



UNIVERSITY OF
GOTHENBURG

TAMING SYSTEMIC CORRUPTION:

The American Experience and Its Implications for Contemporary Debates

MARIANO-FLORENTINO CUELLAR

MATTHEW C. STEPHENSON

WORKING PAPER SERIES 2020:6

QOG THE QUALITY OF GOVERNMENT INSTITUTE

Department of Political Science

University of Gothenburg

Box 711, SE 405 30 GÖTEBORG

September 2020

ISSN 1653-8919

© 2020 by Mariano-Florentino Cuellar & Matthew C. Stephenson. All rights reserved.

Taming Systemic Corruption: The American Experience and Its Implications for Contemporary Debates

Mariano-Florentino Cuellar

Matthew C. Stephenson

QoG Working Paper Series 2020:6

September 2020

ISSN 1653-8919

ABSTRACT

Endemic corruption in developing countries often seems intractable. Yet most countries that currently have relatively high public integrity were, at an earlier point in their history, afflicted with similarly pervasive corruption. Studying the history of these countries may therefore make a valuable contribution to modern debates about anticorruption reform. This paper considers the experience of the United States, focusing principally on the period between 1865 and 1941. We find that the U.S. experience calls into question a number of commonly-held views about the struggle against corruption in modern developing countries. *First*, although some argue that entrenched cultures of corruption are virtually impossible to dislodge, the U.S. experience demonstrates that it is possible to make a transition from a systemically corrupt political system to a system in which public corruption is aberrational. *Second*, although some have argued that tackling systemic corruption requires a “big bang” approach, the U.S. transition away from endemic corruption would be better characterized as incremental, uneven, and slow. *Third*, although some have argued that fighting corruption requires shrinking the state, in the U.S. reductions in systemic corruption coincided with a substantial expansion of government size and power. *Fourth*, some commentators have argued that “direct” anticorruption measures that emphasize monitoring and punishment do not do much good in societies where corruption is pervasive. On this point, the lessons from U.S. history are more nuanced. Institutional reforms played a key role in the U.S. fight against corruption, but investigations and prosecutions of corrupt actors were also crucial, not only because of deterrence effects, but because these enforcement efforts signaled a broader shift in political norms. The U.S. anticorruption experience involved a combination of “direct strategies,” such as aggressive law enforcement, and “indirect strategies,” such as civil service reform and other institutional changes.

Mariano-Florentino Cuellar

Justice, California Supreme Court,

Herman Phleger Visiting Professor of Law and
affiliated scholar, Freeman Spogli Institute for
International Studies, Stanford University

tcuellar@stanford.edu

Matthew C. Stephenson

Eli Goldston Professor of Law,

Harvard Law School

mstephen@law.harvard.edu

Endemic public corruption is one of the most serious and seemingly intractable problems afflicting the modern developing world.¹ Corruption is associated with lower per capita income,² higher levels of poverty and inequality,³ worse health outcomes,⁴ less innovation and entrepreneurship,⁵ greater risk of macroeconomic crises,⁶ lower levels of public trust,⁷ and higher levels of political instability and violence.⁸ The extent to which corruption is the root cause of these or other problems is unsettled and hotly debated, but there is nevertheless a widespread consensus that corruption in the developing world is both pervasive and harmful. There is substantially less consensus, however, about what can be done about it. Many activists and policymakers have grown weary of research that merely describes the problem; they are increasingly asking the so-called experts for guidance on reform strategy—including what lessons can be learned from those jurisdictions that have succeeded in getting corruption under control.

Unfortunately, unambiguous modern success stories are few and far between, especially if one is looking for examples of large democracies that have tackled corruption effectively.⁹ The two most frequently noted modern anticorruption success stories—Hong Kong and Singapore in the 1970s—are nondemocratic city-states, and their corruption cleanups were largely top-down initiatives.¹⁰ Other more recent examples of apparent success, like the Republic of Georgia in the 2000s, also appear very much driven by relatively unconstrained, and some would say semi-autocratic, chief executives.¹¹ Although there are certainly some major democracies that have achieved im-

¹ Corruption is notoriously difficult to define, and is sometimes used broadly to capture a wide range of ways in which a system may be dysfunctional, captured, or morally compromised. For present purposes, we adopt a narrower definition widely used in the literature—the misuse of public office for private gain. By this we mean, for instance, bribery of public officials, embezzlement or other misappropriation of public funds for personal or partisan benefit, exploitation of private government information for private financial gain, or basing government hiring or contracting on family, partisan, or other personal connections. See, e.g., Susan Rose-Ackerman, “Corruption,” in CHARLES K. ROWLEY & FRIEDRICH G. SCHNEIDER EDS., *READINGS IN PUBLIC CHOICE AND CONSTITUTIONAL POLITICAL ECONOMY* 551, 551 (2008). See also MARK W. SUMMERS, *THE ERA OF GOOD STEALINGS* ix (1993) (adopting a definition of “corruption” that includes “the illegal and generally unacceptable use of public position for private advantage or exceptional party profit, and the subversion of the political process for personal ends beyond those of ambition”) (internal quotation marks omitted).

² See Daniel Kaufmann & Aart Kraay, *Growth Without Governance*, 3 *ECONOMIA* 169, 169-173 (2002).

³ See Alberto Chong & Cesar Calderon, *Institutional Quality and Income Distribution*, 48 *ECONOMIC DEVELOPMENT & CULTURAL CHANGE* 761 (2000).

⁴ See Matthieu Hanf et al., *Corruption Kills: Estimating the Global Impact of Corruption on Children Deaths*, 6 *PLoS ONE* (2011).

⁵ See Sergey Anokhin & William S. Schulze, *Entrepreneurship, Innovation, and Corruption*, 24 *JOURNAL OF BUSINESS VENTURING* 465 (2009).

⁶ See Pattama L. Shimpalee & Janice Bourcher Breuer, *Currency Crises and Institutions*, 25 *JOURNAL OF INTERNATIONAL MONEY & FINANCE* 125 (2006).

⁷ See Eric C.C. Chang, *A Comparative Analysis of How Corruption Erodes Institutional Trust*, 9 *TAIWAN JOURNAL OF DEMOCRACY* 73 (2013).

⁸ See SARAH CHAYES, *THIEVES OF STATE: WHY CORRUPTION THREATENS GLOBAL SECURITY* (2016).

⁹ See, e.g., DAN HOUGH, *ANALYSING CORRUPTION: AN INTRODUCTION* (2017).

¹⁰ See Jon S.T. Quah, *Controlling Corruption in City-States: A Comparative Study of Hong Kong and Singapore*, 22 *CRIME, LAW & SOCIAL CHANGE* 391 (1994).

¹¹ See Alexander Kupatadze, *The Quest for Good Governance: Georgia’s Break with the Past*, 27 *JOURNAL OF DEMOCRACY* 110 (2016).

portant anticorruption breakthroughs over the past 30 years—including Italy’s “Clean Hands” investigations and associated political reforms,¹² Indonesia’s creation of surprisingly effective anticorruption institutions following the transition to democracy in the late 1990s,¹³ South Korea’s recent legal reforms,¹⁴ and Brazil’s “Car Wash” operation¹⁵—it is hard to demonstrate that these or other efforts have achieved substantial and lasting reductions in the pervasiveness of public corruption. A skeptic might point out that if one looks at the Corruption Perceptions Index (CPI), published annually by the advocacy organization Transparency International since 1995, very few countries have seen a substantial improvement,¹⁶ and those score changes we have seen many largely reflect random statistical noise.¹⁷ Corruption, at least at the macro-level, appears to be not only pervasive, but also quite resistant to change.

If we look further back in time, however, the picture—especially with respect to the potential for substantial transformation—looks quite different, and considerably more encouraging. After all, most of the countries that today achieve good scores on the CPI were, at an earlier point in their history, afflicted with pervasive public corruption (bribery, embezzlement, nepotism, and other abuses of public power for private gain), as well as clientelistic political systems rife with pork and patronage. Though different in their particulars, many of the leading lights of modern “good governance”—countries like Denmark, Sweden, Germany, the United Kingdom, and the United States—once bore more than a passing resemblance to modern-day developing countries like Brazil, Indonesia, India, and Nigeria. We do not have an index like the CPI that goes back 200 years, but if we did (and if the scale were constant), it is likely that a century or two ago the scores for countries that currently do well (like the United States and Sweden) wouldn’t be that different from the present-day scores of countries like Brazil and Indonesia.¹⁸

So, the set of anticorruption success stories is potentially larger than has been fully appreciated, a fact that a small but growing number of scholars have emphasized. (Articles with titles like “Getting to Sweden”¹⁹ and “Becoming Denmark”²⁰ provide a flavor of this emerging literature.) It is always challenging and potentially hazardous to try to draw clear lessons from what happened decades or

¹² See Antonio Accocia & Claudia Cantabene, *A Big Push to Deter Corruption: Evidence from Italy*, 67 GIORNALE DEGLI ECONOMISTI E ANNALI DI ECONOMIA 75 (2008).

¹³ See Sofie Arjon Schutte, *Against the Odds: Anti-Corruption Reform in Indonesia*, 32 PUBLIC ADMINISTRATION & DEVELOPMENT 38 (2012).

¹⁴ See Jung da-Min, “Korea’s Anti-Corruption Efforts an Inspiration for Other Asian Countries,” KOREA TIMES (Dec. 8, 2019).

¹⁵ See PAUL F. LAGUNES & JAN SVEJNAR EDS., CORRUPTION AND THE LAVA JATO SCANDAL IN LATIN AMERICA (2020).

¹⁶ See TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2019 8-9 (2020).

¹⁷ See Matthew C. Stephenson, “The New Corruption Perceptions Index Identifies Countries with Statistically Significant Changes in Perceived Corruption—Should We Credit the Results?,” posted on Global Anticorruption Blog (Mar. 6, 2018).

¹⁸ See Matt Andrews, *The Good Governance Agenda: Beyond Indicators without Theory*, 36 OXFORD DEVELOPMENT STUDIES 379, 380 (2008) (pointing out that those governments rated as “effective” on current governance indicators “looked very different” in the past, when they faced challenges similar to those faced by modern developing countries, and “would surely have scored poorly on the current indicators”).

¹⁹ See Bo Rothstein & Jan Teorell, *Getting to Sweden, Part II: Breaking with Corruption in the Nineteenth Century*, 38 SCANDINAVIAN POLITICAL STUDIES 238 (2015).

²⁰ See Alina Mungiu-Pippidi, *Becoming Denmark: Historical Designs of Corruption Control*, 80 SOCIAL RESEARCH 1259 (2013).

centuries ago—under quite different social, political, and economic conditions—for modern policy-making. Yet considering the history of today’s “top performers” can nonetheless make a valuable contribution to modern debates about anticorruption reform—not so much by providing simple lessons about what policies to adopt, but by offering a broader sense of how the complex process of anticorruption reform unfolds over time, and by calling into question certain widely-held beliefs about this process.

In this essay, we seek to contribute to this emerging literature by considering the experience of the United States.²¹ We will focus principally on the period between the end of the American Civil War in 1865 and the U.S. entry into World War II in 1941, though important parts of the story both precede and follow this three-quarter-century period. As several scholars have pointed out (including one of us in prior work), the United States, from its founding up into the first half of the twentieth century, can be thought of as a developing country, albeit quite a wealthy one by the standards of the time.²² This makes the United States a potentially fruitful subject of study for those interested in a historical perspective on the challenges facing modern developing countries. The United States may be a particularly interesting and relevant case study because the country—in contrast to most of the other high-performers on the CPI and other “good governance” indexes—established political democracy well before the period of substantial “good government” reforms. By contrast, most of the other major Western countries that are today considered both democratic and relatively uncorrupt—such as Denmark and Sweden—implemented substantial good governance reforms prior to the transition to democracy, and did so in largely top-down fashion.²³ For that reason, the challenges facing anticorruption reformers in the United States in the late nineteenth and early twentieth century may be more akin to the challenges facing reformers in modern-day democracies

²¹ In doing so, we build on the work of other scholars who have also explicitly raised the possibility that the U.S. experience fighting corruption might be relevant to modern developing countries. See, e.g., Edward L. Glaeser & Claudia Goldin, *Corruption and Reform: Introduction*, in EDWARD L. GLAESER & CLAUDIA GOLDIN EDS., CORRUPTION AND REFORM: LESSONS FROM AMERICA’S ECONOMIC HISTORY 3, 3 (2006) (“America’s reputation as an untarnished republic is a modern phenomenon. Conventional Histories of nineteenth- and early twentieth-century America portray its corrupt elements as similar, and at times equal, to those found in many of today’s modern transitional economies and developing regions”); *id.* at 4 (“If the United States was once more corrupt than it is today, then America’s history should offer lessons about how to reduce corruption”); John Joseph Wallis, *The Concept of Systemic Corruption in American Political and Economic History*, in GLAESER & GOLDIN EDS., *supra*, at 23; SUSAN ROSE-ACKERMAN & BONNE J. PALIFKA, CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM, SECOND EDITION (2016) (arguing that “developing countries and those in transition can learn from the historical experience of developed countries” such as the United States and the United Kingdom).

²² See MARTIN J. SKLAR, THE UNITED STATES AS A DEVELOPING COUNTRY: STUDIES IN U.S. HISTORY IN THE PROGRESSIVE ERA AND THE 1920S (1992); Mariano-Florentino Cuellar, Margaret Levi & Barry R. Weingast, *Twentieth-Century America as a Developing Country: Conflict, Institutions, and the Evolution of Public Law*, 57 HARVARD JOURNAL ON LEGISLATION 25 (2020). As noted in the main text, if one focuses on per capita income—the usual metric by which we distinguish developed from developing nations—the characterization of the United States as a developing nation in the nineteenth century may seem dubious. According to Angus Maddison’s widely-used estimates, by 1870 per capita GDP in the United States was higher than in most other Western European countries (lower than the United Kingdom—the wealthiest country in the world at the time—as well as the Netherlands and Belgium, but higher than France, Germany, Sweden, and Switzerland, among others) By 1950, U.S. per capita GDP was the highest in the world. See ANGUS MADDISON, COUNTOURS OF THE WORLD ECONOMY, 1-2008 AD (2007). But widening the focus beyond relative per capita GDP reveals the myriad ways in which the nineteenth and even early-twentieth century United States resembled modern developing countries: Putting aside *relative* per capita wealth, absolute national wealth and living standards were still quite low compared to today; the country was undergoing rapid industrialization, and with it profound social and demographic change; political institutions were weak and unstable, while levels of political violence were high. And perhaps most relevant here, patronage, clientelism, nepotism, and self-dealing were widespread.

²³ See Mungiu-Pippidi, *supra* note 20. Rothstein & Teorell, *supra* note 19.

in the developing world, where corruption and democratic politics are deeply enmeshed, and where the decision of a single leader or small elite group is typically not sufficient to achieve major, lasting change.

We do not attempt, in this short essay, a comprehensive survey of the history of corruption and anticorruption in U.S. history. This story has been partially told elsewhere, though the topic still awaits a comprehensive synthesis.²⁴ Nor do we purport to reach firm conclusions about the reasons that the U.S. struggle against systemic corruption ultimately succeeded—let alone to draw facile “lessons” about “what works” that elide some of the undeniably distinctive features of the American historical journey. Though our objective here is more limited, we think the very distinctiveness of the American story underscores the value of attention to historical realities amidst cautious generalizations, and we hope our foray into this topic will spark deeper exploration. But even our account here shows how the U.S. experience, when viewed from the metaphorical 30,000 feet, calls into question a number of commonly-held views about the struggle against corruption in modern developing countries.

First, although some argue that entrenched cultures of corruption are virtually impossible to dislodge, at least within a democratic framework, the U.S. experience demonstrates that it is possible for a democratic country to make a transition from a systemically corrupt political system to a system in which public corruption, though still present, is aberrational, or at least manageable. This may seem like a trivial point, but given the fatalism that sometimes infects discussions of endemic corruption in many modern developing countries, demonstrating that the United States (along with other countries) made this transition, from a starting point that didn’t look much more favorable than what we see in developing countries today, serves an important purpose.

Second, some modern commentators, drawing on game-theoretic models and concepts, have advanced the claim that a shift from systemic corruption to manageable corruption can occur only through a “big bang”—with reforms that are swift, drastic, and coordinated.²⁵ The United States, however, does not fit that reform template. Although there were certainly some important bursts of reform at certain periods (little bangs? medium bangs?), overall the U.S. transition from a system in which corruption was endemic to one in which it was reasonably under control—which, again, we date as running roughly from the 1860s through the 1940s, though with important further developments in the 1960s and 1970s—would be more accurately characterized as incremental, uneven, and slow.

²⁴ Particularly helpful resources include GLAESER & GOLDIN EDS., *supra*, note 21; ZEPHYR TEACHOUT, CORRUPTION IN AMERICA: FROM BENJAMIN FRANKLIN’S SNUFF BOX TO CITIZENS UNITED (2014); MARK W. SUMMERS, THE PLUNDERING GENERATION: CORRUPTION AND THE CRISIS OF THE UNION, 1849-1961 (1987); ARI HOOGENBOOM, OUTLAWING THE SPOILS: A HISTORY OF THE CIVIL SERVICE REFORM MOVEMENT, 1865-1883 (1961); JOHN T. NOONAN, JR., BRIBES: THE INTELLECTUAL HISTORY OF A MORAL IDEA 427-680 (1984); ABRAHAM S. EISENSTADT ET AL. EDS., BEFORE WATERGATE: PROBLEMS OF CORRUPTION IN AMERICAN SOCIETY (1978); Peri E. Arnold, *Democracy and Corruption in the 19th Century United States: Parties, “Spoils” and Political Participation*, in SEPPO TIIHONEN ED., THE HISTORY OF CORRUPTION IN CENTRAL GOVERNMENT 197 (2003).

²⁵ See Paul Collier, *African Growth: Why a “Big Push”?*, 15 JOURNAL OF AFRICAN ECONOMICS 188 (2006); Bo Rothstein, *Anti-Corruption: The Indirect “Big Bang” Approach*, 18 REVIEW OF INTERNATIONAL POLITICAL ECONOMY 228 (2011).

