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Buying Our Way Out of Corruption: Performance-Based Incentive Bonuses for Developing Country Politicians and Bureaucrats

Martin Skladany[†]

This Article argues for the establishment of performance-based financial incentive programs in developing countries that would pay politicians and high-level bureaucrats substantial bonuses (ten to twenty times or more of their official yearly salaries) to reduce corruption within their countries. These incentive programs would turn the weapon of greed back on itself by aligning the motivations of politicians and bureaucrats with the stated goals of government and the desires and will of citizens. Paying corrupt public officials to stop stealing may seem distasteful, but the problems that developing countries face and yet cannot overcome because of systemic corruption are staggering and have been largely resistant to other anticorruption strategies. By simply altering the source of funds to public servants, performance-based incentive programs for developing country politicians and high-level bureaucrats can, over the long run, create a culture of clean governance conducive to sustained economic growth and can make all aspects of development, such as improving infrastructure, education, and health care, more manageable.

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INTRODUCTION

*The trouble with Nigeria is simply and squarely a failure of leadership The Nigerian problem is the unwillingness or inability of its leaders to rise to the responsibility, to the challenge of personal example which are the hallmarks of true leadership.*¹

While Prime Minister of India in the 1980s, Rajiv Gandhi publicly stated that he believed 85% of government spending on development within India never reached its intended beneficiaries but was instead lost to corruption² at every stage along the way.³ A 2004 survey in Chad showed that 99% of money earmarked for rural health clinics by the Ministry of Finance never reached its destination.⁴ In Uganda, a relatively functional African country, “less than 30 percent of the funds dedicated to primary education was actually reaching schools” in 1998.⁵ A poll by Gallup International Associations of 50,000 individuals worldwide revealed that “Africans . . . are painfully aware of the inadequacy of their leaders: 8 out of 10 said ‘political leaders are dishonest’; three-quarters ‘deemed them to have too much power and responsibility’; while 7 out of 10 ‘think politicians behave unethically.’”⁶

As Heineman and Heimann observe, “Although it is difficult to quantify global corruption, there is little question that huge problems exist. For example, the World Bank estimated in 2004 that public officials worldwide receive more than \$1 trillion in bribes each year (and that figure does not include embezzlement).”⁷ The above sum is staggering and directly harms the poor, but the larger tragedy is that systemic corruption can destroy most incentives to create wealth and can perpetuate a dynamic in which it is “in most people’s interest to take action that directly or indirectly damages everyone else”⁸:

The rot starts with government but it afflicts the entire society.

1. CHINUA ACHEBE, *THE TROUBLE WITH NIGERIA* 1 (1983).

2. I will use the term “corruption” to refer to a politician or bureaucrat’s misuse of public office for private gain, including illegal campaign finance.

3. Amelia Gentleman, *India’s War on Poverty: Easy Victory Unlikely*, INT’L HERALD TRIB., Feb. 28, 2006, at 2, available at <http://www.ihf.com/articles/2006/02/27/news/poor.php>.

4. PAUL COLLIER, *THE BOTTOM BILLION: WHY THE POOREST COUNTRIES ARE FAILING AND WHAT CAN BE DONE ABOUT IT* 66 (2007). Collier points out: “The survey had the extremely modest purpose of finding out how much of the money actually reached the clinics — not whether the clinics spent it well, or whether the staff of the clinics knew what they were doing, just where the money went.” *Id.*

5. “Not all of the missing money was stolen or wasted; some [o]f it was re-appropriated to other priorities by middle-level officials.” ROBERT CALDERISI, *THE TROUBLE WITH AFRICA: WHY FOREIGN AID ISN’T WORKING* 163 (2006).

6. Lydia Polgreen, *Why So Starry-Eyed? Misery Loves Optimism in Africa*, N.Y. TIMES, Mar. 5, 2006, at D1.

7. Ben W. Heineman, Jr. & Fritz Heimann, *The Long War Against Corruption*, 85 FOREIGN AFF., May-June 2006, at 76.

8. TIM HARFORD, *THE UNDERCOVER ECONOMIST: EXPOSING WHY THE RICH ARE RICH, THE POOR ARE POOR — AND WHY YOU CAN NEVER BUY A DECENT USED CAR!* 198 (2006).

There's no point investing in a business because the government will not protect you against thieves. (So, you might as well become a thief.) There's no point in paying your phone bill because nobody can successfully take you to court (so there's no point being a phone company). There's no point getting an education because jobs are not handed out on merit (and in any case, you can't borrow money for school fees because the bank cannot collect on the loan, and the government doesn't provide good schools). There's no point setting up an import business because the customs officers will be the ones to benefit (and so there is little trade, and so the customs office is underfunded and looks even harder for bribes).⁹

From an economic perspective, systemic corruption reduces the beneficial effects of competition in the market, the quality of goods produced,¹⁰ foreign direct investment (FDI),¹¹ government revenue,¹² and bank supervision,¹³ while raising the prices that the poor pay for goods, increasing the risk premium that developing countries (LDCs)¹⁴ pay when issuing bonds,¹⁵ and swelling the informal economy.¹⁶ From a political perspective, systemic corruption corrodes the legal system, turns the bureaucracy into a self-seeking entity that disregards the public interest, undermines representational democracy, reduces educational funding,¹⁷ and increases military spending and arms procurement.¹⁸ From a societal

9. *Id.* at 198–99.

10. For example, "in Southern Chad, farmers grow their cassava far away from the road and do not fertilize their crops, worried that their plants will grow too high and be visible to military vehicles driving by." CALDERISI, *supra* note 5, at 60.

11. See generally Shang-Jin Wei, *How Taxing Is Corruption on International Investors?*, 82 REV. ECON. & STAT. 1 (2000).

12. See generally Eric Friedman et al., *Dodging the Grabbing Hand: the Determinants of Unofficial Activity in 69 Countries*, 76 J. PUB. ECON. 459 (2000) (controlling for income per head).

13. Shang-Jin Wei & Sara E. Sievers, *The Cost of Crony Capitalism*, in THE ASIA COMPETITIVENESS REPORT 1999 at 50, 52 (World Economic Forum, Geneva).

14. I will use the terms "developing countries" and "LDCs" interchangeably. Numerous scholars prefer to distinguish between least developed countries and developing countries, reserving the abbreviation "LDC" for the former. I will use the term "LDC" to designate both. This is obviously a large spectrum of states, and the poorest states are inevitably in greater need of performance-based financial incentive programs. I do not use the term "LDC" broadly out of disrespect towards any developing countries; rather, I use it as an umbrella simply for convenience's sake, since performance-based incentive programs are needed in many least developed countries and developing countries. Also, I will use the terms "public officials" and "public servants" interchangeably with "politicians and high-level bureaucrats" and "politicians and bureaucrats."

15. See generally Francisco Ciochini et al., *Does Corruption Increase Emerging Market Bond Spreads?*, 55 J. ECON. & BUS. 503 (2003).

16. See generally Simon Johnson et al., *Regulatory Discretion and the Unofficial Economy*, 88 AM. ECON. REV. 387 (1998).

17. See generally Paolo Mauro, *Corruption and the Composition of Government Expenditure*, 69 J. PUB. ECON. 263 (1998).

18. See generally Sanjeev Gupta et al., *Corruption and Military Spending*, 17 EUR. J. POL. ECON. 749 (2001).

perspective, systemic corruption breeds cynicism, rage, despair, and factionalism, exacerbates the emigration of skilled citizens, and promotes individual advancement above ethical concerns. From an environmental perspective, systemic corruption increases pollution.¹⁹ From a foreign aid perspective, systematic pilfering by developing country public officials blocks potentially life-saving assistance from reaching the poor and ultimately discourages foreign generosity, for developed countries (DCs) may become reluctant to contribute aid where the greater portion is stolen and never reaches those in need.

The problems that LDCs face but cannot overcome because of systemic corruption are staggering. Systemic corruption can be a matter of life or death for millions of LDC citizens. There are over 9.5 million deaths annually of children under the age of five in developing countries, two-thirds of which are "entirely preventable"²⁰ but extremely difficult to prevent because "fragile states, characterized by weak institutions with high levels of corruption, political instability and a shaky rule of law, are often incapable of providing basic services to their citizens."²¹ Frustration and anger regarding systemic corruption have even resulted in dramatic outbreaks of violence. In Peru, for example, corrupt public officials were lynched by disillusioned citizens.²²

Theft by government officials has been largely resistant to anticorruption strategies. Unfortunately, "[t]he energy invested in the anti-corruption drive has failed to reduce average levels of graft in government or business in the world's poorest regions, according to World Bank officials and other leading analysts."²³ Given the pervasiveness of corruption and the drastic nature of the problems that result, new policies that properly take into account LDC environments are desperately needed.²⁴

For the poorest of poor countries, dramatically reducing corruption²⁵ is

19. See generally Heinz Welsch, *Corruption, Growth, and the Environment: A Cross-Country Analysis*, 9 ENV'T & DEV. ECON. 663 (2004).

20. UNICEF, THE STATE OF THE WORLD'S CHILDREN 2008: CHILD SURVIVAL 6, 15 (2008), available at <http://www.unicef.org/sowc08>.

21. *Id.* at 20.

22. See Larry Rohter & Juan Forero, *Unending Graft Is Threatening Latin America*, N.Y. TIMES, July 30, 2005, at A1.

23. Donald Greenlees, *Stagnation Marks Anti-Corruption Fight*, INT'L HERALD TRIB., Apr. 6, 2006, at 1. "Kathleen Moktan, the Manila-based director of the Asian Development Bank's capacity development and governance division, said she would 'never argue' that corruption had been reduced. . . . 'There has been no global improvement on average,' Daniel Kaufman, the director of global programs at the World Bank Institute in Washington, said by phone. 'It is quite sobering. The average quality of governance worldwide has remained stagnant.'" *Id.*

24. One such small, yet innovative example, outside the field of anticorruption efforts, of taking LDC environments into account is the fact that road signs in Zambia are "deliberately perforated, for otherwise they would soon be removed and turned into pots and pans." John Grimond, *Return to Lundazi*, ECONOMIST, Dec. 24, 2005, at 63, 64.

25. Throughout this Article, for the sake of convenience, I will talk of the need to reduce corruption, when in fact what LDCs are truly seeking is to reduce the total economic, political, and social cost of corruption. Further, while dramatically reducing corruption (i.e., the economic, political, and social cost of corruption) is of vital importance to many LDCs, completely eliminating corruption is an unrealistic goal given diminishing returns to scale

the most significant step that a developing country can take toward successful, sustained development.²⁶ As Cooper notes, "Imagine a poor country with a well-run legal system but not much else in the way of resources. Someone will somehow find an opportunity to make money. In the end, the country will probably grow rich."²⁷ This is not to claim that low corruption within a state guarantees sustained development.²⁸ Many

and historical precedent.

