

Curbing Corruption through Gendered Lens: Utilizing Feminist Curb-Cutting Theory as an Anti-Corruption Strategy

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I. INTRODUCTION

Corruption is a virulent and debilitating social disease that manifests itself in many forms. The terms corruption and poor governance have been used almost interchangeably, although corruption should be more clearly defined as an outcome, a consequence of weak or bad governance. Poor governance can lead to lack of transparency, weak accountability, monopoly of power, wide discretion, and inefficiency, subsequently resulting in corruption, a term which has oftentimes baffled scholars and escaped rigid academic definition. A simple solution to corruption has proven itself elusive, while the effects of corruption have been pervasive.

In addressing this social pandemic, a dynamic, integrated, and globalized approach is necessary to combat its adverse effects on the marginalized. The United Nations Convention against Corruption¹ in its Preamble states that “corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential.”² The Convention likewise affirms that “a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively.”³

This Paper recognizes that corruption inherently involves unequal power relations, and in order to be truly responsive to the needs of the powerless, providing solutions to corruption issues requires a gender-sensitive perspective. This need is highlighted by the fact that studies have revealed the “disproportionate impact of corruption on women as the majority of the poor population.”⁴ Thus, the World Bank has declared that “gender mainstreaming” (the demand for socio-economic and political equality between the genders), is key to “poverty reduction.”⁵

Due to the need for an interdisciplinary and integrated anti-corruption strategy, this piece aims to utilize the feminist curb-cutting theory in order to mainstream gender within the Philippine anti-corruption framework. Feminist curb-cutting replicates the model used for people with disabilities

1. United Nations Convention against Corruption, G.A. Res. 4 (LVII), U.N. Doc. A/RES/58/4 (2003) [hereinafter UNCAC].

2. *Id.*, Preamble, ¶ 4.

3. *Id.* ¶ 5.

4. Bianca Schimmel, et al., Corruption and Gender: Approaches and Recommendations for TA, available at <http://www.gtz.de/de/dokumente/en-corruption-and-gender.pdf> (last accessed Mar. 21, 2008) [hereinafter Corruption and Gender].

5. Wendy McElroy, Gender Feminisms Global Blackmail, Apr. 16, 2002.

and uses their experience to benefit not only those with disabilities, but anyone who may need the curb-cutting structural design. The principle emanating from feminist curb-cutting is that a principle designed to benefit one marginalized group concurrently benefits others.

According to Ackerly, a human rights scholar, the feminist curb-cutting theory —

begins with the experience of those whose capabilities fall outside the norm and involves them in the design of the solution for existing infrastructure and the design of future structures such that the full range of capabilities inform their design. While designed with attention to those in wheelchairs, the curb cuts, access ramps, automatic doors, multiple access points, and clearly indicated wheelchair accessible routes enhance the mobility of others as well. Those pushing strollers and delivery dollies, those carrying lots of books, and those recovering from an injury for example are all able to move more freely. Beginning with those most affected, all are able to see and understand a broad range of mobility challenges and to design solutions that enable greater freedom of movement for all. Further, the ramifications of improved mobility are felt far beyond the initial focus on freedom of movement for those whose mobility is most challenged. For example, in the United States, with reliable and predictable wheelchair access, parents with children whose age or ability require them to be in strollers are able to bring their children to museums (and a range of other venues) to further their children's and their own education. Older people are afforded similar opportunities for continued learning despite declining mobility.⁶

In mainstreaming gender within the proposed anti-corruption strategy, it is hoped that a gender-sensitive approach furthers the goals of both gender equality and good governance. Addressing issues of gender and corruption is indispensable to achieving the goals of formal and substantive gender equality, in terms of the gender perspective, and transparent and accountable governance, in terms of the corruption perspective. Both goals are significant in their own right, but should likewise be addressed with a view to their intersectionality.

II. ORGANIZATION OF THE STUDY

Given its aim of providing a gendered, interdisciplinary anti-corruption strategy, this Paper discusses each of the perspectives indispensable to combating corruption in the Philippines.

Part III focuses on the Philippine legal framework; it presents the pertinent laws and anti-corruption bodies designed to combat corruption and

6. BROOKE ACKERLY, *UNIVERSAL HUMAN RIGHTS IN A WORLD OF DIFFERENCE* 136 (2006).

analyzes whether these laws and mechanisms are adequate and effective in curbing corruption.

Part IV discusses the socio-cultural framework; it introduces socio-anthropology principles that may be utilized in formulating an anti-corruption strategy. It presents the socio-cultural definition of corruption, and works with several assumptions concerning corruption: that the socio-cultural matrix influences the politico-legal system; that the politico-legal system in turn influences the socio-cultural matrix; and that practices favoring corruption and practices against corruption are influenced by the interplay between the politico-legal system and the socio-cultural matrix. This section also distinguishes between the public and the private sphere, and establishes the proposition that a strong sense of public community in the Philippines can forestall corrupt practices.⁷ It proposes that an increase in transparency and accountability in governance can curb corruption.

Part V presents the political science framework; it discusses the definition of corruption from a political science perspective, distinguishes between notions of the public and non-public spheres, and likewise proposes that a viable anti-corruption strategy invariably requires the minimization of discretion and increase in accountability.

Part VI integrates the three above-mentioned perspectives, underscoring their particularities and resemblances, to formulate a three-pronged anti-corruption strategy.

Part VII is devoted to the gender perspective and is divided into four sections. The first section explains the sex-gender distinction. The second section illustrates the intersectionality of gender and corruption by showing how both gender and corruption involve abuse of power. The third section discusses how both corruption and gender are development issues and must be addressed in their own right in order to achieve the goals of formal and substantive gender equality, and transparent and accountable governance. Finally, the fourth section situates gender within the three-fold anti-corruption framework discussed in Parts III to V.

Part VIII highlights how the feminist curb-cutting theory can be utilized as an anti-corruption tool. This is because it addresses the need for a dynamic, integrated, and global approach towards combating corruption. The chapter likewise discusses that the problems involved in gender and corruption must be addressed simultaneously, while acknowledging the

7. Dr. Fernando Zialcita, *A Lecture on Corruption: A Socio-Cultural Perspective* (Jan. 12, 2007).

significance of each in furthering the goals of substantive gender equality and good governance.

III. CURRENT PHILIPPINE ANTI-CORRUPTION SYSTEM VIEWED THROUGH LEGAL LENS

A. Local Laws

Philippine initiatives against corruption have taken the form of law and anti-graft bodies created by the Constitution. In addition to the State, other institutions have been active in the fight against graft and corruption.

1. Anti-Corruption Laws

Accountability of public officials is enshrined in the 1987 Constitution, as it was in the 1898 Malolos Constitution, the 1935 Commonwealth Constitution, and the 1973 Constitution of the Martial Law period. Article XI of the 1987 Constitution, entitled “Accountability of Public Officers,” states the fundamental principle of public office as a public trust.⁸ This requires full accountability and integrity among public officers and employees. The President, Vice-President, members of the Supreme Court, members of the Constitutional Commissions, and the Ombudsman may be impeached for violations of the Constitution, treason, bribery, graft and corruption, other high crimes, and for betrayal of public trust.⁹ Other public officials committing such acts can be investigated and prosecuted through the regular judicial process provided by law.

The Philippine government is directed to maintain honesty and integrity in the public service, and to take action against graft and corruption.¹⁰ It is also directed to give full public disclosure of all transactions involving the public interest.¹¹ This provision finds its counterpart in the Bill of Rights, which gives people the right to information on matters of public concern, including official records, documents and papers pertaining to official acts, transactions or decisions, and to government research data used as the basis for policy development.¹²

8. PHIL. CONST. art XI, § 1.

9. PHIL. CONST. art XI, § 2.

10. PHIL. CONST. art II, § 27.

11. PHIL. CONST. art II, § 28.

12. PHIL. CONST. art III, § 7.

In 1960, Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act,¹³ was enacted. Considered as landmark legislation at that time, it defines what are considered corrupt practices by a public officer, declares them unlawful, and provides the corresponding penalties of imprisonment,¹⁴ perpetual disqualification from public office, and confiscation or forfeiture of unexplained wealth in favor of the government. In addition, it mandates the submission by all government personnel of a statement of assets and liabilities every two years.¹⁵

2. Laws of the Re-Democratization Period (1986 to the present)

Immediately after former President Corazon Aquino's assumption to office, she promulgated the "Freedom Constitution" which, among other provisions, declared all government positions vacant unless otherwise identified.¹⁶ This Freedom Constitution was the basic law of a revolutionary government and was superseded by the 1987 Constitution. Six new anti-corruption laws emerged under its operation.

The Administrative Code of 1987¹⁷ incorporates in a unified document the major structural, functional, and procedural principles and rules of governance. It reiterates public accountability as the fundamental principle of governance.

