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# **Corrupted Courts: A Cross-National Perceptual Analysis of Judicial Corruption**

by

Kathleen Barrett

Under the Direction of William Downs

## **ABSTRACT**

This thesis examines the factors that influence perceptions of judicial corruption. A statistical analysis using data from such sources as Transparency International, the World Bank, and Freedom House demonstrates that aspects of accountability (the ability to remove judges) and transparency (freedom of the press) are only weakly related to perceptions of judicial corruption. A systematic country comparison shows that the structure of the judicial system explains variations in perceived judicial corruption.

INDEX WORDS:      Corruption, Judiciary, Legal System

**CORRUPTED COURTS: A CROSS-NATIONAL PERCEPTUAL ANALYSIS OF JUDICIAL  
CORRUPTION**

by

Kathleen Barrett

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of

Master of Arts

Georgia State University

2005

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Kathleen Barrett  
Master of Arts

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CORRUPTION**

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## **Corrupted Courts: A Cross-National Perceptual Analysis of Judicial Corruption**

Dramatic variation exists across countries in whether citizens perceive the presence of corruption in the very institution entrusted with upholding the law, the national judiciary. Identifying, explaining, and interpreting such variation are the goals of this study. Judicial corruption is an increasingly salient, yet vastly under-researched, topic in the fields of comparative and judicial politics. While much of the research literature is devoted to single country studies and inductive narratives, largely missing is systematic, theory-driven, cross-national empirical investigation. Drawing upon data from such sources as Transparency International, the World Bank, and Freedom House, this thesis adds to the understanding of perceived judicial corruption. A statistical analysis, though limited by existing data, demonstrates that aspects of accountability (the ability to remove judges) and transparency (freedom of the press) are only weakly related to perceptions of judicial corruption. A systematic country comparison shows that the structure of the judicial system explains variations in perceived judicial corruption.

What factors influence perceived judicial corruption? Money and effort are being expended to reform judiciaries to ensure that they are independent, fair, and free from corruption. Yet comparatively little consideration is given to ensuring that the citizens, those who should turn to the judiciary for protection, perceive the judiciary to be more trustworthy. For example, in October 2004 the World Bank authorized an additional \$1.2 million for judicial reform in Peru. According to Transparency International's Corruption Perception Barometer the people of Peru want corruption eliminated from the judicial system more than any other institution. According to the 1995 World Values Survey 80% of the Peruvian respondents have little or no confidence in the legal system. Given that this is the second effort to reform Peru's judiciary (the World Bank cancelled the first \$22 million loan during the Fujimori regime), will the \$1.2 million dollars improve these perceptions? While some proponents argue that making changes to increase transparency will decrease corruption, efforts at judicial reform in Latin



America contradicts this argument. Conversely, over 55% of Nigerians have confidence in their reformed legal system.<sup>1</sup> Yet in October 2004 Nigerian judges, including Supreme Court judges, were arrested on charges of corruption including accepting \$39M in bribes.<sup>2</sup>

Corruption undermines democracy, reduces the potential for economic growth, and threatens the freedom and security of citizens. *Perceived* corruption can be even more devastating because correction requires both marketing a non-corrupt image and rebuilding the legitimacy of, and confidence in, the system. Corruption in the judiciary, real or perceived, has political and economic impacts since individuals, businesses, political parties, and interest groups all look to the courts for protection from and redress against crimes, including corruption. In this situation, the outlook for correcting corruption in other areas of the state becomes bleak since the judiciary is one arm of defense against corruption. Conversely, if businesses and individuals perceive courts to be relatively free from corruption, the courts can legitimize and enforce the rule of law to minimize corruption in the state. Because of the reliance on the courts to minimize corruption, it might be reasonably expected that countries with lower perceived overall corruption would also have lower perceived judicial corruption. Also, since the judiciary is a branch of the government, it could be expected that a citizenry that perceives high levels of judicial corruption would also perceive high levels of overall corruption. But is this really the case? The reasonable expectation is actually a surprisingly untested empirical proposition that demands scrutiny by comparativists and country experts. The relationship between perceptions of corruption in the judiciary and in the political system prompts a litany of timely, but largely unresearched, questions. Are there differences in the structure of the judicial system that impact the perception of judicial corruption? Why would citizens in a country with high overall corruption be less concerned about judicial corruption than citizens in a country with low overall corruption? Why do two countries with equal overall corruption have variances in levels of concern over corruption in the judiciary and confidence in the legal system? Although much has been written about the relationship between the perception of fair judicial process and legal legitimacy (Tyler et al, 1991, 1989; Tyler, 2000, 1994) as well as the causes and impacts of corruption (Thurow, 2003; Heymens and Lipiez, 1999; Eigen, 1996), and while a limited number of

studies have measured perceived judicial corruption (Eigen, 2002; Carothers, 1999; Mauro, 1995), scholars have not effectively addressed the factors impacting perceived judicial corruption. By understanding the causes of perceived judicial corruption insight will be gained into ways that perceptions can be informative (if they truly reflect a corrupt situation) or corrected (if the judiciary is being wrongly accused). Since fighting corruption has gained a global focus through the efforts of the United Nations, the World Bank, and Transparency International, this understanding will contribute to the analysis of their efforts and contributions.

This thesis seeks to explain the variations in perceived judicial corruption through both a quantitative and case study test of hypotheses. Building on prior research it will argue that citizen interactions with the judicial system matter. Through statistical models and in-depth analysis of specific cases this thesis will demonstrate that transparency and accountability, the standard answers to corruption, do not sufficiently explain perceptions of judicial corruption. The type of legal system and courts has more of an impact on perceptions of judicial corruption.

The thesis proceeds in five sections. The first section specifies the dependent variable by establishing the definition, causes, and impacts of overall corruption in the state and then specifically in the judiciary. Since corruption has been shown to undermine legitimacy (Eigen, 1996), this section also compares the rival factors advanced by scholars seeking to explain variations in perceptions of judicial legitimacy based on a review of the extant literature. The second section derives testable hypotheses for measuring the relationship between overall corruption and judicial corruption. An explanatory model is tested and the results presented in the third section. A comparative case test of the hypotheses is performed in the fourth section. The fifth section explores the impacts of the results, relates the analysis to broader literature and its concerns, and concludes by mapping out future research opportunities.

### **Corruption: Conceptual Foundations and Magnitude of Variation**

Corruption, like many other terms, is a generally recognized word, and, therefore, has many definitions. Beginning with a broad definition, Scott views corruption as a departure from behavioral standards (Scott, 1972). Although he further refines the definition to include an indication of whom and why, his definition focuses on deviant behavior. Eigen uses a slightly more explicit definition by viewing corruption as the use of power for personal gain (Eigen, 2002). Stapenhurst and Sedigh extend this definition slightly to include both personal and group gain (Stapenhurst and Kpundeh, 1999). While these are all helpful definitions, they are still too broad to provide a working concept that lends itself to operationalization. Since this thesis focuses on judicial corruption the above definitions can be combined and slightly modified resulting in a focused definition: *the abuse, by a public official, of entrusted power for personal benefit.*

Yet even within this definition there is some ambiguity since public officials can either be elected, appointed, or hired (as in administrative) and the corruption can occur at any point along the continuum from the establishment to the enforcement of laws. Pradhan et al (2000) in their report prepared for the World Bank help to clarify this with their distinction between “state” and “administrative” corruption. By their definition state corruption occurs in the formation of laws whereas administrative corruption occurs in the implementation of the laws. Since the judiciary deals with the application of laws, judicial corruption would occur in the administrative realm. Therefore, our definition can be further refined to: the abuse of power, for personal benefit, by a public official entrusted to administer the application of laws in a fair and judicious manner. Because “public official” can still be misleading we can then define this term as a person elected or appointed to the judiciary and the supporting administrative staff.

As a final point of clarification, for the purposes of this thesis the judiciary does not include police or any other of the law enforcement arms of the state. There are two reasons for this. First, it ensures that the focus remains on the judicial system. Related fields such as law enforcement have corruption issues that are significant in their own right and would mitigate the attention to the judiciary.

Second, empirical measures and surveys make this distinction. For example, both the World Values Survey and Transparency International's Corruption Barometer provide separate measures for the judiciary and the police. Consistency with these studies strengthens the reliability and validity of the measures used.

With this definition the question can then be asked why it would be important theoretically, substantively, and methodologically to study corruption in judiciary. The first step to answering this question involves an understanding of the political impacts of corruption in general. First, corruption, both actual and perceived, undermines the legitimacy of the state (Eigen, 2002). When the citizens of a state see that corruption has invaded the government they lose faith that the government is capable of working for their interests (Eigen, 2002). When this happens the citizens have at least three choices. First, they could force the resignation of the corrupt officials. President Estrada of the Philippines discovered this in 2002 when protesters demanded his resignation when the legislature failed to act on evidence of his corruption (Eigen, 2002). Second, they could find alternate avenues to gain the access needed to government such as creating an underground economy (Pradhan et al, 2000). Evidence of this is seen in Latin America where countries (such as Mexico and Colombia) with corrupt, inefficient, and overworked legal systems have seen increases in private enforcement measures (Mainwaring and Welna, 2003). Third, they could accept the costs associated with a corrupt judiciary. For example, citizens in Guatemala are discouraged from using the legal system because of the ease with which criminals are able to benefit from the corruption (Mainwaring and Welna, 2003). If the chosen avenue becomes too much of a threat to the government it will become politically unstable. Officials will increase their focus on maintaining power and corruption will become self-sustaining (Damania, Fredriksson, Mani, 2003). One example of this situation is Cameroon where the President, who succeeded in having the constitution modified to both extend his term of office and allow him to run for a fourth term, has appointed all members of the judiciary thus minimizing his risk of legal challenges.<sup>3</sup> In Argentina, Chavez followed this pattern of constitutional change to remain in power coupled with control of the judiciary through appointments (Finkel, 2004).

Second, corruption hinders economic development both internally and externally (Eigen, 2002; Heymens and Lipiez, 1999; Thurow 2003). Internally, corruption prevents competition and causes the government to operate inefficiently (Heymens and Lipiez, 1999). Externally, corruption inhibits foreign direct investment both by diverting aid into corrupt hands and increasing the costs of doing business in the country (Thurow, 2003). Since poverty breeds corruption and corruption deters wealth the result is a circle from which it is hard to escape. The more widespread corruption becomes, moreover, the more resistant it becomes to change (Damania, Fredriksson, Mania, 2003).