26. Since the end of World War II, the development field has gone through numerous paradigms that have all offered different explanations as to why LDCs are poor and different policy prescriptions as to how LDCs could lift themselves out of poverty or be lifted out of poverty by others. As time has passed, more and more models of development have sprung forth, including: Post-Development Model (*see, e.g., THE POST-DEVELOPMENT READER* (Majid Rahnema & Victoria Bawtree eds., 1997)), Washington Consensus Model (*see, e.g.,* essentially any economic report by the World Bank in the 1980s or 1990s before the seminal WORLD BANK, *THE EAST ASIAN MIRACLE: ECONOMIC GROWTH AND PUBLIC POLICY* (1993)), Asian Tigers Model (*see, e.g.,* Ha-Joon Chang, *The East Asian Development Experience, in RETHINKING DEVELOPMENT ECONOMICS* (Ha-Joon Chang ed., 2003)), Capabilities Model (*see, e.g.,* AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999)), Democracy and/or Rule of Law Model (*see, e.g.,* THOMAS CAROTHERS, *AIDING DEMOCRACY ABROAD: THE LEARNING CURVE* (1999)), and a plethora of other, partial explanations as to why LDCs are poor (*see, e.g.,* JARED DIAMOND, *GUNS, GERMS, AND STEEL: THE FATES OF HUMAN SOCIETIES* (1997)). I take corruption and poor governance to be the predominant factors restraining LDCs from a fighting chance at securing the fruits of development. For a contrarian view that asserts that the causal pathway should be reversed — i.e., that LDCs are corrupt and poorly governed because they are poor, not that corruption and poor governance lead to countries being poor — see JEFFREY D. SACHS, *THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME* (2005). Andrew Rice responds to Sachs, stating:

According to a 2002 study conducted by the African Union, corruption consumes more than a quarter of the continent's gross domestic product every year, about \$148 billion. Faced with such facts, Sachs tries to recalculate reality. He publishes a chart of corruption figures that have been "controlled statistically for income levels" and concludes that Africa is not "distinctly poorly governed by the standards of very poor countries." This is a little like saying if you control for height, the Ivy League is the best conference in college basketball. The generals who looted Nigeria — a government of "average" honesty by Sachs's measure — were not stealing relative dollars: Check their Swiss bank statements.

Andrew Rice, *Why Is Africa Still Poor?*, NATION, Oct. 24, 2005, at 38, available at <http://www.thenation.com/doc/20051024/rice>. Yet one comment by Sachs could be interpreted as possible sympathy for incentive programs for LDC public officials that target corruption. He states:

[W]here authoritarian or corrupt regimes hold sway, the consequences for the population are likely to be tragic, but the responsibilities of the rich world are also limited. Perhaps the most important action that rich countries can take in those circumstances is to help the well-governed neighbors of such countries to prove that there is help available for those that are organized politically to help themselves.

SACHS, *supra*, at 269. Finally, for a summary of the empirical literature on the connection between corruption and economic growth, see WILLIAM EASTERLY, *THE ELUSIVE QUEST FOR GROWTH: ECONOMISTS' ADVENTURES AND MISADVENTURES IN THE TROPICS* (2002).

27. Robert Cooper, *The Mystery of Development*, PROSPECT MAG., Feb. 2006, at 34.

28. See Megan McArdle, *The Virtue of Riches: How Wealth Makes Us More Moral*, REASON, July 2006, at 55, available at <http://reason.com/news/show/36749.html> (reviewing BENJAMIN M. FRIEDMAN, *THE MORAL CONSEQUENCES OF ECONOMIC GROWTH* (2005)). "[I]n a recent *Foreign Policy* essay, Moisés Naím quotes François Bourguignon, the [World Bank]'s chief economist, as saying '[w]e do have a good sense of what are the main obstacles to growth and what are the conditions without which an economy can't grow. But we are far less sure about

other factors, including education levels, the capacity of health care systems, and intelligent economic policy, play important roles. But these other factors become more manageable when a poor country has clean governance – e.g., most medicines actually reach those who need them; teachers show up to teach and do not steal and resell school materials; and politicians do not pursue economic policies whose sole purpose is to hide corrupt transactions.²⁹

For low middle-income countries, substantial reductions in corruption can end the existence of extreme poverty within their borders. Low middle-income countries have little money to help lift the extreme poor within their borders out of poverty, and corruption can worsen the problem by preventing a significant amount of the money allocated for such projects from reaching the extreme poor. Large reductions in corruption would thus enable more money to be on hand for those in need.

Corruption also imposes costs on those public officials who choose to partake in it.³⁰ It is time-consuming and risky to solicit bribes and siphon off government funds. Plus, it wins no respect from citizens or from the international community. Corruption leads to precarious, unstable positions because public officials cannot rely on their ability and merit to maintain steady employment but instead must satisfy the whims and pleasures of those who are more powerful.³¹ By stunting development, politicians and bureaucrats deprive themselves as well as their fellow citizens of clean air, safe streets, health, and longevity.

Given how devastating the effects of corruption are on most LDCs, this Article proposes providing financial incentives (legal bribes or inducements) to government officials in developing countries to stop them from partaking in corruption – from robbing the LDC's treasury, stealing overseas development aid, or soliciting bribes from private citizens,

what are the other ingredients needed to create and sustain growth.” *Id.* Conversely, LDCs that are extremely corrupt can still experience large economic growth. Even in those happy moments when economists have a pretty good idea of what should be done, they are generally at a loss to prescribe programs that can survive a political process that is usually controlled by the same group of people who are causing the problems. Yet it would be a mistake to assume that such LDCs do not need a performance-based incentive program targeted at their senior public servants because such growth may not be high enough and/or sustainable over the long term. Even if this were not the case, the existence of significant corruption in these countries would still signify scores of resources that were not getting to the poor. Further, as mentioned before, corruption would still be undermining noneconomic strides toward justice by corroding the fairness of the legal system and elections, harming the environment, breeding cynicism, etc.

29. See Cooper, *supra* note 27. “Many development programmes concentrate on infrastructure, social programmes, health or education. It is desirable to improve all of these areas in developing countries, but good infrastructure and healthcare are as much the result of development as a cause. For these benefits to be lasting, they must be provided by a well-functioning state, paid for by a well-functioning tax system and operated by honest state employees Spending money on public services as a way of promoting development is like trying to cure an illness by hiding the symptoms. It may do good – and it may be all that can be done – but it does not go to the heart of the problem.” *Id.*

30. I do not mean to imply that all public officials in developing countries are corrupt.

31. While this holds true for competent and incompetent public officials, it should be noted that incompetent public officials could conceivably be better served by a corrupt public administration.

corporations, or other public servants.³² Performance-based financial incentive programs in developing countries, established by a coalition of DC governments, intergovernmental organizations, or others, would pay LDC politicians and high-level bureaucrats substantial bonuses – ten to twenty times or more of their official yearly salaries – to reduce corruption within their countries.³³ The incentive program would better align the motivations of politicians and bureaucrats with the stated goals of government and the desires and will of citizens.³⁴ There would be no doubt that the incentive bonuses would be meant to financially substitute for the money that corrupt public servants traditionally steal from the government or take from citizens. In essence, performance-based incentive programs would aim to turn the weapon of greed back on itself by exploiting it as a means of positive change. By simply altering the source of funds to public servants, performance-based incentive programs for LDC politicians and bureaucrats can, over the long run, create a culture of clean governance conducive to sustained economic growth and can make all aspects of development, such as improving infrastructure, education, and health care, more manageable.³⁵

If public servants reduce their corruption enough to qualify for incentive bonuses, the payment of these bonuses would have a transformative effect on the LDC.³⁶ Citizens would no longer have to

32. There are at least three ways to effect change in others: convince them, scare them, or bribe them. One can convince others by getting them to see and believe in the logical, moral, or religious superiority of a viewpoint. A government or a clandestine organization like a gang can scare others by credibly threatening fines, humiliation, imprisonment, torture, or death. Finally, one can “bribe” others by offering illegal (kickbacks or bribes) or legal (incentives) inducements to perform or abstain from performing certain activities. This Article focuses on the latter option.

33. I will use the terms “performance-based financial incentive bonuses,” “performance-based incentive bonuses,” “incentive bonuses,” “incentives,” and “bonuses” interchangeably throughout this Article. Also, I will often truncate “performance-based financial incentive programs” to “incentive programs.” While nonfinancial incentive bonuses could theoretically be used, in this Article I will examine only performance-based financial incentives.

34. For this reason, performance-based financial incentive programs are far superior to merely raising public officials’ salaries. Empirical studies that investigate the link between corruption levels and simply raising public officials’ salaries show that the latter provides poor or largely insignificant results. Any significant results can suffer from endogeneity: while high wages may reduce corruption, corrupt politicians may allocate themselves high wages. See Daniel Treisman, *The Causes of Corruption: A Cross-National Study*, 76 J. PUB. ECON. 399, 436 (2000). In corrupt societies in which “public positions are often purchased by borrowing money from family and friends,” Huther and Shah note that raising public sector wages, not through performance-based incentive bonuses but instead through traditional wage increases, “simply raises the purchase price and subsequent corruption efforts to repay loans.” Jeffrey Huther & Anwar Shah, *Anti-Corruption Policies and Programs: A Framework for Evaluation 7* (World Bank Policy Research, Working Paper No. 2501, 2000). See also Timothy Besley & John McLaren, *Taxes and Bribery: The Role of Wage Incentives*, 103 ECON. J. 119, 137 (1993) (Efficiency wages, wages above what a tax inspector, in their example, could earn elsewhere, “may not be a good idea much of the time, even for relatively high levels of corruption.”).

35. “World Bank researchers and others showed that small cuts in the level of corruption in a country could multiply its per-capita income by two to three times, reduce infant mortality, increase economic growth and foreign direct investment.” Greenlees, *supra* note 23.

36. I assume that public officials are self-interested, rational agents.

waste their time and money negotiating bribes for services to which they are entitled; companies would not face the surreptitious and unfair decision-making process that corruption engenders in contract bids and privatization sales; previously unprofitable business ventures would become viable because the cost of the venture would not be artificially inflated by expected expenditures on bribes; and judges would be much more apt to administer justice and signal to citizens and businesses that they could confidently proceed in their activities without the ever present threat of an arbitrary legal decision being rendered against them.