In 1989, the Code of Conduct and Ethical Standards for Public Officials and Employees was passed.¹⁸ It promotes a high standard of ethics and requires all government personnel to make an accurate statement of assets and liabilities and to disclose net worth and financial connections.¹⁹ It also

13. The Anti-Graft and Corrupt Practices Act, Republic Act No. 3019 (1960).

14. An Act Amending Sections Eight, Nine, Ten, Eleven, and Thirteen of Republic Act Numbered Thirty Hundred and Nineteen, Otherwise Known as the Anti-Graft and Corrupt Practices Act, Batas Pambansa Blg. 195 (1982).

15. Anti-Graft and Corrupt Practices Act, § 7.

16. *See*, 1986 PHIL. FREEDOM CONST. § 3 (superseded 1987).

17. An Act Instituting the Administrative Code of 1987 [ADMINISTRATIVE CODE], Executive Order No. 292 (1987).

18. An Act Establishing a Code of Conduct and Ethical Standards for Public Officials And Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes [CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES], Republic Act No. 6713 (1989).

19. *Id.* § 8.

requires new officials to divest ownership in any private enterprise within 30 days from assumption of office to avoid conflict of interest.²⁰

The Ombudsman Act of 1989, Republic Act No. 6770,²¹ provides the functional and structural organization of the Office of the Ombudsman. In Republic Act No. 8249,²² the law further defining the jurisdiction of *Sandiganbayan*, the latter was designated as a special court on the same level as the Court of Appeals.²³

B. Constitutional Anti-Corruption Bodies

The 1987 Constitution established special independent bodies to support the principles of honesty, integrity and public accountability. These special independent bodies are:

- (1) the Office of the Ombudsman as the people's protector and watchdog;
- (2) the Civil Service Commission as the central personnel agency;
- (3) the Commission on Audit as the supreme body responsible for auditing the government's expenditures and performance; and
- (4) the *Sandiganbayan* as a special court that hears cases of graft and corruption.

To ensure that these organizations and their commissioners can fulfill their duties without fear of reprisal from other agencies of the government, the Constitution grants them fiscal autonomy.²⁴ Their actions are appealable only to the Supreme Court.²⁵

The Office of the Ombudsman was created to investigate and act promptly on complaints filed against public officials and employees, and to serve as the people's watchdog of the government. It is an institution with

20. *Id.* § 9.

21. An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman and for Other Purposes [The Ombudsman Act of 1989], Republic Act No. 6770 (1989).

22. An Act Further Defining the Jurisdiction of the *Sandiganbayan*, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes, Republic Act No. 8249 (1997).

23. *Id.* § 1.

24. PHIL. CONST. art VIII, § 2.

25. See, Republic Act No. 8249, § 7, ¶ 3; 1997 RULES OF CIVIL PROCEDURE, rule 64, § 2.

the biggest responsibility to prevent graft and corruption. It provides for a Deputy Ombudsman for the military, and at least one Deputy each for the geographical divisions of Luzon, Visayas, and Mindanao.²⁶

The Civil Service Commission is the central personnel agency tasked to promote efficient and responsive public service delivery, to establish a career service, strengthen the merit system and human resource development, promote public accountability and enforce the Code of Conduct and Ethical Standards for Public Officials and Employees.²⁷ It undertakes anti-corruption functions, such as values orientation workshops and employee voluntarism.

The Commission on Audit, while primarily regarded as an evaluator of the government's performance in handling funds, also conducts audits on the income and revenues of government. Aside from ensuring financial accountability, the Commission may also inquire into the effectiveness and impact of programs, as well as inquire into the economy, efficiency, or the legality and regularity of government operations.

The *Sandiganbayan*, literally "the pillar of the nation," is a special court with jurisdiction over civil and criminal cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.²⁸

1. Presidential Anti-Corruption Bodies

All post-war Philippine presidents have come out with their own statutory creations to provide citizens with an informal and accessible avenue of redress that will guarantee them fair and equitable treatment under the law.

The first of such offices was created in 1950 by President Elpidio Quirino. Called the "Integrity Board,"²⁹ the body received and investigated complaints against officials of the executive branch for corruption and dereliction in the performance of duty. It was empowered to summon witnesses, administer oaths, take testimonies, receive evidence, gather

26. See, The Ombudsman Act of 1989, § 12.

27. CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, § 4 (B).

28. JOSE Y. FERIA & MARIA CONCEPCION S. NOCHE, CIVIL PROCEDURE ANNOTATED 105 (2001).

29. Office of the President, Executive Order No. 318 (May 25, 1950).

information, and examine documents and papers pertinent to its investigation.³⁰

As his first executive act, President Ramon Magsaysay replaced Quirino's Integrity Board with his "Presidential Complaint and Actions Commission" (PCAC).³¹ Its duty was to investigate complaints against executive departments and agencies and to recommend the appropriate action to take on such complaint.³²

President Carlos P. Garcia followed suit with the establishment of an agency he called the "Presidential Committee on Administration Performance Efficiency" (CAPE).³³ Garcia also formed a group known as the "Presidential Anti-Graft Committee" (PAGCOM)³⁴ to implement Republic Act No. 1379,³⁵ tasked with inquiring into, investigating, determining, and verifying any and all unlawfully acquired properties of government officials and employees and obtaining the needed evidence to establish such unlawful acquisitions while they were in public office. In less than a year, Garcia abolished the PAGCOM.³⁶

For his part, President Diosdado Macapagal resurrected the CAPE and called it the "Presidential Anti-Graft Committee."³⁷ The group was charged with the enforcement of the Anti-Graft Law and the Anti-Graft and Corrupt Practices Act.

In 1966, President Ferdinand Marcos set up the "Presidential Agency on Reforms and Government Operations" (PARGO) and placed it directly under his office.³⁸ The Agency later became the "Complaints and Investigation Office."³⁹ With a member of the Cabinet as head, PARGO acted as a central clearing-house through which the general public and all

30. An Act Amending the Administrative Code [REVISED ADMINISTRATIVE CODE OF 1917], Act No. 2711, §§ 71, 580 (1917).

31. Office of the President, Executive Order No. 1 (Dec. 30, 1953).

32. Office of the President, Executive Order No. 19 (Mar. 17, 1954).

33. Office of the President, Executive Order No. 306 (July 15, 1958).

34. Office of the President, Executive Order No. 378 (Feb. 18, 1960).

35. An Act Declaring Forfeiture in Favor of the State any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee, Republic Act No. 1379 (1955).

36. Office of the President, Executive Order No. 457 (Dec. 29, 1961).

37. Office of the President, Executive Order No. 4 (Jan. 18, 1962).

38. Office of the President, Executive Order No. 4 (Jan. 7, 1966).

39. Office of the President, Executive Order No. 208 (Feb. 8, 1970).

government officials and employees may transmit inquiries, air grievances, and lodge complaints of graft and corruption against public officials, and in the proper instances, file and prosecute the proper charges with the appropriate agency. Within the year it was created, PARGO was replaced by the “Presidential Complaints and Action Office” (PCAO). On 2 October 1967, PARGO was revived and in 1970, was renamed the “Complaints and Investigation Office” (CIO).⁴⁰

Presidential Decree No. 6 entitled Amending Certain Rules on Discipline of Government Officials and Employees,⁴¹ which took effect six days after the imposition of Martial Law, was the purported legal basis for the purge of almost 8,000 officials and employees in the first year of the dictatorship. The provision for summary proceedings was reiterated in Presidential Decree No. 807,⁴² the Civil Service Act of the period and was repealed by the Aquino administration.

All other anti-graft presidential decrees remain in effect. These include:

- (1) Presidential Decree No. 46⁴³ (1972), making it unlawful for government personnel to receive, and for private persons to give, gifts on any occasion including Christmas, regardless of whether the gift is for past or future favors. It also prohibits entertaining public officials and their relatives.
- (2) Presidential Decree No. 677⁴⁴ (1975), requiring the statement of assets and liabilities to be submitted every year.
- (3) Presidential Decree No. 749⁴⁵ (1975), granting immunity from prosecution to givers of bribes or other gifts and to their accomplices

40. *Id.*

41. Amending Certain Rules on Discipline of Government Officials and Employees, Presidential Decree No. 6 (1972).

42. Providing for the Organization of the Civil Service Commission in Accordance with Provisions of the Constitution, Prescribing its Powers and Functions and for Other Purposes, Presidential Decree No. 807 (1975).

43. Making it Punishable for Public Officials and Employees to Receive, and for Private Persons to Give Gifts, on Any Occasion, Including Christmas, Presidential Decree No. 46 (1972).

44. Amending Section 7 of Republic Act No. 3019, as Amended, Otherwise Known as the Anti-Graft and Corrupt Practices Act, Presidential Decree No. 677 (1975).

45. Granting Immunity from Prosecution to Givers of Bribes and Other Gifts and to Their Accomplices in Bribery and Other Graft Cases Against Public Officers, Presidential Decree No. 749 (1975).

in bribery charges if they testify against the public officials or private persons guilty of these offenses.

In 1971, President Marcos created a three-member body known as the “Presidential Administrative Assistance Committee” (PAAC).⁴⁶ Headed by the Undersecretary of Justice, it acted as “a grievance committee to investigate and act on abuses in the implementation of the suspension of the privilege of *habeas corpus*.” Letter of Implementation No. 42 dated 11 December 1976 provided for the automatic abolition of the CIO upon the creation of the *Tanodbayan*. President Marcos, however, issued Presidential Decree No. 1501 on 11 June 1978 retaining the CIO.