Finally, corruption undermines democracy (Eigen, 2002). Corruption circumvents the workings of democracy in three ways. First, many acts of corruption undermine human rights (Eigen, 2002) by fostering discrimination. Corruption also undermines political and civil rights, such as free speech and fair elections, which are important to the development and perpetuation of a democracy (Eigen, 2002; Dahl, 1971). Third, studies have demonstrated that democracy is more likely to be successful in a wealthy country (Dahl, 1971; Przeworski, Alvarez, Cheibub, Limongi 2000), that corruption hinders economic development (Eigen, 2002; Heymens and Lipiez, 1999; Thurow 2003), and that corruption is more likely to occur in underdeveloped countries (Eigen, 1996). It therefore follows that corruption will make it harder for a country to sustain democracy.

Thus it can be seen that incidences of corruption can have a significant political impact on the overall stability of the state. Peru's Fujimori felt these impacts when evidence illustrated that his administrative officials bribed the media to support him. Corruption in the judiciary is the most devastating form for a state because it either supports the rule of law, thereby thwarting corruption and fostering freedom, or it undermines the rule of law resulting in an implicit, if not explicit, support of corruption. Both of these examples can be seen in Argentina. Under Alfonsín the Argentine judiciary had enough independence to issue opinions against the President's policies and favored positions thus supplying a check against corruption. On the other hand, a stacked court under Menem unquestionably supported government actions even to the point of altering opinions (Larkins, 1998). Rule of law is important to a country for several reasons. First, rule of law, or, constitutional liberalism in Zakaria's

terms, protects the citizens by limiting the power of government (Zakaria, 1997). This limitation allows protection against both corruption and usurpation of human and democratic rights. Second, a safeguard against corruption is the equal and predictable application of the laws (Dobel, 1976), a situation that cannot occur if the judiciary is corrupt. In fact, the judiciary cannot limit the powers of government unless it blindly and predictably applies the laws. Finally, it has been asserted that without the fair application of the rule of law the state cannot develop a fully operational market economy because businesses will not be able to rely on the property protection they need to operate (Carothers, 1999). In other words, the judiciary protects the rights and freedoms that stabilize the government and protect the rights, human and democratic, of the citizenry as well as ensuring the environment that businesses need to develop the economy. If corruption exists in the judiciary these protections will not be fairly applied and the resulting inequality will undermine both the state and the economy (Heymens and Lipiez, 1999).

It can be argued that perceived corruption in the judiciary is at least as harmful, if not more so, than actual corruption since the effects are the same but perceptions are not as easy to change as actions. Mauro demonstrated a negative correlation between perceived corruption and investment indicating that a belief that corruption exists is enough to deter investment and growth (Mauruo, 1995).<sup>4</sup> Applying this directly to the rule of law, Dobel argues that in order to be effective citizens must accept the laws, their application, and adjudication (Dobel, 1976). When faith is lost in laws and the judiciary, other recourse is found including, Dobel argues, the use violence to resolve conflicts. Therefore, while actual occurrences of corruption may go unnoticed, the effectiveness of the judiciary is eroded once it is perceived to be corrupt.

Another argument supporting the strength of perceived corruption is that actual occurrences of corruption frequently remain hidden. Corruption flourishes in an environment without transparency or accountability (Eigen, 2002) since it minimizes the risk of being discovered. However, this also prevents insight into the exact extent of corruption (Heymens and Lipiez, 1999), thus preventing accurate measurement of corruption. Conversely, corruption also deters transparency. When corruption is prevalent political discourse and discussions are discouraged, media freedoms are limited, and education

is undermined (Dobel, 1976; Eigen, 2002). Consequently, avenues that would normally be used to ferret out and report corruption are suppressed to ensure that corruption can continue. This is particularly true in the judiciary, which, even in the best cases, is shrouded by secrecy and mystery. Since actual insight into judicial proceedings is rarely possible, the legitimacy and fairness (ie. lack of corruption) of the system must be perceived and believed by the citizens in order for them to trust the institution. Thus, a perception of corruption within the judiciary undermines its ability to enforce and maintain the legitimacy of the rule of law, which subsequently undermines the stability and effectiveness of the government and prevents economic development of the state.

### *Causes of Corruption*

Corruption, both overall and in the judiciary, has generally been linked to deficiencies in three conditions: accountability, transparency, and equality. In order to understand how these factors impact corruption it is important to understand what is meant by these three conditions. Of the three, transparency is the hardest to define since the term is widely used in the literature but with an implicit rather than explicit definition. The implied definition is that actions are available for public scrutiny (Hammergin, 1999). Therefore, transparency will be defined here as the ability for citizens to access accurate information about the actions of public officials. In terms of the judiciary this means that the judicial process and decisions can be viewed by others and understood. Accountability has a variety of definitions, two aspects of which are important to these efforts. The first is that, when authority is delegated to an agent that agent is responsible to the principal for his actions (Downs, 1999). The principal-agent relationship is applicable to the judiciary since judges are either appointed or elected to their post. Second, and most simply, accountability is allowing scrutiny of a public official's actions (Pope, 2000). Transparency allows the scrutiny to occur. Equality as used here will mean equal opportunity (Pope, 2000). The judiciary requires equal opportunity for resources and must provide equal opportunity to all it serves.

Deficiencies in accountability and transparency are closely linked as causes of corruption, yet each makes a significant individual contribution. Accountability forces the government to focus on the public interest rather than personal interests (Heymens and Lipiez, 1999; Eigen, 2002). Holding a government accountable (i.e. responsible for its actions and subject to scrutiny) includes both the implementation of effective monitoring tools (Heymens and Libpiez, 1999) and the involvement of the public to question the government on the reported results (Eigen, 2002). Transparency provides insight into the activities of government officials. When faced with reforms that open their actions to public scrutiny corrupt officials are resistant, knowing that the transparency will increase the likelihood that they are caught and decrease the opportunities for corruption (Carothers, 1999). Thus, the lack of either of these qualities can foster corruption but the lack of both accountability and transparency is fertile ground for corruption.

Inequality can foster corruption in two ways. Low government employee salaries are cited as one of the primary sources of corruption (Eigen, 1996; Buscaglia and Dakolias, 1999; Heymens and Lipiez, 1999). When government employees see themselves subsisting below the level of the general public they take the opportunity to supplement their income through the misuse of the positions. Yet corruption can also occur when one group is prevented from equal access to the benefits of the state (Dobel, 1976). In this case the underprivileged will support corrupt practices that allow them the access they need.

Corruption is also linked with deficiencies in trust and political will. Research has demonstrated that where there is a high level of trust in an institution, such as the judiciary, there is a lower level of corruption (Tonoyan, 2003). Therefore, building trust in a society's legal institution is an important factor in fighting corruption (Tonoyan, 2003). Political will in fighting corruption is a key method to building the trust. From building support for anti-corruption activities, to sanctioning officials who engage in corruption, to demonstrating an on-going effort in the battle against corruption, a society committed to controlling corruption can work together to make the tough choices and changes necessary (Brinkerhoff, 1999). Conversely, the less demonstrated political will for fighting corruption the more corruption is accepted in society. A prime example of this is Belgium. In the past Belgium has accepted corruption as



the normal way of politics (Bull and Newell, 2003). Yet when politicians perceived that the legitimacy of the government was falling, a concerted effort by all areas of the government was made to introduce and enforce sweeping anti-corruption reform (Bull and Newell, 2003). The result has been reduced levels of corruption, an increased lack of acceptance of corruption as normal in politics, and a gradual increase in the trust of the government (Bull and Newell, 2003).

Studies have associated the same three causes to corruption in the judiciary. In order to prevent corruption, the judiciary must be paid on par with other organizations (Buscaglia and Dakolia, 1999), must be held accountable for their decisions both by higher courts and by the general public (Buscaglia and Dakolia, 1999; World Bank, 2000), and, in order for the public to hold them accountable their actions must be transparent. Where judicial corruption is concerned, inequality takes on special characteristics; corruption will develop where laws can be applied inequitably (Buscaglia and Dakolia, 1999). This affects corruption both in the overall state as well and in the judiciary. If a judge can be counted on to apply laws based on the value of a side payment then there is not equality before the law. In this case, both transparency and accountability are closely tied to ensuring equitable application of the law. It follows that transparency and accountability impact perceived corruption. For example, the European Union has noted that reform efforts in Poland have increased the efficiency of the judiciary but recommends that Poland improve both public access to information and perceived corruption in the judiciary.<sup>5</sup>

Correcting and preventing corruption in the judiciary, and the state, is, in theory, as simple as correcting the three problems. Hold the institutions accountable, provide open access to information, and ensure that government employees are paid fairly (Eigen, 2002). Buscaglia and Dakolia (1999) demonstrated this by illustrating that the introduction of reforms, which included such aspects as computer monitoring systems and a focus on short-term benefits to the judiciary, reduced the occurrence of corruption in Ecuador and Chile.

Yet in practice controlling corruption in the judiciary is not that simple for two reasons. First, although the judiciary must be held accountable it must also maintain its independence (Pope, 2000). In

fact it is recommended that the judiciary be independent from both the executive and legislative branches of government as well as the electorate (Pope, 2000). Consequently, the judiciary is faced with the conundrum of being accountable to itself to prevent corruption. This becomes even more difficult when the judiciary is expected to enforce anti-corruption laws that they may be violating (Dininio and Kpundeh, 1999). Consequently, the judiciary must be compelled to be accountable to itself and the public while maintaining its independence, not an easy balance to achieve. Second, it is not always possible for the judiciary to be completely transparent. For example, whistle blowing is seen as a key element in the fight against corruption yet for this tool to be effective the whistle-blower must be protected (Dininio and Kpundeh, 1999). Full transparency would prevent anonymity and open the whistle-blower to risk. Consequently, a balance must be struck between a level of transparency that will foster the necessary accountability while protecting information when needed, again a difficult task.

Therefore, implementing the common solutions to fighting corruption, both in general and in the judiciary, may not guarantee an ethical judiciary, much less the citizen's perception that the judiciary is not corrupt. As mentioned, in his study of judicial corruption in Santiago, Chile and Quito, Ecuador Buscaglia (1999) found that the implementation of judicial reforms was correlated with reduced reports of corrupt practices. Based on this research, the difference between a country with a judiciary perceived to be highly corrupt and one whose judiciary is not perceived to be corrupt should be the existence of effective accountability and transparency measures in the judiciary. Yet it is possible that other factors, such as personal experiences with the judiciary or the type of legal system, could have a strong influence on perceived judicial corruption regardless of accountability and transparency. This thesis will test the strength of this presumed correlation between perceived judicial corruption, accountability, and transparency arguing that other factors are necessary to understand perceived judicial corruption.

