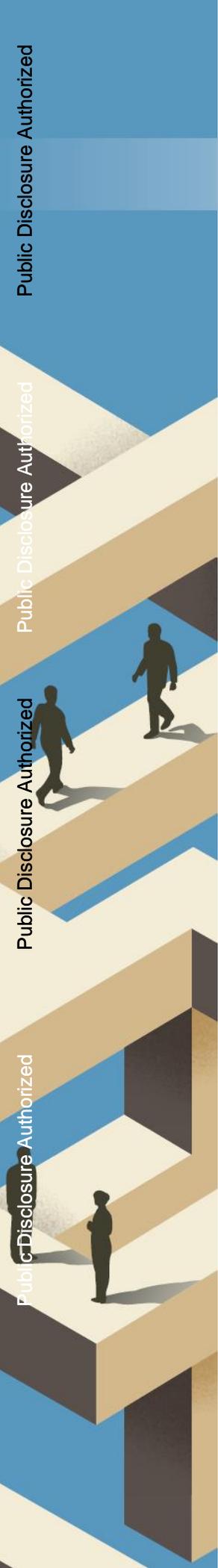BACKGROUND PAPER

GOVERNANCE *and* THE LAW

Corruption as Social Order

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Corruption as social order

By Alina Mungiu-Pippidi

To understand why corruption has become the crucial issue for the latest generation of protest movements and uprisings, from Tunisia to Moldova and from India to Brazil, public corruption is best conceived as part of a broader social order context and not at individual level. Presuming corruption to be the exception and public integrity the norm in every society does not reflect the reality and can lead to erroneous development strategies, as norm building and norm enforcement require two very different approaches. Corruption is hardly a social 'malady' to be eradicated, but rather a default governance order, as all states have started from being 'owned' by a few individuals who control all resources to eventually reach a situation when the state represents everybody equally and shares public resources equitably. Particularism is a natural inclination-people tend to favor their own, be it family, clan, race or ethnic group: treating the rest of the world fairly seems to be a matter of extensive social evolution and sufficient resources. The public-private separation in public affairs and the complete autonomy of state from private interest are exceptions in the present world, difficult to reach and difficult to sustain as well.

A governance order is a salient and stable set of rules of the game, both formal and informal, determining who gets what in a given society. In the modern world we consider as corrupt a governance regime which deviates significantly from the norm of ethical universalism, where similar rules apply to everyone (Parsons 1997: 80-82) resulting in an allocation of public resources which is partial and unfair, due to the presence of ties of a personal and particular nature between office holders and certain individuals or groups. This includes other forms of favoritism beyond those motivated by bribes, and both legal and illegal corruption, reflecting the current global perception of public corruption as shown in surveys (where large majorities across countries claim that most of their officials are corrupt, although only a minority was ever asked directly for a bribe, due to some 'Panama papers' experience) and the broad approach of the United Nations Convention against Corruption (UNCAC), whose ratifying states pledge themselves to governance excluding any favoritism (Mungiu-Pippidi 2015; chapter 1).

A country can fall anywhere on this continuum of governance which has as an extreme absolute ethical universalism (public integrity, with open access) and as the other absolute particularism (every public resource is allocated by virtue of status, which largely predicts a person's life prospects). Bribes are often the way to open access for individuals with inferior connections with power and authority in what is otherwise a public resource distribution system dominated by favoritism (Mungiu-Pippidi 2015 chapter 2). The evolution towards the public integrity end should not be taken for granted; universalism and individualism, which spread in the West after the Enlightenment to become generally held norms, are not natural, nor necessarily and under any circumstance good (Wilson 1993), although in the history of Western thought they have advanced continuously from Cicero to United Nations Treaty against Corruption.

As they are not about a few people taking bribes, but about power resources being systematically used to sustain and convert into material benefits, governance orders are resilient, with the result of perpetuating unequal opportunities and subverting fair competition on the basis of merit and

hard work. Corruption correlates poorly with democracy, but closely with Geert Hofstede's (Hofstede 2011) psychological concept of power distance (the accepted hierarchy of power status in a society). It is therefore costly for the society at large, as it frequently results in the failure to enforce merit and honesty versus connections or privilege, with the inability to innovate and the drain of best brains towards merit-based societies, creating a vicious circle (Mungiu-Pippidi 2015, chapter 1). Furthermore, if the state is perceived to collect taxes from the many to redistribute them as privileges to the few, the poor also do not pay any taxes and social rebellions may occasionally incur, like the Arab Spring. This was started by a street vendor who set himself on fire to defend his right to remain unlicensed and untaxed by a government perceived to work only for the interest of a dictator and his clique.