Unlike her predecessors, President Corazon Aquino did not put up an anti-graft body. Instead, she organized members of her Cabinet into a “Committee on Public Ethics and Accountability.” The body reflected the idea that corruption can be tackled by management actions that increase its risks and decrease its benefits.⁴⁷

President Fidel V. Ramos, established the “Presidential Commission Against Graft and Corruption” (PAGCC).⁴⁸ Its duties included the investigation of administrative complaints against presidential appointees in the Executive department, including those in government-owned or controlled corporations, charged with graft and corruption. It may refer to the Office of the Ombudsman “when guaranteed and necessary, any case calling for the investigation and/or prosecution of the party or parties concerned.”

When his turn came, President Joseph Estrada replaced the PAGCC with the “National Anti-Corruption Commission.”⁴⁹ The new body absorbed the functions and jurisdiction of the PAGCC. Composed of a full-time Chairman and four full-time Commissioners with the rank of Cabinet Secretary and Undersecretary, respectively, the Commission was empowered to investigate or hear, *motu proprio* or on complaint filed in any form or manner, charges, reports, or information involving the possible violation of graft and corrupt practices at all levels in government by public officers and private persons alike. After investigation, it may endorse graft and corruption

46. Office of the President, Executive Order No. 333 (Aug. 26, 1971).

47. Nelson N. Moratalla, *Graft and Corruption: The Philippine Experience*, available at <http://www.unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019122.pdf> (last accessed Mar. 21, 2008).

48. Office of the President, Executive Order No. 151 (Jan. 11, 1994).

49. Office of the President, Executive Order No. 268 (July 18, 2000).

cases to the Office of the Ombudsman or the Department of Justice for prosecution.

In 2001, President Gloria Macapagal-Arroyo created the Presidential Anti-Graft Commission (PAGC).⁵⁰ The three-man Commission, acting as a collegial body, may, on its own or on complaint, investigate or hear administrative cases or complaints involving the possible violation of any of five laws dealing with graft and corruption, and their implementing rules and regulations. It was also authorized to investigate or hear administrative cases or complaints against all presidential appointees in the government and any of its agencies or instrumentalities (including members of the governing board of any instrumentality, regulatory agency, chartered institution and directors or officers appointed or nominated by the President to government-owned or controlled corporations or corporations where the government has a minority interest or who otherwise represent the interests of the government), occupying the positions of assistant regional director, or an equivalent rank, and higher, otherwise classified as Salary Grade “26” and higher, of the Compensation and Position Classification Act of 1989.⁵¹ In the same manner, the Commission may investigate a non-presidential appointee who acted in conspiracy or may have been involved with the presidential appointee or ranking officer mentioned earlier. The Commission, however, has no jurisdiction over members of the Armed Forces of the Philippines and the Philippine National Police.

According to legal scholar Carlota, the Executive Ombudsmen created by Philippine presidents “were doomed to failure at the very moment of their creation primarily because they were not free from political pressures. There was, to begin with, no leeway for political independence. Being creations of the Chief Executive, they were completely under his control and he could abolish them at his own will.”⁵² It would not be reasonable to expect them to criticize the actions of the agencies that are under the control and supervision of the President. Political commentator Robles opined that, more often than not, these institutions became a “spawning ground for political protégés and partisan activities. It came about that the very ills sought to be remedied by the creation were the same ones which plagued

50. Executive Order No. 12 (Apr. 16, 2001). President Arroyo earlier issued Executive Order No. 268 (July 18, 2000) abolishing the Presidential Commission against Graft and Corruption and replacing it with the National Anti-Corruption Commission. However, the latter body was never activated.

51. An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes, Republic Act No. 6758 (1989).

52. Salvador T. Carlota, *The Ombudsman: Its Effectivity and Visibility Amidst Bureaucratic Abuse and Irregularity*, 65 PHIL. L.J. 21 (1990).

and doomed them to failure.”⁵³ This failure indicates that the mere creation of anti-corruption legislation alone is inadequate to effectively prevent and punish corruption, particularly when such legislation is incompatible with the socio-cultural landscape.

IV. CURRENT PHILIPPINE ANTI-CORRUPTION SYSTEM VIEWED THROUGH SOCIO-CULTURAL LENS

Most anthropologists define culture as the set of learned behaviors, beliefs, attitudes, values, and ideals that are characteristic of a particular society or population.⁵⁴ Corruption is said to occur within a context defined by its cultural surroundings and by its interaction with the State. Thus, analyzing corruption through a socio-cultural perspective entails working with several assumptions concerning corruption: that the socio-cultural matrix influences the politico-legal system; that the politico-legal system in turn influences the socio-cultural matrix; and that practices favoring corruption and practices against corruption are influenced by the interplay between the politico-legal system and the socio-cultural matrix.⁵⁵

As it exists today, the State is a relatively new phenomenon, with its roots usually traced to the 16th century. The Modern State is a political organization consisting of governmental institutions which are capable of maintaining order and implementing rules or laws over a given population and within a given territory.⁵⁶ To fully understand the State as it is presently known requires a short summary of the three types of polities identified by socio-culturalists: the Modern State grew from the Pre-Modern State, which in turn evolved from the Non-State, composed of primitive social units.

The Pre-Modern State is characterized by the feudal kingdoms of Europe. Each kingdom was divided into sections controlled by dukes, counts, and other members of the nobility, who, although they had sworn allegiance to a king, were accustomed to act independently. With control of the land came political power.⁵⁷

Sociologists and anthropologists generally agree that the first social unit was the family, headed by a parent, that a later and larger unit was the clan of

53. Del. Rodolfo D. Robles, *The Ombudsman and You*, PHILIPPINE PANORAMA, Feb. 11, 1973, at 11.

54. CAROL EMBER & MELVIN EMBER, ANTHROPOLOGY 172 (9d ed. 1999).

55. Zialcita, *supra* note 7.

56. ROBERT J. JACKSON & DOREEN JACKSON, A COMPARATIVE INTRODUCTION TO POLITICAL SCIENCE 34 (1998).

57. G.A. JACOBSEN & M.H. LIPMAN, POLITICAL SCIENCE 11 (1964).

related families headed by a single chieftain or by a council, and that a still broader unit was the tribe of families connected by ancestry, by friendship, and by a realization of advantages to be obtained through cooperation under some common head.⁵⁸ For these units, bonds of cohesion consisted of a “sense of common ancestry, common language, and common religion, a realization of common military and economic interests, and geographic proximity.”⁵⁹ These bonds of cohesion or kinship ties on which the non-state community was based continue to be found in the Modern State, contrary to the sense of the *public* essential to the idea of the Modern State. It is a weakening of this sense of the *public* and the ascendancy of the *private* and *social* sphere that is the chief source of corruption.

In Concepcion Alfiler’s analysis, she found it “fundamental to present a characterization of the components of bureaucratic corruption as a social phenomenon.”⁶⁰ Alfiler identifies three functions of the bureaucracy that are most susceptible to corruption: revenue-raising, revenue-spending, and regulation. The causes for the vulnerability of these agencies to corruption, Alfiler suggests, may be viewed on three levels: the individual level, the organizational level, and the societal level. On the individual level, the low morality of the persons involved is pinpointed as the main reason for corruption. Organizational reasons include inadequate or unrealistic compensation levels, inadequate controls, and lack of explicit standards of performance. Lastly, societal values, norms, and practices are also viewed as causes of corruption due in part to legal formalism, which creates high statutory standards incongruent with social norms; a difficulty of establishing guilt in court; societal tolerance; *particularism*; and a lack of political will against corruption.⁶¹ To assess bureaucratic vulnerability to corruption, the Development Academy of the Philippines developed a concept that helps to understand the inherent weaknesses in a government agency that make it vulnerable to corrupt activities. Three areas were targeted in the assessment: general control environment; inherent risk of corruption; and adequacy of existing safeguards.⁶²

58. *Id.* at 7.

59. *Id.* at 8.

60. MA. CONCEPCION ALFILER, THE PROCESS OF BUREAUCRATIC CORRUPTION IN ASIA: EMERGING PATTERNS. BUREAUCRATIC CORRUPTION IN ASIA: CAUSES, CONSEQUENCES, AND CONTROLS 26 (Ledivinia V. Cariño ed. 1986).

61. *Id.* at 65-66 (emphasis supplied).

62. World Bank, *Combating Corruption in the Philippines: An Update*, Philippine Country Management Unit East Asia and Pacific Regional Office, Report No. 23687-PH, Sep. 30, 2001, at 27 [hereinafter World Bank].

Rance Lee has argued that the “incongruence of legal norms and folk norms” motivates Asian bureaucrats, specifically those in Hong Kong, South Korea, Malaysia, Nepal, the Philippines, Singapore, and Thailand, to engage in corrupt practices such as graft, nepotism, and bribery. The universalism of legal norms and the *particularism* of folk norms are incompatible. On the one hand, “to maintain justice among different groups of people, legal norms are bound to be impersonal and are supposed to be applied uniformly in all situations and to all persons concerned.”⁶³ On the other hand, the *particularism* of folk norms requires loyalty to and special concern for *insiders* or kith and kin.

