

*LEGITIMACY VERSUS ILLEGITIMACY — TRANSPARENCY,
INTEGRITY OF FINANCIAL MARKETS AND CORPORATE
GOVERNANCE: WHITHER CORRUPTION?*

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INTEGRIDADE DOS MERCADOS FINANCEIROS E
GOVERNANÇA CORPORATIVA: QUANDO É CORRUPÇÃO?*

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1. INTRODUCTION AND OVERVIEW

Ethics management globally is a swiftly growing reality with various countries placing substantial emphasis on anti-corruption initiatives. International organizations, including the United Nations (“UN”), Transparency International (“TI”), and the Organization for Economic Cooperation and Development (“OECD”) have created a number of anti-corruption creativities, for instance, the UN, promulgated an International Code of Conduct for Public Officials in 1996². Moreover, the United Nations International Centre for Crime Prevention has established an Anti-Corruption Tool kit to ‘help U.N. Member States and the public to understand the insidious nature of corruption, the potential damaging effect it can have on the welfare of entire nations and suggest measures used successfully by other countries in their efforts to uncover and deter corruption and build integrity³. In the same vein, TI, the only global non-governmental organization dedicated to battling corruption, seeks via education and information to dishearten corrupt activities and fraudulent performances as well as foster integrity and liability to achieve better governance⁴.

According to the UN Code of Conduct, public officials shall guarantee that they accomplish their obligations and functions proficiently, commendably and with integrity, in accordance with legal

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² Agnieszka Klich, Note, Bribery in Economies in Transition: The Foreign Corrupt Practices Act, 32 STAN. J. INT’L.L. 121 (1996).

³ Archie B. Carroll & Michael D. Meeks, Models of Management Morality: European Applications and Implications, BUSINESS ETHICS: A EUROPEAN REV. (1999). See also UNITED NATIONS DEVELOPMENT POLICY AND ANALYSIS DIVISION, <http://www.un.org/en/development/desa/policy/capacity/toolkit.shtml>. (last visited Mar. 30, 2016).

⁴ Barbara C. George & Kathleen A. Lacey, A Coalition of Industrialized Nations, Developing Nations, Multilateral Development Banks, and Non-Governmental Organizations: A Pivotal Complement to Current Anti-Corruption Initiatives, 33 CORNELL INT’L. L. J. (2000). It should be noted that TI issues a Bribes Payers Index, a Global Corruption Report, and a Corruption Perceptions Index (“CPI”) that pin-track corruption along with guides and books that promote integrity in governance through a National Integrity System.

statutes and administrative strategies⁵. They shall at all times pursue to confirm that public resources and government's funds for which they are accountable are managed in the most operative and well-organized way⁶. Furthermore, they shall be observant, fair, and impartial in functioning their tasks, particularly, in their relations with the general public, as they shall afford any excessive favored behavior to any group, entity, or individual or inappropriately discriminate against anybody, or otherwise misuse the power and authority conferred to them, and committing the peddling influence's crime⁷. Thus, an inclusive attitude to transparency, accountability, and implementing a range of responsibility's advocates, democratic, judicial, media, and civil society is requested⁸.

In addition, The OECD have long history in the front of endorsing good governance. That OECD was involved in pushing forward the 1997 Anti-Bribery Convention that is the first universal device to combat corrupt acts in cross-border business transactions⁹. Also, OECD approved a proposal to advance ethical conduct in the public service that encompass "Principles for Managing Ethics in the Public Service," as these norms are intended to be a reference point for state members when merging the fundamentals of an active ethics management system in line with their personal political, managerial, and cultural settings¹⁰. Ethical laws and codes of conducts are extensively used apparatuses in the universal moral values supervisor's toolbox¹¹.

In this respect, ethical codes and rulings are not, of course, adequate implements to confirm moral and proper governance. In 1999, Mike Nelson recites:

⁵ See generally Charlotte Durrant, *What Are the Advantages and Disadvantages of Codes of Conduct in Regulating Moral Behavior in Business?* (2008) (on file with author).

⁶ Clark Kathleen, *Do We Have Enough Ethics in Government? An Answer From Fiduciary Theory*, 57 U. ILL. L. REV. (1996); Colin Leys, *What is the Problem about Corruption?* 3 J. MODERN AFRICAN STUDIES (1965). See also David Hess & Thomas W. Dunfee, *Fighting Corruption: A Principled Approach; The C²Principles (Combating Corruption)*, 33 CORNELL INT'L. L. J. (2000).

⁷ Buscaglia Edgardo, *Judicial Corruption in Developing Countries: Its Causes and Economic Consequences* (1999). See also Cathy Cassell, Phil Johnson, & Ken Smith, *Opening the Black Box: Corporate Codes of Ethics in their Organizational Context*, 16 J. BUS. ETHICS (1997).

⁸ Brian C. Harms, *Holding Public Officials Accountable in the International Realm: A New Multi-Layered Strategy to Combat Corruption*, 33 CORNELL INT'L. L. J. (2000). See also David Kennedy, *The International Anti-Corruption Campaign*, 14 CONN. J. INT'L. L. REV. 455 (1999).

⁹ Christopher F. Corr & Judd Lawler, *Damned If You Do, Damned If You Don't? The OECD Convention and the Globalization of Anti-Bribery Measures*, 32 VAND. J. TRASNAT'L. L. 1249 (1999).

¹⁰ Id. See also COMMENTARIES ON THE CONVENTION ON COMBATING BRIBERY OF OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS, OECD NEGOTIATING (1998). It includes, the decision-making process should be transparent and open to scrutiny, as public citizens has a right to know how government institutions apply the authority and public funds entrusted to them (freedom of information). It is important to have clear guidelines for the linkage between public and private sectors. Defining ethical standards should guide the behavior of public officials, as public procurement. Corporate directors and managers should explain and support moral conduct and management plans, measures, and practices should promote ethical acts, as government strategy should not only ignore the minimal values.

¹¹ For example, in Brazil, the Public Ethics Committee was established in 1999 to endorse ethical behavior in the federal executive branch. It is responsible for the implementation of Ethics Management Internationally. The Federal Code of Conduct of High Administration coordinates decentralized ethics measures in order to guarantee the adequacy of the Brazilian administration's moral values. Also, New Zealand enacted a nationwide code of conduct in 1998 that emphasizes duties expected of public officials in their professional tasks. In 1998, the UK Committee on Standards in Public Life (Nolan Committee), issued the 'Seven Principles of Public' as well.

[...] the problem with Codes of Conduct is that it is easy to stick them on the wall, but hard to make them stick in practice . . . without an effective development and implementation strategy which is integrated and engages with the heart and bowels issues of concern to the organization, the net result seems consistently the same: that the Code of Conduct remains a mere piece of paper, displayed or appealed to when convenient, but ignored the rest of the time [...]¹².

By the same token, regarding the evaluating role of the moral and ethical codes in the European Union (EU) countries, Bossaert and Demmke stated that:

Despite their popularity, codes of ethics make little sense unless they are accepted by the personnel, and maintained, cultivated and implemented with vigour [...] codes are useless if staff are not reminded of them on a regular basis and given continuous training on ethics. Codes are only effective if they are impressed upon the hearts and minds of employees¹³.

