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Linking Corruption and Human Rights:
An Unwelcome Addition to the
Development Discourse

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LINKING CORRUPTION AND HUMAN RIGHTS: AN UNWELCOME ADDITION TO THE DEVELOPMENT DISCOURSE

Morag Goodwin* & Kate Rose-Sender[‡]

1. INTRODUCTION

The explanation blurb to the conference¹ for which this paper was written states that corruption is, in the words of the organisers, “one of the greatest social evils of our time”. So normal have such hyperbolic claims become that, even in the world of academia, arguing against corruption as a social evil of mammoth proportions is like arguing against Christmas or in favour of drowning kittens. It automatically seems to place one on the wrong side of any debate. Similarly, the view that the integration of human rights and the development discourse is desirable is now so mainstream that objecting to it has almost as much purpose as attempting to stop a runaway truck by standing in front of it. However, we will risk the opprobrium, as well as the danger of being flattened, to argue that corruption is not as straightforward a social evil as the anti-corruption crusaders would have us believe. While there can be no doubt of the harm done by, to say nothing of the immorality of, an unaccountable leader stripping a poor country of its natural resources and depositing the proceeds in a Swiss bank account, our contention will be that defining what is corruption as it affects lives on a day-to-day basis is rarely ever so black and white. Instead, whether or not a redistributive action is labelled as corruption is an area mired in greyness and ideology. More pertinently for the theme of this book, we will also argue that the suggested link between corruption and human rights is either so straightforward as to be prosaic or else incoherent when taken as suggesting a more profound connection.

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¹ This chapter is a revised version of a paper presented at the conference ‘Corruption and Human Rights’ at Maastricht University, 22-23 October 2009; for documents relating to the conference, including the explanation of the theme of the conference,

<http://www.unimaas.nl/default.asp?template=werkveld.htm&id=TE12QN4K7A0F30K64511&taal=en>

That paper, dealing explicitly with the call for the creation of a human right to corruption free services, is available as a Maastricht Faculty of Law working paper (2009-14);

<http://www.unimaas.nl/default.asp?template=werkveld.htm&id=F60BL5P00MJO466V63M6&taal=nl>

As the call for a human rights approach to corruption from within the human rights world is implicitly directed at the developing world,² it is necessary to consider it by reference to the development industry. We see two elements to this story. The first is the rise of anti-corruptionism. Instead of simply lamenting the existence of corruption and the harm that it does, we wish to consider why it is that corruption suddenly became the central issue of concern within development – why it became, in the words of one scholar, “the new star of the development scene” in the second half of the 1990s.³ This paper will suggest that the anti-corruption drive – what this paper will term ‘anti-corruptionism’, denoting a narrative that places corruption at the centre of development concerns – is tightly bound up with the ‘good governance’ turn within the development discourse and, further, with the shift towards legal formalization. The appearance of corruption as such a central narrative in the relationship between key international institutions and developing countries supports a particular economic account of development and, as such, cannot be understood as neutral. This part of the story will attempt to locate the place of anti-corruptionism within the narrative of law and development and lay a little clearer its ideological associations and the goals it serves within the dominant development discourse. Such efforts at excavating the origins of anti-corruptionism do not of course suggest that corruption is not a social harm but instead are intended to suggest that an understanding of anti-corruptionism’s ideological roots is necessary if we are to grasp the implications and consequences of the emergence of (and support for) this domineering narrative.

The second element of the story focuses on the second half of the equation and considers the alleged connection from the perspective of the growing domination of human rights at the international level and the seemingly unstoppable drive to frame every aspect of life in terms of human rights concerns. Attempts to integrate development and human rights have appeared slightly more recently than anti-corruptionism and went mainstream in the 2000 Millennium Declaration.⁴ This paper will however argue that corruption does not lend itself well to capture by human rights language. Where the connection between the two is alleged to be one of

² For the suggestion that the World Bank’s anti-corruption drives primarily target Africa

³ TARA POLZER, ‘Corruption: Deconstructing the World Bank Discourse’, *LSE Destin Working Paper* No. 01-18(2001); available at www.lse.ac.uk/depts/destin, 2.

⁴ The Declaration recognises that ‘development and human rights are interdependent and mutually reinforcing’; *United Nations Millennium Declaration*, GA Res55/2, UN GAOR, 55th session, Supp 49, UN Doc A/RES/55/2 (8 September 2000).

outcome, we will suggest that it adds little to the stated aims of anti-corruptionism. We will also attempt to draw out the inconsistencies that arise in justifying the connection on the basis of the outcome of corruption. Moreover, while the desire to raise awareness of the potential harm of corruption is noble, this paper will argue that such proposals are harmful to the notion of human rights and counter-productive to the stated aim of ending corruption.

We cannot of course in the limited space attempt a thorough deconstruction of the origins and use of both the anti-corruption and human narratives within development discourse; the aim is instead the much more modest one of raising flags of concern for an audience coming at the issue predominantly from a human rights background. Where there is a link between human rights and corruption, it will be suggested that it lies in the instrumentalization of law in the services of the dominant neo-liberal approach to development. In sum, this paper will attempt to outline the case that the suggested link between human rights and corruption is an unhelpful and thus unwelcome addition to the development debate.

2. THE RISE OF ANTI-CORRUPTIONISM

The emergence of corruption as a *key* narrative strand within the development discourse took place within the second half of the 1990s. By 1999, the then-President of the World Bank, James Wolfensohn, could describe corruption as ‘the largest single inhibitor of equitable economic development’.⁵ However, there had been earlier attempts to put corruption on the international agenda. The UN General Assembly passed a resolution at the end of 1975 condemning corrupt practices of transnational corporations but only called upon national governments to adopt appropriate legislation to combat it;⁶ a more ambitious resolution proposing international measures met with resistance.⁷ Similarly, in 1979, ECOSOC put forward a Code of Conduct to tackle the problem of transnational illicit payments and suggested an international agreement on this topic. Both initiatives were rejected by the General Assembly. So why was corruption thrown into the spotlight in the 1990s, when its harmful effects had long been known?

⁵ *Washington Post*, 10 November 1999; cited in POLZER, ‘Corruption: Deconstructing the World Bank Discourse’, 2.

⁶ General Assembly resolution 3514 (XXX) (1975), 2441st plenary session, 15 December 1975.