Unlike most official development assistance (ODA) projects, performance-based incentive programs for LDC public officials that target corruption would have a built-in self-enforcing momentum in that the programs would encourage eligible public officials to monitor corruption and pressure their peers, subordinates, and, at times, superiors to comply because incentive bonuses would be paid collectively based on nationwide, not individual, performance.³⁷ Under an incentive program, if the nationwide performance benchmark is met, all eligible public officials will receive a bonus; if the performance benchmark is not met, no one will receive a bonus.

Another potential benefit of an incentive program is to give LDC citizens a platform from which to protest state corruption. The existence of a performance-based anticorruption program would improve government responsiveness to citizen complaints, thereby encouraging citizens to report corrupt practices.³⁸ This increasing voice could also assume the form of pressuring LDC politicians and bureaucrats to reduce corruption and take the incentive bonus money instead of pilfering the treasury or soliciting bribes from citizens.

Incentive programs for LDC public officials also avoid the main drawback of traditional ODA: unconditional distribution to LDC public coffers, which inadvertently propagates corruption by providing a constant source of funds for public servants to embezzle. Unlike traditional ODA, incentive bonuses are not opportunities for public officials to be corrupt but rather motivation for them to reduce corruption. Public officials cannot steal incentive bonuses; they must earn them. That leads to a further advantage – if LDC public officials are not sufficiently motivated by the prospect of incentive bonuses to improve their performance, the incentive programs will simply not pay out any of the earmarked money and hence will be much less expensive and less wasteful than other forms of foreign aid.³⁹ Incentive programs targeting corruption have yet another advantage

37. This aspect of performance-based incentive programs for public officials with corruption as the performance variable enables them to effectively counter both low-level and high-level corruption along with corruption associated with different structures of government institutions and political processes. See generally Andrei Shleifer & Robert W. Vishny, *Corruption*, 108 Q.J. ECON. 599 (1993).

38. See generally ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES (1970).

39. If public servants in an LDC do not qualify for incentive bonuses, the performance-based incentive program would only have to bear the financial cost of collecting the data associated with the performance measurements and paying the expenses associated with

— they will not breed a bureaucracy of aid workers that increases the cost of ODA and recruits away the most talented local LDC individuals from other enterprises,⁴⁰ because only a handful of full-time employees staffing an independent administrative committee will be needed to manage each incentive program.

This Article argues that performance-based incentive programs should be implemented to tackle corruption in LDCs. Given the skeptical reaction many readers might have to performance-based LDC incentive programs, a substantial portion of this Article will address possible objections to the proposal. Part I articulates the contours of a model performance-based financial incentive program for LDC politicians and high-level bureaucrats, while making clear that there are dozens of components of incentive programs that can potentially be tailored to fit the unique circumstances of different LDCs. Part II sketches the general idea of principal-agent theory and then examines the literature on performance-based incentives for public officials. My analysis will show how incentive programs can be structured for maximal effectiveness, and how traditional opposition to high-powered performance incentives in the public sector can be overcome when corruption is used as a performance variable. Part III surveys possible negative consequences of setting up incentive programs for LDC public officials and potential sources of opposition to such programs. Part III also explains how these concerns can be eliminated or reduced so that they do not pose a serious problem to the successful establishment of incentive programs. Finally, Part IV concludes that performance-based incentive programs for LDC public officials are the most promising prospect for clean governance, and for attaining all of the benefits identified as flowing from it.

I. THE MODEL INCENTIVE PROGRAM

This Part describes the most salient features of performance-based incentive programs for LDC public officials. While one would expect many of the features described to be integrated into most or all incentive programs for LDCs, each LDC's incentive program should be tailored, as appropriate, to the particular situations and needs of that developing country. Keeping this in mind, this Part presents a model performance-based incentive program, not to pronounce it as the optimal incentive program for LDCs but to outline the major components or parameters of

maintaining the incentive program's investments. As will be discussed later, it would be beneficial for incentive program founders to donate enough money initially to the independent committee running the program to guarantee the availability of sufficient funds to pay out all future incentive bonuses. If LDC public officials do not take advantage of the program by reducing corruption, any excess investment returns from this initial large infusion of cash into the program could be returned to the founders, reducing the cost of the incentive program to them.

40. See generally GRAHAM HANCOCK, *LORDS OF POVERTY: THE POWER, PRESTIGE, AND CORRUPTION OF THE INTERNATIONAL AID BUSINESS* (1989).

such a program without taking firm positions on all its structural details.

A. Performance Measurement

The first component of an incentive program is identifying the performance variable. The performance variable that should be measured by incentive programs for LDC public officials is corruption — a comprehensive and accurate indication of which can be determined by aggregating data from many different sources (performance measurements). An example of such an aggregated corruption measurement, which could serve as a solid foundation for any incentive program's measurement composite, is Transparency International's Corruption Perceptions Index (CPI).⁴¹ Another possible foundation for an incentive program's measurement composite is the World Bank's governance indicators.⁴² Like the CPI or World Bank governance indicators, possible performance measurements could take the form of reports, surveys, indices, and polls.⁴³ Further, they should include analyses by thousands of individuals, from foreign and domestic policy experts and businesspersons to citizens of differing backgrounds.

Using numerous different performance measurements has three related benefits: (1) it leads to a more accurate assessment of the real level of corruption within a developing country; (2) it makes it more difficult for LDC public officials to game performance measurements through bribery or threats; and (3) it reduces the pressure — from both external and internal sources — that would naturally gather around a single entity charged with determining the flow of millions of dollars to a concentrated

41. The CPI 2007 ranks 180 countries and is comprised of fourteen sources from twelve independent institutions. These institutions include the Asian Development Bank, African Development Bank, Bertelsmann Foundation, World Bank, Economist Intelligence Unit, Freedom House, Global Insight, IMD International, Merchant International Group, UNECA, Political and Economic Risk Consultancy, and the World Economic Forum. The "goal of the CPI is to provide data on extensive perceptions of corruption within countries" by rating each country on a score of zero to ten — the higher the score, the less the perceived corruption. JOHANN GRAF LAMSDORFF, TRANSPARENCY INTERNATIONAL & UNIVERSITY OF PASSAU, *THE METHODOLOGY OF THE CORRUPTION PERCEPTIONS INDEX 2007*, at 2 (2007), available at <http://www.transparency.org/content/download/23965/358196>. All fourteen sources "measure the overall extent of corruption. This is not the case if aspects of corruption are mixed with issues other than corruption, such as political instability or nationalism." *Id.* Further, "the CPI 2007 combines assessments from the past two years to reduce abrupt variations in scoring that might arise due to random effects." *Id.* at 3.

42. See generally Daniel Kaufmann et al., *Governance Matters III: Governance Indicators for 1996, 1998, 2000, and 2002*, 18 *WORLD BANK ECON. REV.* 253 (2004).

43. While the CPI does a good job of collecting multiple sources on perceived corruption from domestic and foreign businesspersons and public policy analysts, it does not include public opinion surveys — all its sources collect data from experts, not from the general public in the countries being scored. Transparency International has another corruption perception measuring tool, the Global Corruption Barometer, a public opinion survey of more than 63,199 individuals in sixty countries that gauges the public's experience with and views of corruption. Global Corruption Barometer 2007, Frequently Asked Questions, http://www.transparency.org/policy_research/surveys_indices/gcb/2007/gcb_2007_fa (last visited Apr. 19, 2009).

group of public officials.⁴⁴

One of the great advantages of having the performance variable of incentive programs be corruption is that, comparatively speaking, it is a very nonideological and noncontroversial goal — i.e., almost all people agree that reducing corruption is a good thing.⁴⁵ Numerous other public policy positions are much less clear-cut. For example, some academics still disagree over the relative merit of numerous macroeconomic policies for LDCs. While the goal of reducing corruption is much more nonideological and noncontroversial than almost any other policy, it is still not completely free from all association with political ideology and economic policy debates. Certain economic policies make corruption easier to pull off. For example,

High black market premiums and negative real interest rates certainly make corruption possible. The leader gets foreign exchange at the official rate and sells it at the black market rate. He finances his purchase of foreign exchange using loans at the negative real interest rate and invests the money in foreign assets with a positive real interest rate.⁴⁶

The same is true for some noneconomic policies and structural features of bureaucracies. Since this is the case, when incentive programs attempt to get public officials to be less corrupt, the incentive programs could be perceived as advocating certain policies that might be more contested than the value of reducing corruption.

I am not claiming that this occasional association of corruption with other policies that are more controversial is a bad thing, simply that such associations should be acknowledged and their extent well understood. In fact, certain policies and laws will likely be altered if public officials are to become substantially less corrupt.⁴⁷ Those LDCs that might disagree with

44. Given how even academics these days occasionally need police protection when expressing their opinions, one cannot be certain that a few high-ranking politicians and bureaucrats would not be tempted to threaten select employees of a rating organization if it were the only organization responsible for rating the level of corruption within developing countries. Of course, this threat is dramatically reduced if such responsibility is diffused across thousands of individuals. See *The Great Plains Drain: How the Interior is Learning to Live with a Shrinking Population*, ECONOMIST, Jan. 19, 2008, at 35 ("In the 1980s two academics from Rutgers University suggested turning the plains into a 'buffalo commons', where the animals that grazed the area before white immigration would be encouraged to return. The idea was so unpopular that its authors occasionally had to be protected by police.").

45. For a nuanced position, see David Kennedy, *The International Anti-Corruption Campaign*, 14 CONN. J. INT'L L. 455, 456 (1999).

46. See EASTERLY, *supra* note 26, at 258. Easterly also states, "A high black market premium or a highly negative real interest rate practically guarantees massive graft." *Id.* at 252.

47. Corruption may lead to terribly inefficient economic outcomes. The Institute for Liberty and Democracy spent 289 days and \$1231 (including expenses and lost wages) in 1983 to discover the "cost of legality" when registering a clothing factory in Peru. "At that time . . . [\$1,231] was the equivalent of 32 minimum monthly wages." The institute was solicited for bribes ten times during the registration process. HERNANDO DE SOTO, *THE OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD* xii (1989).

some of the policies indirectly associated with reducing corruption do not have to implement the policies that they disagree with to receive the incentive bonus payouts as long as their performance in reducing corruption meets or exceeds the threshold requirements of the corruption variable. Qualifying for the bonus payouts may be more difficult if the LDCs do not follow all or most of the policies that indirectly are associated with reductions in corruption, yet in no way do they preclude the politicians and bureaucrats within LDCs from qualifying for the incentive bonuses.