This is not to say that the strength of folk norms and the prevalence of corruption are simply proportional. According to Jocano, Filipino personalism includes personalization or the special way of dealing with another as a fellow person.⁶⁴ It is thus a complicated matter to distinguish bribes from gift giving in such an environment since, according to De Sardan, “there is a continuum rather than a gulf between bribing someone and thanking them for services rendered.”⁶⁵ However, Lee finds that “[t]he incongruence of legal and folk norms does not necessarily make people behave according to folk rather than legal norms. Under certain conditions, however, people may have greater wants and/or opportunities to let folk norms take precedence over legal norms, i.e., to commit corrupt acts as defined by law.”⁶⁶

These conditions include: (1) the socio-economic status of the bureaucrats, especially low salaries, perceived relative poverty, and the inconsistency of wealth with power and prestige; (2) the structures and functioning of the bureaucracy, particularly bureaucratic dominance such as the elitism of the bureaucrats, the idealism of the legal framework, and the imbalance between supply and demand of government resources, and the lack of institutional control on the performance of the bureaucrats such as the great discretion power of the bureaucrats, the inadequacy of the internal checking mechanisms, and the lack of extra-bureaucratic control; and (3) the

63. RANCE P.L. LEE, BUREAUCRATIC CORRUPTION IN EAST ASIA: THE PROBLEM OF INCONGRUENCE BETWEEN LEGAL FORMS AND FOLK NORMS. BUREAUCRATIC CORRUPTION IN ASIA: CAUSES, CONSEQUENCES, AND CONTROLS 77 (Ledivinia V. Cariño ed. 1986).

64. F. LANDA JOCANO, TOWARDS DEVELOPING A FILIPINO CORPORATE CULTURE 171-72 (rev. ed. 1999).

65. J.P. OLIVIER DE SARDAN, A MORAL ECONOMY OF CORRUPTION IN AFRICA? EXPLAINING CORRUPTION 492 (Williams ed. 2000).

66. LEE, *supra* note 63, at 106.

social reactions to the bureaucracy, particularly the situations where a) the government is regarded as politically illegitimate, b) the leadership is considered immoral, c) the society is relatively unstable, d) people are ignorant of the laws, or e) the government is applying discriminative policies toward different ethnic groups.⁶⁷

Lee proposes that even where there is an incongruence between legal and folk norms, bureaucrats may choose to conform to the legal norms if the following negative conditions are effectively addressed: (1) unrealistic salary scales; (2) monopoly power, unclear discretion, and lack of accountability of bureaucrats; and (3) adverse social reactions to the bureaucracy owing to situations like political illegitimacy or social instability.

Alfred McCoy describes the Philippines as a “weak post-colonial state” where “the interaction between powerful rent-seeking families and a correspondingly weak Philippine state has been synergistic.”⁶⁸ Even among ordinary citizens, clannishness or tribalism is much stronger than patriotism such that “[m]uch of the passion, power, and loyalties diffused in First World societies are focused upon family within the Philippines. It commands an individual’s highest loyalty, defines life chances, and can serve as an emotional touchstone.”⁶⁹ These deep-seated socio-cultural ties are inextricably bound to the politics that take place within any given society. As previously pointed out, the socio-cultural matrix is reciprocally influenced by the political matrix. Politics, rooted as it is in relations of power, is omnipresent and cannot be excised from any interaction, even the most personal. Thus, the personal is political because, as esteemed philosopher Michel Foucault put it: “power is everywhere.”⁷⁰

V. CURRENT PHILIPPINE ANTI-CORRUPTION SYSTEM VIEWED THROUGH THE POLITICAL SCIENCE LENS

A. Defining Corruption through Notions of Public and Non-Public

Political science has been defined in various ways: as the study of life in an organized community, as the study of the state, and as the study of power relationships between individuals and groups, or what we call “politics,”

67. *Id.* at 106.

68. ALFRED MCCOY, *AN ANARCHY OF FAMILIES: STATE AND FAMILY IN THE PHILIPPINES* 19 (1994).

69. *Id.* at 8.

70. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH* 93 (Alan Sheridan trans., 2d ed. 1995) (1997).

commonly defined as “who gets what, when, and how.”⁷¹ In the study of political science, much emphasis has been placed on the modern national state — its institutions, laws, and processes. In the same way, the main locus of corruption is customarily regarded as the state and government, and for this reason both invariably involve public officials.

The most common definition of corruption is “the abuse of public power for private gain.”⁷² Rose-Ackerman gives a definition that is suited mostly to bribes: “an illegal payment to a public agent to obtain a benefit that may or may not be deserved in the absence of payoffs.”⁷³ Nye presents a classical and oft-quoted definition of corruption — that of “behavior which deviates from the formal duties of a public role because of private regarding (personal, close, family, private clique), pecuniary, or status gains; or violates rules against the exercise of certain types of private-regarding influence,”⁷⁴ which definition was endorsed by Hutchcroft in his analysis of the interrelated nature of rent seeking, corruption, and clientelism.⁷⁵ De Sardan broadened the notion of corruption into a “corruption complex,” or a notion “beyond corruption in the strict sense of the word, to include nepotism, abuse of power, embezzlement and various forms of misappropriation, influence-peddling, prevarication, insider trading and abuse of the public purse.”⁷⁶ Neild defines corruption as “the breaking by public persons, for the sake of private financial or political gain, of the rules of conduct in public affairs prevailing in a society in the period under consideration.”⁷⁷

The conceptual definitions derived from a political science perspective demonstrate that any precise definition of corruption must necessarily

71. CARLTON CLYMER RODEE, ET AL., INTRODUCTION TO POLITICAL SCIENCE 17 (1977).

72. World Bank, *supra* note 62, at 1.

73. SUSAN ROSE-ACKERMAN, *Corruption and the Global Economy*, in CORRUPTION AND INTEGRITY IMPROVEMENT INITIATIVES IN DEVELOPING COUNTRIES (1998).

74. J.S. Nye, *Corruption and Political Development: A Cost-Benefit Analysis*, in POLITICAL CORRUPTION: A HANDBOOK 966 (Arnold J. Heidenheimer, et al. eds. 1989).

75. Paul Hutchcroft, *The Politics of Privilege: Assessing the Impact of Rents, Corruption, and Clientelism on Third World Development*, POLITICAL STUDIES XLV (3), SPECIAL ISSUE 639-58. See, DE SARDAN, *supra* note 65.

76. DE SARDAN, *supra* note 65, at 483.

77. ROBERT NEILD, PUBLIC CORRUPTION: THE DARK SIDE OF SOCIAL EVOLUTION 213 (2002).

contain a notion of *the public*. Williams concludes that “the public office and public interest definitions of corruption share the understanding that the common good is best served when officials adhere to ‘the formal duties of public roles’ and do not lapse into conduct designed to secure ‘private regarding gains,’” causing “all definitional roads [to] lead back to the notion of public office.”⁷⁸

Incentives to commit corrupt acts exist because individuals holding public office have the discretionary latitude to allocate scarce resources and impose costs.⁷⁹ Corrupt officials distort public choices and decisions to generate profits for themselves, resulting in inefficient and inequitable public policies and programs. Klitgaard’s formula recognizes that the existence of a monopoly over discretion results in corruption in the absence of the counteractive effect of accountability.⁸⁰ The intensity of political contests over control of state resources are often brought about by the fact that the government has at its disposal a significant amount of resources accompanied by a wide sphere of discretion.

Such discretion has cemented the role of the government as a shadow donor in the financing of political campaigns. Considering that political campaigns are often costly, with expenses exceeding the normal and legal sources of funding, politicians resort to tapping into government resources as an alternative source of funding. The use of discretionary or secret resources for the campaigns of government party candidates has been shown to be directly proportional to the size of any discretionary or secret resources that may be used by the government without being held accountable. This lack of accountability and transparency has created “cracks between state sectors” within which political finance corruption works.⁸¹

B. Current Philippine Anti-Corruption System Evaluated

The World Bank reports that “the last fifteen years ha[ve] shown that progress can be made by reducing the discretion in government decision

78. Robert Williams, *New Concepts for Old?*, 20 *THIRD WORLD QUARTERLY* 503 (1999).

79. AMADO M. MENDOZA, *The Industrial Anatomy of Corruption: Government Procurement, Bidding and Award of Contracts in THE POLITICAL ECONOMY OF CORRUPTION: STUDIES IN TRANSPARENT AND ACCOUNTABLE GOVERNANCE 2* (2000).