⁷ POLZNER, ‘Corruption: Deconstructing the World Bank Discourse’, 8.

The post-war years of 1945-1970 were, generally speaking, years of optimism and enthusiasm in development studies in which there was a general consensus on what developing countries needed to do to achieve economic growth.⁸ Economies were national, developing countries were all alike, law was a tool of economic growth, and development policy coalesced around the general prescription for governments to be interventionist.

However, the shocks to the global economy of the 1970s and the simultaneous inflation and recession that followed dashed the optimism that had motivated and sustained the development efforts of the post-war generation. Even before the economic storm began to overwhelm developing economies, it was becoming apparent that twenty-five years of development efforts had yielded very little by way of the expected economic growth. Although some developing economies had grown, the majority had stagnated and were slipping ever further behind. Moreover, poverty as measured in terms of the basic necessities of existence was also increasing. Faced with such evidence, development economics floundered. Scholars either simply left the field or retreated to the academy to reflect upon what had gone wrong. What was to emerge was a new theory of economic development.

In place of a neo-classical Keynesian approach that placed the state at the heart of development strategy, a new generation of development economists instead identified the state as the problem. This ‘Chicago School’ formulated a laissez-faire model that saw the market as the centre of economic life. Instead of national development strategies aimed at ‘take off’ or ‘catch up’, the market was simply to be allowed to do its job of making everyone richer. The neo-liberal consensus that emerged centred around a concept of ‘rent-seeking’, whereby ‘rent’ was defined as ‘the direct use or waste of economic resources for non-economic gain’, and rent-seeking theories ‘were employed to show that, *given any choice*, developing-country governments would

⁸ See in particular, DUNCAN KENNEDY, ‘Three Globalizations of Law and Legal Thought: 1850-2000’; DAVID M. TRUBECK, ‘The “Rule of Law” in Development Assistance: Past, Present and Future’; and DAVID KENNEDY, ‘The “Rule of Law”, Political Choices, and Development Common Sense’, all in David M. Trubeck and Alvaro Santos (eds.), *The New Law and Economic Development. A Critical Appraisal* (Cambridge: CUP, 2006). The summary presented here does not do justice to the complicated and nuanced accounts of these authors; we hope however that it is sufficient for the points we wish to raise.

only serve themselves'.⁹ These ideas – centred around the state as problem rather than solution – were taken up with enthusiasm as an answer to earlier development failures.

This had considerable consequences for the perception of the role or utility of law within the development field. The law has a particular place in neo-liberal economic theory. On the surface, neo-liberal thinking was as instrumentalist and as positivist as interventionism had been earlier. Where legal instruments such as treaties, statutes and administrative decrees had created the regimes of government development plans, import substitution and general interventionism they were now used to dismantle them. But the theory of law underpinning neo-liberalism was quite different to that of earlier periods. Where the law & development movement had emphasised legal modernism, which they understood to require a flexible, pragmatic and hence anti-formalist approach to law, neo-liberal theory crucially viewed law as a limit on the state. In this shift from public law to private law, law was to limit the discretion of administrators and legislators by laying down hard, formal rules in the form of private rights, constitutional law and judicial review.¹⁰ This stress on private ordering, combined with judicial review to enforce private rights against the state, led to an understanding of development, in the words of David Kennedy, as development-through-formalization. Neo-liberal ideology required law to be a clean, functional instrument of the economic theory of the individual rather than the culturally and politically entangled social system that it undoubtedly is. At the same time, and as a corollary of this shift, development came to be seen less in terms of political economy or as an inherently political process but as a matter of technical expertise. This depoliticisation and technicalisation of the development discourse went hand in hand with the rise of neo-liberal theory.

The return to formalism noted above failed to grasp the lessons of law and development, in particular that of the inevitable implementation gap between law on the books and law in reality. This left the neo-liberal enthusiasts needing an alternative explanation for when the anticipated economic growth failed to emerge,

⁹ M. GALLAGHER, *Rent-Seeking and Economic Growth in Africa* (Oxford: Westview Press, 1991), 31 (emphasis in the original); cited in POLZNER, 'Corruption: Deconstructing the World Bank Discourse', 7.

¹⁰ KENNEDY, 'The "Rule of Law", Political Choices, and Development Common Sense', 138.

which, of course, it did.¹¹ Where the preferred explanation of law and development scholars throughout the 1960s and 1970s was that of bureaucratic resistance to legal reform efforts – i.e. blind adherence to formal rules preventing law from fulfilling its potential – from the 1980s onwards given the neo-liberalists’ insistence on formalism, implementation problems were instead viewed through the language of ‘corruption’, ‘government rent-seeking’ and ‘government failure’.¹²

The ‘good governance’ agenda thus arose in the 1990s in response to these ‘government failures’. The result was to turn a focus on rent-seeking into anti-corruptionism. The neo-liberal orthodoxy was under pressure not only for its failure to deliver growth but was also facing strong criticism by organisations such as UNICEF and the UNDP for the heavy toll exacted on the most vulnerable by the World Bank’s structural adjustment programmes and the IMF’s conditionality clauses. At the same time that the orthodoxy championed by the Bretton Wood Institutions (BWI) was being challenged, the end of the Cold War meant that the priorities of donor countries were changing: global politics had shifted and Western governments were no longer willing to prop up authoritarian leaders for strategic reasons. In conjunction with the demand that their money be used efficiently, donors wanted to support worthy governments. The decision by the leading development institutions such as the World Bank to adopt the good governance agenda is thus widely perceived as a defensive strategy; as Polzer puts it, ‘to forestall a perceived crisis of the neo-liberal paradigm through the co-option of a critical discourse’.¹³ Where critics might have dwelled upon unfair market structures or inappropriate reforms, their attention was diverted instead to a lack of institutional capacity at the local level necessary to manage the process of adjustment. In searching for an explanation for the failure to see the predicted economic growth once government interventionism had been ‘eliminated’ and the ‘correct’ laws been put in place, corruption emerged as a powerful stand-alone explanatory factor for the poor growth rate of much of the developing world. The

¹¹ There were of course countries in the South that experienced rapid economic growth during the 1980s and early 1990s – the so-called Asian Tigers – but these were precisely the countries that eschewed the structural adjustment demands of the IMF in favour of more state-led capitalism. See JOSEPH STIGLITZ, *Making Globalization Work* (London: Penguin, 2007), chapter 2.

