A Broken Windows Theory of International Corruption

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A Broken Windows Theory of International Corruption

ROGER P. ALFORD*

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“By justice a king gives a country stability,
but those who are greedy for bribes tear it down.”¹

I. INTRODUCTION

The problem of corruption has been with us for centuries. As Jonathan
Swift wrote in Gulliver’s Travels, one cannot help but lament the course of
history if one is attuned to the evils of corruption:

How many innocent and excellent persons [have] been condemned to death or
banishment by the practising of great Ministers upon the corruption of
judges . . . .

. . . [T]he royal throne [cannot] be supported without corruption, because that
positive, confident, restive temper which virtue infused into man, [is] a
perpetual clog to public business.

. . . [I]t gave me melancholy reflections to observe how much the race of
human kind was degenerate among us . . . .

. . . [P]ure native virtues . . . prostituted for a piece of money . . . .²

*Professor of Law, Notre Dame Law School. I would like to thank Victoria Mitchell,
Brendan Geary, and Greg Ge for invaluable research assistance.

So constant has been the problem of corruption that, until recently, it has been viewed as an essential part of the human condition—an endemic aspect of life in the modern world—and even worse, a useful tool to “grease [] the wheels of progress in overregulated societie.

Fortunately, that attitude began to change in the late 1970s. The United States was at the forefront of this change with the passage of the Foreign Corrupt Practices Act (FCPA) in 1977. After decades of U.S. lobbying, the international community began to change its attitude as well in the 1990s. In October 1996, World Bank President James Wolfensohn launched a campaign against corruption.

In country after country, it is the people who are demanding action on this issue. They know that corruption diverts resources from the poor to the rich, increases the cost of running businesses, distorts public expenditures, and deters foreign investors. They also know that it erodes the constituency for aid programs and humanitarian relief.

In a subsequent address in 1999, Mr. Wolfensohn stated:

Corruption is a cancer. Corruption is the greatest eroding factor in a society. Corruption is the largest impediment to investment. And it is not just a theoretical concept. It is a concept whose real implications become clear when children have to pay three times the price that they should for lunches. It becomes clear when people die from being given bad drugs, because the good drugs have been sold under the table. It becomes clear when farmers are robbed of their livelihood.

The race to establish international norms against corruption had begun. In a development worthy of wonder, the result has been a flurry of international

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treaties against corruption. These treaties do not mince words, boldly declaring that corruption distorts international competition, undermines democracy, jeopardizes the rule of law, and threatens sustainable development.

A growing body of empirical research supports these findings. Numerous studies confirm the notions that corruption is a significant obstacle to economic and social development, distorts markets, stifles economic growth, and debases democracy.

This Article supports these recent findings by reframing the issue of corruption and, in so doing, making two essential claims. The reframing requires us to consider corruption as a broken window signaling the breakdown of order in society. In its essence, corruption is about distrust and disorder. The battle against corruption is not just about fighting crime, it is about maintaining order and instilling trust in a community.

Thus reframed, the Article’s first claim is that corruption undermines the public’s trust in public institutions essential for good governance and orderly society. Empirical evidence finds ample support for this claim, confirming that corruption negatively alters the public’s perception of government and society. The Article’s second claim is that corruption is inextricably linked to many other public concerns. Empirical evidence finds a positive relationship between a country’s corruption ranking and its ranking on other major indices measuring public welfare. Communities that are perceived to take corruption seriously score well on their commitment to other social goods, such as global competitiveness and productivity, increased standards of living, enhanced children’s health, protection of civil liberties, and the safeguarding of political freedom.

Empirical evidence establishes a strong positive correlation between a country’s rank on Transparency International’s Corruption Perception Index (CPI) and its rank on other major indices. These corruption correlations provide an evocative snapshot of the connection between corruption and social order. This empirical evidence is supported by numerous other studies that

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8 See, e.g., United Nations Convention Against Corruption, supra note 7, at pmbl.; OECD Anti-Bribery Convention, supra note 7, at pmbl.

9 See infra Part III.

demonstrate a significant relationship between corruption and global competitiveness, human welfare, civil liberties, and democracy.

These findings have important implications when considered from the perspective of a “broken windows” theory of international corruption. The payment of a bribe to a government official is a sign that government does not care about the public welfare and that disorderly conduct will go unchecked in society. Corruption is a broken window that signals the breakdown of community controls necessary for the maintenance of social order. A government that abuses its power for private gain is a government that cannot be trusted to pursue the general welfare. Corruption is associated with other matters of grave public concern, such that the struggle against corruption is the struggle to promote a variety of public benefits.

The Article attempts to re-conceptualize corruption through the lens of the broken windows theory of community policing, focusing on the root consequences of corruption as well as its secondary effects. In Part II, the broken windows theory of community policing is introduced and discussed in the context of international corruption. In Part III, the connection between corruption and other social goods is explored, with specific reference to global competitiveness, human development, civil liberties, and democracy. In Part IV, legal efforts to combat corruption are analyzed, with particular focus on the utility of cooperative efforts to regulate and prosecute corruption. Part V presents a broken windows approach to combating corruption, which redefines corruption as distrust and disorder, refocuses energies toward all types of corruption, and rejuvenates community policing of corruption through an effective private and public sector partnership.

II. THE BROKEN WINDOWS THEORY

In March 1982, George Kelling and James Q. Wilson published in The Atlantic a landmark article positing a correlation between broken windows and social order. “[I]f a window in a building is broken and is left unrepaired,” they argued, “all the rest of the windows will soon be broken. This is as true in nice neighborhoods as in run-down ones. . . . [O]ne unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing.” From this observation, the authors developed a “broken windows theory” of social order. “[S]erious street crime flourishes in areas in which disorderly behavior goes unchecked.” If the police maintain its traditional role as night watchman

13 Id. at 34.
against threats to order, society flourishes. But as soon as the police stop maintaining order—when vandalism and graffiti go unreported, rowdy vagrants are uncontrolled, and broken windows are unrepaired—community controls break down and serious crime has the opportunity to flourish. Each “unchecked panhandler is, in effect, [a] broken window.” Kelling and Wilson further contend that “[i]f the neighborhood cannot keep a bothersome panhandler from annoying passersby, the thief may reason [that] it is even less likely to call the police to identify a potential mugger or to interfere if the mugging actually takes place.”