Third, in some circles the idea has taken root that fighting corruption requires shrinking the state—both the scope of government regulatory interventions and the extent of government redistribution.²⁶ Yet in the United States, the reduction in systemic corruption, especially in the first half of the twentieth century, coincided with a substantial *expansion* of government size and power, especially at the national level. Indeed, it may be that this expansion, driven by growing citizen demand for greater government intervention in the economy, contributed to increasing political pressure to control public corruption. To be sure, the relationship between these developments is complicated, and teasing out causality is largely beyond what we can hope to accomplish in this essay. Nevertheless, these parallel trends at least call into question the simple story that the key to cutting corruption is cutting “big government”²⁷ or imposing rigid limits on bureaucratic discretion.²⁸

Fourth, perhaps in reaction to an earlier generation’s focus on monitoring and punishment, it has recently become fashionable in some quarters to suggest not only that such direct strategies must be complemented by broader institutional changes (a proposition that we would endorse), but also that measures which target individual wrongdoers—such as criminal prosecutions—do not actually do much good in societies where corruption is pervasive.²⁹ On this account, reformers should focus exclusively on “fundamental” institutional reforms, and not get distracted trying to push for more effective systems of detection and punishment. A somewhat distinct but closely related claim is that, when fighting systemic corruption, “direct” strategies—those that explicitly target corruption—are unlikely to succeed, and that what is needed instead is an “indirect” strategy, one that does not specifically target corruption, but rather changes societal conditions and public institutions in ways that make corruption harder to sustain.³⁰ On this point, the lessons from U.S. history are somewhat more nuanced. Institutional reforms—especially though not exclusively civil service reforms—incontrovertibly played a key role in the U.S. fight against corruption. But investigations and prosecutions of corrupt actors were also crucial, not only because of the deterrence and incapacitation effects of such measures, but because these enforcement efforts contributed to the credible signal of a broader shift in political and social norms. And even those reform measures that could be characterized as “indirect,” such as civil service reform, were often explicitly packaged and promoted as specifically targeting corruption. Speaking more generally, the U.S. experience appears to entail a combination of “direct strategies,” such as aggressive law enforcement, and “indirect strategies,” such as civil service reform and other institutional changes.

The essay is organized as follows. Part I provides a brief overview of systemic corruption in the United States up through the 1870s, emphasizing the extent to which the historical evidence supports our assertion that corruption in the United States in the decades immediately preceding and following the American Civil War, while not on the scale of modern kleptocracies like Equatorial

²⁶ See Gary S. Becker, *If You Want To Cut Corruption, Cut Government*, Bloomberg (Dec. 11, 1995).

²⁷ See Gary S. Becker, *To Root Out Corruption, Boot Out Big Government*, Bloomberg (Jan. 31, 1994).

²⁸ See ROBERT KLITGAARD, *CONTROLLING CORRUPTION* (1988).

²⁹ See Adrian Karatnycky & Alexander J. Motyl, *How Western Anticorruption Policy Is Failing Ukraine: It Should Focus on Institutions, Not Individuals*, FOREIGN AFFAIRS (May 29, 2018).

³⁰ See Bo Rothstein, *Fighting Systemic Corruption: The Indirect Strategy*, 147 DAEDELUS 35 (2018).

Guinea or Venezuela, appears to have been at least roughly comparable to the widespread corruption we see in modern developing-world democracies like Brazil, India, Indonesia, Nigeria, and Ukraine. Part II then traces major developments in the U.S. fight against corruption from preliminary steps in the 1850s up through the New Deal period in the 1930s, with some brief mention of further developments in the latter part of the twentieth century. In Part III, we consider whether or how this admittedly superficial sketch of U.S. history sheds light on several questions in the current debates over anticorruption strategy in modern developing and transition countries: first, whether successfully disrupting endemic corruption requires a “big bang” approach; second, whether the most effective way to counter systemic corruption is to reduce the size and scope of government; and third, whether criminal prosecutions and other “direct” enforcement strategies can help reduce corruption, or whether only “structural” reforms can be effective when corruption is entrenched. While mindful of the difficulties with drawing simple lessons from a single historical case, we suggest that U.S. history provides evidence that seems inconsistent with some of the conclusions and recommendations that scholars have reached with respect to each of these questions. While we would not go so far as to argue that the U.S. experience refutes those claims, we do think that the U.S. historical experience suggests the need for more critical scrutiny. More broadly, we suggest that the careful study of the history of the fight against systemic corruption in modern Western countries can shed light on continuing the struggle against systemic corruption throughout the world.

I. Systemic Corruption In the Nineteenth Century United States

Let’s make one thing clear at the outset: The United States has not “solved” corruption. Corruption remains an important problem in all levels and branches of American government, and in all areas of the country. And this is so even if we bracket the suggestion that certain forms of currently lawful lobbying, campaign finance, and other influence activities might plausibly be characterized as “corrupt.”³¹ Corruption scandals regularly make headlines.³² The U.S. Department of Justice has an entire division devoted to the prosecution of public corruption, and that division has plenty of work.³³ And the last several years have seen a resurgence of concerns about corruption and conflicts of interest at the highest levels of the U.S. federal government.³⁴

Nevertheless, the nature of the corruption problem in American government today is quite different from the nature of the corruption problem in countries like Argentina, Brazil, Honduras, India,

³¹ See LAWRENCE LESSIG, REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS—AND A PLAN TO STOP IT (2011).

³² See, e.g., “It’s the Human Way’: Corruption Scandals Play Out in Big Cities Across U.S.”, *New York Times* (Feb. 5, 2019); “Ohio Speaker’s Arrest in Bribery Probe Muddies 2020 Election.” *Washington Post* (July 22, 2020); “North Carolina G.O.P. Chairman Indicted in Corruption Probe,” *New York Times* (April 2, 2019).

³³ See U.S. DEPARTMENT OF JUSTICE, REPORT TO CONGRESS ON THE ACTIVITIES AND OPERATIONS OF THE PUBLIC INTEGRITY SECTION FOR 2016 21-22 (2016) (table showing that between 1997 and 2016, the Section secured convictions of nearly 8,000 federal officials and nearly 2,000 state officials, as well as over 4,700 local officials, for public corruption, along with over 5,000 private citizens involved in public corruption offenses. Some have plausibly argued that the Department of Justice data is over-inclusive, see Adriana S. Cordis & Jeffrey Milyo, *Measuring Public Corruption in the United States: Evidence from Administrative Records of Federal Prosecutions*, 18 PUBLIC INTEGRITY 127 (2016), but even taking that into account, it’s clear that corruption in the United States is by no means a thing of the past.

³⁴ See “Tracking Corruption and Conflicts of Interest in the Trump Administration,” posted on Global Anticorruption Blog.

Indonesia, Mexico, Nigeria, the Philippines, South Africa, Ukraine, and dozens of others. In those countries, commentators—both domestic and international—diagnose a “culture of corruption,” where corrupt networks function as the country’s primary “operating system.”³⁵ This reality is reflected in international indexes like the CPI, which, for all of its well-documented shortcomings,³⁶ plausibly finds that the United States is perceived as much less corrupt than most other countries.³⁷ It’s all relative, but on the whole—at least if we put to one side legitimate concerns about the Trump Administration’s transgression of longstanding integrity norms—public corruption in the United States is episodic rather than systemic; it is aberrational, rather than “just the way things work.”³⁸ There are, of course, important modern exceptions—particular jurisdictions or bureaus where corruption is systematic and entrenched. The New York City Police Department in the 1960s is one infamous modern example;³⁹ a more recent example is the Department of the Interior’s Minerals Management Service in the 2000s.⁴⁰ And, as just mentioned, the Trump Administration is notable for its seemingly flagrant disregard for ethical norms relating to matters of self-dealing and conflict of interest.⁴¹ But these examples are notable in part because they are exceptional, and for that reason especially shocking.

It is sometimes tempting to ascribe cross-country differences in government corruption to deeply entrenched cultural differences, or perhaps to profound differences in historical experiences—differences that are, for all intents and purposes, “fixed” features of different societies, changeable only by the operation of deep social and economic forces over centuries, and not susceptible to conscious policy interventions. That fatalistic view is buttressed by the observation that corruption (or its inverse, integrity) can be a self-reinforcing social equilibrium: When corruption is widespread in a society, people in that society may have stronger incentives to engage in corruption; any single individual may feel that it’s pointless to act honestly when everyone else is corrupt, and organizing collective action among very large numbers of uncoordinated individuals is unrealistic.⁴² On this view, a country that has inherited a deeply rooted “culture of corruption” has had a stroke of bad

³⁵ See SARAH CHAYES, WHEN CORRUPTION IS THE OPERATING SYSTEM: THE CASE OF HONDURAS (2017).

³⁶ See, e.g., Dan Hough, “Here’s this year’s (flawed) Corruption Perceptions Index. Those flaws are useful.”, posted on The Monkey Cage blog, Washington Post (Jan. 27, 2016); Paul Heywood, “The Corruption Perceptions Index (CPI): the Good, the Bad and the Ugly,” posted on the British Academy blog (Feb. 3, 2016).

³⁷ In the most recent CPI, for 2019, the US received a score of 69 out of 100, tying it with France for 23rd place in the ranking of 180 countries. (It’s worth noting that the U.S. score and rank appear lower in the last couple of years, which may be a function of the Trump Administration, but might also just be statistical noise.) By comparison, the scores and ranks for some of the major democracies in the developing world were as follows: Malaysia (53/100, ranked 51st); Argentina (45/100, ranked 66th); South Africa (44/100, ranked 70th); India (41/100, ranked 80th); Indonesia (30/100, ranked 85th); Brazil (35/100, ranked 106th); Philippines (34/100, ranked 113th); Ukraine (30/100, ranked 126th); Mexico (29/100, ranked 130th); Nigeria (26/100, ranked 146th).

³⁸ See ROSE-ACKERMAN & PALIFKA, *supra* note 21, at 422 (observing that although concerns persist in the United States over “the role of wealth in subverting public power,” the focus of these concerns is on things like “campaign funding, aggressive lobbying, conflicts of interest, and the revolving door, not the outright siphoning off of public funds by politicians,” and while bribery does take place, “such payoffs are not systemic, seldom enrich top federal politicians, and are punished”).

³⁹ See WHITMAN KNAPP ET AL., REPORT OF THE COMMISSION TO INVESTIGATE ALLEGED POLICE CORRUPTION (1972).

⁴⁰ See NATIONAL COMMISSION ON THE BP DEEPWATER HORIZON OIL SPILL & OFFSHORE DRILLING, DEEP WATER: THE GULF OIL DISASTER AND THE FUTURE OF OFFSHORE DRILLING 76-79 (2011).

⁴¹ See “Tracking Corruption and Conflicts of Interest in the Trump Administration,” posted on Global Anticorruption Blog (<https://globalanticorruptionblog.com/profiting-from-the-presidency-tracking-corruption-and-conflicts-in-the-trump-administration/>) (last viewed Aug. 6, 2020).

⁴² See Anna Persson, Bo Rothstein & Jan Teorell, *Why Anticorruption Reforms Fail—Systemic Corruption as a Collective Action Problem*, 26 GOVERNANCE 449 (2012).

luck—like being landlocked or located in the tropics—that cannot really be changed, but must instead be worked around. And while efforts to keep the problem at bay may be worthwhile, fundamentally changing the culture seems hopeless.

Yet it is precisely that fatalistic attitude that the U.S. experience over the course of the late nineteenth and early twentieth century calls into question, for the simple reason that 150 years ago, American government, especially though not exclusively at the state and local levels, appeared to be mired in the same sort of entrenched, systemic corruption—corruption as the operating system—that we see in many developing countries today.⁴³ The pervasiveness of (then-legal) patronage and clientelism in U.S. government, along with numerous examples of egregious high-level (illegal) corruption, suggest a polity more similar to modern-day Argentina than to modern-day Sweden.

Political corruption was widespread in the American colonies before the Revolution,⁴⁴ and pervaded American politics from the beginning of the Republic. Although venal corruption appears to have been relatively rare at the highest levels of the national government during the administrations of the first four U.S. presidents (Washington, Adams, Jefferson, and Madison),⁴⁵ grand corruption at the state level was a serious problem. As is true in many developing countries today, much of the most egregious corruption in the early American Republic involved the sale of state-owned resources—especially land—to unscrupulous private interests. The most notorious example from this period is the so-called Yazoo scandal. In 1795, a consortium of private investors bribed Georgia state legislators to enact a law that conveyed to the investors, for absurdly low prices, approximately 35 million acres of state-owned land north of the Yazoo River. Though public outrage led to the election of a new set of Georgia legislators in 1796, nobody involved in the Yazoo scandal was ever prosecuted, in part because Georgia had no state law against bribery at the time.⁴⁶ Though the Yazoo scandal is the most well-known example of this sort of dirty dealing, it was hardly an anomaly.⁴⁷

And the problem only got worse—or at least more widespread and conspicuous—during the presidency of James Monroe (1817-1825), a period that is sometimes known (misleadingly) as the “Era of Good Feelings.” As is true in many developing countries today, the massive corruption of this period was largely a product of the rapid growth that accompanied industrialization, coupled with the important role of government in regulating the economy and supplying infrastructure and other

⁴³ SEE ERIC FONER, RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION 1863-1877 384 (1988) (noting that, from the Colonial period up through Reconstruction, “bribery, fraud, and influence peddling have been endemic to American politics”).

⁴⁴ See Edwin G. Burrows, “Corruption in Government,” in JACK P. GREENE ED., ENCYCLOPEDIA OF AMERICAN POLITICAL HISTORY VOL. 1 417, 417-20 (1984); SUMMERS, *supra* note 24, at 8; Morton Keller, “Corruption in America: Continuity and Change,” in ABRAHAM S. EISENSTADT ET AL. EDS., BEFORE WATERGATE: PROBLEMS OF CORRUPTION IN AMERICAN SOCIETY 7-9 (1978); James T. Kloppenberg, in *Interchange: Corruption Has a History*, 105 JOURNAL OF AMERICAN HISTORY 912, 918 (2019).

⁴⁵ See Burrows, *supra* note 44, at 424-25.

⁴⁶ See NOONAN, *supra* note 24, at 435-37; TEACHOUT, *supra* note 24, at 81-101. After the 1796 election, the new Georgia legislature enacted a new bill purporting to nullify the sale, a decision that triggered lengthy litigation culminating in the U.S. Supreme Court’s 1810 decision in *Fletcher v. Peck*. While interesting and important in its own right, this subsequent history is not directly relevant here.

⁴⁷ Bank chartering was another significant source of corruption during the first generation after the ratification of the Constitution. See SUMMERS, *supra* note 24, at 9.

public goods, as well as a weak institutional framework.⁴⁸ The corruption during this period involved officials at the highest levels of the federal and state governments, and staggering sums of money.⁴⁹ As one historian summed it up, “many men in Washington regularly plundered the treasury.... Those who disbursed funds or otherwise handled public money skimmed off a little something for themselves as a regular matter.... Congressmen were probably the worst offenders, at least in terms of the amount of money they pocketed.... Numerous congressmen took money from corporations to advance the interests of these companies through favorable legislation or other government actions.”⁵⁰ So bad was the corruption of the time that this historian suggested that rather than being known as the Era of Good Feelings, this period should really be known as the nation’s first Era of Corruption.⁵¹

Things did not get much better over the next generation. While Andrew Jackson was outraged by the corruption of the Monroe era (in part for personal political reasons⁵²), during his presidency (1829-1837) corruption pervaded “every facet” of political life.⁵³ Perhaps most notably, President Jackson entrenched the so-called “spoils system” in the federal civil service. Though framed as an anti-elitist measure to break the power of what certain modern commentators might call the “deep state,” the expansion of partisan control over government appointments proved fertile ground for pervasive corruption—a result that observers of patronage politics in today’s developing countries would find wholly unsurprising.⁵⁴ One particularly sharp critic wrote in 1854 that the Jacksonian spoils system was “[t]hat deadly element” that rendered the U.S. political system “so exquisitely vicious, that thenceforth it worked to corruption by an irresistible necessity.... [The spoils system] has made the word *office-holder* synonymous with the word *sneak* [and] ... has thronged the capital with greedy sycophants.”⁵⁵

The expansion of the spoils system is closely associated with President Jackson specifically—for good reason. But the emergence of this system may also have had something to do with broader changes in U.S. politics during this time, particularly the rise of “mass-based political parties”; because “[o]rganizing the huge electorate to win frequent political campaigns required great efforts and contributions by a host of devoted party workers,” parties naturally came to see civil servants as the “most obvious source of workers and money[.]”⁵⁶ Moreover, in addition to the changes associated with the rise of the spoils system, there’s little evidence that the pervasive corruption that

⁴⁸ See Burrows, *supra* note 44, at 426 (1984); ROBERT V. REMINI, ANDREW JACKSON AND THE COURSE OF AMERICAN FREEDOM, 1822-1832, VOL. 2 13 (1981).

⁴⁹ REMINI, *supra* note 48, at 13.

⁵⁰ REMINI, *supra* note 48, at 14.

⁵¹ REMINI, *supra* note 48, at 13.

⁵² Jackson believed, possibly for good reason, that he had lost the contested election of 1824 to John Quincy Adams because Adams had bribed key electors. See FRANK ANECHIARICO & JAMES B. JACOBS, THE PURSUIT OF ABSOLUTE INTEGRITY: HOW CORRUPTION CONTROL MAKES GOVERNMENT INEFFECTIVE 10 (1996).

⁵³ Edward Pessen, “Corruption and the Politics of Pragmatism: Reflections on the Jacksonian Era,” in ABRAHAM S. EISENSTADT ET AL. EDS., BEFORE WATERGATE: PROBLEMS OF CORRUPTION IN AMERICAN SOCIETY 79, 82 (1978); ROSE-ACKERMAN & PALIFKA, *supra* note 21, at 423.

⁵⁴ See TEACHOUT, *supra* note 24, at 81-101 at 175-76; Pessen, *supra* note 53, at 83-86.

⁵⁵ James Parton, *The Life of Horace Greeley*, *Editor of the New York Tribune* (1854) p. 100.