¹² KENNEDY, ‘The “Rule of Law”, Political Choices, and Development Common Sense’, 112.

¹³ POLZNER, ‘Corruption: Deconstructing the World Bank Discourse’, 8, referring to G.J. SCHMITZ, ‘Democratization and Demystification: Deconstructing “Governance” as Development Paradigm’, in David B. Moore & Gerald J. Schmitz, *Debating Development Discourse: Institutional and Popular Perspectives* (London: Macmillan, 1995).

centrality of Africa to the good governance/ corruption debates at the World Bank is strongly indicative of the connection between poor development performance by orthodox criteria and the search for an explanation to hide those failings.¹⁴

That corruption emerged as such a key element in the good governance agenda flew in the face of the empirical evidence.¹⁵ It was simply assumed that long-term corruption weakened public institutions and would eventually impact upon economic growth.¹⁶ Indeed, the World Bank was keen to reassure its donors of their determination to ‘anchor[...] political conditionalities within the good-governance regime to orthodox economic conditionality and the fundamentals of “market-friendly” development’.¹⁷ As Santos also highlights in tracking the World Bank’s anti-corruption strategy, it was only once the institution had decided to expand its remit by becoming involved in the fight against corruption (thus allowing it to expand its role into the area of good governance wing without falling foul of its Charter commitment not to become involved in political issues) that it was able to begin producing studies linking low corruption levels to, among other things, low infant mortality and so on.¹⁸ The conviction that corruption was bad preceded the evidence. The connection between eliminating corruption and economic growth remains weak, and there is as yet no economic theory that predicts that the switch from a “corrupt” regime to a “non-corrupt” regime will lead to growth rather than simply a different sort of stunted equilibrium.¹⁹

¹⁴ See in this regard, POLZNER, ‘Corruption: Deconstructing the World Bank Discourse’.

¹⁵ Corruption is widely used in the World Bank good governance discourse as the antithesis of good governance; for example, the interchangeability of anti-corruption and good governance in DANIEL KAUFMANN, ‘Human Rights and Governance: The Empirical Challenge’, in P. Alston and M. Robinson (eds.), *Human Rights and Development. Towards Mutual Reinforcement* (Oxford: OUP, 2005).

¹⁶ IBRAHIM SHIHATA, ‘Corruption – A General Review with an Emphasis on the Role of the World Bank’, in *The World Bank in a Changing World* (1991), 604-605.

¹⁷ SCHMITZ, ‘Democratization and Demystification: Deconstructing “Governance” as Development Paradigm’, 71.

¹⁸ ALVARO SANTOS, ‘The World Bank’s Uses of the “The Rule of Law” Promise in Economic Development’ in Trubeck and Santos (eds.), *The New Law and Economic Development*, 273-275.

¹⁹ NICOLAS MEISEL & JACQUES OULD AOUDIA, ‘Is “Good Governance” a Good Development Strategy?’, *Agence Française Développement Working Paper 58*, January 2008 (which attempts to correlate the classic good governance indicators of a wide range of countries across the development scale with economic growth, and discovers no correlation). The connection between corruption and human development is equally hedged with caveats and exceptions, even in the work of those who conclude that corruption is a key factor. For example, Daniel Kaufmann concedes that there is no evidence linking HIV infection rates with good governance indicators, leading him to suggest the importance of ‘unbundling’, or a more nuanced approach. See KAUFMANN, ‘Human Rights and Governance: The Empirical Challenge’, 379.

This lack of empirical evidence has not prevented anti-corruptionism from becoming a central plank in the World Bank's programmes.²⁰

3. THE COST OF ANTI-CORRUPTIONISM

There are a number of consequences to the emergence of anti-corruptionism as a key explanatory factor for development failure. The first is principally a consequence of the ideology from which anti-corruptionism itself sprung but is also tied up with the attack on the state that anti-corruptionism encourages and supports. At the core of neo-liberalism is the simplistic mantra of private = good, public = bad. By viewing actions of the state as interference in the functioning of the market – as rent-seeking activities – neo-liberalism ignored the dangers of private monopolies and anti-competitive behaviour, both of which began to flourish internally. Moreover, as Joseph Stiglitz has persuasively argued, neo-liberalism as encapsulated by the Washington Consensus failed to take into account the extreme inter-relatedness of everything with everything else in society. The 'institutional blitzkrieg' approach of neo-liberal structural adjustment policies on developing economies destroyed social norms without replacing them and thus worked to remove the last barriers to full-scale corruption.²¹ The ideological roots of anti-corruptionism determined that other equally damaging behaviour that did not suit the current ideology was allowed to develop and grow unchecked.

The second consequence of anti-corruptionism is arguably more serious and is related again to its role within neo-liberal ideology. It is the way in which corruption has become a mono-casual or predominant explanatory factor for development failures. One of the most potent dangers of anti-corruptionism is therefore not that it is wrong to highlight the damaging nature of corruption – although much more work needs to be done to provide evidence for the supposition that it is actually harmful – but that it is too simple an explanation alone to account for the failures in development policies. If there has been one central lesson of the past sixty years of development disappointments, it is how little we understand of what actually works in enabling

²⁰ See the World Bank Governance section on its website: <http://www.worldbank.org/wbi/governance>

²¹ JOSEPH STIGLITZ, 'Whither Reform? Ten Years of Transition', Keynote Address at Annual World Bank Conference on Development Economics (28 April 1999), available at http://www.worldbank.org/research/abcde/washington_11/pdfs/stiglitz.pdf

people to fight their way out of poverty. From within this overwhelming uncertainty about what to do for the best, one guiding element has emerged: mono-causal explanations collapse when tested against the empirical evidence.²² The danger therefore of anti-corruptionism is that it diverts attention away from more nuanced accounts of development failures by providing an illusion of certainty in our understanding of development, and in doing so causes actual and on-going harm. The inability or unwillingness to develop a comprehensive understanding of failure contains within it the risk of failing all over again.