### *Perceived Judicial Corruption*

As indicated above perceived corruption, and more specifically perceived judicial corruption, undermines the stability and growth of a state. Organizations such as Transparency International have developed a plan for fighting corruption, both overall and in the judiciary, which is based on transparency, accountability, and equality. Theoretically, a judiciary that is held accountable for its actions (for example, through judicial review by an appellate court), that is transparent (for example, by providing internet access to decisions), and is equitable both in access to the system by the citizens (for example, by publishing any charges required for court services in advance) and in compensation to the judiciary (for example, by ensuring that the pay scale of judges is sufficient and comparable to other professions) should not be corrupt and, therefore, should not be perceived to be corrupt. But is this the case? Current research suggesting that this relationship might hold is based on an individual case study (Buscaglia, 1999).

Data available from Transparency International, however, indicate that the relationship between perceived corruption and the judiciary is not straightforward. Table 1 illustrates this point. For example, almost 28% of people surveyed in Finland, which is rated as the least corrupt country according to Transparency International, indicate that correcting corruption in the courts is more important than correcting corruption in other public institutions, with only corruption in political parties being more of a concern. On the other hand, less than 5% of the people surveyed in Nigeria, which is rated as the most corrupt country by Transparency International, selected courts as their first choice institution for the correction of corruption.<sup>6</sup> Transparency International rates Poland and Mexico the same for overall corruption yet 15% of the people surveyed in Poland are most concerned about corruption in the courts compared to less than 7% of those surveyed in Mexico. These findings are supported by other surveys.<sup>7</sup> According to the 1995 World Values Survey 24% of the Nigerian respondents had a great deal of confidence in the legal system compared to less than 14% of Finnish respondents. The World Values Survey also indicates a disparity between Poland, where 11% of the respondents have no confidence in the legal system, and Mexico, where 25% of the respondents have no confidence in the legal system.<sup>8</sup>

**Table 1: Classification of Countries by Perceived Judicial Corruption and Perceived Overall Corruption**

Perceived Court Corruption						
High			Low			
Perceived Overall Corruption	High			Low		
	Country	Courts**	CPI*	Country	Courts**	CPI*
	Bulgaria	19.8	54	Costa Rica	8.6	50
	Croatia	21.6	59	South Korea	10.3	50
	Peru	35.0	59	Colombia	3.4	59
	Poland	15.4	64	Mexico	6.6	64
	Panama	15.0	66	Dominican Rep.	12.1	70
	Bosnia	17.0	70	Turkey	6.6	77
	Romania	20.2	83	India	3.8	83
	Argentina	19.2	92	Russia	10.9	86
	Macedonia	15.4	106	Guatemala	8.0	100
	Indonesia	32.8	122	Nigeria	4.8	132
	Georgia	18.1	124			
	Cameroon	31.0	124			
	Country	Courts**	CPI*	Country	Courts**	CPI*
	Finland	27.7	1	Netherlands	10.0	7
	Denmark	16.3	3	Switzerland	9.8	8
	Sweden	16.2	6	Canada	8.3	11
	Norway	12.3	8	United Kingdom	8.6	11
	Luxembourg	18.1	11	Austria	8.4	14
	Israel	14.8	21	Germany	8.6	16
	Spain	26.6	23	Ireland	8.8	18
	Portugal	14.8	25	United States	9.1	18
	Italy	18.0	35	Japan	3.7	21
				Malaysia	8.5	37
			South Africa	3.9	48	

\*CPI: Corruption Perception Index score

Source: Transparency International

\*\*Courts: Percent who responded Courts when asked “If you had a magic wand and you could eliminate corruption from one of the following institutions what would be your first choice?”

Source: Transparency International

Is there something about the judiciary that is related to the different levels of concern about corruption in the courts? What are the differences between the judiciary in the most corrupt country with a high level of confidence in the legal system and the judiciary in the least corrupt country with a lower level of confidence in the judiciary? What is different between the judiciaries of two countries that have been rated the same for overall corruption by Transparency International but have different levels of confidence in the legal system? It could be argued that there is a variance in the standard controls for corruption, transparency, accountability, and equality, within these countries. An alternate argument could be that some countries have more serious problems with corruption in areas other than the judiciary. Neither of these arguments explains the lack of confidence in the judiciary despite a lack of concern about corruption or the variances in concern about judicial corruption. In other words, they do not explain the role of judicial legitimacy. Before this role is explored the factors influencing judicial legitimacy must be understood.

### *Explaining Judicial Legitimacy*

Since the judiciary cannot directly enforce its directives, it must rely on its legitimacy, or at least the perception of legitimacy, to ensure compliance with its decisions and respect for the rule of law particularly if the decision is not favorable (Tyler and Rasinski, 1991). Several studies on the relationship between perceived legitimacy of the law and legal authorities indicate that when the process was perceived to be fair judicial decisions and the legal authorities were accepted as legitimate regardless of whether or not the outcome was perceived to be favorable (Tyler et al, 1991, 1989; Tyler, 2000, 1994). Specifically, a study of the United States Supreme Court found that people accepted Supreme Court decisions, whether or not they agreed with the decisions, because they perceived that the Supreme Court made the decisions fairly (Tyler and Rasinski, 1991). An earlier study of the impact of judicial decisions on the perception of legal legitimacy indicates that perceptions change incrementally through experience (Tyler et al, 1989). Since a corrupt judiciary will result in unfair treatment it will decrease the legitimacy of the judiciary and, in the extreme, undermine the rule of law (Tyler and Rasinski, 1991)

Perceived corruption in the judiciary could originate from two directions;<sup>9</sup> it could be the result of actual evidence of corruption or it could be a manifestation of distrust in the judiciary. Actual evidence of corruption can be documented, punished, and corrected by addressing the perpetrators. The cause of distrust in the judiciary, on the other hand, is more difficult to isolate; it may be the result of a personal encounter with the judiciary years ago or it may be a lack of understanding of the process. Whatever the cause, correcting distrust in the judiciary is not as easy as punishing an act of corruption. Trust in the institution must be rebuilt. Consequently it is important to understand factors that have been shown to influence the legitimacy of the judiciary and how they interact with the standard corrections for corruption – accountability and transparency. Three aspects of judicial legitimacy are relevant to this study: public opinion of the judiciary; cultural influences; and, political influences. Although these three aspects are not solely related to perceptions of corruption, they influence perceptions of and confidence in the judiciary and, therefore, could be related to perceptions of judicial corruption.

Studies have shown that several factors directly influence the public's confidence in the courts. Judicial activism, protection of the rights of the accused, and inflation are shown to turn public opinion against the United States Supreme Court (Caldeira, 1986). On the other hand, public awareness of court actions and presidential popularity are shown to move public opinion in favor of the US Supreme Court (Caldeira, 1986). These findings are consistent with public opinion studies, which show that news media, presidents, and interest groups impact public opinion (Page, Shapiro, Dempsey, 1987). These influences on public opinion of courts appear to be true in other countries as indicated by studies of opinions of the European Court of Justice, which show evidence that support of the Court of Justice increases with awareness but when information about the court is not available support for the court will be based on support of other factors (Caldeira and Gibson, 1995). Therefore, it is possible that transparency will increase support for the judiciary regardless of levels of corruption. It is also possible that attitudes toward the national leader will impact perceptions of corruption in the judiciary.

Culture may also influence confidence in the judiciary. Although confidence in the legal system is not the same as perceived corruption, it can be argued that a symptom of corruption would be a loss of

confidence in the legal system. This is supported by the argument made above that institutions with low levels of corruption have high levels of trust (Tonoyan, 2003). Arguably, when the public trusts the judiciary they have confidence in the judiciary. Similarly when the public lacks trust in the judiciary they also lack confidence in the judiciary. And, since a relationship between levels of trust and levels of corruption has been demonstrated (Tonoyan, 2003), it is important to understand factors, such as culture, which impact confidence in the judiciary since the same factors could also be related to perceived judicial corruption. Both education and social class are shown to influence support for legal institutions in Europe (Gibson and Caldeira, 1996), which would be reflected in the measures of confidence in the legal system. Studies in El Salvador and Guatemala indicate that a low level of interpersonal trust in the culture is reflected by a lack of trust in institutions, including the judiciary (Mainwaring and Welna, 2003). General differences within the culture have also been shown to negatively impact support for legal institutions. A study of differences in support for European legal institutions indicated that the more divided a society was along the lines of ethnicity and language, or the less modern the society was, the more negatively the legal system is viewed (Gibson and Caldeira, 1996). The negative impact of cultural differences is also demonstrated in a study of the support for courts within South Africa (Gibson and Caldeira, 2003), as well as a study of the acceptance of judicial decisions in multicultural societies (Tyler, 2000). It is therefore possible that perceptions of corruption in the judiciary would be influenced by education, a culture of trust, significant cultural differences, and modernization of the society, none of which are included in either transparency or accountability. Therefore, it will be important to control for these factors in the quantitative tests.

Finally, political influences impact support for the judiciary. Although support for the judiciary is not the same as perceived corruption, its importance to this study is similar to the importance of confidence in the judiciary. As mentioned above, low levels of corruption in an institution have been associated with high levels of trust in that institution (Tonoyan, 2002). Arguably, an institution that is not trusted is most likely not supported. Therefore, it is likely that corrupt institutions would be neither trusted nor supported. Consequently, it is plausible that factors that influence support for the judiciary

could be associated with perceived judicial corruption. Studies of the South African courts and the European Court of Justice have shown that courts must be visible to the public and earn its support (Caldeira and Gibson, 1995; Gibson and Caldeira, 2003). Yet there is indication that courts recognize the need for legitimacy and act to increase their legitimacy. Although lack of judicial legitimacy could have many causes, one cause could be judicial corruption. Arguably, if low corruption in an institution is related to high levels of trust in that institution (Tonoy, 2003), the institution would also have a high degree of legitimacy. Conversely, an institution with high levels of corruption would have low levels of trust and low levels of judicial legitimacy. A study of the Philippine Supreme Court indicates that it may be enhancing its legitimacy by serving a redistributive function by protecting the underprivileged (Haynie, 1992). State leaders also indicate an understanding of the need for judicial legitimacy. A study of supreme courts in three countries (India, Pakistan, and The Philippines) undergoing a political crisis that resulted in establishment of an authoritarian government indicates that the courts were left independent initially to ensure that both the leader and the rule of law within the state would maintain legitimacy (Tate, 1992). However, if the court subsequently threatened the leader then the scope of the court was reduced thereby allowing the leader to control the court without completely eliminating legitimacy (Tate, 1992). While of itself the limiting of courts by the regime leader might not impact perceptions of the courts, coupled with the fact that the popularity of leaders is known to influence opinions of the court, perceptions of the courts in crisis regimes may be even more significantly influenced. Thus, while publicity to increase judicial legitimacy corresponds to transparency, court actions to increase legitimacy or state actions to limit the courts are not covered by the traditional corruption remedies. Therefore, consideration will need to be given to these factors.