⁵⁶ Ari Hoogenboom, “Civil Service Reform,” in JACK P. GREENE ED., ENCYCLOPEDIA OF AMERICAN POLITICAL HISTORY VOL. 1 233, 233 (1984)

characterized the Era of Good Feelings dissipated during the Jackson administration, notwithstanding Jackson's condemnations. Indeed, during the Jacksonian period corruption of various kinds remained "remarkably widespread."⁵⁷

Some historians do see the post-Jacksonian 1840s as perhaps somewhat less corrupt than the preceding decades, though the feeling was not necessarily shared by many at the time. (The Scottish journalist Alexander Mackay reported that during his travels in the United States in 1846-47, he had "heard several Americans declare[] that they believe their own government to be the most corrupt on earth."⁵⁸) Whether or not the 1840s were marginally better than the preceding decades, any hope that the U.S. government had started to progress beyond systemic corruption was dispelled by the rampant corruption of the 1850s. "[T]he evidence is overwhelming," one historian writes, that "[t]he 1850s were as depraved as any other age and, at least from the evidence available to historians, far more debauched than the 1840s."⁵⁹ Much, though not all, of this corruption was associated with significant government infrastructure projects, such as railroads and canals.⁶⁰ Land speculation and the growth and professionalization of political party machines also played a role.⁶¹

This rampant corruption was noted and lamented by critics, both foreign and domestic. In 1858, a local newspaper editor who visited Washington, D.C. wrote that he was shocked by the brazen and routinized buying and selling of offices carried out by party leaders in the U.S. Senate, the White House, and various government departments, with "the actual sum of money to be paid for an office ... as publicly named ... as the prices of dry goods are named between a dealer ... and his customers."⁶² Some Washington insiders had a similarly despondent view: Also in 1858, Georgia Senator Robert Toombs complained that while Americans may "speak of the corruptions of Mexico, of Spain, of France, ... I do not believe to-day there is as corrupt a Government under the heavens as these United States."⁶³ Critics from the other side of the Atlantic shared this assessment. William Edward Baxter, a British Member of Parliament who traveled widely in the United States, wrote in 1855 about the pervasive corruption not only in Washington D.C. but in state and local governments as well. Writing about New York in particular, Baxter observed that "offices and favours were there openly bought and sold; that aldermen and councilmen accepted these situations for the avowed purpose of getting quickly rich; and that jobs every week were there perpetrated with impunity which in [Great Britain] would bring disgrace to every person connected with them. I believe that as great corruption exists in [New York] as was ever brought to light in the days of the Stuarts[.]"⁶⁴ Another British politician, Henry George Grey, 3rd Earl Grey, invoked the United States in

⁵⁷ See Pessen, *supra* note 53, at 80. See also *id.* at 84 (describing the level of political corruption as "inordinately high during the Jacksonian era").

⁵⁸ ALEXANDER MACKAY, THE WESTERN WORLD: OR, TRAVELS IN THE UNITED STATES IN 1846-47, VOL. 1 166 (1849). Mackay made this passing remark in the context of competition for federal patronage appointments (or "jobbing").

⁵⁹ SUMMERS, *supra* note 24, at 14. See also *id.* at 167 (in the 1850s, the available evidence tells "a devastating story of public officials and party hacks who abused their authority to line their pockets or thwart the democratic process.... Corruption had grown as the nation grew[.]"). That corruption, however, was not evenly distributed throughout the country; it was worse in some places than in others. See *id.* At xii-xiii.

⁶⁰ See SUMMERS, *supra* note 24, at 17; Burrows, *supra* note 44, at 426.

⁶¹ See SUMMERS, *supra* note 24, at 17; Burrows, *supra* note 44, at 426.

⁶² SUMMERS, *supra* note 24, at 29.

⁶³ Quoted in SUMMERS, *supra* note 24, at 7.

⁶⁴ WILLIAM EDWARD BAXTER, AMERICA AND THE AMERICANS 59 (1855).

an 1858 tract as a cautionary example of the baleful effects of excessive democracy. In the United States, Grey alleged, “[t]he management of public affairs is thrown into the hands of men selected for employment without regard to their fitness; the grossest corruption notoriously prevailing, both in making appointments to office and in the general conduct of public business, whether by the Federal Government, or by the State or Municipal authorities. Even the administration of justice is infected with the taint, and fails to command the confidence of the Public for its impartiality and fairness.”⁶⁵

Allegations of corruption in the administration of President James Buchanan (1857-1861) led to the formation, in 1860, of a House of Representatives Select Committee to Investigate Alleged Corruptions in Government. This committee was known as the Covode Committee after its chair, Representative John Covode. Though the Covode Committee was criticized by President Buchanan and his allies—with some justification—as partisan, the committee nonetheless uncovered “the most devastating proof of government abuse of power since the founding of the Republic.”⁶⁶ Although the Covode Committee did not find that President Buchanan had personally committed any criminal or impeachable offense, “members of both parties were stunned at the depth of the corruption that the President had permitted or inspired.”⁶⁷

Such bipartisan condemnation underscores how, on the eve of the American Civil War, corruption appeared to pervade all levels of the U.S. government. Systemic corruption persisted, and if anything became more virulent, during the post-war Reconstruction period—a period that one historian suggests could also be called “The Era of Good Stealings.”⁶⁸ The roots of this corruption will sound familiar, both from the descriptions of U.S. corruption in prior eras, and from more contemporary examples in modern developing and transition countries. In the Reconstruction South, “[o]fficials regularly handled unprecedented sums of money, corporations vied for the benefits of state aid, and communities competed for routes that would supposedly guarantee their future prosperity—conditions that offered numerous opportunities for bribery and plunder.”⁶⁹ The problem was by no means confined to the South—corruption was also endemic in the North and West, as well as in the federal government.⁷⁰ As a good-government reform advocate lamented in an 1868 magazine article, “At present there is no organization save that of corruption; no system save that of chaos; no test of integrity save that of partisanship; no test of qualification save that of intrigue.”⁷¹ This was probably an exaggeration,⁷² not much different from modern hyperbolic claims

⁶⁵ EARL GREY, PARLIAMENTARY GOVERNMENT CONSIDERED WITH REFERENCE TO A REFORM IN PARLIAMENT: AN ESSAY 136-38 (1858).

⁶⁶ SUMMERS, *supra* note 24, at 258-59.

⁶⁷ SUMMERS, *supra* note 24, at 258-59.

⁶⁸ See SUMMERS, *supra* note 1.

⁶⁹ FONER, *supra* note 43, at 385. See also *id.* at 389 (noting that “corruption threatened to undermine the integrity of Reconstruction itself, not simply in the eyes of Southern opponents but in the court of Northern public opinion”).

⁷⁰ FONER, *supra* note 43, at 465-67.

⁷¹ HOOGENBOOM, *supra* note 24, at 1 (quoting Julius Bing, *Our Civil Service*, PUTNAM'S MAGAZINE, II, No. 8 (August 1868), 233, 236.)

⁷² Indeed, while corruption in the post-civil war period was indeed widespread, there was also a familiar tendency in this period to make hyperbolic, and often politically motivated, claims about just how bad the problem was. See SUMMERS, *supra* note 1, at x.

that in this or that developing country “all government officials” are corrupt.⁷³ The civil service in the post-Civil War period “would not have functioned at all if corruption and incompetence were as universal as reformers alleged.”⁷⁴ Still, it seems fair to conclude that during this period “professionalism was almost nonexistent in the civil service, and politics permeated it to the core.”⁷⁵

While the corruption associated with patronage politics was a substantial concern in the post-Civil War period, much as it had been in the pre-Civil War period, a great deal of the corruption in the decades following the Civil War was associated with the most significant technological and economic development of the era: the rapid expansion of railroads.⁷⁶ Railroad companies were private, but they relied on various forms of government aid and approvals, and this, coupled with the vast amounts of money involved in railroad development, was a recipe for grand corruption not so different from what one observes in major infrastructure projects in the modern developing world. There are countless examples of railroad-related corruption during the 1870s,⁷⁷ but by far the most infamous was the so-called Credit Mobilier scandal. The scheme, which was hatched in 1864, was somewhat complex, but essentially it involved self-dealing by major stockholders in the Union Pacific Railroad company, the private firm that the federal government had chartered—and heavily subsidized—to build a portion of the transcontinental railroad. These shareholders created a sham construction company, which they named “Credit Mobilier,” and then arranged for Union Pacific to enter into construction contracts with Credit Mobilier, which charged Union Pacific exorbitant prices for the work. Basically, the architects of the scheme were paying themselves and other Credit Mobilier shareholders with Union Pacific money—which was largely taxpayer money, given the substantial federal subsidies for railroad construction. Starting in 1867, the ringleaders sought to protect their scheme, and to secure more funding for Union Pacific, by bribing congressmen and other politicians with cash and heavily discounted shares of Credit Mobilier stock. A newspaper broke the story in 1872, while President Grant was running for reelection, and the media coverage prompted a congressional investigation. That investigation ultimately led to the expulsion of two Members of Congress, and badly damaged the reputations of several other leading political figures of the day.⁷⁸

The Credit Mobilier affair was the most prominent corruption scandal of President Grant’s first term. The most prominent and politically damaging corruption episode of President Grant’s second term was the “Whiskey Ring” scandal, which was essentially a tax evasion scheme. Treasury Secretary Benjamin Bristow launched investigations that produced evidence that a coalition of distillers,

⁷³ See Matthew C. Stephenson, “Watch Your Language: Not ‘Everyone’ Is Corrupt—Anywhere,” posted on Global Anticorruption Blog (Aug. 23, 2016).

⁷⁴ HOOGENBOOM, *supra* note 24, at 1.

⁷⁵ HOOGENBOOM, *supra* note 24, at 1.

⁷⁶ FONER, *supra* note 43, at 386, 465, 467-68.

⁷⁷ To note just a few: In the Reconstruction South, a ring headed by a couple of private businessmen distributed roughly \$200,000 in bribes to state lawmakers in order to secure millions of dollars in government funding for railroad construction, but instead of using this money for construction, the ring used the money to purchase stock in other railroads, and for personal consumption. See FONER, *supra* note 43, at 386-87. Another example is Louisiana Governor Henry Wadsworth’s elaborate system for “exacting tribute” from railroads in order to enrich himself. See *id.*, at 385. And in the Pennsylvania state legislature, railroad lobbyists reputedly exerted “as much influence as the elected chambers,” largely due to corruption. *Id.* at 465. The problem was much more general than this handful of examples.

⁷⁸ FONER, *supra* note 43, at 468; NOONAN, *supra* note 24, at 460-500.

shopkeepers, and corrupt government agents had colluded to defraud the U.S. government of millions of dollars in taxes. The fact that the Whiskey Ring was uncovered by the executive branch, acting on its own initiative, rather than by media disclosures, makes this scandal somewhat unusual for the time. Also unusually for the time, the Whiskey Ring scandal led to criminal prosecutions, and over a hundred participants in the scheme were eventually convicted. However, when Secretary Bristow's investigations started leading him to senior officials more closely connected to the Grant Administration, he came under increasing pressure to drop the cases; his situation became so untenable that he eventually resigned.⁷⁹

In addition to high-profile corruption scandals at the federal level, significant corruption continued at the state and local level as well. Indeed, during this period, “[a]lthough corruption occurred on the federal level of government, it was on the state and municipal levels that it became most blatant and common.”⁸⁰ Back in 1855, as noted earlier, William Baxter had been appalled by the avarice and impunity of New York City’s politicians, and the overt purchase and sale of public offices.⁸¹ One wonders what he would have thought of New York politics in the late 1860s and 1870s, a time when “the votes of New York legislators were bought and sold like ‘meat in the market,’” and when it was “impossible to pass a bill unless a high percentage of the legislators had been purchased[.]”⁸²

Much of this state and local corruption was connected to the rise, over the latter part of the nineteenth century, of more sophisticated and organized political machines. In New York City, the figure most associated with the systemic corruption of this period was “Boss” William Tweed, who transformed a politically influential social club called Tammany Hall into what some historians characterize as the first urban political machine.⁸³ The model—which had its roots in the pre-Civil War “spoils system” and spread to many other states and cities throughout the 1870s and 1880s⁸⁴—had corruption down to a science:

The organization, or machine, in return for getting out the vote, received exclusive control of government appointments and programs within its territory.... Its placemen and dependents in turn handed back a fixed percentage of their official salaries to the organization and split with it any kickbacks, rake-offs, shares, or bribes that their ingenuity could devise with outside interests. The resulting stream of [corrupt revenue] ... then passed down through a well-defined corporate hierarchy [of machine apparatchiks] ..., who completed the cycle by distributing the gifts and favors that ensured voter loyalty and brought victory on election day. It was all ... ruthlessly efficient and disciplined.⁸⁵

⁷⁹ TEACHOUT, *supra* note 24, at 122; HOOGENBOOM, *supra* note 24, at 135-36.

⁸⁰ HOOGENBOOM, *supra* note 24, at 36. See also Burrows, *supra* note 44, at 426.

⁸¹ See *supra* TAN 64

⁸² HOOGENBOOM, *supra* note 24, at 36. See also Ari Hoogenboom, “Did Gilded Age Scandals Bring Reform?”, in ABRAHAM S. EISENSTADT ET AL. EDS., BEFORE WATERGATE: PROBLEMS OF CORRUPTION IN AMERICAN SOCIETY 125, 127-28 (1978).

⁸³ Rebecca Menes, *Limiting the Reach of the Grabbing Hand: Graft and Growth in American Cities, 1880 to 1930*, in GLAESER & GOLDIN EDS., *supra*, note 21 at 63, 86.

⁸⁴ Menes, *supra* note 83, at 86.

⁸⁵ Burrows, *supra* note 44, at 426 (1984). See also Keller, *supra* note 44, at 11-12; TEACHOUT, *supra* note 24, at 178.

Boss Tweed himself proved too greedy for his own good, even by the standards of the time. Between 1867 and 1871, he and his cronies stole somewhere between \$40 million and \$410 million from New York City's public coffers. When the scale of this theft was disclosed in 1871 by a rival politician who had managed to get hold of the city's account books and leaked them a newspaper, Tweed's ring collapsed and Tweed himself went to jail, where he died in 1878.⁸⁶ But the urban political machine, and its associated corruption, persisted in many American cities well into the twentieth century.⁸⁷

The point of this brief historical overview is simple but nonetheless important. In the decades immediately preceding and immediately following the U.S. Civil war, corruption in the United States was deeply entrenched in society, and just as deeply enmeshed with the political system. Rapid economic expansion, coupled with massive publicly subsidized infrastructure projects, took place in an environment with relatively weak political institutions, as well as a legal framework that was incomplete on paper and under-enforced in practice. The need to run broad-based election campaigns that mobilized large numbers of voters—many of them lower income, relatively uneducated, and without a robust social safety net—fostered patronage systems that weakened the capacity of the public service and allowed widespread theft and misappropriation of public resources. The United States, in both the pre-Civil War 1850s and the post-Civil War 1870s, looked a lot like many modern developing and transition countries in terms of the extent to which corruption was both systemic and intertwined with the operation of the political system.

There are, to be sure, important differences between the mid-nineteenth century United States and modern developing and transition countries. For one thing, as noted above, even by the standards of the time the nineteenth-century United States was quite wealthy. For another, despite the widespread corruption of the period, it does not appear that any nineteenth-century U.S. president was personally corrupt. And although legal and judicial institutions were incomplete and often under-enforced, at least at the federal level it seems that, for the most part, these institutions were reasonably effective. Nevertheless, despite these important differences, the available evidence all suggests that, as historians of the period have concluded, corruption “thoroughly permeated American politics and government in the nineteenth century,”⁸⁸ and, by the latter part of that century, corruption had emerged as “the central issue of American political life and thought.”⁸⁹ The nature and extent of the systemic corruption that pervaded U.S. politics and government during this time was strikingly similar to what one finds in modern developing and transition countries.⁹⁰ That simple observation is a corrective to the cynicism, fatalism, and cultural determinism that sometimes creep into discussions of the challenges associated with fighting systemic corruption in the modern developing world. Systemic corruption is, admittedly, frustratingly resilient. Moreover, when corruption is part and parcel of how the political system operates—when it’s the “way things

⁸⁶ Menes, *supra* note 83, at 87.

⁸⁷ Menes, *supra* note 83, at 86; Burrows, *supra* note 44, at 426.

⁸⁸ Keller, *supra* note 44, at 10.

⁸⁹ Burrows, *supra* note 44, at 430.

⁹⁰ See Glaeser & Goldin, *supra* note 21, at 3.

get done”—it is tempting to conclude that, absent some massive disruption, there’s no way to change the system. It’s also tempting to ascribe systemic corruption to deep-rooted cultural traits—something in the attitudes, beliefs, or values of the people that makes them willing to tolerate or even to embrace corrupt practices. There was some of that in the nineteenth century United States as well: Many observers, both domestic and foreign, attributed pervasive American corruption to deep-rooted cultural and moral failings, especially materialism, pathological individualism, and admiration of amoral cleverness.⁹¹ More generally, the kind of systemic corruption that historians have documented in the United States in the decades before and after the Civil War could easily have led an observer at the time to be pessimistic, and perhaps hopeless, about the possibility for meaningful change.

Yet change did come. In the next section, we sketch out some of the most important changes that took place in the United States with respect to corruption and anticorruption from the mid-nineteenth century to the mid-twentieth century. For now, the simple but important point we want to emphasize is that a dramatic transition—a change that more pessimistic Americans and foreign observers at the time might have thought impossible—took place. Indeed, as other scholars have emphasized, “American history … provide[s] a striking story of a country that changed from a place where political bribery was a routine event infecting politics at all levels to a nation that now ranks among the least corrupt in the world.”⁹² While there is still too much corruption in the United States, there was clearly a dramatic transformation between the mid-nineteenth century and the mid-twentieth century, a shift from systemic corruption (corruption as the “operating system”) to aberrational corruption. For modern developing countries, there are two simple and related lessons to draw from this.

