HOW ONE MAN'S MEAT CAN BECOME ANOTHER MAN'S POISON: THE PITFALLS OF INTERNATIONAL ANTI-CORRUPTION STRATEGIES IN LATIN AMERICA. THE ARGENTINE CASE.

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ABSTRACT

This paper examines the unintended consequences of international anti-corruption strategies in Latin America, with a focus on Argentina. Despite efforts to combat corruption through standardized reforms, empirical evidence reveals a paradoxical increase in corruption levels. Cultural and technical barriers hinder the effective implementation of these strategies. Culturally, the imposition of standardized rules disregards local nuances and historical context. Technically, the "one-size-fits-all" approach clashes with the Argentine legal framework, resulting in multiple implementation challenges. These obstacles lead to normative hypertrophy, increased complexity, anomie, and legal uncertainty, creating new avenues for corruption. This paper highlights the disparity between compliance and effectiveness, emphasizing the need for a more nuanced and context-specific approach to anti-corruption efforts. By shedding light on these shortcomings, it aims to inform discussions and stimulate effective strategies to tackle corruption in Latin America.

I. INTRODUCTION

The international community has endeavored to contribute to the fight against corruption[1] in Latin America primarily through the pursuit of a legal reform agenda. However, this approach has proven to be not only ineffective, but also counterproductive as it has inadvertently fueled opportunities

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[1] One of the most widely accepted definitions of corruption is formulated by the World Bank: the abuse of public office for private gain. Similarly, Transparency International defines corruption as the abuse of entrusted power for private gain. *See Anticorruption Fact Sheet*, WORLD BANK (2020), https://www.worldbank.org/en/news/factsheet/2020/02/19/anticorruption-fact-sheet#:~:text=Corruption%E2%80%94the%20abuse%20of%20public,affected%20by%20fragility%20and%20conflict, *archived at* https://perma.cc/2KP8-EUND; *see also What is Corruption?*, TRANSPARENCY INTERNATIONAL (2024), https://www.transparency.org/en/what-is-corruption, *archived at* https://perma.cc/HH4P-ATJZ.

for corruption. Argentina serves as a clear illustration of this failure. Empirical studies have demonstrated that while domestic anti-corruption laws may improve when the most stringent international standards are adhered to, corruption paradoxically thrives at alarming levels.

The international approach is characterized by its simplicity. Initially, international law prescribes standardized measures aimed at fostering transparency and accountability. Subsequently, the international community exerts pressure on developing countries to enact legislation embodying these prescribed measures, with the expectation that corruption levels will decrease. Nevertheless, the implementation of these international legal standards domestically has encountered numerous obstacles.

Some of these barriers stem from cultural factors. The imposition of standardized rules by central nations upon peripheral countries exemplifies an ethnocentric approach that disregards local historical, axiological, social, political, and economic nuances and traits. Moreover, laws enacted without genuine sovereign deliberation prove challenging to comply with, thereby eroding their effectiveness and applicability.

Other obstacles are technical in nature. The universally promoted "one-size-fits-all" recipe, in conjunction with the Argentine legal framework, demonstrates significant incompatibilities, giving rise to multiple implementation problems.

The international strategies employed to combat corruption have inadvertently backfired due to the aforementioned difficulties. The proliferation of loosely integrated legal reforms has resulted in a state of normative hypertrophy. The ubiquity of formal rules has intensified the complexity of the system, thereby increasing legal uncertainty and fostering an environment of lawlessness and anomie. Consequently, public officials have been afforded greater discretion, creating fresh avenues for corrupt practices. Domestically enacted anti-corruption laws, which are promoted by the international community, serve as mere symbolic gestures toward global cooperation but fail to yield any positive effects.

This paper aims to first demonstrate the profound disparity between compliance and effectiveness by employing widely recognized indicators ("The Gap"). Subsequently, it will delve into the underlying causes of this disparity, focusing on the international community's approach and the cultural and technical barriers it encounters when implementing anti-corruption laws in certain developing countries, such as Argentina. Lastly, it will explore the impact of overlapping, non-applicable formal rules on the prevalence of corruption.

The ultimate objective of this paper is to shed light on the shortcomings of current methods, raise awareness regarding the necessity of reevaluating international tactics, and advocate for a more nuanced approach to tackling the pervasive and widespread issue of corruption.

II. What This Research Does Not Argue

This study by no means suggests that corruption is more acceptable in Argentina or Latin America than in other regions. The present research does not aim to analyze corruption as a value, but rather to explain factors that

influence the level of corruption. In this work, corruption represents a variable whose magnitude is objectively measured through internationally recognized assessments, and the focus here is on how a culture harboring certain values, particularly socio-economic values, also impacts corruption levels.

Furthermore, this research does not argue that cultural values are determinants or creators of an inevitable or unavoidable destiny, nor does it claim that Argentina is condemned irremediably to endure the whims of corruption. On the contrary, what is asserted is that various cultural factors, though conducive to dishonest practices, call for the adoption of particular anti-corruption strategies. The strategy must be guided, first and foremost, by considering the specific cultural and legal characteristics of each context in which greater transparency is sought.

This research is far from stating, likewise, that the international community should not get involved in this issue. On the contrary, the international community is an essential actor without which necessary reforms can hardly be achieved. To such an extent, this work does not seek to exclude international organizations from the mission but rather aims to convince them to approach with a more empathetic perspective towards the particularities of each operating space, in order to achieve greater accomplishments and, at the same time, foster a less disruptive relationship with society.

The intention of this article is to influence the way nations address global policy issues, including corruption. Despite the increasing development of a globalized world where values are homogenized, criticism of the imperialism inherent in international anti-corruption legislation is not obsolete. Only when the world reaches a stage where geopolitical influence becomes an insignificant cultural factor will such criticism lose relevance. However, the world has not yet reached that stage. Currently, cultures, with varied nuances in values and beliefs, remain substantially influenced by nationality, regions, and physical proximity. Consequently, existing international criminal norms against corruption continue to affect the legislative prerogatives or self-governance of nations.[2]

III. The Gap

This section aims to illustrate a profound disparity between the degree of compliance exhibited by Argentina regarding its international commitments and the actual outcomes achieved in the fight against corruption. To accomplish this objective, I will undertake the following steps: (a) elucidate the conceptual distinction between compliance, implementation, and effectiveness; (b) demonstrate that despite adhering to the most stringent international standards, corruption in Argentina has escalated to alarming levels.

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[2] Steven R. Salbu, *Battling Global Corruption in the New Millennium*, 31 L. & Pol'y in Int'l Bus. Rev. 47, 76 (2011).

A. Compliance, Implementation, and Effectiveness

When evaluating the outcomes of international agreements aimed at inducing change within domestic contexts, it is imperative to differentiate between compliance, implementation, and effectiveness.[3]

"Compliance" entails the behavior of an actor that aligns with the explicit rules set forth in a treaty. It pertains to whether the actions of a State Party—a State that signed and ratified the instrument—conform to the precise provisions of the treaty. Hence, compliance is contingent upon both behavior of the State Party and the strictness and breadth of its legal standards. Mere compliance with the literal provisions of an international treaty does not necessarily reflect the law's utility or impact, as compliance can occur without any substantive efforts being made by the parties to implement the treaty.

"Implementation" denotes the process of translating international commitments into practice, encompassing the adoption of new legislation within domestic legal systems. While this concept is of paramount importance, a comprehensive analysis cannot overlook the aspect of "effectiveness." The latter signifies a favorable change in behavior exhibited by a State Party.

"Effectiveness" of anti-corruption conventions is gauged by the degree to which they prompt behavioral changes that align with the objectives of international law. Consequently, international instruments can be deemed effective if they engender the desired shift in behavior, even without eradicating corruption in its entirety.

As I will demonstrate, Argentina exhibits an exceptionally high level of compliance and implementation concerning its international commitments to combating corruption. These factors are closely associated with "mechanical" measures, such as signing and enacting relevant agreements. However, the abysmal effectiveness achieved by international law in Latin America, and particularly in Argentina, is nothing short of staggering.

B. Spotting the Gap

Argentina serves as an extraordinary case study, as it demonstrates a stark contrast: while domestic anti-corruption legislation has improved in line with the most rigorous international standards, corruption has escalated to rampant levels.

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[3] *See* Giorleny D. Altamirano, *The Impact of the Inter American Convention Against Corruption*, 38 U. Miami Inter-Am. L. Rev. 487, 508 (2006).

1. The Main Indicators Employed in This Research: Their Meaning and Relevance

a. Transparency International Corruption Perceptions Index (TI CPI)

Among those involved in formulating and studying public policies, this index is the most common measure for assessing the level of corruption in each country[4] and has been compiled by the University of Passau in Germany since 1995 to the present.[5] In general, it has been asserted that the perceived level of corruption is commonly a good indicator of the actual level of corruption,[6] and its validity and reliability have been established in various studies.[7]

Corruption is challenging to measure due to its secretive nature. However, the TI CPI serves as a reasonable measurement parameter, consisting of questionnaires administered to business actors and financial journalists. The TI CPI does not determine the actual level of corruption but rather attempts to establish the perceived level of corruption in a country by entrepreneurs, considering its potential impact on business. It is interesting to note that even citizens and officials in countries with lower scores, i.e., those positioned as more corrupt, do not question its significance.[8]

Furthermore, although "corruption" and "perception of corruption" are not equivalent, the latter influences the former, and a high level of perception has devastating effects on its own.[9] Just as corruption is influenced by social and cultural variables, so is the perception of corruption.[10]

It is noteworthy that the TI CPI and the World Bank's Control of Corruption Index substantially coincide, demonstrating a correlation of 0.97.[11]

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[4] Jakob Svensson, *Eight Questions About Corruption*, 19 J. Econ. Persp. 19, 22 (2005); Jason De Backer, Bradley T. Heim & Anh Tran, *Importing Corruption Culture from Overseas: Evidence from Corporate Tax Evasion in the United States*, 117 J. Fin. Econ. 122, 126 (2005).

[5] Ahmed Seleim & Nick Bontis, *The Relationship Between Culture and Corruption: A Cross-National Study*, 10 J. Intell. Cap. 165, 174 (2009).

[6] Johann Graf Lambsdorff, *Corruption in Empirical Research – A Review*, 9th Anti-Corruption Conference, Durban, South Africa, Dec. 1999, http://www1.worldbank.org/publicsector/anticorrupt/d2ws1_jglambsdorff.pdf, *archived at* https://perma.cc/6UR6-V72L; Johann Graf Lambsdorff, *Consequences and Causes of Corruption: What Do We Know from a Cross-Section of Countries?*, Passauer Diskussionspapiere - Volkswirtschaftliche Reihe, No. V-34-05, Universität Passau, Wirtschaftswissenschaftliche Fakultät, (2005).

[7] Thomas D. Lancaster & Gabriella R. Montinola, *Toward a Methodology for the Comparative Study of Political Corruption*, 27 Crime, L. & Soc. Change 185, 198 (1997); Hoon Park, *Determinants of Corruption: A Cross-National Analysis*, 11 Multinat'l Bus. Rev. 29, 38 (2003); Rajib Sanyal, *Determinants of Bribery in International Business: The Cultural and Economic Factors*, 59 J. Bus. Ethics 139, 141 (2005); Eugen Dimant, *The Nature of Corruption: An Interdisciplinary Perspective*, Econ. Discussion Papers, No. 2013-59, Kiel Inst. for the World Econ. (IfW), (2013).

[8] Kathleen A. Getz & Roger J. Volkema, *Culture, Perceived Corruption, and Economics: A Model of Predictors and Outcomes*, 40 Bus. & Soc'y 7, 17 (2001).

[9] Natalia Melgar, Máximo Rossi & Tom W. Smith, *The Perception of Corruption*, 22 Int'l J. Pub. Op. Res. 120, 120-121 (2010).

[10] *Id.*

[11] Dimant, *supra* note 7, at 8.

b. Global Integrity Report (GIR)[12]

The values published by the Global Integrity Report are generated through a meticulous and collaborative examination process, involving a synthesis of information from various sources, sometimes conflicting. Following the peer review process, the Global Integrity staff identifies specific data points where reviewers have noted problematic scores. Subsequently, the entire team of the evaluated country engages in a debate on the issue, and appropriate changes, when necessary, are decided upon in the original data based on the information received from the country's team.

In particular, concerning the category of "implementation gap," it refers to the disparity between, on one hand, the legal framework of the country for good governance and anti-corruption efforts, and on the other hand, the actual application and compliance with that legal framework. The "implementation gap" is established by first generating a score for the legal framework and a score for actual implementation for each country. These two values are derived through separate calculations. Once the scores for the legal framework and actual implementation are generated, the real score is simply subtracted from the legal score to produce the implementation gap for the respective country.

2. The Argentine Gap

The Global Integrity Report[13] (GIR) bestowed a remarkable score of 97 out of 100 upon Argentina in 2010[14] regarding the strength of its legal framework.[15] Specifically, the Argentine Anti-Corruption Law achieved a flawless score of 100 out of 100[16]—an impeccable achievement. However, in the same year, Argentina ranked 105th on the Transparency International Corruption Perceptions Index (TI CPI),[17] with a score of 2.9 out of 10.

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[12] *See The Global Integrity Report: 2011 - Methodology White Paper*, Global Integrity (2011) https://www.globalintegrity.org/wp-content/uploads/2018/12/2011_GIR_Meth_Whitepaper.pdf, *archived at* https://perma.cc/6SRK-7EM4.

[13] The values published by the Global Integrity Report are generated through a rigorous and collaborative examination process, which involves a balance of information from various sources, often with conflicting perspectives. Following the peer review process, the staff at Global Integrity identifies specific data points where reviewers have highlighted problematic scores. The entire team involved in evaluating the country engages in a discussion regarding the issue, and ultimately, appropriate changes are decided upon, if necessary, based on the information received from the country team.

[14] *Global Integrity Report 2010 – Qualitative Report – Argentina,* Global Integrity (2010), https://www.globalintegrity.org/resource/gir2010-report-argentina/, *archived at* https://perma.cc/2EDV-NF4Q.

[15] Argentine criminal law suffers from numerous drafting or "design" flaws. However, the Global Integrity Report does not assess these specific issues. Instead, the evaluation focuses on the existence of institutionally prescribed mechanisms as stipulated in the normative framework. While it may be advisable to consider improving how certain criminal offenses are regulated, the measurement conducted by the Global Integrity Report is what is of interest here. It would be absurd to argue, for example, that the problem of corruption in Argentina can be attributed to the absence of the verbs "require" or "request" in Article 256 of the Penal Code (bribery). Global Código Penal [Cód Pen.] art. 256 (Arg.). This perspective will be further explored throughout this work.

[16] Global Integrity Report 2010, *supra* note 14.

[17] Among policy-makers and scholars in the field of public policy, this index is widely used to measure the level of corruption in each country. It has been developed by the University of

Equally enlightening are the findings from the Global Corruption Barometer (TI GCB) for the period of 2010-2011. These results reveal that 62% of the public believed that corruption had increased in Argentina, while a mere 8% expressed the opinion that corruption had decreased. Moreover, the same index for 2013 indicated that, when asked about the changes in the level of corruption in Argentina over the previous two years, 58% of respondents believed that it had increased significantly, 14% claimed a slight increase, 19% perceived it to have remained constant, 6% noticed a minor decrease, and 3% observed a substantial decrease.

Table 1. Argentina's Scores

Year	GIR - Legal Framework	GIR - Anti-Corr. Law	GIR - Actual Implementation	TI CPI Score	TI CPI Rank
2004	–	75	63	2.5	108
2005	–	–	–	2.8	97
2006	95	100	64	2.9	93
2007	94	100	56	2.9	105
2008	90	100	51	2.9	109
2009	–	100	–	2.9	106
2010	97	100	77	2.9	110
2011	97	100	–	3	100
2012	97	100	–	3.5	102
2013	97	100	–	3.4	106
2014	97	100	–	3.4	107
2015	97	100	–	3.2	106
2016	97	100	–	3.6	95
2017	97	100	–	3.9	85
2018	97	100	–	4.0	85
2019	97	100	–	4.5	66
2020	97	100	–	4.2	78
2021	97	100	–	3.8	96
2022	97	100	–	3.8	94

Passau in Germany since 1995 to the present day. It is generally asserted that the perceived level of corruption is a reliable indicator of the actual level of corruption. The validity and reliability of this index have been established through various research studies. *See generally* Lancaster & Montinola, *supra* note 7; Hoon Park, *supra* note 7; Sanyal, *supra* note 7; Eugen Dimant & Thorben Schulte, *The Nature of Corruption: An Interdisciplinary Perspective*, 17 German L. J. (Special Issue) 53 (2016).

FIGURE 1.

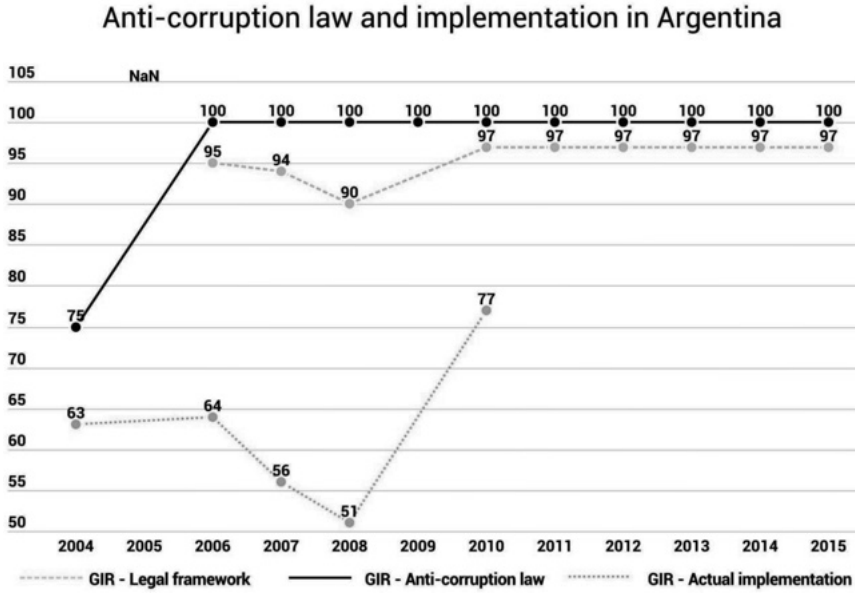

Table 1 and Figure 1. Source of data: *Global Integrity Report 2006 — Qualitative Report — Argentina*, GLOBAL INTEGRITY (2006), https://www.globalintegrity.org/wp-content/uploads/2019/08/GIRScorecard2006_Argentina_comments.pdf, *archived at* https://perma.cc/DYB6-SECS; *Global Integrity Report 2007 — Qualitative Report — Argentina*, GLOBAL INTEGRITY (2007), https://www.globalintegrity.org/wp-content/uploads/2019/08/GIRScorecard2007_Argentina_comments.pdf, *archived at* https://perma.cc/YCM4-QS8E; *Global Integrity Report 2008 — Qualitative Report — Argentina*, GLOBAL INTEGRITY (2008), https://www.globalintegrity.org/wp-content/uploads/2019/08/GIRScorecard2008_Argentina_comments.pdf, *archived at* https://perma.cc/4BZU-GQ5Z; *Global Integrity Report 2010 — Qualitative Report — Argentina*, GLOBAL INTEGRITY (2010), https://www.globalintegrity.org/wp-content/uploads/2019/08/GIRScorecard2010_Argentina_comments.pdf, *archived at* https://perma.cc/V6QT-4QMA; *Corruption Perceptions Index*, TRANSPARENCY INTERNATIONAL (2010), https://www.transparency.org/en/cpi/2010, *archived at* https://perma.cc/U4J8-V46D.

