

Institutionalized “Corruption”:

IMPLICATIONS FOR LEGAL REFORM IN INDONESIA AND THE NEED TO MAKE HASTE SLOWLY

— Curtis E. Renoe* —

So far as our institution is concerned, there is nothing more important than the issue of corruption . . . At the core of the incidence of poverty is the issue of equity, and at the core of the issues of equity is the issue of corruption.

James D. Wolfensohn,
President of the World Bank
October 1999¹

So who should be put in charge? My granddaughter? She might only be three years old, but she's about the only person around here not corrupt.

Indonesian Farmer
*Kerinci, 1998*²

I. INTRODUCTION

Reformasi Hukum, or law reform, represented one of the major areas of change reformers concentrated upon following the fall of Indonesian President Suharto in May of 1998. Economic, political, and law reform all combined to form a composite push for “*reformasi total*,” a movement on the part of many disparate elements in Indonesian society to correct or at least modify the structures of power and privilege that resulted from

and sustained a thirty-two year authoritarian regime. The motto on the lips of virtually all those demonstrating in the streets was to rid the government of “KKN,” i.e., *Korupsi, Kolusi, and Nepotisme*.³ Once the goal of Suharto’s removal from power was achieved, however, the *Reformasi* movement seemed to splinter into various interest groups, and it became ever more difficult to determine what exactly “reform” meant. Answers seemed to depend largely upon whom one asked. Nevertheless,

¹ Address to the Ninth International Anti-Corruption Conference in Durban, South Africa, as quoted in The World Bank, *Helping Countries Combat Corruption: Progress at the World Bank Since 1997* 6 (2000).

² Interview conducted in Kerinci, Indonesia, July 1998.

³ I.e., Corruption, Collusion, and Nepotism.

* **Acknowledgments:** The author would like to thank the Wenner-Gren Foundation for Anthropological Research, the Fulbright Foundation, Universitas Andalas, the Yale Center on Southeast Asian Studies, and the Department of Anthropology at Yale University for providing support for this research. I must also thank Cathryn M. Houghton and Erik Jensen for helpful comments on this paper and/or for the informal input that led to the form it eventually assumed.

legal reform assumed a prominent place in the new government's agenda.⁴ The goal of this paper is to explore what is meant by "legal reform" in Indonesia with particular reference to "corruption" and to examine how this may or may not be amenable to outside, mostly Western, efforts to promote the "rule of law."

II. LAW AND DEVELOPMENT: THE ROLE OF LEGAL INSTITUTIONS IN ECONOMIC GROWTH

While the exact nature of the relationship between legal institutions and economic development is open to debate,⁵ international lending institutions certainly do not have any qualms about putting money into rule of law projects to promote economic growth in developing countries.⁶ This perceived link between the rule of law and economic development is not lost upon those foreign interests for whom economic growth and political stability in Indonesia represent key goals that structure their relationships with the archipelago.⁷ For example, the United States Embassy in Jakarta offered the following assessment of the

need for legal reform in an economic report issued on March 17, 1999:⁸

Legal reform is at the core of Indonesia's economic reform program, whose success is crucial to Indonesia's future to define the rules of the game. Investors who rode Indonesia's boom, in spite of pernicious structural problems, will look to make more accurate assessments of risk, especially in the short term. Demands for legal reform are part of the overall reform movement sentiment in Indonesia, focused particularly on creating a legal system to mitigate the kinds of abuses that allowed Soeharto era distortions to permeate the economy.

While the assessment of risk certainly is important to making choices when it comes to where one is going to invest one's money, this statement overstates the degree to which the "rules of the game" were unknown or arbitrary during the Suharto regime. Everyone I spoke with in Indonesia knew that certain "fees" were required to conduct business, and this applied to both foreigners and Indonesian citizens. While

⁴ See Mohammad Fajrul Falaakh, "Indonesian Judicial Reform Agenda," *The Jakarta Post*, March 20, 2000; MPR, "Resolution of the People's Consultative Assembly of the Republic of Indonesia on State Policy Guidelines on Development Reform for the Purpose of Salvation and Normalization of National Life," X/MPR/1998, Chapter II, General Conditions, p.37, which stated: "For thirty-two years of the New Order administration, legal development was inadequate, particularly in relation to organic laws and regulations limiting the powers of the president. This condition provides an opportunity for the occurrence of corruption, collusion and nepotism and culminating in interpretations that conform only to the taste of those in authority. These constitute misuse of authority and law, ignorance of a sense of justice and lack of legal protection and certainty for the public. The development of the judiciary by the executive constitutes an opportunity for those in authority to intervene and develop collusion and negative practices in the judicial process. Legal enforcement has not provided a sense of justice and legal certainty in cases against the government or other strong parties, thereby placing the public in a weak position."

⁵ See, e.g., Katharina Pistor & Phillip A. Wellons, *The Role of Law and Legal Institutions in Asian Economic Development: 1960-1995* (1999).

⁶ See Richard E. Messick, "Judicial Reform & Economic Development: A Survey of the Issues," 14(1) *The World Bank Research Observer* 117 (1999) (stating that since 1994 the World Bank, the Inter-American Development Bank, and the Asian Development Bank have approved more than \$500 million in loans for judicial reform projects in 26 countries).