First, we should be skeptical of arguments that assert that contemporary practices are the inevitable consequences of deep structural or cultural forces. That is not to deny the relevance of culture or long-term historical forces in shaping political outcomes. But we should keep in mind that to an American citizen in 1870, especially one living in a city dominated by a political machine, it may well have seemed that corruption was inexorably woven into the fabric of American political life, a part of the “culture.” We should be cautious about constructing “Just So” stories about why and how current practices and institutions are the inevitable consequence of forces beyond our control. *Second*, U.S. history demonstrates that the transition from a state of systemic, entrenched corruption to a state of limited, aberrational corruption is possible.⁹³ That point alone might not seem terribly satisfying, as we still want to know how such a transition can be achieved, and whether U.S. history offers any lessons on that question for other polities. Yet we shouldn’t underestimate the importance of simply demonstrating the possibility of change. Endemic corruption feeds on hopelessness; the fatalistic belief that nothing can be done about systemic corruption can be self-fulfilling.

⁹¹ Pessen, *supra* note 53, at 89; Burrows, *supra* note 44, at 430; SUMMERS, *supra* note 24, at 81; CHARLES DICKENS, AMERICAN NOTES 215 (1842). Others, like Earl Grey, explicitly rejected that diagnosis, however, and asserted instead that America’s corruption was due not to the defective character of its people, but to the flaws in its institutions. GREY, *supra* note 65, at 139.

⁹² See Glaeser & Goldin, *supra* note 21, at 21

⁹³ See Glaeser & Goldin, *supra* note 21, at 21.

In that sense, the observation that the United States and other countries succeeded in making this transition is significant to the contemporary struggle against corruption in the developing world.

II. Anticorruption Reform in the United States, 1865-1940 (and Beyond)

We cannot and will not try to provide anything like an in-depth survey of over 75 years of American history (really more, since the transformation continued at least through the 1970s). Nevertheless, to give a sense of how (and perhaps why) things changed in the United States, this section will provide a brief sketch of the timeline of the reform process, highlighting the most important developments in the U.S. fight against corruption.

Though our main focus will be on the period between 1865 and 1941, important first steps toward significant anticorruption reform took place in the 1850s, notwithstanding (or perhaps because of) the egregious corruption of that period. At the federal level, in 1853 Congress enacted the first federal statute explicitly prohibiting the bribery of Members of Congress.⁹⁴ That law, which had been prompted by a scandal concerning the handling of claims related to the Mexican-American War, was further strengthened in 1862, partly due to concerns over war profiteering.⁹⁵ (The law, however, was not terribly effective, and no convictions were obtained under it before the twentieth century.⁹⁶) Also in 1853, in response to worries about the excessive influence of paid lobbyists—some of them sitting congressmen—Congress adopted new rules that, among other things, prevented members of Congress from acting as agents for private claimants.⁹⁷

The 1850s also saw some important reforms on the state level—reforms which, though not explicitly or exclusively about “corruption,” addressed more general concerns about improper private influence on policymaking, especially the legislative process. In the early nineteenth century, much state legislative activity consisted not of enacting general laws, but rather of passing private bills to benefit specific people, firms, or groups. (Corporate charters, for example, were granted by the legislature to individual firms.) Lobbying for these sorts of private bills was widely perceived as corrupt, whether or not actual bribery took place. Popular revulsion at these practices led most states, starting with Indiana in 1851, to amend their constitutions to limit the ability of the state legislatures to enact many types of private bills, including corporate charters.⁹⁸ (No such prohibitions applied to the U.S. Congress, though some have suggested that the states’ constitutional amendments helped shift norms concerning appropriate legislative behavior.⁹⁹)

The incremental progress that began in the 1850s continued in the post-Civil War period. At the state level, the (accurate) perception that railroad companies were among the leading corruptors of state legislators contributed to the passage of laws in several states that established independent

⁹⁴ NOONAN, *supra* note 24, at 451-55. Burrows, *supra* note 44, at 427.

⁹⁵ NOONAN, *supra* note 24, at 451-55. Burrows, *supra* note 44, at 427.

⁹⁶ NOONAN, *supra* note 24, at 601.

⁹⁷ Burrows, *supra* note 44, at 427.

⁹⁸ Naomi R. Lamoreaux, in *Interchange: Corruption Has a History*, 105 JOURNAL OF AMERICAN HISTORY 912, 920-21 (2019).

⁹⁹ Lamoreaux, *supra* note 98, at 920-21.

commissions to regulate railroads, taking this power away from the state legislatures. While the main objective of these so-called “Granger Laws” was to end railroad rate discrimination and thereby to secure more favorable rates for farmers, the creation of these independent commissions was also meant to curb the bribery and other corrupt practices that railroad companies had employed to ensure favorable treatment by state legislatures. As one historian put it, “Since railroads were among the leading corrupters of Gilded Age legislatures, the creation of railroad commissions was in part a reaction to that corruption.... Reformers hoped that energetic and capable railroad commissioners, enjoying a longer tenure of office than legislators, would be able either through publicity or regulation to eliminate railroads’ corrupt political and business practices. The main objective was to end rate discrimination, but the desire to stop railroads from corrupting legislatures was real.”¹⁰⁰

At the federal level, another important legal change addressed concerns about extortionate corruption in the customs service. The main target of this reform was what was known as the “moiety” system for enforcing customs duties. Under this system, if an informant revealed an importer’s failure to pay customs duties, the importer’s entire shipment (not just the specific items on which the duty was owed) would be forfeited, and the proceeds from the sale of the forfeited goods would be divided equally among the informant, the government treasury, and the customs officials of the port.¹⁰¹ On its face, this might sound like an efficient way to leverage private information and private incentives to more effectively detect and deter tariff evasion. The problem, however, was that “exceedingly complex import laws” enabled customs officials to find minor technical violations and either to seize the shipment (and pocket a substantial portion of the proceeds) or to extort bribes not to do so (pocketing some of the money they made and using the rest of it to fill their political party’s coffers).¹⁰² Merchants’ complaints about such abuses, coupled with several embarrassing public scandals, eventually prompted Congress to enact an 1874 reform bill that eliminated the moiety system, replacing it with a system in which failure to pay duties could result in confiscation only if a court found intent to defraud, and forfeiture was limited to the smuggled items rather than an entire shipment.¹⁰³ The elimination of the moiety system was seen as an important step toward cracking down on corruption in customs administration. On top of that, President Hayes ordered sweeping investigations into corruption in customs offices throughout the country in 1877.¹⁰⁴ (In addition to their other consequences, these investigations led President Hayes to dismiss future President Chester Arthur from his position as customs collector for New York, a setback that clearly did not derail Arthur’s political career.¹⁰⁵)

These reforms were small but important, as were a number of other changes that occurred during this period.¹⁰⁶ Also, as noted above, Treasury Secretary Bristow’s investigations into the Whiskey

¹⁰⁰ Hoogenboom, *supra* note 82, at 135-37; Burrows, *supra* note 44, at 431.

¹⁰¹ Hoogenboom, *supra* note 56, at 239; Hoogenboom, *supra* note 82, at 135-37.

¹⁰² FONER, *supra* note 43, at 486; Hoogenboom, *supra* note 56, at 239.

¹⁰³ Hoogenboom, *supra* note 82, at 135-37.

¹⁰⁴ Burrows, *supra* note 44, at 431.

¹⁰⁵ Burrows, *supra* note 44, at 431.

¹⁰⁶ Hoogenboom, *supra* note 82, at 130-31. For example, the movement toward open city accounts began during this period and expanded over the latter half of the nineteenth century. See Menes, *supra* note 83, at 74.

Ring scheme led to prosecutions and over 100 convictions. While the prosecutions of those too close to President Grant were stymied, the Whiskey Ring prosecutions were nevertheless important both in exposing corruption and demonstrating that determined investigators and prosecutors could disrupt and dismantle corrupt networks. But by far the most significant development of the post-Civil War generation, with respect to the fight against corruption and patronage, was the movement toward civil service reform.

Notwithstanding considerable hostility to the Jacksonian spoils system, meaningful civil service reform wasn't really on the public agenda prior to the Civil War. The war, however, both increased the size of the federal bureaucracy and exposed the problems with the spoils system.¹⁰⁷ As a result, interest in reforming the federal civil service to create something more along the lines of the British or continental European model started to emerge even before the war was over.¹⁰⁸ Indeed, Rhode Island Congressman Thomas Jenckes, known as the "father of civil service reform," introduced his first reform bill in December 1865, barely seven months after the Civil War ended.¹⁰⁹ That bill was not enacted, and didn't receive much support outside of a small circle, but over the course of the Reconstruction era, support for civil service reform gradually expanded."¹¹⁰

There were some encouraging signs about the prospects for civil service reform early in the Grant Administration, most notably President Grant's creation of a Civil Service Commission in 1871. Though that commission had only advisory powers, it released a lengthy and influential report condemning the spoils system and advancing a set of substantive recommendations for reform.¹¹¹ Furthermore, although efforts to push through legislation modeled on Congressman Jenckes bill stalled, the early 1870s did see some modest internal reforms within the executive branch.¹¹²

Nevertheless, progress was halting and uneven. Broad and ambitious recommendations, along the lines proposed by the Civil Service Commission, provoked significant resistance, including from within Grant's own party. While a sustained and unified campaign for civil service reform might have succeeded, supporters of such reform fractured into three different camps in the 1872 election, and these internal divisions so weakened the reform movement that the reformers were unable to stop President Grant from capitulating to reform opponents.¹¹³ The movement for civil service reform was further undermined by an economic crisis in 1873, which pushed the issue off the public agenda.¹¹⁴ By 1875 the prospects for meaningful civil service reform looked as bleak as they had when Congressman Jenckes introduced his first reform bill a decade earlier.¹¹⁵

But the civil service reform movement rebounded after 1875, with new leadership and an infusion of energy and popular support.¹¹⁶ The reformers saw some modest gains the Hayes administration

¹⁰⁷ Hoogenboom, *supra* note 56, at 234.

¹⁰⁸ Hoogenboom, *supra* note 56, at 234.

¹⁰⁹ Hoogenboom, *supra* note 56, at 234; HOOGENBOOM, *supra* note 24, at 26.

¹¹⁰ ANECHIARICO & JACOBS, *supra* note 52, at 19. HOOGENBOOM, *supra* note 24, at 27, 33, 36.

¹¹¹ Hoogenboom, *supra* note 56, at 237-38.

¹¹² Hoogenboom, *supra* note 56, at 236; HOOGENBOOM, *supra* note 24, at 136.

¹¹³ Hoogenboom, *supra* note 56, at 238-39; HOOGENBOOM, *supra* note 24, at 135.

¹¹⁴ Hoogenboom, *supra* note 56, at 239.

¹¹⁵ Hoogenboom, *supra* note 56, at 239.

¹¹⁶ HOOGENBOOM, *supra* note 24, at 136-140.

(1877-1881). For example, President Hayes, who was generally supportive of civil service reform, “flatly banned political activity by federal officeholders, as well as the practice of assessing them for political contributions in proportion to their salaries.”¹¹⁷ The leaders of the civil service reform movement nonetheless complained that the Hayes administration’s reforms were too slow and limited, and they continued to organize and lobby for more sweeping legislation.¹¹⁸ Their efforts received a considerable boost when a disappointed office-seeker, who thought he should have received a patronage appointment for the work he had done for the Republican Party in the 1880 election, shot and fatally wounded President Garfield in 1881.¹¹⁹ President Garfield, who in life had not been terribly sympathetic to the civil service reform movement, proved in death to be a useful rallying point. His assassination by a would-be beneficiary of the spoils system give reformers “a simple, emotion-packed illustration that the previously uninterested masses could understand: the spoils system murdered Garfield.”¹²⁰

The political momentum for civil service reform, stoked by anger over Garfield’s assassination, ultimately led to the enactment of the Pendleton Civil Service Reform Act in January 1883, a little over 17 years after Congressman Jenckes had introduced his first civil service reform bill.¹²¹ The Pendleton Act established a merit system, based on competitive examinations administered by a bipartisan Civil Service Commission, for hiring certain classes of federal employees, and the Act prohibited firing employees in those positions for political reasons.¹²² The scope of the merit system established by the Pendleton Act was, however, weaker in substance and narrower in coverage than Congressman Jenckes’ original bill.¹²³ The Pendleton Act applied only to certain classes of federal employees based either in Washington D.C. or in the post offices and customhouses in the largest cities—only about 10% of federal government jobs.¹²⁴ Considerable political hostility to the Act persisted, even among politicians who had voted for the law and professed in public to support it.¹²⁵ And the Pendleton Act did nothing directly to address patronage politics on the state and local levels. Although a couple of states—New York and Massachusetts—followed the federal government’s example, enacting their own civil service reform bills in 1883 and 1884—“[c]ounterattacks … crippled reform enforcement in those states, and over twenty years elapsed from the passage of the Massachusetts law until the next states, Wisconsin and Illinois, enacted reform bills.”¹²⁶ Indeed, at the state and local level, as discussed previously, the 1880s and 1890s saw the rapid expansion and entrenchment of urban political machines, which operated in an environment substantially untouched by federal civil service reform.

So while the Pendleton Act was an important milestone, it was certainly not the end of the struggle for civil service reform. The Pendleton Act gave reformers “a foot in the door” and laid the

¹¹⁷ Burrows, *supra* note 44, at 431.

¹¹⁸ Burrows, *supra* note 44, at 431; Hoogenboom, *supra* note 56, at 242-43.

¹¹⁹ TEACHOUT, *supra* note 24, at 177.

¹²⁰ Hoogenboom, *supra* note 56, at 244.

¹²¹ Burrows, *supra* note 44, at 431; TEACHOUT, *supra* note 24, at p. 177.

¹²² Burrows, *supra* note 44, at 431; TEACHOUT, *supra* note 24, at 177.

¹²³ Hoogenboom, *supra* note 56, at 234.

¹²⁴ Hoogenboom, *supra* note 56, at 246; Burrows, *supra* note 44, at 431.

¹²⁵ Hoogenboom, *supra* note 56, at 246.

¹²⁶ Hoogenboom, *supra* note 56, at 246.

groundwork for future reform initiatives.¹²⁷ Over the 1880s and 1890s, the merit system “made rapid strides in the federal bureaucracy,” with an ever-expanding set of federal government positions shifted into the merit system.¹²⁸ (Part of this expansion may have been due to the continuing efforts of reformers, but much of it was the result of practical, arguably cynical, political calculation: Partisan control of the White House changed after every election between 1884 and 1896, and each new president followed the same pattern of first “appointing [his] partisans to unclassified offices, extended the merit system to freeze their appointments in place.”¹²⁹)

The period between the late 1880s and the turn of the century saw the emergence of several other important political reforms as well—reforms that, while not exclusively “anticorruption” reforms, were, like civil service reform, designed in substantial part to combat what was seen as the pernicious and corrupting influence of patronage-based political machines. First, this period saw the move to the secret ballot—an essential means of combating various forms of electoral corruption, including vote buying and coercion. In 1888 Massachusetts adopted the secret ballot, and by 1896 this reform had spread to 39 states.¹³⁰ Many states also began, albeit fitfully and rather ineffectively, to regulate political campaign expenditures, explicitly in the name of anticorruption. The pioneer here was New York, which in 1890 adopted a statute called the New York Corrupt Practices Act. This law, which was modeled on the British Corrupt and Illegal Practices Act of 1883, sought to limit certain types of campaign expenditures and to require that candidates file campaign expense statements. Within the next few years, twenty other states had enacted similar laws.¹³¹ And, in an echo of one of the themes connected to the creation of independent railroad commissions in the 1870s, a number of American cities in the late nineteenth century “shifted control of various municipal functions into the hands of impartial boards,” partly as an attempt (not always successful) to put these functions beyond the corrupting influence of private firms and political machines.¹³²

Perhaps the period of greatest concentrated anticorruption reform in U.S. history was the first decade of the twentieth century, the dawn of the so-called Progressive Era.¹³³ Several factors appear to have contributed to the acceleration of anticorruption and related reforms during this time. For one thing, while corruption might not have been as bad in the 1900s as it had been in, say, the 1870s, public awareness of—and outrage at—systemic corruption appears to have substantially increased by the turn of the century. Some of this change in public attitudes was likely due to changing social and economic conditions, but some of it was driven by the so-called “muckrakers”—journalists

¹²⁷ Burrows, *supra* note 44, at 431.

¹²⁸ Hoogenboom, *supra* note 56, at 246.

¹²⁹ Hoogenboom, *supra* note 56, at 246.

¹³⁰ Hoogenboom, *supra* note 82, at 132; Richard L. McCormick, *The Discovery that Business Corrupts Politics: A Re-appraisal of the Origins of Progressivism*, 86 AMERICAN HISTORICAL REVIEW 252, 269 (1981); Burrows, *supra* note 44, at 431.

¹³¹ PETER H. ARGERSINGER, *STRUCTURE, PROCESS AND PARTY: ESSAYS IN AMERICAN POLITICAL HISTORY* (1992); Burrows, *supra* note 44, at 431.

¹³² Burrows, *supra* note 44, at 431.

¹³³ RICHARD HOFSTADTER, *THE AGE OF REFORM* (1955); McCormick, *supra* note 130.

who specialized in exposing the seamy underbelly of American politics, and in stoking popular demand for reform.¹³⁴ (Among the most famous examples of this genre are Lincoln Steffens' magazine articles on municipal corruption, written between 1901 and 1903 and later published together in the 1904 volume entitled *The Shame of the Cities*.¹³⁵) For another thing, a new generation of leaders—at the national, state, and local levels—made anticorruption central to their agendas and campaigns.¹³⁶ The extent to which these politicians were shaping public opinion, and the extent to which they were responding to changing public attitudes, is hard to say; it was likely a bit of both. Whatever the reason, fighting corruption became a central narrative in American political discourse during the first decade of the twentieth century.