80. Robert Klitgaard, *Subverting Corruption*, *FINANCE AND DEVELOPMENT*, June 2000, at 37.

81. Delia Ferreira Rubio, *The Government as Shadow Donor: The Case of Argentina in 2 DEMOCRACY AT LARGE, NEWS, ANALYSIS, AND DEBATE 20-21* (2006).

making and increasing competition, transparency, and civil society monitoring of public and private sector governance.”⁸²

In 2000, the World Bank identified two broad categories of positive developments in the environment of Philippine governance. The first category includes anti-corruption interventions that improved specific instruments and programs of anti-corruption activities. The other category covers anti-corruption interventions consisting of a formation of stronger alliances within the government, the private sector, civil society and the donor community. Specifically, the progress made as to anti-corruption interventions were in the areas of: legislative and administrative reforms; strengthening of anti-corruption agencies; procurement reforms; financial management reforms; public sector reforms; judicial sector reforms; anti-corruption strategy; inter-agency coordination; corporate governance; information and communications technology; and investigative journalism.⁸³ Progress was also made in the area of anti-corruption alliances with regard to the transparent accountable governance project; transparency and accountability network; Philippines governance forum; corruption vulnerability assessment; and donor alliance.

The Philippines now has a comprehensive set of laws that may have ascertained all the possible instances of graft and corruption achievable. Numerous anti-corruption agencies have been given ample power to identify and punish offenders. Incidentally, due to the vast network of government institutions with essentially the same mandate, the World Bank cautions that “overlapping responsibilities may act as disincentives to progress.”⁸⁴ The direct correlation of power to corruption is duly recognized, with special agencies mandated to give priority to high-profile cases or catching the “big fish” and grave offenses, over the acts of lower ranking personnel. Point number six of the *Ten-Point Jumpstart Action Program* of the Development Academy of the Philippines is the fast tracking of high-profile cases.⁸⁵ Corruption is addressed in both a preventive and punitive way, using a strategy of coordination for greater effectiveness.

The State recognizes that the task is not only that of the government; it has also enlisted civil society in the struggle. Citizens, for their part, have volunteered, in cooperation with state agencies or by themselves, in fighting corruption. The World Bank recommends that “a partnership (coalition)

82. World Bank, *supra* note 62, at 35.

83. *Id.* at 14.

84. *Id.* at 22.

85. Development Academy of the Philippines, National Anti-Corruption Plan for the Philippines (Feb. 2001).

with several citizens, business, professional associations and donor alliances coalesce to fight corrupt practices in the Philippines.”⁸⁶ It is acknowledged, however, that despite these efforts, corruption remains an impregnable component of the Philippine governance environment.

VI. THE THREE-FOLD ANTI-CORRUPTION FRAMEWORK:
FUSING DYNAMISM, INTEGRATION, AND GLOBALIZATION

For an issue as intricate and densely woven as corruption, it is important to have an integrated and global perspective in order to navigate within the labyrinth of proffered anti-corruption strategies. To this end, three diverse theoretical frameworks have been consulted, all having fundamental interconnections. It must be noted that the basic distinction between “private regarding gains” and the “public interest” is implicit in and is the starting point for any discussion on corruption, whether from a legal, socio-cultural, or political science perspective. Ultimately, it is the delicate act of balancing and reconciling the essential incompatibilities between public and private interests that forms the foundation of any anti-corruption strategy.

Each perspective discussed above offers its own brand of anti-corruption medication to cure what is now accepted as a virulent and debilitating social and political disease. Whatever the scholars of each field of study may propose in their commentaries and treatises on corruption, there is a discernible, although not immediately apparent, agreement on the nature of corruption, the reasons behind it, and how it should be treated.

While Nye and those of the revisionist persuasion of the late 1960s evaluated the costs and benefits of corruption and found that “corruption could, at least occasionally and sometimes systematically, have a beneficial impact on a range of important goals: ‘nation-building,’ economic development, administrative capacity, and democratization,”⁸⁷ there is a general consensus that corruption is more harmful than beneficial, particularly when viewed from a developmental standpoint.⁸⁸ Nye himself acknowledges that those who do not support the idea that corruption may be constructive argue that it is “economically wasteful, politically destabilizing, and destructive of governmental capacity.”⁸⁹

The legal approach evidently does not share Nye’s view that corruption may be beneficial. In fact, the law views corruption as destructive and

86. World Bank, *supra* note 62, at 35.

87. Hutchcroft, *supra* note 75, at 643.

88. *Id.* at 646.

89. Nye, *supra* note 74, at 421.

counter-productive on every occasion, a view made manifest by the numerous legal weapons that have been unleashed against corruption by the government. The comprehensiveness of these laws is probably because, as James Scott put it, “the possibilities for corruption are greater in a modern state where government actions touch more facets of its citizens’ lives than in a traditional order where state activity is limited.”⁹⁰ This may be particularly true in the Philippines, which is a country undergoing rapid modernization and must, as a result, have as a key policy the reining in of corruption.⁹¹

The legal viewpoint, while acknowledging the impact of society, culture, and politics on corruption, notably does not take into account the socio-cultural nature of corruption in its anti-corruption strategy, which consists mainly of the enforcement of anti-corruption laws through the prosecution of corrupt public officials and private citizens. Both the context within which corruption occurs and the motivations of those who engage in it are of no import in the prosecution of offenses, due to the principle of universalism inherent in government, which seeks to ensure that justice prevails and that the law is applied equally and uniformly to all concerned in every situation.⁹² Social context is sporadically taken into account only in the creation of the law itself and in the definition of offenses. Once enacted, anti-corruption laws do not permit compromise in light of the contextual situation within which the corrupt acts occurred. The focus of the law is on the act itself instead of on the actors. Lee argues that this incongruence of legal norms and folk norms may even be increasing the incidence of corruption instead of reducing it.⁹³ In Lee’s view –

... the occurrence of corruption is not due to the lack of anti-corruption laws and procedures. A basic source of the problem could be the conflict between legal norms (including anti-corruption rules and other formal rules) required by the government bureaucracy and the folk norms shared by the various groups of people in the society. Should the folk norms be incongruent with the legal norms, people would be motivated or even forced to deviate from the legal requirements.⁹⁴

On the other hand, although the political science perspective focuses on power struggles and the dynamics of power relations in its analyses of corruption, there is frequent acknowledgment of the importance of informal alliances, or what Lee calls “personal primary networks,” and the significance

90. LEE, *supra* note 63, at 78.

91. *Id.*

92. *Id.* at 77.

93. *Id.* at 78.

94. *Id.*

of attitudes towards and perceptions of corruption within a country. Hutchcroft writes: “the tendency [of the best of the literature on corruption] to focus on how issues of politics and political power are played out among major social forces ... can be seen as a welcome relief in an era in which the realm of macro-politics is often no longer the premier consideration of political economy.”⁹⁵

Many parallels may be drawn between what the political science and socio-cultural perspectives identify as the causes for corruption. In his analysis of the interaction of power and authority within bureaucracies and parties, Hutchcroft points out that “the stronger the formal authority relative to informal networks the less prevalent will be the incidence of corruption.”⁹⁶

De Sardan’s analysis of Africa’s “moral economy of corruption” may be applied by analogy to the Philippines’ own situation. He takes note of “[t]he youthfulness of these states and of their apparatus, as well as the traumatizing experience of colonialism, [which] are to some degree responsible [for corruption].” He also claims that in Africa, there is a “scarcity of an ‘ethic of the public service’” and that “[t]he lack of enthusiasm manifested by the political elites of all types, which have succeeded each other since independence, for the promotion of such an ethic, illustrated by their own example, bears a part — a great part — of the responsibility.”⁹⁷ Such an emphasis on the need for strong figures of authority or “leaders by example” is similarly made by the socio-cultural framework, particularly by Bhargava and Bolongaita. In their analytical framework for improving anti-corruption effectiveness, they stress the need for “authoritative and accountable leadership and management structures of anti-corruption relevant to a country’s governance and operating environment.”⁹⁸ In the same vein, De Sardan claims that “the change to democracy seems ... merely to have introduced the possibility of openly attacking practices ... without modifying them; those who criticize them today, when in opposition or without power, will adopt them tomorrow when in power or possessing influence.”⁹⁹

95. Hutchcroft, *supra* note 75, at 645.

96. *Id.* at 647.

97. DE SARDAN, *supra* note 65, at 31.

98. VINAY BHARGAVA & EMIL BOLONGAITA, CHALLENGING CORRUPTION IN ASIA: CASE STUDIES AND A FRAMEWORK FOR ACTION 242 (2004).

99. DE SARDAN, *supra* note 65, at 42.

Having discussed the anti-corruption strategies proposed by scholars in various academic fields, the proponent of this paper has formulated a three-fold anti-corruption strategy that fuses the legal, socio-cultural, and political.