Whistleblowing laws and performs fluctuate immensely all over the globe. The United States has frequent legal norms that boost and protect folks and entities who blow the whistle on those who involve in white collar crimes, especially corruption, embezzlement, misappropriation of public funds, fraud, and peddling in influence (power's abuse)¹⁴. Unlike the U.S., India anticorruption laws does not offer the all-encompassing defense for whistleblowers¹⁵. In fact, whistleblowing is theoretically illegitimate, according to civil service rules, and might even be personally dangerous. Historically speaking, Roberta Johnson opposes, that new sorts of whistleblowers are evolving who are inspired to serve the public interest, and her study concluded that there is no straight link between law and the whistleblowing's incident and the cultural factors play a significant role in opposing corruption in some nations and in other countries they not¹⁶. Due to some foremost corruption circumstances and public servants' misconduct and politicians, citizens are progressively aware of the prominence of integrity and ethical management¹⁷. Ethical codes of conduct, deterrence (preventative) procedures,

¹² See Mike Nelson, Codes of Ethics in Transitional Democracies: A Comparative Perspective, 8 PALIDAUSKAITE J. 2006 PUBLIC INTEGRITY 8:35-48 (1999).

¹³ Danielle Bossaert and Christophe Demmke, Main Challenges in the Field of Ethics and Integrity in the EU Member States, EUROPEAN INSTITUTE OF PUBLIC ADMINISTRATION, COMMITTEE ON STANDARDS IN PUBLIC LIFE (2004), 10th Report: Getting the Balance Right—Implementing Standards of Conduct in Public Life, HMSO (2005), http://www.eipa.nl/Publications/Summaries/05/2005_1.pdf. See also Timo Moilanen & Ari Salminen, Comparative Study on the Public-Service Ethics of the EU Member States, [REPORT FROM THE HUMAN RESOURCES WORKING GROUP EUPAN (2006), http://vm.fi/documents/10623/307711/Comparative_Study_on_the_Public_Service_Ethics_of_the_EU_Member_States_publication+131206.pdf/524e908b-5388-4d1c-9199-59b4f3e567a9 (last retrieved Mar. 30, 2016).

¹⁴ Christopher J. Duncan, Comment, The 1998 Foreign Corrupt Practices Act Amendments: Moral Empiricism or Moral Imperialism? 14 ASIAN-PAC. L. & POL'Y J. 14 (2000). Dana Milbank & Marcus W. Brauchli, How U.S. Concerns Compete in Countries Where Bribes Flourish, WALL STREET J. (1995).

¹⁵ Roberta Ann Johnson, Comparative Whistleblowing: Administrative, Cultural, and Ethical Issues, (Proceedings of International Conference on Public Administration 2005).

¹⁶ David Osterfeld, Prosperity versus Planning: How Government Stifles Economic Growth, 8 SPRINGER 2 (Feb., 1994), at 199-201, <http://www.jstor.org/stable/30013417>.

¹⁷ Duane Windsor & Kathleen A. Getz, Multilateral Co-operation to Combat Corruption: Normative Regimes despite Mixed Motives and Diverse Values, 33 CORNELL INT'L. L. J. (2000).

whistleblower fortification, and other techniques of firming the virtuous dimension of politics and management have stretched an extraordinary status on the agenda in several countries, especially the Arab Spring Middle Eastern and North African (MENA) region¹⁸.

Against this succinct backdrop, this article examines how the gaming of laws and regulations by corporations contributes to the problem of institutional corruption in the business world. Also, it deals with a brief explanation of the various concepts of CSR in literature emphasizing its basic principles in fighting corporate corruption and is accompanied with an evaluation of the CSR performs that exist in the fields of human development, social growth, and environmental consciousness. Finally, it examines the role of CSR in fighting unethical conduct, especially corruption, through anti-corruption and anti-bribery programs, along with other defensive measures for contending this phenomenon with particular emphasis on the 2003 United Nations Convention Against Corruption (“UNCAC”). To elucidate the analysis, it focuses on the following two sets of inquiries: First, are corporations accustomed with the relevant soft-law instruments and the anti-corruption worldwide documents?; How do they perceive these documents?; What impression, if any, have these conventions had on enterprises?; Have businesses attuned their performance as a result? Second, have corporations willingly implemented ethical codes or other internal measures that endorse CSR?; Is CSR a useful, convenient, and effective tool in confronting corruption generally?; If so, to what extent? This article concludes in by arguing that CSR should be a priority among practitioners and specialists in fighting unethical corporate behavior and promote a clean corporate manners around the globe, mainly in the MENA region.

2. GAMING LAWS AND INSTITUTIONAL CORRUPTION: TRAP!! AND QUO VADIS?

“Gaming” in its numerous forms encompasses the use of technically legal instruments to undermine the intent of the law in order to gain advantages over competitors, maximize reported earnings, preserve high credit scores, reap superior personal rewards, maintain access to capital on favorable terms, just to name a few¹⁹. It is one of the most destructive forms of institutional corruption in business today²⁰.

“Institutional corruption” refers to institutionally-sanctioned behavior and relationships that may be lawful but either harms the public interest or weakens the capacity of an institution to achieve its professed goals by undermining its legitimate procedures and core values²¹. The most noticeable consequence of institutional corruption is diminished public trust in the governance of the institution in

¹⁸ Edward C. Banfield, *Corruption as a Feature of Governmental Organization*, 18 J. L. & ECO. (1975). See, e.g., Franklin A. Gevurtz, *Using the Antitrust Laws to Combat Overseas Bribery by Foreign Countries: A Step to Even the Odds in International Trade*, 27 VA. J. INT’L. L. (1987).

¹⁹ See generally M. Patrick Yingling, *Conventional and Unconventional Corruption*, 51 DUQUESNE L. REV. 263, 264-71 (2013).

²⁰ Id. See also Ellen S. Podgor, Paul D. Borman, Peter Henning, & Jerold H. Israel: *WHITE COLLAR CRIME: LAW AND PRACTICE* (2003).

²¹ Carla Miller, *The Tail Wagging the Dog: Institutional Corruption and the Federal Sentencing Guidelines for Organizations (FSGO)*, EDEMAND J. SAFRA, HARVARD CENTER FOR ETHICS, Aug. 20, 2013, <http://ethics.harvard.edu/blog/tail-wagging-dog> (“In fact, there is an ethics revolving-door phenomena. Those government employees intimately familiar with the complex ethics regulations are highly sought after in the private sector, the “ethics industry.”).

question²². While institutional changes promoting integrity, transparency, and accountability in state and economic institutions are necessary parts of any anti-corruption strategy, a long-term social foundation is required, particularly where corruption is systemic²³.