At the national level, President Theodore Roosevelt made fighting public corruption a defining feature of his presidency.¹³⁷ Roosevelt, who became president in September 1901 after President McKinley's assassination, sought to engage legislators and the public in his crusade. In his 1903 address to Congress, President Roosevelt (in the specific context of discussing his administration's efforts to secure the extradition of corrupt U.S. politicians who had fled the country) declared:

“There can be no crime more serious than bribery. Other offenses violate one law while corruption strikes at the foundation of all law. Under our form of Government all authority is vested in the people and by them delegated to those who represent them in official capacity. There can be no offense heavier than that of him in whom such a sacred trust has been reposed, who sells it for his own gain and enrichment; and no less heavy is the offense of the bribe giver. He is worse than the thief, for the thief robs the individual, while the corrupt official plunders an entire city or State. He is as wicked as the murderer, for the murderer may only take one life against the law, while the corrupt official and the man who corrupts the official alike aim at the assassination of the commonwealth itself. Government of the people, by the people, for the people will perish from the face of the earth if bribery is tolerated. The givers and takers of bribes stand on an evil pre-eminence of infamy. The exposure and punishment of public corruption is an honor to a nation, not a disgrace. The shame lies in toleration, not in correction.... If we fail to do all that in us lies to stamp out corruption we can not escape our share of responsibility for the guilt. The first requisite of successful self-government is unflinching enforcement of the law and the cutting out of corruption.”¹³⁸

Progressive leaders on the state level, like Robert M. La Follette (governor of Wisconsin from 1901 to 1906) and Charles Evans Hughes (governor of New York from 1907 to 1910), similarly made fighting corruption a central and explicit part of their reform agendas.¹³⁹

¹³⁴ Menes, *supra* note 83, at 88; Burrows, *supra* note 44, at 433; McCormick, *supra* note 130, at 260.

¹³⁵ LINCOLN STEFFENS, THE SHAME OF THE CITIES (1904).

¹³⁶ Glaeser & Goldin, *supra* note 32, at 4.

¹³⁷ TEACHOUT, *supra* note 24, at 182.

¹³⁸ Theodore Roosevelt, Third Annual Message to Congress (Dec. 7, 1903).

¹³⁹ See JOHN MILTON COOPER, JR., PIVOTAL DECADES: THE UNITED STATES, 1900-1920 83-89 (1990); see also MICHAEL McGERR, A FIERCE DISCONTENT: THE RISE AND FALL OF THE PROGRESSIVE MOVEMENT IN AMERICA, 1870-1920 153-78 (2003) (describing the regulation of the insurance industry and other consolidated enterprises following the exposure of their role in gross corruption). Some scholars describe this pattern in scholarship as “substantial agreement on the identification of critical trends that were transforming U.S. society in the period of the 1890s to 1916.” SKLAR, *supra* note 22, at 37.

The combination of leadership from above and pressure from below contributed to another wave of reforms, which crested roughly between 1904 and 1908 but continued well into the 1910s.¹⁴⁰ At the risk of oversimplification, it seems that there were four main strands of Progressive Era anticorruption reforms.

The first of these was the further expansion of the civil service merit system at both the federal and state levels. As noted above, the merit system had continued to expand at the federal level over the 1880s and 1890s, but the expansion accelerated under President Roosevelt. In the 18-plus years between January 1883, when the Pendleton Act was enacted, and September 1901, when President Roosevelt assumed office, the coverage of the federal merit system had expanded from about 10% of federal employees to about 46% of them. During President Roosevelt's nearly eight years in office, the merit system expanded to cover roughly 66% of federal civil servants.¹⁴¹ Moreover, civil service reform at the state level, which had stalled for over two decades after New York and Massachusetts adopted their laws in 1883 and 1884, picked up again in the first decade of the twentieth century, eventually leading to some sort of civil service reform in nearly every state.¹⁴²

Second, President Roosevelt's administration ramped up federal criminal prosecutions of bribe-payers and bribe-takers. At the time President Roosevelt assumed office, although there were already reasonably strong federal anti-bribery laws on the books, those laws were not vigorously or consistently enforced. But the Roosevelt Administration made corruption prosecutions a higher priority, beginning what one scholar has described as a "new era of criminal enforcement," one in which prosecutors "indicted hundreds of people, and dozens were convicted."¹⁴³ Importantly, these anti-corruption enforcement efforts resulted in the first-ever convictions of elected federal officials. In 1905, Senator John Mitchell was convicted for his role in a land fraud scheme that involved hundreds of other co-conspirators, and that same year Senator Joseph Burton was convicted for taking money to influence a post office decision.¹⁴⁴ State-level criminal prosecutions for corrupt activity also started to increase at the beginning of the twentieth century, with numerous convictions of state and local officials.¹⁴⁵

Third, the nascent efforts to regulate political finance and lobbying—in order to stymie corrupt private sector influence over legislative decisions—were deepened and extended in the first decade of the twentieth century, at both the federal and state levels. As noted above, in the 1880s and 1890s many states, led by New York, had enacted "corrupt practices" laws that regulated certain types of campaign expenditures, but these laws were relatively weak and did not cover the various ways that private interests might try to influence public officials through gifts, campaign donations, or lobbying. In 1903, no state had any laws on these subjects. Just five years later, in 1908, a dozen states had passed laws regulating lobbying, 22 states limited corporate political contributions, and 24

¹⁴⁰ Menes, *supra* note 83, at 88.

¹⁴¹ Hoogenboom, *supra* note 56, at 246.

¹⁴² Hoogenboom, *supra* note 56, at 246; TEACHOUT, *supra* note 24, at 177.

¹⁴³ TEACHOUT, *supra* note 24, at 187.

¹⁴⁴ TEACHOUT, *supra* note 24, at 186; NOONAN, *supra* note 24, at 601.

¹⁴⁵ NOONAN, *supra* note 24, at 576; McCormick, *supra* note 130, at 260-61. See also Alice M. Holden, *Graft Prosecutions: 1914-1915* 4 NATIONAL MUNICIPAL REVIEW 572 (1915).

states prohibited transportation companies from giving free passes to public officials (a common technique that railroad companies used to influence legislators).¹⁴⁶ And in contrast to the late nineteenth century, there was important movement on the federal level as well: Public outrage over various scandals associated with corporate political contributions, which smacked of corruption, spurred President Roosevelt to push Congress for federal legislation addressing the problem. Congress responded in 1907 by enacting the Tillman Act, which prohibited federally-chartered corporations from contributing to election campaigns, and prohibited all corporations, wherever chartered, from contributing to congressional and presidential campaigns.¹⁴⁷ In 1910, during the Taft Administration, Congress went further, enacting a statute called the Federal Corrupt Practices Act that imposed disclosure requirements and campaign expenditure limits on political parties in House elections.¹⁴⁸ Although the original version of this Act was both narrow and weak, it was amended in 1911 to cover Senate elections and primary elections (though the latter provisions were invalidated by the Supreme Court in 1921).¹⁴⁹

Fourth, one of the signature institutional reforms of the Progressive Era was the creation (or, in some cases, the further strengthening) of independent regulatory commissions, which often wielded authority that had previously been in the hands of elected politicians.¹⁵⁰ Recall that there had already been some early movement in this direction, most notably the Granger Laws of the 1870s, which established independent commissions to regulate railroad rates. This type of institutional reform expanded and accelerated during the Progressive Era. While progressives advanced many arguments to justify the creation of independent regulatory boards, in many states these boards were a conscious and explicit response to the perceived corrupt influence that powerful industries exercised over politicians and political parties.¹⁵¹ As one historian summed up the view of many Progressive Era reformers, “Regulation by commissions seemed to be an effective way to halt corruption by transferring the responsibility for business-government relations from party bosses and legislators to impartial experts.”¹⁵² As was true in the 1870s, when it came to corruption of legislatures, railroad companies were viewed as among the worst culprits, especially in southern and western states;¹⁵³ between 1905 and 1907, fifteen states established new railroad commissions, and other states strengthened their existing commissions.¹⁵⁴ But the scope of the authority that states assigned to independent regulatory commissions expanded as well, covering not just railroads and other transportation companies but also public utilities like gas, electricity, and telecommunications.¹⁵⁵

¹⁴⁶ Burrows, *supra* note 44, at 433; see also DEWEY W. GRANTHAM, SOUTHERN PROGRESSIVISM: THE RECONCILIATION OF PROGRESS AND TRADITION 155 (1983).

¹⁴⁷ Burrows, *supra* note 44, at 433; TEACHOUT, *supra* note 24, at 188.

¹⁴⁸ TEACHOUT, *supra* note 24, at 188.

¹⁴⁹ TEACHOUT, *supra* note 24, at 188.

¹⁵⁰ ANECHIARICO & JACOBS, *supra* note 52, at 21.

¹⁵¹ McCormick, *supra* note 130, at 267.

¹⁵² McCormick, *supra* note 130, at 271. See also Burrows, *supra* note 44, at 434 (asserting that the Progressives’ “solution [to corruption] … was the corporate state—government by commissions, bureaus, agencies, boards, and authorities, all in the hands of professional experts whose only professed loyalties were to honesty, impartiality, and efficiency”).

¹⁵³ See GRANTHAM, *supra* note 146, at 155.

¹⁵⁴ McCormick, *supra* note 130, at 268.

¹⁵⁵ McCormick, *supra* note 130, at 268.

Between 1903 and 1908, 41 states either established new independent commissions, or strengthened their existing commissions, to regulate transportation and utility companies.¹⁵⁶ At the federal level too, the expansion of federal regulatory authority into areas like food safety was accompanied by the creation of independent commissions to exercise that authority. Over the course of the first two decades of the twentieth century, not only economic regulation but also “other governmental policy areas, including health, education, taxation, correction, and the control of natural resources, increasingly came under the jurisdiction of independent boards and commissions.”¹⁵⁷

None of these four strands of anticorruption reform was wholly new; each built on the foundation laid by earlier generations.¹⁵⁸ Nevertheless, the first couple of decades of the twentieth century, from roughly the beginning of President Roosevelt’s administration up through the U.S. entry into World War I in 1917 during the Wilson Administration, were a significant period for the advance of the fight against corruption in the United States. As two scholars summed up the accomplishments of the Progressive Era reformers, “By the early twentieth century, the full apparatus of modern checks on corruption was in place. Rules had generally replaced discretion in many areas, such as patronage. Different levels of government more effectively patrolled each other. Greater competition and political independence in the news media meant that corrupt activities and charges were more likely to be reported everywhere in America, not just in the big cities. Finally, voter expectations about corrupt behavior had changed, and revealed corruption was more likely to lead to political defeat.”¹⁵⁹

That doesn’t mean that everything was smooth sailing after that. The 1920s, which saw the rise of more conservative political forces—especially at the national level, with the presidencies of Warren G. Harding (1921-1923), Calvin Coolidge (1923-1929), and Herbert Hoover (1929-1933)—saw little forward movement, and some retrenchment, on the Progressive Era’s institutional reform agenda. And in many respects, the post-World War I period was a time of backsliding with respect to corruption, with the Harding administration in particular “wallow[ing] in a succession of scandals reminiscent of the Grant era.”¹⁶⁰ The most infamous of these scandals was the so-called Teapot Dome affair of 1922, in which Interior Secretary Albert Fall took bribes from oil company executives to arrange for leases that gave those companies drilling rights in the U.S. Navy’s oil reserves in Teapot Dome, Wyoming and Elk Hill, California.¹⁶¹ This misconduct was not uncovered until a Senate committee investigation in 1924, after Fall had left the cabinet.¹⁶²

¹⁵⁶ Burrows, *supra* note 44, at 433.

¹⁵⁷ McCormick, *supra* note 130, at 268.

¹⁵⁸ It’s also worth noting here that other, broader political reforms of the Progressive Era were framed and justified, at least in part, as anticorruption measures. For example, a popular Progressive Era reform, the direct primary election (in which voters, rather than the party leaders, select a party’s nominees) was viewed as a way to reduce the power of corrupt party machines. See McCormick, *supra* note 130, at 267; Burrows, *supra* note 44, at 433. Another example is the Seventeenth Amendment, ratified in 1913, which provided for the direct election of U.S. senators. Supporters viewed the amendment in part as an anticorruption measure, because state legislators, who had previously selected U.S. senators, were thought to be more corruptible. See *id.*

¹⁵⁹ Glaeser & Goldin, *supra* note 32, at 20.

¹⁶⁰ Burrows, *supra* note 44, at 436.

¹⁶¹ NOONAN, *supra* note 24, at 565.

¹⁶² NOONAN, *supra* note 24, at 565.

Yet while the Teapot Dome scandal demonstrated that grand corruption at the highest levels of the government had not yet been eliminated, the response to the scandal suggested progress in how the U.S. government dealt with such allegations. Recall that in the nineteenth century, federal corruption prosecutions were relatively rare, and prosecutions of high-level federal officials like cabinet secretaries were unheard of. By the 1920s, things had changed. The Senate committee's 1924 report on the Teapot Dome scandal prompted President Coolidge (who had assumed office in 1923 after President Harding's death) to appoint two special counsels (one Democrat and one Republican) to jointly investigate and prosecute those responsible. Although the prosecution of Fall did not go entirely smoothly, in 1929 he was convicted of bribery, fined, and imprisoned.¹⁶³ The two oil companies involved were also forced to pay back over \$47 million to the U.S. government.¹⁶⁴

Fall's conviction was significant in that it demonstrated that cabinet officials were not immune to criminal prosecution for corruption, and the case against him was a sign of a "new seriousness about the criminal aspect of the bribe."¹⁶⁵ And the Teapot Dome affair was not the only corruption scandal that resulted in the criminal punishment of high-level federal officials. For example, in 1924 the Director of the Veterans' Bureau, Charles Forbes, was convicted for his role in a procurement bribery scheme,¹⁶⁶ and in 1926 a senior U.S. Representative from Kentucky, John Wesley Langley, was convicted for taking bribes to use his influence in obtaining permits for whiskey shipments into Kentucky.¹⁶⁷ Moreover, while much of the reformist spirit of the Progressive Era had dissipated by the 1920s, there were some additional legal reforms during this period that addressed corruption concerns. Most notably, in 1925 Congress enacted the Federal Corrupt Practices Act, which strengthened and expanded on the Tillman Act by requiring disclosure of campaign contributions and campaign expenditures, and imposing some campaign spending limits.¹⁶⁸ So, even during the more politically conservative 1920s, there was some progress in the fight against corruption.

The next major set of important reforms, which contributed to the further suppression of systemic corruption in U.S. government, took place during the administration of President Franklin Delano Roosevelt. Under President Roosevelt's New Deal, the country experienced a substantial expansion of federal regulation and federal social welfare programs. In contrast to the Progressive Era, where anticorruption was central to the political discourse and the reform agenda,¹⁶⁹ the New Deal period did not involve the same sort of explicit attention to corruption as such. This is understandable: The highest priority for the Roosevelt Administration, and for most American citizens, was addressing the massive economic and social crisis caused by the Great Depression. Nevertheless, the New Deal period was a time of several important developments in the fight against government corruption.

¹⁶³ NOONAN, *supra* note 24, at 566; Burrows, *supra* note 44, at 436.

¹⁶⁴ NOONAN, *supra* note 24, at 566; Burrows, *supra* note 44, at 436.

¹⁶⁵ NOONAN, *supra* note 24, at 565.

¹⁶⁶ Burrows, *supra* note 44, at 436.

¹⁶⁷ NOONAN, *supra* note 24, at 602.

¹⁶⁸ Burrows, *supra* note 44, at 436.

¹⁶⁹ Glaeser & Goldin, *supra* note 32, at 4.

First, policymakers approved a further expansion of the civil service merit system, together with new measures to increase the professionalism and integrity of the civil service. These developments did not take place immediately. Indeed, the early years of the Roosevelt Administration were marked by the creation of a number of new agencies with staffs appointed outside of the merit system. While one could argue that this was the right approach under the circumstances, by 1937 it had become clear that bureaucratic reforms were sorely needed, and President Roosevelt appointed a Committee on Administrative Management (known as the Brownlow Committee, after its chair Louis Brownlow) to recommend reforms to the federal bureaucracy.¹⁷⁰ The Brownlow Committee proposed, among other things, that the merit system should be expanded to cover all federal civil service positions except for those with substantial policy-making responsibilities. President Roosevelt acted on that recommendation, and by the time the U.S. entered World War II in December 1941, the merit system covered approximately 90% of the federal civil service.¹⁷¹ The other major New Deal-era development with respect to the civil service involved greater restrictions on political activities by government employees. In 1939, Congress enacted the Hatch Act, which barred all but the most senior federal employees from engaging in partisan political activities, such as taking part in political campaigns or soliciting campaign contributions. A year later, in 1940, Congress amended the Hatch Act to extend its prohibitions to state and local officials paid (in whole or in part) with federal funds.¹⁷²

Second, the Roosevelt administration ratcheted up efforts to detect and punish corruption, though both criminal law enforcement and administrative oversight. Some of this was a further extension of the more aggressive approach to anticorruption prosecutions that had started during the Progressive Era and continued through the 1920s.¹⁷³ But there were important new developments as well. In particular, the Roosevelt Administration made fighting corruption in the administration of federal welfare programs a high priority. Prior to 1932, social welfare programs were generally run by local governments, and were rife with corruption and patronage.¹⁷⁴ President Roosevelt, however, recognized that the credibility of the New Deal would be undermined if voters came to see New Deal welfare programs as corrupt.¹⁷⁵ The Roosevelt Administration therefore took aggressive measures to prevent corruption in these programs—promulgating new rules, establishing special administrative offices to investigate complaints about corruption in government programs, creating

¹⁷⁰ Hoogenboom, *supra* note 56, at 247.

¹⁷¹ Hoogenboom, *supra* note 56, at 247. See also Wallis, Fishback & Kantor, *supra* note 21, at 343-44 (noting that the Roosevelt Administration “sought to curb corruption … in the long run[] by bureaucratizing the administration of public welfare”).

¹⁷² Hoogenboom, *supra* note 56, at 247; Burrows, *supra* note 44, at 436 (1984). The 1940 Hatch Act amendment established other, more general limits on political expenditures and campaign contributions. *Id.*

¹⁷³ For example For example, in the 1930s two congressmen were convicted for taking money to procure a federal appointment, NOONAN, *supra* note 24, at 602, and in 1939 a federal judge, Martin Manton, was forced to resign, and was ultimately prosecuted and convicted, for his role in a bribery scheme, *id.* at 565. In the end Manton was acquitted on the bribery charge, but he was convicted of obstructing justice for his efforts to cover his tracks. More generally, prosecutions of state and local corruption continued to increase over the course of the first half of the twentieth century. *Id.* at 576.

¹⁷⁴ See Wallis, Fishback & Kantor, *supra* note 21, at 343.

