to change. Or, even, manipulation.

This paper suggests that the definition of corruption has been manipulated. The explosion of Chicago macroeconomic theory (i.e., market forces are good, regulation is bad; herein called the "metascript") instigated a definitional disruption that synonymized corruption with *public* corruption (Part II). Most definitions of corruption thereby exclude corporate corruption, on the basis of the "macroscript"—government regulation of its own corruption is good; government regulation of private corruption is bad.

The process of definitional disruption coincided with another metascriptual process—the dawn of the multinational corporation. Pivoting abroad, corporations jumpstarted the symbiotic development of the corporate intelligence movement, created to quantify risk in theretofore untapped, foreign markets. The corporate intelligence movement employed the macroscript's corruption framework—infecting well-intented efforts to measure and reduce corruption with the macroscript's erroneous framework (Part III).

The effect on the developing world has been tragic (Part IV). Global anticorruption infrastructure measures corruption-in-name, but only *public* corruption in practice. This sleight-of-hand shines light on the forms of corruption endemic to developing nations but obfuscates the labyrinthine network of facilitatory corporate corruption that originates in developed nations. Low-income countries already prone to corruption are made poorer by investments that are unjustly tied to these silly metrics. All the while, multinational corporations profit off—what can justly be called—the status corruptus.

PART I: DEFINITIONAL DISRUPTION

Corruption was once physical. The Latin roots of the word *corruption* are *con* + *rumpere*—literally, to be "with a break". In other words, a state of being broken. Of the extant Latin texts, evidence suggests that

for multiple centuries the Roman world understood corruption to only mean physical ruptures (corruption and rupture having the same suffix in *rumpere*). In *Commentarii de Bello Gallico*, Julius Caeser recounted, "they destroyed the remainder [of the grain] by throwing it into the river or setting it on fire." Here, when Caesar wrote "they destroyed," he employed *corruperunt*—third person plural of *corrumpere*.

Until the second century AD, little evidence exists to suggest corruption meant anything other than physical destruction. However, in 121 A.D., we find reference to a different form of corruption, one with a negative moral valence. In one recorded instance, Suetonius regaled a different type of Caesarian triumph: his "debauchment [corrupisse] of many ladies of the highest quality."[3] While *corruption* could still denote physical decay, its Old French evolutions hedged closer to Suetonius's usage: to seduce[4] or pervert a woman.[5]

The watershed moment comes for us in thirteenth century France. In *Coutumes de Beauvaisis*, the jurist and royal official, Philippe de Beaumanoir, attempted to compile a record of French procedural and substantive law. In Section 1246, he wrote, "Let us praise in all ways the judges that are careful not to take gifts by which they are corrupted."[6]

The importance of this usage should not be understated. De Beaumanoir employed the Old French *corrompre* to describe an act that we, too, might identify as corrupt. While this particular example sheds light on an etymological movement towards specific criminal acts, the vast majority of Old French, Middle English, and Early Modern English texts still used "corruption" as a non-legal moral perversion or, still, physical decomposition.[7]

At any given time, corruption had multiple, simultaneous meanings. If a fifteenth century peasant on the outskirts of London whispered to himself, "that judge is corrupt," a lack of context might have an inquisitive passerby wondering if: a) the judge's flesh was physically decomposing, b) the judge had a penchant for ladies of the highest quality, or c) the judge was careless enough to accept a gift.

Carelessness became lawlessness by the end of the fifteenth century—evinced by multiple legal maneuvers in English Courts and by English Parliament. For instance, one parliamentary proceeding in 1494 mentioned the "corrupcion by the Graund Jury" in the form of pecuniary gifts.[8] Corruption piled on new meanings as time went by. First, physical; then, physical and moral; and, finally, physical, moral, and

legal. Yet, even the legal definition was remarkably fluid. Accusations would be levied at the Catholic Church for soliciting tithings, [9] usurers for accepting interest payments, [10] and capitalists for engaging in the newly formed stock markets.[11] The legal definition was quite similar to its moral and physical sister-definitions in that it, too, carried a host of simultaneous meanings.