Social empowerment, which means expanding and protecting the variety of political and economic resources and options open to ordinary citizens, is one way to address this task²⁴. Social empowerment involves strengthening civil society in order to enhance its political and economic vitality, providing more orderly means of access and rules of collaboration between state and society, and escalating economic and political opportunities²⁵. Development policies intended particularly for disempowered people and regions within a country are of particular importance²⁶. It does not include wholly new remedies, but rather the sensible coordination of a multiplicity of familiar development and anti-corruption programs²⁷. Social empowerment will not totally eliminate corruption; it can, however, provide essential sustenance for institutional reforms, weaken the combination of monopoly, discretion, and lack of accountability that makes for systemic corruption, and help institutionalize reform for the long term²⁸.

On the other hand, corruption does not necessarily involve violation of legal rules or principles. Rather, the relevant standards for defining institutional corruption include public interest and private procedural standards²⁹. In this regard, Jack Knight said: “These twin standards show how corrosive institutional corruption can be: it involves both social injury (‘corruption by the institution’), whether illegal or not, and institutional injury (‘corruption of the institution’) [...]”³⁰.

Persistent institutional corruption—including corruption stemming from gaming the law—inevitably shapes democracy and capitalism “in a free-market economy,” including how Congress and

²² Id. (“There must be monitoring and auditing to detect crimes and to evaluate the program. There may be anonymous ways to report crimes without fear of retaliation . . . Gaming the system is at the heart of institutional corruption. If the FSGO program maintains its focus on criminal conduct alone, then it can be used as a joystick for a very large game. If a company or a government heralds its “ethics program” it should mean something to the public; it should be something they can trust is not a charade. Institutional corruption should be seen as the overarching construct that can be utilized to repair institutions, including local governments. By narrowing the scope of “ethics” programs to the prevention of crimes and legalistic regulations, we have the “tail wagging the dog.”).

²³ See generally Michael Johnston, *Fighting Systemic Corruption: Social Foundations for Institutional Reform*, 10 EUR. J. OF DEV. RES. 85 (1998).

²⁴ See, e.g., M. Patrick Yingling & Mohamed A. ‘Arafa, *After the Revolution: Egypt’s Changing Forms of Corruption*, 2 U. BALT. J. INT’L L. 23, 28-34 (2014).

²⁵ Id.

²⁶ Gerald F. Cavanagh, *The Ethics of Organizational Politics*, 6 ACAD. MGMT. REV. (1981). See generally GREGORY P. NOONE, *AN ANALYSIS OF TRANSNATIONAL CORRUPTION* (2007).

²⁷ Ibrahim F.I. Shihata, *Corruption: A General Review with an Emphasis on the Role of the World Bank*, 15 DICKINSON J. INT’L L. (1997) (“Societies may differ in their views as to what constitutes corruption, although the concept finds universal manifestations. Experts have different perspectives on the meaning, causes, and effects of this universal phenomenon. While a few take an interdisciplinary approach, positions are more often influenced by the respective discipline.”).

²⁸ Id.

²⁹ Id. See Yingling & ‘Arafa, *supra* note, 24.

³⁰ See JACK KNIGHT, *INSTITUTIONS AND SOCIAL CONFLICT* (1992). See also John McMillan & Zoido Pablo, *How to Subvert Democracy: Montesinos in Peru*, 18 J. OF ECON. PERSP. 69–92 (2004).

regulatory agencies monitor and control business enterprises and how markets function³¹. This is because few institutions in a democratic society—whether in the private or public sector—can survive in the long run in the absence of public trust³².

Thus, gaming and institutional corruption in the private sector looks like a huge phenomenon and the legislative bodies has various ways to structures and designs the law (many of society' rules) that may foster institutional corruption given the strong temptation for business executives to manipulate the law³³. These ways may comprise, first, the extensive Congressional lobbying by businesses interests seeks not only to minimize regulatory constraints but also to preserve opportunities to game or legally subvert the intent of those rules for private gain³⁴. The second plan is that purposeful gaming of society' rules by business firms is fueled by the short-term decision-making of corporate executives and investment fund managers, whose behavior is often acclimatized and reinforced by perverse incentives embedded in their compensation plans³⁵. The third proposition is that corporate boards of directors become complicit in the gaming of the law when they allow it to take root and persist as an acceptable organizational norm by failing to articulate and promote quality objectives or actively monitor behavior according to the standards implied by these objects³⁶. Furthermore, this themes acknowledges the influence of corporations' professional advisors, such as lawyers and accountants, as these advisors often support their clients' gaming of community rules³⁷. The reason for this is because of the economic and commercial benefits of retaining these clients overwhelm the advisors' professional responsibility—highlighting the lack of Corporate Social Responsibility (“CSR”)—to uphold rules, transactions, and regulations governing business conduct³⁸. In this respect, scholars and experts interested in law, public policy, and political philosophy have long been working to develop a set of notions that adequately define corruption in public life³⁹.

According to Professor Dennis Thompson, who has been studying corruption in Congress for two decades, institutional corruption is “a form of corruption in which an institution or its agents receives a benefit that is directly useful to the institution, and systematically provides a service to the

³¹ Cavanagh, *supra* note 26. Jennifer Daehler, Professional versus Moral Responsibility in the Developing World, 9 GEO. J. LEGAL ETHICS (1995).

³² Johan Joseph Wallis, THE CONCEPT OF SYSTEMATIC CORRUPTION IN AMERICAN HISTORY (2005). See Johann Graf Lambsdorff, Corruption in Comparative Perception, in ECONOMICS OF CORRUPTION, Arvind Jain (ed.), (1998).

³³ *Id.* See also Yingling & 'Arafa, *supra* note, 24.

³⁴ Miller, *supra* note 21.

³⁵ Mahzarin Banaji, The Psychology of Institutional Corruption: Ideas for Experiments, EDEMAND J. SAFRA, HARVARD CENTER FOR ETHICS (2012), at <http://ethics.harvard.edu/mahzarin-banaji-psychology-institutionalcorruption-ideas-experiments>.

³⁶ Lawrence B. Chonko et al., Ethics Code Familiarity and Usefulness: Views on Idealist and Relativist Managers Under Varying Conditions of Turbulence, 42 J. BUS. ETHICS (2003).

³⁷ *Id.*

³⁸ William English, What are the Distinctive Challenges Posed by Different Types of Corruption? EDEMAND J. SAFRA, HARVARD CENTER FOR ETHICS (2012), <http://ethics.harvard.edu/what-are-distinctive-challenges-posed-differenttypes-corruption> (“... the solution (in theory) would be to take certain types of rents off the political bargaining table (e.g. tax loopholes/expenditures), and develop “impersonal” processes for accessing government resources. The rules would have to apply in the same manner to all people, and be enforced impersonally, impartially, and without bias. However, such changes would need to defeat the existing array of interest aligned against them.”).

³⁹ *Id.*

benefactor under conditions that tend to undermine legitimate procedures of the institution”⁴⁰. In Thompson’s paradigm, corruption is defined by institutional behavior that damages an institution’s central, “legitimate” procedures⁴¹. Legitimate procedures refer to processes “necessary to protect the institution against interests that undermine its effectiveness in pursuing its primary purposes, and the confidence of the relevant publics that it is doing so”⁴².