⁷ For example, a letter of intent issued by the Indonesian Government in 2000 to the IMF for \$3.6 billion in loans through 2002 emphasized that, "Likewise, the reform of public institutions, notably the empowerment of the judiciary system, is a key to good governance, without which the economy will never become efficient and competitive." See "Bailout Program Extended," *The Jakarta Post*, January 25, 2000.

See also Messick, *supra* note 6, at 118 (stating: "Judicial reform is part of a larger effort to make legal systems in developing countries and transition economies more market friendly").

For a critique of the World Bank's purely "economic" role in legal reform, see Lawyers Committee for Human Rights & Venezuelan Program for Human Rights and Education and Action, *Halfway to Reform: The World Bank and the Venezuelan Justice System* (1996).

⁸ Taken from <www.usembassyjakarta.org/econ/legaldraft.html> (visited on 5/17/01).

foreign businesses had to account for such transaction costs in any budget, so too did local people when it came to getting a job as a civil servant or enrolling their child in a local school or college, among myriad other encounters with the ever-present bureaucracy in Indonesia. Far from being some great unknown, such costs seemed to be quite regular and a subject of everyday discourse.⁹ While business people I spoke with in Jakarta often complained about the cost of doing business in Indonesia, such complaints did not stop many international corporations from investing billions of dollars in all manner of projects and enterprises in Indonesia during the Suharto regime. One must therefore question from whence this anti-corruption rhetoric comes. Is it any coincidence that the rhetoric became so central only after the end of the Cold War and the emergence of a new economic order?¹⁰

Nevertheless, there is much talk in legal development circles about “learning from past mistakes.”¹¹ What seems under-emphasized in even these new approaches, however, is a full appreciation for the degree to which legal institutions are fundamentally social institutions embedded within webs of often conflicting modes of cultural practice. Indeed, most

international efforts aimed at aiding legal reform and democratization in developing countries continue to accept a Western-based model as the basis from which reform must come.¹² While David Trubeck and Marc Galanter’s influential warnings about the danger of imposing ethnocentric assumptions in different cultural-socio-historical contexts seem to have been taken into account,¹³ there are those who remain skeptical that the new efforts to promote the rule of law will meet with any greater success than the perceived failures of the past.¹⁴ The approach adopted in this paper attempts to address both the meanings and impetus for reform both internal and external to Indonesia in hopes of understanding where reform may be successful and what impediments may remain.

III. THE CONSTITUENCY FOR REFORM: A WILL TO CHANGE?

As mentioned earlier, the call for reform and the elimination of corruption is not simply the top-down rhetoric of international interests but rather emerges on a daily basis in the media and often from even the most casual conversations with Indonesians on the streets.¹⁵

⁹ For example, where I worked, it was widely known that to get a job as a beginning teacher in the public school system cost 5 million rupiah (roughly \$625 U.S. at the time). Indeed, it has been argued that corruption may have less of an impact on foreign investment if there is some degree of predictability to the costs of doing business in such an environment.

See Edgardo J. Campos, Donald Lien, & Sanjay Pradhan, “The Impact of Corruption on Investment: Predictability Matters,” 27(6) *World Development* 1059 (1999).

¹⁰ See James W. Williams & Margaret E. Beare, “The Business of Bribery: Globalization, Economic Liberalization, and the ‘Problem’ of Corruption,” 32(2) *Crime, Law and Social Change* 115 (1999).

¹¹ See, e.g., Maxwell O. Chidbundu, “Law in Development: On Tapping, Gourding and Serving Palm Wine,” 29 *Case Western Reserve Journal of International Law* 167 (1997) (discussing the failures of the law and development movement of the 1960s and 1970s and calling for a new approach).

See also, Brian Z. Tamanaha, “The Lessons of Law and Development Studies,” 89 *American J. of International Law* 470 (1995) (providing a general overview of the field of law and development).

¹² See Thomas Carothers, “The Question of Strategy,” in *Aiding Democracy Abroad: The Learning Curve* 85, 85-103 (1999) (presenting the “Democracy Template” and the kinds of aid that correlate with the sometimes implicit assumptions about the nature of democracy and the appropriate role for law and civil society).

¹³ David M. Trubeck & Marc Galanter, “Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development,” 1974 *Wisconsin Law Review* 1064.

¹⁴ See Patrick McAuslan, “Law, Governance, and the Development of the Market: Practical Problems and Possible Solutions,” in *Good Governance & Law: Legal & Institutional Reform in Developing Countries* (J. Faundez ed., 1997);

Joseph R. Thome, “Comment on McAuslan’s ‘Law, Governance, and the Development of the Market: Practical Problems and Possible Solutions,’” in *Good Governance & Law: Legal & Institutional Reform in Developing Countries* (J. Faundez ed., 1997).

¹⁵ See, e.g., the official homepage of Antikorupsi.org (<www.antikorupsi.org>), an Indonesian NGO that serves as a clearinghouse for information about current cases of corruption and efforts to combat its effects throughout society.