The crowding out of other priorities by anti-corruptionism is coupled with the difficulty that ‘tackling corruption’ fails to tell one anything about what action should be taken.²³ The ideological motivation for anti-corruptionism not only works to obscure whether there is any real connection between corruption and lack of economic growth, but this lack of research has hampered any deep-level understanding of the exact role that it plays and how best to tackle it. The prescription to governments that they need to fight corruption does not provide a list of priorities, a means of going about it or any unanticipated (negative) consequences that may arise. This is largely because ‘corruption’ tells us nothing about specific actions; instead it is what Polzer, following Euben, describes as an ‘othering’ tool. In place of describing specific actions, such as theft or vote-rigging, corruption is simply a negative evaluative concept that ‘tells us less about the behaviour itself ([e.g.] a transfer of assets) than about the value system of the person or society labelling it’.²⁴ One of the main effects of the term itself is thus to create a dichotomy between ‘the corrupt’ and ‘the good’ that mirrors neatly onto neo-liberalism’s central characterisation of the state as bad and the market as good; the othering nature of the discourse, moreover, allows the World Bank, as champion of the market, to take on the mantle of good expert in contrast to the corrupt developing state.

Focusing on the corruption of bureaucrats and government officials not only conveniently shields free market ideology from any responsibility for the failure to

²² For a de-bunking of mono-causal explanations within development, see ADAM SZIRMAI, ‘Explaining Success and Failure in Development’, *UNU-MERIT Working Paper* 2008-013 (2008).

²³ DANI RODRIK makes this point in *One Economics, Many Recipes* (Princeton: Princeton University Press, 2007), 224.

²⁴ POLZER, ‘Corruption: Deconstructing the World Bank Discourse’, 11.

live up to its claims of wealth creation and the BWI from any responsibility for their role; anti-corruptionism also exculpates any responsibility that the West – its institutions and its citizens – may have for, for example, the Cold War politics that courted ‘strong men’ and helped keep them in power; for the western banks that were only too happy to maintain secret accounts in which the powerful could hide their ill-gotten gains and which were then eager to lend huge sums of money to those they knew to be corrupt at exorbitant interest rates; for the inherently unfair system of global trade that continues to shore up the wealth of the global North without regard for the human cost to the South; and so on.²⁵ Corruption, because of its place within the good governance agenda, is an ahistorical discourse of the present. Moreover, it is one of course that locates development failures squarely within developing countries, and this predominating focus on developing government failures in the face of our own complicity in them has of course an undeniable smack of cultural imperialism to it.²⁶ As such, it is not only deeply unhelpful but also damaging to the goals of development as well as to the necessary relationship between the global North and South – an essential part of development if development goals, however defined, are to be achieved.

Anti-corruptionism arose from a desire to locate development failure with third world governments and protect the new economic orthodoxy from criticism rather than as a studied response to empirical data. To highlight the relationship between the emergence of anti-corruptionism and neo-liberal theory is not to suggest that corruption itself emerged as a consequence of the latter – corruption has been around for millennia and is as old as human political interaction itself – nor, without wishing to overly labour the point, to deny that wide-scale corruption can itself be harmful. What it does is demonstrate that the adoption of the fight against corruption as a key narrative within development thinking was a political choice that sought to highlight

²⁵ For an account of western complicity in, and hence (joint) responsibility for, the looting of African countries in particular, see THOMAS POGGE, *World Poverty and Human Rights* (Cambridge: Polity Press, 2007) and POGGE, *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor* (Oxford: OUP, 2007); see also Paul Collier for the suggestion that a focus on ensuring western banks comply with an anti-corruption agenda would be more effective; PAUL COLLIER, *The Bottom Billion* (Oxford: OUP, 2007), 135-7.

²⁶ Even those who work in the area of corruption studies note the neo-colonial aspects of contemporary approaches to tackling corruption; see INDIRA CARR, ‘Corruption, the Southern African Development Community Anti-corruption Protocol and the principal-agent-client model’, *International Journal of Law in Context* 5 (2009), 147-177.

certain aspects and conceal others. It is the centrality of its position in the development debate, the way in which its size overshadows more nuanced accounts and the way it acts as a stick with which to beat developing countries that makes it so unwelcome.

4. BUT IS IT HUMAN RIGHTS? LINKING HUMAN RIGHTS AND CORRUPTION

The attempt to assert a connection between human rights and corruption is arguably part of a wider trend within development and, more broadly, international law to integrate once separate areas of international concern with human rights.²⁷ Since the turn of the millennium, the UN has produced a plethora of documents and declarations attesting to the recognition by all ‘that development and human rights are interdependent and mutually reinforcing’.²⁸ Moreover, it is not only organisations of the UN that are championing such integration. Human rights organisations and human rights scholars have also been vocal in pushing for and claiming the desirability of the integration of human rights and development.²⁹

The attempt to integrate development within the human rights paradigm has not been without criticism, however, despite almost universal acceptance of it as a good thing and as something that we need more of. As Sundhya Pahuja highlights in her insightful article on the subject, what the integration of development and human rights actually does is blunt the emancipatory potential of human rights and co-opt them into the service of the development orthodoxy i.e. neo-liberalism. As she puts it, the co-

²⁷ See in this regard, ANTONIO CASSESE, *International Law* (Oxford: OUP, 2001), who welcomes the shift he sees at the normative level towards a more integrated international community; taken from SUNDHYA PAHUJA, ‘Rights as Regulation: The Integration of Development and Human Rights’, in Bronwen Morgan (ed.), *The Intersection of Rights and Regulation. New Directions in Sociolegal Scholarship* (Aldershot: Ashgate, 2007).

²⁸ See, notably, the 2000 Millennium Declaration, as well as the Millennium Development Goals (MDGs), which are derived from the Declaration; as well as the documentation relating to the 2005 World Summit, available at http://www.un.org/ga/59/hl60_plenarymeeting.html. The Millennium Declaration is a text adopted by the UN General Assembly in 2000 by the convened 147 Heads of States; United Nations Millennium Declaration, GA Res 55/2, UN GAOR, 55th session, Supp 49, UN Doc A/RES/55/2 (8 September 2000).