Additionally, Professor Lawrence Lessig has also initiated a study of institutional corruption, primarily focused on the public sector. According to Lessig,

[t]he seeds of institutional corruption are planted when an entity’s behavior becomes rooted in dependent relationships with outside parties that conflict with the institution’s intended purpose. Institutional corruption also occurs when an organization’s internal “economy of influence”—such as performance measurement and reward systems, and leaders’ directives—leads people to act in ways that compromise that organization’s essential processes, espoused values, and intended purpose⁴³.

Lessig’s study of Congress is a prime example of institutional corruption in the public sector. He shows how persistent fundraising, for example, members of Congress has debased the legislative process, as powerful interests have become increasingly active in “purchasing public policy”⁴⁴.

“The corruption of a hard disk on a computer may serve as an illustrative metaphor. If the disk becomes corrupted, the computer will no longer serve its purpose—to reliably store and permit the

⁴⁰ Dennis F. Thompson, Two Concepts of Corruption: Making Campaigns Safe for Democracy, 73 GEO. WASH. L. REV. 1036 (2005). See also ETHICS IN CONGRESS: FROM INDIVIDUAL TO INSTITUTIONAL CORRUPTION (1995). Thompson draws a distinction between “individual” corruption and “institutional” corruption. It is a subtle, but important one. When an executive takes a bribe, for example, in return for some favor, and assuming the favor relates in no way to the executive’s job description, we can say that the exchange serves no institutional purpose and is therefore a matter of straightforward individual corruption. But when an executive accepts a bribe to further the corporation’s interests, and in doing so undermines the corporation’s espoused values and frustrates its primary purposes, then that executive becomes an agent of institutional corruption. See Yingling, *supra* note 19.

⁴¹ *Id.*

⁴² *Id.* See generally M. Patrick Yingling, Civil Disobedience to Overcome Corruption: The Case of Occupy Wall Street, IND. J OF L. & SOCIAL EQUALITY, (2016).

⁴³ Lawrence Lessig, How to Get Our Democracy Back, THE NATION, Feb. 22, 2010. Institutional corruption is confirmed, according to Lessig, when public trust falls in response to a collective perception that the institution and its leadership no longer behave according to society’s understanding of its espoused purpose. The greater the perceived dependence of an institution on external and internal sources of influence that detract from its espoused purpose and compromise its essential processes, the higher the level of public distrust in the conduct and governance of that institution.

⁴⁴ BEN HEINEMAN, RESTORING TRUST IN CORPORATE GOVERNANCE: SIX ESSENTIAL TASKS OF BOARDS OF DIRECTORS AND BUSINESS LEADERS, POLICY AND IMPACT COMMITTEE OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT (2010). Other recent academic scholarly work on private-sector corruption has focused on corporate behavior that clearly crosses the line into illicit and unlawful activity. One such example is TI, which seeks to expose manipulations of normal commercial procedures, such as transfer pricing used to evade taxes, and the use of agency fees for bribery, embezzlement, fraud, and price fixing. See also Mohamed ‘Arafa, Battling Corruption within a Corporate Social Responsibility Strategy, 21 IND. INT’L. & COMP. L. REV. 397 (2011) (providing further elaboration concerning codes of ethics and corporate social responsibility).

retrieval of data"⁴⁵. The language of corruption in this analogy does not point to the blameworthiness of any individual; rather, it emphasizes the implication of the loss of (or damage to) the data. If the data happen to be the only copy of a first novel or of a patient's medical records, the corruption of the disk will be of great consequence⁴⁶. Institutional corruption in context is clearly intended to do some work in the world, by signifying the importance of a particular institution and the way that institution is operating. It is a call for attention and for action (although it does not prescribe the kind of attention or action that should follow). The term is also useful in that it includes issues and concerns that other terms, such as "conflict of interest," might not⁴⁷.

In contrast to work addressing illegal transactions and conduct, it is vital to focus on the socially destructive corruption's aspects, as it should be noted that the three of four most common forms of trust-destroying private sector behavior; as documented by scholars and practitioners are: (a) violating norms of fairness; (b) tolerating conflicts of interest, and (c) exploiting cronyism in business-government partnerships⁴⁸. Further, the fourth key form of institutional corruption in the private sector is the gaming of the law by business executives, often supported by their external legal and accounting advisors⁴⁹. This increasingly ubiquitous behavior, because it is perhaps the least visible variant of institutional corruption, and has, therefore, received much less systematic analysis than the first two⁵⁰. Hence, the fundamental strategies suggested for curbing gaming and institutional corruption as much more work remains to be to mitigate such behavior.

This include and should focus on confronting rule-making issues, as lobbying is at the center of most rule-making activities involving business⁵¹. However, in thinking about remedies for the kind of lobbying that leads to diminished public trust in business, it is imperative to distinguish between lobbying aimed at securing new rules and regulations place that adverse restraints on productive invention and lobbying intended to conserve opportunities for gaming⁵². Moreover, addressing rule-following ("Gaming") problems in business should be considered. Potential remedies for the time horizon problem are less scary than those for the rulemaking problem, but will also require extreme

⁴⁵ Institutional Corruption, LESSIG WIKI, http://www.wiki.lessig.org/Institutional_Corruption (last visited Mar. 30, 2016). (quoting Professor Jonathan H. Marks).

⁴⁶ Id. See Mark Jorgensen Farrales, *What is Corruption? A History of Corruption Studies and the Great Definitions Debate* (2005).

⁴⁷ Edward C. Banfield, *THE MORAL BASIS OF BACKWARD SOCIETY*, (N.Y. Free Press 1958). Edward C. Banfield, *Corruption as a Feature of Governmental Organization*, 18 *L. & ECO. J.* (1975), 587-605. David. H. Bayley, *The Effects of Corruption in a Developing Nation*, 19 *WESTERN POLITICAL QUARTERLY* 4 (1966), at 719-732.

⁴⁸ MARK TURNER & DAVID HULME, *GOVERNANCE, ADMINISTRATION, AND DEVELOPMENT* (1997).

⁴⁹ Nathaniel Leff, *Economic Development through Bureaucratic Corruption*, 8 *AM. BEHAVIORAL SCIENTIST* 2 (1964), at 8-14. See also Colin Leys, *What is the Problem about Corruption?* 3 *J. OF MODERN AFRICAN STUDIES* 2 (1965), at 215-224.

⁵⁰ SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM*, (Cambridge Univ. Press 1999).

⁵¹ Id.

⁵² Moreover, lobbyists serving as public policy advocates and counselors for their client lobbyists' participation in rule-making are potentially a productive aspect of our political process. But when businesses or industries publicly support a rule because lobbyists have preserved ways of subverting it, that duplicity—when discovered, as it inevitably is—becomes a major driver of public distrust and institutional corruption. See SIMON JOHNSON & JAMES KWAK, *13 BANKERS: THE WALL STREET TAKEOVER AND THE NEXT FINANCIAL MELTDOWN* (2010).

patience and steady commitment⁵³. The short-term decision horizon of corporate executives and fund directors is often at the heart of their decisions to engage in gaming⁵⁴. From that perspective, changing public policies that influence private sector behavior, and voluntarily changing business and commercial policies and practices within firms to encourage long-term decision horizons are the principal approaches to extending the time horizon of executives and investment managers⁵⁵.