The etymologist thrust towards a more specific definition came once state institutions began to expand in the nineteenth century. An increase in public officeholders led to an increase in the public's interactions with the government. A lack of oversight contributed to widespread petty corruption. Officeholders were historically permitted (even encouraged) to view their offices as personal property—including the many rights of sale and profit incumbent upon any personal property. By the mid-nineteenth century, this changed. An appointment to public service morphed into something higher: an "office of trust concerning the public."[12] However, we should hesitate before we conflate "an office of trust concerning the public" with *public* office. Corporate officeholders also held offices of trust concerning the public—a conclusion consistent with the process by which public corporations were incorporated. "Corruption as a breach of trust" loomed large in numerous trials of corporate officeholders. For instance, the phrase was used nine times in the charges brought against Warren Hastings, corporate governor of the East India Company, accused of corruption in 1786.[13] The focus was on "offices of trust concerning the public" writ large. The coming definitional disruption can also be framed with reference to this phrase: what does "concerning the public" mean? Which offices concern the public, versus which offices concern, say, shareholders?

Our current conception of corruption answers the question with ease: public offices concern the public; the public ought to be concerned with public offices. Let us take, for example, the simple sentence: The official acted corruptly. Regardless of the composite words' denotations, the connotative inferences that most Americans make transform the sentence into, "The public official accepted a bribe." While there might be variations (say, embezzlement in lieu of bribery), contemporary definitions betray a surprising synonymity at play.

If you examine any common dictionary, the false synonymity becomes readily apparent. Google Dictionary defines corruption as "dishonest or fraudulent conduct by those in power, typically involving bribery." Merriam-Webster defines corruption as "dishonest or illegal behavior especially by powerful people (such as government officials or police

officers)." Cambridge Dictionary defines corruption as "illegal, bad, or dishonest behavior, especially by people in positions of power," with in-sentence examples like: "The film is about a young police officer and his struggle to expose corruption in the force. Political corruption is widespread throughout the country."

Even academia presents a remarkably unidimensional approach. In one seminal work on global corruption, two scholars presented their readership with a stock version:

> The simplest way to think about corruption is to imagine a public official taking a bribe in the course of doing his job . . . What unites these examples is that they all involve exploiting public office for private gain. . . according to our definition, corruption always involves a public official who exploits his or her office to further his or her personal—rather than the public's—interests.[14]

Even more consciously than dictionary definitions, Fisman and Golden push a limited definition of corruption: "corruption always involves a public official." It is rare for a political scientist to use always, all, etc. Here, however, there is no question: corruption *always* involves a public official. They unthinkingly drink from the tap and fall prey to the luxury of linguistic stasis.

Yet, we know that the definition of corruption is anything but static. Daniel Hays Lowenstein—professor at UCLA Law School—asserts the relativity of corruption. Defining corruption "means identifying as immoral or criminal a subset of transactions and relationships within a set that, generally speaking, is fundamentally beneficial to mankind, both functionally and intrinsically."[15] Lowenstein's framework casts Fisman and Golden (and the entire anticorruption orthodoxy) as choice-makers. In defining corruption as public corruption, they are making a choice: *Public corruption is immoral and criminal, while other forms are either fundamentally beneficial or neutral.* The former forms the residual kernel that remains corruption in the twenty-first century. The latter occupies a privileged status outside moral-legal rebuke.

This paper posits that corporate corruption enjoys that privileged status. This fact, however, is fairly recent.

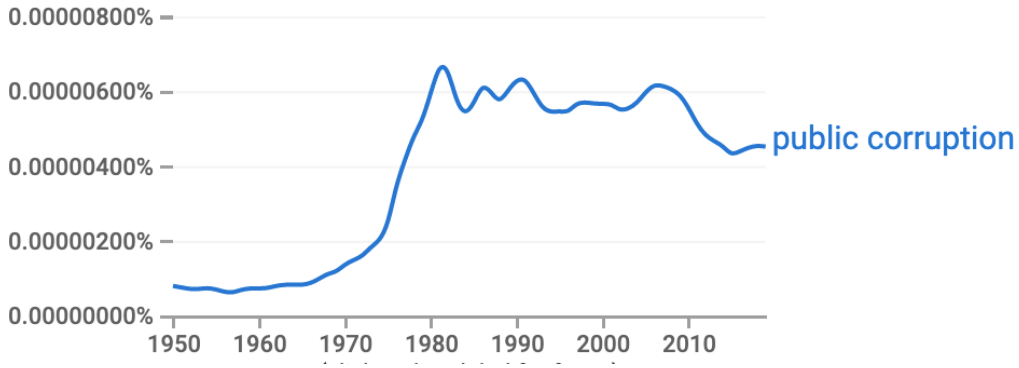
The redefinition of corruption fits seamlessly into the grand academic project of the mid-twentieth century: market economics. The metascript—borne out of minds like Friedrich Hayek and Milton Friedman—promulgates a preference for free market principles over

government regulation. When Congress passes law or agencies enact rules that regulate corruption, the metascript raises an alarm—with one caveat. Corruption regulations are certainly on the chopping block, but only insofar as they relate to corporate (i.e., private) corruption. The metascript does not inspire similar ire for the government's effort to regulate its own (i.e., public) corruption.