It is important to note the following clarifications: (1) Due to the unavailability of GIR data for Argentina beyond 2010, it is assumed that the score remained constant, given that Argentina did not repeal any anti-corruption laws. In fact, since then, Argentina has enacted new anti-corruption legislation, including the "whistleblower law" and a corporate criminal liability law for cases of corruption. (2) Unfortunately, there is no information available regarding the actual implementation of GIR measures after 2010.

FIGURE 2.

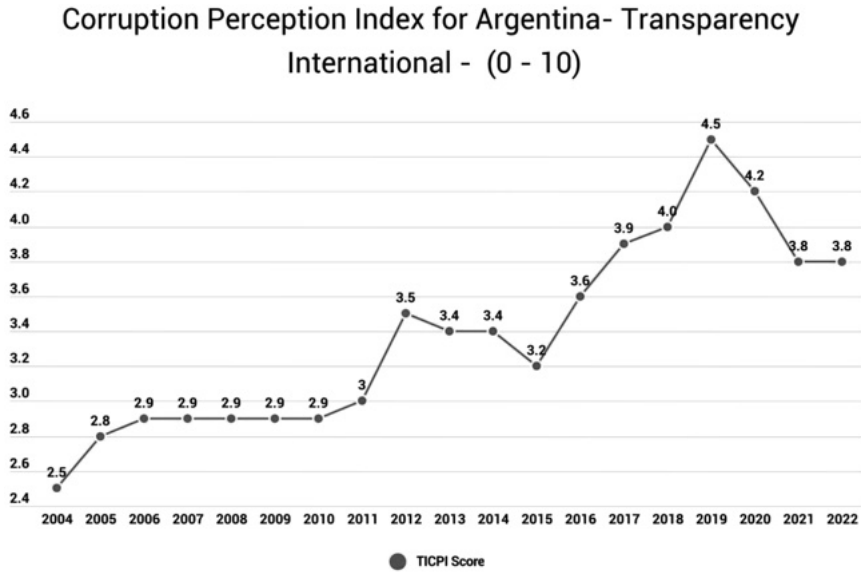

Figure 2. Source of data: *Transparency International Corruption Perceptions Index*, TRANSPARENCY INTERNATIONAL (2004-2022), www.transparency.org/research/cpi/overview, *archived at* https://perma.cc/C822-8VE5.

The available data reveals a pronounced disparity between the commendable standards set by Argentina's legal framework and anti-corruption legislation, and the distressing prevalence of deeply entrenched corruption within the country. Notably, it is worth highlighting that countries with significantly lower levels of corruption often obtained considerably lower scores in terms of the efficacy of their legal frameworks in combating corruption compared to Argentina.

FIGURE 3.

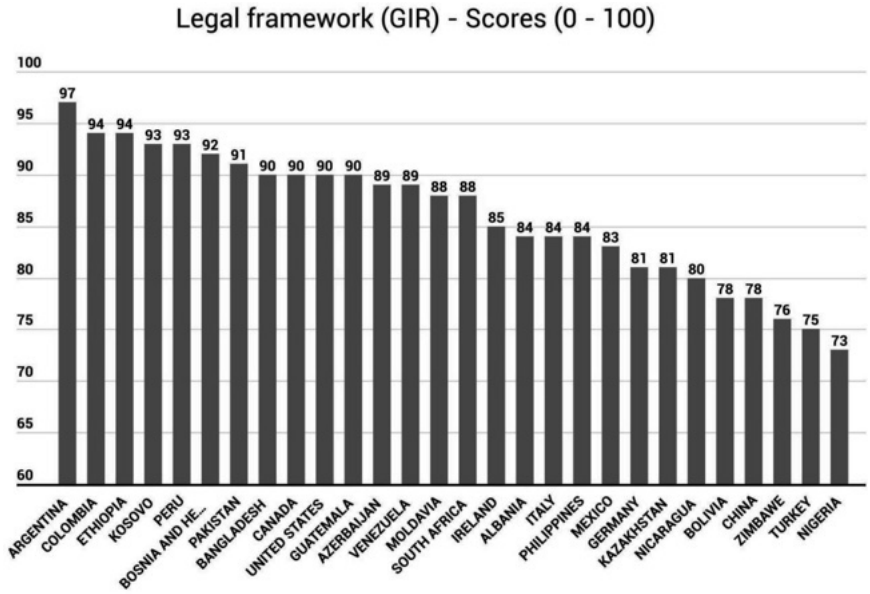

Figure 3. Source of data: *Global Integrity Report 2008 — data*, GLOBAL INTEGRITY (2008), https://www.globalintegrity.org/resource/gir-2008-data/, *archived at* https://perma.cc/SRQ5-Z8CU; *Global Integrity Report 2010 — data*, GLOBAL INTEGRITY (2010), https://www.globalintegrity.org/resource/global-integrity-report-2010-data/, *achieved at* https://perma.cc/XD6F-L6WU; *Global Integrity Report 2011 — data*, GLOBAL INTEGRITY (2011), https://www.globalintegrity.org/resource/gir-2011-data/, *archived at* https://perma.cc/DXY3-TWJQ.

The data sheds light on a notable phenomenon, wherein countries widely regarded as having low levels of corruption, such as Germany, Canada, and the United States, consistently obtained lower scores in terms of the readiness of their legal frameworks to combat corruption when compared to Argentina. For instance, Germany's scores in the Transparency International Corruption Perceptions Index (TI-CPI) ranged between 7.9 and 8.2 from 2004 to 2016.[18] However, according to the Global Integrity Report 2011, Germany's legal framework received a score of 81 points, which was 16 points lower than Argentina's score in 2010.[19] Similarly, Canada's TI-CPI scores ranged between 8.1 and 8.9 from 2004 to 2016,[20] while its Global Integrity Report—Legal Framework Scores for the years 2007, 2008, and 2010 were 89, 90, and

[18] *Corruption Perceptions Index*, TRANSPARENCY INTERNATIONAL (2004-2016), https://www.transparency.org/en/cpi/, archived at https://perma.cc/GVZ7-VW38.

[19] Corruption Perceptions Index (2010), *supra* TABLE 1 and FIGURE 1.

[20] *Corruption Perceptions Index*, *supra* note 18.

90, respectively.[21] A similar pattern can be observed for Japan and the United States.

These findings highlight a paradoxical situation wherein countries considered among the least corrupt in the world, as per Transparency International, exhibit comparatively lower scores in terms of the preparedness of their legal frameworks to combat corruption when compared to Argentina. This underscores the need for a nuanced understanding of the complex interplay between legal frameworks, anti-corruption efforts, and actual outcomes in different national contexts.

FIGURE 4.

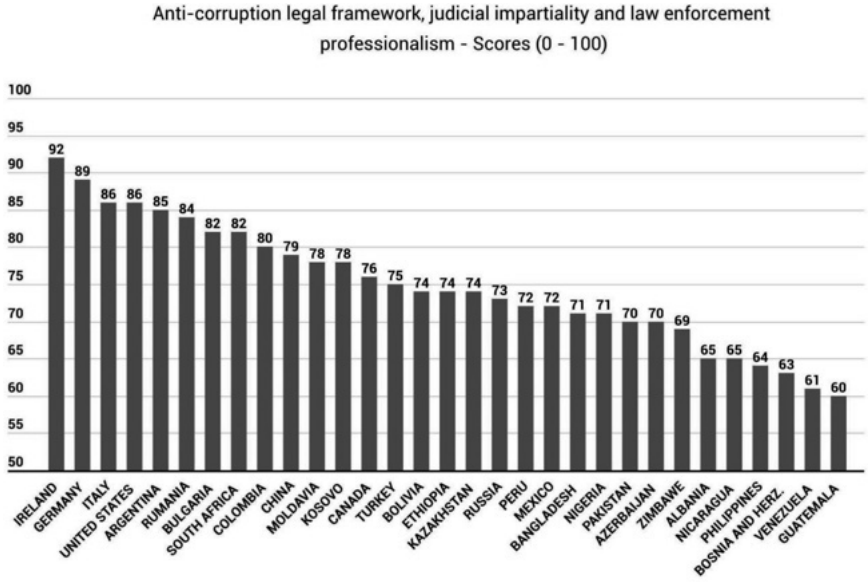

Figure 4. Source of data: Global Integrity Report 2010 — data, *supra* FIGURE 3. Global Integrity Report 2011 — data, *supra* FIGURE 3.

Figure 4 reinforces the aforementioned conclusions, highlighting that Argentina's scores align with those of developed countries with low levels of corruption in relation to a more specific indicator. This indicator pertains to the standards of laws governing the combat against corruption, judicial impartiality, and the professionalism exhibited in enforcement. It is noteworthy that Argentina's performance in this particular domain demonstrates a degree of parity with countries widely recognized for their robust anti-corruption measures and well-established judicial systems. This further accentuates the

[21] *Global Integrity Report 2007 — data*, GLOBAL INTEGRITY (2007), https://www.globalintegrity.org/resource/gir-2007-data/, *archived at* https://perma.cc/3Q9H-SGVP; Global Integrity Report 2008 — data, *supra* FIGURE 3; Global Integrity Report 2010 — data, *supra* FIGURE 3.

need for a comprehensive analysis of the factors contributing to the effectiveness and outcomes of anti-corruption efforts within diverse national contexts.

FIGURE 5.

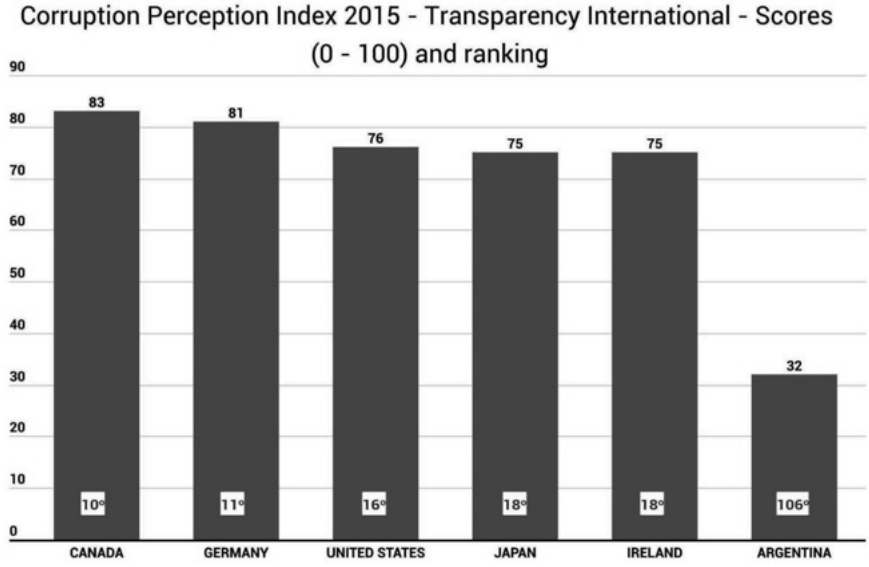

Figure 5. Source of data: *Corruption Perceptions Index*, TRANSPARENCY INTERNATIONAL (2015), https://www.transparency.org/en/cpi/2015, *archived at* https://perma.cc/28NP-MZFE.

Figure 5 serves to elucidate the stark disparity between the trajectory of domestic anti-corruption law in Argentina and the resultant surge in corruption levels ("The Gap"). Notably, as Argentina made strides in enhancing its domestic anti-corruption legislation, adhering to the most rigorous international standards as evidenced in Figures 1, 3, and 4, the prevalence of corruption within the country reached alarming proportions. In the 2015 Transparency International Corruption Perceptions Index (TI-CPI), Argentina obtained a score of 32 out of 100 and ranked 106th, while developed nations with comparatively lower legal standards as measured by Global Integrity Report scores emerged as paragons of transparency on the global stage.

In addition to the TI-CPI, the World Bank Worldwide Governance Indicators ("WBWGI") furnish valuable insights. The WBWGI encompasses a section dedicated to the "Control of Corruption" and another focusing on the "Rule of Law." These indicators capture perceptions regarding the extent to which public power is exploited for personal gain, encompassing both minor and major forms of corruption, as well as instances of state capture by influential elites and private interests.[22]

[22] Daniel Kaufmann & Aart Kraay, *Worldwide Governance Indicators*, THE WORLD BANK (2023), http://info.worldbank.org/governance/wgi/pdf/cc.pdf, *archived at* https://perma.cc/968L-KTSX.

The data presented in Figure 5 provides further substantiation for the divergence observed between the strengthening of anti-corruption legislation in Argentina and the simultaneous escalation of corruption levels. It underscores the imperative for a comprehensive examination of the multifaceted dimensions of corruption encompassing not only legal frameworks, but also issues pertaining to the rule of law and the prevention of state capture by vested interests.

FIGURE 6.

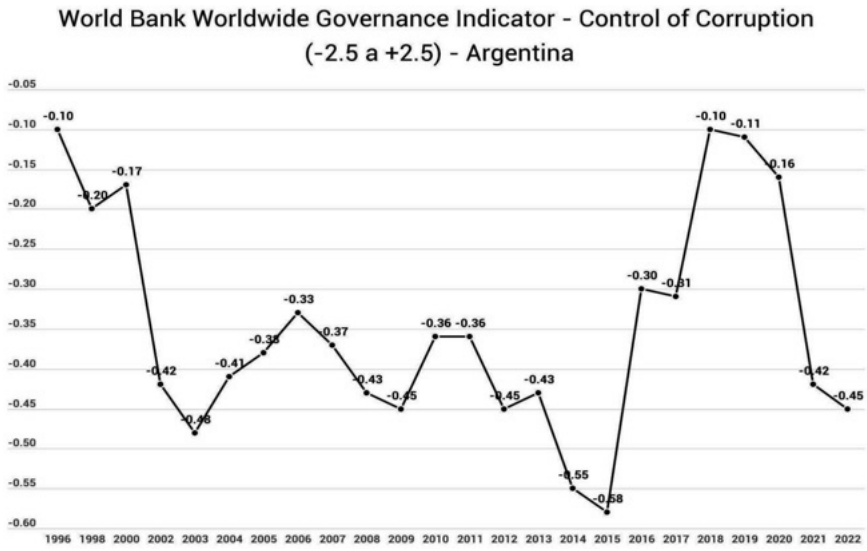

Figure 6. Source of data: Daniel Kaufmann & Aart Kraay, *supra* note 22; *see also* Interactive Data Access – WorldWide Governance Indicators, THE WORLD BANK, https://www.worldbank.org/en/publication/worldwide-governance-indicators/interactive-data-access, *archived at* https://perma.cc/S483-SYR6.

Higher values correspond to better governance.

Figure 6 corroborates the earlier conclusions by highlighting a consistent pattern. The World Bank's Control of Corruption measurement reveals a concerning trend in Argentina, wherein the strengthening and refinement of anti-corruption laws coincided with a decline in the actual control of corruption. In 1998, the control of corruption was recorded at -0.1, but from 2008 to 2013, it deteriorated to -0.4. The peak was reached in 2014 at -0.5, despite the perception that the legal framework had achieved a state of perfection.

This counterintuitive observation challenges conventional reasoning. As time progresses and Argentina's legal anti-corruption framework is enhanced or maintained, there appears to be an erosion of effective corruption control. This suggests a disconcerting alignment between the improvement of laws and the encroachment of corrupt practices upon the state.

It is crucial to acknowledge that while this paper focuses primarily on Argentina as a case study, its findings and considerations may serve as valuable insights for exploring the broader Latin American context. The region shares common traits and challenges. For instance, countries such as Guatemala, Honduras, Jamaica, and Trinidad & Tobago also demonstrate high levels of compliance, including automatic compliance,[23] with the Inter-American Convention Against Corruption ("ICAC"), yet corruption perceptions among citizens, experts, and enterprises have not improved. Moreover, the Transparency International Corruption Perceptions Index and the Governance Research Indicator Country Snapshot suggest perceived corruption has worsened since 2000.[24]

The Country Risk Guide ("ICRG") produced by the Political Risk Group[25] further confirms that neither the ratification nor the implementation of anti-corruption measures has effectively mitigated the risk to investors in Guatemala, Honduras, Jamaica, and Trinidad & Tobago.[26]

It is also useful to examine the behavior of private sector actors during the analyzed period, noting that their ethical conduct has not improved despite the high normative standards. Empirical evidence substantiates the connection between business integrity and foreign bribery. The evaluation of companies' ethical conduct in a specific country, as gauged by the World Economic Forum's Executive Opinion Survey (WEFEOS), exhibits a robust correlation with perceptions of foreign bribery originating from that country. Companies hailing from nations where corporate ethics are perceived to be firmly ingrained are generally viewed as less prone to involvement in foreign bribery.[27]

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[23] Automatic compliance can be defined as the situation in which a country's legislation complies with the international convention even before the latter was adopted by the country.

[24] Altamirano, *supra* note 3, at 534.

[25] This instrument provides information on political risks in both developed and developing countries, indicating whether there have been any advancements towards creating a more favorable environment for investors.

[26] Altamirano, *supra* note 3, at 535.

[27] Deborah Hardoon and Finn Heinrich, *Bribe Payers Index*, Transparency International, 10 (2011), https://issuu.com/transparencyinternational/docs/bribe_payers_index_2011?mode=window&backgroundColor=%23222222, *archived at* https://perma.cc/QD6A-MM5D.

FIGURE 7.

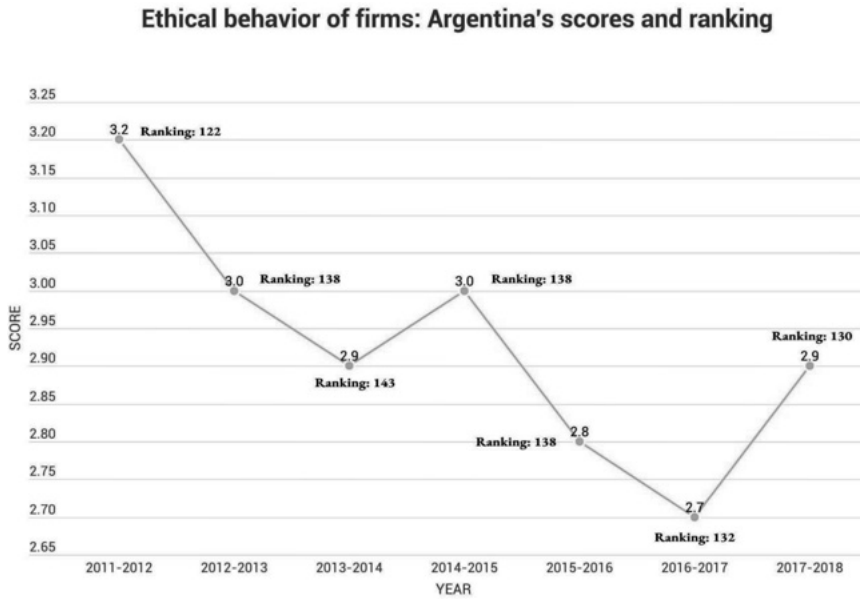

Figure 7. Scale: 1 to 7. 1 = extremely poor—among the worst in the world; 7 = excellent—among the best in the world.
Source of data: *Global Competitiveness Report 2011–2012*, WORLD ECONOMIC FORUM (2011), https://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf, *archived at* https://perma.cc/4ZZ4-6KWE*; Global Competitiveness Report 2012–2013*, WORLD ECONOMIC FORUM (2012), https://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf, *archived at* https://perma.cc/A7S9-E5RP; *Global Competitiveness Report 2013–2014*, WORLD ECONOMIC FORUM (2013), https://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf, *archived at* https://perma.cc/8PCQ-AB6H; *Global Competitiveness Report 2014–2015*, WORLD ECONOMIC FORUM (2014), https://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf, *archived at* https://perma.cc/3HNR-C2RY; *Global Competitiveness Report 2015–2016*, WORLD ECONOMIC FORUM (2015), https://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf, *archived at* https://perma.cc/2JSC-RANF; *Global Competitiveness Report 2016–2017*, WORLD ECONOMIC FORUM (2016), https://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf, a*rchived at* https://perma.cc/AL3B-VEEL; *Global Competitiveness Reports 2017–2018*, WORLD ECONOMIC FORUM (2017) https://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017–2018.pdf, *archived at* https://perma.cc/4QM8-GW83.