On the other hand, public policy measures, in which the range of public policy, administrative, and regulatory options related to extending time horizons include restricting hedge fund activities in some way to limit the volume of border fund trading; introducing a transaction tax to raise trading costs; and changing capital gains taxes to favor long-term holdings⁵⁶. Certain economic and political factors do, however, constrain all three alternatives⁵⁷. Business Policy Actions (“Codes of Ethics and Effective Leadership”) is very essential, as it is increasingly apparent that introducing business policies and practices aimed at restricting short-termism and its two derivatives—gaming and institutional corruption—requires institutional leadership committed to high ethical standards and values related to society’ rules⁵⁸. Recent corporate scandals, specifically in Europe and United States reveal that developing and distributing corporate codes of conduct is rarely enough to curtail gaming and ethical drift⁵⁹.

It is a deep commitment to “quality” objectives, meaning compliance not only with the law but also with the principles underlying it and with ethical ideals that promote public trust⁶⁰. When corporate boards and their delegated agents fail to build sustained obligations to such values or neglect to provide clear guidelines for responsible action, they put the institution’s reputation and its very future at risk⁶¹. The key to achieving quality objectives and preserving public trust lies in three organizational commitments: qualitative attention, balanced incentives, and active monitoring.

⁵³ See, e.g., Mike Koehler, *The Story of the Foreign Corrupt Practices Act*, 73 OHIO STATE L. J. 5 (2012).

⁵⁴ ‘Arafa, supra note 44, at 15. (“Most business executives and fund managers understand that extending the market’s focus further into the future would diminish pressures to “manufacture” short term financial performance and pursue other gaming and corrupt practices. The challenge is building energy and consensus for collective action within the collaboration between businesses and civil society as seen through collective action and knowledge sharing.”).

⁵⁵ Lessig, supra note 43, at 10.

⁵⁶ JOSHUA D. MARGOLIS & KIM BETTCHER, *Up to Code: Does Your Company’s Conduct Meet New World Standards?*, 83 HARV. BUS. REV. (2005). See also J.D. FOSTER, *OBAMA’S CAPITAL GAINS TAX HIKE UNLIKELY TO INCREASE REVENUES* (2010); Allen Sinai, *Gap Gains Taxation: Less Means More*, WALL ST. J., Sept. 21, 2010, at A21 (“Presenting a full analysis of the macroeconomic and business benefits of a lower capital gains tax would be useful.”).

⁵⁷ See generally Peter Henning, *Public Corruption: A Comparative Analysis of International Corruption Conventions and United States Law*, 18 ARIZONA INT’L. & COMP. L. REV. 3 (2001).

⁵⁸ ‘Arafa, supra note 44, at 15-17 (explaining the notion of ethical legality, morality, and ethical leadership in corporations and the linkage to CSR).

⁵⁹ *Id.*

⁶⁰ Pierre-Guillaume Méon & Khalid Sekkat, *Does Corruption Grease or Sand the Wheels of Growth?*, 122 PUBLIC CHOICE (2005).

⁶¹ Oliver E. Williamson, *Transaction-Cost Economics: The Governance of Contractual Relations*, 22 L. & ECO. J. 2, (1979), at 233-261.

Qualitative Attention⁶². Through corporate stories, it is obvious that without persistent attention to the qualitative aspects of individual and group performance, the chances of developing an organizational environment conducive to thoughtful social and ethical deliberation are minimal⁶³. For this reason, negotiation and review of personal and business plans must include attention to the organization's qualitative objectives and ethical standards, such as the protection of corporate integrity and reputation, truth-telling, formal performance management,⁶⁴ compliance with the intent of society's rules and regulations, and a host of other possible goals in addition to whatever standard, quantitative measures the plans may require⁶⁵.

Well-adjusted Incentives. A commitment to the qualitative aspects of organizational performance requires a disciplined approach to incentives. For example, the policies governing financial incentives for corporate executives and investment fund managers require serious rethinking⁶⁶. Other ideas for curbing short-termism include paying out annual bonuses over a certain period of time and basing "clawback" provisions on substantial changes in investment performance⁶⁷. Executive officers should also be subject to clawback, so that a company may recover from current and former officers compensation based on measures later found to be erroneous (including estimates of product performance) or misrepresentations of corporate performance⁶⁸. Likewise, limiting executive reliance on evading and derivative transactions, as they weaken the connections among executive pay, long-term results, and corporate governance practices, including commercial securities and collaterals⁶⁹. Likewise, Active Auditing and Monitoring. Audits of critical decisions by boards of directors are as important as internal audits by management in building a strong organizational commitment to quality objectives and high performance standards⁷⁰. Control of corporate affairs and board oversight is essential. Additionally, extensive and expensive documentation of internal controls by management, and annual review of these controls by outside accountants or consultants, is

⁶² The phrase "Qualitative Attention" is from KENNETH R. ANDREWS, *ETHICS IN PRACTICE* 263 (1989).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* Qualitative performance measures also help individual managers see the full nature of their jobs more clearly. Any effort to liberate an evaluation process by adding qualitative judgment to the numbers requires a parallel effort in managerial development not so much through formal training as in how companies develop careers. If organizations elect to foster quality objectives and high standards, then they will have to nurture the character and values of "promotable" managers. Somewhere in their early careers, promising managers must be exposed to important moral dilemmas in executive decision-making, including the subject of gaming society's rules. The purpose of this midcareer education should be to emphasize the practical requirements for retaining public trust in their institution. See Durrant, *supra* note 5.

⁶⁶ 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.* (1998).

⁶⁷ Investment companies could also link bonuses for fund managers to the firm's quarterly or annual profits, and perhaps peer-group comparisons over a three-year period. Leaders of investment companies and mutual funds could also base annual bonuses partly on the quality of fund managers' research, and their contributions during investment team meetings. Stephen Schwenke, *The Moral Critique: Corruption in Developing Countries*, 11 *J. PUBLIC & INT'L. AFF.* (2000).

⁶⁸ Steven R. Salbu, *A Delicate Balance: Legislation, Institutional Change, and Transnational Bribery*, 33 *CORNELL INT'L. L. J.* (2000).

⁶⁹ LUCIAN A. BEBCHUK, *HOW TO FIX BANKERS' PAY* 139 (2010).

⁷⁰ Steven R. Salbu, *Are Extraterritorial Restrictions on Bribery a Viable and Desirable International Policy Goal Under the Global Conditions of the Late Twentieth Century?* 24 *YALE J. INT'L. L.* (1999).

required⁷¹. Working at detecting and monitoring the societal benefits and costs of incentive structures will also help achieve quality goals in corporations⁷².