### *Judicial Reform*

The importance of preventing and correcting judicial corruption, and the important role the judiciary has in preventing and correcting overall corruption, has been noticed. Groups such as Transparency International, the World Bank, and USAID have developed and implemented judicial



reform programs in various countries. These programs have focused on both infrastructure (buildings, supplies) and education (training of the judges as well as lawyers). Sadly, these programs have neither corrected judicial corruption nor increased confidence in the judiciary. The efforts in Latin America serve as testimony to the failure of reforms. In Peru, efforts by the World Bank to reform the judiciary were undermined by Fujimori (Doing, 1999). Both citizens and elites in Guatemala and El Salvador remain skeptical of the judiciary after the implementation of judicial reforms in those countries (Mainwaring and Welna, 2003). Another study of judicial reform in Latin America indicates that increasing judicial independence only served to increase opportunities for judicial corruption (Hammergren, 2000; Mainwaring and Welna, 2003).

Since these efforts were based on the importance of transparency, accountability, and equality, the results suggest that the standard reforms are not sufficient to control either judicial corruption or perceived judicial corruption. Groups experienced in judicial reform implemented reforms that are commonly believed to improve the judiciary yet, neither judicial legitimacy nor judicial corruption were significantly improved. Since the result is that the citizens still do not have a judiciary that they can trust to uphold the law fairly and equitably, the benefits of the reform efforts are called into question. However, these results are enlightening because they support the idea that correcting perceived judicial corruption is a necessary condition for the development of an effective and legitimate judiciary. It could be argued that, had the problems underlying the lack of judicial legitimacy and perceived judicial corruption in these three countries been corrected, reforms efforts would have, at a minimum, maintained that legitimacy or, in the best case, increased judicial legitimacy. Yet, until there is a better understanding of the factors influencing judicial legitimacy and perceived judicial corruption the reforms necessary to correct these problems cannot be developed. One step, which will be undertaken in the next section, is to better understand variations in perceived judicial corruption.

In summary, a review of the extant literature reveals that opinions of judicial legitimacy are both driven by perceived corruption and drive perceptions of judicial corruption. Since several factors, which are shown to influence opinion of judicial legitimacy, are not included in the traditional responses to

corruption (accountability and transparency), they will need to be included as the perceptions of judicial corruption are tested. Exploring the impact of these variables will improve our understanding of the dynamics of perceived judicial corruption. In particular, education, wealth (which can be used as a proxy for social development and redistributive needs), modernization of society, cultural diversity, popularity of the state leader, and regime type will be included in the testing.

## Hypotheses

As argued above, actual occurrences of corruption are hard to measure since it is in the best interests of the actors involved to hide corrupt acts. Therefore, this thesis will draw upon measures of perceived corruption, in particular, those provided by Transparency International. Three hypotheses will be tested.

The first hypothesis, which will determine whether or not there is a relationship between overall corruption and corruption in the judiciary, is that *as perceived overall corruption increases perceived judicial corruption increases*. It is important to understand this relationship to ensure that perceived judicial corruption cannot be explained away as a consequence of perceived overall corruption. The logic supporting this hypothesis, that perceived judicial corruption is correlated with a loss of legitimacy for the rule of law which leads to an increase in overall corruption, is based studies that demonstrate a relationship between actual judicial corruption and decreased business investment. Businesses will avoid investing in countries with high levels of corruption for two reasons. First, the increased transaction costs associated with corruption decreases the profit available to the business. The argument proceeds that as business in the country declines corruption becomes an avenue to supplement income, including judicial income. Second, if the judiciary in particular is corrupt it cannot guarantee the legal protections associated with contracts, patents, trademarks, and intellectual properties that businesses demand. This hypothesis will also serve as a control for a direct link between generally perceived corruption and perceived judicial corruption. There are two reasons why the two perceptions may be directly linked.

First, the judiciary may be guilty by association. Because citizens perceive a high degree of corruption in the country, they might implicate the judiciary, whether or not it deserves it, because it is an institution of the country. Second, it may be that judiciaries in countries with high levels of corruption are more likely to also be corrupt. To accept this hypothesis a positive, statistically significant relationship must exist between perceived overall corruption and perceived judicial corruption.

The second hypothesis, which will test the effectiveness of the generally accepted controls for corruption, asserts that *as the level of judicial transparency and accountability increase the level of perceived judicial corruption decreases*. A concern with this hypothesis is that it is attempting to project individual perceptions onto the overall population. However, it is the aggregate of individual preferences that determines the viability of the judiciary. If a minority of the population perceives the judiciary to be corrupt some of the time the overall judiciary will still be respected as legitimate. Conversely, if the majority of the population perceives the judiciary to be corrupt, judicial legitimacy will be in question despite the support of the minority. The logic behind this hypothesis is that corruption can only exist in hiding; therefore, the more opportunity there is to view the judicial process the less opportunity there is for corrupt acts to go undetected. Because a judicial system can have different types of transparency, this hypothesis will test three different methods that could be used to view the activities of the judicial system. First, access to judicial opinions provides the public insight into judicial logic and consistency. Even if all opinions are made available to the public, it is reasonable to expect that only a select few will take advantage of the availability. However, it is a reasonable expectation that availability of judicial opinions demonstrates that the judiciary is not attempting to hide its actions. Second, the more opportunity the public has to participate in the judicial process the more they can observe how the judiciary works. Again, this is making the assumption that the more the public can see of the judicial process the less they will perceive that the judiciary is attempting to hide its actions. Finally, the press can serve as a liaison between the judiciary and the public on a regular basis by reporting trials, decisions, and actions of the judiciary in terms that are easily understood by the public. Yet, a government-controlled press can be expected to suppress reporting of corrupt actions by the judiciary. Therefore, a free press increases

transparency. The hypothesis will be supported if there is a negative relationship between the method of judicial transparency and perceived judicial corruption.

Similarly, there can be a variety of methods used to hold the judiciary accountable either to the government or to a legal body. Unfortunately, this is a double-edged sword since an independent judiciary is necessary both to prevent and judge corruption. Two methods that are used to strike the balance between an independent and accountable judiciary will be used for the purposes of this study. First, the judiciary can be held accountable to the government if the government has the ability to remove justices for cause. Countries where another arm of government has the ability to remove judges for specific actions or types of actions will be considered to have a higher degree of accountability. A second method that is used to hold judges accountable for their actions is judicial oversight. In this situation, an independent legal organization monitors the actions of judges and takes appropriate measures where necessary. Existence of a judicial oversight mechanism will also be considered a situation with increased accountability. As with transparency, the hypothesis will be supported if there is a negative relationship between the method of accountability and perceived judicial corruption.

It is also possible that type of legal system used by the country influences perceived judicial corruption. This impact will be assessed with the third hypothesis which states that *perceived judicial corruption will be lower in countries based on a civil law legal system than in countries based on a common law legal system*. Civil law legal systems are code based and the role of the judiciary is to apply the code to the situation. Therefore, the laws are clearly defined and judges are limited in their ability to interpret the law. Conversely, common law systems are based on case law and, therefore, allow judges wider latitude for interpretation. Because interpretation could be used to support corrupt acts the argument will be made that civil law systems are more likely to deter corruption. A counter argument could be made the common law system's reliance on precedent would be more likely to deter corruption since it would highlight inconsistencies. However, the selection of precedent is also, arguably, an interpretation and, therefore, could be used to hide or support corruption. This hypothesis will be

supported if there is a negative, statistically significant relationship between judicial corruption and civil law systems.

Some countries accommodate religious law and courts to handle family law, although adjudication of this law only occurs in a limited set of courts in the country. However, since religious law and its jurisdiction would personally impact a broad range of citizens it is possible that it influences perceived judicial corruption. Therefore, a corollary to the third hypothesis will be that *perceived judicial corruption will be higher in countries that have religious law*. This hypothesis will be supported if there is a negative, statistically significant relationship between judicial corruption and civil law systems.

In summary, the following three hypotheses will be tested in this study:

H1: As perceived state corruption increases perceived judicial corruption increases.

H2: As judicial transparency and accountability increase perceived judicial corruption decreases.

H3: Perceived judicial corruption will be lower in countries with a civil law system.

H3A: Perceived judicial corruption will be higher in countries with religious law.

It might be argued that these hypotheses are attempting to explain individual perceptions through aggregate results. This is not untrue. However, since this is a first attempt at a quantitative, cross-national study the availability of data is limited. The ideal study would use individual surveys to identify the reasons for each individual's perception of corruption in the judicial system. Although the available data does not reach that ideal, the data for both perceptions of corruption and perceptions of judicial corruption is survey based. Since an in-depth survey requires an understanding of the questions to ask, this study contributes to that effort by identifying factors that vary with perceptions of judicial corruption and, therefore, can be used as the basis for future survey questions. Furthermore,, the goal of this study is to understand how the features of the judiciary impact the overall perception of corruption in the judiciary. It is probable that, no matter what is done or how infallible the judiciary, some portion of the population will perceive it to be corrupt. Conversely, some portion of the population will believe in the

judiciary despite numerous documented incidents of corruption. Problems occur when perceptions of corruption are widespread. This study will add to an understanding of the causes of widespread perceived judicial corruption.