This approach adopted by the international community, which compelled countries to adhere to a standardized recipe of legal amendments, has proven to be counterproductive. As I will elaborate in Section V, its ineffectiveness has inadvertently bolstered the prevalence of opportunities for corruption.

IV. A Flawed Approach

This section will delineate the standardized approach that the international community has devised to combat corruption and delve into the reasons for its subsequent failure. Furthermore, it will expound upon the challenges encountered when implementing one-size-fits-all legal prescriptions in developing countries, with a particular focus on Latin America, highlighting both cultural and technical obstacles.

A. The Standardized Approach of International Law

The international approach to combating corruption follows a straightforward pattern. International law establishes standardized recipes aimed at promoting transparency and accountability. Subsequently, the international community exerts pressure on developing countries to enact legislation that incorporates these prescribed recipes, with the expectation that this will reduce corruption levels.

During the 1990s, the adoption of one-size-fits-all economic recipes for developing countries proved unsuccessful. The Washington Consensus, characterized by the slogan "stabilize, privatize, and liberalize," imposed a fixed package of economic measures on Latin American and Sub-Saharan African countries. However, this approach failed to consider the unique constraints on economic growth in each region or country and neglected to recommend tailored measures accordingly. To achieve successful reform, it is necessary to undertake a diagnostic analysis that targets these specific constraints, followed by creative and imaginative policy design. Lastly, institutionalizing the process of diagnosis and policy response is crucial. The Washington Consensus overlooked these considerations and neglected to acknowledge the need for tailored approaches, ultimately leading to its failure.[28] The Washington Consensus failed in this process and avoided the basic consideration that "different strokes for different folks"[29] are needed to achieve successful reform.

The international community's approach to combating corruption through the enactment of fixed packages of reforms shares a similarity with the Washington Consensus: an ethnocentric view that assumes what works in one context will work universally. This approach disregards the need for contextualization and contributes to the failure of international law in addressing corruption effectively.

Insufficient attention has been given to conducting diagnostic analyses to individualize constraints in the fight against corruption or to developing creative and imaginative policy designs. Furthermore, there has been a lack of institutionalization in terms of diagnosing and responding to corruption-related

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[28] Dani Rodrik, *Goodbye Washington Consensus, Hello Washington Confusion? A Review of the World Bank's Economic Growth in the 1990s: Learning from a Decade of Reform,* 44 J. of Econ. Literature 973, 982 (2006).

[29] This phrase is used by Dani Rodrik (*id.* at 982), in the context of criticism to the Washington Consensus.

issues. Instead, there is heavy reliance on a one-size-fits-all package of legal amendments that countries are expected to adopt to combat corruption. Sanctions may follow if countries fail to comply with these requirements.

It is essential to recognize that a country's laws reflect its traditions, history, values, culture, social struggles, social composition, and idiosyncrasies. Therefore, assuming that identical legal provisions will fit every jurisdiction is questionable.

International organizations primarily focus on whether countries comply with their commitment to amend their laws. These organizations encourage the adoption of various measures through conventions, recommendations, guidelines, and follow-up mechanisms. These measures include:[30] (a) criminalizing corrupt acts not yet covered by domestic law (for instance, transnational bribery, illicit enrichment, different types of bribery, or forms of aiding and abetting); (b) amending existing regulations deemed inappropriate by the international community; (c) facilitating international cooperation in corruption cases (for instance, extradition, the divulgence of information upon the request of foreign authorities, or the undertaking to refrain from invoking bank or tax secrecy in cases involving classified information); (d) enabling judicial measures to investigate and punish corruption (for instance, the potential for penalizing legal entities or the confiscation and forfeiture of illicitly obtained assets, along with the establishment of an appropriate timeframe for relevant statutory limitations); (e) the implementation or revision of legislation promoting transparency in the performance of public duties (for instance, the disclosure of assets by public officials, the establishment of monitoring systems for public servants, the formulation of codes of conduct, the disclosure of conflicts of interest among government personnel, the establishment of transparent procedures for government hiring and procurement, the provision of mechanisms to safeguard whistleblowers, and the adoption of accounting standards for corporations).

The standardized application of these legal formulas encounters two types of obstacles: (a) cultural barriers and (b) technical barriers. These barriers arise due to differences in cultural contexts and the technical incompatibility between standardized prescriptions and the specific legal systems of each country.

B. Cultural Barriers

It has been established that the most corrupt countries have a significantly low level of human capital, while governmental interventionism, institutional quality, and absence of competition also influence corruption.[31] Empirically,

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[30] This classification is based on the main international anti-corruption instruments applicable in Latin American countries. *See generally* The Inter-American Convention against Corruption (1996); The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions(1997); United Nations Convention Against Corruption (2003).

[31] Svensson, *supra* note 4, at 21, 29, 34.

the relationship between the level of corruption and various economic, legal, and social factors has been confirmed.[32]

Among the influential economic factors are the endowment of natural resources,[33] competition,[34] economic freedom,[35] economic growth,[36] the size of the state or degree of government intervention,[37] globalization,[38] income distribution,[39] administrative and political inefficiency,[40] inflation,[41] economic

[32] A comprehensive compilation of research and sources on the subject can be found in Dimant & Schulte, *supra* note 17, at 63; *see generally* Dimant, *supra* note 7.

[33] Alberto Ades & Rafael Di Tella, *Rents, Competition, and Corruption*, 89 Am. Econ. Rev. 982, 983 (1999); Carlos Alberto da Cunha Leite & Jens Weidmann, *Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth*, Working Paper of the Int'l Monetary Fund 99/85 (1999); Gabriella Montinola & Robert Jackman, *Sources of Corruption: A Cross-Country Study*, 32 Brit J. Pol. Sci. 147, 158 (2002); Laarni Escresa & Lucio Picci, *The Determinants of Cross-Border Corruption*, 184 Public Choice 351, 353 (2020).

[34] Alberto Ades & Rafael Di Tella, *The New Economics of Corruption: A Survey and Some New Results*, 45 Pol. Stud. 496, 497 (1997); Andrei Shleifer & Robert Vishny, *Corruption*, 108 Q. J. Econ. 599, 616 (1993).

[35] Rajeev K. Goel & Michael A. Nelson, *Economic Freedom versus Political Freedom: Cross-Country Influences on Corruption*, 44 Australian Econ. Papers 121, 131 (2005); Martin Paldam, *The Cross-Country Pattern of Corruption: Economics, Culture, and Seesaw Dynamic*, 18 Eur. J. Pol. Econ 215, 238 (2002); *see also* Joseph La Palombara, *Structural and Institutional Aspects of Corruption*, 61 Soc. Rsch. 325, 338 (1994).

[36] Bryan W. Husted, *Wealth, Culture, and Corruption*, 30 J. Int'l Bus. Stud. 339, 354 (1999); Abdiweli Ali & Said Isse Hodan, *Determinants of Economic Corruption: A Cross-Country Comparison*, 22 Cato J. 449, 451 (2003); Aziz N. Berdiev, Yoonbai Kimb & Chun-Ping Chang, *Remittances and Corruption*, 118 Econ. Letters 182, 182 (2013); Paldam, *supra* note 35, at 238.

[37] Goel & Nelson, s*upra* note 35; Montinola & Jackman, *supra* note 33, at 158; Ali & Hodan, *supra* note 36, at 460.

[38] Patrick Glynn, Stephen J. Kobrin & Moises Naim, The Globalization of Corruption, Corruption and the Global Economy (Kimberly Ann Elliott ed.) (1997); Hung-En Sung & Doris Chu, *Does Participation in the World Economy Reduce Political Corruption? An Empirical Inquiry*, 3 Int'l J. Comp. Criminology 94, 95 (2003); Wayne Sandholtz & William Koetzle, *Accounting for Corruption: Economic Structure, Democracy, and Trade*, 44 Int'l Stud. Q. 31, 48 (2000).

[39] Husted, *supra* note 36; Paldam, *supra* note 35.

[40] Robert Nowak, *Corruption and transition economies*, U.N. Economic Comm'n for Europe 1, 6-7 (2001).

[41] Getz & Volkema, *supra* note 8, at 24; *see generally* Miguel Braun & Rafael Di Tella, *Inflation, Inflation Variability and Corruption*, 16 Econ. & Pol. 77 (2004).

openness,[42] per capita income,[43] poverty level,[44] regulatory structure,[45] tax system,[46] trade openness,[47] wage level,[48] and economic development.[49]

Legal factors include the accountability system,[50] bureaucratic structure[51] civil society participation,[52] freedom of the press,[53] decentralization,[54] power delegation,[55] level of democratization,[56] access to information,[57] characteristics of the legal system,[58] penalty and punishment system,[59] political competition,[60] political instability,[61] property rights,[62] transparency level, and legitimacy of the legal system.[63]

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[42] Jean-Jacques Laffont & Tchétché N'Guessan, *Competition and Corruption in an Agency Relationship*, 60 J. Dev. Econ. 271, 274 (1999); Sandholtz, *supra* note 38, at 31; Shang-Jin Wei, *Natural Openness and Good Government*, CID Working Paper Series 2001.61, Harvard University, Cambridge (2001); Paldam, *supra* note 35.

[43] Berdiev, *supra* note 37, at 183; *see generally* Bryan Evans, *The Cost of Corruption: A Discussion Paper on Corruption, Development and the Poor*, Tearfund (1999); Braun & Di Tella, *supra* note 41; Danila Serra, *Empirical Determinants of Corruption: A Sensitivity Analysis*, 126 Pub. Choice 225, 230 (2006).

[44] *See generally* Evans, *supra* note 43.

[45] Vito Tanzi, *Corruption Around the World – Causes, Consequences, Scope, and Cures*, 45 IMF Staff Papers 559, 583 (1998); Daniel Treisman, *The Causes of Corruption: A Cross-National Study*, 76 J. Pub. Econ. 399, 408 (2000); Harry G. Broadman & Francesca Recanatini, *Seeds of Corruption – Do Market Institutions Matter?*, 11 Econ. Pol'y in Transitional Econ. 359, 373, (2001); John Gerring & Strom Thacker, *Do Neoliberal Policies Deter Political Corruption?*, 59 Int'l Org. 233, 237-238 (2005).

[46] Tanzi, *supra* note 45.

[47] Ades & Di Tella, *supra* note 34; Treisman, *supra* note 45; Sandholtz *supra* note 38, at 39; Tanzi, *supra* note 45, at 563.

[48] Tanzi, *supra* note 45, at 572; *see generally* Caroline van Rijckeghem & Beatrice Weder, *Bureaucratic Corruption and the Rate of Temptation: Do Wages in the Civil Service Affect Corruption, and by How Much?*, 65 J. Dev. Econ. 307 (2001).

[49] Serra, *supra* note 43.

[50] Susan Rose-Ackerman & Rory Truex, *Corruption and Policy Reform,* Yale L. & Econ. Rsch. Paper No. 444 (2012).

[51] Tanzi, *supra* note 45, at 575.

[52] Ce Shen & John B. Williamson, *Corruption, Democracy, Economic Freedom and State Strength*, 46 Int'l J. Comp. Socio. 327, 329, 340 (2005).

[53] *Id*. at 329–30; *see* Svensson, *supra* note 4, at 30. (including Table 5, a regression analysis showing that the more corrupt a country, the more they regulate the press).

[54] Shleifer & Vishny, *supra* note 34; Susan Rose-Ackerman & Bonnie J. Palifka, Corruption and Government: Causes, Consequences, and Reform, 187–88, 192, 201 (2d ed. 2016).

[55] Jean Cartier-Bresson, *The Causes and Consequences of Corruption: Economic Analyses and Lessons Learnt*, *in* No Longer Business as Usual: Fighting Bribery and Corruption 12 (OECD 2000).

[56] Daniel Treisman, *What Have We Learned About the Causes of Corruption from Ten Years of Cross-National Empirical Research?*, 10 Ann. Rev. Pol. Sci. 211 (2007); *see generally* Jana Kunicová, *Democratic Institutions and Corruption: Incentives and Constraints in Politics*, *in* International Handbook on the Economics of Corruption (Edward Elgar Publishing, 2006).

[57] Evans, *supra* note 43, at 22.

[58] Ades & Di Tella, *supra* note 33, at 982, 985, 990; Ali & Hodan, *supra* note 36.

[59] Shleifer & Vishny, *supra* note 34; Tanzi, *supra* note 45.

[60] Montinola & Jackman, *supra* note 33.

[61] Treisman, *supra* note 45, at 405.

[62] Daron Acemoglu & Thierry Verdier, *Property Rights, Corruption and the Allocation of Talent: A General Equilibrium Approach*, 108 Econ. J. 1381 (1998).

[63] *See* Park, *supra* note 7.

Social factors encompass culture,[64] education, ethnic separation,[65] ethics,[66] gender,[67] history and geography,[68] human development,[69] country size and government decentralization,[70] religion,[71] selective migration,[72] urbanization and modernization,[73] the significance of women's role in society,[74] and value systems.[75]

Research has shown that there is a relationship between corruption levels and the size of public administration or bureaucracy, as well as with the organizational culture—competitive and cooperative—or its more or less hierarchical or vertical form.[76] Policy models have also been developed that influence corruption levels, such as determinations concerning whether to punish corrupt officials or corrupt citizens more severely, the salary policy for officials, the sanitation of public administration by dismissing corrupt officials, and establishing whether it is more effective to remove those at the top of the hierarchical pyramid or those in the middle or lower strata.[77]

Among the various influential socio-economic factors, cultural values appear to be particularly important, as they consist of desirable cross-situational goals that serve as guiding principles or guides in the life of an individual or social entity.[78]

This research, among all the enumerated factors, focuses on culture and legal structure, particularly regarding their compatibility with international norms on corruption. It does not claim to provide absolute coverage. On the contrary, the work is based on the premise that the subject of investigation involves only a small fraction of the countless factors that, as previously evidenced, impact corruption levels in a society.

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[64] *See* subsequent sections herein.

[65] *See* Treisman, *supra* note 45.

[66] *Id.*

[67] Sung & Chu, *supra* note 38.

[68] *See generally* Harry Bloch & Sam Hak Kan Tang, *Deep Determinants of Economic Growth: Institutions, Geography and Openness to Trade*, 4 Progress in Dev. Stud. 245, 248 (2004).

[69] *See* Rose-Ackerman & Truex, *supra* note 50; Randi L. Sims, Baiyun Gong & Cyinthia P. Ruppel, *A Contingency Theory of Corruption: the effect of human development and national culture*, 49 Soc. Sci. J. 90 (2012).

[70] Raymond Fisman & Roberta Gatti, *Decentralization and corruption: evidence across countries*, 83 J. Pub. Econ. 325, 330 (2002).

[71] *See* Section IV.B.1.

[72] *See generally* Eugen Dimant, Tim Krieger & Margarete Redlin, *A Crook Is a Crook… But Is He Still a Crook Abroad? On the Effect of Immigration on Destination-Country Corruption*, 16 German Econ. Rev. 464 (2013).

[73] *See generally* Kouakou Donatien Adou, *The untold story of the modernization thesis: Urbanization and corruption in developing countries*, 25 Int'l Area Stud. Rev. 214 (2022).

[74] Escresa & Picci, *supra* note 33, at 354.

[75] *See* subsequent sections herein.

[76] *See generally* Elena Duggar & Madhur Duggar, *Corruption, Culture and Organizational Form* (Nov. 2004), https://ssrn.com/abstract=770889, *archived at* https://perma.cc/8VYJ-GKX6; Johann Graf Lambsdorff, *Consequences and Causes of Corruption: What Do We Know from a Cross-Section of Countries?*, Passauer Diskussionspapiere - Volkswirtschaftliche Reihe, No. V-34-05, Universität Passau, Wirtschaftswissenschaftliche Fakultät, (2005).

[77] *See* Duggar & Duggar, *supra* note 76, at 1.

[78] Shalom H. Schwartz, *Are There Universal Aspects in the Structure and Content of Human Values?*, 50 J. Soc. Issues 19 (1994).

1. Culture and Corruption are Related

The significant influence of culture on development was acknowledged by Tocqueville,[79] who observed that South America, despite its vast and fertile lands similar to those in North America, struggled to establish democracy and generate resources for societal well-being due to cultural factors.

Corruption is condemned by Buddhism,[80] Christianity,[81] Confucianism,[82] Hinduism[83] Islam,[84] Judaism,[85] and Taoism.[86] All of these religions disapprove of corrupt practices as they violate fundamental moral values.

However, this does not imply that corruption, as a complex phenomenon, takes on the same form, magnitude, or manifests in a similar way in all regions and cultures equally. Indeed, asserting that corruption is universally perceived as a negative phenomenon says nothing about the content and definition of the concept. The practice that constitutes an act of corruption in one society may represent a centuries-old custom or a harmless gratification in another. The scope, content, and limits of what constitutes a corrupt or honest and acceptable practice substantially depend on cultural, historical, social, economic, and axiological factors. The classification of behavior as corrupt is an expression of the conceptions and evaluative constructions of a community. These variables determine that corruption, its form, scope, dimension, content, and consequences, find explanation in diverse factors depending on the region of the world.

Although all nations prohibit corruption, the definitions of corruption and the acts encompassed within it differ across regions and cultures. Countries characterize such behaviors and develop regulations in accordance with local traditions, cultural values, and social and economic structures. Therefore, while all countries condemn corruption, culture remains a critical differentiator as opinions vary on which conduct falls within or outside of that label.[87] Corruption has not been subject to a universal definition. Instead, given the prevalence of cultural pluralism despite a rapidly globalizing world,

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[79] Alexis de Tocqueville, Democracy in America (Liberty Fund New Edition ed. 2012).

[80] Marie Dalton, *Efficiency v. Morality: the Codification of Cultural Norms in the Foreign Corrupt Practices Act*, 2 N.Y. U. J. L. & Bus. 583, 589 (2006) (citing U. Dhammaratana, The Social Philosophy of Buddhism (Samdhong Rinpoche ed., 1972)).

[81] Deuteronomy 16:19 ("you must take no bribes"); Exodus 23:8 ("you must not accept a bribe, for a bribe blinds clear- sighted men").

[82] J.C. Cleary & Patrice Higonnet, *Plasticity into Power: Two Crises in the History of France and China*, 81 NW. U. L. Rev. 664, 669 (1987).

[83] Dalton, *supra* note 80, at 589 (citing Upendra Thakur, Corruption in Ancient India (Abhinav Publications 1979)).

[84] Qoran, Sura 2:184 ("Not to consume each others' wealth unjustly, nor offer it to judges as bribes, so that, with their aid, you might seize other men's property unjustly"); Sura 28:77 ("Allah loveth not corrupters").