All societies start from an unequal endowment of power resources distributed across individual members or social groups, but some have managed through a long historical process to reduce such inequalities and arrive at citizenship, whereas society members have sufficient autonomy to defend their rights. Societies also differ in the accessibility of material resources which can be ripped off easily by people with power, such as natural resources. As states develop historically, individual autonomy grows, but so do the material resources available for spoiling, as people entrust more and more common resources for the state to undertake further tasks. Control of corruption can be thus conceived as a balance (see Figure 1) between such resources (of power discretion and potential material spoils) and constraints that an autonomous society is able to inflict on the ruling elites through an independent judiciary and a mass of enlightened citizens who put up a strong demand for good governance (see also Becker, G. 1968; Huther, J, and A Shah. 2000). The first generation of developed Western states has achieved this balance through modernization, but many other countries around the word have since tried to replicate this without achieving similar impersonality and rationalization of government. The last waves of democratization produced about eighty new democracies where politics is still about spoiling public resources by each elections winners in their turn.

Figure 1 about here. Control of corruption as a balance
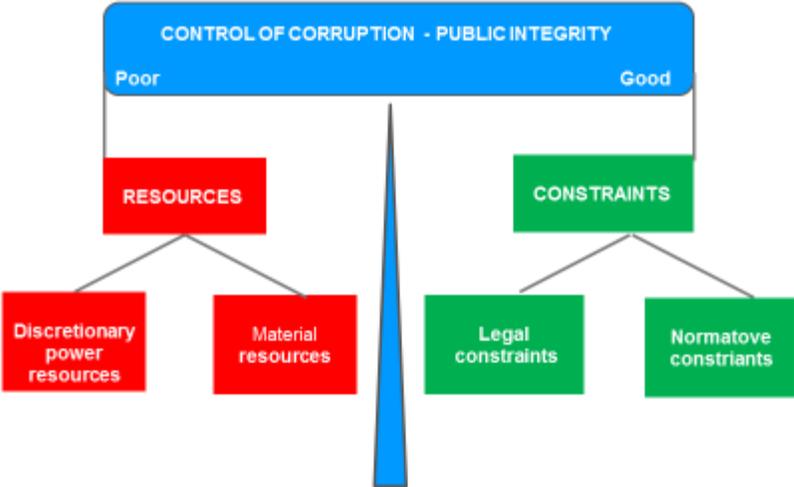
How inescapable is corruption?

Modernity, however, as captured in the human development index, explains only a little more than half the variation in control of corruption. The association of control of corruption with human development index shows that some countries over-perform, and others underperform on governance seeing their human development, while in most of the countries we find a close correspondence (see Figure 2). Countries which seem to have found the virtuous circle of development by political agency are New Zealand, Norway, Denmark, Singapore, Chile, Uruguay, Georgia, Estonia, Costa Rica, Botswana. Countries which underperform are Venezuela, Argentina, Zimbabwe, Azerbaijan, Central Asian countries, Italy and Greece. How an optimal balance was reached or was missed in such countries becomes essential to learn. The presence among achievers of countries with a poor fit to a classic modernization model by the time they started their transformation (Chile, South Korea, Georgia, Botswana) also shows that transitions from one governance order to another can be engineered and steered, although this is not frequent.