The government recognizes that corruption cannot be eliminated in one fell swoop; it requires a “patient, constant, steady disinfecting, scraping and cleansing.”¹⁰⁰ However, it must be kept in mind that “actions are needed now to match the rhetoric and fulfill expectations by reducing opportunities and motivation for corruption through appropriate policy and regulatory reforms. It should make corruption a high-risk and low-reward activity through actions designed to reduce incentives for corruption and increase the success rate in enforcement of sanctions.”¹⁰¹ This need to increase the risks for corruption and lower its rewards is echoed by Alfiler in her observation that “[i]n most countries where bureaucratic corruption is a low-risk activity it also tends to be recurring and systemic.”¹⁰² However, she warns that “increased regulation mandated without careful study of the capacity of government to enforce it seriously may only end up in more legal formalism, a condition that abets the growth of corruption.”¹⁰³ Lee similarly notes that “law is not always in line with local custom” and that such incongruence “becomes a potential source of social disorder.”¹⁰⁴

In addition to the need to make corruption a high risk and low reward activity by effectively enforcing anti-corruption laws, there are other recurring threads that run through each one of the frameworks, such as: 1) Increasing competition, fairness, impartiality, efficiency, accountability, simplification, and the flow of information; 2) Civil society monitoring of public and private sector governance; 3) Minimizing discretion in decision making; 4) Reinforcing media independence and citizen participation; 5) Enhancing effectiveness and accountability of independent oversight institutions; 6) Building the capacity and independence of prosecutorial agencies and the judiciary with appropriate checks and balances for holding them accountable to the public; 7) Strengthening of the political will; 8) Forging broad-based anticorruption coalitions; and 9) Eliminating administrative opportunities for corruption.

100. World Bank, *supra* note 62, at 35.

101. *Id.*

102. ALFILIER, *supra* note 60, at 64–65.

103. *Id.* at 68.

104. LEE, *supra* note 63, at 107.

VII. VIEWING CORRUPTION WITH GENDERED LENS

This chapter is divided into four sections and aims to achieve the following: first, explain the sex-gender distinction; second, illustrate the intersectionality of gender and corruption by showing how both gender and corruption involve abuse of power; third, discuss how both corruption and gender are development issues and must be addressed in their own right in order to achieve the goals of formal and substantive gender equality, on the one hand, and transparent and accountable governance, on the other; and finally, situate gender within the three-fold anti-corruption framework outlined in the three previous chapters.

A. *The Sex-Gender Distinction*

Much scholarly ink has been devoted to the sex-gender distinction. Stated succinctly, gender defines the roles of men and women as constructed in a particular social context, while sex refers to biological distinction.¹⁰⁵ Feminist author Oakley distinguishes between the two terms in this manner:

‘Sex’ is a biological term: ‘gender’ a psychological and cultural one. Common sense suggests that they are merely two ways of looking at the same division and that someone who belongs to, say, the female sex will automatically belong to the corresponding [feminine] gender. In reality this is not so. To be a man or a woman, a boy or a girl, is as much a function of dress, gesture, occupation, social network and personality, as it is of possessing a particular set of genitals.¹⁰⁶

While the sex/gender system is considered useful as a starting point for the discussion of gender issues as it helps “identify and contest expectations, opportunities and forms of oppression,”¹⁰⁷ it has been criticized as untenable due to the implicit assumption that the needs of all women are homogenous.¹⁰⁸

105. See, VALERIE BRYSON, *FEMINIST DEBATES: ISSUES OF THEORY AND POLITICAL PRACTICE* 46 (1999) (“[s]ex is equated with the biological characteristics of males and females, and is contrasted with gender, which refers to the socially produced attributes of masculinity and femininity and the social arrangements based upon them.”). See also, ANN OAKLEY, *SEX, GENDER, & SOCIETY* 158 (1972); *Corruption and Gender*, *supra* note 4, at 5.

106. OAKLEY, *supra* note 105, at 158.

107. BRYSON, *supra* note 105, at 49.

108. *Id.* at 58 (“[w]omen do not constitute an economic group united by their role in social production or reproduction and that it is not therefore appropriate to conceptualize them as a class.”).

In analyzing corruption with a gendered lens, studies consider the “disproportionate impact of corruption on women as the majority of the poor population.”¹⁰⁹ Likewise, due to their socialization, women enjoy less personal security and are constrained to rely on the government for support. Women are thus more adversely affected by corruption in education, health, and other social sectors.¹¹⁰ Within the legal and judicial spheres, moreover, women are particularly affected,¹¹¹ first, due to their socialization as spouses of the disappeared, and second, as victims of gender-based violence.¹¹²

With respect to their socialization as keepers of the home, women are constrained to rely on their spouses for support; when their spouses are gone — either as victims of forced disappearances or extrajudicial killings — women become further prone to acts of impunity.¹¹³ Within the context of coping with a spouse’s death and tending to the financial needs of the family, a woman’s fight for justice receives scant importance: “Their quest for justice as regards the fate of their spouses become[s] merely secondary in their list of priorities.”¹¹⁴

With respect to women’s vulnerability to violence, it is noted that acts of violence perpetrated upon women are gender-based; acts of violence against women take specific forms such as rape and sexual harassment, and are perpetrated upon them particularly because they are women.¹¹⁵ CEDAW General Recommendation No. 19 has defined gender-based violence as “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on the basis of equality of men” and holds the State “responsible for private acts if they fail to act with due diligence to prevent violations of rights or investigate and punish acts of violence, and for providing compensation.”¹¹⁶ Within the context of State responsibility, gender and corruption show possibilities for integration, as the adverse effects of impunity are felt in both spheres.

109. Corruption and Gender, *supra* note 4, at 7.

110. *Id.* at 8.

111. *Id.* at 10.

112. Amparita S. Sta. Maria, *Images of Women in Impunity*, in HUMAN RIGHTS TREATISE ON THE LEGAL AND JUDICIAL ASPECTS OF IMPUNITY, CONFERENCE PROCEEDINGS AND RELATED ARTICLES 111 (2001).

113. *Id.*

114. *Id.*

115. *Id.*

116. Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, U.N. Doc. No. A/47/38, ¶ 9 (1992).

B. Gender and Corruption Involve Abuse of Power

Gender and corruption are intrinsically linked with concepts of power.¹¹⁷ Power is derived from the Latin verb *potere*, which means “to be able.”¹¹⁸ The pervasiveness of power is unquestionable, and political scientists begin their exposition on accurately describing the concept:

One cannot hold power, touch it or even see it, yet almost everybody wants it. It is present wherever there is politics, in all social relations, no matter how small the group or society. Individuals have it, so can institutions and states [P]olitics involves making common decisions for a group or groups of people, and ... the exercise of power in making those decisions can range from influence to coercion. In its broadest sense, power is being able, physically and intellectually, or a combination of both, to achieve what one wants.¹¹⁹

Politics, rooted as it is in relations of power, is omnipresent and cannot be excised from any interaction, even the most personal. Although a variety of definitions have been proposed to delineate acts of corruption as discussed in previous chapters, corruption has generally been defined as “an abuse of public power for private gain that hampers the public interest,”¹²⁰ while the shaping of gender roles necessarily involves dynamics of power.¹²¹ According to Bryson, “[g]ender is not simply about individual attributes; radical feminist analysis has shown that it is also a basic principle of social organization. In societies as they exist today, this means that it is about power: to learn masculinity or femininity is therefore to learn about subordination and domination; it may also entail learning about resistance.”¹²²

Characteristics ascribed to males and females are also accorded different values, with the consequence that male characteristics are considered more important than female characteristics. A woman’s reproductive role, for instance, is always at the core of female gender, while maleness is defined based on its difference from female. Thus, while being a woman is equated

117. See, BRYSON, *supra* note 105, at 46; JENNY CHAPMAN, THE FEMINIST PERSPECTIVE 96 (David Marsh & Gerry Stoker eds. 1995).

118. JACKSON & JACKSON, *supra* note 56, at 9.

119. *Id.* at 8–9.

120. Global Dynamics of Corruption, The Role of the United Nations Helping Member States Build Integrity to Curb Corruption 2 (2002).

121. See, CHAPMAN, *supra* note 117, at 97.

122. BRYSON, *supra* note 105, at 46–47.

with childbearing and lactation, being a man means competition, self-assertion, and achievement.¹²³

The terminology employed in contemporary gender studies referring to the sexual division of labor is the production-reproduction distinction, which ascribes to women “the primary responsibility for caring for children and the home, and to men ... the task of providing the income on which their families live.”¹²⁴ Author Dionisio ascribes to the view that society accords greater significance to male productive labor rather than female reproductive labor:

Production ... refers to social production, or the production of commodities: that is, goods and services for exchange rather than for immediate consumption. *Participants in social production usually get a wage or fee in return for their labor or the product they produce.* Production is viewed as men’s sphere.

Reproduction includes not just biological reproduction, but also the other tasks associated with it: childrearing, the maintenance of other members of the family, and the maintenance of the dwelling—*activities indispensable to survival, but assigned no economic value.* This is viewed as women’s sphere.¹²⁵

The view recognizing the imbalance between values and roles accorded to males and females is supported by other feminist scholars. According to Chapman, “[g]ender is not just a dichotomy of male and female, but a *hierarchy* of male *over* female [C]aring and nurturing values and activities are devalued, while competition and achievement, along with the inequality they inevitably produce *among men* as well as between sexes, are prized highly.”¹²⁶

Gender studies likewise entail an analysis of theories on sexism — the assumption of male superiority, and patriarchy — a term that feminists use for referring to the system of oppression premised on male power and politics.¹²⁷ These concepts interact and support the proposition that speaking of gender invariably means speaking of power.