B. Disbursement Structure

Another important component of a model incentive program is the structure of the payments. One possibility is to impose step benchmarks. Under this model, performance bonuses would not be paid out as a simple linear function of performance, in the sense that greater reductions in corruption would not incrementally increase the size of incentive bonuses. Instead, the incentive bonus amounts would be fixed, but to receive the bonus, politicians and bureaucrats would have to reduce corruption each performance period (each year) until corruption levels are low. The improvements in performance would have to exceed step thresholds or benchmarks.

In addition, once public officials in an LDC meet the first threshold step of improved performance, they would receive an incentive bonus payout, but to obtain the second bonus payout they would have to improve their performance over the previous year in order to meet the new performance threshold. If politicians and bureaucrats in an LDC fail to improve their performance enough in the following year, they would not receive incentive bonuses. If their performance worsens, the threshold rates of performance would not decrease the next year, and if their performance improves but not by enough to qualify for the next incentive bonus, the threshold rate in the next year would hold steady rather than moving up to the next step or level. The performance-based financial incentive program would end after thirty years of incentive bonuses have been paid out. The gradually increasing, step nature of performance thresholds would exist for the first five to ten years of an incentive program – long enough not to expect insurmountably large reductions in corruption in one year but not too long to impede momentum in reducing corruption. Afterward, the public officials would have to meet or exceed an unchanging high level of performance – i.e., a low level of corruption. The amount that corruption would have to be reduced for each step threshold to be met could be constant or could vary between thresholds.

The benefits of step benchmarks include the fact that the sizes of fixed bonuses are easy to understand and publicize. Corruption would not have to completely stop in order for public officials to meet the first performance threshold. Rather, a small percentage of public officials would have to cease being corrupt, or a larger group of public officials would have to

reduce their corruption, or some combination of the two scenarios would need to occur, in order for incentive bonuses to be paid to all eligible public officials. Those that choose to reduce their corrupt activities would have tools — the ability to dismiss, demote, reprimand, prosecute, apply peer pressure, and/or inform on the corrupt public officials — to increase the chances that they could meet the first performance threshold of reduced corruption. While an increasing number of public officials would need to reduce their corruption in order to meet future performance thresholds, the higher the number of honest public officials, the more effectively they would be able to use the above-mentioned tools to push for changes among their corrupt peers and subordinates, and the more enticing the carrot of incentive bonuses would become.

The fixed, straightforward, and explicit nature of step corruption reduction performance thresholds also makes it more difficult for officials to game the program. If bonuses were paid on a linear scale, with incremental changes resulting in incremental bonuses, public officials could be tempted to illicitly encourage those responsible for the public measurements to artificially enhance their results on the margin, as each small enhancement would amount to more money in the officials' pockets. To attain a bonus in a step benchmark system, however, substantial improvement must be made, and gaming large improvements is more difficult than gaming small improvements. Public servants would not know if they are collectively close to attaining a step performance benchmark until after the performance period ends and the corruption indicators are published. The inability of public servants to anticipate and manipulate the measurement of their performance, especially given the magnitude of the improvements they must be seen to make, would frustrate efforts to influence measurements on the margin. Step benchmarks work well for measuring the reduction of corruption by public officials because they require a significant improvement before the payout of incentive bonuses and thus inspire public confidence that genuine reductions in corruption have occurred.⁴⁸

While step performance benchmarks will be the assumed type of benchmark throughout this Article, step performance benchmarks are not necessarily superior to linear benchmarks. An attractive feature of using a linear function to distribute incentive bonuses is that it would initially make incentive bonuses more attainable. As even small reductions in corruption would trigger incentive bonus payouts, a linear distribution could encourage recalcitrant officials to participate in the program. In the eyes of eligible public servants, such an initial bonus payout could cement the founders' seriousness in backing the incentive program, making the possibilities of very large incentive bonuses for decades more concrete and hence more enticing.

Of course, a measurement function could be created that incorporates

48. Using Transparency International's CPI (described in note 43, *supra*) as an example of an incentive program's measurement composite, each step benchmark could require, for example, a 1.0 improvement on the CPI's zero to ten scale.

both linear and step thresholds. For example, a linear function could determine the size of incentive bonuses for a set number of years, or for a set decrease in corruption, and subsequently a step function could be used to determine whether the incentive bonuses are paid.

C. Eligible Public Officials

Whether or not bonuses are awarded under an incentive program in a given year would depend on the collective overall success of all eligible public officials within an LDC in reducing corruption, with individual bonus amounts keyed to the position of each eligible politician or bureaucrat. All politicians (presidents, prime ministers, cabinet members, members of parliament, regional and local politicians), judges, and high-level bureaucrats – roughly the top five or ten percent of bureaucrats best positioned to exert pressure on others to stop being corrupt – would be included in the incentive program.⁴⁹ The bonuses would be substantial – multiples of the official salary of every politician and high-level bureaucrat – and would be paid out collectively – either everyone initially deemed eligible at the inception of the incentive program would receive an incentive bonus in a given year or no one would receive a bonus. So, even if a particular politician or bureaucrat governs immaculately, she would not receive a performance bonus unless the entire LDC reduces corruption enough collectively.⁵⁰ Payouts based on collective improvements would strongly encourage politicians and bureaucrats to pressure peers, subordinates, and, at times, superiors to reduce corruption.⁵¹

49. Rose-Ackerman's observations below suggest that comprehensive eligibility for all politicians and high-level bureaucrats, as proposed here, would be preferable to including only some politicians or only some high-level bureaucrats. She states: "The basic problem is the enclave nature of many past efforts. Tax collectors and customs agents receive pay raises and improved working conditions and win incentive bonuses. This works for awhile but then begins to undermine morale elsewhere in government, causing resentment and risking a backlash that can leave the government in worse shape than before. Either everybody else gets a pay raise or the enclave of virtue is destroyed by resentful bureaucrats in the rest of government." SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM* 184 (1999).

50. A performance-based financial incentive program could theoretically be tailored to each individual politician or bureaucrat within an LDC instead of distributing bonuses collectively to all politicians and bureaucrats if their performance is high enough as a group. Such tailoring would alleviate most of the uncertainty as to whether the politicians and bureaucrats would collectively improve their performance by essentially eliminating all possible collective action uncertainties. The largest difficulty with such a design is the problem of how to monitor the performance of each politician and bureaucrat and to measure it accurately. In the future some solution to this problem might present itself in the form of a technological innovation, but as of now it seems as if this difficulty by itself would make incentive programs tailored to individuals unfeasible. While the measurement problem is the largest difficulty with this design option, it is not necessarily the only one. Incentive programs tailored for individual public officials would not make use of the important peer pressure among colleagues to improve their behavior and performance. If all a politician in an LDC has to do to obtain her performance bonus is not be corrupt herself, she would have little incentive to pressure her colleagues to improve.

51. There is a real likelihood that if both politicians and bureaucrats are eligible for financial bonuses under a performance-based incentive program, the two groups would

In determining which public sector officials should be included in an incentive program, certain general factors need to be considered, such as which public officials are the most influential or powerful and which public officials, given the structure of their posts, can most effectively pressure and persuade their peers, subordinates, or superiors to improve their performance.

Numerous other factors that are unique to each LDC must also be considered: specific institutional structures of individual governments,⁵² differing salaries for government officials from one LDC to the next, different price levels and income levels among LDCs, and the different desires of citizens. Finally, the program must not adversely alter the balance of power among different public officials or institutions.

D. Program Founders and Designers

Most likely those who fund an incentive program will also want to design its specifics, but the two roles can be separately performed by different groups. For example, if a group of individuals desires to fund an incentive program, the program's legitimacy would be well served by having a group of nongovernmental organizations (NGOs), private foundations, developed countries, or the United Nations design and administer the program. Regardless of who designs a performance-based incentive program, advice on its structure should be welcomed from a broad array of individuals, including academic experts, policymakers, and NGO advocates in both DCs and LDCs who are familiar with the cultural, historical, economic, social, and political climate of each of the LDCs as well as with the views of those who may become eligible under the incentive program.

The program would ideally be established and funded by a group of countries acting in concert through international coalitions or institutions like the United Nations. It could also be successfully funded, under certain circumstances, by a combination of entities including private foundations,

monitor and successfully encourage or coerce each other to reduce corruption. Under a performance-based incentive program in which politicians and certain bureaucrats receive bonuses only if nationwide levels of corruption are significantly reduced, politicians would have an incentive to carefully monitor and discipline any bureaucrats engaged in corrupt acts because such acts could alter the chances that the politicians would collect their financial bonuses. Likewise, bureaucrats through their collective power to oversee, investigate, audit, record, publicize, judge, and prosecute politicians could encourage compliance with the incentive program by politicians. Eligibility of both groups would be to their mutual advantage, for mutual pressure would increase the likelihood that cleanup thresholds are met and bonuses are paid out.

52. A mechanism might need to be created to address the issue of how an incentive program should respond to a situation in which an LDC desires to add new political or high-level bureaucratic positions within its government. For example, would more people be eligible for bonuses under the incentive program? Would the lowest-level members eligible for bonuses have their eligibility revoked to make room for the new high-level public servants? Should no alterations be allowed to deter LDCs from creating unnecessary new positions?

NGOs, and/or individuals from developed or developing countries.⁵³ International institutions could also cooperate with some of the nongovernmental entities listed above.⁵⁴

After the incentive program has been designed, an independent oversight committee would run the incentive program. It would control the program's funds and publicly disseminate all the performance measurement data. The independent oversight committee would be staffed by independent foreigners without a financial stake in the incentive program.

E. Determining Which States Should Be Offered Performance-Based Incentive Programs

When deciding where to establish incentive programs aimed at reducing corruption, the three overriding issues to consider are: (1) the need of an LDC to reduce corruption; (2) whether an LDC could realistically benefit from such an incentive program; and (3) whether an LDC's politicians are exceedingly depraved and despotic.

There are only a few LDCs that have relatively clean governments and hence do not need the assistance of an incentive program aimed at reducing corruption within their borders. Yet, the reality that corruption reduction is desperately needed in many LDCs does not necessarily mean that all of these LDCs are well situated to benefit from incentive programs aimed at their public officials. Incentive programs for failed or war-torn states like Somalia or Sudan, for example, would likely be impracticable.⁵⁵ Furthermore, politicians and bureaucrats in some LDCs might never be motivated by the large financial bonuses associated with performance-based incentive programs. In some LDCs, especially those rich in oil or minerals, there might just be too much to plunder.⁵⁶ For example, "around US\$55 billion was looted from Nigerian public funds during the Abacha

53. Even citizen savings accounts with the United Nations could be established where citizens donate money to establish an incentive program for public officials within their own country or to augment an existing program's incentive bonuses.