As has often been pointed out, external efforts at reform cannot succeed without the will on the part of those in the target country to reform.¹⁶ The opportunity for real reform in Indonesia thus seems possible given the atmosphere over the past two years, which has made "*reformasi*" the key topic of public debate.¹⁷ Despite this great desire for reform on the public's part, its implementation continues to lag behind this general will. As one observer stated after corruption charges against Djoko Tjandra in the Bank Bali scandal were recently dismissed:¹⁸

The judiciary, particularly the courts, is still run mostly by people from the old regime. Like politicians of that recent bygone era, these judges were notorious for blatantly supporting the tyrannical New Order government. The judiciary is the last bastion of the Soeharto regime, and this goes a long way toward explaining why many of the efforts to prosecute corrupters and human rights abusers from that era have failed upon reaching the courts. The judiciary is the only government branch that has yet to be reformed.

While such comments may represent something of an overstatement in that the military remains practically untouched by efforts at reform,¹⁹ the tone of frustration at the courts' resistance to change comes through

quite clearly nevertheless. Indeed, the writers of one commentary on the state of reform in the judiciary asked the not entirely rhetorical question: "Do the people have to get angry (i.e., go into the streets again) before things will change?"²⁰

In explaining the slow pace of reform, Yushar Yahya, a spokesman from the Attorney General's office, had the following to say about recent efforts to reform government agencies: "[M]ost state institutions have failed to comply with the criteria of clean governance as the institutions' top officials never put them into effect."²¹ Under current efforts at reform, there are simply too few incentives to motivate entrenched bureaucrats to change from long-practiced modes of behavior. Yet, as my Indonesian friend whom I quoted at the beginning of this paper stated, "Who do you want to put in charge?" There is no real thought of replacing the existing members of a civil service corps that numbers approximately four million,²² and institutional behaviors and cultures of petty corruption simply replicate themselves without oversight from what has admittedly become a weakened central government. Any effort at reform must, by necessity, take a considerable amount of time, as a successful change in bureaucratic culture must begin both with the replacement of top officials and the recruitment of new civil servants with an ethic appropriate to an era of reform.²³ Such a process could be quite slow indeed since institutional memory and

¹⁶ See, e.g., Thomas Carothers, "The Rule of Law Revival," 77(2) *Foreign Affairs* 95, 105 (1998) (stating that "rule of law aid cannot substitute for the internal will to reform").

¹⁷ The window for reform may or may not be closing with the appointment of Megawati Sukarnoputri as president in late July 2001. The most disturbing fact of her assuming the office of president may be that she did so largely with the support of the military who see in her shades of her nationalist father, Sukarno. What this means for reform will have to be determined over the course of the next few months.

¹⁸ "Reform the Judiciary," *The Jakarta Post*, March 13, 2000.

¹⁹ For example, the military still retains 38 seats in the national legislature, with some talk that their overt role in politics will be "phased-out" by 2004.

²⁰ See A. Reza Rohadian, Bagus Marsudi, & Barly Haliem Noe, "Apa Rakyat harus Marah dulu?," *Kontan*, edisi (edition) 15/V, 8 January 2001.

²¹ "Observers Urge War Against KKN in Judiciary," *The Jakarta Post*, June 22, 2000.

²² See The World Bank, "Shape and Size of Public Employment for Indonesia," <www1.worldbank.org/publicsector/civilservice/countries/indonesia/shapesize.html>

²³ See J. Faundez, "Legal Reform in Developing and Transition Countries: Making Haste Slowly," paper presented at the Global Conference on Comprehensive Legal & Judicial Development (Washington, D.C. 2000) (discussing the slow pace of legal reform and the necessity of seeing such reform as a very complex process with few quick results).

culture(s) generally conform those who enter them to specific practices and “ways of doing things.”²⁴

In this respect, the move toward decentralization in the post-Suharto era does not make the effort to reform the state bureaucracy any easier.²⁵ Greater independence does not necessarily breed accountability or change practices that led to the public’s frustration in the first place. Nevertheless, one of the central concerns of legal reform in Indonesia advocated by almost all parties is the elimination of the executive branch’s influence on the judiciary with not just nominal, but real independence.²⁶ This goal was achieved in theory if not in practice by Law No. 35 of 1999, which calls for the transfer of court administration, operations, and oversight from the executive branch to the Supreme Court within five years.²⁷ While the call for independence in this area is warranted since the judiciary has historically served as a tool for those in power²⁸ and serves as one of the major building blocks that most see as necessary to establish the rule of law, the fact that the Supreme Court will now be in charge of court administration does not necessarily guarantee adequate safeguards for the

administration of impartial justice, especially considering that there has not been a wholesale turnover of personnel in either the Supreme Court or the judiciary more generally.

IV. THE POLITICAL BASIS OF KORUPSI IN INDONESIA

Somewhat ironically, Suharto came to power in 1966 promising to rid the Old Order government of corruption with the motto of “not only good government, but also clean government.”²⁹ The following 32 years in power saw Suharto, his family, and cronies accumulate billions of dollars in assets as they siphoned off a share from virtually all of the development and private investment projects coming into the country. This system of extraction seeped down to the lowest levels of government, and in many ways, government came to exist for the sake of corruption and personal enrichment. For example, in the remote area in which I conducted my fieldwork, the World Wide Fund for Nature was seriously considering pulling its support for a local conservation project because the “cost of doing business” was simply too high.

²⁴ See Mary Douglas, *How Institutions Think* (1986) (presenting a theory of institutional structure and organization that highlights the way in which institutions structure individuals to think different kinds of thoughts).