[85] Sefer Hahinnuch, The Book of [Mitzvah] Education 325 (1978).

[86] Dalton, *supra* note 80, at 590 (citing Harbans Singh, Degh, Tegh, & Fateh, Socio-Economic & Religio-Political Fundamentals of Sikhism, 141 (Alam Publishing House 1986)).

[87] Stephen R. Salbu, *Foreign Corrupt Practices Act as a Threat to Global Harmony,* 20 Mich. J. Int'l L. 420, 423 (1999).

local authorities have differently defined the scope of permissible payments according to regional values and social norms.[88]

Therefore, it is difficult, if not impossible, to conceive of addressing this phenomenon in a homogeneous or "standard" manner in every corner of the planet.

Certain cultural norms can act as barriers to effectively combating corruption. Culture has the tendency to perpetuate certain conduct norms, including those that support corruption, thereby exacerbating the entrenchment of "corruption-prone cultural features."

It is important to note that corruption or honesty is not inherent in the "given or natural essence" of individuals, as if it were determined by genetics. People in different regions, such as New Zealand, Denmark,[89] or Somalia[90] do not possess inherent traits that determine their level of corruption. Nurture, rather than nature, plays a significant role in shaping behavior.

In his work "Social Theory and Social Structure," Merton challenges the notion of an ongoing conflict between individual biological urges and societal constraints. He criticizes this perspective for failing to explain why the occurrence of deviant behavior differs across various social structures, as well as why deviations manifest in diverse forms and patterns within these structures. By examining the social structures that exert particular pressures on certain groups to engage in deviant behavior, Merton recognizes that such conduct arises as a response to the social circumstances individuals find themselves in, rather than being solely attributable to biological tendencies.[91]

While culture is not the sole determinant of corruption, certain cultural features prevalent in societies can either foster transparency or facilitate corruption. Corruption exists worldwide but affects regions to varying extents. Cultural values shape the functions, goals, and operational modes of social institutions, as well as the actions, evaluations, and justifications of social actors.[92]

Empirical evidence suggests that corruption is linked to social diversity, ethno-linguistic fractionalization, and the proportions of a country's population adhering to different religious traditions.[93] Lipset and Salman Lenz

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[88] Christopher J. Duncan, *The 1998 Foreign Corrupt Practices Act Amendments: Moral Empiricism or Moral Imperialism?*, 16 Asian-Pacific L. & Pol'y1 (2000); *see also* Dalton, *supra* note 80, at 607.

[89] *The Global Coalition Against Corruption*, Transparency International, www.transparency.org/news/feature/corruption_perceptions_index_2017, *archived at* https://perma.cc/3AHY-GTGK (the most transparent countries according to the 2017 Corruption Perceptions Index from Transparency International).

[90] *Id.* (the most corrupt countries according to the 2017 Corruption Perceptions Index from Transparency International).

[91] Robert K. Merton, Social Theory and Social Structure, 185 (The Free Press 1968).

[92] Abigail Barr & Danila Serra, *Corruption and Culture: An Experimental Analysis*, 94 J. of Pub. Econ. 862, 862 (2010) (citing Amir N. Licht, Chanan Goldschmidt & Shalom H. Schwartz, *Culture rules: The foundations of the rule of law and other norms of governance,* 35 J. Comp. Econ. 659 (2007)).

[93] Lawrence Harrison & Samuel Huntington, Culture Matters: How Values Shape Human Progress, 116 (Basic Books 2000).

illustrate this concept by highlighting regions of British colonial origin, where emphasis is placed on sacred procedural rituals rather than authority. This cultural norm, which encourages judges and public officials to follow sacred rules even at the risk of challenging authority, appears to increase the likelihood of exposing corruption.[94]

Social structures play a significant role in creating circumstances where deviant behavior becomes a "normal" response. These structures exert pressure on certain individuals in society to engage in non-conforming behavior instead of conforming behavior.[95] For example, cultures that emphasize economic success as an important goal but restrict access to opportunities tend to have higher levels of corruption. Conversely, countries with relatively low achievement motivation but high access to appropriate means tend to have lower levels of corruption, as seen in the Scandinavian region.[96]

Differential pressures for deviant behavior will continue to be exerted upon certain groups and strata only as long as the structure of opportunity and the cultural goals remain substantially unchanged. Hence, as significant changes in the structure or goals occur, we should expect corresponding changes in the sectors of the population most severely exposed to these pressures.[97]

"Particularism," which refers to the felt obligation to help family, friends, and membership groups, is another cultural trait associated with corruption. Nepotism is a prominent manifestation of particularism, whereas universalism, the commitment to treat others according to a similar standard, represents its opposite. Empirical analysis supports the relationship between familism (strong familial ties) and corruption, with nations scoring high on familism tending to have higher levels of corruption. The World Values Survey and aggregate statistics provide data that is useful to measure familism.[98] Asian nations, known for their strong familial ties, often rank among the most corrupt, while Scandinavian nations, known for weak familial ties, tend to rank among the least corrupt. The familism scale and the Corruption Perceptions Index show a strong correlation.[99]

Scholars have also shown that the share of Protestants, as well as ethnolinguistic homogeneity,[100] leads to more efficient government performance and less corruption. Cultural, linguistic, and religious variables have been identified as important determinants of corruption beyond economic factors.[101]

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[94] *Id.*

[95] *See* Merton, *supra* note 91, at 185-86.

[96] *See* Harrison & Huntington, *supra* note 93, at 117.

[97] *See* Merton, *supra* note 91, at 246.

[98] "Amoral familism" is defined as a culture that is deficient in communitarian values but fosters familial ties. In amoral familism, no one will further the interest of the group or community except as it is to his private advantage to do so. *See* Edward Banfeld, The Moral Basis of a Backward Society, 10-11, 147, 163 (The Free Press 1958).

[99] *See* Harrison & Huntington, *supra* note 93, at 120.

[100] The fact that Protestantism favors an environment of less corruption is a widespread understanding. Nevertheless, such general understanding does not exist with respect to ethnolinguistic homogeneity. *See* Treisman, *supra* note 45, at 420.

[101] Sascha Becker, Peter H. Egger & Tobias Seidel, *Common Political Culture: Evidence on Regional Corruption Contagion*, 25 Eur. J. of Pol. Econ. 300, 301 (2009).

Certain religions, such as Protestantism, place moral value on thrift, honesty, and saving, while condemning idleness and consumption.[102] These attitudes favor investment and growth. Conversely, religions like Hinduism and Buddhism emphasize refraining from action as a virtue.[103] The relationship between *guanxi* (social connections) and corruption in China also demonstrates the powerful cultural influence on corruption.[104]

Max Weber, in "The Protestant Ethic and the Spirit of Capitalism," established a significant connection between Protestant Calvinism and the advancement of economic and political systems, juxtaposing it with Catholicism. During the 17th century in Europe, prevailing notions encompassed the bourgeoisie, egalitarianism, the veneration of labor, and the accumulation of wealth, whereas in Ibero-America, the defense of the seigniorial spirit, the rationalization of social disparities,[105] and the contemplative lifestyle predominated. The ascent within society relied more upon social capital, tied to lineage and historical standing, rather than the bourgeois virtues of industriousness and the sanctification of mundane tasks. The Catholic-Spanish worldview, unlike its Protestant cultural counterparts, did not foster the establishment of a social structure founded on clear and universally applicable rules of engagement. Instead, honor, family, and faith perpetually overshadowed these social values and warranted persistent deviations from the rule of law.[106]

Notably, Argentine playwright Mario Diament asserted that "corruption in Latin America is not merely a social deviation, it is a way of life".[107] This phenomenon finds its roots in a historical legacy of colonial domination, which fostered clientelism, strong familial ties, and rigid social hierarchies that eroded public trust in the governmental sphere, thereby facilitating corruption in the region.[108]

Furthermore, corruption begets further corruption by engendering a culture of disregard for legal principles. It undermines the functionality of law enforcement agencies and the judiciary, while also distorting private transactions, permeating the domain of private law.[109] Within nations that harbor a

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[102] Martin Paldam, *Corruption and Religion Adding to the Economic Model*, 54 KYKLOS 383, 391 (2001).

[103] *Id.*

[104] *See* Yadong Luo, *The Changing Chinese Culture and Business Behavior: The Perspective of Intertwinement between Guanxi and Corruption,* 17 INT'L BUS. REV. 188 (2008).

[105] This assessment is consistent with Geert Hofstede's cultural dimensions measurements in Latin America—specially the power-distance dimension—as explained below.

[106] Mauricio García Villegas, *Ineficacia del Derecho y Cultura del Incumplimiento de Reglas en América Latina*, *in* EL DERECHO EN AMÉRICA LATINA: UN MAPA PARA EL PENSAMIENTO JURÍDICO DEL SIGLO XXI 199, 204 (César Rodríguez Garavito ed., Siglo Veintiuno Editores 2011).

[107] Jason García Portilla, *Diagnosing Corruption and Prosperity in Europe and the Americas*, *in* YE SHALL KNOW THEM BY THEIR FRUITS. A MIXED METHODS STUDY ON CORRUPTION, COMPETITIVENESS, AND CHRISTIANITY IN EUROPE AND THE AMERICAS, 30 (Springer 2022) (citing Mario Diament, *Corrupt to the Core*, 3 HEMISPHERE 20, 20–22).

[108] *See* Xiaohui Xin & Thomas K. Rudel, *The Context for Political Corruption: A Cross-National Analysis,* 85 SOC. SCI. Q. 294, 299 (2004).

[109] Amir N. Licht, Chanan Goldschmidt, & Shalom H. Schwartz, *Cultural Rules, The Foundations of the Rule of Law and Other Norms of Governance*, 35 J. OF COMPAR. ECON. 659, 664 (2007).

cultural disposition favoring corruption, individuals fail to internalize anti-corruption norms. Consequently, the impact of intrinsic motivations on their decisions to engage in or abstain from corruption remains feeble. Conversely, in societies where transparency and honesty are esteemed, such intrinsic motivations wield significant influence. Consequently, in societies where corruption is endemic, individuals are far more prone to engage in corrupt practices than in societies where corruption is an exception.[110]

To shed light on the dynamics of cultural norms and legal enforcement in curbing corruption, Fisman and Miguel[111] conducted an empirical study, scrutinizing the parking behavior of United Nations officials hailing from 149 different countries, based in Manhattan. Prior to November 2002, diplomatic immunity afforded UN diplomats residing in New York the privilege of evading payment for parking tickets. Unlawful parking by diplomats aligns with the paradigm of corruption, as its definition may be aptly framed as "the exploitation of entrusted power for personal gain." Consequently, an intriguing analytical framework emerges by comparing diplomats' behavior through the lens of their cultural backgrounds to gauge the extent of corruption within social norms or a corrupt culture. Furthermore, assessing the impact of enforcing fines against diplomats on their subsequent conduct would elucidate whether law enforcement emerges as a potent tool capable of shaping culture and fostering integrity.[112]

The study's findings evinced a robust correlation between the number of diplomatic parking violations and prevailing indicators of corruption within diplomats' home countries. Remarkably, cultural norms or traits associated with corruption proved deeply entrenched, even when diplomats found themselves far removed from their homelands. However, enhanced legal enforcement exerted a highly influential effect, resulting in a staggering decline of over 98 percent in parking violations.[113] Hence, both cultural norms and legal enforcement occupy pivotal roles in the corruption decisions made by government officials.[114] In the absence of law enforcement, wherein the costs of such behavior are negligible, diplomats naturally conform to their cultural norms.

In summary, the study's findings establish a compelling connection between diplomats' parking behavior and the prevailing levels of corruption in their respective home countries.[115] Diplomats originating from nations plagued by high levels of corruption exhibited a marked tendency to accumulate unpaid parking violations, while their counterparts from the least corrupt countries displayed a stricter adherence to the law. These findings lend support to the notion that corruption is influenced by specific cultural traits, which, if

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[110] Barr & Serra, *supra* note 92, at 866.

[111] *See* Raymond Fisman & Edward Miguel, *Corruption, Norms, and Legal Enforcement: Evidence from Diplomatic Parking Tickets*, 115 J. OF POL. ECON. 1020 (2007).

[112] Starting November 2002, New York City began stripping the official diplomatic license plates from vehicles that accumulated more than three unpaid parking violations.

[113] *See* Fisman & Miguel, *supra* note 111, at 1022.

[114] *See id.* at 1023.

[115] *Id.* at 1045.

appropriately addressed through tailored policies, can be steered toward more virtuous conduct.

It is important to note that culture and corruption share a close relationship, although they are not inextricably tied. The mere existence of rules and regulations does not appear to effectively shape the behavior of individuals within certain cultures. Nevertheless, the implementation of appropriate incentives holds the potential to redirect corruption-prone tendencies toward honest and upright behavior.

In light of these insights, it becomes evident that combating corruption necessitates a multifaceted approach. Policies aimed at curbing corruption must not only address legal enforcement, but also consider cultural factors that shape individuals' attitudes and predispositions. By creating incentives and fostering an environment conducive to integrity, it is possible to encourage a shift away from corruption and cultivate a culture that upholds ethical standards. Through targeted and tailored measures, corruption-prone traits can be transformed, paving the way for a more virtuous and accountable society.

2. *Culture, Corruption, and International Law in Latin America: A Weak Strategy*

In the context of Latin America, the effectiveness of international legal instruments, such as the Inter-American Convention Against Corruption (ICAC) and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention), is undermined by the cultural dynamics prevailing in the region.[116] These instruments, which primarily rely on fiscal and punitive measures, are only partially successful due to their compatibility with countries characterized by high individualism, egalitarianism, and behavioral flexibility. However, Latin American societies predominantly exhibit collectivist tendencies, a significant power distance, and a high aversion to uncertainty.[117] Consequently, the effectiveness of such legal instruments is questionable within this cultural context.[118]

Drawing upon Talcott Parsons' typology, Carlos Nino argues that Latin American societies, including Argentina, are shaped by distinct cultural norms that contrast with the principles of universalism, specificity, egalitarianism, and achievement.[119] Universalism suggests that correct behavior can be universally defined and applied, regardless of the context.[120] In contrast, particularism emphasizes the primacy of interpersonal relationships over abstract social codes, making norms and appropriate behavior context-dependent.[121] In

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[116] Bryan W. Husted, *Culture and International Anti-Corruption Agreements in Latin America*, 37 J. of Bus. Ethics 413, 418 (2002) [hereinafter Husted, *International Anti-Corruption Agreements*].

[117] *Id.* at 415-419.

[118] *Id.* at 421.

[119] Carlos S. Nino, Un País al Margen de la Ley, 17 (Emecé Editores 1992)

[120] *Id.*

[121] *Id.*

societies characterized by universalism, social interactions primarily rely on weak ties and are guided by values associated with power, achievement, and individual autonomy.[122] In contrast, in societies with a particularistic orientation, social interactions are built on strong, cohesive group ties influenced by principles of tradition, conformity, and benevolence.[123]

The diffuseness-specificity dimension focuses on the actor's interest and interaction with social objects.[124] An actor's interest in a social object can be specific, targeting a particular object, or diffuse, encompassing a broader scope.[125] Specificity implies that interactions with social objects are governed by specific terms, whereas diffuseness indicates a broader perspective that is not limited to a specific object. In the Latin American context, diffuseness, as highlighted by Nino,[126] implies that individuals are treated as individuals regardless of their position or authority in society.[127] The behavior of society is not adapted based on social roles but rather emphasizes the identity of the person occupying a certain position.

Elitism underscores the hierarchical categorization of individuals based on factors such as race, religion, gender, wealth, or social status. It accentuates the differentiation and stratification of society.[128]

The ascription-achievement pattern category revolves around an actor's perspective on goal attainment.[129] Strong ascription implies that people are treated based on inherited qualities or personal relationships rather than their skills and accomplishments.[130]

These cultural characteristics, including particularism, diffuseness, elitism, and ascription, shape the social fabric of Latin American societies, contributing to an environment where corruption finds fertile ground. The inclination toward particularistic relationships and the devaluation of universalistic principles hinder the effectiveness of legal instruments that rely solely on fiscal and punitive approaches.[131] Likewise, the prevalence of elitism and ascription reinforces social hierarchies, which can perpetuate corrupt practices.[132]

Therefore, addressing corruption in Latin America necessitates strategies that take into account the cultural dimensions at play. Merely imposing

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[122] *Id.*

[123] Valentina Rotondi & Luca Stanca, *The Effect of Particularism on Corruption: Theory and Empirical Evidence*, 1–23 (CONSIRT Working Paper Series, Working Paper No. 6 2015), http://consirt.osu.edu/wp-content/uploads/2014/10/CONSIRT-Working-Papers-Series-6-Rotondi-Stanca.pdf, *archived at* https://perma.cc/LG8S-KLK2.

[124] Talcott Parsons, Toward a General Theory of Action (Edward C. Tolman ed., Harvard University Press 1951).

[125] *Id.*

[126] Nino, *supra* note 119.

[127] *Id.* at 17.

[128] *Id.*

[129] *Id.*

[130] *Id.*

[131] Cf. Husted, *International Anti-Corruption Agreements*, at 413 (while the cited work bases its conclusions on Geert Hofstede's value dimensions, it seems feasible to apply such conclusions using Lipset's typology).

[132] Cf. Nino, *supra* note 119.

legal frameworks without considering the underlying cultural factors is likely to yield limited results. Recognizing and navigating these cultural complexities becomes paramount in formulating more effective and context-sensitive anti-corruption policies and interventions.

As Lipset aptly asserts, the prevailing cultural traits in Latin America, including particularism, diffuseness, elitism, and ascription, contribute to a social framework that prioritizes personal relationships, such as friendship or family ties, over impersonal interactions.[133] This emphasis on personal connections over objective criteria creates an environment conducive to corruption. In this context, individuals may prioritize favoritism and nepotism, undermining fair and impartial practices.

a. Geert Hofstede's Cultural Dimensions Typology

Geert Hofstede's typology, which encompasses dimensions such as power distance, individualism-collectivism, uncertainty avoidance, masculinity-femininity, and time orientation (short vs. long) provides further insights into the cultural dynamics that influence corruption, particularly in the context of work culture. In this discussion, I will focus on the first three dimensions, as they are particularly relevant to the topic at hand.

The research conducted by Hofstede stands as a landmark and cornerstone of empirical social studies in the field of culture. His work is invaluable, notwithstanding the time that has elapsed since his findings were reported.[134] The studies carried out by Hofstede prove to be extremely useful in comprehending the cultural dynamics of nations. Each dimension places a nation's culture on a scale from 0 to 100.[135]

> "The first scores were collected by IBM between 1967 and 1973, covering more than 70 countries, from which Hofstede first used the 40 largest. This was later extended to 50 countries and 3 regions. In the editions of Geert Hofstede's work since 2001, scores are listed for 76 countries and regions, partly based on replications and extensions of the IBM study on different international populations. In 2022, the list of countries was extended to 102."[136]

Kirkman also highlights its relevance despite the passage of time.[137] Furthermore, nations possess specific cultural traits that are not easily modifiable in the short or medium term.

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[133] *Id*. at 18.

[134] Seleim & Bontis, *supra* note 5, at 166.

[135] Geert Hofstede, Culture's Consequences: Comparing Values, Behaviours, Institutions and Organizations Across Nations (Mikael Søndergaard ed., 2nd ed. 2001).

[136] *Frequently Asked Questions*, The Culture Factor Group, https://www.hofstede-insights.com/frequently-asked-questions, *archived at* https://perma.cc/6QEY-EEM4.