### *Data and Methods*

The dependent variable across the three hypotheses is perceived judicial corruption. Judicial corruption perceived by the citizens is important because, as argued above, if citizens do not feel that they can get redress through the judiciary they will find alternate avenues for their complaints. Transparency International's Global Corruption Barometer survey asks citizens to indicate the importance of eradicating corruption across several institutions including courts.<sup>10</sup> Although this provides a measure of perceptions of the importance of corruption it is not without problems. Since this a measure of the perceived importance of judicial corruption as compared to other institutions within the same country it may be reflecting a particular situation within the country. For example, in a very poor country it may be possible that receiving medical services without having to pay a bribe is more important to citizens than corruption in the judiciary whereas in a developed country adequate medical services are readily available and, therefore, corrupt medical services do not

Eight independent variables are used to test the hypotheses. The first is perceived overall corruption, which is measured as the Transparency International Corruption Perception Index Ranking (CPI).<sup>11</sup> This is the independent variable in the first hypothesis. The next three variables measure transparency, which is one of the two independent variables in the second hypothesis. By reporting on the decisions of the judiciary, including both positive and negative aspects, the media offer transparency into the judiciary that is accessible to most citizens. But in order for the media to provide effective transparency there must be a high level of freedom of the press. Therefore, the second independent variable is the Freedom House Freedom of the Press score.<sup>12</sup> It might be argued that transparency requires the ability of citizens to access information about the court cases. However, if the press can

freely report on the cases the information will be available to the citizens. Consequently, Freedom of the Press will be serving a dual measurement purpose.<sup>13</sup> The third independent variable is whether or not citizens can review judicial decisions.<sup>14</sup> Another measure of transparency, and the fourth independent variable, is the level of citizen involvement in the judicial process.<sup>15</sup> The fifth independent variable is the final transparency variable and is a measure of judicial review. This variable includes a measure of both appeals through the legal system and an independent or peer review of cases.<sup>16</sup> The next two independent variables are used to measure accountability. The first measure of accountability, and sixth independent variable, is whether or not justices are subject to removal from office if they violate laws.<sup>17</sup> Another measure of accountability, and seventh independent variable, is whether the behavior of judges is subject to review by an oversight group.<sup>18</sup> The eighth independent variable is the independent variable in the third hypothesis and is the type of legal system. Legal systems can be classified as common law, civil law, religious law, traditional law, or mixed. This hypothesis will be tested with both civil law and religious law.

### *Controls*

As explained above several factors can influence the opinion of the legitimacy of the courts that are not included in the standard corrections for corruption (e.g. transparency and accountability). Although legitimacy is not the same as corruption and may have causes other than corruption, it is plausible that increased levels of corruption could lead to decreased judicial legitimacy. As a result, this study will control for effects of legitimacy.

Three control variables will be used in the hypothesis tests. The first control variable is wealth, measured as the per capita GDP for the country. Per capita GDP is being used to ensure a measure of individual wealth rather than overall country wealth, which would be indicated by base GDP. The difference is being made to reflect the relationship between low salaries and corruption, since corruption has been shown to be more prevalent at lower levels of income (Eigen, 1996). Cultural diversity is the second control variable. Although this could be measured in several different ways, for the purposes of

this study it will be measured as the number of official languages in the state.<sup>19</sup> Measuring cultural diversity in this way will miss situations where the same language is spoken but there are other aspects that render certain groups culturally distinct. However, language cleavages are arguably the most difficult to bridge since a difference in language makes communication more difficult. Using this measure also captures those instances where other features are similar except the language, such as the English/French divide in Canada. The importance of common language in the legal system is supported by the fact that the United States was found in violation of the Vienna Convention on Consular Relations by the International Court of Justice when Mexican nationals were not immediately notified of their right to Consular notification immediately upon arrest despite the fact that Spanish is one of the two recognized languages in the United States.<sup>20</sup> Third, popularity of the state leader is measured as support for the leader.<sup>21</sup>

Although prior research suggests additional controls, such as education, modernization, and regime type, it was found that these were correlated with the controls listed above (GDP, cultural diversity, and support for the leader). Education, which has been related to trust in the legal system (Gibson and Caldeira, 1996), can be operationalized as the number of years of schooling completed by children. Previous studies operationalized traditional versus modern societies as commitment to religion (Gibson and Caldeira, 1996) however very religious societies, such as Israel, can also be very modern which may skew the data.<sup>22</sup> Since Internet access requires both technology infrastructure and personal technology acceptance it measures both the modernization of the state as a whole and individual acceptance of modern technologies, and is used to represent modernization in this study. Finally, regime type is measured based on whether or not the government is listed by Freedom House as democratic.<sup>23</sup> A Pearson Correlation indicates that, as operationalized above, education, internet availability, and regime type are correlated with Real GDP per capita at a statistically significant level.<sup>24</sup> In addition, there is also a strong correlation between Real GDP per capita and freedom of the press.<sup>25</sup> Given the strong correlation of these variables, including all of them in the models would likely result in the results of the models being understated and acceptance that there is not a relationship when one existed. Conversely,



not including the variables in the models increase the risk that explanatory variables are ignored. To resolve this dilemma all models were regressed with and without the correlated variables and a Block F Test was performed to determine the impact of the correlated variables. For all models the Block F Test failed to achieve statistical significance indicating that the correlated variables added little explanatory power to the models. Therefore, GDP per capita will be the control variable used to represent wealth, modernization, education, and regime type. Also, since Freedom of the Press is a transparency measure, when it is used in the model real GDP per capita will be excluded. It is acknowledged that these variables are not an exact proxy for the variables being dropped however the resulting model will be generally representative as well as parsimonious.

These controls will serve two purposes. First, they will ensure that the measure of perceived corruption is a function of corruption rather than a function of other influences. This is considered true if the control variables do not achieve statistical significance when the hypotheses are tested. However, if any of these variables achieve statistical significance then they must be considered as explanations for perceived corruption. Therefore, these variables will help provide explanations as to why the hypotheses are not true.

### **Empirical Tests**

A statistical test of the hypotheses is done using Ordinary Least Squares regression analysis. The advantage of this method is that it will identify the individual impact of one variable on the dependent variable holding all other variables constant, assess its statistical significance, and provide a measure of the variation explained by the model. There are, unfortunately, two disadvantages. First, several of the variables are dichotomous or scalar which limits the explanatory power of the statistical model. Second, correlation does not necessarily mean causation. Therefore, care must be taken in extrapolating the results of the variables. Since the hypotheses are testing current perceptions of corruption a single cross-sectional sampling of the data has been taken. This method was chosen for two reasons. First, there is little variation in the CPI scores and rankings over the last five years indicating that there would be little

benefit from doing a time-series analysis of the data. Second, this study attempts to identify what causes variations in perceived judicial corruption. By looking at a single point in time, analysis can be done on the variations existing at the chosen point in time.

Two cautions must be noted. First, the data used in this study is limited and imperfect. While this will prevent decisive conclusions it will provide insight for future research. Second, although the dependent variable, perceived judicial corruption, is at an individual level the independent variables, such as GDP and legal system, are measured at a country level. This implies that aggregate measures can explain individual perceptions. Given the limited nature of available data, the research objective is to identify perceptual patterns and to begin the process of empirically isolating the causes of cross-national variation.

The tests of the hypotheses will proceed in two subsections. First, the results of the empirical tests will be reported without interpretation or discussion to allow the reader to assess the validity of the tests. Interpretation and discussion of the results will be done in the second section. This will be followed by a test the hypotheses against the comparative cases.

### *Hypotheses Tested*

Results of the first hypothesis, that perceived judicial corruption increases as perceived corruption increases, are displayed in Table 2. As can be seen none of the variables achieve statistical significance at the  $p < .05$  level, although Real GDP per capita falls just short of the threshold. The direction and magnitude of the relationship merits attention. All variables demonstrate a negative relationship, indicating that perceived judicial corruption increases as perceived overall corruption, number of languages (cultural diversity), real GDP per capita, and support of the current government decrease. Furthermore, a one-point change in any of the values will result in less than half a point change in perceived judicial corruption. Based on the  $R^2$  the model would only correctly predict 13% of the variance in the dependent variable. Therefore, this hypothesis must be rejected in favor of the null hypothesis.

**Table 2: Regression Analysis of Perceived Judicial Corruption**

Dependent Variable: Perceived Judicial Corruption	
Independent Variables	b (se)
Constant	32.908** (9.680)
Perceived Overall Corruption*	-.134 (.081)
Languages	-.144 (.504)
Real GDP per capita	-.001 (.000)
Government Support	-.393 (.302)
<hr/>	
R <sup>2</sup>	.133
Adjusted R <sup>2</sup>	.013
F	1.261
N	43
p < .01	

\*Operationalized as the CPI rank.

The test of the second hypothesis, that perceived judicial corruption decreases with increased levels of transparency and accountability, is presented in Table 3. In this model only one of the independent variables, the ability to remove judges, is statistically significant at the  $p < .05$  level. Again, the direction of the variables is worthy of note. Perceived judicial corruption increases at lower levels of citizen participation and judicial oversight as expected. However, perceived judicial corruption also increases as the ability to remove judges and the breadth of judicial review increase. This model is also more predictive than the model used to test the first hypothesis since it is able to predict 24% of the dependent variable. The strong impact of the variables is also important. The change from citizens not participating to participating at some level decreases judicial corruption by 2 points. Moving from no ability to review or remove judges to holding judges accountable at some level increases perceived judicial corruption by more than 3 points each. And moving from having no oversight to having at least some level of oversight will decrease perceived judicial corruption by 1.5 points. The accountability

aspect of the second hypothesis can thus be accepted although the transparency aspect must be rejected in favor of the null hypothesis.

**Table 3: Regression Analysis of Transparency and Accountability**

Dependent Variable: Perceived Judicial Corruption	
b	
Independent Variables	(se)
Constant	12.229 *
	(5.819)
Citizen Participation	-2.170
	(2.080)
Judge Review	3.149
	(3.925)
Judge Removal	3.729*
	(1.585)
Oversight	-1.560
	(2.012)
Languages	-.412
	(.520)
Freedom House Press Freedom	-.040
	(.087)
Government Support	.267
	(.301)
R <sup>2</sup>	.245
Adjusted R <sup>2</sup>	.042
F	1.208
N	43
*p < .05	

Tests for the third hypothesis, that perceived judicial corruption is lower in countries with a civil law system, are displayed in Table 4. This model is less predictive than the model testing hypothesis two by predicting 19% of the variance in the dependent variable, but it is still more predictive than the first hypothesis. Civil law is statistically significant at the  $p < .05$  level and in the anticipated direction; perceived judicial corruption will be 7 points higher in civil law countries all other things being equal. Therefore, the third hypothesis concerning civil law can be accepted.