Two scholars in particular moved the needle.[16] Arnold Heidenheimer—professor of political science at Washington University in St. Louis—embarked on the task of categorizing corruption. He idealized three types of corruption: public office-centered corruption, market-centered corruption, and public interest-centered corruption.[17] His three types of corruption are less like different species of corruption and more like different breeds: intrinsically the same with minor phenotypical variations. All three are simply "variants of the crooked bureaucrat type."[18] His taxonomy ignores crooked businesspeople.[19]

J.S. Nye—professor at the Harvard Kennedy School and former chair of the National Intelligence Council under President Clinton—expanded upon Heidenheimer's work. He published a series of papers which set the definitional tone right up to the present: corruption is "behaviour which deviates from the formal duties of a public role . . ."[20] While both Heidenheimer and Nye were academics, Nye doubled as a public servant—bringing his corporatized definition of corruption into practice at the National Intelligence Council and, then, the Defense Department.

Surely, Heidenheimer and Nye were not the first to study public corruption.[21] Instead, alongside their late twentieth-century peers, they breathed life the paradigmatic shift wherein definitional relativity (à la Lowenstein) transformed into definitional stasis: corruption is *always* public. This explains the ten-fold increase in scholarly usage of the term between 1950 and 1990—evident in the Google ngram for "public corruption" reproduced below.[22]



Source: Google NGrams

By virtue of the metascript's influence over American law (via Law and Economics jurisprudence), this disruption weaseled its way into the courtroom. Two related trends emerged: the expansion of federal options to prosecute public corruption; and, the gradual reduction of federal options to prosecute private corruption.

Options to prosecute public corruption proliferated during the mid-twentieth century. In 1962, Congress passed 18 U.S.C. § 201 to criminalize the bribery of public officials acting on behalf of the United States. In 1972, the federal circuits began to reinterpret the Hobbs Act to include bribery, as well as extortion.[23] By 1984, Congress added yet another weapon to the anticorruption arsenal: 18 U.S.C. § 666, which federalized state and local corruption crimes.[24]

Congress and the federal judiciary joined forces in the latter half of the twentieth century to bloat prosecutorial power beyond recognition. The trend was to find gaps in federal anticorruption law and fill them. The doctrine of honest services fraud, however, bucks this trend. While the federal judiciary reveled in the expansion of prosecutorial flexibility contra public corruption, it expressed anxiety that the government might be effective in combating corruption by corporate fiduciaries, executives, board-members, etc. Thus, while the rest of anticorruption law saw unprecedented expansion during the development of the metascript, the doctrine of honest services fraud saw unrelenting restriction.

In 1987, the Supreme Court rejected decades of the federal circuits' unanimous[25] interpretation of the mail fraud statute so as to include honest services fraud as a federal crime. [26] Congress acted swiftly to codify in statute what the Court had rejected as judge-made. Within two decades, however, the Supreme Court accomplished what it had failed to do in the 1980s. Sympathizing with the defendant's void-for-vagueness challenge in *Skilling v. United States,* the Court opted for a limited construction of honest services fraud.[27] *Skilling* narrowed the doctrine to include prohibitions against bribery and kickbacks, repudiating attempts by the Government to subsume undisclosed self-dealing and conflicts of interest within honest services fraud.[28] In effect, the Court borrowed the mouthpiece of the macroscript to say: the government can regulate the forms of corruption endemic to governance (bribery), but cannot regulate the forms of corruption endemic to corporations. As proof of its intention, the Supreme Court simultaneously exonerated corporate executives accused of corruption, by applying its new interpretation of honest services fraud from *Skilling*.[29]

The novelty of honest services fraud was its equal application to both public *and* corporate officeholders. But that power posed an existential threat. In concert with the macroscript, the Court felled decades of federal judicial precedent codified by the political branches of government. This has been the legal and practical effects of definitional disruption. Scholarship—informed by market theory—disrupted our definition of corruption. Jurisprudence—informed by that scholarship—ossified this disruption into law. This first historical process might have been contained to the United States (and, perhaps her Western partners) if not for a simultaneous development in international commerce.