[137] Bradley L. Kirkman, Kevin B. Lowe & Cristina B. Gibson, *A Quarter Century of Culture's Consequences: a Review of Empirical Research Incorporating Hofstede's Cultural Value Framework*, 37 J. Int'l Bus. Stud. 285, 307-308 (2006).

In a similar vein, Søndegaard concluded, after reviewing 61 studies that replicated Hofstede's experiments, that his conclusions should be widely confirmed.[138] Thus, the most widely accepted tool for investigating and evaluating the culture of a society remains Geert Hofstede's system of cultural dimensions.[139]

Hofstede gathered his original data between 1967 and 1973 through a large multinational corporation, collecting a total of 116,000 employee attitude questionnaires in 20 languages from 72 countries. The survey items were categorized into factors related to the aforementioned cultural dimensions. The cultural dimension related to time orientation was developed in the 1980s based on the Chinese Values Survey developed by Bond.[140]

i. Power Distance

Power distance, as defined by Hofstede, refers to "the extent to which the less powerful members of institutions and organizations within a country expect and accept that power is distributed unequally." In countries with high power distance, there exists a significant dependence of subordinates on their superiors, often characterized by a system of paternalism. This system entails superiors providing favors to subordinates in exchange for their loyalty. Within such societies, corruption finds fertile ground in the form of favoritism and nepotism, as personal connections and loyalty supersede merit-based considerations.[141]

Latin America, as a region, generally exhibits high levels of power distance, emphasizing the importance of hierarchical relationships and authority. This cultural characteristic poses challenges when it comes to implementing anti-corruption conventions effectively. While the adoption of such conventions is a positive step, it is crucial to recognize that their successful implementation requires strong leadership and a commitment to transcend mere expressions of goodwill. However, many national and local governments in the region may display passive resistance or employ other means to undermine the anti-corruption regime, seeking ways to exploit loopholes or subvert the intended goals.[142]

Addressing corruption in Latin America, therefore, demands not only legal and institutional measures, but also a deeper understanding of the cultural context. Strategies that account for the region's high power distance and navigate the complexities of personal relationships and loyalty will be crucial for promoting transparency, accountability, and integrity. Efforts should aim to foster a culture that values meritocracy, fairness, and the rule of law,

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[138] Michael Søndergaard, *Hofstede's Consequences: A Study of Reviews, Citations, and Replications*, 15 Eur. Grp. for Organizational Stud. 447, 450 (1994).

[139] *See* Hoi Yan Cheung & Alex W. H. Chan, *Corruption Across Countries: Impacts from Education and Cultural Dimensions*, 45 Soc. Sci. J. 223, 229 (2008); *see also* Getz & Volkema, *supra* note 8; *see also* Park, *supra* note 7.

[140] Cheung & Chan, *supra* note 139.

[141] Husted, *supra* note 36, at 343.

[142] *See* Husted, *International Anti-Corruption Agreements*, *supra* note 116, at 416.

thereby mitigating the influence of corruption-prone traits and promoting a more ethical and transparent society.

FIGURE 8.

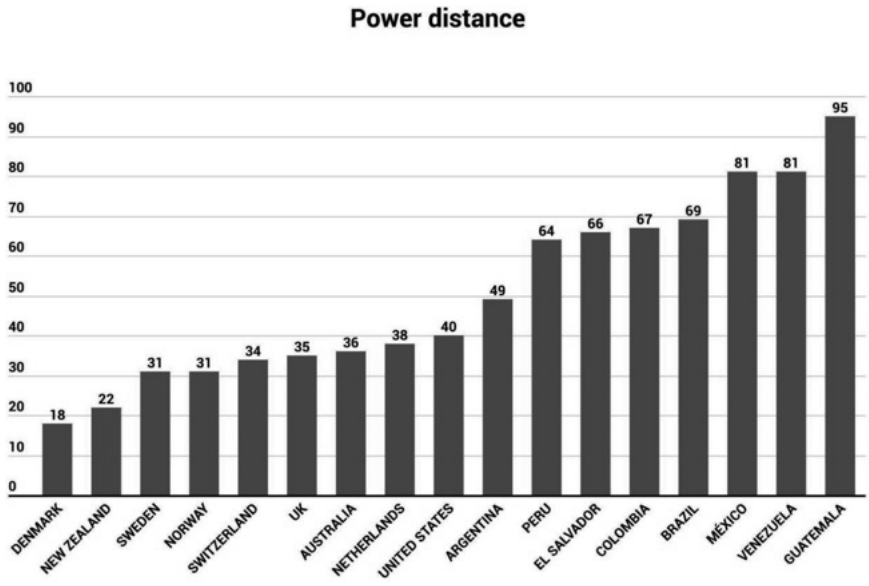

Figure 8. Source of data: GEERT HOFSTEDE, CULTURES AND ORGANIZATIONS: SOFTWARE OF THE MIND (McGraw Hill 1991); *see also Power Distance Index*, CLEARLY CULTURAL, http://clearlycultural.com/geert-hofstede-cultural-dimensions/power-distance-index/, *archived at* https://perma.cc/WR3V-GSJK; *Country Comparison Tool*, THE CULTURE FACTOR GROUP, https://www.hofstede-insights.com/country-comparison-legacy, *archived at* https://perma.cc/A7G8-XQAK.

ii. Individualism - Collectivism

Indeed, Latin American countries tend to exhibit a collectivist orientation rather than an individualist one. This distinction, as highlighted by Erez and Earley, is rooted in the shared beliefs and values of the people concerning the relationship between individuals and groups within society. It reflects how individuals in a given society relate to one another and the emotional and cognitive attachments they have to particular networks.[143]

Family and friends play a crucial role in the lives of individuals in Latin America. Group objectives frequently take precedence over societal goals, leading to the consideration of norms as flexible in the context of the personal

[143] *Id.*

relationships that define the region. Group members receive treatment distinct from that extended to outsiders or strangers.[144]

The network of friends and family can establish enduring relationships that might facilitate abnormal or illegal transactions. In exchange for favors to members of their own social group, public officials may be tempted to accept bribes.[145] Collectivists are willing to accept criticism as long as it comes from within the group.[146] Collectivist values imply that "laws and rights differ by group," suggesting that different standards should be applied when evaluating the behavior of various groups.[147]

In collectivist societies, ethical behavior is contemplated through interpersonal relationships rather than formal structures. The emphasis on interpersonal relationships is prone to fostering favoritism, nepotism, and corruption. Many authors, such as Hooper, Husted, Banfield, and Parboteeah, have established a direct correlation between collectivism measured by Hofstede and corruption.[148] As an illustrative example of how this dimension influences ethical behavior, Husted[149] determined that in collectivist cultures, individuals are more likely to engage in software piracy, as they are willing to share protected software among group members. Lapalombrara,[150] on the other hand, found that individuals in predominantly collectivist societies are more susceptible to violating written laws. Conversely, in individualistic cultures, where relationships hold less significance, ethical behavior is channeled through formal structures, and regulations are more rigorously respected.[151]

In collectivist societies, individuals hold high expectations of others and are willing to disregard rules and legal procedures to fulfill these expectations. It is also common to favor friends and family in hiring processes and in the allocation of rewards and promotions.[152] In individualistic societies, individuals prioritize their own interests or those of their immediate family, and individual goals take precedence over group objectives. Emphasis is placed on rationality, and individuals tend to carry out their activities with greater independence than in collectivist societies. Additionally, individuals in individualist societies do not typically make distinctions between group members and those outside the group.[153] Collectivism favors cohesive or union-like so-

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[144] Husted, *International Anti-Corruption Agreements*, *supra* note 116, at 416.

[145] Getz & Volkema, *supra* note 8, at 15-16.

[146] James H. Davis & John A. Ruhe, *Perceptions of Country Corruption: Antecedents and Outcomes*, 43 J. Bus. Ethics 275, 280 (2003)

[147] *Id.* (citing Hofstede, *supra* note 135).

[148] Hamid Yeganeh, *Culture and Corruption. A concurrent application of Hofstede's, Schwartz's and Inglehart's Frameworks*, 13 Int'l J. Dev. 6 (2014).

[149] Bryan W. Husted, *The impact of national culture on software piracy*, 26 J. Bus. Ethics 197 (2000).

[150] Joseph Lapalombrara, *Structural and institutional aspects of corruption*, 61 Social Research 325, 331-332 (1994).

[151] Yeganeh, *supra* note 148, at 6.

[152] Seleim & Bontis, *supra* note 5, at 171.

[153] Michele J. Gelfand, Harry C. Triandis & Darius K-S Chan, *Individualism versus collectivism or versus authoritarianism?*, 26 Eur. J. Soc. Psychol. 397, 399-401 (1996).

cial structures and group decisions. Moreover, group loyalty is valued more than efficiency.[154]

FIGURE 9.

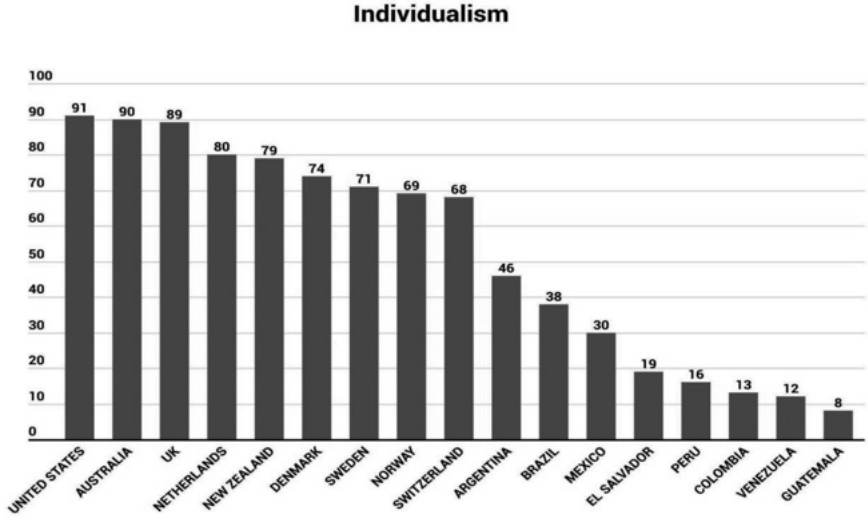

Figure 9. Source of data: HOFSTEDE, *supra* FIGURE 8; *see also Power Distance Index*, CLEARLY CULTURAL, http://clearlycultural.com/geert-hofstede-cultural-dimensions/power-distance-index/, *archived at* https://perma.cc/WR3V-GSJK; *Country Comparison Tool*, *supra* FIGURE 8.

Family and social connections hold significant importance in the lives of individuals in Latin America, contributing to a collectivist mindset. In these societies, the interests and goals of the in-group, such as family or close friends, often take precedence over societal goals. As a result, norms and rules may be perceived as flexible, adapting to the personalistic relationships that characterize the region.

The treatment of individuals within the in-group differs from that of outsiders, leading to differential application of norms and laws. This poses a challenge to international conventions like the ICAC and the OECD Anti-Bribery Convention, which emphasize the role of impersonal mechanisms in law enforcement. In collectivist societies, the law is likely to be applied unevenly, favoring members of in-groups and potentially undermining the principles of fairness and equity that these conventions seek to uphold.[155] Consequently, this uneven application erodes trust in the legal system and weakens the institutions responsible for implementing and enforcing the laws.[156] Although Argentina does not rank among the most collectivist countries in the region, it

[154] Davis & Ruhe, *supra* note 146, at 280.
[155] Husted, *International Anti-Corruption Agreements, supra* note 116, at 417.
[156] *Id.* at 419.

still exhibits a notable collectivist orientation compared to developed nations with lower levels of corruption.

Understanding the collectivist nature of Latin American societies is crucial when designing strategies to combat corruption. Efforts to promote transparency, accountability, and integrity should take into account the significance of social networks and the role of interpersonal relationships. Building trust and fostering a sense of collective responsibility can help create a culture that values the common good and discourages corrupt behavior. Therefore, a nuanced approach that acknowledges both cultural tendencies and individual diversity is necessary when addressing corruption and promoting ethical practices in Latin American societies.

iii. Uncertainty Avoidance

Latin American countries also tend to score highly on uncertainty avoidance. This implies a strong inclination toward adhering to rules, even when those rules may seem nonsensical, inconsistent, or dysfunctional.[157]

Tolerance for ambiguity generally fosters flexibility, creativity, and innovation. On the other hand, an intolerance of uncertainty often leads to the enactment of excessively rigid laws, which are frequently disregarded in practice. In situations of ambiguity, formal rules provide structure and help reduce anxiety. However, when the rules do not align with reality, the resulting anxiety is alleviated by breaking those rules.[158]

While some studies argue that in cultures with high uncertainty avoidance, individuals prefer institutions with well-established norms, political rules, and procedures—which might lead to the perception of favoring transparency—this dimension entails certain conditions that promote corruption.[159] Bureaucratic structures encourage deviant behavior from ethical norms. As social and cultural rules define and constrain behavior, individuals tend to perceive the need to operate through informal channels to achieve personal objectives.[160] This encourages bribery and other dishonest dealings, and once corruption patterns are established, they tend to perpetuate because breaking away from these patterns simultaneously generates uncertainty.[161]

When uncertainty avoidance is high, individuals exhibit a heightened concern for their safety and lives, consequently, they are more driven to seek means to control the future. The reduction of uncertainty sometimes involves illegal methods. Diminishing uncertainty to ensure survival takes precedence over legitimacy. Moreover, individuals, at times, convince themselves that the only way to dispel uncertainty is through wealth, which creates pressure to pursue any necessary path to obtain it.[162]

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[157] *Id.* at 417.
[158] *Id.*
[159] Getz & Volkema, *supra* note 8, at 15.
[160] *Id.*
[161] *Id.*
[162] Park, *supra* note 7, at 37–38.

Various studies empirically determined that high levels of uncertainty avoidance are accompanied by elevated levels of corruption.[163] Subordinates' initiatives are closely monitored, and those who break the rules typically seek their reform.[164]

FIGURE 10.

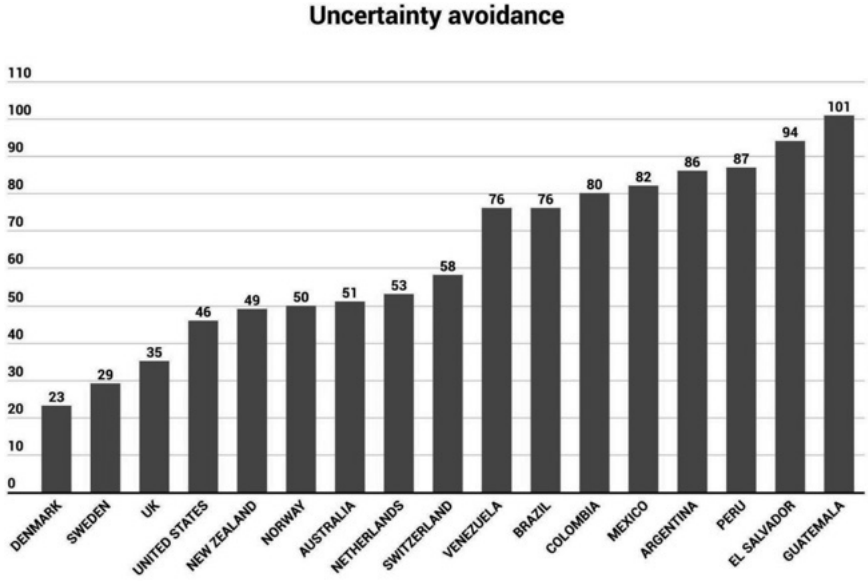

Figure 10. Source of data: HOFSTEDE, *supra* FIGURE 8; *Power Distance Index*, *supra* FIGURE 9; *Country Comparison Tool*, *supra* FIGURE 8.

Carlos Nino explained that Argentina exhibits a proliferation of strict laws that are exceedingly challenging to comply with. The country's high degree of ritualism encourages the adherence to formal procedures without due consideration for the objectives or outcomes of those rules. This often leads to absurd outcomes that are circumvented through acts of corruption.[165] Argentine society appears to struggle with adapting rules to the prevailing circumstances in order to ensure that the intended objectives of those rules can be achieved.

Therefore, measuring Uncertainty Avoidance provides a tool for gauging a society's capacity to tolerate uncertainty and ambiguity. This metric reflects how at ease the members of a culture feel in unstructured scenarios. Cultures with a high Uncertainty Avoidance tendency aim to reduce the occurrence of such situations by implementing stringent laws and rules. Conversely, cultures with a low Uncertainty Avoidance inclination are more open to diverse

[163] *See generally* Seleim & Bontis, *supra* note 5; Getz & Volkema, *supra* note 8; Yeganeh, *supra* note 148; Husted, *International Anti-Corruption Agreements*, *supra* note 116.
[164] Davis & Ruhe, *supra* note 146, at 279.
[165] *See* NINO, *supra* note 119, at 117–18.

opinions, maintain fewer regulations, and accommodate a multitude of beliefs. Argentina, in particular, ranks among the countries with the highest levels of uncertainty avoidance worldwide.

Argentina has diligently fulfilled the international agreements it ratified by enacting and amending laws in accordance with the directives of the international community. However, these laws are routinely violated and disregarded in daily practice. The ICAC and the OECD Anti-Bribery Convention are likely to face a similar treatment. While these conventions may be enacted with technical sophistication in the legal realm, in situations characterized by significant ambiguity, individuals will often abandon formal rules in favor of solutions that appear to be more attuned to reality. In Latin America, where numerous anti-corruption laws already exist, there is considerable skepticism regarding the impact of further reforms. The cultural inclination is to flout these laws in practice, as they are perceived to be incongruent with the reality experienced.[166]

b. The "One-Size-Fits-All" Approach Clashes with Latin American Values

These observations highlight the challenge of effectively implementing and enforcing anti-corruption measures in a cultural context where strict formal rules may not align with the perceived reality. It underscores the importance of addressing the underlying cultural and societal factors that contribute to the non-compliance with anti-corruption laws. To achieve meaningful progress, it becomes necessary to go beyond legal reforms and actively engage with the cultural norms, attitudes, and values that shape behaviors and perceptions surrounding corruption.

Both the ICAC and the OECD Anti-Bribery Convention were enacted in response to the desire of the United States business sector to create a level playing field and combat corruption. These international instruments follow a legalistic approach to social control, similar to the approach taken by the United States in the Foreign Corrupt Practices Act (FCPA). However, it is important to recognize that this approach may not be the most effective path to address corruption in Latin America.[167]

For instance, the whistleblowing provisions[168] outlined in the ICAC, which work well in highly individualistic and low power distance cultures like the United States, may not be as effective in high power distance and

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[166] *See* Husted, *International Anti-Corruption Agreements*, *supra* note 116, at 418.

[167] *Id.* at 419.

[168] Section III.1 of the ICAC referred to Preventive measures provides: "Standards of conduct for the correct, honorable, and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest and mandate the proper conservation and use of resources entrusted to government officials in the performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of public servants and government processes." *Inter-American Convention Against Corruption*, Organization of American States (Mar. 29, 1996), O.A.S.T.S. No. B-58.

collectivist countries like Argentina. In collectivist cultures, where followers generally accept the actions of leaders as good and right, and where personal relationships hold significant weight, the rigid enforcement of the law may be viewed with flexibility.[169]

International anti-corruption instruments frequently rely on sanctions or punitive measures as a mechanism of social control, grounded in a rational behavior model wherein individuals consider the potential costs of punishment when making decisions, consequently deterring them from participating in illicit activities. However, this approach is more aligned with individualistic societies like the United States[170] and overlooks how cultural and social contexts influence the preferences and decision-making processes of individuals, as well as the weight of shame in collectivist societies.[171]

In collectivist cultures, social control strategies should be directed towards changing organizational cultures, leveraging the power of in-groups to combat corruption. Positive incentives can be introduced within these organizations, coupled with systems that foster cultural change and promote transparent business conduct.[172] Such approaches recognize the influence of cultural factors and aim to align organizational values and practices with anti-corruption objectives. By working within the existing cultural framework, it becomes possible to cultivate a collective commitment to integrity and accountability.