54. Members of a coalition attempting to establish one or more incentive programs could challenge each other to fulfill funding commitments through grants conditional on the other partners' success in raising their share of each program's capital. For example, a wealthy individual could contribute 40% of the funding needed to establish an incentive program for a developing country only if the United Nations or a developed country contributed the remaining 60%. The offer could be valid for a limited or unlimited time period. See, e.g., Editorial, *Mr. Buffett's Excellent Idea*, N.Y. TIMES, Sept. 28, 2006, at A22 (Buffett has pledged \$50 million for a nuclear fuel bank to be run by the International Atomic Energy Agency, but "won't kick in his \$50 million unless some government or governments ante up \$100 million in cash or fuel.").

55. In discussing the plight of the bottom billion, Collier discusses four traps: the conflict trap, the natural resource trap, the land-locked with bad neighbors trap, and the bad governance in a small country trap. See generally, COLLIER, *supra* note 4.

56. Of course, incentive bonuses could be dramatically increased in an attempt to make the performance-based incentive program attractive to such public servants. This could conceivably be a worthwhile endeavor after incentive programs are first established for all other LDCs in need of them.

dictatorship.”⁵⁷ It has been reported that “Mr. Abacha, during his period as president, had a standing order to transfer \$15m (£8.4m at current exchange rates) a day of stolen funds to his Swiss bank account.”⁵⁸ Abacha was legendarily infamous and in charge of a populous LDC that was a major oil exporter. In such villainous cases where officials can steal such staggering amounts from public coffers, an incentive program would probably not be able to pay officials enough to persuade them to change their behavior. Still, LDCs presently mining mineral riches should not be ruled out as future participants in incentive programs, as they may be encouraged to join after seeing successful programs in other LDCs. Ultimately, even if incentive programs are implemented successfully in only a few LDCs, the long-term benefits accruing to the poor in those countries would be tremendous.

The public officials of some LDCs may be so exceedingly depraved and despotic that establishing financial incentive programs for such LDCs is insupportable. For example, LDCs whose leaders participate in systematic acts of physical aggression against their own people should be excluded from consideration, as the international community should not provide funds to regimes involved in genocide or other horrific acts.

If the resources could be found, then establishing incentive programs for ten LDCs simultaneously, each with tailored design aspects, would provide a wealth of information as to how best to structure future incentive programs. While the results may not be directly transposable into incentive programs for other LDCs, the lessons learned could prove invaluable.

F. Setting Compensation Levels

There are two approaches for determining how large incentive bonuses should be in order to induce public officials to reduce corruption: setting the bonus amounts just high enough to motivate LDC politicians and bureaucrats to stop being corrupt, or setting them well above this estimated level with the rationale that erring on the high side will increase the likelihood of success.⁵⁹

Researching the amount of corruption at different levels of government within an LDC will assist in setting the incentive bonus amounts for that

57. Oxfam, *Tax Havens: Releasing the Hidden Billions for Poverty Eradication* 3, (Oxfam Briefing Paper No. 002P0036, 2000), available at http://publications.oxfam.org.uk/oxfam/display.asp?K=002P0036&aub=Oxfam&sort=sort_date/d&m=99&dc=113#descrip.

58. Duncan Campbell, *Havens that Have Become a Tax on the World's Poor*, GUARDIAN, Sept. 21, 2004, at 14.

59. Conceivably, the LDC politicians could be motivated to reform their ways by a bonus amount that is substantially less than the amount they currently steal from the government or solicit from citizens. This could be the case for numerous reasons, including: caving to international or domestic pressure; wanting to clear their names or consciences; preferring smaller streams of legal cash over larger streams of illegal cash because legal cash flows could be freely and openly spent; or realizing that it would be less work to be paid to govern cleanly than to cover up the paper trails of illegal activities.

country.⁶⁰ Another helpful strategy could be to ask LDC politicians and bureaucrats for their views on the size of effective incentive bonuses. Also, the salaries of public officials in DCs and LDCs should be examined, taking into account the cost of living in each country. I mention a few examples below to give a sense of how much salaries can vary. After becoming Bolivia's President, "Evo Morales cut his salary by more than half" to \$22,500 per annum.⁶¹ In Kenya, a parliament member's salary "is about \$60,000 a year, rising to about double that amount if allowances are included."⁶² In the United States, the salary for a senator was \$165,200 in 2006, while associate justices of the U.S. Supreme Court earned \$203,000 that year. Singapore "believes so strongly that you have to get the best-qualified and least-corruptible people you can into senior positions in the government, judiciary and civil service that its [sic] pays its prime minister a salary of \$1.1 million a year. It pays its cabinet ministers and Supreme Court justices just under \$1 million a year."⁶³

Incentive program designers could set bonus amounts using algorithms with variables for different factors, such as existing salary levels, once the appropriate data is collected for an LDC. Also, the incentive bonuses should be indexed to inflation so as to not decrease over time.

Compared to different developed countries' government expenditures, the estimated cost of performance-based incentive programs is minimal. For example, 2006 ODA from the "22 member countries of the OECD Development Assistance Committee, the world's major donors," was

60. If research shows that politicians and bureaucrats in each LDC siphon off significantly different amounts of money, such data could possibly be used to justify setting different financial bonus amounts for different LDCs. This would, however, run the risk of creating resentment among LDC officials. This concern has to be weighed against the fact that if uniform bonus amounts are set across LDCs, the amounts might have to be close to or above the amounts that the most-corrupt public officials take in each year to motivate as many of the public officials as possible to participate. Given that LDCs have vastly different amounts of government funds available for siphoning (compare oil-rich Nigeria, with over 149 million people, to Malawi, with a population of over fourteen million and no significantly valuable natural resources) the incentive payments necessary to effectively reduce corruption could vary substantially. If the population and income differences among LDCs override the above argument for uniform bonus amounts, performance-based financial incentive programs could determine financial bonuses based on an LDC's population, income per capita, or other indicator. Since each LDC differs in its number of politicians, judges, and high-ranking bureaucrats, another possibility would be to set the overall budget for incentive bonuses for each LDC according to its population and income per capita. I would like to thank Professor Henry Hansmann for this suggestion.

61. AP, *Peruvian President Lowers Salaries, Including His Own*, *TAIPEI TIMES*, Aug. 2, 2006, at 7, available at <http://www.taipetimes.com/News/world/archives/2006/08/02/2003321507>.

62. *Going Up or Down?*, *ECONOMIST*, June 9, 2007, at 49, 52. "By comparison, the official minimum wage is about \$700 a year, GDP per head about \$1,500. The very poorest, who slip under the minimum wage threshold to take the most menial and casual jobs, earn less than \$200 a year." *Id.*

63. Thomas L. Friedman, *Singapore and Katrina*, *N.Y. TIMES*, Sept. 14, 2005, at A29. Even if LDCs could afford to pay such salaries, incentive programs align incentives more effectively because they do not automatically reward public servants; they reward public servants only if they perform well.

\$103.9 billion.⁶⁴ If just 1/200th of this was used to fund a year's worth of incentive bonus payouts in an LDC, the top 5,000 public officials could on average each obtain roughly \$100,000 — allowing the most senior officials to collect multimillion dollar bonuses while lower level officials would still obtain many multiples of their base salaries. Bonus figures are likely to be comparable to or substantially greater than the equivalent politician or bureaucrat salaries in most developed countries. This should not be cause for alarm, however, because the pay of DC politicians and bureaucrats is not set to pull the rich countries out of systemic corruption. Establishing clean government costs more than maintaining entrenched norms of good governance because the former requires working against the bad norm in order to overhaul it, whereas the latter merely enforces the good norm in maintaining clean governance.

G. Funding Incentive Programs

Besides setting the amount of incentive bonuses, numerous other financial issues have to be addressed, such as how to fund incentive programs. Three features of funding incentive programs would help to ensure that the programs are credible from the perspective of developing country public officials: (1) fully funding incentive programs from their inception;⁶⁵ (2) establishing independent oversight committees to run incentive programs; and (3) giving these committees control over the programs' funds.

To ensure that an incentive program is fully funded from the outset, those establishing the program would have to make a large, one-time donation that could cover the cost of all bonuses for the length of the program. Obviously, such a sum would be significantly larger than the estimated cost of paying bonuses for one year. Yet, given that the present value of distant bonuses is quite small, and assuming that the one-time donation would be put into an investment fund until it is needed to meet incentive bonus payouts, the cost would still be manageable. While it might be difficult to convince donors to contribute all the funding up front, the clear availability of the funds will reassure LDC public officials that if they keep their end of the bargain by significantly reducing corruption, the donors will honor their side of the deal. Further, after the initial funding the incentive program would not require yearly infusions of cash.

64. OECD, *Development Aid from OECD Countries Fell 5.1% in 2006* (Apr. 3, 2007), available at http://www.oecd.org/document/17/0,2340,de_2649_33721_38341265_1_1_1_1,00.html.

65. Various funding structures could guarantee that incentive programs would be fully funded from their inception, though the cost of different funding structures would vary. Also, funding methods are sensitive to investment return rates, interest rates, foreign exchange risks, and the timing of bonus payouts — i.e., the longer it takes public officials to qualify for bonus payouts, the less up-front funding of an incentive program would be required. For example, it would take at least one year after the establishment of an incentive program for bonuses to be paid out. During that year, the donated funds would likely be earning positive investment returns. If one makes this assumption, then less cash would have to be donated up front to fully fund the incentive program.

Therefore, the most accurate comparison for evaluating the cost of an incentive program is many years of traditional development assistance, not simply one.

H. Physical Terror Default Clause

In Section E, I suggested that LDCs that physically persecute their own citizens in a systematic manner should not have incentive programs established for their public officials. Yet, even if public officials in an LDC do not commit physical atrocities against citizens prior to the creation of an incentive program, they could theoretically turn to sustained violence once the program is in place. To ensure that a scenario would not arise in which public officials are receiving incentive bonuses while systematically persecuting citizens, a physical terror default clause should be strongly considered as part of any incentive program. Essentially, if LDC public officials or their surrogates deliberately and systematically physically terrorize citizens, then public officials would not receive incentive bonuses, regardless of how much they reduce corruption.