²⁵ See “Decentralizing Amid Regional Dissent,” XXVII *The Van Zorge Report on Indonesia* (1999) (discussing recent efforts to implement regional autonomy).

But see, K. G. Enid, “Customer Service as an Element of the Civil Service Reform Programme in Uganda,” 26(66) *Development and Socio-Economic Progress* 39, 47 (1996) (finding that decentralization has helped to improve the responsiveness of the civil service in rural parts of Uganda).

²⁶ See MPR, “Draft Decree of the People’s Consultative Assembly of the Republic of Indonesia Regarding Broad Guidelines of the State Policy for the Years 1999-2004,” MPR/1999, whose goal regarding the judiciary was “to achieve an independent judicial institution free of the influence of those in power and of any party whatsoever” and to “enhance the role of the MPR, the DPR and other high state institutions by confirm their functions, competencies and responsibilities in reference to the principles of division of power and a distinct system of relations between the executive, legislative and judicial institutions.” Australian Legal Resources International is just one among many organizations outside of Indonesia that see real judicial independence as an essential element of any legal reform program.

See also “Legal Reform in a Time of Political Upheaval,” 37(4) *Law Society Journal* 16 (1999) (discussing the need for judicial education, legal drafting, and the introduction of a civil police force).

²⁷ Some worried about the power granted to the Supreme Court under this modified legal regime; while others objected to the fact that the Religious Courts were to be transferred from the Ministry of Religion to the civil court system under the Supreme Court. For general commentary on this law, see “House Amends Judiciary Law as Part of Legal Reform Drive,” *The Jakarta Post*, August 2, 1999.

²⁸ See generally, Daniel Lev, *Legal Evolution & Political Authority in Indonesia* (2000) (a recent compilation of important essays, among which a central theme is the systematic weakening of the judiciary and legal institutions more generally since 1959).

²⁹ Fiona Robertson-Snape, “Corruption, Collusion and Nepotism in Indonesia,” 20(3) *Third World Quarterly* 589 (1999).

By the time bribes and "special fees" had been paid to the national, provincial, and regional officials, any monies for projects on the ground had been virtually depleted.

Most bureaucrats with whom I spoke indicated that government positions offered the opportunity not only for stability but also a decent income by peddling whatever influence they were able to offer. Rather than combating corruption, elites in the central government depended upon allowing the officials under them to exploit their offices to secure their loyalty and support.³⁰ There was thus no incentive to take an aggressive stand against corrupt practices on the part of the bureaucrats at any level who were posted throughout Indonesia, as this patron-client system replicated itself in a series of concentric circles throughout the archipelago. Rather, important government positions were doled out as virtual fiefs, over which officials such as governors and regents were placed who could exploit the resources under their control with impunity. Suharto thus took advantage of indigenous configurations of power including this entrenched patron-client system in which the patron provides a position to one's subordinates in return for their loyalty.³¹ Clients were generally given ample room to maneuver in such a system as long as this loyalty remained.³² This kind of institutionalized corruption spread deep roots throughout all levels of the bureaucracy and remains to this day despite the entering of an era of "*reformasi*."

In part the reasons for this highly centralized system of bureaucracy under the New Order had antecedent sources in the Old Order under Sukarno. Sukarno's fateful 1959 revocation of the 1950 Constitution in favor of the wartime, provisional Constitution of 1945 marked the end of any real democratic impulses or life for the next thirty-nine years. Not insignificantly, this earlier Constitution invested all power in the hands of the executive. There was certainly no separation of powers contemplated in this very basic outline of government. Sukarno eliminated parliamentary democracy and installed himself as an autocrat at the center of the state. The effect upon the development of an independent and functioning judiciary of Sukarno's move toward Guided Democracy and away from parliamentary government was devastating, as the judiciary became largely demoralized and increasingly corrupt.³³

Building upon this tradition, "politics," which connoted internal strife and a lack of communal mindset, became a dirty word under Suharto's New Order government. National elections simply became the exercise of symbolic pageantry and the confirmation of government by consensus in which the ruling party always seemed to win by the same percentage.³⁴ The New Order government set itself up as the provider of peace and stability along with rapid economic development. The fact that civil liberties waned and the government increasingly became rife with corruption seemed to be a bargain the

³⁰ See H. Crouch, "Patrimonialism and Military Rule in Indonesia," 31(4) *World Politics* 571 (1979).

³¹ See Adam Schwartz, *A Nation in Waiting: Indonesia in the 1990's* 136 (1994) (discussing Suharto's belief that such action was simply a legitimate exercise of a traditional Javanese prince). It is also worth noting that the colonial precursor to the state bureaucracy, based on the elevation of the *priyayi* elite (the former Javanese courtly bureaucrats) to positions in the colonial bureaucracy, served as an effective model for the governance of the archipelago once independence was achieved.

See generally, Heather Sutherland, *The Making of a Bureaucratic Elite: The Transformation of the Javanese Priyayi* (1979).

³² For a good example of how susceptible the courts were to political pressure, especially against those who fell into disfavor with those in power or were seen to be disloyal, see Robert Cribb, "The Trials of H. R. Dharsono," *Inside Indonesia* 3 (1988).