The broken windows theory of social order suggests that communities should be vigilant against the smallest illegalities. A well-tended neighborhood cares about petty crimes and creates a bond of social order that discourages serious criminal elements. By contrast, “disorderly behavior engenders [fear] in the local community . . . [that] urban decline[] and decay [will] ultimately follow on the heels of unconstrained disorder.”

Significantly, the theory’s central focus is not on preventing crime, but on the psychological fear of crime. Foot patrolmen reduce the fear of crime because they are effective at combating the social disorder that residents correlate with serious crime. It is the perception of crime associated with graffiti, abandoned cars, vagrants, panhandlers, and other incivilities that is uppermost in people’s minds. The theory’s second order claim—that reducing fear strengthens communities and leads to an actual reduction in crime—remains a contested empirical question. But the primary claim—that “policing of minor crime and disorder can reduce fear of crime in a community”—has become widely accepted. The broken windows theory posits an indirect relationship between social disorder and serious crime: “Citizen fear, created by disorder, leads to weakened social controls, thus creating the conditions in which crime can flourish.”

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14 See id.
15 See id. at 31.
16 Id. at 34.
17 Id.
19 Id.
20 Id. at 16–20.
23 THE ENCYCLOPEDIA OF POLICE SCIENCE, supra note 21, at 498.
In the wake of the broken windows theory, broad political support has emerged favoring community policing strategies aimed at altering neighborhood perceptions. Police chiefs in major cities such as New York, Chicago, and Boston embraced the broken windows theory of social order, creating a “Blue Revolution” that fundamentally altered American police practices. Since Wilson and Kelling published their theory, new policies were adopted that reflected a commitment to “quality-of-life enforcement” and “preventive policing,” integrating police officers on foot patrol into the community. Although not without its critics, the broken windows theory has become “conventional wisdom” and is now a staple of community police efforts in the United States and around the world. Community-oriented policing is the dominant model of policing in democracies around the world.

So how is the broken windows theory relevant for international corruption? In one sense, it is simply a metaphor for the notion that government diligence on petty crimes signals a commitment to address more serious public welfare concerns. But it is more than this. This Article posits that, as with broken windows in community policing, a similar phenomenon applies with respect to the payment of bribes to government officials. There is an empirical connection between the relatively minor offence of bribing a government official and the larger impact that corruption has on public welfare across various metrics. Corruption is a strong signal of social disorder, a canary in the coal mine confirming that government officials cannot be trusted.

There are numerous studies that confirm this connection between corruption and social trust. Empirical evidence establishes that “corruption significantly affects people’s evaluations of their political system’s performance and the trustworthiness of civil servants.” Another empirical study concluded that “[c]orrupt leaders breed distrust throughout society.” Corruption alters the fundamental understanding that citizens have regarding government and society. Corrupt government officials are loyal to the in-group rather than society at large, altering public perceptions of the government and economic elites. As one study put it, “[w]hen people think that the only route to prosperity is through dishonesty, social tensions are heightened between those at the top

26 Id. at 32.
27 See, e.g., HARCOURT, supra note 22, at 57.
28 See generally THE ENCYCLOPEDIA OF POLICE SCIENCE, supra note 21, at 205.
and those who have less.32 Whether the causal link flows from distrust to corruption or corruption to distrust is disputed, with empirical studies supporting both hypotheses.33 But the link between corruption and distrust is undisputed.

The broken windows theory is useful in considering the social costs of all types of corruption. In terms of trust in public institutions, it is a mistake to assume that petty corruption is less serious than grand corruption. The unpredictable nature of corruption is one of its most disturbing aspects, and unpredictability is common with petty bribes. Studies show that foreign investors would rather pay large, predictable bribes than petty, unpredictable ones.34 With the former, the costs of corruption are known, while with the latter they are unknown. These studies suggest that the petty, arbitrary crimes of low-level bureaucrats who make life unpredictably difficult are more damaging than traditionally understood. Bribes do not “grease the wheels,” they throw sand in them.35 Such petty encounters with corrupt officials are the routine experience of citizens who learn to distrust the government. A typical refrain of those who have been forced to pay bribes is that “[t]he system sucks! A common man [cannot] do anything but . . . give [a] bribe!!!”36

32 Id. at 55.
These petty crimes illustrate the endemic nature of corruption. For example, one study examined whether foreign diplomats assigned to the United Nations would pay New York City parking tickets despite their diplomatic immunity.\textsuperscript{37} Not surprisingly, there was a strong correlation between unpaid parking tickets and corruption rankings.\textsuperscript{38} Diplomats from high-corruption countries had significantly more unpaid parking violations, while diplomats from low-corruption countries had far fewer unpaid parking violations.\textsuperscript{39} Foreign officials from corrupt countries cannot be trusted to pay even their parking tickets. Only the fear of sanction—achieved in 2002 through reduction in U.S. foreign aid commensurate with the amount of unpaid traffic penalties—altered the behavior of diplomats from high-corruption countries.\textsuperscript{40} In other words, foreign officials from low-corruption/high trust societies have internalized the norm against abusing power for private gain, while diplomats from high corruption/low trust societies require coercive measures to comply with the norm.

This question of trust and corruption has widespread ramifications. Most importantly, it suggests that the community bonds necessary to maintain social order are strained when government corruption is widespread. If the government cannot be trusted to pursue public welfare over private gain, it cannot be trusted to pursue many policies that promote the key ingredients necessary for a productive, healthy, educated, and stable society. By contrast, a government that effectively combats corruption powerfully communicates its commitment to the welfare of its citizens, laying the foundation for a society in which its citizens can thrive.