¹⁷⁵ See Wallis, Fishback & Kantor, *supra* note 21, at 343-44.

a more centralized investigative division to address concerns about maladministration, and vigorously prosecuting offenders.¹⁷⁶ These measures appear to have been effective: Despite the long history of extensive corruption in American social welfare programs prior to the New Deal, and despite the fact that huge new federal initiatives like the 1933 federal unemployment relief program “offered an opportunity for corruption unique in the nation’s history,” the Roosevelt Administration’s welfare programs, though often attacked by opponents as overly bureaucratic or politicized, seem to have been administered with a high degree of integrity.¹⁷⁷ Both allegations of corruption and evidence of actual corruption were rare, and diminished over the course of the New Deal.¹⁷⁸

The expansion of social welfare programs during the New Deal also appears to have contributed to the reduction in corruption through another, less direct channel as well. Recall that much of the corruption in the late nineteenth and early twentieth centuries, particularly at the local level, was associated with political machines. Those machines sought to control, and often stole, public resources, creating additional costs for and undermining the integrity of local government operations.¹⁷⁹ But the machines also provided a measure of economic security for their rank-and-file supporters. In a world “without Social Security, Medicare, unemployment insurance, workmen’s compensation, or welfare,” pledging to support the party machine “in exchange for services—help with the law, finding a job, getting a new apartment after a fire, access to coal during hard times”—was a rational choice for many working class people.¹⁸⁰ The expansion of the government safety net administered by federal and state agencies during the New Deal diminished the importance of the political machines in providing low-income citizens with safety and security, and thereby contributed to the weakening of the political machines.¹⁸¹ More generally, as another historian of the period has suggested, because “endemic corruption often emerged in sectors where the government did not … regulat[e] sectors that would benefit from regulation,” the expansion of federal regulation during the New Deal period may have undermined the functional foundations of at least some forms of corruption.¹⁸²

It is difficult, perhaps impossible, to assert with confidence which reforms, or combination of reforms, were most important, though in the next section, we will hazard a few speculations along these lines. But putting that issue to the side for the moment, it appears that in the period between the end of the American Civil War in 1865 and the U.S. entry into World War II in 1941, the United States made substantial progress in taming systemic corruption. As we have seen, corruption in the 1850s was pervasive and deeply rooted; systemic corruption persisted, though the form had evolved a bit, in the 1870s. But by the 1930s, and certainly by the 1940s and 1950s, corruption, though still an important problem, appeared more as a deviation from norms of acceptable political behavior than as a routine feature of American governance.

¹⁷⁶ See Wallis, Fishback & Kantor, *supra* note 21, at 343-44.

¹⁷⁷ See Wallis, Fishback & Kantor, *supra* note 21, at 343, 368-69 .

¹⁷⁸ See Wallis, Fishback & Kantor, *supra* note 21, at 343, 368-69.

¹⁷⁹ See EDWARD C. BANFIELD AND JAMES Q. WILSON, CITY POLITICS 41 (1967) (“[T]he pay for [patronage jobs] is… greater than the value of the public services performed.”).

¹⁸⁰ Daniel J. Czitrom, in *Interchange: Corruption Has a History*, 105 JOURNAL OF AMERICAN HISTORY 912, 917 (2019).

¹⁸¹ Burrows, *supra* note 44, at 434; George C.S. Benson

¹⁸² David Witwer, in *Interchange: Corruption Has a History*, 105 JOURNAL OF AMERICAN HISTORY 912, 923 (2019).

Though it is difficult to quantify the difference, one piece of evidence for a significant change can be found in domestic newspaper coverage: The fraction of total news stories about politics and government that discuss corruption declined substantially from the mid-1870s to the mid-1890s, remained stable for a couple of decades (a time when, it should be noted, increased coverage of corruption by muckrakers and others may have offset declines in actual corruption), and then substantially declined again over the 1930s.¹⁸³ That quantitative evidence, though problematic in several respects, accords with the judgment of professional scholars who have studied the topic. As one leading historian of U.S. corruption put it, over the 40-50 years following the Teapot Dome scandal of the mid-1920s, “the chronic, systematic venality of the late nineteenth and early twentieth centuries virtually disappeared from view.”¹⁸⁴ To be sure, there were occasional corruption incidents and scandals in the federal government in the decades following the end of World War II, but “even taken as a whole, these … incidents do not suggest either widespread or systematic venality.”¹⁸⁵ Indeed, given the substantial growth of the federal government over the course of the twentieth century, the relative rarity of major high-level executive branch corruption scandals “tend[s] to confirm the increasingly adventitious and marginal nature of corruption in the executive branch since the 1920’s.”¹⁸⁶ The story is a bit more complicated and uneven with respect to Congress, but here too it appears that in the post-World War II era, corruption had become aberrational rather than systemic, and that, especially when one takes into account “the awesome increases in the size and scope of government, … all of the cases of congressional venality together may still represent a relative decline in the frequency and severity of corruption[.]”¹⁸⁷ The waning influence of patronage machines in large cities provides further evidence of a meaningful change. These urban political machines took off in the 1870s and 1880s and peaked around the turn of the twentieth century, when about these machines dominated politics in roughly 70% of U.S. cities. But the number and power of the machines weakened thereafter, and while some limped along for decades, they were mostly gone by 1975.¹⁸⁸

¹⁸³ See Glaeser & Goldin, *supra* note 21, at 15; see also *id.* at 17 (“The time path shown by these series is compatible with mainstream histories of the period. The traditional view of much of the nineteenth century is that it was replete with great corruption, and the traditional view of the early twentieth century … is that Progressive Era reforms were effective and that corruption actually fell. Furthermore, scattered evidence on conviction in high places also supports the downward trend observed in the index. For example, while charges of venal corruption were regularly leveled against nineteenth century New York City mayors … no New York City mayor since William O’Dwyer, fifty years ago, has been seriously accused of corrupt activities. Indeed, since Van Wyck more than 100 years ago, only O’Dwyer and James Walker seem to have been notably corrupt.”); Menes, *supra* note 83, at 65-66 (examining data on 15 major U.S. cities and finding that in the number of cities in which the mayor or a member of his administration was reportedly corrupt between 1880 and 1930 was about one-third per year, but the frequency dropped beginning in the 1930s, to about one-fourth by the 1970s).

¹⁸⁴ Burrows, *supra* note 44, at 436. See also *id.* at 434 (concluding that “[s]ince the 1920’s—and especially since the burgeoning of federal administrative and regulatory bodies during the New Deal of the 1930’s—the full-throated, rough-and-tumble corruption characteristic of the transition to capitalistic society has slowly but surely subsided,” though also observing that new forms of corruption have emerged); Lamoreaux, *supra* note 98, at 935 (noting that “evidence exists for a trend toward improvement over time” in the control of venal corruption).

¹⁸⁵ Burrows, *supra* note 44, at 437. See also Wallis, Fishback & Kantor, *supra* note 21, at 343 (2006) (noting that while “the modern federal/state public welfare system that developed out of the New Deal reforms is often castigated as bureaucratic,” these programs are “rarely [seen] as corrupt”).

¹⁸⁶ Burrows, *supra* note 44, at 437. See also Wallis, Fishback & Kantor, *supra* note 21, at 343 (2006) (noting that while “the modern federal/state public welfare system that developed out of the New Deal reforms is often castigated as bureaucratic,” these programs are “rarely [seen] as corrupt”).

¹⁸⁷ Burrows, *supra* note 44, at 441; see also *id.* at 437.

¹⁸⁸ Joseph D. Reid, Jr. & Michael M. Kurth, “The Rise and Fall of Urban Political Patronage Machines,” in CLAUDIA GOLDIN & HUGH ROCKOFF EDS., STRATEGIC FACTORS IN NINETEENTH CENTURY AMERICAN ECONOMIC HISTORY 427,

The story did not end after the New Deal, of course. The fight against corruption continued well into the twentieth century. The 1970s, for example, saw not only the various legal reforms enacted in the wake of the Watergate scandal (such as the Ethics in Government Act, the Federal Election Campaign Act, and the Foreign Corrupt Practices Act), but also the emergence of aggressive federal prosecution of state and local corruption,¹⁸⁹ as well as the so-called “Abscam” operation, in which federal prosecutors caught several members of Congress in an anti-bribery sting operation.¹⁹⁰ Indeed, the struggle against corruption in the United States continues to this day, and will probably never end. Yet we would tentatively identify the period between 1865 and 1941 as the time when the United States underwent the most significant transition, from a country where corruption, though deeply unpopular with much of the public, is an entrenched part of the political operating system, to a country where corruption, while still a serious problem, is aberrational and largely manageable. This naturally invites the question of what, if anything, reformers in modern developing and transitional countries struggling with entrenched corruption might learn from U.S. history. We cannot provide a full answer to that question, but in the next section we offer some tentative thoughts on how the U.S. historical experience might inform current debates on fighting systemic corruption in the twenty-first century.

III. Implications of the U.S. Historical Experience for Current Debates Over Anticorruption Strategy

What lessons, if any, does this brief sketch of the history of U.S. anticorruption efforts in the late nineteenth and early twentieth century hold for modern countries struggling with entrenched corruption? At the outset, it is worth emphasizing again the hazards of extracting straightforward conclusions about “what works” from a single case, especially given the substantial differences in social, economic, and political context, as well as the inherent complexities and uncertainties involved in trying to account even for one country’s experience. We do think that even our cursory survey of U.S. history is suggestive of some elements of a successful campaign to root out systemic corruption, and we hope that future work in this vein will be able to extract from this and other historical cases some useful affirmative guidance for modern anticorruption reformers. For now, though, we shy away from that more ambitious goal, and instead focus on how the U.S. historical experience may call into question, or at least complicate, certain hypotheses and rhetorical tropes that feature prominently in the contemporary discourse regarding systemic corruption in the modern developing world.

We focus on four such claims. The first, which we have already discussed, is the claim that systemic corruption is so deeply rooted in national culture or character that it is as impervious to conscious human intervention as geography. This is admittedly not a claim that one sees advanced explicitly in scholarly articles, but those who work in the anticorruption field will likely find it familiar. The trope, perhaps surprisingly, seems most common among people from the very countries where

427(1992) (citing M. Craig Brown & Charles N. Halaby, *Machine Politics in America, 1870-1945*, 17 JOURNAL OF INTER-DISCIPLINARY HISTORY 598 (1987)); Menes, *supra* note 83, at 86.

¹⁸⁹ TEACHOUT, *supra* note 24, at 200.

¹⁹⁰ NOONAN, *supra* note 24, at 604.

such corruption is widespread; one often hears such people—perhaps in frustration or resignation—express the view that corruption in their country is so deeply ingrained that there’s no hope. As we have already emphasized, though, the United States—as well as other countries like Sweden, Denmark, Germany, and the United Kingdom—call that fatalistic view into question, simply by virtue of having succeeded in making a transition from systemic corruption to aberrational corruption, notwithstanding a starting point that looked not so different from that of modern-day developing countries like Brazil, Indonesia, Nigeria, or Ukraine.

In this final section, we turn to three other claims that appear in the contemporary anticorruption discourse, all of which are at least complicated by the U.S. experience. The first is the claim that successfully dislodging endemic corruption requires a disruptive “big bang.” The second is the claim that the key to reducing systemic corruption is reducing the size and scope of government. And the third is the claim that criminal law enforcement and other “direct” approaches that emphasize individual accountability are typically ineffective, and possibly even irrelevant or counterproductive, in the fight against systemic corruption. We will consider each in turn.

A. Does Fighting Entrenched Corruption Require a “Big Bang”?

According to some scholars, the main reason that endemic corruption has proven stubbornly persistent is corruption’s self-reinforcing property: The more people in a society or institution who engage in corruption, the stronger the incentives every person in that community has to behave corruptly. After all, when corruption is widespread, the risks of engaging in corruption are lower, moral or social inhibitions weaken, and corrupt conduct is easier to rationalize. Moreover, when corruption is widespread, the institutions that might combat corruption are more likely to be themselves corrupted. Thus a vicious circle arises, where corruption begets more corruption. And even if most people—including those who currently participate in the corrupt system—would actually prefer to live in a society without corruption, no one person would find it rational to abstain from corruption if most others continued to behave corruptly. The corruption problem, according to this view, is a type of “collective action problem.”¹⁹¹ Furthermore, some proponents of this view continue, the only way for reformers to tackle this problem is through a “big bang” approach: pushing through a set of comprehensive, coordinated, and aggressive reforms, implemented over a relatively short time.¹⁹² The idea is that if the corruption problem is indeed a collective action problem, only a dramatic shock will reset expectations and overcome corruption’s powerfully self-reinforcing tendencies. A variant on the argument emphasizes that, because corrupt actors will mobilize once they realize their power is threatened, the window of opportunity for genuine anticorruption reform tends to be narrow and to close quickly; therefore, the argument continues, reformers must take rapid and decisive action when those windows of opportunity appear, because if they do not expunge systemic corruption during those rare moments of opportunity, the system will revert to

¹⁹¹ See Persson, Rothstein & Teorell, *supra* note 42; Matthew C. Stephenson, *Corruption as a Self-Reinforcing Trap: Implications for Reform Strategy*, WORLD BANK RESEARCH OBSERVER (forthcoming 2020).

¹⁹² See Collier, *supra* note 25; Rothstein, *supra* note 25.

its corrupt status quo ante.¹⁹³ The stronger version of the pro-“big bang” position not only maintains the superiority of this approach, but also assets that partial or incremental reforms are pointless and doomed to failure.¹⁹⁴

We accept the idea that under some circumstances, a big bang approach might be necessary, or at least preferable. Certainly there’s a good case for seizing moments of political opportunity before they slip away. But the strong claim that a transition away from systemic corruption *requires* a big bang approach is not only theoretically problematic—a point one of us has developed in prior work¹⁹⁵—but is also hard to square with the U.S. historical experience recounted in this essay. (The claim is also in considerable tension with the historical experience of other Western countries, though that is not our main focus here.¹⁹⁶) Although there were certainly bursts of intense anticorruption activity over the course of the 76 years between 1865 and 1941, it would be a real stretch to characterize anticorruption reform over this period as a “big bang.” The reform process would be more accurately characterized as incremental, uneven, and spread out over at least three generations.

Consider, as one notable example, civil service reform. The transition to a merit-based system for hiring, retaining, and promoting civil servants is considered was one of the most important institutional changes in the suppression of systemic corruption and patronage—not only in the United States, but in other countries as well.¹⁹⁷ The creation and implementation of such a system in the United States was a lengthy, drawn-out process, not something that was achieved in just a few years in a burst of rapid structural reform. For starters, it took 17 years from Congressman Jenckes’ introduction of his first civil service reform bill in December 1865 until the Pendleton Act was finally passed in January 1883, with lots of struggle and incremental progress in the interim. Moreover, the Pendleton Act, though an important first step, only covered about 10% of the federal civil service. It was not until 1941 that the merit system finally covered roughly 90% of federal civil employees. So, the time it took to get from the first serious proposal for federal civil service reform to a merit system that actually covered all but the most senior policymaking officials was roughly three-quarters of a century, and the path from beginning to end was anything but smooth.¹⁹⁸

Enforcement of laws against corruption also increased gradually, in fits and starts, rather than occurring in one dramatic, concentrated crackdown. Criminal laws against corruption expanded incre-

¹⁹³ See Carol Graham & Moises Naim, “The Political Economy of Institutional Reform in Latin America,” in NANCY BIRDSALL, CAROL GRAHAM & RICHARD H. SABOT EDS., BEYOND TRADEOFFS: MARKET REFORM AND EQUITABLE GROWTH IN LATIN AMERICA 321 (1998).

¹⁹⁴ See Collier, *supra* note 25; Rothstein, *supra* note 25.

¹⁹⁵ See Stephenson, *supra* note 191.

¹⁹⁶ See, e.g., Mark Knights, *Old Corruption: What British History Can Tell Us About Corruption Today* (2016); Anders Sundell, *Anti-Corruption Reform—Evolution or Big Bang?*, EBA Dissertation Brief Series 1016:08 (2016).

¹⁹⁷ See Rothstein & Teorell, *supra* note 19.

¹⁹⁸ See ROSE-ACKERMAN & PALIFKA, *supra* note 21, at 439-40.

mentally. In the earliest days of the Republic, Congress enacted a handful of relatively narrow federal statutes criminalizing certain corrupt acts;¹⁹⁹ other forms of corruption, even where not explicitly covered by statute, might also have been considered criminal at the time.²⁰⁰ But these laws were only rarely and sporadically enforced.²⁰¹ The situation was similar in the states, where “a patchwork of statutory and common laws covered a small set of potentially corrupting activities,” but even these laws were “rarely used.”²⁰² The legal regime gradually strengthened over time, at both the federal and state levels—but did so in bits and pieces, rather than in one fell swoop.²⁰³ And meaningful enforcement lagged behind legal reform, often by multiple generations.²⁰⁴ But, as Part II of this essay illustrated, enforcement—both criminal and non-criminal—did gradually ratchet up. The exposure of the Credit Mobilier scandal in 1872 might not have resulted in criminal prosecutions, but it did lead to the expulsion of two members of Congress.²⁰⁵ And the Whiskey Ring scandal a few years later produced a large number of criminal prosecutions and convictions—though well-connected high-level figures were protected.²⁰⁶ In 1877 President Hayes ordered investigations into corruption in customs offices, and these investigations also led to terminations and in some cases prosecutions of corrupt officials.²⁰⁷ These early signs of a willingness to take action against corrupt officials may have stalled in the 1880s and 1890s, but picked up in the Progressive Era²⁰⁸—though even then, despite the aggressive posture adopted by President Roosevelt and a number of state governors, enforcement was uneven, with some powerful figures in both the public and private sector escaping accountability.²⁰⁹ Still, the first decade of the twentieth century finally saw criminal convictions of U.S. Senators, indicating cracks, albeit limited ones, in the de facto impunity of the most senior officials had long enjoyed.²¹⁰ Those cracks widened in the 1920s with the Teapot Dome prosecutions, which took down a former cabinet secretary,²¹¹ which were followed by other successful prosecutions of Members of Congress and senior executive branch officials.²¹² During the New Deal period and beyond, investigations and prosecutions of corrupt conduct had become more common, though as noted above, some of the most important federal crackdowns on state and local corruption did not occur until the 1970s. Here again, the story is not so much one of a major crackdown that dislodged corruption from the system, but rather a story of long-term uneven progress, with a weak and under-enforced legal regime gradually strengthened over time, and the de facto immunity of the most senior government officials gradually eroded.