The results of the test of the corollary for the third hypothesis, that perceived judicial corruption will be higher in countries with religious law, are presented in Table 5. As can be seen, the results parallel

the results of the civil law hypothesis. The religious law variable achieves statistical significance and the coefficient is negative indicating that countries with religious law have increased perceptions of judicial corruption. The magnitude of this difference is also striking; perceived judicial corruption in countries with religious law will be 11 points lower all other things held constant. Therefore, this corollary hypothesis can also be accepted.

**Table 4: Regression Analysis of Legal System**

Dependent Variable: Perceived Judicial Corruption	
Independent Variables	b (se)
Constant	8.553* (3.971)
Civil Law	7.645* (3.047)
Languages	.164 (.493)
Freedom House Press Freedom	-.079 (.080)
Government Support	.101 (.270)
<hr/>	
R <sup>2</sup>	.195
Adjusted R <sup>2</sup>	.084
F	1.758
N	43
* p < .05	

**Table 5: Regression Analysis of Legal System**

Dependent Variable: Perceived Judicial Corruption	
Independent Variables	b (se)
Constant	14.664 ** (2.922)
Religious Law	-11.050 * (4.849)
Languages	.347 (.530)
Freedom House Press Freedom	-.017 (.080)
Government Support	-.157 (.270)
<hr/>	
R <sup>2</sup>	.169
Adjusted R <sup>2</sup>	.055
F	1.476
N	43
**p < .001   * p < .05	

### *Discussion*

Two points were indicated by the statistical analysis. First, the type of legal system is statistically significant and has a strong impact on perceived judicial corruption. Since civil law is code based law it was expected that knowledge and understanding of the law would lead to decreased perceptions of judicial corruption since the actions of the judiciary could be judged against stated codes, an expectation supported by the model. Conversely, religious law had an inverse relationship to perceived judicial corruption, indicating that the presence of religious law in the legal system is associated with higher levels of perceived judicial corruption. This indicates that the type of legal system influences perceptions of judicial corruption, an influence ignored by the standard solutions of accountability and transparency. Second, the only accountability variable to reach statistical significance was the ability to remove judges, although the relationship was opposite expectations. According to the model, perceived judicial corruption increases with the ability to remove judges. One possible explanation for the direction of this relationship is that if a judge is removed for corruption other members of the judiciary are guilty by

association. An alternate explanation is that the ability to remove judges was introduced to the country either as a result of past experiences with judicial corruption or because the country is concerned about controlling judicial usurpation of power. Additional research is required to better understand this relationship.

Although the models do not fully explain the perception of judicial corruption (as indicated by the low predictive ability of most models), these results are not surprising for two reasons. First, as mentioned, general perceptions are much harder to predict than the relationship between specific perceptions and specific actions. Second, the model is attempting to explain an aggregate perception. Rather than attempting to explain why a single citizen, or even a specific group of citizens, perceives a judiciary to be corrupt, this model is assessing the perceptions of the citizens of country. Therefore, the influences on these perceptions can be as broad as the characteristics of the citizens and their experiences.

Despite these problems this statistical exercise has demonstrated that perceived judicial corruption is influenced by more than just transparency and accountability. The comparative studies that follow will attempt to validate these statistical findings and further clarify the factors that influence perceived judicial corruption.

### **Comparative Cases**

Assessing the statistical relationship between various attributes of corruption is enlightening, but it does not indicate why citizens in some countries perceive more judicial corruption than citizens in other countries, particularly in conjunction with the overall level of corruption. One answer could be that a society with high levels of corruption will choose to eliminate corruption in areas that most impact their daily lives such as the police, utilities, or medical services. Yet this answer does not explain those countries that have the same level of perceived overall corruption but differ significantly in their concern with judicial corruption. Consequently, specific comparisons are made to identify factors that may be contributing to these perceptions.

The original hypothesis is that countries with high levels of overall corruption would be more likely to have higher levels of perceived corruption in the judiciary. Using the Transparency International Corruption Perception Index as a measure of overall corruption and the Global Corruption Barometer as a measure of judicial corruption, countries were ranked according to high and low levels of judicial and overall corruption.<sup>26</sup> The results are displayed in Table 6. Several points are noticeable. First, the location of two countries, Finland and Nigeria, is surprising. Finland is ranked as having the least corruption yet only three other countries have a higher level of judicial corruption. Nigeria is just the opposite. It ranks as having the highest level of overall corruption yet has the fourth lowest level of court corruption. Second, there is a pattern of country placement. The Eastern European countries are clustered in the high corruption/high judicial corruption category. The low corruption/high judicial corruption category contains primarily Western European and Scandinavian countries most of which belong to the European Union. Third, several countries that rank identically in corruption overall have significantly different (two or more times) levels of perceived judicial corruption. Most notable are Israel and Japan, Colombia and Peru, and Poland and Mexico.

These results raise several questions. What causes countries to have the same overall perceived general corruption but different perceived judicial corruption? Why do the Scandinavian countries have such perceived high judicial corruption? Why does Nigeria have such low perceived judicial corruption? The more narrowly focused, case intensive portion of this thesis will attempt to answer these questions through a more thorough inspection of the judiciary of these countries driven by the hypotheses already presented. Three situations are researched. The first is the situation where there is perceived high overall corruption (ranked 120 or above) but differences in perceived judicial corruption (more than twice the perceived level of judicial corruption). Nigeria (overall corruption ranking 132; judicial corruption 4.8) is compared to Cameroon (overall corruption ranking 124; judicial corruption 12.4). These countries were chosen both because they are at the highest level of overall corruption and because they are geographically in the same area. The common geography helps narrow the variations in political history and development. Both of these countries were under colonial rule, both achieved independence in 1960,



**Table 6: Ranking of Countries by Perceived Judicial Corruption, Perceived Overall Corruption, High Confidence in the Legal System, and No Confidence in the Legal System**

Perceived Court Corruption										
High					Low					
High	Country	Court	CPI	High Conf	No Conf.	Country	Court	CPI	High Conf.	No Conf.
	Bulgaria	19.8	54	9.2	25.2	Costa Rica	8.6	50		
	Croatia	21.6	59	9.6	6.7	South Korea	10.3	50	8.8	5.9
	Peru	35.0	59	7.1	28.1	Colombia	3.4	59	14.7	17.8
	Poland	15.4	64	11.9	10.7	Mexico	6.6	64	10.2	25.5
	Panama	15.0	66			Dominican Rep.	12.1	70	4.0	29.2
	Bosnia	17.0	70	20.4	4.8	Turkey	6.6	77	29.8	12.1
	Romania	20.2	83			India	3.8	83	22.2	4.8
	Argentina	19.2	92	7.1	25.2	Russia	10.9	86	8.6	19.2
	Macedonia	15.4	106	11.1	27.1	Guatemala	8.0	100		
Perceived Overall Corruption	Indonesia	32.8	122			Nigeria	4.8	132	24.0	13.4
	Georgia	18.1	124	3.1	22.5					
	Cameroon	31.0	124							
Low	Country	Courts	CPI	High Conf.	No Conf.	Country	Courts	CPI	High Conf.	No Conf.
	Finland	27.7	1	13.8	5.4	Netherlands	10.0	7		
	Denmark	16.3	3			Switzerland	9.8	8	9.8	6.1
	Sweden	16.2	6	7.0	4.4	Canada	8.3	11		
	Norway	12.3	8	9.6	3	United Kingdom	8.6	11		
	Luxembrg	18.1	11			Austria	8.4	14		
	Israel	14.8	21			Germany	8.6	16		
	Spain	26.6	23	7.9	11.6	Ireland	8.8	18		
	Portugal	14.8	25			United States	9.1	18	6.3	13.1
	Italy	18.0	35			Japan	3.7	21	16.5	1.7
					Malaysia	8.5	37			
					South Africa	3.9	48	20.1	13.2	

CPI: Corruption Perception Index score

Source: Transparency International

Courts: Percent who responded Courts when asked “If you had a magic wand and you could eliminate corruption from one of the following institutions what would be your first choice?”

Source: Transparency International

High Conf: Percent responding that they had a high degree of confidence in the courts.

Source: World Values Survey

No Conf: Percent responding that they had no confidence in the courts.

Source: World Values Survey

and both are struggling to transition to democracy.<sup>27</sup> The second situation is that of low perceived overall corruption (ranked 7 or below) and differences in perceived judicial corruption. This situation will compare Finland (perceived corruption ranked 27.7, the fourth highest of all the countries) with the Netherlands (perceived corruption ranked 10). Both countries are members of the European Union (the Netherlands was a founding member and Finland joined in 1995) and have accepted the Euro<sup>28</sup> and, therefore, are subject to high financial standards. Both countries are also members of the Organization for Economic Cooperation and Development (OECD).<sup>29</sup> Both are given the highest ratings for both political rights and civil liberties by Freedom House.<sup>30</sup> Given these similarities it would be expected that perceived judicial corruption would be similar. Finally, there is the situation where countries are ranked identically for overall corruption yet very differently for judicial corruption. Mexico and Poland have very different backgrounds but rate the same in perceived overall corruption while having more than twice the difference in perceived judicial corruption (Mexico's ranking is 6.6 while Poland's is 15.4). These countries are both members of the Organization for Economic Cooperation and Development (OECD),<sup>31</sup> share the same Freedom House Civil Liberties and Freedom ratings,<sup>32</sup> and both are considered republics.<sup>33</sup> Yet there are differences. Poland is still considered both a "nation in transit" and a democratic country according to Freedom House.<sup>34</sup> Conversely, although Mexico is not considered "in transit" Freedom House ranks it as having a "restricted democratic practice"<sup>35</sup> reflecting the control of elections and access to the media by a dominant political party. Based on these similarities and differences it might be expected that these two countries would either have similar perceived judicial corruption or, since Mexico is rated as a "restricted" democracy, that Mexico's perceived judicial corruption would be higher.