This connection with trust is critical to a broken windows theory of corruption. Empirical studies confirm that individuals make numerous

\textit{Registered, I PAID A BRIBE} (Feb. 9, 2010), http://ipaidabribe.com/bribe-central/forced-pay-bribe-get-house-registered (“[Y]ou cannot get anything done from a govt. department without greasing their palms. . . . I just fail to understand how these people who are accepting such monies can sleep at night and continue to live their lives. Do they have no conscience left? Have they sold their souls?”); \textit{Forced to Pay Bribe to Registrar (Jigani/Anekal Registrar’s office)}, \textit{I PAID A BRIBE} (Mar. 26, 2012), http://ipaidabribe.com/bribe-central/forced-pay-bribe-registrar-jiganianekal-registrars-office (“As a common man we work hard to earn every single rupee and pay due diligently the taxes and this is what we get in return from the government, looting us just left and right in open public. I don’t know . . . how [ ] our country [can] progress with this level of corruption . . . .”).

\textsuperscript{38} See id.
\textsuperscript{39} See id.
\textsuperscript{40} See id. at 5 (“[T]he Clinton–Schumer Amendment (named after the two senators from New York State), [was] proposed by the Bloomberg administration to deal with the diplomat parking problem. This law gave the City permission to tow diplomatic vehicles, revoke their official U.N. parking permits, and have 110% of the total amount due deducted from U.S. government aid to the offending diplomats’ countries of origin. Parking violations fell substantially after this reform, suggesting that increased enforcement can sharply reduce corruption . . . .”) (citation omitted)).
inferences based on their experiences with government corruption.\textsuperscript{41} Individuals engage in inductive reasoning when they witness corruption, making inferences about the trustworthiness of authorities in general based on their observations of specific instances of corruption.\textsuperscript{42} In clinical tests, individuals’ judgment about the trustworthiness of a public authority observed taking a bribe altered their judgment of how far public authorities in general can be trusted.\textsuperscript{43}

Individuals also make inferences about society at large based on their experience with corruption. Observed corruption not only alters perceptions about the government, it spreads distrust throughout society. “[W]hen people experience deceitful behavior by public authorities, they do not lose trust only in the authorities in question. They also come to believe that people in general in such a society are less trustworthy.”\textsuperscript{44} In short, corruption rots the entire fabric of social trust in society, leading people to conclude that “[i]f I cannot trust the local policemen, judges, teachers, and doctors, then whom in this society can I trust?”\textsuperscript{45}

It is therefore appropriate to take corruption more seriously, if only for the damage that it does to the social trust necessary to maintain law and order. If that motivation were not enough, then as discussed in the next section, the fact that corruption is associated with many other social ills offers additional motivations to take corruption seriously.

III. BROKEN WINDOWS AND CORRUPTION CORRELATIONS

A broken windows theory of international corruption posits that a society committed to combating corruption is also one associated with pursuing other public goods. The battle against corruption sends a powerful signal about a government’s commitment to promote the general welfare. There is strong empirical data supporting a positive correlation between anti-corruption and other public goods like global competitiveness, human development, civil liberties, and democracy.

A. Corruption and Competitiveness

A country’s CPI ranking strongly correlates with its global competitiveness ranking, with a correlation coefficient of 0.8473.\textsuperscript{46} According to the World

\textsuperscript{41}See Bo Rothstein, The Quality of Government: Corruption, Social Trust, and Inequality in International Perspective 187 (2011).
\textsuperscript{42}See id.
\textsuperscript{43}See id.
\textsuperscript{44}Id. at 190.
\textsuperscript{45}Id. at 173–74.
\textsuperscript{46}For purposes of this Article, a dataset was generated using CPI rankings for years 1995 through 2010, with a focus on the 2010 data with the addition of several descriptive and explanatory variables for 2010 including country scores for Freedom House political rights and civil liberties, human develop index scores, Gross Domestic Product (GDP)
Economic Forum’s Global Competitiveness Index (GCI), a country’s competitiveness—defined as “the set of institutions, policies, and factors that determine the level of productivity of a country”—determines its future potential for growth and the sustainable level of prosperity citizens can earn.\textsuperscript{47} As the scatter plot in Figure 1 indicates, the positive correlation between a country’s CPI and GCI scores suggests a strong, tightly-clustered linear relationship between perceived corruption and economic productivity.

Figure 1: Scatter Plot of CPI and Global Competitiveness Scores\textsuperscript{48}

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BROKEN WINDOWS THEORY

These findings are consistent with other studies. As one recent study put it, “there is a very strong correlation between corruption and competition where less corrupt countries have more competitive industrial markets.”⁴⁹ Therefore, measures aimed at curbing corruption are a key component to bolstering competition.⁵⁰

Other studies analyze elements of global competitiveness, particularly the relationship between corruption and foreign direct investment (FDI).⁵¹ Host countries compete with one another for foreign direct investment, and corruption negatively impacts their global competitiveness and foreign direct investment.

One recent study, for example, established that an increase in a host government’s corruption level reduced inward foreign investment similar to a sharp increase in taxes.⁵² “An increase in corruption level from that of Singapore to that of Mexico,” the study found, “has the same negative effect on inward foreign investment as raising the tax rate by over fifty percentage points.”⁵³

A related study found that corruption reduces net capital inflows.⁵⁴ Countries with lower corruption ratings are perceived as safe havens for capital inflows. Corruption undermines law and order—measured by sound and accepted political institutions, a strong court system, and provisions for orderly succession of power. A country’s tradition of law and order is among the most important elements necessary for investor confidence required for capital inflows,⁵⁵ and corruption is strongly associated with countries that have poor legal traditions.⁵⁶

Not surprisingly, foreign investors are more adversely affected by corruption than their domestic counterparts, with studies showing that corruption is negatively correlated with the ratio of FDI to total domestic investment.⁵⁷ Domestic investors more accustomed to the local practices are

⁴⁹Patrick M. Emerson, Corruption, Competition and Democracy, 81 J. DEV. ECON. 193, 208 (2006).
⁵⁰Id. at 211.
⁵¹See infra notes 52–53 and accompanying text.
⁵³Id. at 5.
⁵⁵Id. at 231.
⁵⁶See LAMBSDORFF, INSTITUTIONAL ECONOMICS, supra note 33, at 107.
more successful at manipulating a corrupt environment.58 “[F]oreign investments are significantly deterred by corruption, and this impact is large in magnitude.”59

In short, corrupt countries are less competitive globally, less attractive to foreign investment, and less productive. If a government desires to improve its economy, combating corruption must be on the agenda.