¹⁹⁹ Burrows, *supra* note 44, at 424-25; NOONAN, *supra* note 24, at 434.

²⁰⁰ Bribery involving a federal official might have been considered a “common law crime” in the late eighteenth and early twentieth century—that is, it might have been considered a federal crime even though not covered by a federal statute. But judges were divided on the question, and in any event, the federal courts rejected the legitimacy of common law crimes in 1812. Burrows, *supra* note 44, at 425; NOONAN, *supra* note 24, at 435; TEACHOUT, *supra* note 24, at 105-06.

²⁰¹ Glaeser & Goldin, *supra* note 32, at 11.

²⁰² TEACHOUT, *supra* note 24, at 108. See also FONER, *supra* note 43, at 385 (noting that in pre-Civil War Louisiana, there was no explicit criminal law against bribery).

²⁰³ NOONAN, *supra* note 24, at 451-55; Burrows, *supra* note 44, at 427.

²⁰⁴ NOONAN, *supra* note 24, at 564, 575, 601.

²⁰⁵ FONER, *supra* note 43, at 468; NOONAN, *supra* note 24, at 460-500.

²⁰⁶ TEACHOUT, *supra* note 24, at 122-23; HOOGENBOOM, *supra* note 24, at 135-36.

²⁰⁷ Burrows, *supra* note 44, at 431.

²⁰⁸ TEACHOUT, *supra* note 24, at 187; NOONAN, *supra* note 24, at 576; McCormick, *supra* note 130, at 260-61. See also Holden, *supra* note 145.

²⁰⁹ TEACHOUT, *supra* note 24, at 187; McCormick, *supra* note 130, at 271.

²¹⁰ TEACHOUT, *supra* note 24, at 186, 122-23; NOONAN, *supra* note 24, at 564-65, 601.

²¹¹ NOONAN, *supra* note 24, at 565-66; Burrows, *supra* note 44, at 436.

²¹² Burrows, *supra* note 44, at 436; NOONAN, *supra* note 24, at 602.

These and other examples illustrate why “incremental, uneven, and slow” would be a better characterization of the U.S. transition away from systemic corruption than would the “big bang” moniker. Admittedly, it’s possible to characterize certain more compressed periods as anticorruption “big bangs” of a sort. The best candidate for such a label would probably be the first decade of the twentieth century, when Progressive Era leaders at the national, state, and local levels ramped up enforcement of anticorruption laws and pushed through a variety of important institutional reforms. Yet without diminishing the importance of the Progressive Era changes, it’s important to recognize, as Part II of this essay emphasizes, that the Progressive Era reforms both built on the foundation laid by previous generations of reformers (for example, with respect to things like the civil service merit system and the use of independent regulatory commissions) and did not fully succeed in effecting the transition from systemic corruption to aberrational corruption—a transition that was achieved by subsequent generations that built on Progressive Era foundations.

In sum, the story of U.S. anticorruption reform seems to be less a story of an enlightened, far-sighted leader pushing through a dramatic, comprehensive, and disruptive reform agenda, and more that of a long slow slog, with moments of significant progress mixed in with periods of setback or stagnation, but ultimately with a sufficient accumulation of meaningful changes to effect a substantial transformation of the norms and institutions of American governance. And indeed, this is how most historians have characterized the transition. As one scholar, focusing principally on the fight against the corruption of the urban political machines, has explained, “[R]eform was a slow business. Nearly half a century was required after urban corruption began to rise in the 1850s before reform matured from the simple idea of ‘cut the budget and throw the rascals out’ to a set of policies designed to rebuild city government into a structure that would be both resistant to corruption and able to meet the rising demands on urban government.”²¹³ Furthermore, in contrast to many of the more popular modern anticorruption success stories—like Singapore and Hong Kong and Georgia—which emphasize the initiative and decisive action of a particular chief executive (Lee Kwan Yew, Murray MacLehose, and Mikheil Saakashvili, respectively), in the United States, good governance and anticorruption reform “has seldom been credited to a particular political leader. Although there have been exceptions, as in the cases of the two Roosevelts and Woodrow Wilson, even their efforts are best seen as culminations of lengthy reform movements.”²¹⁴

B. Is Reducing the Size of Government the Key to Reducing Corruption?

In addition to (or sometimes in conjunction with) the argument that dislodging systemic corruption requires a comprehensive “big bang,” one often encounters the argument that the best way, or per-

²¹³ Menes, *supra* note 83, at 87-88. See also *id.* at 90 (asserting that the U.S. experience “shows that strong democratic and civil institutions, and especially a strong and independent press, suppress corruption and improve government performance,” but that building these institutions is a “complex, and longer-term, project”); ROSE-ACKERMAN & PALIFKA, *supra* note 21, at 440 (observing that the transition of urban government away from machine politics “did not proceed in a straight line”).

²¹⁴ Glaeser & Goldin, *supra* note 32, at 18 n.11.

haps the only way, to prevent such corruption is to drastically reduce the size and scope of the government. As the Nobel Laureate economist Gary Becker once succinctly put it, “if you want to cut corruption, cut government.”²¹⁵

How well does this hypothesis fit the U.S. historical experience? If one focuses on the nineteenth century, one could find plenty of evidence to support the “big government, big corruption hypothesis.” The nineteenth century was a time not only of rapid economic growth, but also of rapid growth in the size and importance of government. Governments at all levels (federal, state, and local) provided “lucrative charters, franchises, licenses, and contracts,” as well as “the laws of property and exchange.”²¹⁶ This expansion in the size and importance of government over the course of the nineteenth century created new opportunities, and much stronger incentives for, various forms of public corruption.²¹⁷ The surge in corruption during the post-Civil War period in particular has been attributed in part to the “expansion of the national government.”²¹⁸ Many of those living through the upheavals of the nineteenth century agreed not only with this diagnosis—that the expansion of the size and scope of government was a contributing factor to the surge in corruption—but also endorsed a version of Professor Becker’s prescription. Andrew Jackson was one notable early adopter of the view that shrinking government was essential to containing corruption. In President Jackson’s view, the remedy to the threat posed by a corrupt alliance between public institutions and moneyed interests “was to scale down governmental undertakings, on the grounds that public privileges [lead] to both corruption and inequality.”²¹⁹ Decades later, in the fallout of the Credit Mobilier scandal of the 1870s, several contemporary commentators drew a similar conclusion, arguing that the grand corruption exemplified by the Credit Mobilier affair demonstrated why the government needed to get out of the infrastructure business altogether, leaving the developments of railroads, telegraphs, roads, and canals to private industry, without subsidies or protections.²²⁰

So, as of roughly 1875, U.S. history would seem to provide ample evidence in support of the hypothesis that expansions in the size and power of government was associated with increases in corruption, and one might naturally conclude that the only way to get systemic corruption under control would be to scale back the scope of government activities. Not so, however, with the next 75-plus years of U.S. history. If anything, this period featured even greater *increases* in the size and power of government—especially though not exclusively the federal government—yet it is also the period when the U.S. achieved the greatest successes in getting systemic corruption under control. It may well be true that the dramatic increase in the role of government in the economy was a significant contributor to the expansion and entrenchment of systemic corruption between the Era of Good Feelings and the Gilded Age. But the ultimately successful effort to tame this corruption

²¹⁵ Becker, *supra* note 26.. See also Becker, *supra* note 27; ROSE-ACKERMAN & PALIFKA, *supra* note 21, at 434-36.

²¹⁶ Burrows, *supra* note 44, at 425.

²¹⁷ Burrows, *supra* note 44, at 425; Glaeser & Goldin, *supra* note 32, at 20.

²¹⁸ Keller, *supra* note 44, at 12-13. See also Hoogenboom, *supra* note 82, at 125 (asserting that “Gilded Age enterprise, by provoking government intervention in the economy, enlarged opportunities for corruption”).

²¹⁹ McCormick, *supra* note 130, at 253.

²²⁰ McCormick, *supra* note 130, at 255.

over the next three-quarters of a century—the period stretching from the 1880s through the Progressive Era and up to the New Deal and beyond—did not entail any shrinking of the state. Quite the opposite—the pace of government expansion only accelerated during the first half of the twentieth century.²²¹ As two economic historians sum up the seeming paradox, on the one hand it seems that the surge in corruption over the course of the nineteenth century was driven in part by the expansion in the size and role of government, which increased the potential economic returns to corrupting government officials, but on the other hand, “the decline in corruption between the mid-1870s and 1920 was not associated with declining returns to corruption[, given that the] size of the government continued to rise[.]”²²²

What explains this? If the expansion of government from the 1820s and the 1870s fueled the growth in systemic corruption, why was the further, and even more dramatic, expansion of government from the 1880s through the mid-twentieth century associated with a steady reduction in corruption? There are a number of possible explanations. First, the problem in the nineteenth century may not have been the growth of government as such, but rather the growth of government without adequate institutional safeguards and oversight. When public officials had, by virtue of their largely unchecked discretion, the ability to influence the allocation of substantial amounts of wealth, it is unsurprising that many of them adopted the attitude so memorably captured by Tammany Hall operative George Washington Plunkitt: “I seen my opportunities and I took ‘em.”²²³ But during the period from the mid-1870s through the New Deal, those opportunities were constricted—not by shrinking the government, but by making it harder for government agents to use their power for personal or partisan advantage. Civil service reform simultaneously made it harder to reward loyalists with plum jobs, and shifted control over government decision-making from party hacks to competent professionals. The creation of semi-autonomous regulatory commissions reduced opportunities for elected officials to leverage their power to sell favorable regulatory treatment. Greater financial transparency made it harder to misappropriate public funds.²²⁴ And the strengthening and stepped-up enforcement not only of criminal laws and administrative controls, but growing bureaucratic capacity to enforce laws, increased the risks and consequences of getting caught.²²⁵ Even while the continued growth in the size and power of government increased the potential benefits of engaging in corrupt activities, then, the potential costs increased even more sharply, thus leading to a substantial net reduction.²²⁶

Three additional considerations are worth mentioning here. First, efforts to improve government integrity may have been, at least in part, a consequence of the expansion of government power. The

²²¹ See PAUL P. VAN Riper, HISTORY OF THE UNITED STATES CIVIL SERVICE (1958); BARRY D. KARL, THE UNEASY STATE: THE UNITED STATES FROM 1915 TO 1945 (1983); STEPHEN SKOWRONEK, BUILDING A NEW AMERICAN STATE: THE EXPANSION OF NATIONAL ADMINISTRATIVE CAPACITIES, 1877-1920 (1982); JACOB HACKER, THE DIVIDED WELFARE STATE: THE BATTLE OVER PUBLIC AND PRIVATE SOCIAL BENEFITS IN THE UNITED STATES (2002).

²²² Glaeser & Goldin, *supra* note 32, at 20.

²²³ WILLIAM L. RIORDAN, PLUNKITT OF TAMMANY HALL: A SERIES OF VERY PLAIN TALKS ON VERY PRACTICAL POLITICS (1963).

²²⁴ Menes, *supra* note 83, at 74.

²²⁵ See DANIEL CARPENTER, THE FORGING OF BUREAUCRATIC AUTONOMY: REPUTATIONS, NETWORKS, AND POLICY INNOVATION IN EXECUTIVE AGENCIES, 1862-1928 (2002).

²²⁶ See Glaeser & Goldin, *supra* note 21, at 20.

more government affected lives and livelihoods, and the more it was apparent that corruption in government programs posed a threat to same, the more public pressure there was to take measures to promote public integrity. Relatedly, the expansion in the size of the government bureaucracy may have contributed to the increase in support for civil service reform by high-level politicians, as the larger bureaucracy was harder for them to control through direct intervention or patronage.²²⁷ The story is obviously more complicated than that simple framing suggests. The expansion of public involvement in economic development in the early nineteenth century, as we have seen, was associated in an explosion of public corruption, and if that explosion eventually produced a movement for greater government integrity, it did so only with a considerable lag. Yet there does seem to be some association between periods of significant expansion of government power—during the Civil War and the New Deal, for example—and public pressure for pro-integrity reforms.

Second, and perhaps as an additional explanation for why the expansion of government was associated with an increase in systemic corruption in the pre-Civil War period but with reductions in systemic corruption later on, it seems that the nature of government activity shifted, at least in emphasis, from more particularistic interventions by elected politicians (conveying land, chartering corporations, subsidizing specific infrastructure projects) to more programmatic interventions, most obviously the large social welfare programs of the New Deal. That shift, as we have seen, was at least in part a consequence of concerns about corruption, though other factors—including perhaps the increasing scale and centralization of government activity—contributed as well. Whatever the reasons, the U.S. experience is at least suggestive of the possibility that the magnitude of government intervention in the economy may be less important, from an anticorruption perspective, than the form that intervention takes.

Third, we should consider another important reason why the expansion of the size and scope of government during the first half of the twentieth century may have been associated with a decrease, rather than an increase, in systemic corruption. Not only did institutional reforms and more aggressive oversight reduce the amount of corruption in those government programs, but many of these programs may have ameliorated some of the underlying problems that contributed to the power of corrupt political machines. As noted earlier, while the machines may not have been good for the overall economic or political health of the community overall, they provided their supporters with valuable benefits and support.²²⁸ As the government took on an increasing role in providing welfare, social insurance, and other public goods, the political machines lost some of their value to their rank-and-file supporters, making them easier to marginalize and eventually displace.²²⁹ In other words, the growth in government during the early twentieth century may have correlated with declining systemic corruption in part because much of this growth was due to an expanding government-provided social safety net, which supplanted some of the functions of the corrupt political

²²⁷ See Ronald N. Johnson and Gary D. Libecap, THE FEDERAL CIVIL SERVICE SYSTEM AND THE PROBLEM OF BUREAUCRACY 21-29 (1994); ROSE-ACKERMAN & PALIFKA, *supra* note 21, at 423-24, 433-34.

²²⁸ Czitrom, *supra* note 180, at 917.

²²⁹ Burrows, *supra* note 44, at 434.

machines, and more generally reduced the poverty and inequality that are thought by many researchers to be significant contributors to corruption.²³⁰

In sum, Becker's assertion that the key to "root[ing] out corruption" is "boot[ing] out big government"²³¹ does not seem consistent with the U.S. historical experience. We would not be so bold as to argue that the U.S. experience affirmatively demonstrates the validity of some other hypothesis, such as the claim that bigger governments generally reduce corruption—though that claim does seem more consistent with the modern cross-country evidence than Becker's hypothesis.²³² Our more modest conclusion here is that, as with the hypothesis that rooting out systemic corruption requires a disruptive "big bang" approach, the U.S. experience, though admittedly only a single data point, casts doubt on the hypothesis and suggests the need for more careful, nuanced consideration.

C. Enforcing Rules or Changing Systems (or Both)?

There are, broadly and crudely speaking, two main methods that reformers advance for taming corruption. First, there are "direct" measures that focus on detecting and sanctioning individual corrupt actors, both to prevent them from engaging in future corruption and to deter others who might be tempted to engage in similar malfeasance. Enactment and enforcement of criminal laws against bribery, embezzlement, and other corrupt acts are the most obvious example of this punishment-based strategy in action, but there are other mechanisms for detecting and disciplining corrupt actors that would also fit into this general category. (For example, legislatures and bureaucratic agencies may have codes of conduct, violations of which are not necessarily crimes, and which are enforced by internal bodies rather than courts.) The second broad approach to fighting systemic corruption is through "indirect" measures—institutional or social reforms that reduce the incentive or opportunity to engage in corruption, but that do not specifically target corrupt individuals, and might not be framed or understood as about fighting corruption as such.²³³ The proposal to fight corruption by reducing the size of government, discussed above, would fall into this category. So would things like civil service reform, privatization of government services, expansion of public education, and so forth.

Most anticorruption reformers, as well as most scholars who study the topic, would likely agree that both individual accountability and preventative structural measures are important ingredients in the fight against corruption. That said, critics sometimes argue that certain governments focus excessively on detection and punishment of individuals, at the expense of structural reforms, and that in

²³⁰ See Bin Dong & Benno Torgler, *Causes of Corruption: Evidence from China*, 26 CHINA ECONOMIC REVIEW 152 (2013); Nicholas Apergis, Oguzhan C. Dincer & James E. Payne, *The Relationship Between Corruption and Income Inequality in U.S. States: Evidence from a Panel Cointegration and Error Correction Model*, 145 PUBLIC CHOICE 125 (2009).

²³¹ Becker, *supra* note 27.

²³² See Anna Persson & Bo Rothstein, *It's My Money: Why Big Government May Be Good Government*, 47 COMPARATIVE POLITICS 231, 232 (2015); Jonathan Hopkin & Andres Rodriguez, "Grabbing Hand" or "Helping Hand": *Corruption and the Economic Role of the State*, 20 GOVERNANCE 187 (2007).

²³³ See Rothstein, *supra* note 30.

situations of systemic corruption, trying to ameliorate the problem solely through punishment-oriented “crackdowns” is doomed to failure.

The U.S. historical experience certainly seems to corroborate the claim that structural reforms are crucial to successfully taming endemic corruption. During the three-quarter-century period we surveyed above, many of the most crucial reforms—reforms that seem closely associated with the decline in systemic corruption during the twentieth century, though we admittedly cannot prove this—were broad institutional reforms that reduced the incentives and opportunities for corruption, rather than crackdowns that emphasized detection and punishment of individual corrupt actors. Civil service reform is the most prominent illustration, but there are others, including the expanded use of independent regulatory commissions, stricter campaign finance disclosure rules, the abolition of the moiety system in customs, and several others.