These countries will be compared in two ways. First, the variables used for the quantitative portion of the study will be compared across each of these countries. This will provide insight into the individual variances of the variables. Second, looking at a limited set of countries allows more in-depth analysis of the judicial systems. This allows a refinement of the third hypothesis that perceived judicial corruption is influenced by the legal system. Internationally, a range of judicial options is being applied

to particular cases. Truth and reconciliation committees and special tribunals are being used to bring justice to post conflict countries. Countries under military influence allow military courts greater jurisdiction. Since it is possible that these types of courts can influence the perception of corruption, these countries will be compared on whether or not they have experienced alternate judicial impacts. And since alternate judicial experiences such as Truth and Reconciliation Commissions and International Criminal Tribunal are implemented to bring justice for extreme human rights violations and are operated under the supervision of the United Nations, it will be expected that they will result in decreased perceived judicial corruption. This will be tested with the sub-hypothesis that *an alternate judicial experience will decrease perceived judicial corruption*. A second comparative variable will be the scope of military courts. Countries with a military also have a military court. However, the jurisdiction of the military court may differ between countries being limited only to military actions at a minimum and encompassing civilian action at a maximum. By nature, military courts are less transparent than civilian courts and, therefore, the sub-hypothesis that *increased use of military courts will increase perceived judicial corruption*. Finally, many countries today are in the process of transition. Some are ending a civil conflict. Some are transitioning from communism to democracy. And some are struggling to consolidate democracy. One implication of these changes is that the judicial system in existence today may be the result of recent changes. The change in judicial systems, the prior judicial system, or both may impact perceived judicial corruption. If there is an impact, it is reasonable to expect that the influence of the impact will last roughly one generation, which, for the purposes of this study, will be equated with 20 years. This change can be the result of the overthrow of a repressive government, as is the case in Eastern European countries, in which case it would be expected that there would be a decrease in perceived corruption. However, the change could also be the result of a leader implementing changes to assure the support of the judiciary, as was the case in Latin America (Finkel, 2004). Therefore, this will be tested with the sub-hypothesis that *a variation in judicial system within the last 20 years will be associated with a variation in perceived judicial corruption*.

**Table 7: Comparative Analysis Variables**

Country	Press Freedom	Citizen Access	Citizen Involvement	Judge Removal	Judge Oversight	Civil Law
Nigeria	53	200	Religious Courts	None	Broad	No
Cameroon	65	40	Traditional Courts	Any Offense	Professional	No
Netherlands	15	3900	None	None	None	Yes
Finland	10	1927	As judges	Impeachment	Professional	Yes
Mexico	38	2712	None	None	None	Yes
Poland	18	2800	As judges	None	Broad	No

Press Freedom is the Freedom House Freedom of Press score.

Citizen Access measures citizen access to information operationalized as the number of internet users truncated to the thousands.

Citizen Involvement indicates whether or not citizens are involved in the judicial process.

Judge Removal indicates whether or not judges of the country's high court are subject to removal.

Judge Oversight indicates the types of judicial oversight in the countries.

Civil law indicates whether or not the country is a civil law country.

### *Comparative Results*

Table 7 lists the values of the variables used to test the hypotheses above for each of the pairs of countries. For each pair, the country listed first is less concerned about correcting corruption in the judiciary than the country listed second. The table illustrates that none of the values is predictive. Both citizen involvement (in any capacity) in the judicial process and the ability to remove judges is consistent for all of the countries that are less concerned about judicial corruption. In Nigeria, which has separate hierarchies for religious and public courts, citizens are involved only in religious courts. Similarly, in Cameroon citizens are involved only at the traditional court level. The Netherlands, and Mexico have little citizen involvement. Finland and Poland, both of which are more concerned about judicial corruption than their partner country, involve citizens as judges. Nigeria, the Netherlands, and Mexico have little ability to remove judges. Yet Poland, with more than double the perceived judicial corruption of Mexico, also has little ability to remove judges. The two countries with the greatest ability to remove judges are also the two countries with higher perceived judicial corruption. In two cases, the countries with higher perceived judicial corruption, Finland and Poland, are considered to have a freer press than

the countries with lower perceived judicial corruption. Cameroon follows the expected pattern since it has higher perceived judicial corruption and its press is considered less free than Nigeria's. The range of difference in Freedom of the Press scores is also notable. Nigeria and Cameroon, and the Netherlands and Finland have Freedom of the Press scores within 10 points of each other. Mexico and Poland, on the other hand, have a 20-point difference between their scores. Consequently, there is no discernable pattern between Freedom of the Press and perceived judicial corruption. In two cases the country with the lower perceived corruption has greater access to information, Nigeria and the Netherlands. Here Poland is the exception because it has more access to information than Mexico but also has a higher level of perceived judicial corruption. However, the difference is very small, particularly when compared to the extreme differences between the other pairs of countries. Judicial oversight varies considerably among the countries. Nigeria (lower perceived judicial corruption than Cameroon) has more ability to exercise judicial oversight than Cameroon, where judicial oversight is performed only by a professional organization. Conversely, Poland and Finland (higher perceived judicial corruption) have the ability to exercise judicial oversight while Mexico and the Netherlands have no judicial oversight. There is also no pattern as to the type of law. Both Nigeria and Cameroon are mixed law countries, Nigeria having common, customary, and religious law and Cameroon having civil, common, and customary law. Both the Netherlands and Finland are civil law countries. However, Mexico and Poland do support the third hypothesis since Mexico, with lower perceived judicial corruption, is a civil law country while Poland, with higher perceived judicial corruption, is not.

This qualitative test of the hypotheses provides some insights into perceived judicial corruption. Contrary to expectations, countries with lower perceived judicial corruption are more likely to have lower levels of citizen involvement and less ability to remove judges. This directly contradicts accepted theory as well as the second hypothesis that greater accountability will lead to lower perceived judicial corruption. The variables also indicate that access to information can lead to lower perceived judicial corruption. This finding offers support for the second hypothesis that greater transparency leads to decreased perceived corruption. However, none of these variables achieved statistical significance in the

model. This indicates that further research is needed to better understand the extent to which these variables impact perceived judicial corruption. To further understand the impact of the legal system the three sub-hypotheses will be assessed.

The first sub-hypothesis, that an alternate judicial experience will decrease perceived judicial corruption, can only be tested with the cases of Nigeria and Cameroon since Finland, the Netherlands, Mexico, and Poland have not had alternate judicial experiences. Nigeria had an alternate judicial experience that was not duplicated in Cameroon. The Human Rights Violations Investigation Commission in Nigeria completed its work in 2002.<sup>36</sup> This experience allowed Nigerians to see that courts can bring justice to elites for serious human rights violations. Since Nigeria has lower perceived judicial corruption it supports this hypothesis.

Nigeria and Cameroon also offer the only test of the second sub-hypothesis, that increased use of military courts will lead to increased perceived judicial corruption, since military courts are not used for civilian purposes in Finland, the Netherlands, Mexico, or Poland. The military is able to prosecute civilians in Cameroon but not in Nigeria. Therefore, since perceived judicial corruption is higher in Cameroon than Nigeria this hypothesis is also supported. Yet, a more detailed look at the court system within each of these countries indicates that there are differences in the structures of the courts, which may have the same result as a military court. Cameroon's judicial system allows traditional chiefs to have private courts, a feature that is not duplicated in Nigeria. Since the chief's courts are private with private methods of punishment and no documented case law, it is reasonable to expect that their impact on perceived judicial corruption is similar to that of military courts.

The third sub-hypothesis, that a change in the judicial system within the last 20 years will result in increased judicial corruption can be tested by Mexico and Poland since none of the other countries have experienced significant changes in their judiciary in the last 20 years. Since emerging from communist rule in the 1990s, Poland has experienced a change in both laws and the structure of the judiciary. Since the changes are being introduced gradually<sup>37</sup> Poland's judiciary is not stable and is still

contains Communist vestiges. Conversely, the judiciary in Mexico, which is perceived as less corrupt than Poland's, has remained stable, as the hypothesis expects.

Since none of these hypotheses explain the difference in perceived corruption between Finland and the Netherlands, further analysis of the two judiciaries indicate two notable differences. The Netherlands has a strictly hierarchical judicial structure, judges are appointed by the Monarchy and serve for life, and judicial review is not allowed by the Constitution. Finland has a dual judicial system (one for civil matters and one for criminal matters) and judges are appointed by the President and are tenured. Finland's Constitution does not take a stand on judicial review but does provide for a committee within the Parliament to ensure the constitutionality of enacted laws. Consequently, there are two differences between the countries. First, the Netherlands, with the lower perceived judicial corruption, does not allow judicial review. Second, the structure of the two judicial systems differs with the system in the Netherlands, where the judiciary is perceived as less corrupt, being more straightforward since it is strictly hierarchical. These differences indicate that structural and procedural aspects of the judicial system should be assessed in more detailed research.

In summary, the statistical findings, that the legal system influences perceived judicial corruption, are supported by these qualitative findings. These case comparisons illustrate that structure of the court system and the judicial process can differentiate levels of perceived judicial corruption. Notably the measures of transparency and accountability produced mixed results, also supporting the unexpected results of these measures in the statistical model. Therefore, rather than supporting the corruption literature which states that transparency and accountability matter, these findings support findings by Tyler (Tyler et al, 1991, 1989; Tyler, 2000, 1994) that experiences with the judicial system make a difference in perceptions of judicial corruption.

These comparisons also indicate four research paths to a better understanding of the causes of perceived judicial corruption. First, the relationship between perceived judicial corruption and citizen involvement in the judicial process needs to be better understood. The original expectation was that citizen involvement in the judicial process would increase transparency and, therefore, decrease perceived

judicial corruption. However, comparison of the variables used to test the primary and sub-hypotheses indicate this might not be the case. This is important because the results may influence the types of judicial reforms implemented. Second, the findings in this section support the hypothesis that increased transparency, operationalized as increased access to information, occurs in the countries with lower levels of perceived judicial corruption despite the lack of support that this hypothesis received from the same variable in the statistical model. Consequently, further research is needed to determine the exact relationship between these two variables. Third, the relationship between the jurisdiction of military courts and perceived judicial corruption requires more research. Although the military court variable is only applicable in Cameroon, many countries transitioning to democracy, particularly in Latin America and Africa, have vestiges of military rule. In addition, the existence of private courts for the traditional chiefs in Cameroon indicates that the research needs to look beyond just military courts to include other types of courts outside the state judicial system. Finally, the information from Poland, Finland, and the Netherlands indicates that the impact of the structure of the judicial system and judicial process on perceived judicial corruption needs to be considered. This is important because these aspects of the judiciary are outside non-transitional judicial reform efforts.