B. Corruption and Human Development

Corruption has a direct impact on human development. Put simply, “corruption in all its aspects retards human development.”60 Where there is corruption there is poverty, income inequality, low education, and poor health. Where there is little incidence of corruption, there is health, wealth, and knowledge. Improvements in governance, including combating corruption, “[have] a large payoff in terms of per capita income.”61

A simple analysis of the correlation between the Corruption Perception Index (CPI) and the United Nations Human Development Index (HDI) underscores this point. The HDI ranks countries by measuring achievement in three basic dimensions of human development: a long and healthy life, access to knowledge, and a decent standard of living.62 This index focuses on development from the perspective of the individual, analyzing the factors that “create an enabling environment for people to enjoy long, healthy and creative lives.”63 A strong correlation between a country’s CPI and HDI scores suggests that corruption impacts individuals on the ground and not simply society as a whole.

The correlation between the CPI and HDI rankings are strong, with a correlation coefficient of 0.7246. The scatter plot in Figure 2 presents an illuminating story of the connection between corruption perceptions and human development.

[Graphical material on following page]

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58 See Leon Zurawicki & Mohsin Habib, Corruption and Foreign Direct Investment: What Have We Learned?, 9 INT’L BUS. & ECON. RES. J. 1, 6 (2010).
63 MAHBUB UL HAQ, REFLECTIONS ON HUMAN DEVELOPMENT 14 (1995).
As Figure 2 suggests, in the overwhelming majority of cases, a country that scores poorly on the CPI will also score poorly on the HDI. Conversely, it is rare to find a country scoring well on the CPI that does not also score well on the HDI. A comparison of these two indices suggests that corruption is directly connected to poverty, low education levels, and poor health.

These findings are supported by numerous other studies. As one study concluded: “[T]here is a statistically significant negative relationship between corruption indexes and human development. . . . [M]ore corrupt countries tend to have lower levels of human development.”

Regarding the relationship between corruption and poverty, “[t]here is no doubt about a strong correlation between [Gross Domestic Product] per head and corruption.” Corruption has a negative adverse impact on Gross Domestic Product (GDP) per capita, diverting foreign aid, reducing tax revenues,

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64 For CPI values, see Transparency Int’l, supra note 48, at 8–14. For human development scores, see United Nations Dev. Programme, supra note 62, at 126–30. For a description of the methodology used, see supra note 46.
65 Akçay, supra note 60, at 46.
66 Lamsdorff, Institutional Economics, supra note 33, at 71.
67 Although some studies have difficulty determining the direction of causality, e.g., Jakob Svensson, Eight Questions About Corruption, 19 J. Econ. Persp., 19, 27–30 (2005), other studies establish that corruption has a significant adverse impact on GDP per capita. See, e.g., Lamsdorff, Causes and Consequences of Corruption, supra note 59, at 24 (citing Kaufmann, supra note 61, at 15–17, 23); see also Geoffrey Wyatt, Corruption, Productivity,
imposing hidden taxes, and misallocating government expenditures. It also exacerbates income inequality, leaving countries either trapped in a “vicious circle[ ] of inequality and corruption,” or freed by a “virtuous circle[ ] of equality and integrity.” In countries where there is corruption, the rich get richer and the poor get poorer. As one study succinctly noted, “[h]igh and rising corruption increases income inequality and poverty by reducing economic growth, the progressivity of the tax system, the level and effectiveness of social spending, and the formation of human capital.... [P]olicies that reduce corruption will also reduce income inequality and poverty.”

The correlation between education and corruption also is clear. “[T]here is convincing evidence that corruption lowers government spending on education.” The reverse is also true: corruption declines as citizens become more educated.

Corruption reduces tax revenues, thereby limiting the resources available for public spending, including spending on education. Moreover, corrupt countries opt to spend less on education because the education sector presents fewer opportunities to engage in lucrative corrupt behavior. Education expenses to pay for teachers and books are a particularly unattractive way to collect bribes, and the education sector typically lacks the expensive high-technology inputs provided by oligopolistic suppliers that are more efficient vehicles for corruption. In general, corrupt countries have significantly lower measures of human capital, measured by years of schooling and literacy rates.
As for the relationship between corruption and health, studies show that “[c]orruption ha[s] a significant positive correlation with measures of health services delivered . . .”77 Infant mortality, child mortality, immunization rates, and low birth weights are all strongly correlated with corruption.78 Health care, of course, “is particularly vulnerable to corruption . . . [given] the diversity of services and outlays, the scale and expense of procurement, and the nature of health care demand.”79

The findings of these empirical studies are reinforced by country case studies. For example, detailed case studies of seven countries in Latin America that score poorly on the CPI—Argentina, Bolivia, Colombia, Costa Rica, Peru, Nicaragua, and Venezuela—found evidence of a “wide range of illicit practices” in the health care industry, including “theft of medical supplies, absenteeism by doctors and nurses, illegal payments for services, excessive payments for inputs and contracted services, favoritism in appointments and promotions, unauthorized use of public facilities for private medical practice, unnecessary referrals to private consultations, and inducement of unnecessary medical interventions.”80

Corruption increases the price and lowers government output of social services.81 It reduces government investment in human capital and the amount of government revenue.82 It stunts economic growth, limits spending on education and health, and diminishes human development.83 In short, the bitter fruit of corruption is poverty, ignorance, and death.

C. Corruption and Civil Liberties

There is a strong correlation between perceived corruption and the protection of civil liberties. Freedom House ranks countries based on fifteen indicators across four major categories: (1) freedom of expression and belief; (2) associational and organizational rights; (3) rule of law; and (4) personal

79 Taryn Vian, Health Care, in FIGHTING CORRUPTION IN DEVELOPING COUNTRIES 43, 44 (Bertram I. Spector ed., 2005); see also Kaufmann, supra note 61, at 17, 24, 27.
80 Rafael Di Tella & William D. Savedoff, Shining Light in Dark Corners, in DIAGNOSIS CORRUPTION: FRAUD IN LATIN AMERICA’S PUBLIC HOSPITALS 1, 15 (Rafael Di Tella & William D. Savedoff eds., 2001).
81 See Gupta et al., supra note 76, at 115–19.
82 See id.
83 See supra notes 60–84 and accompanying text.
autonomy and individual rights. By comparing a country’s CPI ranking with its Freedom House ranking for civil liberties, one can conclude that a country that is perceived to take corruption seriously is also committed to civil liberties. Conversely, a country that ranks poorly on the CPI also ranks low in guaranteeing civil liberties.