³³ See Lev, *supra*, note 28 (discussing the fact that prior to Sukarno's political maneuverings in the late 1950's, the Indonesian judiciary was actually functioning quite well, a history that has been almost completely erased in the memories of present legal practitioners in Indonesia).

³⁴ See Barbara Hatley, "National Ritual, Neighborhood Performance: Celebrating Tjujuhbelasan," 34 *Indonesia* 55 (1982);

John Pemberton, "Notes on the 1982 General Election in Solo," 41 *Indonesia* 1 (1986)

Indonesian people were willing (or were forced) to accept as long as the promise of development held.³⁵ President Suharto even went so far as to name himself *Bapak Pembangunan*, “Father of Development.” This patrimonial state, founded on economic development, only came to an end following the Asian economic crisis of 1997. The bargain had been broached, and the Indonesian people were no longer willing to accept the excesses of a government not delivering on its promises. As prices skyrocketed and the rupiah continued to plummet, the pressure on the government became too great, and after massive street demonstrations and violence in May of 1998, Suharto was forced to step down.³⁶

Even with the removal of Suharto, the basic structure of government administration and economic practice remained largely the same. Under the Suharto regime, the government involved itself heavily in almost every aspect of the economy, which had significant ramifications for the extension of corrupt practices into virtually every transaction. A key economic advisor for Suharto described the system thus:³⁷

In a patriarchal society such as Indonesia, the government had become the ultimate patron. There was almost no element of the economy that was not directly touched by the government...[E]very point of economic interaction within the government was a new opportunity for patronage or corruption.

Petty corruption, the paying of extra or special fees, to get virtually anything done in Indonesia is merely one of the rituals of daily life in Indonesia. One must pay officials to get one’s phone hooked up, one’s water running, register a marriage, etc.

Bureaucratic salaries are clearly one of the factors that lead to the pervasiveness of petty corruption.³⁸ Suharto himself acknowledged such a situation in his autobiography when he stated:³⁹

Corruption in our country is not the result of corrupt minds but of economic pressures. Eventually, when economic development has gone so far as to produce a good overall standard of living, government employees will receive adequate salaries and have no reason to practice corruption.

This remarkable statement comes from one whose own corrupt practices siphoned off untold dollars from the Indonesian economy. Obviously, the acquisition of a more than a “good overall standard of living” was not enough to keep Suharto and his cronies from continually dipping their fingers into the pots of money flowing into and out of Indonesia throughout a thirty-two year reign. Besides the blatant hypocrisy of this statement, what is even more disturbing is the utter lack of acknowledgement of how the government not only tolerated but actively encouraged corruption on the part of its officials to secure their loyalty.⁴⁰

³⁵ However, it should be remembered that the vast majority of economic progress and development benefited the emerging middle class and urban-oriented Indonesians, while much of the rural poor remained virtually untouched in any meaningful way by the lengthy period of sustained growth. See Mochtar Pabottingi, “Indonesia: Historicizing the New Order’s Legitimacy Dilemma,” in *Political Legitimacy in Southeast Asia: The Quest for Moral Authority* 224, 227 (Muthiah Alagappa ed., 1995).

³⁶ Of course, a key element forcing Suharto’s hand during the crisis was the withdrawal of the military’s support.

³⁷ R. Prawiro, *Indonesia’s Struggle for Economic Development* 32 (1998).

³⁸ See Jamie Mackie & Andrew MacIntyre, “Politics,” in *Indonesia’s New Order: The Dynamics of Socio-Economic Transformation* 1, 21-22 (Hal Hill ed., 1994) (stating that “official salaries have lagged far behind the cost of living (so that in 1990, for example, they provided for barely one-third of an official’s household needs”).

But see The World Bank, “Shape and Size of Public Employment for Indonesia,” <www1.worldbank.org/publicsector/civilservice/countries/indonesia/shapesize.html> (accessed 7/30/01) (indicating that recent pay increases over the past two years have led to an equalization of pay for bureaucrats with the private sector).

³⁹ Suharto, *My Thoughts, Words, and Deeds: An Autobiography* 213 (1991).

⁴⁰ See Michael Vatikiotis, *Indonesian Politics under Suharto: Order, Development and Pressure for Change* 52 (1993) (discussing the basis of Suharto’s power as patronage and the allocation of positions from which his cronies could enrich themselves).

*V. CORRUPTION AS A CONTESTED,
NORMATIVE JUDGEMENT*

In the above discussion, I have been making use of the term "corruption" rather freely and in a way that requires further articulation in order to make it serve a useful analytic purpose since definitions of "corruption" depend upon particular cultural ideas and beliefs that define relevant forms of practice.⁴¹ Such definitions obviously vary from one cultural and socio-historical context to another.⁴² Some have even tried to rehabilitate the largely negative connotations of the term "corruption" by pointing to its important role in capital formation and actually speeding up the development process.⁴³ The exact nature of corruption is therefore difficult to define given that "corruption alters its character in response to changing socio-economic, cultural and political factors. As these factors affect corruption, so does corruption affect

them."⁴⁴ To come to an adequate understanding of "corruption," some notion of how this behavior fits within specific cultural logics and is embedded in webs of social relations is thus needed.⁴⁵