It is imperative to acknowledge the intricate relationship between culture and corruption, understanding that cultural traits alone do not signify an embrace or justification of corrupt behavior. The presence of certain cultural characteristics in Latin America, for instance, does not imply an inherent commendation of corruption within the culture, nor does it suggest that corrupt practices are held in high esteem. Rather, it is within the framework of cultural traits that we may discern a propensity for corrupt behavior or its rejection.

The formulation of legislation, as one of the most sovereign acts undertaken by a nation, is a multifaceted process influenced not only by formal legislative procedures but also by the intrinsic elements of culture, values, societal norms, axiological factors, social structure, historical context, and tradition. Consequently, legislation enacted under international pressure to achieve a purported "state-of-the-art" legal framework is unlikely to yield significant positive outcomes in regions where cultural traits hinder the effective implementation of international law.

Ethnocentric conventions that incorporate standardized anti-corruption measures are at risk of faltering due to their failure to account for the diverse

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[169] *See* Husted, *International Anti-Corruption Agreements*, *supra* note 116, at 419.

[170] Diane Vaughan, *Rational Choice, Situated Action, and the Social Control of Organizations*, 32 L. & Soc'y Rev. 23, 56 (1998).

[171] Christopher P. Earley, Face, Harmony, & Social Structure: An Analysis of Organizational Behavior Across Cultures (Oxford University Press 1997); Stella Ting-Toomey & Beth-Ann Cocroft, *Face and Facework: Theoretical and Research Issues*, *in* The Challenge of Facework: Cross-Cultural and Interpersonal Issues 307 (Stella Ting-Toomey ed., 1994).

[172] *See* Husted, *International Anti-Corruption Agreements*, *supra* note 116, at 421.

cultural contexts in which they are applied. Cultural particularities must be acknowledged and incorporated into anti-corruption strategies to ensure their efficacy and promote genuine change. Understanding that cultural influences shape individual preferences and attitudes, it becomes evident that the application of solely punitive measures based on rational choice models may overlook the role of culture and social context in decision-making processes.

A shift in focus is warranted, particularly within collectivist cultures prevalent in Latin America, where social control strategies should be directed toward transforming organizational cultures. By harnessing the power of in-groups, it becomes possible to combat corruption through the cultivation of transparent business practices. Such strategies should embrace positive incentives embedded within cultural change systems to foster an environment conducive to integrity and accountability. "For example, societies with high uncertainty avoidance practices should adopt long-term reform programs that emphasize institutional mechanisms to improve the presence of uncertainty avoidance practices."[173] Collectivist countries with high power distance and uncertainty avoidance should implement measures to counteract these factors by establishing systems to rationalize and systematize mechanisms, such as flexible incentive systems and professional promotion structures.[174] The detrimental impact of corruption on development, equality, and prosperity has been vehemently expressed through popular demonstrations and social movements in countries like Argentina.[175] This could be construed as a signal that corruption is widely acknowledged as a pervasive evil rather than a universally accepted practice in Latin America. Such civic engagement serves to underscore the urgent need to address corruption as a significant impediment to societal progress.

In light of these intricate dynamics, a more nuanced and culturally sensitive approach is required when formulating and implementing anti-corruption measures. Ethnocentric conventions must be supplanted with strategies that acknowledge cultural nuances, engage local stakeholders, and foster a culture of integrity and accountability within the unique cultural contexts in which corruption persists. By doing so, a more effective and sustainable path towards combating corruption can be pursued.

It is important to recognize that individuals do not always align their behavior with their ethical standards. In this regard, the findings of the World Values Survey (WVS)[176] provide valuable insights, particularly when

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[173] Seleim & Bontis, *supra* note 5, at 180.

[174] *Id.*

[175] *See* Laura Plitt, *Massive anti-government protests in Argentina*, BBC News (Apr. 19, 2013), https://www.bbc.com/news/av/world-middle-east-22218244, *archived at* https://perma.cc/UN37-RNHS; News Wire, *Thousands protest against government in Argentina*, France 24 (Nov. 9, 2012), https://www.france24.com/en/20121109-argentina-kirchner-corruption-thousands-protest-beunos-aires, *archived at* https://perma.cc/B9MA-JW2G; Argentina protests: up to half a million rally against Fernández de Kirchner, The Guardian (Nov. 9, 2012), https://www.theguardian.com/world/2012/nov/09/argentiana-protests-rally-fernandez-kirchner, *archived at* https://perma.cc/3HWX-YT9B.

[176] R. Inglehart, C. Haerpfer, A. Moreno, C. Welzel, K. Kizilova, J. Diez-Medrano, M. Lagos, P. Norris, E. Ponarin & B. Puranen et al. (eds.), *World Values Survey: Round*

examining the Argentine case in relation to other countries. Specifically, I have selected a group of Latin American countries characterized by high levels of corruption, namely Argentina, Brazil, and Guatemala. In contrast, the chart also includes several European and North American countries known for their low levels of corruption, such as Canada, Germany, Great Britain, Norway, and the United States.[177]

As part of the survey, participants were asked to express their beliefs regarding the justifiability of taking bribes. The respondents were presented with a scale ranging from 1 (indicating that bribery is never justified) to 10 (indicating that bribery is always justified), allowing for a nuanced response that encompasses various degrees of justification.

FIGURE 11.

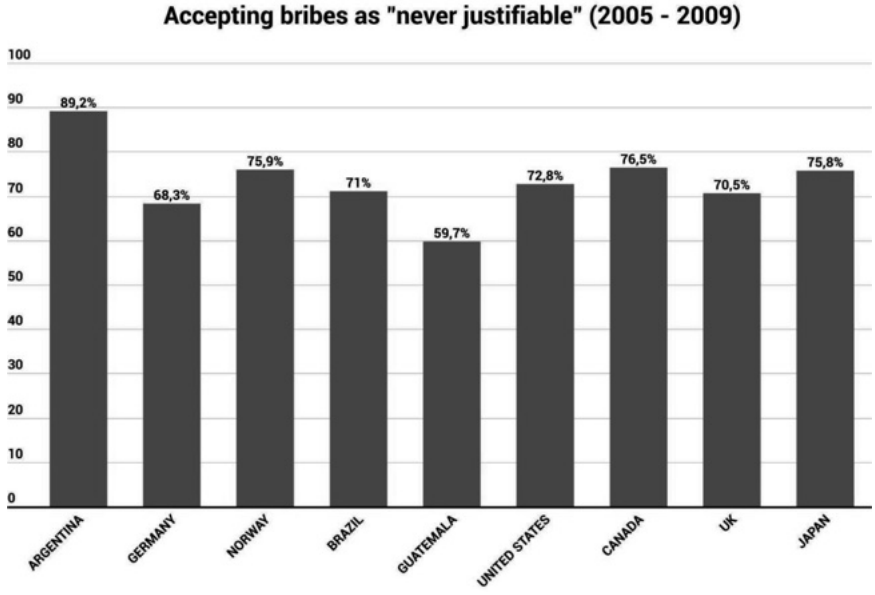

FIGURE 11. Source of Data: Inglehart et al., *supra* note 176.

As can be observed in Figure 11, Argentinians express higher disapproval of corruption compared to all other selected countries, some of which are known for their high levels of transparency according to Transparency International's Corruption Perceptions Index.[178]

Five - Country-Pooled Datafile Version, JD SYSTEMS INSTITUTE (2014), https://www.worldvaluessurvey.org/WVSDocumentationWV5.jsp, *archived at* https://perma.cc/JPE9-D4CR.

[177] The selection of countries was made based on a criterion relying on the Corruption Perceptions Index of Transparency International. *Corruption Perceptions Index*, TRANSPARENCY INTERNATIONAL (2022), https://www.transparency.org/en/cpi/2022?gclid=CjwKCAiA-P-rBhBEEiwAQEXhH_kwP4eE-4C-s8YM285IJ5TqYF2c18WAAtSj4sgyipaSeO9mUKSlLBoCTw4QAvD_BwE&gad_source=1, *archived at* https://perma.cc/43GP-LSTM.

[178] *Corruption Perceptions Index (2022)*, *supra* note 177.

While it is beyond the scope of this paper to propose a comprehensive solution to the issues outlined, it is reasonable to suggest that the complexity of the problem would be significantly amplified if Argentines perceived corruption as a positive behavior. Such a scenario would necessitate a fundamental shift in deeply ingrained values and principles—a daunting task in itself. However, corruption is generally regarded as negative conduct by the majority of Argentines, as evidenced by the central role it played in triggering massive demonstrations.[179]

Considering this context, preventing individuals from engaging in acts they already deem unacceptable and morally wrong may be a more attainable objective compared to dissuading them from participating in acts they consider acceptable or justified. Rather than attempting to alter deeply rooted values, the focus should be directed towards modifying behavior that contradicts these shared values. It is essential to recognize that a one-size-fits-all approach based on international recipes is unlikely to effectively address the complex and nuanced challenges presented by corruption.

Notwithstanding, it is necessary to raise concerns about recent data indicating that Argentine society is increasingly less censorious of accepting bribes. In this regard, the WVS 2017-2022 found that 71.3% of Argentinians considered bribery as "never justifiable." During the same period, the rest of the referenced countries (except for the United States and Canada) have increased their rejection of accepting bribes. This data could suggest a values crisis in Argentina—a determination that requires a thorough investigation beyond the scope of this work—implying a greater complexity in addressing the problem.

[179] *See supra* note 175.

FIGURE 12.

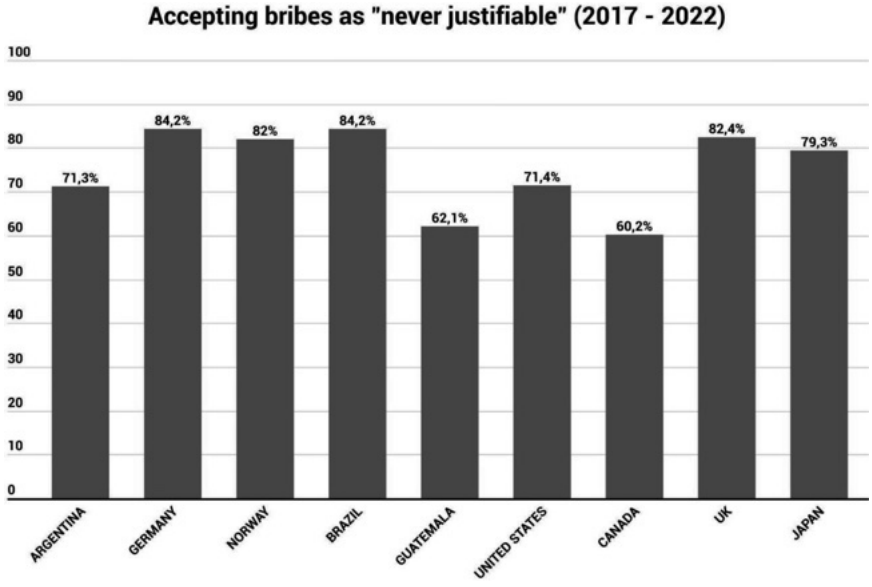

FIGURE 12. Source of data: Haerpfer, C., Inglehart, R., Moreno, A., Welzel, C., Kizilova, K., Diez-Medrano J., M. Lagos, P. Norris, E. Ponarin & B. Puranen (eds.), *World Values Survey: Round Seven - Country-Pooled Datafile Version 5.0, Madrid, Spain & Vienna, Austria*, JD SYSTEMS INSTITUTE & WVSA SECRETARIAT (2022), https://www.worldvaluessurvey.org/WVSDocumentationWV7.jsp, *archived at* https://perma.cc/GWH7-REE2.

3. Some Argentine Examples

In this section, I aim to provide illustrations of how collectivism, high power distance, and uncertainty avoidance influence the Argentine system, thereby hindering the objectives of anti-corruption international law. Specifically, I will focus on two critical areas that are particularly susceptible to the influence of culture: whistleblowing and the appointment of judges. By examining these examples, we can gain insights into the challenges posed by cultural factors and their impact on the effectiveness of anti-corruption measures.

i. Blowing the Whistle

Whistleblowing, a critical mechanism for exposing corruption, faces significant challenges in high power distance, collectivist societies such as Argentina. While Article III, Sections 1 and 8 of the ICAC[180] (preventive

[180] *Inter-American Convention Against Corruption*, *supra* note 168.

measures) and Articles 8.4, 13.2, 32, 33, and 60.1.i of the United Nations Convention Against Corruption (UNCAC)[181] emphasizes the importance of creating standards of conduct and protecting witnesses, the cultural dynamics in Argentina make it unlikely for these provisions to yield substantial results. In high power distance countries, there is a tendency for followers to unquestioningly accept the actions of leaders as inherently good and right, eroding the potential for whistleblowing behavior that challenges the status quo. Only the most flagrant violations of the sense of propriety would undermine that trust in strong leadership.[182] "In addition, the collectivist responds more to personal obligations owed to members of his or her respective in-groups than to impersonal obligations owed to society.[183] It is almost inconceivable that whistle blowing behavior would be observed in a high power distance and collectivist society."[184]

Argentina's history with whistleblowing reflects this cultural context. Prior to 2016, the country had limited provisions for whistleblowing, and even then, it was predominantly restricted to drug-related crimes. As someone who has worked extensively on cases involving economic crimes, I have witnessed firsthand the limited effectiveness of whistleblowing in Argentina. In the rare instances where individuals provided information, it was typically about lower-ranking members of the organization, while leaders remained shielded from exposure.

Only in 2016, after a two-decade delay since signing the ICAC, did Argentina pass a comprehensive "Whistleblowing Act" that encompassed a range of crimes, including corruption.[185] This belated response underscores the resistance within the political sphere to facilitate investigations that might implicate those in power. The inclusion of whistleblowing provisions specifically targeting corruption took significant time to materialize due to this reluctance.

While it is too early to gauge the effectiveness of whistleblowing in corruption cases in Argentina, a recent prominent case, known as "El Caso de los Cuadernos" or "the notebook scandal," sheds some light on the challenges. In this case, a high-ranking public official's driver meticulously recorded every bribe received by his superior, implicating numerous businessmen and public officials. However, when it comes to revealing information, the pattern has been businessmen cooperating to secure release on bail, while public officials remain unwilling to expose their superiors, even if it means remaining in custody. The revelations mainly come from members of the out-group rather than cohesive in-groups.

Based on these observations, it is evident that traditional individualistic approaches to whistleblowing may not yield the desired outcomes when

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[181] *United Nations Convention Against Corruption*, UN General Assembly A/58/422 (Oct. 31, 2003), https://www.refworld.org/docid/4374b9524.html, *archived at* https://perma.cc/Y3J4-XKXA.

[182] Hofstede, *supra* Figure 8.

[183] *See* Husted, *International Anti-Corruption Agreements*, *supra* note 116, at 419.

[184] *Id.*

[185] Law No. 27.304 (2016), Nov. 2, 2016, [33.495] B.O. 1.

dealing with tightly knit groups. To foster effective whistleblowing within cohesive organizations, it would be advantageous to promote a group norm that values integrity and perceives corrupt practices as a violation of the in-group's principles. By cultivating a sense of organizational belonging and a shared commitment to transparency, employees may feel more compelled to come forward with information, even if it implicates their superiors.[186]

To enhance the effectiveness of whistleblowing in Argentina and similar cultural contexts, it is crucial to address the broader organizational culture and instill a collective sense of responsibility for combating corruption. This entails creating an environment where speaking out against corrupt practices is not only encouraged but also protected. By combining individual accountability with the reinforcement of group norms, it becomes possible to foster a culture that rejects corruption and supports whistleblowing as an integral part of maintaining the integrity of the organization.[187]

ii. Appointment of Judges

Hiring practices are addressed in Article III, Section 5 of the ICAC, which emphasizes the importance of openness, equity, and efficiency in the selection process. However, in Latin America, including Argentina, it is common for individuals to be hired based on personal relationships rather than merit.[188] This preference for hiring friends or relatives can be attributed to the positive value placed on personal connections within high uncertainty avoidance and collectivist societies.[189] By hiring individuals they know and trust, people feel more secure and reduce uncertainty when dealing with unfamiliar individuals. Moreover, in collectivist cultures, strong personal relationships take precedence over impartial considerations, leading to the favoritism of specific individuals. As a result, despite the existence of rules promoting openness and equity, there is a tendency to circumvent such regulations.[190]

In the case of Argentina, there is a lack of regulations that align with the criteria set forth in the ICAC. Congress, the executive branch, and the judiciary have the power to make appointments without significant restrictions. They often make these appointments based on personal relationships. However, it is worth noting the judge appointment system as a specific example. Prior to the constitutional reform of 1994, the president had the authority

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[186] Husted, *International Anti-Corruption Agreements*, *supra* note 116, at 419.

[187] *Id.*

[188] *See* Julio Ríos Figueroa, Family Ties and Nepotism in the Mexican Federal Judiciary, in The Limits Of Judicialization From Progress To Backlash In Latin America, 195 (Sandra Botero, Daniel M. Brinks and Ezequiel A. Gonzalez Ocantos ed., Cambridge University Press 2022); Davis & Ruhe, *supra* note 146, at 285.

[189] Agyenim Boateng, Yan Wang, Collins Ntim & Keith W. Glaister, *National culture, corporate governance and corruption: A cross-country analysis*, 26 Int. J. Fin. Econ. 3852, 3856 (2021); Davis & Ruhe, *supra* note 146, at 278; Monica Violeta Achim, *Cultural Dimension of Corruption: A Cross-Country Survey*, 22 Int. Adv. Econ. Res. 333, 335 (2016); Husted, *Wealth, Culture, and Corruption*, *supra* note 36, at 343.

[190] *Id.* at 420.

to appoint any lawyer as a judge,[191] with confirmation from the Senate. This system was similar to that of the United States. Following the reform, the National Magistrate Council was established to participate in the judge appointment process. The Council was responsible for organizing open contests, conducting exams, evaluating the academic and professional backgrounds of applicants, and proposing three candidates to the president, who retained the discretion to select any of the candidates for the position.

Despite subsequent regulations introduced in 1998 to address discretionary appointments, the appointment process has undergone multiple reforms. However, throughout these changes, the process has involved an oral stage that lacks anonymity, such as an oral exam. Currently, the final stage consists of an interview aimed at assessing the "democratic values of the candidates." This interview has the potential to significantly impact the ranking of contestants, ultimately allowing the government to appoint the person they would have chosen even in the absence of an open contest. Consequently, this system helps to mitigate uncertainty and ensures that the government retains control over appointments.

While Argentina has made efforts to adhere to the rigorous international law reform agenda, aimed at meeting global standards and avoiding sanctions, many of these reforms are not in line with the country's cultural context. As a result, these regulations have become mere formal commands devoid of substantive meaning, as they fail to effectively address the cultural factors that hinder their practical application.