²⁹ Most prominently of course, AMARTY SEN, *Development as Freedom* (Oxford: OUP, 1999); more recently, PHILIP ALSTON and MARY ROBINSON (eds.), *Human Rights and Development. Towards Mutual Reinforcement* (Oxford: OUP, 2005); but also BÅRD A. ANDREASSEN and STEPHEN P. MARKS (eds.), *Development as a Human Right. Legal, Political and Economic Dimensions* (Cambridge MA: Harvard University Press, 2006) as well as those from a more critical background, such as ADAM GEAREY, *Globalization and Law: Trade, Rights and War* (Oxford: Rowman and Littlefield, 2005), notably 109.

joining of development and human rights ‘should be understood as the creeping transformation of a promised sphere of “rights” into a domain which may aptly be called “regulatory”’.³⁰ In place of human rights as a site for political contestation and claims,³¹ human rights as regulation denotes a focus on human rights as defined in positive law. For Pahuja, the political aspect or emancipator potential of human rights – what she terms the symbolic valence – exists in the gap between human rights norms as laid down in international law – the regulatory aspect of human rights – and the imaginative appeal that human rights hold. These two aspects of human rights – human rights as they are laid down in positive law and human rights as they are claimed – co-exist but are not co-extensive, and they often conflict. It is this conflict that opens up a space of contestation that provides the emancipatory potential of human rights. And it is precisely this tension that is neutralised by the merger of development and human rights, in which the rule-based aspect of human rights – their regulatory side – comes to dominate and mute the political aspect. It is this manoeuvre that forms the second element of the story that we wish to tell about the attempt to link human rights and corruption.

At the heart of this story is the crucial role that allegations of corruption have played and continue to play in legitimizing the instrumentalization of law within the development discourse. This shift to ‘development through formalization’, as noted in the rise of anti-corruptionism, is central to the way in which law is viewed as a tool of economic growth and hence in the dominant understanding of human rights as regulation rather than resistance. Corruption has thus played a key part in human rights becoming a tool in the subordination of society to the imperative of market-based economic growth. In blunting the potential of human rights, anti-corruptionism is deeply harmful to the human rights discourse where one views the empowering potential of human rights as their greatest asset.

But this is not what supporters of a corruption-human rights connection see when they allege such a link. Arguments in support of a connection between human rights and corruption focus overwhelmingly upon the impact that corruption has upon the

³⁰ PAHUJA, ‘Rights as Regulation: The Integration of Development and Human Rights’, 168.

³¹ For the claim that human rights have in the past acted as sites of contestation of the dominant development orthodoxy, see RAJAGOPAL BALAKRISHNAN, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: CUP, 2003).

actualization of rights.³² That such a connection may exist is clear – where there is large-scale siphoning off of funds, countries that are poor will struggle even more to provide the basic services that form part of the canon of socio-economic rights, for example – but, beyond stating the obvious, what does connecting the two actually achieve? Arguments normally run along the line that, in the words of two of the contributors to this volume, ‘[a] clear understanding of the practical connections between acts of corruption and human rights may empower those who have legitimate claims to demand their rights in relation to corruption’. Further, ‘if corruption is shown to violate human rights, this will influence public attitudes’.³³

Such an approach is problematic on a number of levels, not least of which is the idea that citizens of developing countries are not aware of the harm being done by corruption and need to be led by the hand to that understanding by western activists. Underlying this argument that citizens in developing countries need the connection to human rights to understand that their interests are being harmed (where they do not benefit from it of course!) is implicitly the understanding that they need to be told that it is wrong. This is what is meant by the argument that linking corruption to human rights will influence public attitudes. Either such citizens are being harmed and do not know it; or ‘corruption’ is an inevitable part of life, in which sometimes one benefits and sometimes someone else benefits, and it is difficult to see how linking corruption to human rights will have any impact at all. The first of these infantilises citizens of developing countries; and the second makes clear the banality of the proclaimed connection.

³² E.g., see MAGDALENA SEPULVEDA and JULIO BACIO TERRACINO, ‘Corruption and Human Rights. Making the Connection’, and MARTINE BOERSMA, ‘Corruption as a Violation of Economic, Social and Cultural Rights: Reflections on the Right to Education’, both in this volume. A similar argument is made by Daniel Kaufmann, Director of Global Governance at the World Bank Institute, on the basis of empirical analysis, which apparently shows that grand/political corruption, where it reaches the level of state capture, may play an important mediating role between civil and political rights and socio-economic rights. KAUFMANN, ‘Human Rights and Governance: The Empirical Challenge’, in Alston and Robinson, 373.

³³ SEPULVEDA and TERRACION, *ibid.*. This argument permeates the World Bank’s approach to charting corruption. According to Kaufmann, ‘well presented and simple comparative charts illustrating findings on corruption can help mobilise and given voice to previously silent and disparate citizenry groups.’ Cited in POLZER, ‘Corruption: Deconstructing the World Bank Discourse’, 15. No empirical evidence is presented to support this assumption that citizens are unaware of either corruption or the harm it does.

The second main problem with the arguments made in support of the link is that there is little that is empowering about being told that one's human rights are being violated. It not only characterises citizens of developing countries as passive victims but for rights to be empowering, they need to be defined and claimed at the local level, not be imposed or even proposed from outside. As such, the attempt to link corruption and human rights at the practical level is a classic example of rights as regulation. However, the argument about whether linking corruption to human rights can be empowering goes much deeper, and is linked to the way in which corruption has been defined in the anti-corruptionism discourse.³⁴ As suggested above in section 2, corruption has been defined by the World Bank at the outset in economic terms. This is the case not only because 'the political' is excluded from the World Bank's remit in its Articles of Agreement but also because, in keeping with neo-liberal thinking, the political is both viewed and constructed as inferior to the economic perspective.³⁵ While the integration of human rights and development and the development of the good governance agenda are in part the result of a recognition of the inappropriateness of viewing development solely in economic terms, the underlying economic motives are not altered or affected by framing good governance as human rights *ex post facto*. In other words, instead of human rights questioning the economic framing of development, the integration of human rights and development merely dresses up that framing in human rights language. Human rights in this context are not only *not* used to question the dominant framing of development as economic but they provide additional support for it by diverting attention away from the actual framing and by soothing the concerns of those who are uncomfortable with the neo-liberal dominance of development concerns. Human rights act as window dressing to the real back-room activity of development. As such, the attempt to connect human rights and corruption blunts the emancipatory potential of human rights, co-opting them into the service of the dominant ideology rather than enabling human rights to act as a tool for contesting it, and for contesting the subservience of the political to the economic.