The danger inherent in adopting a form of "cultural relativism" when addressing questions of "corruption," however, becomes one in which cultural and value-based explanations often turn into implicit and sometimes explicit justifications for such practices.⁴⁶ There is the additional danger of essentializing "culture" without an adequate appreciation for the configurations of power and political economy that have historically structured the relationships between the developed and developing worlds. The form of inquiry adopted in this paper attempts to avoid such problems, as well as those represented in efforts to "explore how culture...affects the extent to which societies achieve or fail to achieve progress in economic development and political democratization."⁴⁷

⁴¹ See, e.g., Akhil Gupta, "Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, & the Imagined State," 22(2) *American Ethnologist* 375 (1995) (discussing the different modalities of the discourse surrounding what constitutes "corruption" in both national media and village life in India);

For a review of recent development literature surrounding the topic, see Alan Doig & Stephanie McIvor, "Corruption & Its Control in the Developmental Context: An Analysis and Selective Review of the Literature," 20(3) *Third World Quarterly* 657 (1999).

⁴² The historical dimension is of particular interest, especially in post-colonial states such as Indonesia, where the colonial past often served as a model for contemporary forms of extraction, exploitation, and rule by their independent successors. See, e.g., Arvind Verma, "Cultural Roots of Police Corruption in India," 22(3) *Policing* 264 (1999) (discussing the colonial roots of contemporary police corruption as reflected in the maintenance of organizational practices from that era).

See also, Pamela G. Price, "Cosmologies and Corruption in (South India): Thinking Aloud," 2 *Forum for Development Studies* 315 (1999) (arguing that corruption in the Indian bureaucracy is partly a result of underlying historical relations between rank, status, and authority).

⁴³ See, e.g., A. J. Heidenheimer (ed.), *Political Corruption: A Handbook* (1989).

⁴⁴ S. B. Werner, "The Development of Political Corruption: A Case Study of Israel," 31(4) *Political Studies* 638 (1983).

⁴⁵ For an example of an approach along these lines, see J. P. Olivier de Sardan, "A Moral Economy of Corruption in Africa?," 37(1) *The Journal of Modern African Studies* 25 (1999).

⁴⁶ See, e.g., Michael Jacobsen (ed.), *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia* (2000) (discussing the debate concerning the status of "Asian values" and human rights discourse);

Christopher Lingle, *Singapore's Authoritarian Capitalism: Asian Values, Free Market Illusions, and Political Dependency* (1996).

See also, Abdullahi Ahmed An-Na'im (ed.), *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (1992);

Abdullahi Ahmed An-Na'im & Francis M. Deng (eds.), *Human Rights in Africa: Cross Cultural Perspectives* (1990).

⁴⁷ Samuel P. Huntington, "Cultures Count," in *Culture Matters: How Values Shape Human Progress* xiii, xv (Lawrence E. Harrison & Samuel P. Huntington eds., 2000). I do not have the space to get into a detailed discussion critiquing Huntington's essentialism and uncritical adoption of orientalist rhetoric, but see Aihwa Ong, *Flexible Citizenship: The Cultural Logics of Transnationality* 186-213 (1999) (discussing Huntington's bicultural schema and the rather naïve underlying assumptions forming its basis).

For the articulation of Huntington's extremely influential views on this topic, see Samuel P. Huntington, *The Clash of Civilizations and the Remaking of the World Order* (1996).

By appreciating the lived realities of the bureaucrats and the public they serve who are forced to negotiate their way through official interactions and encounters on a daily basis, this paper thus attempts to adopt a nuanced approach that appreciates the specific cultural meanings attached to practices deemed “corrupt” without completely eliding the fact that such practices often lead to exploitation.⁴⁸

This recognition of “corruption” as a specific articulation of cultural beliefs and orientations within particular political-economic contexts is necessary so as not to take for granted what the term connotes in specific instances. I would argue that the general, “cookie-cutter” approach to reform often fails to account for the particularized history and meaning of the practice of “corruption” by attempting to address what is perceived as a universal, almost purely organizational problem. One could make the argument that attempts to impose values and standards of behavior that may conflict with indigenous practices and configurations of governance may likely result in failure or in the worst case actually end up promoting new forms of corruption as aid money continually pours into economies without underlying controls for its effective or equitable distribution to those in need.⁴⁹ There is even some evidence that reforms in governance and democratization of authoritarian regimes do not necessarily eliminate corruption but rather provide new avenues for its expression and new opportunities for its

practice by those formerly excluded from systems of power and influence.⁵⁰

VI. TRADITIONAL JAVANESE CONCEPTIONS OF POWER AND LINKS TO CORRUPTION?

An argument can be made that the basis from which leadership and ideas of the appropriate configuration of polity operates in Indonesia with some very different assumptions that that to be found in most Western political theory. If such a premise is accepted, an indigenous notion of power would therefore form an important component of any manifestation of “corruption” in that context.⁵¹

One of the most influential articulations of traditional notions of power operative within the Indonesian elite is found in Benedict Anderson’s formulation of the Javanese idea of power and polity, which was originally published in 1972.⁵² In this article Anderson outlines the way in which traditional notions of power in Javanese culture are diametrically opposed to common Western conceptions. For example, where Western political theory tends to think of power as 1) abstract, 2) heterogeneous in its sources, 3) without limitations in regard to its accumulation, and 4) morally ambiguous; traditional Javanese notions see power as 1) concrete, 2) homogenous, 3) of constant quantity, and 4) not raising the question of legitimacy.⁵³ Anderson’s definition of power in traditional Javanese

⁴⁸ For a similar approach to the issue that attempts to take seriously the differences between a largely Western discourse surrounding democracy and economic transparency and indigenous Southeast Asian perspectives, see Vincent Houben, “Economic Crisis and the Culture of Reform in Southeast Asia,” 7(4) *European Review* 487 (1999).