3. THE CSR IN COMMERCIAL THEORY: CSR BASICS IN THE GLOBALIZATION VEIL

Without hesitation, businesses play a critical role in tumbling and ultimately eradicating corrupt performs transnationally⁷³. The mass media have covered numerous circumstances of businesses and enormous enterprises inducing public officials in order to gain a private interest (“competitive advantage”) in businesses⁷⁴. The development and improvement of international trade and cross-border profitable dealings repeats greater economic and gainful amalgamation under the umbrella of globalization⁷⁵. Well recognized CSR affords several companies with a reputational competitive edge and is a critical part of publics’ awareness of any corporation⁷⁶. Many understand corrupt deeds as an awkward problem relating exclusively to public officials and white-collar workers, yet this is an imprecise perception⁷⁷. Similar to environmental rights, employment rights, and human rights, rights to be free from bribery exemplify a serious aspect of the CSR field⁷⁸. To inspire comprehensive change in CSR, public servants must not only set goals and generate enhancements in the areas of labor rights, ecological rights, and human rights, but they must also work toward removing corruption,

⁷¹ See SARBANES-OXLEY ACT of 2002, Pub.L. 107-204, 116 Stat. 745, § 404. Whatever the benefits (and costs) of documenting systems designed to inform and control corporate behavior, this is no substitute for actually looking at the behavior itself. This act includes eleven (11) titles that describe specific mandates and requirements for financial reporting. (1) Public Company Accounting Oversight Board (“PCAOB”); (2) Auditor Independence; (3) Corporate Responsibility; (4) Enhanced Financial Disclosures; (5) Analyst Conflicts of Interest; (6) Commission Resources and Authority; (7) Studies and Reports; (8) Corporate and Criminal Fraud Accountability; (9) White Collar Crime Penalty Enhancement; (10) Corporate Tax Returns; and (11) Corporate Fraud Accountability. For further elaboration on this act, see Peter Iliev, *The Effect of SOX Section 404: Costs, Earnings Quality, and Stock Prices*, 3 J. OF FINANCE 1163 (2010).

⁷² Therefore, in the absence of such monitoring, corporate boards and the organizations they govern become complicit in the gaming of the law. Kenneth R. Andrews, *Can the Best Corporations Be Made Moral?*, in ANDREWS, *supra* note 62, at 265.

⁷³ The Chair of TI Huguette Label in this sense stated that [t]he BPI [“Bribe Payers Index”] provides evidence that a number of companies from major exporting countries still use bribery to win business abroad, despite awareness of its damaging impact on corporate reputations and ordinary communities. See THE BRIBE PAYERS INDEX (2008).

⁷⁴ Esther J. Schouten, *Defining the Corporate Social Responsibility of Business from International Law*, 49 1/2 MANGERIAL L. 16, (2007).

⁷⁵ Rhys Jenkins, *Globalization, Corporate Social Responsibility, and Poverty*, 81 INT’L. AFF. 3, (2005). (“Corporate Social Responsibility (CSR) has become a major focus of interest not only for corporate managers but also for development practitioners, both within the NGOs community and within the multilateral and bilateral development agencies.”). The International Organization for Standardization (“ISO”) defines social responsibility as “The responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behavior that contributes to [sustainable] development, including health and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent [w]ith international norms of behavior; and is integrated throughout the organization.” *Guidance on Social Responsibility, Resolution 3*, (Int’l Org. for Standardization, Working Group on Social Responsibility, ISO/WD 26000, 2007).

⁷⁶ Arafa, *supra* note 44.

⁷⁷ *Id.*

⁷⁸ See Greg Hills, Leigh Fiske, & Adeeb Mahmud, *Anti-Corruption as Strategic CSR: A Call to Action for Corporations*, May 2009, at 10-24.

bribery, and disgraceful behavior from corporate culture⁷⁹. In this domain, various businesses have claimed generally that transparency and accountability lessen corruption and that administrative (clerical) and decision-making integrity are decisive in achieving better governance⁸⁰. In this sense, CSR experts identify and concede that “corruption distorts market competition, breeds cynicism among citizens, destroy democracy, undermines the rule of law, damages government legitimacy, and corrodes the integrity of the private sector”⁸¹. In terms of CSR, the government’s role is one as the “State Guard” within the free market (capital) economy.

Conspicuously, the OECD played a dynamic and self-motivated role in CSR when it executed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“OECD Convention”) in 1997⁸². The agreement requires all signatories to take footsteps to proscribe the payment of bribes to foreign public representatives, to foster partnership among nations in pursuing prosecutions, and to launch appropriate severe sanctions on firms as well as individuals who violate these provisions⁸³. In the same vein, legislative, executive, and judicial assistances from state governments, along with civil society organizations, as Non-governmental Organizations (“NGOs”) and private sector establishments, could further the program against corrupt practices, as shameful corporate manner is an offense that is universal in scope, it becomes vital, and perhaps even indispensable, to craft a new set of procedures concerning the international commercial dealings⁸⁴. For CSR to prosper, the international community must pay greater care and courtesy to globalization, governance, corporate sector accountability, sustainable development, fiscal and economic ethics, operational leadership, and business tool reliability⁸⁵. Therefore, the key task is to

⁷⁹ See Cynthia A. Williams, *Corporate Social Responsibility in an Era of Economic Globalization*, 35 U.C. DAVIS L. REV. 705, 731 (2002).

⁸⁰ Ben W. Heineman, Jr. & Fritz Heimann, *The Long War Against Corruption*, FOREIGN AFFAIRS, May/June 2006, at 85. See also Mohamed ‘Arafa, *Corporate Social Responsibility and the Fight Against Corruption: Towards the Concept of CSR in Egypt after the January Revolution* in CORPORATE SOCIAL RESPONSIBILITY IN COMPARATIVE PERSPECTIVE, Frank Emmert (ed.), COUNCIL ON INTERNATIONAL LAW AND POLITICS (Chicago 2014)

⁸¹ Heineman, Jr. & Heimann, *supra* note 80, at 85. (“In the field of CSR linked to the fight against corruption and illicit activities in the private sector, it is important that governments adopt a transparent and accountable procurement system especially in developing countries through strengthening the judicial systems and the rule of law.”) *Id.*, at ‘Arafa, *supra* note 80, at 194.

⁸² THE ORGANIZATION FOR ECONOMIC AND CO-OPERATION DEVELOPMENT ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND RELATED DOCUMENTS (2010), available at https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf. 18 December 1997, OECD document DAF/IME/BR (97) 20, 37 I.L.M. 1 (1998). For further details on this Convention, see generally Mark Pieth, Lucinda A. Low, and Peter J. Cullen, *The OECD Convention on Bribery: A Commentary*, (Cambridge Univ. Press 2007).

⁸³ See generally Peter Yeoh, *The Direction and Control of Corporations: Law or Strategy?* 49 MANAGERIAL L. 1/2. (2007); Fred Robbins, *Why Corporate Social Responsibility Should be Popularized but not Imposed*, 8 CORP. GOV. 3 (2008). See also Charles O. Holliday, Stephan Schmidheiny, and Philip Watts, *Walking the Talk: The Business Case for Sustainable Development* (2002).

⁸⁴ See Cornelius B. Pratt, *Multinational Corporate Social Policy Process for Ethical Responsibility in Sub-Saharan Africa*, 10 J. OF BUS. ETHICS 7 (1991).