As indicated in the scatter plot in Figure 3, there is a strong positive correlation between a country’s CPI ranking and its Freedom House Civil Liberties ranking, with a correlation coefficient of 0.6428.

Figure 3: Scatter Plot of CPI and Human Development Scores

For CPI values, see TRANSPARENCY INT’L, supra note 48, at 8–14. For civil liberties scores, see FREEDOM HOUSE, FREEDOM IN THE WORLD 2011: THE ANNUAL SURVEY OF POLITICAL RIGHTS & CIVIL LIBERTIES 830–32 (Arch Puddington et al. eds., 2011). For a description of the methodology used, see supra note 46.
Other studies confirm these findings. Empirical studies of the relationship between corruption and civil liberties show that “the higher the level of civil liberties . . . in a country, the lower the level of corruption.”

In particular, studies have established a strong correlation between corruption and freedom of the press, with less corruption associated with more press freedom. The link between corruption and freedom of the press is obvious. One of the best tools to combat corruption is transparency. But “[t]ransparency depends crucially on freedom of press and expression,” with publicity reducing “the informational problem between principals (citizens) and agents (governments), thus improving governance,” and, particularly, “reducing corruption.” Put simply, empirical evidence establishes that free speech is a “demonstrated antidote to widespread political corruption.” By way of example, if a country with a poor corruption record like Indonesia had one of the freest presses in the world, its CPI score would be that of one of the least corrupt countries in the world, Singapore.

Studies also show that an independent judiciary—another indicator in the Freedom House Civil Liberties ranking—correlates with reduced corruption. As one study put it, “[c]orruption is higher in countries where judicial institutions are not well developed, or are not independent of political influences.”

The combination of a free press and independent judiciary is a potent force against corruption. “[T]he role of the judiciary and the press are of singular importance,” concluded one study. “[A]s the main institutional guardians against governmental excesses, they can either condone or restrict the magnitude of the problem of corruption.”

D. Corruption and Democracy

The relationship between corruption and democracy is more complex and nuanced. Comparing the Transparency International CPI with the leading...
indicator of political regime types—the Polity IV Regime data set—reveals a weak correlation between a country’s CPI ranking and its democracy ranking, with a correlation coefficient of 0.3863. The scatter plot ranking a country’s CPI score with its Polity IV Regime type is revealing.

Figure 4: Scatter Plot of CPI and Polity IV Regime Type

![Scatter Plot of CPI and Polity IV Regime Type](image)

The Polity IV methodology ranks a country’s scale from fully institutionalized autocracies to fully institutionalized democracies.95

As the data suggests, the relationship between corruption and democracy is nonlinear. Only countries that are fully institutionalized democracies

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96 See Monty G. Marshall & Benjamin R. Cole, Global Report 2011: Conflict, Governance, and State Fragility, CENTER FOR SYSTEMIC PEACE 8 (Dec. 1, 2011), http://www.systemicpeace.org/GlobalReport2011.pdf. In a fully institutionalized autocracy, “citizens’ participation is sharply restricted or suppressed; chief executives are selected according to clearly defined...rules of succession from within the established political elite; and, once in office, chief executives exercise power with no meaningful checks from legislative, judicial, or civil society institutions.” Id. at 9. By contrast, a fully institutionalized democracy “has institutionalized procedures for open, competitive, and deliberative political participation; chooses and replaces chief executives in open, competitive elections; and imposes substantial checks and balances on the discretionary powers of the chief executive.” Id. at 8–9. There is a middle group of countries, described as anocracies that “are neither fully democratic nor fully autocratic” but combine an “incoherent mix of democratic and autocratic traits and practices.” Id. at 9.
BROKEN WINDOWS THEORY consistently rank well on Transparency International CPI scores. There is no measurable improvement in corruption rankings between mixed political regimes and partial democracies. Moreover, in many cases institutionalized autocracies have better CPI scores than partial democracies.

These findings are consistent with other studies. As one study noted, “corruption is likely to be slightly lower in dictatorships than in countries that have partially democratized. But with more complete democratization . . . countries experience much lower levels of corruption.”

Another study found that “[h]ow well any government functions simply hinges on how good citizens are at making their politicians accountable for their actions. . . . [I]t is only when citizens effectively discipline policymakers to serve them that public goods are delivered in an efficient manner and corruption is curtailed.” This requires not simply free and fair elections, but also informed citizens capable of curbing corruption.

Of course, fully fledged democracies do not spring forth overnight. Studies indicate that “a long period of exposure to democracy lowers corruption.” It is common for countries in transition toward democracy to experience a growing problem with corruption. But in the battle against corruption, patience is a virtue. The “[g]reatest rewards (in the form of a clean and transparent state) [a]re granted to countries that [a]re able not only to realize but also to maintain the strongest and healthiest democratic institutions.”

In short, lukewarm democracies are not effective at combating corruption and often do a worse job at it than tin-pot dictators. Only when democracy has fully flowered is there a strong positive correlation between a democratic form

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97 Gabriella R. Montinola & Robert W. Jackman, Sources of Corruption: A Cross-Country Study, 32 BRIT. J. POL. SCI. 147, 167 (2002); see also Lambsdorff, Institutional Economics, supra note 33, at 40 (explaining that “corruption in medium-democratic regimes is . . . higher than in totally authoritarian countries,” but once this threshold is passed democracy reduces corruption); Lambsdorff, Causes and Consequences of Corruption, supra note 59, at 10–11.

98 Adsera et al., supra note 33, at 41. This finding is consistent with historical reflections on the matter. As General Andrew Jackson famously put it in 1825 in a letter to President James Buchanan:

> The great constitutional corrective in the hands of the people against usurpation of power, or corruption by their agents, is the right of suffrage. . . . It will perpetuate their liberties and rights, and will compel their representatives to discharge their duties with an eye single to the public interest.


99 See Adsera et al., supra note 33, at 41–42.


of government and low levels of perceived corruption. The good news is that fully fledged, well-established democracies are the cleanest governments on earth.