The abuse of power relations permeating corruption and gender are highlighted when a public officer abuses his power to pursue private purposes, thus resulting in hampered national, social, economic, and political

123. See, CHAPMAN, *supra* note 117, at 96.

124. ELEANOR R. DIONISIO, MORE ALIKE THAN THE SAME: WOMEN, MEN & GENDER AS SOCIAL CONSTRUCTION 2 (1993).

125. *Id.* (emphasis supplied).

126. CHAPMAN, *supra* note 117, at 96.

127. *Id.* at 98.

progress,¹²⁸ while in gender, power relations among men and women are abused by the assertion of male dominance over females. The assertion of male dominance invariably results in discrimination against women, which impairs or nullifies the enjoyment by women of their fundamental human rights and freedoms.¹²⁹

Further intersectionality between gender and corruption is evident in the unequal access to the same resources and positions of power by men and women, which increase opportunities for corruption. Thus, studies conclude:

[i]t will ... not be sufficient to rely on simply raising women quotas for a 'quick fix' in anti-corruption. Instead, what is needed are sustainable impacts through raising the substantive participation of women, supplemented by additional measures to prevent and combat corruption that help curb and control power.¹³⁰

C. Gender and Corruption as Development Issues

Both gender and corruption are considered development issues. Studies have concluded that “the more widespread the corruption, the worse the macroeconomic figures, particularly per capita income, and that poor sections of the population — and hence women in particular — are disproportionately affected.”¹³¹ In acknowledgment of this reality, the World Bank has declared that “gender mainstreaming” (the demand for socio-economic and political equality between the genders), is key to “poverty reduction.”¹³²

Within the context of gender, scholars have generally classified the development of gender studies into three phases: Women in Development (WID), Women and Development (WAD), and Gender and Development (GAD).¹³³

128. See, Global Dynamics of Corruption, *supra* note 120, at 5.

129. Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) 193, U.N. Doc. A/34/46, art. 3, *entered into force* Sep. 3, 1981.

130. Corruption and Gender, *supra* note 4, at 24.

131. *Id.* at 8.

132. McElroy, *supra* note 5.

133. Celestine Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?* 41 HARV. INT'L L. J. 381, 383-90 (2000).

WID, the first phase, is primarily based on the principles of liberal feminism and aims at eliminating formal inequality. It seeks to address the issues facing Third World women such as their invisibility in the workforce, the lack of importance ascribed to household work, and the prevailing traditional notions of women adversely affecting their social status.¹³⁴

WAD, the second phase, is based on the principles of Marxist feminism and is focused on poverty alleviation of Third World women. Due to its Marxist perspective, this phase highlights class consciousness and proposes that women's reproductive labor is exploited by men in the same manner as the capitalist exploits the productive labor of the working class.¹³⁵

Finally, GAD is based on the principles of difference and post-modern feminism.¹³⁶ It highlights the cultural construction of gender and "gives attention to the social system that defines gender roles differently for men and women."¹³⁷ GAD likewise "focuses on gender relations and questions the validity of differentiated gender roles and the social and political institutions that shape these roles."¹³⁸ The GAD phase is averse to meta-theories and grand narratives, thus focusing on the public and private spheres, while rejecting the dichotomy between the two.¹³⁹

The active participation of women in achieving national development goals should be given primacy. Their increased participation can be achieved by ensuring their incorporation within the political system, as politics involves participation in the decision-making process in all spheres of society, hence ensuring women's attainment of *de facto* equality.¹⁴⁰ Several arguments have been advanced in favor of women's increased participation in politics. First, the inclusion of women in politics furthers democracy and egalitarianism. Second, women's under-representation can be dangerous for the legitimacy of democratic systems because it gives rise to public distrust. If women are distanced from the representative body, they cannot expect that

134. *Id.* at 384.

135. *Id.* at 386.

136. *Id.* at 387.

137. *Id.*

138. *Id.*

139. Nyamu, *supra* note 133, at 387.

140. *See*, Committee on the Elimination of Discrimination against Women, General Recommendation No. 25, art. 4, ¶ 4, A/59/38 Part I; CEDAW/C/2004/I/WP.1/Rev.1 (2004). This further discusses the concept of *de facto*, as well as *de jure*, equality of women with men in the enjoyment of human rights and fundamental freedoms.

their interests will be adequately addressed. Third, since political participation involves articulating, providing, and defending interests, women are better able to press for their own needs through their participation in government. Fourth, women are a necessary factor in initiating transformative politics through the enlargement of its scope: women not only focus on improving infrastructure, but also emphasize the necessity for improving the social structure of the community through education and health care. Finally, including women within the political sphere ensures the efficient use of human resources, and allows women to exercise their agency.

Viewed with an interdisciplinary corruption perspective, the significance of corruption as a development issue is emphasized by its adverse effect on the poor. According to former UN Secretary-General Kofi Annan, “[c]orruption hurts the poor disproportionately — by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid.”¹⁴¹ The adverse consequences wrought by corruption have also been described as “subversive of stable economic structures, good governance, just and predictable legal systems and other critical social structures.”¹⁴² In developing countries more particularly, “public resources are allocated inefficiently, competent and honest citizens feel frustrated, and the general population’s level of distrust rises.”¹⁴³

Corruption likewise impairs the economic development of poorer countries because large sums of money are transferred in the opposite direction from where such funds are direly needed: instead of applying funds for legitimate purposes such as aid and investment, these flow back to the accounts of corrupt officials, oftentimes diverted to banks in already developed countries.¹⁴⁴

The necessity of an integrated approach towards gender and corruption is highlighted by their nature as development issues. Addressing both issues is

141. See, United Nations, Office of the Under-Secretary-General - Statements, Statement by Mr. José Antonio Ocampo Under-Secretary-General for Economic and Social Affairs of the United Nations, *available at* http://www.un.org/esa/desa/ousg/statements/2005/20050925_devcmnt.html (last accessed Mar. 21, 2008); Transparency International, Fighting Global Corruption, *available at* <http://www.transparency-usa.org/intro.html> (last accessed Mar. 21, 2008).

142. Global Dynamics of Corruption, *supra* note 120, at 5.

143. *Id.*

144. *Id.*

indispensable to achieving the goals of formal and substantive gender equality, in terms of the gender perspective, and transparent and accountable governance, in terms of the corruption perspective. Both goals are significant in their own right, but should likewise be addressed with a view to their intersectionality: “[t]he idea that oppressions are interconnected but that none can be assumed to have causal primacy, also means that each system must be tackled directly and in its own right, rather than assuming that it will disappear as a by-product of change elsewhere.”¹⁴⁵

D. Situating Gender within the Three-Fold Anti-Corruption Framework

As previously discussed in Chapters One to Three of this work, the three-fold anti-corruption framework is composed of the legal, socio-cultural, and political science perspectives. The aim of this section is to situate gender within these three perspectives and determine how the cumulative anti-corruption strategies proposed within the framework can further gender issues.

There has been no current effort at mainstreaming gender within Philippine anti-corruption laws, although one particular law can be analyzed as an anti-corruption tool notwithstanding its primary anti-discrimination purpose: Republic Act No. 7877,¹⁴⁶ the Anti-Sexual Harassment Act of 1995. The law can be viewed as an anti-corruption tool as it addresses sexual corruption in bureaucracies and organizations. Women are

frequently subordinated in a hierarchy who are forced to render sexual services by male superiors who decide on their employment, remuneration, career, or dismissal. This conduct can be interpreted analytically as corruption since the superiors fail to respect their duty to take personnel decisions based on technical and functional criteria and abuse their position of power for private purposes.¹⁴⁷

It is notable that such corrupt behavior is precisely penalized by the law when it defines sexual harassment as being committed —

In a work-related or employment environment when:

- (1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation,

145. BRYSON, *supra* note 95.

146. An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes [Anti-Sexual Harassment Act of 1995], Republic Act No. 7877 (1995).

147. Corruption and Gender, *supra* note 4, at 12.

terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating, or classifying the employee which in anyway would discriminate, deprive, or diminish employment opportunities or otherwise adversely affect said employee;

- (2) The above acts would impair the employees' rights or privileges under existing labor laws; or
- (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.¹⁴⁸

The gender-based form of corruption explicit in sexual harassment is perpetuated by the discretionary powers accorded supervisors and higher officers within the bureaucracy, as well as lack of both transparency and accountability.¹⁴⁹ The emphasis on the necessity of minimizing discretion and increasing transparency and accountability are recurrent themes that flow among the three-fold anti-corruption framework.