While any violence by state officials is reprehensible, the physical terror default clause should probably target only extreme, widespread violations — genocide and systemic use of torture, for example. It is sadly unrealistic to expect that an LDC could stamp out all human rights abuses caused by state agents.⁶⁶ Further, to make incentive programs attractive to public officials in LDCs, those establishing the programs need to make credible commitments to the public officials that if they significantly abstain from padding their income through corrupt means, this loss of income will be made up for through incentive bonuses. It must be made clear to eligible public officials that a few bad acts beyond their control will not defeat their chances of earning financial bonuses if they themselves do everything they can to stem corruption. If the physical terror default clause is triggered by the random or isolated acts of a few bad actors, public officials could not be induced to take incentive programs seriously — they would assume that such isolated violations could not be realistically prevented. Also to this end, the actions that trigger the physical terror default clause should be precisely defined in order to give LDC public officials a clear understanding of the program's contours, and to dispel concerns that the independent administrative committee of the incentive program might use the clause as a pretext to withhold incentive bonuses. A physical terror index could possibly be established for this purpose.⁶⁷

66. Theoretically, many other default clauses, such as a democracy default clause, could be established. However, default clauses should be used with caution, as they could turn incentive programs that aim to fight corruption into incentive programs that aim to solve many or all LDC problems at once — an unrealistic challenge that would doom the initial effort to substantially reduce corruption, and thus hurt advancements on other policy fronts within the LDC as well. The physical terror default clause is aimed to prevent donors from funding a potential Nazi Germany or genocidal Rwanda.

67. Such a composite index could draw on some or all of the following sources: HUMAN RIGHTS WATCH, *WORLD REPORT 2009* (2009); AMNESTY INTERNATIONAL, *AMNESTY*

I. Combining Incentive Programs with Other Anticorruption Strategies and ODA

The numerous anticorruption strategies that have been attempted in the past — including anticorruption task forces, legal protections for whistle-blowers, freedom of information laws, governmental procurement reform, ombudsman departments, and anti-money laundering laws — have been unsuccessful in many countries because they are vulnerable to capture by corrupt politicians and the bureaucrats who establish them.⁶⁸ The officials are able to give an appearance of propriety and positive reform while continuing their corrupt business as usual.⁶⁹

Attempting to penalize politicians and bureaucrats for poor performance or illicit activity is, of course, the opposite of distributing incentive bonuses for good performance. If one ignores political economy and how power is divided and used or abused by actors, it might seem that a program meant to dole out sticks would be less expensive and more effective than one that hands out carrots. Unfortunately, there is often little hope for LDC politicians and bureaucrats to employ sticks effectively against other public officials within their LDCs.⁷⁰ Those with power are not eager to punish themselves, their political allies, or their bureaucratic appointees.⁷¹ Sticks can also be ineffective because of a shortage of

INTERNATIONAL REPORT 2008 (2008); U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2007 (2008); and FREEDOM HOUSE, FREEDOM IN THE WORLD 2008 (2008).

68. For an excellent summary and synthesis of the law and economics literature on existing anticorruption strategies, see ROSE-ACKERMAN, *supra* note 51. For some slightly more recent law and economics literature that examines the relationship between the structural foundations of government and corruption and hence has some possible implications for anticorruption strategies, see generally John Gerring & Strom C. Thacker, *Political Institutions and Corruption: The Role of Unitarism and Parliamentarism*, 34 BRIT. J. POL. SCI. 295 (2004) (suggesting that unitary and parliamentary systems of government are associated with lower levels of corruption than federal and presidential systems); Jana Kunicová & Susan Rose-Ackerman, *Electoral Rules and Constitutional Structures as Constraints on Corruption*, 35 BRIT. J. POL. SCI. 573 (2005) (finding empirical support for the claim that proportional representation systems are associated with higher levels of corruption than plurality systems). Research suggests that an effective anticorruption policy may be to increase women's participation in the labor force and in parliament. See David Dollar et al., *Are Women Really the "Fairer" Sex? Corruption and Women in Government*, 46 J. ECON. BEHAV. & ORG. 423 (2001) (finding a positive association between representation of women in Parliament and lower levels of corruption across a large sample of countries). Brunetti and Weder's regressions also suggest that a free press reduces corruption. See Aymo Brunetti & Beatrice Weder, *A Free Press Is Bad News for Corruption*, 87 J. PUB. ECON. 1801 (2003). For groundbreaking application of economic principles to corruption, see SUSAN ROSE-ACKERMAN, *CORRUPTION: A STUDY IN POLITICAL ECONOMY* (1978).

69. See generally W. MICHAEL REISMAN, *FOLDED LIES* (1979) (using the language of "myth system" and "operational code" to describe this phenomenon).

70. For example, the Supreme Court in Nepal "is bound up in the culture of impunity. Earlier this year an unsuccessful litigant released recordings of his efforts to win a property dispute through bribery. No action has been taken." *Something Still Rotten*, *ECONOMIST*, June 16, 2007, at 51.

71. For example, a program that required public officials to return 50% of their salaries if collectively they did not meet certain performance benchmarks would never be passed, unless it was assumed that all public officials would just continue to steal more government funds and collect more bribes.

competent personnel; there may simply not be enough qualified, skilled individuals in LDCs to replace corrupt officials.⁷²

Thus, the prospects of performance penalties on their own are not good. Yet numerous performance penalties may become quite effective when combined with the anticorruption, performance-based incentive bonuses discussed in this Article, as the prospect of incentive bonuses will give those in charge of punishment-based anticorruption programs a greater incentive to have their programs work.⁷³ Anticorruption performance-based incentive programs should be simultaneously implemented along with tough penalties for corruption in order to maximize the prospect of giving the poor what is rightfully theirs — a functioning government that serves to benefit the public good, not cripple it.

Just as performance penalties targeting corruption can be made more effective if paired with performance-based incentive bonuses, so ODA can be made more effective if coupled with incentive programs for LDC public officials. Coupling ODA with performance-based incentive programs for LDC public officials would be maximally effective if traditional ODA intended for distribution to LDC governments is also made contingent on LDC public officials significantly reducing corruption.⁷⁴ This would take away a source of potential funds (the ODA) for government officials to steal, would make any distributed ODA much more likely to reach its intended beneficiaries, and could invigorate LDC citizens' pressure on public officials to clean up their act and earn the incentive bonuses, rather than soliciting bribes or stealing from the public purse.

II. INCENTIVE THEORY FOR PUBLIC OFFICIALS

In this Part, I begin by laying out the basics of principal-agent theory and how incentives can be used to better align the efforts of agents to the desires of principals. Subsequently, I present the major reasons why scholars believe high-powered, performance-based incentives for politicians and bureaucrats — large incentive bonuses relative to public

72. "'In 25 years, Africa will be empty of brains.' That dire warning, from Dr. Lalla Ben Barka of the UN Economic Commission for Africa, reflects the growing alarm over Africa's increasing exodus of human capital." Ainalem Tebeje, *Brain Drain and Capacity Building in Africa*, Feb. 22, 2005, http://www.idrc.ca/en/ev-71249-201-1-DO_TOPIC.html. "Ethiopia lost 75% of its skilled work force between 1980-91." *Id.*

73. To avoid giving corrupt public officials an incentive to cripple the program, an amnesty for all corrupt acts committed prior to the establishment of the incentive program should be considered.

74. Programs that condition ODA on reductions in corruption without incorporating incentive payments for individual public officials, although intended to improve the alignment between the interests of public officials and the public good, only minimally affect that alignment, as the additional ODA, if released, would be directed towards LDC coffers, rather than the officials themselves. An example of such contingent ODA is the U.S. Millennium Challenge Corporation (www.mcc.gov), which aims to provide ODA to better-governed LDCs.

servants' incomes — are problematic, and explain why these concerns are overcome when the right performance variable — corruption by public officials — is selected.⁷⁵

A. Principal-Agent Relationships

Principal-agent concerns present themselves when a principal — one who entrusts responsibilities to another to act on her behalf in some capacity — cannot easily monitor the activities of the agent — the individual who has been entrusted to act on behalf of the principal. The possibility of misaligned incentives is born from the separation of ownership from control.

Lack of monitoring produces opportunities for the agent to maximize her own benefit, if she is so inclined, at the principal's expense. Such opportunities exist because it is expensive for principals to monitor agents. Theoretically, principals should monitor their agents until the marginal cost of monitoring equals the marginal return that principals receive from an extra amount of monitoring.⁷⁶

One way a principal can mitigate an agent's shirking of her duties is to threaten to dismiss or not re-elect the agent. To motivate an agent to not shirk, the principal can also offer inducements or incentives to the agent that are linked to her performance.⁷⁷ These incentives are in addition to the base level of compensation that the agent receives for completing tasks for the principal. They are contingent on good performance, which is defined as exceeding some performance benchmark established by the principal. These performance-based incentives are meant to reinforce the existing incentive that an agent has to act in the best interests of the principal — keeping her job.

In this Article, the politicians and bureaucrats are the agents, while citizens are the principals.⁷⁸ Politicians and bureaucrats are confronted with an incentive to perform in the best interests of others — holding on to

75. For excellent overviews of incentive programs in the public sector, which I rely upon significantly in this Part, see Avinash Dixit, *Incentives and Organizations in the Public Sector: An Interpretative Review*, 37 J. HUM. RESOURCES 696 (2002), or Simon Burgess & Marisa Ratto, *The Role of Incentives in the Public Sector: Issues and Evidence*, 19 OXFORD REV. ECON. POL'Y 285 (2003).

76. The difficulties of monitoring are compounded if there are numerous principals because of a collective action problem. If no effective mechanism exists to share the costs of monitoring evenly among all principals, then it is not rational for any principal to monitor the agents past the point at which her marginal cost of monitoring equals her marginal return from monitoring. Most likely, her individual efficient amount of monitoring will be below the group's efficient amount of monitoring if all principals could effectively share the costs of monitoring.

77. "The concept of performance-based pay is so intuitively appealing that it seems almost ludicrous to disagree with it." Christopher M. Lowery et al., *Employee Perceptions of the Effectiveness of a Performance-Based Pay Program in a Large Public Utility*, 24 PUB. PERSONNEL MGMT. 475, 475 (1995).

78. While, strictly speaking, bureaucrats will be the agents of politicians at times, this fact does not complicate my analysis, which stresses citizens as the ultimate principals of both politicians and bureaucrats.

their jobs. Yet performance-based incentive programs could be established to better align the interests of politicians and bureaucrats with the interests of a country and its citizens.

B. Solving the Limitations of Incentive Programs in the Public Sector for LDCs

Performance-based incentive programs have been and continue to be significantly more prevalent in the for-profit, private sector than within government,⁷⁹ even though some scholars have concluded that “bureaucrats respond to performance incentives.”⁸⁰ Those who study the feasibility of using performance-based incentives within public organizations generally agree that the challenges to successful implementation are greater in the public sector than in the private sector. This is true because of the complexities involved in conceiving and structuring public incentive programs that provide for the differences between the public and private sectors and the different situations that arise within various types of public organizations. If public incentive programs are not tailored to the public sector, they will most likely have different, possibly negative, outcomes than when implemented in the private sector.