⁴⁹ See, e.g., Morris Szeftel, “Between Governance and Under-Development: Accumulation & Africa’s ‘Catastrophic Corruption,’” 27 *Review of African Political Economy* 287 (2000).

⁵⁰ See, e.g., David Watt, Rachel Flanary, & Robin Theobald, “Democratization or the Democratization of Corruption?: The Case of Uganda,” 37(3) *Commonwealth & Comparative Politics* 37 (1999).

⁵¹ This approach was adopted in somewhat different terms by Robertson-Snape, supra note 29, and some of the following discussion was influenced by that article.

⁵² See Benedict Anderson, “The Idea of Power in Javanese Culture,” in *Language and Power: Exploring Political Cultures in Indonesia* 17 (1990), reprinted from *Culture and Politics in Indonesia* 1 (Claire Holt ed. 1972).

⁵³ Id. at 21-23.

culture has not been free from criticism, particularly in the fact that he does not sufficiently account for the influence of Islamic thought on Indonesian political culture and that his formulations represent an overly simplistic, essentialist account of Javanese political theory divorced from the realities of historical practice.⁵⁴ The broad outlines Anderson explores, however, remain significant for the kinds of political organization deployed within the context of Indonesian politics, whose leaders often saw themselves as modern Javanese princes.⁵⁵

In this indigenous model, power radiates out from the center and all ministerial actions should reflect back to the wishes of that power with little or no accountability to the public at large.⁵⁶ Ideally, there should be no discretion on the part of those appointed to the periphery, as they are seen as the mere extension of the center's will, and actions on the periphery reflect back onto the center. This underlying ideology of power, in which the state's production and stability are fundamental expressions of the center's capacity to rule,⁵⁷ helps to explain the New Order's emphasis on the maintenance of economic progress through development or *pembangunan* and the maintenance of order.⁵⁸

The bureaucratic administrative structure imposed to address this concentration of power at the center had a great deal to do with the eventual appointment of administrators sent from the center to oversee the periphery. From this perspective, "the wealth of the state is in the gift of the ruler and may be distributed

downward through officialdom as the prerequisites of office; but...this distribution is to be conceived not as an obligation of the ruler to his officials, but rather as a mark of his favor."⁵⁹ The end result is that large-scale corruption in post-Independence Indonesia "takes the form of allotting the 'surplus' of certain key sectors of the economy to favored officials or cliques of officials, whether civilian or military."⁶⁰ In the area where I worked, for example, many of the logging and mining concessions went to high ranked military personnel despite the supposed ban on logging and mining in the area due to the establishment of a large national park in the region.

Anderson's model is intriguing, especially as the basic principles he outlines as falling into a traditional Javanese conception of power and polity directly conflict in many ways with Weber's ideal-type of rational-legal bureaucracy, a methodological construct that nevertheless exerts a powerful influence on ideas about how an efficient and rational bureaucracy should function.⁶¹ The basics of Weber's thoughts on rational-legal bureaucracy list the following criteria as the functioning "rules" under which bureaucrats in such an ideal system work: 1) bureaucrats are subject only to the authority of their impersonal official obligations; 2) they are organized by a clearly defined hierarchical system of offices; 3) each office has a clearly defined sphere of competence; 4) the office is filled by free contractual relationships; 5) candidates are selected on the basis of technical qualifications; 6) there are fixed salaries based on rank within

⁵⁴ See, e.g., Pabottinggi, *supra* note 24 at 235-237.

⁵⁵ See John Pemberton, *On the Subject of "Java"* (1994) (exploring how the appearance of order and stability under Suharto was founded upon appeals to traditional Javanese cultural practices and traditions).

⁵⁶ Anderson, *supra* note 51, at 49.

⁵⁷ *Id.* at 33.

⁵⁸ See Ariel Heryanto, "The Language of Development and the Development of Language" 40 *Indonesia* 35 (1985) (discussing the shift in discourse from the organic *perkembangan* to the more mechanical and modernist *pembangunan*, which became the underlying legitimization for Suharto's rule).

⁵⁹ Anderson, *supra* note 51, at 59.

⁶⁰ *Id.* at 60. For a comparative explanation of the development of what the author terms a "clientelist" state in reference to cronyism in Malaysia, see James V. Jesudason, "The Developmental Clientelist State: The Malaysian Case," 23(1/2) *Humboldt Journal of Social Relations* 173 (1997).