IV. LEGAL EFFORTS TO COMBAT CORRUPTION

Given such strong correlations—and in some cases causal connections—between corruption and other public goods, it is not surprising that many governments are taking concrete steps to combat corruption. What is surprising is how long it has taken for governments to regulate corruption, and how many governments remain on the fence.

Until the late 1970s there was no significant effort to combat international corruption. For almost two decades thereafter, only one nation—the United States—criminalized the payment of bribes to foreign officials. Today the situation is dramatically different, with numerous treaties regulating international corruption. To use constructivist language, an international norm emerged in the late 1970s, reached a cascading point in the late 1990s, and now is in the process of internalization in the domestic systems of major capital-exporting countries throughout the world.

If there is a leading norm entrepreneur in the battle against international corruption, it is the United States. Following the enactment in 1977 of the FCPA, United States individuals and corporations became subject to civil and criminal prosecution for the payment of bribes to foreign officials.

For many years, the U.S. business community’s perception was that it suffered from a competitive disadvantage vis-à-vis other foreign investors who were under no legal obligation to avoid the payment of bribes and in some cases could deduct bribes as a business expense. Empirical studies confirm that following the enactment of the FCPA, United States firms’ market share declined sharply in bribery-prone countries, and that the FCPA weakened “the

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104 See sources cited supra note 7.
competitive positions of American firms without significantly reducing the importance of bribery to foreign business transactions."\(^{108}\)

Concerns about differential legal obligations have generated numerous efforts to level the playing field. After initial reservations about the wisdom of continuing with the FCPA, the United States has pursued the path of exporting the norm against bribery to its allies abroad.\(^{109}\) These efforts led to the adoption of numerous treaties against corruption,\(^{110}\) most notably the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention.\(^{111}\)

The OECD Anti-Bribery Convention requires its thirty-nine parties—including almost all of the major capital-exporting nations of the world—to pass national legislation prohibiting the payment of bribes to foreign officials.\(^{112}\) However, once a party has passed legislation, there is no international mechanism—beyond a toothless reporting procedure\(^{113}\)—to ensure that the national anti-bribery legislation is effectively enforced.\(^{114}\)

Whether OECD member states are effectively enforcing their anti-bribery laws remains unclear. The norm against international corruption has crystallized through international treaties, but whether it has become internalized is another matter.

By one measure the OECD Anti-Bribery Convention has made little difference. As displayed in Figure 5, the mean CPI score of all parties to the

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\(^{109}\) Windsor \& Getz, supra note 107, at 760–64.

\(^{110}\) See sources cited supra note 7.

\(^{111}\) OECD Anti-Bribery Convention, supra note 7.

\(^{112}\) Id. at art. 1(1) (“Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.”).

\(^{113}\) See id. at art. 12.

OECD Anti-Bribery Convention has declined. The mean CPI scores of both active and non-active enforcers of the OECD Anti-Bribery Convention have actually declined since implementing anti-bribery legislation.

Figure 5: Longitudinal Comparison of OECD CPI Mean Scores: 1995–2010

This finding comports with other findings that only a handful of parties to the OECD Anti-Bribery Convention have actively enforced their anti-corruption laws.

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115 For purposes of Figure 5, an active enforcer of the OECD Convention is a country that has brought at least one anti-bribery prosecution in 2010. This definition comports with what Transparency International would describe as “moderate enforcement.” See Fritz Heimann et al., Progress Report 2011: Enforcement of the OECD Anti-Bribery Convention, TRANSPARENCY INT’L 4 (May 24, 2011), http://files.transparency.org/content/download/102/411/file/2011_OECDreport_EN.pdf. Its more stringent definition of active enforcement is defined as ten major cases for countries with more than two percent of world exports and three major cases for countries with less than two percent of world exports. See id.


117 For CPI values, see TRANSPARENCY INT’L, supra note 48, at 8–14. For a discussion about which country is an “active enforcer,” see supra note 115 and accompanying text. For a description of the methodology used, see supra note 46.
laws and that they are reluctant to take the steps necessary to ensure compliance with “the letter and the spirit” of their anti-corruption treaty obligations.\textsuperscript{118}

By other measures, however, the OECD Anti-Bribery Convention appears to be altering investment behavior. Empirical studies of the impact of the OECD Anti-Bribery Convention find that investors from countries that have laws against paying bribes to foreign officials are likely to limit their foreign direct investment in countries with high levels of corruption. By contrast, investors from countries with high levels of corruption do not limit their foreign direct investment in other countries that also have high levels of corruption.\textsuperscript{119} One study found that after signatories implemented the Convention, multinational corporations from OECD countries reduced exports to corrupt countries by 5.66\% relative to less corrupt countries.\textsuperscript{120} Outlawing bribery alters the risk-reward calculus of foreign investment.

The OECD Anti-Bribery Convention also has led to less opportunistic bribery. One study relied on evidence from one of the most notorious bribery scandals in modern history—the United Nations Oil-for-Food Program—and found a “significant bivariate relationship between the [OECD Anti-Bribery] Convention and firms’ decisions whether to engage in cross-border bribery.”\textsuperscript{121} Firms from non-signatory countries had a 13\% greater propensity to bribe U.N. officials than firms from OECD countries.\textsuperscript{122} These findings suggest that a capital-importing country can create a virtuous circle by combating corruption. Not only will the total amount of foreign direct investment increase, but a greater percentage of it will come from countries that actively discourage bribery, thereby reinforcing the battle against corruption.\textsuperscript{123} Conversely, if a developing country does not take active steps to combat corruption, then foreign investors unaccustomed to paying bribes will avoid that market.\textsuperscript{124}

\textsuperscript{118} Kevin E. Davis, \textit{Does the Globalization of Anti-Corruption Law Help Developing Countries?}, in \textit{INTERNATIONAL ECONOMIC LAW, GLOBALIZATION & DEVELOPING COUNTRIES} 283, 298–99 (Julio Faundez & Celine Tan eds., 2010).


\textsuperscript{120} Anna D’Souza, \textit{The OECD Anti-Bribery Convention: Changing the Currents of Trade}, 97 J. DEV. ECON. 73, 79 (2012).