Figure 2. Predicted Control of Corruption Scores Based on Human Development
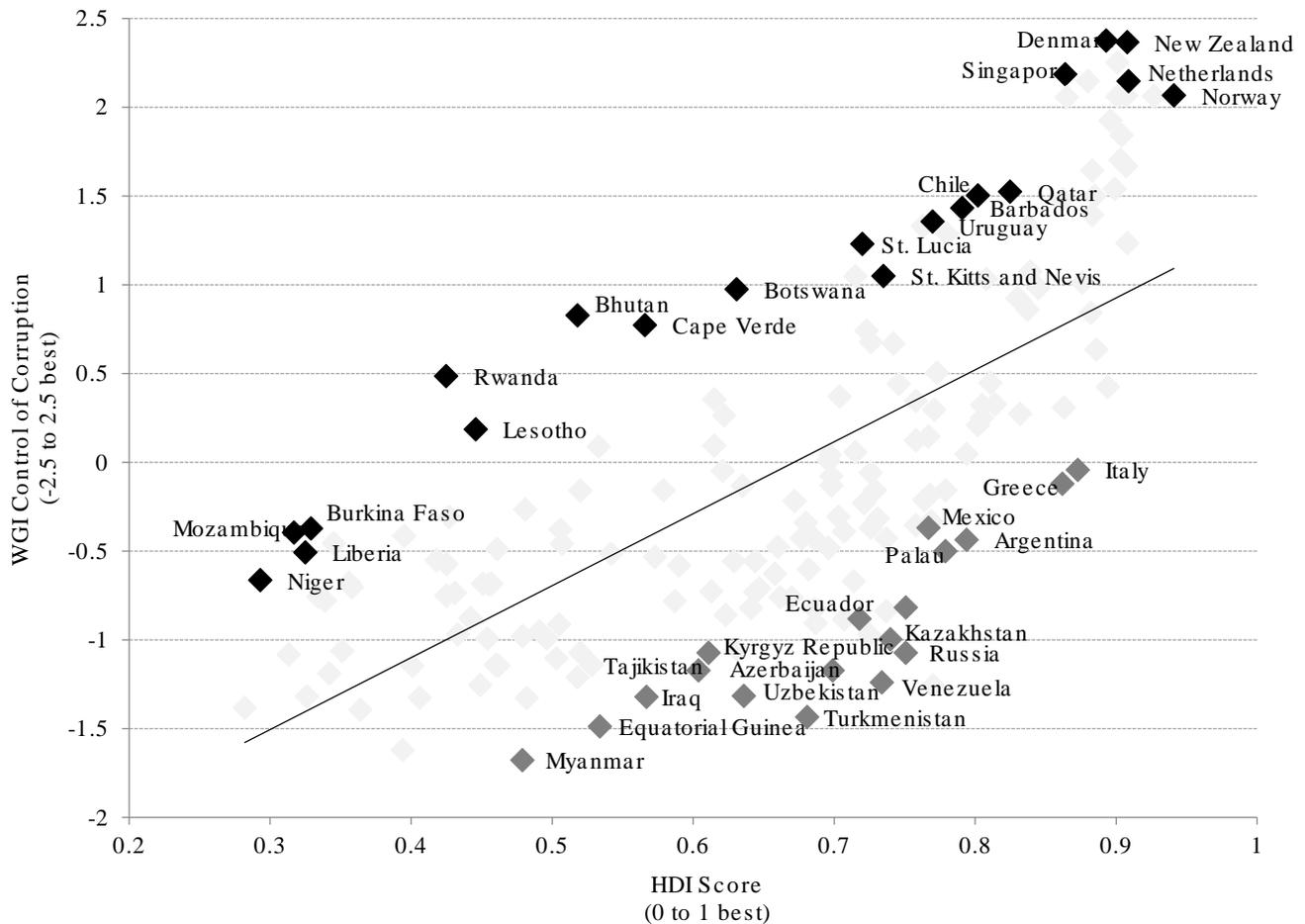
Legend. Dots are estimates of Control of Corruption (World Bank Institute) by Human Development Index (UNDP). Only outliers are shown.

Control of corruption is thus achieved when this balance gets right, and not when one or another anticorruption tool is adopted. Evidence shows that no silver bullet exists and countries which adopt anticorruption agencies, restrictive party finance legislation or whistleblower protection acts do not progress more than countries that don't- sometimes the opposite is true (Mungiu-Pippidi 2015, chapter 4). Mandatory disclosure of assets for officials work only in the presence of a free press. Fiscal transparency helps curb corruption only when an active civil society exists. It is the interaction between these factors which produces the equilibrium, and if on the society side the demand for control of corruption is poor, because spoils are used efficiently to buy off certain strategic groups, then collective action becomes impossible and the equilibrium remains suboptimal with particularism the norm. **Both reduction of resources and increase of constraints can greatly be helped by technology. Digitalization helps transparency and rationalization of fiscal management on the government side and creates empowered citizens on the society side.** Evidence exists that internet media in general and social networks in particular are indispensable components of citizen empowerment and collective action.