That said, it has recently become fashionable, in some quarters of the anticorruption community, to suggest that “direct” strategies that emphasize individual accountability—through the criminal law or other mechanisms—as mostly an irrelevant distraction in countries that are beset by systemic corruption. While not entirely dismissing the importance of vigorously enforced anticorruption laws in countries that have less pervasive corruption, proponents of this argument sometimes suggest that when corruption is so deeply enmeshed in the political system that corrupt deals are just “the way things get done,” seeking to punish individual corrupt actors (even a lot of them) is not just insufficient—a point that most experts would endorse—but actually an unhelpful distraction, and might actually prove counterproductive. On this view, when corruption is thoroughly and deeply embedded, the focus should be *exclusively* (or at least overwhelmingly) on preventative measures that address the root causes of corruption, rather than on efforts to hold individual corrupt actors personally accountable.²³⁴

The U.S. historical experience, however, seems inconsistent with this view. While structural, preventative reforms—things like civil service reform and depoliticization of regulatory decisions—played an important role in long-term progress, the evidence suggests (though again does not prove) that measures to hold individual corrupt actors accountable also played a significant role. As noted earlier, the efforts to hold corrupt actors accountable proceeded in fits and starts, but these efforts nonetheless appeared important, particularly after the turn of the twentieth century. President Theodore Roosevelt and other Progressive Era reformers promoted vigorous enforcement of existing laws against corruption. Such enforcement was associated with a period of declining corruption, at least so far as we can tell from the admittedly imperfect evidence. And prosecutions, especially of high-level officials, likely served an important symbolic function, even when such prosecutions were still relatively rare. Consider the prosecution and conviction of former Interior Secretary Albert Fall for his role in the Teapot Dome scandal. As Judge John Noonan writes in his history of bribery, this conviction “changed the prevailing rule [that a sufficiently senior government official was de facto immune from prosecution for bribery] or, rather, demonstrated that [this rule]

²³⁴ See Karatnycky & Motyl, *supra* note 29.

was not of iron.”²³⁵ This case, together with the conviction roughly a decade later of a federal judge, Martin Manton, for participating in a bribery scheme, were, as Judge Noonan concludes, perceived as “signs of a new seriousness about the criminal aspect of the bribe,” notwithstanding the fact that these cases remained unusual for the time.²³⁶ And outside the context of criminal prosecutions and punishment, a number of important government initiatives sought to detect, punish, and deter corrupt actors in other ways. Consider, by way of illustration, the substantial efforts that President Franklin Roosevelt undertook to combat corruption in New Deal relief programs.

It is also perhaps relevant here that, notwithstanding the fact that in some contexts it may be more effective to push for good government reforms without explicitly referencing corruption—so as to make such reforms seem less threatening—it seems that many U.S. reformers often took the opposite tack. As we have seen, the proponents of civil service reform in the late nineteenth century, and the Progressives at the beginning of the twentieth century, deliberately packaged their general institutional reforms explicitly as anticorruption measures, even when it would have been possible to justify those reforms on other grounds. It seems that reformers leveraged the popular outrage at the greed of venal public officials and unscrupulous private interests to mobilize support for a broader reform agenda. Rather than soft-peddling or obscuring their anticorruption message, these reformers leaned into it—and were generally quite successful.

Taken as a whole, then, the U.S. historical experience seems most consistent with the conventional view that the recipe for fighting systemic corruption includes *both* aggressive “direct” efforts to detect and punish individual corrupt actors, *and* significant “indirect” structural reforms that mitigate the incentives and opportunities for engaging in corruption. Our brief survey suggests that U.S. experience is inconsistent with the idea that a government can tame systemic corruption through a sufficiently aggressive crackdown, but the U.S. experience also seems inconsistent with the idea that enforcing anticorruption laws and rules against individual wrongdoers is irrelevant or counterproductive. We stress again that we cannot prove either claim. History only happens once, and we do not and cannot know what would have happened if, say, the U.S. in the late nineteenth and early twentieth century had attempted to tackle its systemic corruption problem primarily or exclusively with one approach or the other. But our admittedly impressionistic reading of the available evidence suggests that both were important.

Conclusion

By the middle of the twentieth century, the United States had undergone a substantial change in both the prevalence of corruption and the means used to target it. That story has been told elsewhere, though not entirely comprehensively. The implications of that story for debates about the fight against corruption in the modern developing world, however, have not been sufficiently appreciated or discussed. At the very least, the American experience calls into question a number of familiar arguments and hypotheses about the best way to tackle this seemingly intractable problem.

²³⁵ NOONAN, *supra* note 24, at 565.

²³⁶ NOONAN, *supra* note 24, at 565, 569.

Moreover, to return to a cautiously optimistic theme we have stressed above, the American experience over the nineteenth and twentieth century suggests that systemic public corruption is perhaps not as intractable as it may seem in the moment. The American story is a testament to the fact that change can occur despite entrenched cultural norms and political resistance. It is also a reminder, though, that such change plays out over decades or generations, not months or years, and requires sustained, determined efforts by both political elites and ordinary citizens.

REFERENCES

- Acconcia, Antonio & Claudia Cantabene. 2008. *A Big Push to Deter Corruption: Evidence from Italy*, Giornale degli Economisti e Annali di Economia 67: 75.
- Andrews, Matt. 2008. *The Good Governance Agenda: Beyond Indicators without Theory*, Oxford Development Studies 36: 379.
- Anechiarico, Frank & James B. Jacobs. 1996. The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective.
- Anokhin, Sergey & William S. Schulze. 2009. *Entrepreneurship, Innovation, and Corruption*, Journal of Business Venturing 24: 465.
- Apergis, Nicholas, Oguzhan C. Dincer & James E. Payne. 2009. *The Relationship Between Corruption and Income Inequality in U.S. States: Evidence from a Panel Cointegration and Error Correction Model*, Public Choice 145: 125.
- Argersinger, Peter H. 1992. Structure, Process and Party: Essays in American Political History.
- Arnold, Peri E. 2003. *Democracy and Corruption in the 19th Century United States: Parties, “Spoils” and Political Participation*, in Seppo Tiihonen ed., The History of Corruption in Central Government, p. 197.
- Banfield Edward C. and James Q. Wilson. 1967. City Politics.
- Baxter, William Edward. 1855. America and the Americans.
- Becker, Gary S. 1995. *If You Want To Cut Corruption, Cut Government*, Bloomberg (Dec. 11, 1995).
- Becker, Gary S. 1994. *To Root Out Corruption, Boot Out Big Government*, Bloomberg (Jan. 31, 1994).
- Bing, Julius. 1868. *Our Civil Service*, Putnam's Magazine, II, No. 8 (August 1868), p. 233.

Brown, M. Craig & Charles N. Halaby. 1987. *Machine Politics in America, 1870-1945*, Journal of Interdisciplinary History 17: 598.

Burrows, Edwin G. 1984. "Corruption in Government," in Jack P. Greene ed., Encyclopedia of American Political History Vol. 1, p. 417.

Carpenter, Daniel. 2002. The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928.

Chang, Eric C.C. 2013 *A Comparative Analysis of How Corruption Erodes Institutional Trust*, Taiwan Journal of Democracy 9: 73.

Chayes, Sarah. 2016. Thieves of State: Why Corruption Threatens Global Security..

Chayes, Sarah. 2017. When Corruption Is the Operating System: The Case of Honduras.

Chong, Alberto & Cesar Calderon. 2000. *Institutional Quality and Income Distribution*, Economic Development & Cultural Change 48: 761.

Collier, Paul. 2006. *African Growth: Why a "Big Push"?*, Journal of African Economics 15: 188.

Cooper, John Milton, Jr. 1990. Pivotal Decades: The United States, 1900-1920.

Cordis, Adriana S. & Jeffrey Milyo. 2016. *Measuring Public Corruption in the United States: Evidence from Administrative Records of Federal Prosecutions*, Public Integrity 18: 127.

Cuellar, Mariano-Florentino, Margaret Levi & Barry R. Weingast. 2020. *Twentieth-Century America as a Developing Country: Conflict, Institutions, and the Evolution of Public Law*, Harvard Journal on Legislation 57: 25.

Czitrom, Daniel J. 2019. *Interchange: Corruption Has a History*, Journal of American History 105: 912.

Dickens, Charles. 1842. American Notes.

Dong, Bin & Benno Torgler. 2013. *Causes of Corruption: Evidence from China*, China Economic Review 26: 152.

Eisenstadt, Abraham S. et al. eds. 1978. Before Watergate: Problems of Corruption in American Society.

Foner, Eric. 1988. Reconstruction: America's Unfinished Revolution 1863-1877.

Glaeser, Edward L. & Claudia Goldin. 2006. *Corruption and Reform: Introduction*, in Edward L. Glaeser & Claudia Goldin eds., *Corruption and Reform: Lessons from America's Economic History*, p. 3.

Global Anticorruption Blog, "Tracking Corruption and Conflicts of Interest in the Trump Administration" (<https://globalanticorruptionblog.com/profiting-from-the-presidency-tracking-corruption-and-conflicts-in-the-trump-administration/>) (last viewed Sept. 2, 2020).

Graham, Carol & Moises Naim. 1988. "The Political Economy of Institutional Reform in Latin America," in Nancy Birdsall, Carol Graham & Richard H. Sabot eds., *Beyond Tradeoffs: Market Reform and Equitable Growth in Latin America*, p. 321.

Grantham, Dewey W. 1983. Southern Progressivism: The Reconciliation of Progress and Tradition.

Earl Grey. 1858. Parliamentary Government Considered with Reference to a Reform in Parliament: An Essay.

Hacker, Jacob. 2002. The Divided Welfare State: The Battle Over Public and Private Social Benefits in the United States.

Hanf, Matthieu et al. 2011. *Corruption Kills: Estimating the Global Impact of Corruption on Children Deaths*, PLoS One 6.

Heywood, Paul. 2016. “The Corruption Perceptions Index (CPI): the Good, the Bad and the Ugly,” posted on the British Academy blog (Feb. 3, 2016).

Hofstadter, Richard. 1955. The Age of Reform.

Holden, Alice M. 1915. *Graft Prosecutions: 1914-1915*, National Municipal Review 4: 572.

Hoogenboom, Ari. 1961. Outlawing the Spoils: A History of the Civil Service Reform Movement, 1865-1883.

Hoogenboom, Ari. 1984. “Civil Service Reform,” in Jack P. Greene ed., Encyclopedia of American Political History Vol. 1, p. 233.

Hoogenboom, Ari. 1978. “Did Gilded Age Scandals Bring Reform?”, in Abraham S. Eisenstadt et al. eds., Before Watergate: Problems of Corruption in American Society, p. 125.

Hopkin, Jonathan & Andres Rodriguez. 2007. “*Grabbing Hand*” or “*Helping Hand*”: *Corruption and the Economic Role of the State*, Governance 20: 187.

Hough, Dan. 2017. Analysing Corruption: An Introduction (2017).

Hough, Dan. 2016. “Here’s this year’s (flawed) Corruption Perceptions Index. Those flaws are useful.”, posted on The Monkey Cage blog, *Washington Post* (Jan. 27, 2016)

Johnson, Ronald N. and Gary D. Libecap, 1994. The Federal Civil Service System and the Problem of Bureaucracy.

Jung da-Min. 2019. “Korea’s Anti-Corruption Efforts an Inspiration for Other Asian Countries,” Korea Times (Dec. 8, 2019).

Karatnycky, Adrian & Alexander J. Motyl. 2018. *How Western Anticorruption Policy Is Failing Ukraine: It Should Focus on Institutions, Not Individuals*, Foreign Affairs (May 29, 2018).

- Karl, Barry D. 1983. The Uneasy State: The United States From 1915 to 1945.
- Kaufmann, Daniel & Aart Kraay. 2002. *Growth Without Governance*, Economia 3: 169.
- Keller, Morton. 1978. "Corruption in America: Continuity and Change," in Abraham S. Eisenstadt et al. eds., Before Watergate: Problems of Corruption in American Society p. 7.
- Knitgaard, Robert. 1988. Controlling Corruption.
- Kloppenberg, James T. 2019. in *Interchange: Corruption Has a History*, Journal of American History 105: 912.
- Knapp, Whitman et al. 1972. Report of the Commission to Investigate Alleged Police Corruption.
- Knights, Mark. 2016. *Old Corruption: What British History Can Tell Us About Corruption Today*.
- Kupatadze, Alexander. 2016. *The Quest for Good Governance: Georgia's Break with the Past*, Journal of Democracy 27: 110.
- Lagunes, Paul F. & Jan Svejnar eds. 2020. Corruption and the Lava Jato Scandal in Latin America.
- Lamoreaux, Naomi R. 2019. *Interchange: Corruption Has a History*, Journal of American History 105: 912.
- Lessig, Lawrence. 2011. Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It.
- Mackay, Alexander. 1849. The Western World: Or, Travels in the United States in 1846-47, Vol. 1.
- Maddison, Angus. 2007. Countours of the World Economy, 1-2008 AD.
- McCormick, Richard L. 1981. *The Discovery that Business Corrupts Politics: A Reappraisal of the Origins of Progressivism*, American Historical Review 86: 252.

McGerr, Michael. 2003. *A Fierce Discontent: The Rise and Fall of the Progressive Movement in America, 1870-1920*.

Menes, Rebecca. 2006. *Limiting the Reach of the Grabbing Hand: Graft and Growth in American Cities, 1880 to 1930*, in Edward L. Glaeser & Claudia Goldin eds., *Corruption and Reform: Lessons from America's Economic History*, p. 63.

Mungiu-Pippidi, Alina. 2013. *Becoming Denmark: Historical Designs of Corruption Control*, Social Research 80: 1259.

National Commission on the BP Deepwater Horizon Oil Spill & Offshore Drilling. 2011. *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling*.

New York Times. 2019. “It’s the Human Way”: Corruption Scandals Play Out in Big Cities Across U.S.” (Feb. 5, 2019).

New York Times. 2019. “North Carolina G.O.P. Chairman Indicted in Corruption Probe” (April 2, 2019).

Noonan, John T., Jr. 1984. *Bribes: The Intellectual History of a Moral Idea*.

Parton, James. 1854. *The Life of Horace Greeley, Editor of the New York Tribune*.

Persson, Anna & Bo Rothstein. 2015. *It’s My Money: Why Big Government May Be Good Government*, Comparative Politics 47: 231.

Persson, Anna, Bo Rothstein & Jan Teorell. 2012. *Why Anticorruption Reforms Fail—Systemic Corruption as a Collective Action Problem*, Governance 26: 449.

Pessen, Edward. 1978. “Corruption and the Politics of Pragmatism: Reflections on the Jacksonian Era,” in Abraham S. Eisenstadt et al. eds., *Before Watergate: Problems of Corruption in American Society*, p. 79.

Quah, Jon S.T. 1994. *Controlling Corruption in City-States: A Comparative Study of Hong Kong and Singapore*, Crime, Law & Social Change 22: 391.

Reid, Joseph D., Jr. & Michael M. Kurth. 1992. "The Rise and Fall of Urban Political Patronage Machines," in Claudia Goldin & Hugh Rockoff eds., Strategic Factors in Nineteenth Century American Economic History, p. 427.

Remini, Robert V. 1981. Andrew Jackson and the Course of American Freedom, 1822-1832, Vol. 2.

Riordan, William L. 1963. Plunkitt of Tammany Hall: A Series of Very Plain Talks on Very Practical Politics.

Roosevelt, Theodore. 1903. Third Annual Message to Congress (Dec. 7, 1903).

Rose-Ackerman, Susan. 2008. "Corruption," in Charles K. Rowley & Friedrich G. Schneider eds., Readings in Public Choice and Constitutional Political Economy, p. 551

Rose-Ackerman, Susan & Bonne J. Palifka. 2016. Corruption and Government: Causes, Consequences, and Reform, Second Edition.

Rothstein, Bo. 2011. *Anti-Corruption: The Indirect "Big Bang" Approach*, Review of International Political Economy 18: 228.

Rothstein, Bo. 2018. *Fighting Systemic Corruption: The Indirect Strategy*, Daedelus 147: 35.

Rothstein, Bo & Jan Teorell. 2015. *Getting to Sweden, Part II: Breaking with Corruption in the Nineteenth Century*, Scandinavian Political Studies 38: 238.

Schutte, Sofie Arjon. 2012. *Against the Odds: Anti-Corruption Reform in Indonesia*, Public Administration & Development 32: 38.

Shimpalee, Pattama L. & Janice Bourcher Breuer. 2006. *Currency Crises and Institutions*, Journal of International Money & Finance 25: 125.

Sklar, Martin J. 1992. The United States as a Developing Country: Studies in U.S. History in the Progressive Era and the 1920s.

Skowronek, Stephen. 1982., Building a New American State: The Expansion of National Administrative Capacities, 1877-1920.

Steffens, Lincoln. 1904. The Shame of the Cities.

Stephenson, Matthew C. 2020. *Corruption as a Self-Reinforcing Trap: Implications for Reform Strategy*, World Bank Research Observer (forthcoming).

Stephenson, Matthew C. 2018. “The New Corruption Perceptions Index Identifies Countries with Statistically Significant Changes in Perceived Corruption—Should We Credit the Results?,” posted on Global Anticorruption Blog (Mar. 6, 2018).

Stephenson, Matthew C. 2016. “Watch Your Language: Not ‘Everyone’ Is Corrupt—Anywhere,” posted on Global Anticorruption Blog (Aug. 23, 2016).

Summers, Mark W. 1993. The Era of Good Stealings

Summers, Mark W. 1987. The Plundering Generation: Corruption and the Crisis of the Union, 1849-1961.

Sundell, Anders. 2016. *Anti-Corruption Reform—Evolution or Big Bang?*, EBA Dissertation Brief Series 1016:08.

Teachout, Zephyr. 2014. Corruption in America: From Benjamin Franklin’s Snuff Box to Citizens United.

Transparency International. 2020. Corruption Perceptions Index 2019.

U.S. Department of Justice. 2016. Report to Congress on the Activities and Operations of the Public Integrity Section for 2016.

Van Riper, Paul P. 1958. History of the United States Civil Service.

Wallis, John Joseph. 2006. *The Concept of Systemic Corruption in American Political and Economic History*, Edward L. Glaeser & Claudia Goldin eds., Corruption and Reform: Lessons from America's Economic History, p. 23.

Washington Post. 2020. “Ohio Speaker’s Arrest in Bribery Probe Muddies 2020 Election” (July 22, 2020).

Witwer, David. 2019. *Interchange: Corruption Has a History*, Journal of American History 105: 912.