C. Technical Obstacles

This section highlights the lack of alignment between internationally promoted standardized solutions and the legal framework in Argentina, resulting in ineffective legal amendments. The process of lawmaking is regarded as a symbol of sovereignty, particularly in criminal law, which involves the state's coercive power and the restriction of individuals' fundamental liberties. As such, each country's legal framework regulates the balance between state power and individual rights, making it unlikely for one-size-fits-all laws, especially in criminal matters, to seamlessly fit every domestic penal and constitutional framework. Laws that are not the product of genuine deliberation are unlikely to be fully complied with, thereby undermining the effectiveness of international law. Moreover, when there is incompatibility between a law and a country's constitutional framework, such as a violation of fundamental rights like double jeopardy, the presumption of innocence, or the principle of legality, the norms become inapplicable.

An illustrative example is Brazil, which formulated a reservation to Article XI.1.c of the ICAC[192] due to its inconsistency with the Brazilian legal

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[191] Only restrictions related to age and seniority in the legal profession applied.

[192] *See* ICAC, Organization of American States (1996), www.oas.org/juridico/english/sigs/b-58.html, *archived at* https://perma.cc/92KD-JV76 (list of signatory countries and ratifications of the ICAC).

framework. This article encourages states to establish as offenses under their laws acts that involve illicitly obtaining benefits or gains from public authorities. Brazil deemed this provision offensive to its legal framework. Similarly, Panama declared that Article XV of the ICAC does not bind the country because the seizure and forfeiture of property outlined in the provision contravene Article 30 of the Panamanian Constitution, which prohibits the seizure of property as a penalty.[193] Guyana also made a similar declaration regarding Article 142.1 of its Constitution.[194]

Ratifying the Convention took several years for many states, and this delay was influenced by various factors, including complex national procedures, concerns about the constitutionality of certain provisions, difficulties in defining specific conduct, incorporating certain articles such as the removal of bank secrecy, and the absence of an institutional mechanism for effective implementation.[195] While the Convention was eventually signed by nearly all countries in the region due to genuine willingness to combat corruption, political pressure, and the desire to enhance international credibility, challenges and incompatibilities between domestic legal frameworks and standardized legal solutions persist. In the case of Argentina, for example, the Convention remains a formal instrument with limited substantive effect in many aspects.[196] It is evident that Argentina has implemented numerous amendments requested by international organizations, but these amendments have often lacked sufficient deliberation and consequently, have resulted in inconsistency.

4. Pressure Exerted by the International Community and Argentina as a Perfect Compliant

Argentina's ratification of major international conventions against corruption, such as the ICAC, the OECD Anti-Bribery Convention, the UNCAC, and the United Nations Convention Against Transnational Organized Crime, demonstrates its commitment to addressing corruption at the global level. These ratifications signify Argentina's willingness to align itself with international standards and actively participate in the fight against corruption.

Furthermore, Argentina's membership in the Financial Action Task Force (FATF) and its regional chapter GAFISUD highlights its dedication to combating money laundering and the financing of terrorism. By being part of these organizations, Argentina has assumed the responsibility of adhering to the FATF's Forty Recommendations, which provide guidance on combating money laundering and terrorist financing.[197]

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[193] *Id.*

[194] *Id.*

[195] Enrique Lagos, *The Future of the Inter-American Convention Against Corruption, in* Conference: Transparency and Development in Latin America and the Caribbean (InterAmerican Development Bank, May 2000).

[196] *See* Sections IV.C.1 and IV.C.2.

[197] *Financial Action Task Force Recommendations*, Financial Action Task Force (2023), https://www.fatf-gafi.org/en/topics/fatf-recommendations.html, *archived at* https://perma.cc/Q7YP-E7SB.

Argentina's commitment to these international instruments and organizations is not merely symbolic. The country has taken concrete steps to implement the reforms and measures recommended by these entities. This proactive approach is reflected in Argentina's high scores in the Global Integrity Report, particularly in the areas of anti-corruption law and the overall legal framework.[198]

These achievements underscore Argentina's recognition of the importance of international cooperation in addressing corruption and its efforts to ensure compliance with global standards. By ratifying and implementing these conventions and participating in international organizations, Argentina demonstrates its commitment to combating corruption and promoting transparency and integrity in its governance practices.

Argentina's commitment to compliance with international standards is further evidenced by the numerous legal amendments it has enacted at the behest of the international community. Several notable examples include:

1. In 1999, Argentina passed the "Public Ethics Act,"[199] which—among many other objectives—aimed to impede the operation of the statute of limitations in corruption cases. However, this singular amendment, without the accompaniment of tailored institutional reforms, proves ineffective considering the prolonged duration of judicial proceedings in corruption cases. Based on a sample of twenty-one cases, the average length of these proceedings is 137 months, or over 11 years.[200] It is also noteworthy that the average time between the commission of the crime and the initiation of judicial proceedings is 40 months, exceeding 3 years. In some significant cases, the judicial process commenced nearly 5 years after the offense was committed.[201] Furthermore, the average duration from the commencement of criminal court proceedings to the trial is 86.8 months, surpassing 7 years.[202] Consequently, it takes more than a decade from the occurrence of the crime to bring a case to trial.
2. Through the "Public Ethics Act," Argentina comprehensively updated its legislation pertaining to bribery, illicit enrichment, and various corrupt activities, thereby complying with the 1996 ICAC.
3. The enactment of the "Public Ethics Act" also introduced the offense of transnational bribery into national legislation (Article 258 bis of the Penal Code), in accordance with the requirements of the

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[198] *See* Section III.

[199] Law No. 25.188 (1999), Nov. 1, 1999, [29.262] B.O. 1.; see, in particular, Article 29 of the "Public Ethics Law," which amended Article 67 of the Argentine Penal Code.

[200] Oficina de Coordinación y Seguimiento en materia de Delitos contra la Administración Pública (OCDAP), Asociación Civil por la Igualdad y la Justicia (ACIJ) & Centro de Investigación y Prevención de la Criminalidad Económica (CIPCE), *Los procesos judiciales en materia de corrupción. Los tiempos del proceso. Estado de situación*., ORGANIZACIÓN DE LOS ESTADOS AMERICANOS (OAS), www.oas.org/juridico/pdfs/mesicic4_arg_proc.pdf, *archived at* https://perma.cc/WV6C-HKXC.

[201] *Id.* at 4.

[202] *Id.* at 6.

IACAC (Article VIII). Subsequently, through Law 25,825 (2003),[203] certain aspects of the criminal offense were reformed at the request of the OECD to align the legislation with the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (approved by Argentina in 2000).

On December 18, 2014, the OECD published a statement titled "Argentina seriously non-compliant with key articles of Anti-Bribery Convention." It stated that "The OECD Working Group on Bribery doubts Argentina's commitment to fight foreign bribery. Argentina still has no law to punish companies for foreign bribery or prosecute its citizens who commit this crime abroad. Widespread delays continue to plague complex economic crime investigations. Executive contact with and disciplinary processes against judges and prosecutors threaten their independence. Urgent action is needed to address these grave concerns. As a result, Argentina will be evaluated again by the end of 2016 to assess progress. A high-level mission will also visit Argentina in early 2016." [204] In the phase 3 report on the implementation of the Convention (December 2014), among many other issues, the OECD expressed concerns about Argentina's failure to establish the criminal liability of legal entities in cases of international bribery.[205]

However, it is striking that the provision always remained drafted as a general criminal offense, identifying the active subject with the formula "the one who (. . .), gives or offers," which makes little sense for the offense of transnational bribery. According to this formulation, Argentina would have to punish any citizen of any country who engages in the prohibited conduct anywhere in the world, essentially assuming universal jurisdiction in relation to this offense. It was only nearly two decades after the introduction of the criminal offense in the legislation that this was modified through the "Corporate Criminal Liability Act" (2017),[206] which added a corrective clause to Article 1 of the Penal Code. The current provision states that Argentine criminal law applies "to the offense provided for in Article 258 *bis* committed abroad by Argentine citizens or legal persons domiciled in the Argentine Republic, either at their statutory domicile or at the establishments or branches they have in

[203] Law No. 25.825 (2003), Dec. 11, 2003, [30.295] B.O. 1.

[204] *Argentina seriously non-compliant with key articles of Anti-Bribery Convention, says OECD*, OECD (2014), https://web.archive.org/web/20230320131937/https://www.oecd.org/corruption/argentina-seriously-non-compliant-with-key-articles-of-anti-bribery-convention.htm, *archived at* https://perma.cc/QN4X-SHKL.

[205] *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Argentina*, OECD (2014), https://www.oecd.org/daf/anti-bribery/Argentina-Phase-3-Report-ENG.pdf, *archived at* https://perma.cc/7VPL-SYJV.

[206] Law No. 27.401 (2017), Dec. 1, 2017, [33.763] B.O. 3.

Argentine territory."[207] In this way, the active subject of the criminal offense was regulated in accordance with the principle of nationality.

In its report, the OECD strongly criticized the wording of Article 258 *bis* of the Penal Code, highlighting the need for a broad and autonomous definition of foreign public officials, the vagueness of the criminal offense by failing to clarify that the obtained advantage must be undue, the need to expressly establish Argentine jurisdiction in cases of transnational bribery, the lack of jurisdiction based on nationality rather than mere territorial jurisdiction, the omission of fines for companies that commit the offense, the lack of provisions regarding asset confiscation from the involved companies, criticism of the procedural regime for generating unnecessary delays leading to the operation of the statute of limitations, the low penalties provided in Argentina for accounting offenses (Article 300.2 of the Penal Code), inadequate protection of witnesses in cases of plea bargaining, and the need to increase the maximum fine for the offense of transnational bribery, among others.[208]

In July 2019, in the report corresponding to phase 3bis, the OECD acknowledged Argentina's significant progress in implementing a substantial portion of the recommendations made in 2014, as mentioned earlier. Notably, Argentina adopted a comprehensive definition of foreign public officials, explicitly established Argentine jurisdiction for cases of transnational bribery involving Argentine citizens or corporate entities domiciled in the country, introduced the term "improperly" to qualify the act of offering a bribe or advantage to a foreign official within the criminal offense, approved the criminal liability of legal entities for this offense, and included a specified fine in Article 259 *bis* of the Penal Code, among other measures.[209]

However, it is noteworthy that there is no record of any conviction for transnational bribery since its enactment, and it is even challenging to trace any cases of transnational bribery in the Argentine judicial history. The cases that have been investigated have not led to convictions or even progressed to the trial stage. According to an audit conducted by the Audit Body of the National Magistrate Council,[210] a total of six judicial proceedings involve facts partially or entirely encompassed by the transnational bribery offense. Although

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[207] Translation by the author.

[208] *Phase 3 Report*, *supra* note 205.

[209] *Argentina: Follow-up to the Phase 3bis Report & Recommendations*, OECD (2019), https://www.oecd.org/corruption/anti-bribery/OECD-Argentina-3bis-follow-up-report-ENG.pdf, *archived at* https://perma.cc/62T4-4MPJ.

[210] Resolution 342/2016, National Magistrate Council (2016), https://old.pjn.gov.ar/Publicaciones/00014/00098042.Pdf, *archived at* https://perma.cc/GA6L-8A27; Resolution 414/2018, National Magistrate Council (2018), https://old.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=126966&CI=INDEX100, *archived at* https://perma.cc/Q2ZA-NCSW; Resolution 547/2018, National Magistrate Council (2018), https://old.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=129176&CI=INDEX100, *archived at* https://perma.cc/GSW9-T9H9.

the report provides an account and description of the procedural status of 11 cases, it should be clarified that Resolution 414/2018 mandated the inclusion of ongoing judicial proceedings potentially constituting transnational bribery in the audit work conducted by the Audit Body. Therefore, in several of the reported cases, it is not confirmed that the factual basis constitutes a case of transnational bribery but rather has the potential to be one. This is evidenced by the circumstance that, until the time of the report's presentation, the offense reported in relation to the remaining cases included bribery, embezzlement of public funds, incompatible negotiations with public function, and fraudulent administration detrimental to the public administration.

It is also pertinent to note that the six cases of transnational bribery are in the early stages of investigation. Only in one of these cases was an individual summoned for a preliminary statement, which led to the issuance of a prosecution order that, at the time of the report's presentation, had been appealed and not yet confirmed. Even considering the broader universe of 11 cases surveyed, which involve various offenses, only two of them resulted in summons for preliminary statements, while the others were subjected solely to the ordering of investigative measures.[211]

Furthermore, in addition to these circumstances, there are obstacles encountered in the realm of international cooperation (see point 9 of this enumeration). However, the lack of effectiveness in these cases cannot be causally linked to the wording of the laws or the absence of provisions regarding the criminal liability of legal entities, which was only introduced in 2017 through the "Corporate Criminal Liability Act." There are no known instances where charges have not prospered or advanced towards conviction due to the wording of the law. In fact, during the two decades of the transnational bribery offense's existence, there is no knowledge of advanced-stage criminal proceedings with such a qualified offense as the main subject.[212]

Moreover, the aforementioned reports do not indicate any references to the cultural and technical compatibility of the required reforms but rather demand them uniformly from all member countries of the OECD Convention.

4. Until 2000, money laundering was exclusively criminalized in relation to drug-related offenses. In that year, Argentina introduced a significant amendment (Law 25, 246) to encompass money laundering as a crime applicable to all predicate offenses. Nonetheless, money laundering was not yet legislated as an autonomous offense,

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[211] *See* Resolution 547/2018, *supra* note 210.

[212] *See Argentina seriously non-compliant*, *supra* note 204; *Phase 3 Report*, *supra* note 205; *Argentina: Follow-up*, *supra* note 209.

meaning that it was not legally possible to convict someone for laundering their own money, but only for laundering funds belonging to others. This statute also established the Argentine Financial Information Unit. Subsequent amendments were introduced in 2003 (Law 25, 815), 2006 (Law 26, 087), and 2011 (Law 26, 683) to further refine this regulatory framework.

5. In 2011, Argentina enacted Law 26, 683, which reformed its legal framework to allow the state to recover stolen assets without the requirement of a prior conviction in cases of money laundering and other economic crimes.[213] This amendment was made in response to requests from international organizations such as the FATF and the OECD. However, the constitutionality of this law has sparked considerable debate and discussion, resulting in ongoing constitutional challenges. On January 22, 2019, the President of Argentina issued an executive order introducing an *in rem* civil action to extinguish any claim of ownership over property allegedly acquired through illicit activities, with a particular focus on corruption cases. Nevertheless, the approval of this presidential decree by Congress has faced resistance, indicating the continuing constitutional complexities surrounding the issue. Moreover, this mechanism has been rarely applied.
6. In 2011, Argentina implemented a significant change to its money laundering legislation through Law 26, 683. Money laundering was finally established as an independent offense, allowing the prosecution of individuals who launder money obtained from previous criminal activities. This reform also included an overall increase in penalties for economic crimes outlined in the Penal Code. However, the national director of the Financial Information Unit reported that there have been only fourteen convictions for money laundering, which is considered a relatively low number, especially when compared to other countries in the region such as Colombia.[214]
7. Law 26, 683 also introduced criminal liability for legal entities in cases of money laundering and established a new section of financial crimes. Subsequently, Law 27, 401 (December 2017) extended criminal corporate liability to cases of corruption. However, the absence of comprehensive and specific procedural rules to accompany the substantive provisions of criminal corporate liability has hindered its effective implementation. This lack of clarity has traditionally rendered the system of criminal corporate liability inapplicable. Some legal scholars and judges in Argentina even argue that

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[213] G.A. Res. A/58/422, (Oct. 31, 2003) at 44.

[214] Fabio Ferrer, *Menos de una condena por año por lavado de dinero*, INFOBAE (Oct. 7, 2016), www.infobae.com/politica/2016/10/07/las-autoridades-de-la-uif-y-de-la-procelac-disertaron-sobre-los-aspectos-penales-del-lavado-de-activos/, *archived at* https://perma.cc/3L86-CBNF.

corporate criminal liability is unconstitutional due to its perceived incompatibility with the system of personal criminal liability outlined in Article 18 of the National Constitution.[215]

8. In 2016, Argentina enacted the "Whistleblower Act"[216] in response to international pressure. This law addresses the protection and promotion of whistleblowers. However, please refer to section VII.1.a. for an analysis of the challenges and obstacles associated with whistleblowing in Argentina.
9. Argentina has signed numerous bilateral and regional treaties for international cooperation in combating corruption and other crimes.[217] However, it faces difficulties in obtaining information from other countries. Approximately 66% of the information requests made by Argentine authorities are either rejected or receive no response due to formal deficiencies or a lack of understanding regarding the laws governing the process of international cooperation.[218] This highlights the inefficiencies of the bureaucratic structure and the need for proper training of public officials, as merely signing international treaties and enacting corresponding laws proves ineffective without an effective implementation framework.

5. Argentina and the Financial Action Task Force: A Conflictive Relationship

During the discussion of the money laundering reform bill in the House of Representatives, Congressman Lanceta emphasized the pressure exerted by the Financial Action Task Force (FATF) on Argentina to strictly comply with its international commitments. The passage of the amendment, which later became Law 26, 683, was seen as a response to this pressure.

In 2011, Argentina also enacted the "Anti-Terrorist Act," which aims to punish offenses committed to instill fear or coerce national or local authorities, foreign countries, or international organizations.[219] However, this statute has faced criticism from the intellectual and legal community in Argentina due to concerns about its potential to criminalize social movements and legitimate claims. The law was passed quickly as part of a legislative package that required urgent enactment. Non-compliance with the demands of the FATF regarding terrorism and money laundering could have resulted in Argentina being placed on the organization's "blacklist."

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[215] *See e.g.*, J. Zaffaroni dissent "*Fly Machine*" (Argentine Supreme Court, 2006).

[216] Law No. 27.304, *supra* note 185.

[217] *Compendio Normativo: Cooperación Jurídica Internacional En Materia Penal*, Normativa Vigente (2022), http://www.cooperacion-penal.gov.ar/userfiles/dajin-compendio-penal.pdf, *archived at* https://perma.cc/5L8R-AHG4 (including a complete list of signed treaties).

[218] Comisión de seguimento del cumplimiento de la Convención Interamericana Contra la Corrupcion en Argentina, *Sexto Informe* (2012), https://www.oas.org/juridico/PDFs/mesicic4_arg_sc_inf_fia.pdf, *archived at* https://perma.cc/FB3D-JZ67.

[219] Law No. 26.734 (2011), Dec. 28, 2011, [32.305] B.O. 4.

Argentina presented these reforms to the FATF during a summit in Rome, with the goal of being removed from the organization's "grey list"[220] and obtaining the status of a "normal jurisdiction." However, Argentina remained on the "grey list" until October 24, 2014, alongside other countries, such as Afghanistan, Albania, Argelia, Angola, Antigua and Barbuda, Bangladesh, Brunei, Cambodia, Kuwait, Kirghizstan, Mongolia, Morocco, Namibia, Nepal, Nicaragua, Philippines, Sudan, Tajikistan, Trinidad and Tobago, Venezuela, and Zimbabwe. The FATF identified several deficiencies that Argentina needed to address, including criminalizing money laundering, confiscating funds related to money laundering, freezing terrorist-related assets, enhancing financial transparency, improving the Financial Intelligence Unit and suspicious transaction reporting requirements, strengthening anti-money laundering and counter-terrorism financing supervision, implementing customer due diligence measures, and improving channels for international cooperation. The FATF encouraged Argentina to continue addressing these deficiencies and implementing its action plan to ensure effective compliance with international standards.[221]

The FATF has consistently criticized Argentina's framework to combat money laundering. In February 2005, the President of the FATF expressed to Argentina's Minister of Foreign Affairs that the country's efforts were insufficient and that the effectiveness of Argentina's fight against money laundering seemed to be hindered by the standards of its laws criminalizing the offense. The FATF raised concerns about exceptions to criminal liability based on family relationships or friendships and the fact that money laundering was not considered an autonomous crime but rather a type of cover-up offense.[222]

In 2009, the FATF evaluated Argentina's progress and found that only five out of the 54 recommendations were met, indicating a significant shortfall in compliance. Despite the numerous amendments made by Argentina to meet these demands, the results in combating money laundering and corruption have remained extremely poor.[223]

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[220] The FATF designates jurisdictions with insufficient measures against money laundering and terrorist financing (AML/CFT) through two public documents issued three times annually. The "Grey List" highlights nations actively collaborating with the FATF to address strategic deficiencies in their frameworks for countering money laundering, terrorist financing, and proliferation financing. When the FATF places a jurisdiction under heightened monitoring, it indicates the country's commitment to promptly rectify identified strategic deficiencies within agreed-upon time frames while being subject to increased scrutiny. *"Black and Grey" Lists*, Financial Action Task Force (2023), https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html, *archived at* https://perma.cc/2H6G-Q7NJ.