⁸⁵ David Logan, Delwin A. Roy, and Laurie Regelbrugge, *Global Corporate Citizenship – Rationale and Strategies*, THE HITACHI FOUNDATION, Washington, D.C. (1997).

abolish corruption, or at least fighting it, while increasing social awareness⁸⁶. Besides, to cultivate and enhance CSR, the private sector must share the responsibility, as the business community must become enthusiastic to combat against corruption, as that will be a spirited and central component of CSR in battling corrupt undertakings in business relations⁸⁷.

Ethical leadership is central if codes of conduct are to be obeyed to and used to positively control the proper and honorable behavior of employees. If corporate employees consider company leadership corrupt, codes of conduct will fall into contempt⁸⁸. Consequently, codes are only as good as the leaders who believe in them⁸⁹. It should be renowned that the International Chamber of Commerce ("ICC") adopted, in 1996, a more stringent code of ethics defining strategies to fight extortion and bribery in international businesses⁹⁰. Provisions of the code comprise a proscription on accepting bribes and inducements, requirements for enterprises to adjust payments by their agents, and procedures concerning auditing and recordkeeping and checking prohibited payments or masked (slush) resources, funds, and assets⁹¹.

4. IMPARTIAL COMPETITIVE INTERNATIONAL FREE MARKETS AND THE 2003 UNITED NATIONS CONVENTION AGAINST CORRUPTION ("UNCAC"): IS IT A FRESH UNIVERSAL TEST FOR CSR?

A backbone inquiry that necessitates crucial attention from both the business and CSR communities is competitive disadvantage. If a company or a business firm is corrupting and enticing a foreign public authorized servant in order to execute a contract, other businesses are likely to adopt the equivalent attitude to continue to be competitive⁹². Nonetheless, today with the acceleration in foreign direct investment ("FDI") in emerging markets, worldwide competition has once again incentivized crooked business activities in securing business contracts⁹³. In light of the fact that transnational firms from OECD countries are unwilling to be the first to engage corruption because they are more likely to get trapped and penalized, countries in emerging markets must also lead their multinational enterprises toward vigorous CSR ideals in their universal marketable transactions⁹⁴.

⁸⁶ BARBARA C. GEORGE at al., *The 1998 OECD Convention: An Impetus in Worldwide Changes in Attitudes Towards Corruption in Business Transactions*, 37 AM. BUS L. J. 485, 515-24 (2000).

⁸⁷ 'Arafa, supra note 80.

⁸⁸ See Krista Bondy, Dirk Matten, & Jeremy Moon, *MNC Codes of Conduct: CSR or Corporate Governance?* (2006).

⁸⁹ See Markus Kitzmueller, *Economic Perspectives on Corporate Social Responsibility* (unpublished Doctoral Thesis 2010) (on file with author).

⁹⁰ See generally Rocco Vanasco, *Foreign Corrupt Practices Act: An International Perspective* (1998). See also THE AMERICAN BAR ASSOCIATION: COMMITTEE ON CORPORATE LAW, *Corporate Director's Guidebook* (2007).

⁹¹ See generally William P. Olsen, *The Anti-Corruption Handbook: How to Protect Your Business in the Global Market Place* (2010) (explaining possible measures and tools for a competitive advantage in the global markets).

⁹² 'Arafa, supra note 44, at 412.

⁹³ *Id.*, at 413.

⁹⁴ See, e.g., Donald R. Cruver, *Complying with the Foreign Corrupt Practices Act: A Guide for U.S. Firms Doing Business in International Market Place* (2nd ed. 1999). See generally David Hess, *Enhancing the Effectiveness of the Foreign Corrupt Practices Act through Corporate Social Responsibility*, 73 OHIO STATE L. J. 5 (2012).

In the nonexistence of active implementation in developing and emerging markets, if multinational corporations from OECD countries want to endure competitive, they require to level the playing field with their intercontinental counterparts⁹⁵. This demands mutual and collective efforts between CSR professionals and the business sector⁹⁶. Unethical and illegitimate corporate manner also misleads competition between multinationals and small and medium sized enterprises (“SMEs”)⁹⁷. Since competition between multinational companies and SMEs is constrained, it must be addressed in order to lessen corrupt actions from businesses at all economic heights⁹⁸. As a result, it is imperative to mark corruption also in SMEs in order to have an inclusive policy and wide-ranging plan against all corruption sorts all over the globe, precisely in the MENA area⁹⁹.

On the other hand, over and again, the United Nations has wanted to take on the scourge of corruption in numerous legal and political frameworks. These scraps and efforts have largely taken the form of creativities that were not binding in nature¹⁰⁰. One of these actions was pursued via the United Nations Commission on International Trade Law (“UNCITRAL”)¹⁰¹. Likewise, in 2000, a number of members of the UN signed the United Nations Convention Against Transnational Organized Crime (“UN Organized Crime Convention”)¹⁰². Corruption activities, counting active and passive domestic bribery and corporate organized wrongdoing, were criminalized by this treaty¹⁰³. Even bribery of foreign public officials is included but criminalization was not made binding¹⁰⁴. The most recent, and conceptually most aspiring, international convention addressing transnational corruption is the United Nations Convention Against Corruption (“UNCAC”) of 2003¹⁰⁵. The UNCAC is the broadest of all the assigned multilateral anti-corruption agreements to address the bribery of public officials in the conduct of international business¹⁰⁶. Generally speaking, this treaty underscores six essential principles with respect to the mandatory and optional measures applicable to both the public and private sectors, covering accounting and auditing standards (recordkeeping) and the advancement of codes of conduct and compliance programs for private corporations; enforced and optional criminalization, comprising obligations about public and private sector bribery, peddling in influence, and illicit enrichment; the accessibility of private rights of action for the victims of corrupt practices (civil

⁹⁵ Philip M. Nichols, Multiple Communities and Controlling Corruption, 88 J. BUS. ETHICS 805, 805 (2009); Philip M. Nichols, Corruption as an Assurance Problem, 19 AM. U. INT’L. L. REV. 1307, 1326-28 (2004).

⁹⁶ See also Suman Sen, Corporate Social Responsibility in Small and Medium Enterprises: Application of Stakeholder Theory and Social Capital Theory, [DBA Thesis] (Southern Cross Univ. 2011).

⁹⁷ Henning, supra note 57.

⁹⁸ ‘Arafa, supra note 80, at 214.

⁹⁹ Id., at 215.

¹⁰⁰ Stuart H. Deming, THE FOREIGN CORRUPT PRACTICES ACT AND THE NEW INTERNATIONAL NORMS (2005), at 115.

¹⁰¹ Id.

¹⁰² See THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL CRIME (signed 15 November 2000, entry into force 29 September 2003, in accordance with Article 38), <https://www.unodc.org/unodc/treaties/CTOC/>.

¹⁰³ ‘Arafa, supra note 80.

¹⁰⁴ See UNITED NATIONS CONVENTION AGAINST CORRUPTION, G.A. Res. 55/61, U.N. DOC. A/RES/55/61(31 October 2003), available at <https://www.unodc.org/unodc/en/treaties/CAC/>.