PART II: CORPORATE INTELLIGENCE

The success of the metascript unearthed new financial opportunities abroad. Simultaneously, it unshackled corporations from regulations which might have chilled globalization. Instead, newly empowered corporations became newly empowered *multinational* corporations. Still, expansion comes with risks, and the multinationals were quick to identify the developing world as chock-full of them.

By the 1970s, Western banks were already brimming with assets. This came to a head during the 1970s oil crisis when OPEC countries ended up "pouring so much of their newfound riches into Western banks that

the banks couldn't figure out where to invest the money."[30] Spurred by the recent success of Citibank and Chase, American and European banks began sending agents around the world to convince political leaders (often, dictators) to take out massive loans.[31] What could easily become a diatribe on the Third World debt crisis of the 1980s and 1990s will end here. Instead, our interest turns to the satellite industry that emerged with the aims of demystifying these untapped markets for banks.

Out with mystique, in with "science". No matter how immeasurable or subjective an object of measurement, the central ontological and epistemological tenets of Western science demand metrics.[32] So, when Western banks and, soon thereafter, non-banking Western corporations ventured into Southeast Asia or West Africa or Central America, they recruited organizations dedicated to measurement. This marked the birth of the "corporate intelligence" movement in the United States and Europe—a systematic post-colonial effort to measure risk and opportunity in the developing world for multinational corporations.[33]

The buzzword within the movement became "political risk," or, the financial risk of doing business with a particular political form. Corruption featured prominently in the new metrics scheme—spawning the birth of organizations like the Merchant International Group in 1982 or Transparency International in 1993. These organizations were dedicated, in part, to meeting the demands of corporations' pseudo-scientific obsession with measured risk.

Remember, however, that simultaneous to this "go-go banking"—the nickname for the form of investment popularized by Citibank and Chase in the 1970s—and the globalization of Western corporations was the definitional disruption described in the first historical process. When Coca-Cola wanted information on corruption in Syria, it wanted information on *public* corruption. Corporate corruption was merely an instrument in the corporate toolbox to lubricate transactions, to effectuate market principles; public corruption, on the other hand, was recast as an unwanted cost-of-doing-business. A cost that corporations were unwilling to pay; and a cost at which market economists levied the metascript's ultimate insult: inefficiency.[34]

Together, the two historical processes—definitional disruption and the corporate intelligence movement—exported a new, corporatized anticorruption regime to the developing world. Using Lowenstein's definitional schema, the new regime identified as immoral or criminal a particularly limited subset of transactions: namely, the acts of crooked

public officials. On the outside of that kernel of opprobrium live the many acts which are deemed fundamentally beneficial to mankind. In so separating public corruption from business or corporate corruption, we adopt the macroscript's contention that corporate facilitation of public corruption is either not blameworthy or less blameworthy. Corporate facilitators should not be blamed for seeking profit, even when their profit-seeking facilitates public corruption. Corporate facilitators are situationalized to the extent that they are adjudged to operate under (false) neutrality. However conscious corporations are that their actions engender public corruption, they are not driven by that particular end. Instead, these corporations are driven by profit—an end which forms the basis of the metascript; an end which is violently neutral when compared with the relevant public actors.

"Corporate facilitators should not be blamed for seaking profit, even their profit-seeking facilitates public corruption."

In contrast, those corrupt *public* actors are dispositionalized to the extent that they cannot be neutral. They are ascribed a dispositional framework that moralizes and illegalizes—rather than neutralizes—their corruption. Their acts are judged in courts of law and public opinion. They form the bases of international efforts to measure public corruption. Their infamy inspires scholarship and curricula at major research institutions.

All the while, the acts of their corporate facilitators are neutralized. They are rarely punished in courts of law and, therefore, go un- or under-reported in media. They escape the detection of major metric-producers like Transparency International. They are understudied in universities.

Faced with this discrepancy, unwitting scholars justify it by tapping into their unexamined linguistic luxury. The acts of corporate facilitators are not "corrupt." Do you even know what corruption is, Fisman and Golden ask? Corruption *always* involves public officials, they exclaim—pointing to their scholarship with the ontological and epistemological certainty of Western political scientists. The acts might be wrong, Heidenheimer and Nye admit. But they are not corrupt and therefore do not trigger the prosecutorial, advocative, and journalistic arms of the anticorruption regime.