[221] *Improving Global AML/CFT Compliance: on-going process*, Financial Action Task Force (2012), https://web.archive.org/web/20220401090233/http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/improvingglobalamlcftcompliance-on-goingprocess-19october2012.html, *archived at* https://perma.cc/BXP5-64MW.

[222] Felix Marteau, *Lavado de dinero: estandarizacion y criminalizacion*, Red Argentino-Americana para el Liderazgo (2010), http://argentinareal.org/lavado-de-dinero-estandarizacion-y-criminalizacion/, *archived at* https://perma.cc/DA3E-HUZZ.

[223] National Law 26, 087 eliminated the exceptions to criminal responsibility for certain cases of concealment and money laundering and Law 26683 established money laundering as an autonomous crime independent from concealment.

Before the autonomy of the money laundering offense was established through legal amendments, when FATF representatives insisted on the need to improve norms related to money laundering and terrorism financing, Argentine officials responded by stating that it was a sensitive issue given the country's internal history ("Ustedes saben que por nuestra historia interna, este es un tema complicado").[224] However, international organizations considered this response insignificant.

Even after Argentina was deemed a "normal jurisdiction" by the FATF on October 24, 2014, following compliance with numerous requested reforms, the level of corruption and money laundering remained constant or even increased. Furthermore, convictions in cases of corruption or money laundering have been rare.

V. The Impact of the Failed Strategy

In Parts II and III, it was demonstrated that despite Argentina's high degree of compliance with international law, corruption in the country has reached rampant levels, which I referred to as "The Gap." The causes of this phenomenon were explored, leading to the conclusion that the one-size-fits-all approach encounters cultural and technical obstacles specific to Latin America.

Overall, Part IV highlights how the overlap and poor integration of legal reforms have unintended consequences, leading to normative hypertrophy and anomie. These factors create fertile ground for corruption to persist and thrive, despite the efforts made to comply with international standards.

A. Lawmaking as an expression of sovereignty

The prerogative of nations to enact their own laws is a fundamental aspect of sovereignty. Through their elected representatives, laws are established as the embodiment of the will and interests of the people. These laws should not only align with the beliefs, customs, history, values, and traditions of the people, as discussed in Section II.B, but also be in harmony with the existing legal framework, particularly the constitution, as outlined in Section II.C.

Sovereignty encompasses autonomy, control, and legitimacy as its constituent elements. Autonomy refers to the independence in decision-making and action, control pertains to the ability to exert influence and achieve desired outcomes, and legitimacy entails the recognized authority to establish rules.[225]

When laws enacted to fulfill international obligations are compatible with and reflect the needs of the people, it represents a process of integration and translation. However, when laws are passed solely for the purpose of

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[224] Rubén Rabanal, *Presionado, Gobierno apura ley de lavado en Diputados*, Ambito (Apr. 7, 2011), https://www.ambito.com/edicion-impresa/presionado-gobierno-apura-ley-lavado-diputados-n3676663, *archived at* https://perma.cc/8HCZ-XT2Y.

[225] Walter Mattli, *Sovereignty Bargains in Regional Integration*, 2 Int'l Stud. Rev. 149 (2000).

compliance and avoiding international sanctions, without considering the domestic social, political, cultural, and economic impact, it becomes a process of domination and legal transplantation, leading to legal and judicial anomie, which ultimately fuels corruption.[226]

Carlos Nino describes Argentina's situation as one of "foolish anomie," which is characterized by a pervasive and ineffective disregard for legality and norms, where even those who break the rules end up suffering.[227] One of the underlying causes of anomie is the lack of identification with the government and its norms. People fail to recognize the purpose and objectives of the rules, regardless of the prescribed sanctions for non-compliance. Nino suggests that participation and deliberation can serve as remedies for this aspect of anomie. Engaging in public discussion and deliberation about the norms that society needs, their objectives, and the consequences of violating them, can ensure that norms are responsive to social demands. Such discussions aim to establish consensual moral norms, which are essential for supporting legal and social norms.[228]

Therefore, hastily enacted rules driven by external demands, without the natural process of deliberation and consensus that a regular legislative process entails, are unlikely to generate moral norms that align with legal rules. This fosters anomie and facilitates corrupt behavior.

However, it is important to note that I do not advocate for states to disregard international law in order to uphold their sovereignty. I reject the traditional Westphalian model of sovereignty. In fact, sovereignty is a complex concept that varies based on historical and social circumstances.[229] The achievements of international law, partly due to its binding nature, have been remarkable. State conduct is no longer shielded from international scrutiny or accountability, and mechanisms exist to hold sovereign actions accountable to international norms, without merely claiming a lack of ongoing consent to those norms.[230]

"As the world shrinks through developments of transportation and technology, so does the distance between the individual and international law. Some in government are threatened by these developments and what they see as 'giving up sovereignty.' In the United States, this debate played out recently in the decision to implement the Uruguay Round agreements. Yet, if the role of the sovereign is to provide security for its subjects, and effective means present themselves for increasing security through international law, then the role of the sovereign must be to participate in the development of that law. It is not an abdication of sovereign authority to delegate functions and authority to a global system of law; it is in many cases an abdication of that authority not to do so."[231]

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[226] *See* Section IV.
[227] Nino, *supra* note 119, at 31.
[228] Nino, *supra* note 119, at 232–33.
[229] Mattli, *supra* note 225, at 150.
[230] Ronald Brand, *External Sovereignty and International Law*, 8 Fordham Int'l L.J 1685 (1995).
[231] *Id.*

It has been submitted that "[i]f the role of the sovereign is to provide security, and strengthening the international rule of law results in increased security, then the role of the sovereign must be to strengthen the international rule of law. If this is to be accomplished by delegating traditionally 'sovereign' functions to an international body, then so be it. In a democracy-oriented world, the representative of the citizen-sovereign should in fact take every opportunity to enter into legal arrangements, whether national, regional, or global, that will increase security for the citizens. That is the sovereign function."[232]

However, a dilemma arises when international pressure for compliance overrides considerations of legal compatibility and cultural context, thereby failing to achieve the goal of enhancing security and strengthening the international rule of law. As demonstrated in the preceding sections, the strategy pursued by the international community has yielded negative outcomes in addressing corruption.

Legal harmonization and the associated standardization of norms present various challenges, particularly in the realm of crime suppression. Firstly, criminal law, being closely tied to the sovereign practices of the nation-state, tends to resist embracing the complexities of legal pluralism. Secondly, it is essential to undertake a process of normative adaptation that produces an internal rule that satisfies the requirements of procedural and substantive legality, regardless of the origin of the criminal provision. Thirdly, once the internationalization of criminal law is accepted and a compatible internal rule is established, the application of such rules to specific cases may not always be feasible due to the limitations of the domestic legal system in comprehending the diverse characteristics of the "pluralistic" international system. This description serves as a reminder of the importance of thoroughly scrutinizing a bill before it becomes law, particularly when it is the result of international pressure and the adoption of internationally standardized legal instruments.[233]

The international community plays a central role in fortifying the rule of law worldwide, and international organizations bear a significant responsibility to the community of nations. Therefore, reforms should be carried out with international assistance rather than international coercion, in order to strengthen the rule of law and enhance security.

B. The Harmful Consequences of Pervasive Legal Reform

While the idea of implementing state-of-the-art laws internationally may appear enticing,[234] it is important to consider the potential harms that can arise

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[232] *Id.*

[233] *See* Felix Marteau, *supra* note 222.

[234] Some individuals may perceive incompatible reforms through the lens of a Pareto improvement, which refers to a change in resource allocation that benefits at least one individual or preference criterion without negatively affecting any other individual or preference criterion within a given initial allocation of goods among a group of individuals. From this perspective, reformers may believe that enacting new and "more sophisticated laws" carries no harm, even if it does not lead to improvements in the level of corruption. However, appearances can be

from such an approach. As demonstrated throughout this work, international strategies against corruption have often backfired due to the challenges outlined. The overlapping and poorly integrated legal reforms have led to a state of normative hypertrophy, where an excessive number of formal rules have complicated the system, resulting in legal uncertainty and anomie. Paradoxically, this has created more opportunities for corruption as public officials exploit the increased margins of discretion.

1. Uncertainty, Discretion and Anomie

The widespread overhaul of the legal framework and the enactment of formal regulations that are not effectively enforced have detrimental effects on a nation's rule of law and its institutions. Laws that do not align with local political, cultural, economic, and social characteristics create a zero-sum game:

- If countries refuse to adopt the reforms, they may face international liability and consequences.
- If countries implement the reforms and apply ill-fitting laws, they may infringe upon the fundamental rights of citizens who struggle to internalize rules that contradict their cultural and moral norms.
- If countries adopt the reforms but fail to enforce them, an anomic system of unenforced and inapplicable laws emerges, eroding trust in the institutional and republican system.

In essence, the superficial adoption of international reforms without considering their compatibility with local contexts and norms can result in negative outcomes and undermine the very goals they aim to achieve. It is crucial to strike a balance between international cooperation and respect for national sovereignty to ensure effective and sustainable progress in fighting corruption.

Argentina, along with other countries in Latin America, has chosen a path that is more likely to exacerbate corruption rather than address it. Widespread amendments to the law have created an environment of uncertainty where rules overlap and loopholes are generated. This situation hampers both the general public and public officials, including judges and prosecutors, from fully understanding and interpreting the laws in force.

In this perpetual state of legal flux, every day feels like a repetition of the same legal challenges. The law rests eternally stuck in a foundational stage. Every day is the "Legal Groundhog Day."[235] The lack of clarity about what is permissible and what is prohibited leaves people uncertain about how to

deceiving. It is inconceivable that, even when considering a constant level of corruption, a society with new laws is inherently superior to a society governed by preexisting laws. The crucial factor lies not solely in the novelty of laws, but rather in their compatibility with a country's culture and legal framework. In reality, as I elucidate here, the imposition of new legislation mandated by international entities ultimately undermines institutions and creates further opportunities for corruption.

[235] In the movie "Groundhog Day," the protagonist, a Pittsburgh TV weatherman, finds himself trapped in an endless repetition of his least favorite day of the year.

act. This issue is particularly significant in Argentina, a country known for its high levels of uncertainty avoidance. Strict laws are routinely disregarded in practice because they do not align with the prevailing circumstances. The mismatch between rules and reality creates anxiety, which often leads to rule-breaking as a means of reducing that anxiety. The inability to adapt rules to the actual context results in absurd outcomes that are often circumvented through acts of corruption.

The combination of anomie and uncertainty fosters noncompliance with the law and the proliferation of corruption. It creates an environment where corrupt deals thrive, which Peruvian writer Mario Vargas Llosa refers to as the "legal web."[236] This contributes to the growth of a hypertrophic, numbed, and antidemocratic state that prioritizes granting monopolies and privileges to private elites rather than fostering wealth creation.[237] When procedural codes are ambiguous, confusing, or frequently amended, judges and court personnel can exploit the resulting confusion for their own benefit.[238]

Overall, the presence of legal anomie, uncertainty, and a convoluted legal framework perpetuates corruption and undermines the rule of law. It is crucial to address these issues by promoting legal clarity, simplifying procedures, and ensuring consistency in the application of laws.

The Argentine case provides numerous examples that highlight the issues here discussed. One such example is the uncertainty surrounding the powers of the Federal Anti-Corruption Prosecutor (Procuraduría de Investigaciones Administrativas).

Law 27, 148,[239] enacted in 2015, aimed to reform Law 24, 946,[240] which was originally passed in 1998 and regulated the powers of prosecutors. However, Law 27, 148 did not explicitly repeal Law 24, 946, resulting in a situation where both statutes coexist and seemingly contradict each other in relation to the Federal Anti-Corruption Prosecutor's powers.

This legal ambiguity creates challenges and hampers the effectiveness of the Prosecutor's Office. The lack of clarity regarding jurisdictional rules becomes a basis for challenging the standing and authority of the Prosecutor. As a consequence, the Prosecutor's capacity to carry out their duties is impaired, ultimately undermining their ability to effectively address corruption cases.

This example demonstrates how legal uncertainty and overlapping regulations can have practical consequences, hindering the proper functioning of institutions and impeding the fight against corruption. It highlights the need for clear, consistent, and well-integrated legal frameworks that provide

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[236] *See* Hernando De Soto, El Otro Sendero (Editorial Sudamericana 1987) (prologue by Mario Vargas Llosa).

[237] *See id*.

[238] Mary Noel Pepys, *Corruption within the judiciary: causes and remedies*, *in* Global Corruption Report 2007–Corruption in Judicial Systems (Transparency International 2007), https://www.transparency.org/en/ publications/global-corruption-report-2007-corruption-and-judicial-systems, *archived at* https://perma.cc/6535-UTZP.

[239] Law No. 27.148 (2015), June 18, 2015, [33.153] B.O. 21.

[240] Law No. 24.946 (1998), Mar. 23, 1998, [28.862] B.O. 1.

certainty and enable law enforcement agencies to carry out their responsibilities effectively.

The "Principal-Agent-Client Model" confirms this reasoning. Illicit behavior flourishes when agents have monopoly power over clients, when agents have great discretion, and when accountability of agents to the principal is weak. A stylized equation holds:[241]

CORRUPTION = MONOPOLY + DISCRETION - ACCOUNTABILITY

The lack of consensus and clarity surrounding applicable and enforceable laws contributes to the increased discretion of public officials. This, in turn, poses challenges for judges and law enforcement authorities when determining whether another public official has committed an act of corruption or violated the law.

Without clear guidelines and a well-defined legal framework, it is difficult for judges and law enforcement authorities to assess and establish with certainty whether a public official has indeed engaged in corrupt practices. The lack of accountability that results from this uncertainty further undermines efforts to combat corruption effectively.

When there is ambiguity and inconsistency in the law, public officials may exploit this situation to their advantage, knowing that their actions may not be easily discernible or punishable. This lack of accountability erodes public trust in the integrity of institutions and undermines the rule of law.

Law-making, compliance, and enforcement require a sense of continuity. Even Roberto Unger, a referent of the Critical Legal Studies movement who has committed to ideas of ongoing and fundamental reform and structure-defying frameworks of law,[242] recognizes that constant institutional change is a state of affairs from which people would soon seek release.[243]

2. The Erosion of the Rule of Law and the Crisis of the Legal Order

In poorly integrated legal systems, judicial authorities, other public officials, and the public, in general, lack certainty regarding the applicable law, its validity and legitimacy, and how to proceed in cases of contradictory or inapplicable rules.

Joseph Raz[244] has argued that the rule of law has two aspects: 1) people should be ruled by the rule and obey it, and 2) the law should be such that people will be able to be guided by it. Accordingly, it is necessary that the law be capable of guiding the behavior of its subjects, who will obey the law only if part of his reason for conforming is his knowledge of the law. Hence, laws

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[241] Robert Klitgaard, Controlling Corruption, 75 (1998).

[242] Roberto Mangabeira Unger, What Should Legal Analysis Become? 185 (Verso 1996).

[243] *Id*. at 164.

[244] Joseph Raz, The Authority of Law: Essays on Law and Morality 214 (Oxford University Press, 1979).

should be prospective, open, clear, stable, and made according to open, stable, clear, and general rules. A law that is ambiguous, vague, obscure, or imprecise is likely to lead to confusion or misunderstanding among those seeking guidance from it. Laws should not undergo frequent changes. Raz posited that if alterations occur too frequently, individuals may struggle to ascertain the current state of the law, constantly fearing that it has been modified since their last update. More crucially, people require a stable understanding of the law not just for short-term decisions but also for long-term planning.

According to Lon Fuller, the law must be understandable, coherent (not contradictory), not subject to frequent changes, and reflect congruence between rules as announced and their actual administration. Fuller has also argued that a legal system failing to satisfy these requirements would not merely be bad but could not properly be called a legal system at all.[245] "Certainly there can be no rational ground for asserting that a man can have a moral obligation to obey a legal rule that does not exist, or is kept secret from him, or that came into existence only after he had acted, or was unintelligible, or was contradicted by another rule of the same system, or commanded the impossible, or changed every minute."[246]

It is reasonable to conclude, therefore, that countries with hypertrophic legal frameworks are governed by anomie. In this context, the normative structure of such a society cannot be characterized as a legal system.

3. The Illusion of Taking Action

Compliance with international legal standards can generate the illusion that matters have been handled, leading to a passive attitude towards adopting necessary measures. The presence of an illusionary solution hinders or immobilizes the pursuit of actual and effective resolutions.

The institutional complementarity theory supports the idea that foreign legal institutions serve as fair, effective, and legitimate compliments to local anti-corruption institutions.[247] This theory has been challenged, suggesting that foreign institutions may serve as substitutes rather than complements of domestic institutions. "In this scenario, the use of foreign institutions as substitutes for local anti-corruption mechanisms leads to a net decline in the effectiveness of all anti-corruption efforts."[248]

This situation becomes even more serious when foreign intervention is marked by the implementation of an ethnocentric perspective. In such cases, reforms will lack effectiveness, not only impacting the responsiveness of local institutions but also paralyzing society at large due to the illusory sense of having found a solution.

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[245] Lon L. Fuller, The Morality of Law 39 (Yale University Press, rev. ed., 1969).
[246] *Id.*
[247] Kevin Davis, Guillermo Jorge & Maira Rocha Machado, *Transnational Anticorruption Law in Action: Cases from Argentina and Brazil*, 40 Law & Society Inquiry 664 (2015).
[248] *Id.* at 670.

VI. Conclusion

International anti-corruption law reflects the collective efforts of nations to establish global standards of transparency and accountability. Its purpose is to address the negative impact of corruption on the international community as a whole. Corruption undermines economic competitiveness, hampers investment, and impedes development projects worldwide.

International law, when effectively utilized, can be a powerful tool for driving positive change. However, when it is misapplied or fails to consider cultural and technical barriers, it can have unintended consequences. The Argentine case exemplifies this phenomenon. Crimes like corruption and money laundering transcend national borders, necessitating collaborative efforts from the international community to combat them.

The one-size-fits-all approach to law reform has encountered challenges in developing countries, particularly regarding cultural and technical factors. This calls for a significant shift in strategy. The Argentine case demonstrates that despite the well-meaning intentions of the international community, its actions alone will not effectively address corruption in developing nations.

If the international community continues to prioritize law reform without adequately considering cultural and technical contexts, corruption will persist, hindering opportunities for prosperity in these countries. It is essential for the international community to recognize that different situations require tailored approaches and strategies to effectively combat corruption. The international community must realize that one man's meat can become another man's poison.