Studies have also been undertaken in the macro, meso, and micro levels that correlate representation of women with the severity of corruption in the national and public/private sector institutions, as well as gender-specific attitudinal differences towards corruption.¹⁵⁰ While these studies are highly contested, some authors propose that increasing the percentage of women in the areas mentioned ensure lower levels of corruption.¹⁵¹ In order to justify this conclusion, authors assert that "women are less tolerant of soliciting bribes and that policies that increase women's role in public life reduce graft."¹⁵² This position has been criticized, as the responses given by women may also be due to their lack of participation in decision-making policies, thus, they are less exposed to opportunities for corruption.¹⁵³

For instance, Working Paper No. 232 authored by Swamy, Knack, Lee, and Azfar, which advocates the increase of women's participation in public life, shows:

- (a) in hypothetical situations women are less likely to condone corruption,
- (b) women managers are less involved in bribery, and (c) countries which have greater representation of women in public life have lower levels of corruption. This evidence, taken together, provides some support for the

148. Anti-Sexual Harassment Act of 1995, § 3 (a).

149. Corruption and Gender, *supra* note 4, at 12.

150. *Id.* at 15-16, 18.

151. *Id.* at 15.

152. *Id.* at 18 (citing Knack/Azwar with reference to their study with Swamy in the Global Corruption Report 2003).

153. *Id.* at 20.

idea that, at least in the short run, increased presence of women in public life will reduce levels of corruption.¹⁵⁴

The proposition that women are intrinsically less likely to assent to corrupt acts is purportedly due to their socialization and other diverse factors:

[i]t is ... important for us to clarify that we do not claim to have discovered some essential, permanent, or biologically determined differences between men and women. Indeed, the gender differences we observe may be attributable to socialization, or to differences in access to networks of corruption, or in knowledge of how to engage in corrupt practices, or to other factors.¹⁵⁵

Women are supposedly brought up to be more honest and risk-averse, dedicated to child-rearing, and therefore the repositories of model virtues. They are also more community-oriented and have high levels of self-control, as well as more obliged to follow rules because of their reliance on the protection of the law. According to Dollar, et al., “[n]umerous behavioral studies have found women to be more trust-worthy and public-spirited than men [R]esults suggest that women should be particularly effective in promoting honest government [T]he greater the representation of women in parliament, the lower the level of corruption.”¹⁵⁶ These assertions, while arguing in favor of greater representation of women in the public sphere, may oftentimes rely on gender stereotypes to further women’s needs. It has thus been observed that “invoking gender stereotypes as proof of higher ethical standards amongst women is also presumably more harmful than beneficial to gender equality goals.”¹⁵⁷

This Paper does not adhere to the conclusion that a mere quantitative increase in women’s representation in politics ensures the rapid minimization of corrupt practices within the government. Rather, the authors subscribe to the view that anti-corruption measures seeking to include women should be more sustainable and aimed at long-term results. Working Paper No. 232 authored by Swamy, et al., supports this view, as the researchers were careful to note that while the increase in women’s participation in public life may be beneficial in the short-term, the authors implicitly acknowledge that other

154. Anand Swamy, *et al.*, Gender and Corruption, Center for Institutional Reform and the Informal Sector, Working Paper No. 232, at 1-2, Nov. 1999.

155. *Id.* at 2.

156. David Dollar, *et al.*, Are Women Really the “Fairer” Sex? Corruption and Women in Government, Policy Research Report on Gender and Development, Working Paper Series No. 4, Oct. 1999.

157. Corruption and Gender, *supra* note 4, at 24.

measures are needed to achieve sustainable results.¹⁵⁸ Thus, the study concludes:

[a]lthough some objection can be raised to each of our diverse pieces of evidence, we maintain that the most parsimonious interpretation is that gender-based differences in corrupt behavior exist and that increasing women's presence in public life can reduce levels of corruption, at least in the short run. We are agnostic regarding whether these differences are attributable to socialization, biology, access to networks of corruption, knowledge of corrupt practices, or other factors, and whether they are temporary or permanent. Overall, our findings provide some support for the view that policies to increase the role of women in politics and commerce—usually proposed with gender-equity or poverty-alleviation goals in mind—can be useful tools in combating corruption.¹⁵⁹

It is imperative that an integrated approach towards gender and corruption is formulated. This may be achieved by addressing the recurrent themes that flow among the three-fold anti-corruption framework, namely, minimizing discretion, increasing accountability, and maximizing transparency. Thus, a gender-sensitive approach to curbing corruption requires “strengthen[ing] accountability and transparency in decentralization and promot[ing] municipal self-governance with substantive participation of female representatives of poor sections of the population in the political process and in administrative operations.”¹⁶⁰

VIII. UTILIZING FEMINIST CURB-CUTTING THEORY AS AN ANTI-CORRUPTION STRATEGY

A. Defining the Feminist Curb-Cutting Theory

There is a need for a dynamic, integrated, and global approach to curbing corruption. This need has been highlighted by the United Nations Convention against Corruption when it acknowledged that “a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively.”¹⁶¹

In response to this necessity, this Paper proposes the utilization of feminist curb-cutting theory as an anti-corruption strategy. Feminist curb-cutting replicates the model used for people with disabilities and uses their experience to benefit not only those with disabilities, but anyone who may

158. Swamy, *et al.*, *supra* note 154, at 20.

159. *Id.* at 20.

160. Corruption and Gender, *supra* note 4, at 25.

161. UNCAC, *supra* note 1, Preamble, ¶ 5.

need the structural curb-cutting design. The principle emanating from feminist curb-cutting is that a principle designed to benefit one marginalized group concurrently benefits others. Thus, the feminist curb-cutting theory

begins with the experience of those whose capabilities fall outside the norm and involves them in the design of the solution for existing infrastructure and the design of future structures such that the full range of capabilities inform their design. While designed with attention to those in wheelchairs, the curb cuts, access ramps, automatic doors, multiple access points, and clearly indicated wheelchair accessible routes enhance the mobility of others as well. Those pushing strollers and delivery dollies, those carrying lots of books, and those recovering from an injury for example are all able to move more freely. Beginning with those most affected, all are able to see and understand a broad range of mobility challenges and to design solutions that enable greater freedom of movement for all.¹⁶²

Placed within a general framework, curb-cut feminists begin with gender analysis of political, social, and economic conditions and processes. These analyses aim at revealing the ways in which the different political, social, and economic contexts exclude or marginalize women. Curb-cut feminist epistemology yields the following conclusions:

1) when the conditions of the 'differently' oppressed are identified and analyzed, greater insights than those possible from positions of relative privilege are possible, 2) those who are 'differently' oppressed may not be visible to the theorist, to the relatively powerful, or to those who are oppressed differently, 3) the oppression of those 'differently' oppressed than the inquirer may not be visible to the inquirer, and 4) identifying the 'differently' affected is a political dimension of this methodology that is itself an important subject of critical attention.¹⁶³

B. Feminist Curb-Cutting within the Three-Fold Anti-Corruption Framework

Curb-cut feminism emphasizes the importance of mainstreaming gender within anti-corruption policies and identifies how women are excluded from current gender insensitive anti-corruption policies. Such curb-cut feminism acknowledges that women are in less powerful positions to challenge corruption; that women face gendered forms of corruption, such as sexual corruption in the workplace; and that corruption disproportionately affects women as majority of the poor population.

Thus, in employing curb-cut feminism as an anti-corruption tool, the strategy utilized aims to achieve intersecting beneficial results: substantive gender equality, on the one hand, and good governance, on the other. The

162. ACKERLY, *supra* note 6, at 136-37.

163. *Id.* at 137.

conclusion reached by Dollar, et al., may be seen as one aspect of achieving these two goals, although it must be clearly noted that the increase of women's representation in government is only one among the many methods of furthering gender equality and good governance, and must not be premised on existing gender stereotypes. According to Dollar, *et al.*,

[i]ncreasing the presence of women in government *may be valued for its own sake, for reasons of gender equality*. However, our results suggest that there may be extremely *important spinoffs* stemming from increasing female representation: if women are less likely than men to behave opportunistically, then bringing more women into government may have significant benefits for society in general.¹⁶⁴

In sum, a gender-sensitive, dynamic, and integrated approach to corruption entails ensuring the substantive and sustainable participation of women in anti-corruption measures, such as: 1) Increasing competition, fairness, impartiality, efficiency, accountability, simplification, and the flow of information; 2) Civil society monitoring of public and private sector governance; 3) Minimizing discretion in decision making; 4) Reinforcing media independence and citizen participation; 5) Enhancing effectiveness and accountability of independent oversight institutions; 6) Building the capacity and independence of prosecutorial agencies and the judiciary with appropriate checks and balances for holding them accountable to the public; 7) Strengthening of the political will; 8) Forging broad-based anticorruption coalitions; and 9) Eliminating administrative opportunities for corruption.

The crafting of these anti-corruption measures, however, must likewise be informed by the heterogeneity of women's interests, and must be predicted on solidarity rather than an undifferentiated unity, as "the social distinction of women (and their interests) ... [is] also ... important, as ignoring it can result in equally corrupt 'elite women' in related positions."¹⁶⁵

It is thus hoped that viewing corruption with gendered lens through the utilization of the feminist curb-cutting theory promotes the goals of gender equality on the one hand, and transparent and accountable governance on the other, with the illuminating recognition that both goals are significant in their own right, but should likewise be addressed with a view to their intersectionality.

164. Dollar, et al., *supra* note 156, at 6 (emphasis supplied).

165. Corruption and Gender, *supra* note 4, at 25.