Figure3. Structural and Policy Determinants of the Control of Corruption
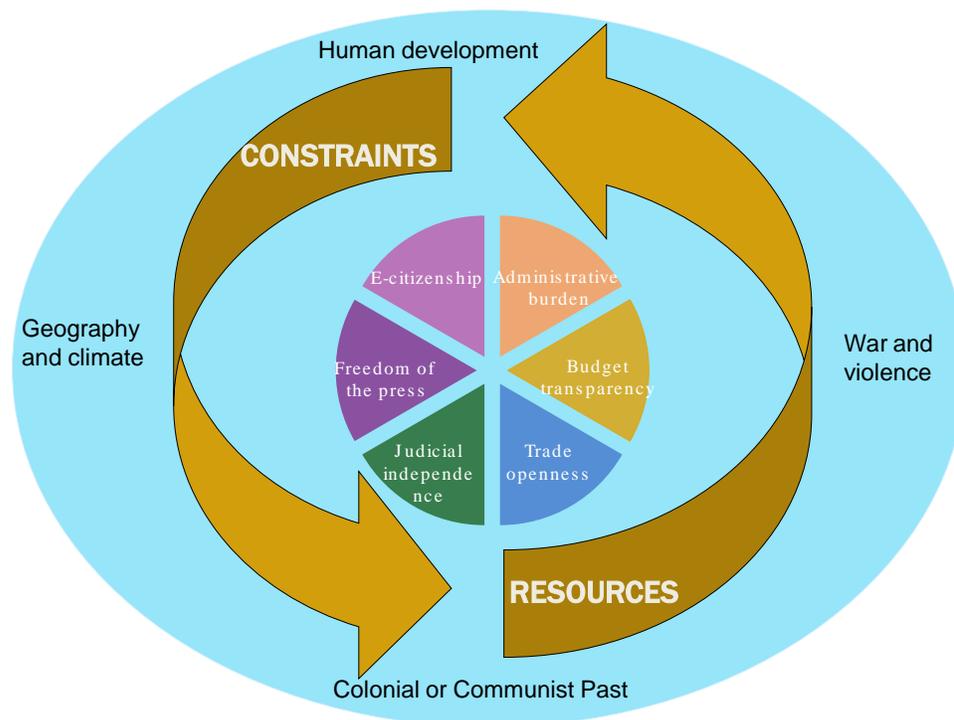
The index for public integrity from Figure 3 reduces this complex model of control of corruption (fully explained, tested and referenced in Mungiu-Pippidi 2015, chapter 4) to six key strategic areas and their basic indicators, thus providing a first step to an evidence-based strategy for both governments and civil societies[1]. This is mirrored by the synthesis of key policies of performing countries – those which managed to evolve to ethical universalism as a norm in contemporary

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[1] For more details on the index, see http://www.againstcorruption.eu/publications/measuring-control-of-corruption-by-a-new-index-of-public-integrity/

times- from Table 1. The policy menu in **Table 1** has two advantages over the ordinary toolkit of consultants. First, each variable is tested on a time series model and is robustly significant. We know that it matters in affecting control of corruption in a context with all relevant controls. Second, each strategy or policy action was tried in some of the few countries which made it and worked. The table does not provide a universal recipe, but rather a checklist, an evidence based instrument to trace reforms and measure progress on what should finally be an optimal equilibrium. The current status of 104 countries on the public integrity index can be visualized here http://integrity-index.org/. The index correlates with World Bank Control of Corruption or Transparency International CPI at over 90 per cent. It is not meant to replace a sound political economy approach, but to complement it: the first initial question of anticorruption fighters remains who are those who lose out of current institutional arrangements and how can they be built in some coalition asking for or promoting these reforms. The question of "who" has to be answered before the question of "what" to do. Who are the credible agents of change and what can empower some collective action to challenge the status quo?