⁶¹ See, e.g., Robert Brown & Alan Gutterman, *Asian Economic and Legal Development: Uncertainty, Risk and Legal Efficiency* (1998) (representing a recent example of work in this area that implicitly makes use of a Weberian notion of rational-legal authority).

the organization; 7) the office is treated as the sole, or at least primary, occupation; 8) the job constitutes a career in which promotion is based on seniority or achievement or both; 9) the official works entirely separated from the means of administrations; and 10) the official is subject to strict and systematic discipline.⁶² Some of these factors obviously do not map on very well to traditional Javanese notions of the ideal patron-client relationship, which essentially serves as the model by which most bureaucratic relationships are structured throughout the archipelago. This observation is not to say that the bureaucracy in Indonesia is locked in the past and that “tradition” is thus the root of all the corruption rampant in Indonesia, but such elements arguably do play

bureaucratic practice in Indonesia.

For example, there is a great dispreference in Indonesia for conducting one’s transactions without some sort of personal relationship. This orientation results in a rather blurred boundary between state and civil society and between personal and public life. Indeed, the importance of personal relationships in business and personal transactions cannot be overestimated in Indonesia, and while such a system may appear to result from cronyism and nepotism from an outside perspective, the use of connections to conduct business and handle disputes offers some stability and reassurance in a system where the state can yield arbitrary power with virtual impunity.⁶³ Most of the Indonesians whom I knew felt extremely uncomfortable conducting their affairs in any situation in which they did not know someone. In instances where they had no connections, I often observed that local people brought along an intermediary to negotiate the relationship.

It was virtually unthinkable for them to go into an encounter “cold.” Obviously, such a system may not be the most “efficient” means to conduct business in that such necessities often increase transaction costs,⁶⁴ but underlying cultural configurations about appropriate modes of conduct represent a powerful force that can structure behavior in particular circumstances despite the “cost.” For example, most people with civil disputes or even petty criminal matters would simply avoid the court system altogether and resolve their problems through a third party acting as a intermediary rather than deal with the relatively unknown and potentially arbitrary courts, whose personnel could extract its own, often quite high, transaction costs.⁶⁵

While all the legal actors in Indonesia (e.g., judges, prosecutors, and police) have somewhat different motivations to engage in “corrupt” behavior, a great deal of it comes down to the desire to improve one’s position in life and take advantage of greater opportunities elsewhere, nearer to the centers of power. Professional advancement fundamentally relies upon the ability of the particular official to accumulate resources and cull favor with those able to get them posted in greater positions of influence and power. Given that the Indonesian bureaucratic system has historically served not as a meritocracy but more as an interlocking set of patron-client relationships, there is no real stopping point at which one will stop seeking advancement in this manner. Rather, as one’s power and influence grows, so does the need to accumulate ever more assets and cultivate connections even closer to the center in order to continue on the path to greater opportunity. Some of course will be satisfied to stay at a certain level or will only be able to

⁶² Max Weber, “The Essentials of Bureaucratic Organization: An Ideal-Type Construction,” in *Reader in Bureaucracy* 18, 21-22 (Robert K. Merton, et. al., eds. 1952).

⁶³ For a comparative example from Ghana in the realm of commercial contracts, see Marcel Fafchamps, “The Enforcement of Commercial Contracts in Ghana,” 24 *World Development* 427 (1996) (discussing the complex system of traders that act as essential go-betweens for commercial transactions). See also, Ong, supra note 46 at 155-156 (discussing the importance of what in many respects is an analogous concept of *guanxi* to traditional Chinese business practices).

⁶⁴ See Oliver E. Williamson, “The Institutions of Governance of Economic Development and Reform,” in *Proceedings of the Annual World Bank Conference on Development Economics: 1994* (M. Bruno & B. Pleskovic eds., 1995).

⁶⁵ For example, in the district court in which I conducted my dissertation research, it was well-known that one had to pay a “special fee” to get a civil judgment enforced or to get official papers filed.

go so far in the system, but as long as such incentive structures are in place, the elimination of corruption seems to be a daunting task that may take decades to achieve.

VII. CONCLUSION

I have tried to briefly outline in this paper the ways in which indigenous notions of polity and power influenced the structuring of the modern Indonesian bureaucracy. How this structure led to systematic practices of corruption becomes clear if one realizes that the only way to advance is through the cultivation of one's connections and the offering of sufficient resources to approach the centers of power that continue to wield true influence, even in an era marked by a drive for "*reformasi*."

It is, however, hopeful that the "*reformasi*" movement currently remains strong as well.

Even though there is increasing public frustration at the pace of change, progress in this area has been made, and while it may not be practical to put the children in charge, those children will one day be adults, and that may be the time when reform could truly take hold. Rather than throwing money at what are thoroughly corrupt institutions, perhaps money would be better spent on this rising generation through a strengthening of the Indonesian education system. In this view, "corruption" is not so much a cultural problem in Indonesia as it is a result of the intentional deployment of a political system that rewarded such behavior in the interests of maintaining stability and the status quo. The institutionalization of corrupt behaviors is an area that any legal reform project in Indonesia must be sensitive to while at the same time recognizing that such institutional practices can be very difficult to dislodge once so firmly established.

This paper is largely based upon fifteen months of field research conducted by the author in Indonesia from late 1997 through 1998.

CURTIS E. RENOE is expecting a Ph.D. in Anthropology from Yale University in May 2002 and a J.D. from Stanford Law School in May 2003. He has received an M.Phil. in Anthropology from Yale, an M.A. in Anthropology from the University of South Carolina, a B.A. in Anthropology from Emory University, and a B.A. in Latin from Emory University.