\textsuperscript{122} Id. at 388.

\textsuperscript{123} Cuervo-Cazurra, supra note 119, at 819.

\textsuperscript{124} See supra notes 119–20 and accompanying text.
The findings also suggest that for capital-exporting nations, efforts to improve corruption at home will impact business behavior abroad. By effectively regulating corruption in the home market, governments condition their citizens to avoid corruption in foreign markets.\textsuperscript{125} As one study put it, investors from clean countries face “psychic distance” from corrupt countries and limit their investment activities there.\textsuperscript{126}

More recent studies emphasize the importance of coordination strategies across enforcement regimes. One study found that the OECD Anti-Bribery Convention helped foreign investors to avoid the “prisoner’s dilemma problem faced by investors from a country that is subject to legal constraints when investors from other countries do not face such constraints.”\textsuperscript{127} Thus, the study found that U.S. investors were more sensitive to avoid investments in corrupt countries after the playing field was leveled when other OECD countries adopted legislation similar to the FCPA.\textsuperscript{128} If all investors are subject to similar legal constraints, then each investor is more likely to abide by those constraints.

Another study found that foreign investors from OECD countries are less likely to receive bribery requests than other investors.\textsuperscript{129} Empirical evidence confirms that “countries that have entered . . . the OECD convention effectively send a signal that their [multinational enterprises] will resist bribery, which may insulate subsidiaries from local corruption pressure.”\textsuperscript{130} In other words, the OECD’s coordinated campaign against bribery has altered the behavior not only of foreign investors, but also corrupt foreign officials.

Among the most significant coordination strategies are U.S. prosecutions under the FCPA followed by anti-corruption prosecutions by their OECD counterparts. Under the FCPA, the United States has jurisdiction over foreign companies that bribe foreign officials, provided they issue shares on a U.S. stock exchange.\textsuperscript{131} The U.S. Department of Justice and Securities and Exchange Commission also take an expansive interpretation of territoriality, such that the payment of a bribe through a U.S. correspondent bank or the sending of an e-mail sent through a U.S.-based e-mail account is considered a sufficient territorial nexus to permit prosecutions of foreign companies for bribing foreign officials on foreign soil.\textsuperscript{132}

\begin{itemize}
  \item \textsuperscript{125} See Zurawicki & Habib, supra note 58, at 6.
  \item \textsuperscript{126} Habib & Zurawicki, supra note 57, at 295.
  \item \textsuperscript{127} Alvaro Cuervo-Cazurra, The Effectiveness of Laws Against Bribery Abroad, 39 J. INT’L BUS. STUD. 634, 648 (2008).
  \item \textsuperscript{128} Id. at 647–48.
  \item \textsuperscript{130} Id. at 284.
  \item \textsuperscript{131} See 15 U.S.C. § 78c(a)(8) (2006) (defining an “issuer” who falls under the scope of United States Anti-Bribery laws as being “any person who issues or proposes to issue any security.”).
  \item \textsuperscript{132} SHEARMAN & STERLING LLP, FCPA DIGEST: CASES AND REVIEW RELEASES RELATING TO BRIBES TO FOREIGN OFFICIALS UNDER THE FOREIGN CORRUPT PRACTICES ACT OF 1977, at xxiii–xxiv, available at http://www.shearman.com/files/Publication/}
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A recent empirical study found “strong statistical evidence linking extraterritoriality to national policy implementation.” Thus, if the U.S. prosecuted a German or British firm under the FCPA, the enforcement behavior of the German and British authorities increased dramatically. “[T]he odds of a country enforcing its first case are twenty times greater if a country has experienced extraterritorial application of the FCPA as compared to countries that have not.” In other words, the regulatory behavior of OECD parties changes dramatically following an FCPA prosecution of one of its nationals. This convergence trend suggests that “lead regulators from large markets may alter domestic enforcement decision making in other jurisdictions, underscoring the subtle legal authority enjoyed by bureaucracies from powerful states to influence international markets.”

In short, empirical studies show that coordination strategies between OECD enforcement authorities alter the behavior of corporations, foreign officials requesting bribes, and government officials prosecuting the payment of bribes.

V. A BROKEN WINDOWS APPROACH TO COMBATING CORRUPTION

The legal environment for combating international corruption has improved dramatically in recent years. Anti-corruption laws are on the books in OECD countries and many countries are beginning to enforce those laws. Unfortunately, despite the many public benefits associated with combating corruption, developing countries lag far behind developed countries.

How would a broken windows theory of corruption alter the legal landscape of anti-bribery laws? I offer three suggestions.

134 Id. at 760.
135 Id. at 748.
First, a broken windows approach would redefine and reframe corruption as distrust and disorder. When one fights corruption one is not simply fighting crime, one is fighting distrust and disorder. The abuse of public power for private gain distorts the essential functions of government. A corrupt government official privileges the few who are willing and able to pay a bribe against the many who are not so disposed. Such selective provision of services renders the government efficient for some and inefficient for most. The government is no longer serving the general public, it is self-servining or serving only the elites. Corruption severs the bonds of community trust necessary for an effective partnership between the private and public sectors so critical for a nation to thrive. Corruption renders a community vulnerable to an influx of more disorderly behavior, public ills, and crime. Corruption begets distrust, which begets disorder, which begets a host of other evils.

The distrust created by corruption alters the fundamental relationship between the government and the governed. Trust is essential to secure the public’s voluntary deference to the decisions of legal authorities. Trust increases the public’s willingness to cooperate and consent to rules in the absence of government coercion. Individuals internalize norms when they perceive the government to be procedurally fair and worthy of trust. Corruption is antithetical to procedural justice, and in the absence of such justice, individuals will reject the legitimacy of government decisions. Where there is procedural justice, by contrast, individuals will accept government outcomes, even those that are not their preferred outcome. Thus, distrust increases the likelihood that government decisions will be openly defied or surreptitiously ignored. Distrust also increases the likelihood of hostility toward legal authorities.