## **Conclusions**

Several important findings emerge from this research. First, the relationship between perceptions of judicial corruption and traditional remedies for corruption is not as robust as it is often portrayed. In particular, factors that are used to hold judges accountable, such as citizen participation, removal of judges, review of judges, and oversight, need closer study since these factors varied in their impact on perceived judicial corruption. Conversely, access to information, a traditional remedy for transparency, was associated with lower levels of perceived judicial corruption in the comparative cases. If judicial reforms are aimed at addressing these transparency and accountability factors without understanding the impact on perceived judicial corruption, the reforms may not resolve the consequences of perceived judicial corruption. Second, the models indicate that countries with the civil law tradition may have more



perceived judicial corruption than countries with common law traditions and countries with religious law systems may have less perceived judicial corruption. Further research in this area is needed to determine the exact impact of the legal tradition including the impact of legal systems that are mixed with religious and common law. Third, the impact of alternate judicial experiences and non-national judicial systems, such as military or tribal courts, on perceived judicial corruption requires further study. This is particularly relevant for special commissions and tribunals since these efforts are aimed at rectifying past wrong and improving confidence in the current system. Finally, the comparison of countries indicates that judicial structure and process may influence perceptions of judicial corruption. If these factors impact the way citizens perceive the judiciary yet they are not addressed during judicial reforms, the ability of the reforms to build success in the judiciary may be compromised.

It is important to reiterate that this study sought to identify variables that potentially impact aggregate perceived judicial corruption rather than exact explanations for individual perceptions of corruption in an effort to focus future research. Identifying exact factors that determine whether or not the citizens of a country perceive the judiciary to be corrupt requires direct feedback from the citizens. Without the direct explanation from the citizens, an effort that would be quite substantial, studies can do no more than point at possible causal factors.

This study was successful in providing additional insight into factors that influence citizens' perception of judicial corruption, factors which have not been considered in prior research. Of particular interest are the potential influences of culture and the judicial system. Current judicial reforms address administrative and judicial education issues. They do not completely restructure the judicial process and system, except where the countries are migrating from Soviet rule, and they do not address cultural factors, such as respect for the law or military, traditional, religious, or private judicial systems. These factors not only impact perceptions of the judicial system, they impact the values and norms that influence the use, imposition, and acceptance of the judicial system. Therefore, if judicial reforms are to increase the rule of law and combat corruption in all areas of the society, these factors need to be as much of the reform process as the administrative and educational efforts.

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<sup>1</sup> World Values Survey numbers combine people indicating either no confidence or not very much confidence in the legal system. A total of 1,211 people responded to the survey. 636 of the respondents indicated “not very much confidence” in the legal system and 329 indicated “no confidence” in the legal system.

<sup>2</sup> Based on reporting from BBC at <http://news.bbc.co.uk/2/hi/africa/3648895.stm>.

<sup>3</sup> Reported by Freedom House at <http://www.freedomhouse.org/ratings/index.htm>.

<sup>4</sup> Mauro used measurements provided by Business International of the impact to business of both corruption and Legal system efficiency and integrity. Although these measures are checked by Business International for accuracy and efficiency they are based on assessments made by Business International analysts and correspondents based in the country and are, therefore, subjective. However, Mauro feels that the price paid for the reports by businesses is “evidence for the accuracy and relevance of the indices”. He further feels that these measures are an appropriate proxy for investor assessment of the business environment of the country.

<sup>5</sup> Reported by Freedom House at <http://www.freedomhouse.org/ratings/index.htm>.

<sup>6</sup> The question posed was “If you had a magic wand and you could eliminate corruption from one of the following institutions what would be your first choice?”

<sup>7</sup> Statistics are from the Global Corruption Barometer 2003 that consisted of a household survey of 40,808 people across 47 countries asking respondents which institution would be their first choice from which to eliminate corruption.

<sup>8</sup> Statistics are from the World Values Survey 1995-1997 which asked respondents to rank confidence in the legal system as great deal, quite a bit, not very, none, or don’t know. “Don’t know” responses were not included in the calculation of the percents to ensure that the figures accurately represented the respondents at the two margins.

<sup>9</sup> Another possibility is, of course, that there is an error in the survey, thus producing biased and misleading results. Care has been taken, however, to compare results from various sources including Transparency International, World Bank, and World Values Survey. Concern with the judiciary is voiced across the sources lending credence each of the individual sources. Refer to Table 5 discussed below.

<sup>11</sup> The Corruption Perception Index (CPI) is based on several different sources including business, expert, and citizen views. The result is a calculated number specific to the country but which can be compared across countries. The ranking is being used here since it is a scalar, meaningful number.

<sup>12</sup> The Freedom of Press score does not provide a direct measure of press reporting of judicial decisions. However, based on the assumption that a free press will freely and fairly access and report decisions, this will serve as an adequate proxy measure. The Freedom of Press score is unique to each country and can be compared across countries.

<sup>13</sup> To verify that this was an appropriate conclusion a variable was constructed that indicated whether judicial information (including case decisions) could be easily accessed via the internet. The Pearson correlation between this variable and the Freedom House Freedom of the Press was .414 with a significance of .006 indicating that the correlation was statistically significant at the  $p < .01$  level.

<sup>14</sup> This is a constructed dichotomous variable that indicates whether or not decisions can be easily accessed. Ease of access was based on the ability to view decisions via the internet. This method was chosen because it would provide greater access to decisions than having to access bound volumes of decisions in a library or other limited locations. An argument could be made that use of decisions would be based on such factors as education, literacy, and infrastructure. The assumption used here is that if the decision is available it can be monitored and reported at some level and, therefore, will overcome any hindrances caused by the other factors. The variable was coded 0 if decisions could not be accessed and 1 if access was available.

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<sup>15</sup> This is a constructed variable. Three points are used to measure participation. If citizens do not participate in the judicial process it is coded as zero (0). If citizens participate at some level, such as jurors, it is coded as one (1). And if citizens participate as judges it is coded as two (2).

<sup>16</sup> This is a constructed dichotomous variable. A zero (0) indicates that there is no judicial review while a one (1) indicates that there is a review either through the judicial system (for example, by virtue of an appeals process) or by an independent group or both. An argument could be made that there is a different level of transparency in appeals versus independent or peer review. For the purposes of this study the level of detail provided by separating these types of review is not needed.

<sup>17</sup> This is a dichotomous variable that is coded zero (0) if judges are not subject to removal and one (1) if they are. Information about removal was based on the country's constitution and/or descriptions of the legal process by the United States Department of State (<http://www.state.gov>) and legal information available on the Jurist website at <http://jurist.law.pitt.edu/worldlaw>. The definition of removal used for this study was that judges could be removed from the bench in the case of misconduct either through the process of impeachment or as a upon conviction of a crime or misconduct. An argument could be made that increased flexibility in removing judges from the bench would increase perceived and actual judicial corruption because it would decrease the independence of the judiciary and, therefore, this variable should measure levels of removal. A counter argument is that independence of the judiciary is undermined as much or more through appointments and personal pressure by the executive. Since the purpose of this study is to determine whether or not there is a relationship the dichotomous values will be used with the caveat that the extent of this relationship requires further study.

<sup>18</sup> This is a dichotomous variable, which is coded as zero (0) if there is not an oversight group and one (1) if an oversight group exists. For the purposes of this study an oversight group is defined as a body, either governmental such as an Ombudsman or professional such as a Bar Association, that regulates and monitors judicial behavior. Coding is based on information in the country's constitution and/or descriptions of the legal process by the United States Department of State (<http://www.state.gov>) and legal information available on the Jurist website at <http://jurist.law.pitt.edu/worldlaw>.

<sup>19</sup> Cultural diversity could be measured as either the number of ethnic groups or the number of recognized languages. Languages is being used here because a difference in language causes a division within the society whereas ethnic differences can be overcome by the use of a common language. The data is drawn from the U. S. Department of State.

<sup>20</sup> Mexico v. US opinion dated March 31, 2004.

<sup>21</sup> This variable is operationalized as support for the national government reported in the World Values Survey. Although this is not a direct measure of leader support the assumption is being made that the popularity of the leader will be reflected in support for the national government.

<sup>22</sup> Number of internet users is drawn from the World Bank and is truncated to the thousands (i.e. 10 rather than 10,000) to ensure a manageable number. Because the other statistics are lower values using the full number here would skew results.

<sup>23</sup> Three categories will be used: democratic, restricted democracy (including those regimes which are not fully democratic and those which are constitutional monarchies), and authoritarian (including totalitarian, monarchies, and military regimes). This is coded as: authoritarian = 0, restricted democracy = 1, and democracy = 2.

<sup>24</sup> The Pearson correlation and significance between the variables and Real GDP per capita are: Education Pearson = .639, significance = .000; internet usage Pearson = .411, significance = .006; and, regime type Pearson = .540, significance = .000. Thus all of the variables are correlated to Real GDP per capita at the  $p < .01$  level.

<sup>25</sup> The Pearson correlation is -.751 (the negative relationship is due to the coding of the Freedom House Freedom of the Press scores) at a significance of .000 which is statistically significant at the  $p < .001$  level.

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<sup>26</sup> Countries were ranked high if they were above the median point in the scale. Therefore a country would be ranked high on overall corruption if they scored above the median CPI score and low on judicial corruption if the scored below the median Global Corruption Barometer court measure.

<sup>27</sup> Based on United States State Department information at <http://www.state.gov/r/pa/ei/bgn/>.

<sup>28</sup> Reported by the European Union at [http://www.europa.eu.int/abc/index\\_en.htm#](http://www.europa.eu.int/abc/index_en.htm#)

<sup>29</sup> Reported by OECD at [http://www.oecd.org/document/58/0,2340,en\\_2649\\_201185\\_1889402\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/58/0,2340,en_2649_201185_1889402_1_1_1_1,00.html)

<sup>30</sup> Reported by Freedom House at <http://www.freedomhouse.org/ratings/index.htm>

<sup>31</sup> Reported by OECD at [http://www.oecd.org/document/58/0,2340,en\\_2649\\_201185\\_1889402\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/58/0,2340,en_2649_201185_1889402_1_1_1_1,00.html)

<sup>32</sup> Reported by Freedom House at <http://www.freedomhouse.org/ratings/index.htm>.

<sup>33</sup> Reported by the United States State Department at  
<http://www.cia.gov/cia/publications/factbook/geos/pl.html#Govt>

<sup>34</sup> Reported by Freedom House at <http://www.freedomhouse.org/research/nitransit/2003/index.htm>

<sup>35</sup> Reported by Freedom House at <http://www.freedomhouse.org/reports/century.html>

<sup>36</sup> Reported by Freedom House at <http://www.freedomhouse.org/ratings/index.htm>.

<sup>37</sup> Based on United States State Department information at  
<http://www.cia.gov/cia/publications/factbook/geos/pl.html#Govt>

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