These defenses stem out of a narrow, ahistorical conception of corruption as a static has-been, instead of an ever changing now-is. They ignore the two historical processes that cleaved corruption into public and

private. We unthinkingly accept a definition of corruption fixed by the metascript, instead of examining how we got here. This is our luxury.

PART III: THE NIGERIA EXAMPLE

The developing world is often hurt, rather than helped, by the current anticorruption regime. Take, for instance, Nigeria. Transparency International rates the West African nation as the thirty-first most corrupt country in the world.[35] It does so in order to "expose the systems and networks that enable corruption."[36] However lofty its mission may be, Transparency International falls short of exposing "systems and networks" and, instead, exposes predominantly public corruption in lockstep with the macroscript.

One such occurrence transpired with dramatic pomp in the autumn of 2005. The Governor of Bayelsa State—Diepreye Alamieyeseigha—was accused of embezzling sums worth tens of millions of USD. To jump bail in London, Alamieyeseigha hatched an elaborate escape plan. The governor disguised himself as a woman and returned to his native Nigeria. Upon his return, however, he was promptly impeached and pled guilty in a Nigerian court.

Here is where the global anticorruption regime steps in. To start, various organizations that measure corruption take note of the incident. The majority of these organizations either were founded in the wake of the corporate intelligence movement or, regardless of their origin, now contribute to the massive industry of corporate intelligence. These private consultancies compile unpublished reports on business climate. When measuring corruption, the consultancies adopt the macroscript's exclusive focus on public corruption.

For instance, the Economist Intelligence Unit defines corruption as "misuse of public office for personal (or party political) financial gain." Of course, they do. This is good business: corporate clients are unlikely to pay hefty fees just to read about their own corruption. These private consultancies and think-tanks then feed their assessments to Transparency International. The NGO then averages their assessments with similar surveys conducted by a select few NGOs and supranational institutions, like the World Bank or the African Development Bank. That average becomes the Corruption Perception Index (CPI)—the anticorruption regime's gold standard for measuring corruption.

Each survey asks a series of questions about corruption in a specific

country. The questions, however, do not measure corruption. Instead, they measure solely public corruption. This is a sampling of questions from the thirteen assessments compiled by Transparency International in 2020:

- To what extent are public officeholders prevented from abusing their position for private interests?[37]
- Is there an independent judiciary with the power to try ministers/public officials for abuses?[38]
- Is the country's economy free of excessive state involvement?[39]
- What is the risk that individuals/companies will face bribery or other corrupt practices to carry our business?[40]

Of the thirteen assessments measuring corruption, nary a question inquires into business or corporate corruption. The Political and Economic Risk Consultancy even limits the participants in its survey to those individuals conducting business in the country. The PRS group—another source institution for the CPI average—prefaces its survey with

> This is an assessment of corruption within the political system. The most common form of corruption met directly by businesses is financial corruption in the form of demands for special payments and bribes connected with import and export licenses, exchange controls, tax assessments, police protection, or loans.[41]

To say, "the CPI is biased," misses the point. The CPI is *designed* to do exactly what it does. It measures corruption as a cost-of-doing-business. It measures the type of corruption reviled by bottom-lines—the type rejected by the macroscript.

"To say, 'the CPI is biased,' misses the point. The CPI is designed to do exactly what it does. . . . It measures the type of corruption reviled by bottom-lines—the type rejected by the macroscript."

In the case of Governor Alamieyeseigha, each of the thirteen assessments incorporated the incident in their own way: via the angst of businesspeople in Nigeria or the scorn of economists upset with his eventual pardon. Once averaged, the updated assessments nudge Nigeria's CPI closer to zero-out-of-ten.

The CPI measures only origin-acts (the acts of corrupt officials) and

ignores the labyrinth of transactions that facilitate the origin-acts—or, facilitator-acts. Governor Alamieyeseigha's corruption is far more complicated than the CPI would have you believe, even if Transparency International claims to expose "systems and networks" of corruption. It does not. Since the simple story only identifies the origin act to inculpate Nigeria, the CPI's source-institutions peddle the simple story. They avoid identifying the facilitator-acts to exculpate their corporate clients (or, in the case of the World Bank, the Western nations that bankroll its coffers). The less-cynical version is still damning: they've been intellectually captured by the metascript. In reality, the story is not so simple.