³⁴ As well as to the way in which human rights are defined within the development discourse; see PAHUJA, 'Rights as Regulation: The Integration of Development and Human Rights'.

³⁵ See POLZER, 'Corruption: Deconstructing the World Bank Discourse', 15-17. This point will be returned to in the following section.

The attempt to connect human rights and corruption arguably goes one step further, however. It was suggested earlier that anti-corruptionism is necessarily ‘othering’ – that it creates a dichotomy between ‘the good’ international organisations and ‘the bad’ developing State. The link to human rights takes this dichotomy to a new level. Schmitt famously warned of the dangers of the concept of humanity, arguing that ‘whoever invokes humanity wants to cheat’. He went on, ‘[t]o invoke and monopolize [humanity] probably has certain incalculable effects, such as denying the enemy the quality of being human and declaring him to be an outlaw of humanity’.³⁶ The universalizing impulse at the core of human rights combined with the ‘othering’ nature of the anti-corruption discourse arguably works to place those ‘bad’ developing States and their peoples outside the bounds of humanity itself. It is not difficult to see echoes of the civilizing narratives of the past at work in this calculus.

Yet, if the main claim connecting corruption and human rights is that the former negatively affects the realisation of the latter, then the argument not only states the obvious but acts to shield the even more blindingly obvious in a similar way to anti-corruptionism. If the argument is that corruption entails, at the macro level, that there is less money to go around and that therefore where funding for essential services such as health and education is in any case severely limited, corruption further harms the realisation of related rights, the key is in the word ‘further’. Corruption, even where it takes place on a massive scale, is only one element that contributes to the realisation of rights in this way, and it is arguably not even the most important. Writing in a book supporting the interconnection of human rights and development, the then President of the World Bank, James Wolfensohn, helpfully makes the point for us. ‘Against that [the paltry amount of development aid]’, he writes, ‘you have agricultural subsidies of \$300 billion plus. And, you have military expenditures and defence. In 1999 they came to \$800 billion and our estimates today [2005] are around a thousand billion.’³⁷ The part that corruption plays in the story of development failure and of the problematic implementation of human rights is dwarfed in scale by

³⁶ CARL SCHMITT, *The Concept of the Political* (1927) (trans. George Schwab, University of Chicago Press, 1996), 54.

³⁷ JAMES D. WOLFENSOHN, ‘Some Reflections on Human Rights and Development’, in Alston and Robinson, *Human Rights and Development*, 24. Wolfensohn was the President who launched the World Bank’s advance into the territory of corruption at the 1996 Annual General Meeting of the World Bank and IMF (see World Bank, *Helping Countries Combat Corruption*. A Report of the Poverty Reduction and Economic Management Network, 1997).

the cost to developing countries of the unfairness of the global trading system, of the interest on debt accumulated under dubious lending practices, or of global expenditure on military. The problem is of course that we don't feel good about acknowledging the responsibility of European agricultural subsidies for suffering and hardship in the developing world but we do get to feel good by taking the moral high ground over corruption. The argument in favour of a connection – while understandable as part of a natural reaction to simplify in the face of almost overwhelming complexity – is not only relatively banal but it is thus also unhelpful in shielding from view the main villains of the story. Even where one argues that corruption is just as important a factor in diverting resources as those suggested above, it is still only one villain among others; such figures alone cannot explain the huge investment being made in connecting human rights and corruption and not, say, the arms industry and human rights.

Moreover, if the aim of connecting human rights to corruption is that it can provide a means of redress for individual harm caused by a corrupt act,³⁸ advocates of this approach need to focus much more on the demand side than they do at present. Put more pertinently, why would the purpose of making a link be to assist individuals? The criminal justice system exists to investigate and punish individual, demonstrable acts of corruption, and there has been little attempt to present arguments for what a human rights approach would add in such a situation. For example, corruption – even where it is blatant political corruption – is not viewed in developing countries as a human rights matter.³⁹ The alleged recent attempt by Illinois Governor Ron Blagojavich to sell the Senate seat vacated by President Obama for personal profit may be viewed as a breach of the voters' trust but it is not understood as a violation of their human rights. In addition, the felt need to link corruption to human rights appears to stem from a desire to overcome the feelings of inadequacy or helplessness that are engendered by societal corruption i.e. widespread endemic corruption. This begs the question of how an individual complaint through an international human rights mechanism to a body sitting in Geneva would help in combating endemic

³⁸ For this suggestion, see SEPULVEDA and TERRACINO, **INSERT PAGE NO.**

³⁹ Since 1921, Illinois Governors Lemmington Small, Otto Kerner, George Ryan, and Dan Walker have all been convicted of various corrupt practices; Governor Ron Blagojavich was recently removed from office and is awaiting trial on corruption-based charges. See *The Wall Street Journal*, December 10, 2008.

corruption. There are perhaps more effective mechanisms for tackling corruption, if that is the aim.⁴⁰ The argument is certainly not intuitive and requires argumentation before it can be taken seriously; moreover, in addition to being rooted in a naïve understanding of the nature of the politics of ‘corruption’, it similarly portrays citizens as victims of rather than as participants in society i.e. it says nothing about who wins and who loses in the re-distribution of resources that are labelled corruption. It is the politics of corruption/ discretion that form the focus of the following section.

5. IT’S POLITICS, STUPID

US political organizer and Chicago reformer Saul Alinsky famously said: ‘Life is a corrupting process from the time a child learns to play his mother off against his father in the politics of when to go to bed; he who fears corruption fears life.’