Table 1. Checklist and indicators to trace progress on control of corruption

|	Action	Indicator	Benchmark country
Reduce opportunity			
Natural resources	• Private management with public share of proceeds established by broad consultation and transparently spent	• Public report on spending revenues from natural resources	Botswana
Administrative discretion	• Reduce red tape and enforce equal treatment • Ombudsman also auditor, controller, judicial reviewer • Make resources transparent through e-government	• Ease of doing business; indicators of equal treatment • Ration between cases solved administratively/cases solved through prosecution • E-services as % as total public services	Georgia Chile Estonia
Public spending	• Transparent public spending concentrated on areas such as health, education, research and innovation	• Existence of e-portals on online tracking expenses for national and local government procurement	Uruguay
Formalization	• Tax simplification • Tax collection by private agents • E-payments facilitation	• Time of paying taxes • % increase in collection rate yearly	Uruguay
Increase constraints			
Judicial independence	• Tenure, appointment and sanctioning of magistrates entrusted to magistrates' bodies only with validation of such bodies by 2/3rds of upper chamber	• WEF Judiciary independence (perception of businessmen) • Successful litigations against government	Chile, Botswana and Taiwan
Civil society	• Ease of registering NGOs, 'sunshine' laws for public consultations, civil society component in every donor program, separate or combined with assistance to government, conditions on participatory budgeting, auditing or evaluations	• Number of NGOs • % public consultations from total new legal drafts or policies • Existence and traffic of watchdog websites • Number of Facebook users	Estonia
Freedom of the media	• No government regulation for media except anti-trust or cartel legislation and transparency of ownership • Political conditionality from international community related to media freedom	• Media sustainability indicators • News readership/audience	Estonia
Empowered citizens	• IT investment in education, training for educators • Freedom of Internet	• Internet connections per household • Facebook users per country • % citizens using e-services	South Korea Estonia

Source: Updated from Mungiu-Pippidi 2015, pp. 219-20.

Lessons from success cases

Among the few successful transitions from particularism of contemporary times, Estonia emerges as the case which managed to strike the balance right in a relative short time – about a decade[2]. Its example was emulated by Georgia, a country with greater structural problems (partial control over its territory, refugees, territorial and economic conflict with a powerful neighbor country). Both countries experienced full-fledged revolutions, with civil societies taking over government overnight and political liberalization accompanied by free-market reforms aimed at taking away old elites' rents. In both Estonia and Georgia there was an alternative elite committed to ethical-universalist ideas. In Estonia this was the group around the young nationalist historian Mart Laar (later an adviser for the Georgian reforms as well), who was able to engineer Eastern Europe's most successful transition even though, at the time he became premier in 1992, he had read only one book on economics. During his first stint as prime minister (1992–94), he replaced almost every judge left over from Soviet times with either very young or very old magistrates (who had not been first socialized into Communist habits), and uprooted much of the "resource base" for corruption by removing legal privileges for public companies, passing a flat tax and cutting red tape. When he returned to the premiership from 1999 until early 2002, he furthered the cause of good governance by initiating what has by now become the most advanced e-government system in the world (a single ID card is used to pay tax, public parking and vote). Based on former anti-Soviet dissidents, the Laar government learned from the mistakes that Russian premier Yegor Gaidar had made (some following international advice) only a year before: That rule of law must come before privatization. Grasping that in a post-communist context it matters a great deal who the first capitalists are, they prevented the communist-holdover networks of enterprise managers, secret-police bureaucrats, and other nomenklaturists from emerging as the transition's big winners and controllers, thereby sparing Estonia the crony capitalism that has blighted Ukraine and Russia for the past twenty years. The Georgian emulation was also radical, strongly led from the top and supported from the bottom in the same time. Both produced a more honest and performing civil service, albeit with massive replacement of personnel from corrupt times. In both countries civil society remained committed and critical towards government, and growth followed political reforms (see figure 4).

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[2] see Mungiu-Pippidi 2015, chapter 5 for all the cases and full story.