¹⁰⁵ See generally Ahmad A. Alshorbagy & Radwa S. Elsamam, Doing Business in Egypt after the January Revolution: Capital Market and Investment Laws, 11 RICHMOND J. OF GLOBAL L. & BUS. 3 (reprinted in 4 J. AFRICAN & INT’L. L. 2) (2011). Id.

¹⁰⁶ Deming, supra note 100.

compensations); extensive anti-money laundering practices; international cooperation in the investigation and prosecution of cases, enclosing collection actions, over extradition and mutual (judicial) legal assistance; and assets recovery¹⁰⁷. Following this serious step, the CSR program has innovated and accomplished a sequence of events for training pressure on the private business sector to reflect the social, cultural, and environmental values of their corporate performs¹⁰⁸. At both the domestic and international scales, the attack against corruption has advanced and ensued through a gradually cohesive legal framework of multilateral agreements, domestic laws, and legal principles¹⁰⁹. Until lately, CSR campaigners have largely left corruption to the jurisdiction and control of government and national law implementation and prosecution authorities, yet, CSR consultants have started application mechanisms through teamwork's correlation and partnership with the business private sector¹¹⁰.

CSR specialists should keep in mind that while the potential of the U.N. agreement is great, its efficiency depends on the level of state action¹¹¹. The motivation for anti-corruption and its combination in the corporate citizenship plan are two of the most dynamic enlargements, as they add a better market integrity and hold the promise of enriched governance in the public and private domains similarly¹¹². While one of the initial goals for the CSR movement is to apply burden on domestic governments to appliance and impose the UNCAC covenant, as CSR authorities should hold the business sector to higher standards of liability (especially criminal culpability), ethical veracity, and transparency values through health managerial actions and policy ingenuities¹¹³.

5. ETHICS VERSUS CORRUPTION: WHITER BETTER GOVERNANCE IN BUSINESS TRANSACTIONS? (CONCLUSION AND PRACTICAL/POLICY RECOMMENDATIONS)

As is generally well-known, corruption is a momentous and thoughtful deficiency to reducing poverty, achieving development objectives, and growth evolution as well. Academic studies offer definite evidence that corruption may extremely inhibit long-term economic growth and upsurge the largeness of business cycles. Given that corruption is particularly prevalent in less developed (Third World) countries without a robust tradition of democracy, transparency, and human rights' respectability, it was not surprising that the Head of the United Nations Anti-Crime Agency ("UNACA")

¹⁰⁷ See generally Robert W. Tarun, *The Foreign Corrupt Practices Act Handbook: A Practical Guide for Multinational General Counsel, Transactional Lawyers, and White Collar Crimes Practitioners* (2010).

¹⁰⁸ *Ibid*, at 54. See UN Convention, Arts.15-17, 18, 22, 23, 24, & 25.

¹⁰⁹ See generally Lucinda A. Low, *Towards Universal Anti-Corruption Standards: The United Nations Convention Against Corruption and Other International Anticorruption Treaties: Too Much of a Good Thing?* (2005).

¹¹⁰ 'Arafa, *supra* note 44, at 415.

¹¹¹ *Id*. ("Actual enforcement and execution of this universal document will benefit the business sector because it will systematically level the playing-field among international competitors.")

¹¹² See generally Adefolake Adeyeye, *The Role of Global Governance in CSR*, 9 SANTA CLARA J. INT'L. L. 1, at 147 (2011). Vito Tanzi & Hamid Davoodi, *CORRUPTION, PUBLIC INVESTMENT, AND GROWTH* (1997). See also Vito Tanzi, *Corruption and the Budget: Problems and Solutions*, in *ECONOMICS OF CORRUPTION*, (1998).

¹¹³ See generally Vito Tanzi, *Corruption, Governmental Activities, and Markets* (1994). See Vito Tanzi, *GOVERNMENT ROLE AND THE EFFICIENCY OF POLICY INSTRUMENTS* (1995).

said: “this [...] uprisings in the Arab world highlighted the anger within societies at this scourge.” Furthermore, the Executive Director of the United Nations Office on Drugs and Crime (“UNODC”), Yury Fedotov, declared that: [T]he Arab Spring was “an emphatic rejection of corruption and a cry for integrity, [...] At the movement’s center was a deep-seated anger at the poverty and injustice suffered by [e]ntire societies due to systemic corruption.”

Societies antedating to see corruption cleaned up and addressed by a wave of traditional CSR movement are likely to be upset. Nonetheless, it looks that corporate governance conformations may provide a more operational and effective attitude. This is not to say that businesses should be observed as “evil artistes,” pursuing to do the slightest required in order to comply. Still, the data recommends that classical business behavior is slow to make way for the newer, broader CSR mandate. All in all, contributing in corruption may have some short term welfares compared to the application of high standards of CSR insofar as it is more meticulously linked to the prevailing governance controls related to director’s duties, reporting, accounting, and auditing requirements.

Some concerns that justify attention as the CSR dialogue moves forward embrace: (a) moving from virtuous charitable deeds to sustainable programs to accomplish growth encounters; (b) outlining CSR and its role to make the business case for CSR; (c) intensifying beyond social responsibility of firms and building a thoughtful corporate citizenship, the concept which emphasize not only business’s obligations but also its rights and corporate policy and accountability; (d) examining credible ways in which social responsibility agendas on the native level can be conformed to match efforts of multinational companies and their supply chains; (e) validating the role of business relations in motivating business commitment in development, capturing and interactive successes, and undertaking the collective action problems; (f) addressing exploitation and the informal/unregistered economy; (g) stressing the role of industrialists, SMEs, and family-owned enterprises (“FOEs”) in ecological development; (h) social awareness-raising among regional and local businesses, as well as cognizance raising among society; (i) coordinating regulation (federal-municipal-local) and guaranteeing stable and regular enforcement, and (j) comforting public-private partnerships to instruct a culture of awareness and ethical behavior in young and future leaders.

If escape from the underdevelopment in the Third World countries is sought, an accurate examination of its cause(s) should be undertaken with the goal of deciding the optimal role of the government in regulating economic activity. Also, intending to examine the nexus between institutional behavior and underdevelopment in the contemporary MENA region is imperative to take in to account. Last, but by no means least, CSR general consultants must prioritize the fight against corruption by economic practitioners. It is vital to think about accurate, certain goalmouths and policies and build upon the modern apparatuses advanced by the international (donor) community, mainly the UNCAC. The CSR drive recalls the potential to fortify commitments made by state parties by surfacing orthodox and typical theories into everyday business practice. So, it should be concerned with preserving and stimulating integrity, stability, and good governance while promising the disruption and containment of grave fiscal unlawful criminal offenses. It is anticipated that there is ample political, business, and community will to monitor and follow these strategies along with the political will, thus, contributing to sousing the firestorms of corruption. The struggle should be stopped at this point. This ambition would

be fulfilled through abandoning neoliberal prescriptions and putting feasible legal policies into play. And as the proverb said, “Bees that have honey in their mouths have stings in their tails and honey is sweet but bees sting . . . !”

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