Conceptualizing corruption as a matter of public trust heightens its importance. Public trust is essential to the rule of law. “[W]hen people’s actions develop out of a trust in the motives of the authorities with whom they are dealing, they consent and cooperate with those authorities’ directives. This cooperation facilitates the efficient and effective exercise of regulatory authority.” When the government loses the public trust, it diminishes the possibility for social control and increases the need for coercive control. The distrust created by government corruption tears asunder the fabric of law and order in society. The corruption of the best government has to offer is the worst possible result: *corruptio optimi pessima*.

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137 Id.
138 See id.
139 See id. at 56–57, 74–75.
140 Cf. id. at 7–8 (stating that “[trust] decreases the likelihood of hostility toward legal authorities”).
141 Id. at 75.
Second, a broken windows approach would augment the battle against corruption with a greater emphasis on petty bribery. Thus far, the legal enforcement strategies have focused on high-profile, large-scale corruption. A broken windows strategy would not ignore those cases, but would also focus on low-profile, petty corruption that alters quality of life and undermines public trust. The goal should not be to reduce grand theft, it should be to help communities create and maintain an environment in which basic public and private institutions can operate effectively and thrive.

An obvious response to this concern is to regulate facilitation payments. Facilitation payments are exempt under some international treaties, but not others. They are exempt in some domestic laws, including the United States, but not in others, such as the United Kingdom. A broken windows theory would embrace greater regulation of small, petty bribes that undermine the fabric of social order and spreads distrust throughout society. Foreign investors should be protected from requests for grease payments by anti-bribery laws that prohibit such payments. Foreign investors should not foster the public’s impression that the government cannot be trusted by greasing the wheels of foreign officials who demand bribes. Individuals and corporations should be fined or prosecuted based on evidence of corruption, regardless of the amount involved. The battle against corruption is a battle to restore trust and maintain public order. Both are undermined with petty bribes and grand theft.

Focusing on petty bribery also alters measurements for success. The goal should not be the professional criminalization of international corruption, in which countries keep score by calculating the number of indictments, arrests, prosecutions, and convictions. The goal should be to address community concerns for maintaining order, sowing seeds of trust, and establishing the rule of law. The priority is to prevent and control crime; restore and maintain order; and reduce public distrust. Prosecuting offenders is a secondary concern. Countries should be counted as active enforcers of international corruption based on metrics that focus on the maintenance of order rather than the initiation of prosecutions. The concern in combating corruption should be on quality of life, government efficiency, and social trust.

Third, a broken windows theory would place greater emphasis on a partnership between the public and private sectors to combat corruption. This approach would mean that corruption should be considered in the local context, with a focus on its destabilizing effects in specific countries and communities. It would mean that the private sector, especially local citizens, help set standards and priorities for the maintenance of order, and that government agencies support and aid those local private efforts. It would mean the privatization of...
many public services, with market competition providing an antidote for public corruption. It would mean the embrace of technology in the delivery of government services, thereby reducing opportunities for public functionaries to demand bribes. It would mean that transparency and free speech are promoted as an effective tool for citizen advocacy against corruption. It would mean that free and fair elections should be the ideal, with government actors accountable to the public through the power of the ballot. It would mean empowering the private sector to effectively combat the government corruption that is of foremost concern in its community.

Community policing of corruption requires enforcement measures to focus on public input addressing matters of genuine public concerns. If a particular priority is of central concern to a specific community, the enforcement measures in that country or region should be tailored to those concerns. Treating the problem of corruption as a community concern involves power sharing and creativity. As the private and public sector work together to address the corruption that is foremost in the public mind, seeds of trust are sown.

With the proliferation of international anti-corruption treaties, over 160 countries are under a legal obligation to work with the private sector to combat corruption.145 The United Nations Convention Against Corruption is explicit in this obligation, expressly requiring preventive measures “that promote the participation of society” and “the active participation of individuals and groups... such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.”146 Thus, international law requires a private and public partnership to combat corruption by “enhancing the transparency of and promoting the contribution of the public to decision-making processes.”147 As countries internalize the norm against corruption, a broken windows theory exemplifies a successful community partnership and situates the international obligation of public participation within the proper context of local community concerns.

146 United Nations Convention Against Corruption, supra note 7, at arts. 5, 13.
147 Id. at art. 13.
VI. Conclusion

A broken windows theory of international corruption makes first order and second order claims. The first order claim of a broken windows theory is simple and straightforward: government corruption is a source of fear and distrust in society. The maintenance of order is undermined when citizens do not trust government officials to pursue the public interest. Numerous studies establish the link between corruption and trust. Simply put, “individuals who experience corruption and who report that corruption is widespread also tend to have lower confidence in public institutions.” This lack of confidence makes it less likely that citizens will rely on the police, the courts, or other public institutions to resolve their problems. If the government is on the take, the public’s perception will be that it has little to offer.

The second order claim of a broken windows theory is more complex and nuanced: that a government’s perceived corruption ranking is correlated with its commitment to other public goods, including global competitiveness, increased standards of living, better health and education, greater civil liberties, and full and robust democracies. The relationship between corruption and each of these public goods is complicated, but the policy implications are not: governments that battle corruption improve the general welfare in a variety ways that we are only beginning to understand.

With strong empirical support for the direct and indirect benefits that flow from reduced corruption, more and more governments are engaged in the battle against it. Empirical studies show that a coordinated campaign of cooperation by and between enforcement regimes is more effective than the unilateral approach that the United States waged for over two decades. We have entered the era of coordinated global policing of international corruption.

A broken windows theory of international corruption draws from the strategy of community policing in the domestic context and applies it to the global struggle against corruption. That strategy recognizes that petty crimes, like bribery, are far more serious than traditionally understood, for they send signals about the state of society and the commitment of government to


149 Clausen, supra note 33, at 213.

150 See sources cited supra note 7.
maintain order and pursue the general welfare. The bonds of social trust are severed when government officials pursue private gain at the public’s expense, and the economic, political, and moral consequences of such conduct are grave.

Given the social, economic, and political costs of corruption, we should embrace a strategy of community policing of international corruption not unlike the domestic community policing strategies against broken windows. We should, as the United Nations Convention Against Corruption puts it, recognize that:

[T]he prevention and eradication of corruption is a responsibility of all [s]tates and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective.\textsuperscript{151}

\footnote{\textsuperscript{151} United Nations Convention Against Corruption, \textit{supra} note 7, at pmbl.}