An inherent feature of the neo-liberal domination of the development discourse is the attempt to deny the ideological or political nature of development and development advice. This is clear not only in the emergence of anti-corruptionism but also in the efforts by development professionals to frame themselves as experts that stand above the ideological fray, as well as in the instrumentalisation of law and the related shift from rights to regulation. Yet there is no escaping the fact that development, however defined, is inherently political. Development policy-making is, as David Kennedy reminds us, political both in the impact decisions have on power distribution between commonly understood ideological distinctions between left and right, as well as in terms of distributional choices about resources, whether between groups within society, between rich and poor, North and South, urban and rural and so on.⁴¹ The danger of anti-corruptionism here is that, in providing the key justification for formalism, in underpinning the instrumentalization of law and in defining the terms of the good governance agenda, it acts to obscure the political choices at stake. In place of the legitimacy of the state being conceived in terms of meeting its citizens’ needs as defined by society itself, legitimacy has come to be viewed as meeting the needs of external investors for certainty. Together, they allow development professionals to operate with the illusion that good governance is a neutral policy prescription; that

⁴⁰ See for example the fascinating talk by SHAFFI MATHER arguing for the use of a profit-making service to fight corruption; see

http://www.ted.com/talks/shaffi_mather_a_new_way_to_fight_corruption.html

⁴¹ KENNEDY, ‘The “Rule of Law”, Political Choices, and Development Common Sense’, 95.

good governance and/or (the rule of) law can be quantified, measured and augmented in an isolated space from overtly political decisions about resource distribution. In this good governance discourse, data is golden. Based on her analysis of the World Bank's anti-corruption strategies, Polzer has concluded that "[d]ata is not only intended to inform or challenge political judgement; it is constructed so as to *replace* the need for political judgement."⁴² Good governance as anti-corruptionism belongs to an understanding of the State as an amalgam of management techniques – politics as administration – rather than the State as the locus of political contestation; it is a vision of the public realm solely as an enabling environment for the private sector. This attempt to separate the economic sphere from political governance has consequences for how citizens perceive the legitimacy of the state.⁴³

The narrative of development-through-formalization, of which the fight against corruption is a major justificatory crutch, obscures the political choices that not only need to be made but that are constantly being made. It is of course only an illusion that the act of choosing has been avoided. Further, every political decision, every choice on policy, every decision to opt for one mode of legal enactment over another has winners and losers.⁴⁴ Obscuring the necessarily political nature of decision-making prevents both proper consideration of the consequences of a given decision or universal prescription in its particular setting and thus precludes decision-makers from making a conscious choice based upon anticipated redistributive outcomes, as well as denying the opportunity to be heard to those who are likely to be among the losers.

Moreover, by obscuring the political choices that are constantly being made, formalization creates the conditions for its own justification. Where the processes of development are viewed as technical and apolitical, politically-based decisions are automatically suspect. Political acts or acts of discretion become corruption, further justifying the call for formalization as a means of tackling corruption. In other words, formalization in order to tackle corruption or rent-seeking creates the conditions which it allegedly is needed to tackle. Take the famous assertion by Hernando de Soto that one of the main reasons for the wealth disparity between the North and the South

⁴² POLZNER, 'Corruption: Deconstructing the World Bank Discourse', 17 (emphasis hers).

⁴³ *Ibid.*

⁴⁴ TRUBECK, 'The "Rule of Law" in Development Assistance, 88.

is that many people in the South are unable to access the capital in their property because of the frequent lack of clear title to land.⁴⁵ This possibility of accessing the capital beneath their feet should also be granted to squatters, who should according to de Soto be given formal title to the land on which they live or farm. This will give them the security to improve the land, the opportunity to borrow money against it or sell it to realise their capital for entrepreneurial activities. It is undoubtedly the case that formalization of legal title will have this effect but de Soto fails to consider the re-distributive nature of his policy prescription.

Most obviously, granting title to squatters constitutes a transfer of resources away from the current legal owner and in doing so destroys his or her capital. Moreover, formalizing legal title in this way and giving the new owners rights to evict trespassers prevents trespassers from carrying out economic activities connected to the land, as well as denying future squatters the possibility of gaining title to the land. de Soto's analysis of the link between the formalisation of a part of the legal system and economic growth is, further, based on the explicit assumption that the squatters will be more productive owners of the land than the current owners, which seems likely, but also that they will be more productive than trespassers or future squatters, for which he provides no evidence. Formalising legal title is therefore presented as best legal practice for developing countries with no discussion of possible alternatives, such as an arrangement of shared usage of the land by squatters and trespassers under the guidance of a flexible law. More pertinently, it has the potential to be powerfully re-distributive. The simplicity of the act of formalisation creates a smokescreen both to the assumptions implicit in the recommendation as well as the distributive choices that are being made.

The point here is the link that is made between discretion and corruption. Indeed, as Kennedy notes, "sometimes 'corruption' is simply a code word for public discretion",⁴⁶ so that the state acts corruptly when it acts by discretion rather than

⁴⁵ HENANDO de SOTO, *The Mystery of Capitalism. Why Capitalism Triumphs in the West and Fails Everywhere Else* (Great Britain: Black Swan, 2001). The example is used by Kennedy and the analysis is his, 144-145.

⁴⁶ KENNEDY, 'The "Rule of Law", Political Choices, and Development Common Sense', 145.

mechanically following the rule laid-down.⁴⁷ Anti-corruptionism blurs the distinction between normal transaction costs and distorted or corrupt costs i.e. between acts of government that redistribute resources by regulating transactions and what neo-liberal enthusiasts label an illegitimate ‘distortion’. It is only a small step from here to labelling such acts as corruption.

Yet acts of discretion by the state and its officials are not simply burdens upon the smooth functioning of economic interactions but are choices that defend the entitlements of some against others. For example, a local official charging a fee for a stamp to formalise an economic activity in one place constitutes a subsidy for the economic activity for an informal user somewhere else, as in the form of public health care or education. Moreover, even where the fee goes into the pocket of the official it is nonetheless an act of redistribution towards the official and his or her family and may be a socially accepted one where much of the economy functions informally.⁴⁸ Such small acts of redistribution, distortion or corruption may also work in an informal economy to create a stable structure of interaction; and removing them may have unpredictable and yet far-reaching consequences for the stability of economic activity.⁴⁹ Anti-corruptionism, in undermining governance that it does not like, may thus lead to greater instability, and thus achieve the opposite of what is claimed for it. Moreover, labelling such acts of redistribution as corruption can actually undermine the provision of basic services (and thus of course the actualisation of human rights). This is because the determination to label discretion at the local level as corruption appears to presuppose a well-functioning public sector with which such acts must necessarily be in competition. For example, the decision to label the actions of a rural doctor in supplementing his non-liveable wage from the public health sector by charging his patients an additional, informal fee as corruption and/or as a violation of his patients’ right to health seems unduly harsh given that it may mean that his own children will starve. Similarly the recent observation by Transparency International that war-torn nations are the most corrupt is simply another way of saying that the

⁴⁷ Discretion is blamed, for example, by World Bank officials for the misspending of funds linked to structural adjustment during the 1980s; see POLZNER, ‘Corruption: Deconstructing the World Bank Discourse’, 23.