Figure 4. Evolution of growth and control of corruption in the Estonian post-communist transition
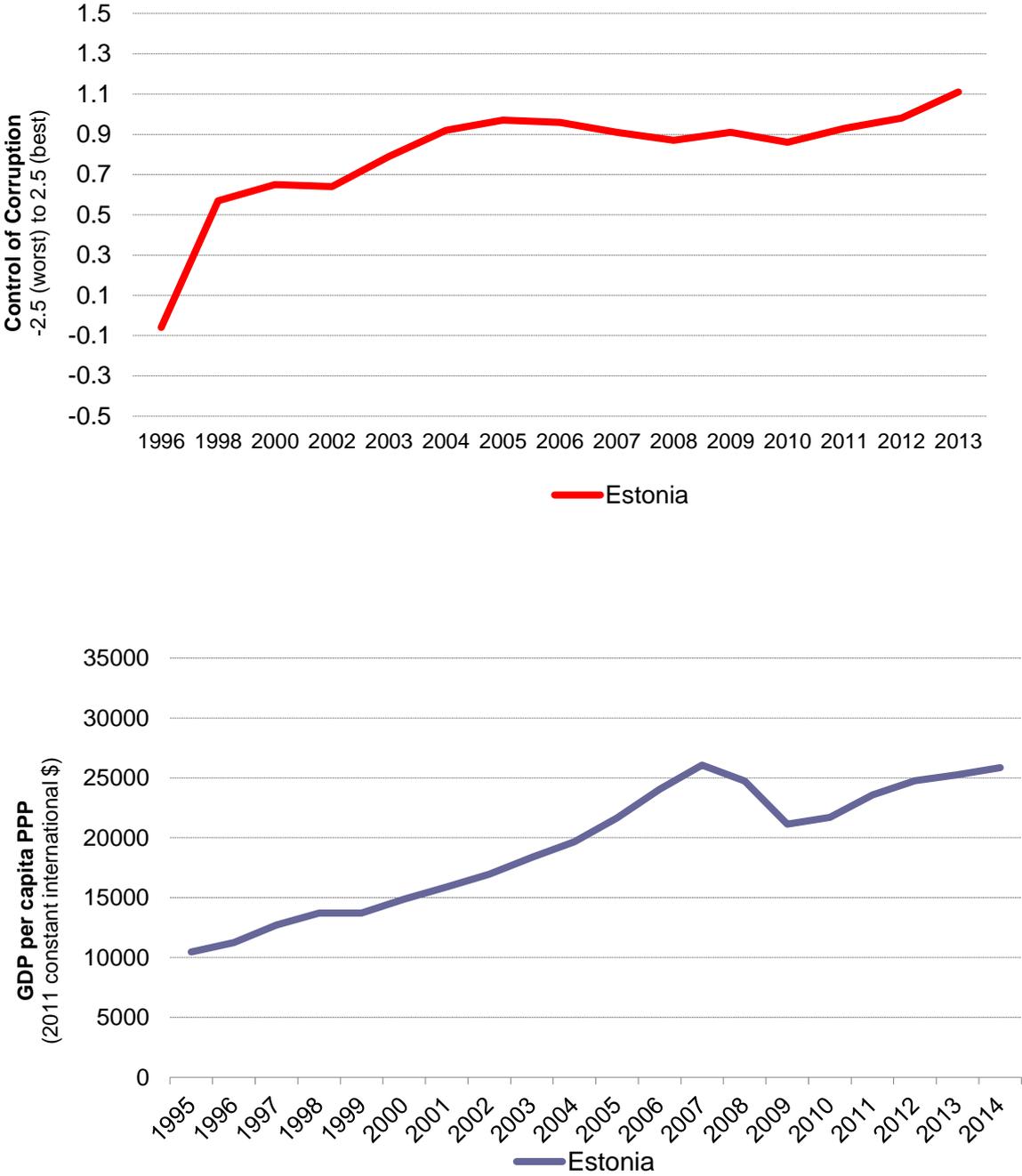
The revolutionary path, where reformers from civil society simply come to power is not frequent. Most international donors work with governments formed by people who win from the status quo and see reforms as jeopardizing their rents. The idea of incentivizing them is at best naïve. Governance is about rules of the game, in other words about what most people do. People conform to norms in their societies. If corruption is the norm and not the exception, the principal agent model does not work. And donors should watch carefully that they do not increase resources for corruption themselves. Any meaningful aid program should be designed to empower social accountability and develop normative constraints for corruption by means of entrusting ownership for change to the broader society through local communities and NGOs, not just the government.

Most anticorruption industry ignores this lesson and gets lost in buzzwords like incentives and other 'behavioral triggers'.

Let's face it. There is no incentive one can offer to a somebody who has grabbed what should be a public diamond mine and spoils it for his (and his cronies) profit. Nothing bigger than a diamond mine (or the whole budget, including assistance funds) exists by way of incentives. Rulers have to be made more *accountable*, and the ruled have to prevent corruption by permanent greater demand and public scrutiny. Anticorruption is not a win-win game, it's a game played by societies against their spoilers, and to prevent the winners not to turn into new spoilers quite a sustained effort is needed. While the new international legal arena is meant to eliminate areas without jurisdiction (and rightly so), retrieval of assets of former dictators is of little help if their democratically elected successors continue to spoil. Corruption is the real game played beyond many constitutional façades in the contemporary world, and without some shift in the balance of power to enable private-public separation little will change. Written laws and constitutions matter little in the real world, in many places no more than they matter in Westeros, as the game of thrones is played. The Romans already had the saying that corrupt Republics have the most laws.

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