This is a classic example of a network of origin- and facilitator-acts. The governor invested nearly two million GBP in investment banks and over 10 million GBP in British real estate assets. He deposited 400,000 USD in a Massachusetts brokerage firm and purchased 600,000 USD of property in Maryland. While his corruption began with embezzlement in Nigeria, a network of corporate facilitators profited off impressive sums destined for investment banks, hedge funds, real estate firms, and the collection of corporations that assist in these transactions (law firms, insurance providers, etc.).[42]

Yet, when the Economic Risk Consultancy, for example, is measuring how corruption affects business climates around the world, they dock Nigeria for Alamieyeseigha's crimes and ignore the facilitator-acts. They ignore the network. All of the assessments do. The CPI is just an average of that ignorance. Corporations are excused from blame.

One effect is that corporate facilitators go unpunished. In 2010, a report by Global Witness noted that five banks in the United Kingdom failed to investigate the origin of funds dubiously received from West African nations—all inevitably linked to corrupt public officials. None of these banks have faced a single penalty from British or international prosecutorial or regulatory bodies.[43]

Punishing Nigeria (twice)

Outside reputational damage by the widely published CPI, why should Nigeria care? Well, the unevenness of measurement damns the nation to its second punishment: poor performance on the CPI translates into withheld support. Studies demonstrate that the allocation of international aid is often linked to corruption indices like the CPI.[44] Sometimes explicitly so. The Millennium Challenge Corporation—funded by the United States Congress—conditions its international aid

on a nation's score on the World Bank's Control of Corruption Index, a near-mirror image of the CPI.

It goes without saying that the assessments which comprise the CPI are used by corporate clients to guide investment decisions. Many of the assessments are quite blunt in their connection to corporate interests:

- The Economist Intelligence Unit professes its mission to "provide executives with authoritative analysis and forecasts."
- The Institute for Management Development aims to "conduct state-of-the-art research to enhance management knowledge."
- The Political and Economic Risk Consultancy "specializ[es] in strategic business information and analysis for companies doing business in countries in East and Southeast Asia."

The surveys measure corruption for the sake of advising business decisions for multinational corporations. When the survey says, *Nigeria is corrupt*, investment withers.

This hypocrisy is maddening. Barclays might see a lower CPI index for Nigeria and slim down project expansion in the nation. Meanwhile, Goldman Sachs might profit off the investment of embezzled funds by the officials whose prosecution triggered that very change in the CPI. They solicit funds stolen from the Nigerian people and then refuse to invest in projects which (if the metascript has any merit at all) could enrich the Nigerian people. The money flows in one direction.

Thus, for every corrupt act, Nigeria suffers twice. First, the act itself; then, the reaction by donor-nations and private investors. This pattern populates the entirety of the global anticorruption regime. In every country labeled corrupt by the anticorruption regime's indices, corrupt officials are named-and-shamed; corrupt acts make local and global news; and the regime pats itself on the back for the occasional high-profile prosecution or exposé.

CONCLUSION

The regime fails to see the forest for the trees. Corruption is not merely a transaction; it is not a series of official acts by bad officials. In defining corruption so narrowly, we obfuscate the network. The origin-acts in the origin-nations are bad. They're corrupt. They're immoral. They're criminal. Meanwhile, the facilitator-acts in the facilitator nations are neutral. They're profit-seeking. They're fundamentally beneficial to the market. We measure the former and

ignore the latter. Facilitators continue doing what they do best: facilitate. They facilitate and profit off of public corruption. If the anticorruption regime were genuinely interested in exposing "systems and networks" of corruption, it would reverse the definitional disruption of the mid-twentieth century and sever the influence of corporate intelligence on corruption measurement. Of course, corporate office "concerns the public." Corporations—and the corporate law that shields them—facilitate the public corruption with which the current anticorruption regime is entirely concerned. Once we make that connection and break the definitional disruption, we can properly identify and prosecute corruption. Until then, we'll fail.

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[22] The Google Ngram algorithm accounts for changes in the number and length of books published each year. It measures the frequency with which the term appears in books.
[23] U.S. v. Kenny, 462 F.2d 1205, 1229 (3d Cir. 1972)
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[26] McNally v. United States, 483 U.S. 350, 360 (1987).
[27] *Id.* at 405-06.
[28] *Id.* at 407.
[29] Black v. United States, 561 US 465 (2010).
[30] Debt: The First 5,000 Years. David Graeber.
[31] *Id.* at 2.

[32] De Maria, *supra* note 12, at 780.
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