⁴⁸ There is also hypocrisy at play within the anti-corruption dynamic, namely that where some get rich from development it is explained as the neutral working of the market; where others seek to redress that balance, it constitutes corruption.

⁴⁹ This is particularly the case given that the ideological underpinnings of anti-corruptionism have made detailed research into the practical consequences of removing ‘corruption’ unnecessary.

lack of a well-functioning public sector as defined by western norms requires the citizens of such countries to rely on informal governance systems.⁵⁰ Indeed, Polzer has convincingly highlighted the way in which the World Bank, in developing its anti-corruption strategies, relies upon an ideal-type administration that has no basis in empirical analysis of how industrialised bureaucracies actually function.⁵¹ She notes that the fictional bureaucracy – described in the 1997 World Bank report as being defined by a ‘*professional* civil service, *sound* financial management, *disciplined* policy making’⁵² – is implicitly contrasted with developing country bureaucracies that are viewed as highly political. It is a view of governance as management rather than governance as politics, of administrative values and practice as pure by virtue of their separation from politics.

What is particularly odd about the attack on discretion as part of anti-corruptionism is that it is an inherent part of governing well – a necessary part of governance that is flexible enough to respond to the unexpected and responsive to its citizens’ needs. It is a fundamental mainstay of the social welfare state model, for example. Not only, therefore, is the attempt to prohibit discretion under the label of corruption a recipe for bad governance but anti-corruptionism in this form is attempting to impose upon developing governments standards that would never be tolerated in the developed world. Anti-corruptionism undermines the sovereignty of developing countries in a way that would be equally unacceptable to developed countries. As Polzer suggests,⁵³ what is changed by replacing ‘discretion’ with ‘ownership’?

There is a genuine danger with anti-corruptionism that any re-distributive effort, whether a ‘legitimate’ act of government or not, is labelled as corruption by a movement that denies the necessarily inherent political character of decision-making. It seems reasonable to suggest that this may have a chilling effect on the openness of decision-makers and have as a consequence that the necessary debate about the

⁵⁰ See TI press release launching the 2009 results for Corruption Perception Index; http://www.transparency.org/news_room/latest_news/press_releases/2009/2009_11_17_cpi2009_en (last accessed 28 February 2010)

⁵¹ POLZNER, ‘Corruption: Deconstructing the World Bank Discourse’, 19. See also WILLIAM de MARIA, ‘The New War on African “Corruption”: Just Another Neo-Colonial Adventure’, paper presented at the 4th International Critical Management Studies Conference, Cambridge University, 4-7 July 2005.

⁵² World Bank, *Helping Countries Combat Corruption*, op. cit., 39 (emphasis added by Polzer).

⁵³ POLZNER, ‘Corruption: Deconstructing the World Bank Discourse’, 23.

political choices facing societies in the developing world and the re-distributive consequences of the choices being made is stifled. Moreover, the attempt to subordinate the political realm to the economy and its needs *qua* management is likely to undermine the legitimacy of the State. In many developing countries, particularly in Africa, the State remains the most important economic actor and promises of welfarist re-distribution are an important basis of legitimacy for developing States. Preventing developing States from making such promises is unlikely to increase trust in the institutions of government. This of course runs counter to the claimed aims of anti-corruptionism, namely transparency, informed participation and the restoring of societal trust.⁵⁴

6. CONCLUSION

The arguments that we have mustered against anti-corruptionism run the spectrum of empirical (there is no clearly established link between corruption and economic growth), practical (anti-corruptionism is harmful in itself for a number of stated reasons) and normative (anti-corruptionism obscures the political choices that are being made and thus deny the people of developing societies the possibility of participating in genuine debate about the decisions being made about *their* development; further, the attempt to impose upon the peoples of the developing world a set of hard rules that will not be applied to the developed North is, quite simply, a variation on the well worn theme of neo-imperialism). What we have attempted to show is that while corruption itself may be harmful in certain situations, the centrality of the fight against corruption within development discourse is certainly harmful – a problem that will only be exacerbated by giving the narrative succour by connecting it to human rights. Moreover, anti-corruptionism not only crowds out debates within development as to the best strategy for a given society but actually undermine the stated aims of fighting corruption. This, the rise of anti-corruptionism, was the first part of the story.

The second part attempted to unravel the connection between corruption and human rights, an attempt that should be viewed as part of the wider effort at the integration of human rights and development. We found ourselves unconvinced by the arguments

⁵⁴ See World Bank, *Helping Countries Combat Corruption*, a report on the Poverty Reduction and Economic Management network, 1997, 3.

currently put forward in support of such a connection, finding them both banal and contradictory in the claims to empowerment. This is not to suggest that it is impossible that such a link may have merit, but that there is at present no convincing argument to suggest it. To know what it means to say that human rights and corruption are connected at this practical level, there would need to be a thorough consideration of the social setting of actions labelled as corruption – the questions of who wins and who loses in the complicated web of personal and societal relations, and when – before arguments for the need for a link can be rescued from banality.

However, even were it possible to make a coherent practical connection between corruption and human rights, we would still have a number of concerns. In place of the widely-touted practical link between the two, we attempted to show that the real connection is the role of anti-corruptionism in the instrumentalization of law that manifests itself so obviously at present in the colonization of development discussions by human rights. This instrumentalizing turn not only seeks to deny the political both within government and within the law, which in itself is deeply concerning, but in making the further step of connecting human rights and development, the emancipatory potential of human rights is blunted and the ability of human rights to act as a means of resistance to the economic framing of development is thwarted. The attempt to connect corruption and human rights is thus another example of, in the language of Pahuja, the use of human rights as regulation. As such, it is deeply harmful to the human rights discourse where one views the emancipatory aspect of human rights to be their most important contribution.

As such, and for all these reasons, we find the efforts being put into connecting human rights and corruption a most unwelcome addition to the development debate. While we doubt that we have managed to convince the moral crusaders, we hope that we have at least managed to suggest a few reasons for doubt concerning the wisdom behind such a move.