Numerous issues make high-powered, performance-based incentive programs difficult to implement in the public sector, including multiple principals, multiple tasks needing to be performed by agents, the risk of gaming or capture, measurement difficulties, teamwork, risk aversion, and nonpecuniary motivations. Some of these issues, like teamwork, are present in both the public and private sectors to roughly the same degree. Others, like measurement difficulties, are present in both the public and private sectors, but harder to manage in the public sector. Regardless, each of these challenges can be overcome in the context of the performance-based incentive programs described in this Article.

An incentive program designed to motivate LDC politicians and bureaucrats to reduce corruption is unlike most incentive programs contemplated by scholars in the past because it assumes the worst of LDC politicians and bureaucrats. In developed countries, performance-based incentive programs in the public sector aim to get government bureaucrats to improve their work beyond an already relatively high level of achievement. For example, British medical doctors are generally perceived to be capable and hardworking, so incentive programs aimed at their profession are difficult to design because they must aim to increase the

79. See generally Simon Burgess & Paul Metcalfe, *The Use of Incentive Schemes in the Public and Private Sectors: Evidence from British Establishments* (Ctr. for Mkt. & Pub. Org., Working Paper No. 00/15, 1999), available at <http://www.bris.ac.uk/Depts/CMPO/workingpapers/wp15.pdf>.

80. James Heckman et al., *Assessing the Performance of Performance Standards in Public Bureaucracies*, 87 AM. ECON. REV. 389, 393 (1997). This study notes, however, that bureaucrats' responses are not necessarily those that the programs intended.

productivity of already productive, hardworking public servants. This is a laudable goal, but it is also very different from attempting to get public officials to no longer steal from public coffers or demand bribes from the public. The expectation gulf between the quality of governance in DCs and LDCs opens up space for a performance-based incentive program that is less vulnerable to gaming and waste than incentive programs within DCs. Using corruption as the measurement variable in LDCs solves the challenge of transposing incentive programs to the public sector, yet this measurement variable would not significantly help citizens in, say, Denmark or Finland.

1. Multiple Principals

In the private sector, employees usually have only one principal — one superior to whom they must report. This employee-boss relationship repeats itself all the way up the company's organizational ladder to the CEO, who is the agent of the company's directors, who in turn are agents of the shareholders. This neatly structured, principal-agent pyramid cannot be easily grafted onto the public sector; in fact, several scholars identify the existence of multiple principals in an organizational structure as a defining characteristic of public bureaucracies.⁸¹ While bureaucracies can look like the hierarchical pyramids commonly found in large corporations, the public employees within bureaucracies "often serve several masters: these may include the users of the service, payers for the service, politicians at different levels of government, and professional organizations."⁸² This public sector structure was designed "to provide checks and balances against biased or arbitrary exercise of power."⁸³

When multiple principals do not cooperate, it is difficult to create well-designed incentive programs because each principal might only be concerned with a few aspects of the agent's work, and collectively the different interests of the multiple principals will probably not coincide.⁸⁴ So, if a principal offers inducements to an agent to perform better on only the fraction of the agent's work that interests the principal, then the principal simultaneously encourages the agent to put less effort into tasks that are valuable to other principals (these other tasks are referred to as "substitutes"). Given numerous principals, the theory assumes that "each principal observes the outcome of all tasks" of the agent and "can offer

81. See JAMES Q. WILSON, *BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT* 236-37 (1989).

82. Carol Propper & Deborah Wilson, *The Use and Usefulness of Performance Measures in the Public Sector*, 19 OXFORD REV. ECON. POL'Y 250, 251 (2003).

83. Avinash Dixit, *Power of Incentives in Private versus Public Organizations*, 87 AM. ECON. REV. 378, 381 (1997).

84. "There are good reasons for [principals'] failure to cooperate — they have to arrange to share the resulting aggregate gains, and find it difficult to make credible commitments needed for this, especially when they have widely divergent interests and regard one another with enmity and distrust." Avinash Dixit, *Some Lessons from Transaction-Cost Politics for Less-Developed Countries*, 15 ECON. & POL. 107, 128 (2003).

marginal rewards or penalties based on all observations” such that

each principal offers a customary positive marginal payment for the output that is of relatively greater concern to him, and a negative marginal payment, which acts like an insurance for the output risk (and therefore the agent’s income risk) associated with the task that is of relatively greater concern to the other principal.⁸⁵

An example of this is when Congress “threatens to reduce the funding of an agency,” such as the National Endowment for the Arts, because Congress believes the agency is catering to artists or art critics instead of paying attention to the desires of Congress itself.⁸⁶ The principals’ offers of positive and negative marginal payments net out, creating weak positive incentives on all the tasks for the agent.⁸⁷ Incentives can be strengthened if one can eliminate either of the two assumptions above – if one can ensure that principals only observe, or that principals can only offer marginal incentives to the agent based on, the outcomes that interest them.⁸⁸ Yet modifying either of the two assumptions through “compartmentalization may be impracticable in an open political system or when the principals are top-level players such as the legislature or the executive whose actions cannot be restrained by an outside force.”⁸⁹ The conclusion often reached in the literature is that, given multiple principals in the public sector, the incentives offered to government bureaucrats should be less substantial than the incentives offered to for-profit private sector employees.⁹⁰

This conclusion does not apply to the kind of program proposed here, for the diversity of interests among multiple principals is not relevant to an incentive program requiring agents to cut back on the practice of corruption. An incentive program focused on the reduction of corruption does not get bogged down in trying to determine how agents should appropriately balance their efforts to fulfill the legitimate demands of all their principals – it leaves this balancing act untouched because its criteria apply across the board and do not favor one principal over another. Further, such an incentive program does not place any new burden on the agents because it rewards restraint; it does not take more time on the part of the agent to be less corrupt. Indeed, it might take less. The amount of time corrupt public servants spend identifying resources to steal, sizing up which citizens to solicit bribes from, covering their tracks, recruiting other public servants into their illegal schemes, determining where to park their illegal proceeds, etc., should not be underestimated. Under the incentive program proposed here, public servants will spend significantly less time soliciting bribes and siphoning off government resources and redirect their

85. *Id.* at 126.

86. Dixit, *supra* note 75, at 710.

87. See Dixit, *supra* note 84, at 126.

88. See Dixit, *supra* note 75, at 710.

89. *Id.*

90. Proper & Wilson, *supra* note 82, at 252.

efforts toward monitoring their peers and subordinates to make sure they do the same. Ultimately, the reduction of corruption should increase the time and effort devoted to all policy areas and interests.

For this reason, less high-powered incentives are not a necessary or even appropriate response to the existence of multiple principals in all cases in which incentive programs are established in the public sector. In fact, very high-powered incentives on the order of tens or hundreds of thousands of dollars or more can be optimal inducements if an appropriate performance variable can be found. An appropriate performance variable — like corruption levels — that does not skew the calculation public officials must make about how much effort they should exert to meet the demands of all their legitimate principals.

2. Multiple Tasks and Goals

Unlike in the private sector, where the profit motive is often viewed as the sole goal, most public sector employees are faced with multiple tasks and/or multiple goals. A concern with designing incentive programs in the public sector is that multiple goals or tasks for agents can be in conflict with each other, much like the case of multiple principals, described above, in the sense that the introduction of incentive bonuses “serves to direct the allocation of the agents’ attention *among* their various duties.”⁹¹ If tasks are substitutes, then high-powered incentive programs will be undesirable because “exerting more effort on one task increases the marginal cost of the task which is a substitute. Higher marginal incentives in one task will drive the agent’s effort away from the tasks which are substitutes.”⁹² Further, “the desirability of providing incentives for any one activity decreases with the difficulty of measuring performance in any other activities that make competing demands on the agent’s time and attention” because agents would inappropriately focus their efforts on the activities that were more accurately measured.⁹³

In situations where goals or tasks are substitutes and where measuring errors vary across different tasks, the traditional response is to have less high-powered incentives so as not to overly aggravate the possible negative effects of either. But this concern is not applicable to a performance-based financial incentive program for LDC public servants with corruption as the performance variable.

Fortunately, a performance-based incentive program that distributes a collective bonus to politicians and bureaucrats if their LDC becomes less corrupt does not face any of the potential suboptimal results described above because the performance variable is not a substitute for other agent tasks — it does not create trade-offs because it does not require any

91. Bengt Holmström & Paul Milgrom, *Multitask Principal-Agent Analyses: Incentive Contracts, Asset Ownership and Job Design*, 7 J.L. ECON. & ORG. 24, 25 (1991).

92. Burgess & Ratto, *supra* note 75, at 287. Conversely, high-powered incentives would be appropriate in cases where the multiple tasks were complements.

93. See Holmström & Milgrom, *supra* note 91, at 26.

additional time or exertion.⁹⁴ Reducing corruption is about performing all existing tasks more honestly, not about spending more time achieving some goals at the expense of other legitimate goals.

3. Gaming and Capture

Another potential difficulty with creating incentive programs for public officials is selecting performance measures that are difficult for agents to manipulate.⁹⁵ This manipulation can take many forms, including gaming, capture, myopia, tunnel vision, measure fixation, misrepresentation, and misinterpretation.⁹⁶ Such behavior can occur if public servants react to incentive programs by pursuing their own benefit in a harmful manner that contradicts the goals of the incentive program. Unsurprisingly, given the many ways government employees can shirk in response to performance measures, the traditional response of the academic literature is to call for less high-powered incentives. Yet, the performance-based incentive program described in these pages significantly minimizes the risk that public servants will be able to game or capture the incentive program because: (1) independent outsiders will evaluate the progress of the politicians and bureaucrats, not the public servants themselves; (2) a distinct set of independent outsiders will comprise the autonomous administrative committee; and (3) numerous performance measurements will be used to gauge corruption – the performance variable. These measures would make it simply not worth public servants' time to attempt to game the performance measures and/or attempt to game the views of thousands of differently situated individuals

94. The academic literature concentrates only on incentive programs for bureaucrats, not politicians. The source of this void is most likely the belief that the concerns articulated and dispelled here when corruption is used as the performance variable would be more difficult to overcome for politicians than for bureaucrats. Performance-based incentive programs with corruption as the performance variable would effectively motivate both politicians and bureaucrats. For a spoof piece on the topic, see Benjamin J. Stein, *A Bonus Pool for the President*, ACROSS THE BOARD, Oct. 1992, at 54. There are no real-world examples, to my knowledge, of performance-based financial incentive programs for politicians. There is an annual prize "to retired African leaders who rule well and then stand down, rather than trying to cling to power." *Face Value, Africa Calling*, ECONOMIST, May 26, 2007, at 74. This prize, the Mo Ibrahim Prize for Achievement in African Leadership, can be awarded to only one leader a year after her retirement. Further, candidates will only be eligible if they took "office through proper elections and left having served the constitutional term stipulated when taking office." The prize awards \$500,000 per annum for a period of ten years, and \$200,000 annually thereafter. Mo Ibrahim Foundation, Questions, <http://www.moibrahimfoundation.org/questions.asp> (last visited May 23, 2008). This beneficial and laudable prize, which is like an employee of the year award, is a different and much weaker instrument than a performance-based incentive program for thousands of public officials, payable while they are still in public service.

95. For an amusing gaming example in the private sector, see Norman D. Fast & Norman A. Berg, *The Lincoln Electric Company*, Harvard Business School Case 376, at 6 (July 29, 1983) (Fast and Berg chronicle an incentive program by Lincoln Electric that paid secretaries a piece rate for each key they typed. One secretary responded by repeatedly striking the same key during lunch.).

96. See generally Peter C. Smith, *On the Unintended Consequences of Publishing Performance Data in the Public Sector*, 18 INT'L J. PUB. ADMIN. 277 (1995).

whose responses constitute the data on corruption for the different publicly reported performance measures.

First, it will be difficult for the public servants to game the performance measurements, especially on a large-scale basis, because the public servants would neither report nor evaluate their own performance. In numerous examples of incentive programs for public officials in developed countries, public servants under the incentive program were at least partially responsible for reporting their own progress on the criteria laid out by the incentive program. For example, Courty and Marschke examined the Job Training Partnership Act of 1982 and determined that "training agencies time the reporting of the trainee's performance outcomes to maximize their [own] incentive awards."⁹⁷ They acknowledge that "one could argue, however, that the costs . . . identif[ied] are specific to a poorly designed incentive system and that these costs could be easily reduced or even eliminated under alternative designs."⁹⁸ Since the public servants under the program proposed here do not measure or report their performance figures, they cannot misrepresent or misinterpret the numbers by, for example, selectively reporting figures or timing the reporting of relevant data.

Second, since all the performance measurements will be reported to the public, it will also be very difficult for politicians and bureaucrats in an LDC to successfully convince the independent administrative committee that oversees the incentive program to doctor the numbers on their behalf. The mandate of when and under what circumstances the committee must pay out incentive bonuses will be very clear and will also be public knowledge. Further, the fact that the committee will be composed of independent foreigners will make it even more difficult for public officials eligible for incentive bonuses under the incentive program to successfully game or capture the committee because independent outsiders will be less susceptible to pressure.

Third, public servants will also find it very difficult to game the publicly reported performance measures because of: (1) the sheer number of different performance measures used to gauge corruption, and (2) the large number of individuals consulted to determine each performance measure. It is one thing to attempt to game one performance measurement but quite another to try to skew a dozen simultaneously, just as it is conceivable that politicians in an LDC could intimidate some domestic policy experts but less likely that they could also sway the views of foreign policy experts, domestic businesspeople, foreign businesspeople, and citizens.⁹⁹ Essentially, politicians and bureaucrats eligible under a financial

97. Pascal Courty & Gerald Marschke, *An Empirical Investigation of Gaming Responses to Explicit Performance Incentives*, 22 J. LAB. ECON. 23, 49 (2004).

98. *Id.* at 50.

99. Every incentive program will potentially have some actors attempting to game it. This will probably be no different for performance-based financial incentive programs for politicians and high-level bureaucrats in LDCs, though their attempts will most likely be less successful. Small-scale gaming could lead to some unjust compensation if public officials who are collectively on the cusp of meeting performance thresholds unfairly attempt to manipulate

incentive program have two alternatives: they can pressure their peers and subordinate colleagues to reduce corruption and receive years' worth of handsome financial incentive bonuses, or they can try to pressure the thousands of people who collectively rate their performance, many of whom they will never know, many of whom do not live in the same country as they do, many of whom are powerful, and many of whom might not hesitate to go to the press to publicize any attempt at unjust interference with the surveys and polls.

In addition to being virtually impracticable, this second option — trying to game or pressure thousands of evaluators — also leaves politicians and bureaucrats vulnerable to losing years' worth of incentive bonuses because it would be difficult and perilous to successfully manipulate the performance measurements for one year, let alone year after year. So, even if politicians and bureaucrats in an LDC somehow managed to scam the incentive program to get one year of bonus payouts, it is unlikely that they could do so repeatedly. Politicians and bureaucrats inclined to game the incentive program would likely realize the ultimate futility of doing so and understand that if they want to become wealthy legitimately, and possibly transform their images, in the eyes of some, from pariahs to officials deserving of (at least some) respect, a strategy of encouraging and pressuring their peers and subordinates into reducing corruption is far more effective than a strategy of manipulation and gaming.¹⁰⁰

Further, unlike improving one's performance under an incentive program that monitors one's success at performing complicated surgeries, which requires perfecting certain skills, or at placing unemployed individuals into jobs, which can be largely dependent on external resources, it does not take much effort, time, or talent to reduce one's own illicit stealing of government funds or to stop oneself from soliciting bribes. Thus, a public servant would not be incentivized to turn to manipulation simply because she cannot perform the task at hand well.

Other attempts at manipulation would also be unlikely to succeed. Myopia seems improbable given that an incentive program would pay out years' worth of incentive bonuses if performance thresholds are met.¹⁰¹ Additionally, it has already been shown above that gaming the multitasking nature of public sector work would be an insignificant concern given that not engaging in corrupt acts does not detract from the amount of effort a public official devotes to different tasks. Finally, given

the performance measurements. Yet, even if a small amount of this goes on, it will go on at the margins and will indicate that a large improvement in reducing corruption will have already taken place. These large improvements would need to occur to get the public officials anywhere close to meeting the performance thresholds required of them to receive bonus payouts.

100. The desire of politicians and bureaucrats to genuinely help their fellow citizens must also be considered. While altruistic desires have in and of themselves not been enough to stem the tide of corruption, they most likely will play a supporting role in tilting the above calculation toward the reduction of corruption over a policy of gaming the incentive program.

101. Unless public officials are not sure whether they can keep their jobs. While bureaucrats would generally not have to worry about such a prospect, some politicians might.

that it takes little effort or time to not partake in corruption, tunnel vision and measure fixation are unlikely to be major concerns.¹⁰²

Some scholars have suggested that since principals only learn how agents respond to incentive programs over time, principals should allow performance measures to evolve — to change over time to respond to gaming and to more effectively address the goal at hand.¹⁰³ While performance-based incentive programs for LDC public officials that aim to reduce corruption could theoretically include such a prescription, it will likely be unnecessary given the nature of the performance variable and the different performance measurements used to gauge it. Unlike counting the output of a factory, the corruption performance measurements would be subtle and, as Hanushek et al. describe in their work on incentives, “flexible enough to avoid manipulation yet objective enough to be politically feasible”¹⁰⁴ because the experts doing the counting could easily factor any gaming into their measurements. For example, if business or policy experts are annually consulted for their opinions about the level of corruption within a particular LDC, their answers would incorporate all the information that they have accumulated in the past year. They would not be bound to base their opinion on only one factor, but instead will consider many complex factors — thus decreasing the ability of eligible public officials to game the incentive program.¹⁰⁵ Further, the neutral experts will not be forced to rely on easily gamed factors but will select data for evaluation.¹⁰⁶

4. Performance Measurement Difficulties

A performance measurement’s value depends on how much distortion and risk it creates — the less of each generated, the better the performance measurement.¹⁰⁷ Yet, as George Baker suggests, “many complex issues in the design of real-world incentive contracts can be fruitfully viewed as

102. Politicians and bureaucrats should devote time to monitoring their subordinates and peers. The amount of devoted time should depend on their position — e.g., someone who is part of an anticorruption task force would devote more time to monitoring than a low-level clerk.

103. Pascal Courty & Gerald Marschke, *Dynamics of Performance-Measurement Systems*, 19 OXFORD REV. ECON. POL’Y 268, 281 (2003).

104. Eric Hanushek et al., *Introduction to the JHR’s Special Issue on Designing Incentives to Promote Human Capital*, 37 J. HUM. RESOURCES 693, 695 (2002).

105. On his travels, Paul Theroux recalls “news of an attempted coup in the capital, Lilongwe. This might have been alarming, but I guessed it was the usual ruse, a pretext to arrest members of the opposition and an inspiration for the police to squeeze travelers at roadblocks.” Such accounts demonstrate that public officials could not successfully game incentive programs because of the reasons mentioned above — policy experts and other evaluators would understand the true nature of the events and judge appropriately. PAUL THEROUX, *DARK STAR SAFARI: OVERLAND FROM CAIRO TO CAPE TOWN* 284 (2003).

106. Plus, if public officials somehow find a way to game the less flexible corruption performance measures — such as a poll asking LDC citizens whether they or anyone they know has been solicited for a bribe in the past year — the more complex and subtle corruption performance measurements could detect and offset this gaming.

107. See generally George Baker, *Distortion and Risk in Optimal Incentive Contracts*, 37 J. HUM. RESOURCES 728 (2002).

tradeoffs between these two features of performance measures.”¹⁰⁸ Distortion arises from forms of manipulation like gaming, while risk is derived from the fact that if a performance measurement does not accurately capture the agent’s effort by failing to “adjust for factors outside”¹⁰⁹ the agent’s control, it leaves the agent more vulnerable to not being properly compensated for her effort.

In Section B.3, it was demonstrated that public officials will have a difficult time successfully manipulating an incentive program that ties incentive bonus payouts to decreasing levels of corruption because of the nature of corruption as a performance variable and the multiplicity of performance measurements. Gaming the multitasking nature of governmental work was shown to not be a concern because providing anticorruption incentives to public officials does not skew or negatively alter their performance on other tasks, given that it takes little effort to not partake in corruption. Further, it was argued that gaming or capture would not be a serious problem because: (1) public servants will not be involved in measuring or reporting the performance measurements; (2) numerous different performance measurements will be used to measure corruption, which will incorporate the input of many individuals with diverse geographical and professional backgrounds; and (3) the autonomous administrative committee will consist of independent outsiders.

Reason two above ensures not only that gaming will be difficult to pull off but that the performance measurements will collectively provide an accurate aggregate reading of the level of corruption in an LDC, thus effectively minimizing performance measurement distortions. Given that corruption will, for practical reasons discussed below, be measured on a country level and not on an individual level, public officials must bear some risk that aggregate corruption indicators will not be an accurate reflection of their individual decision not to be corrupt, even though their act of forsaking corruption will contribute to lower overall corruption scores. This risk is not unique to incentive programs using aggregate corruption figures but rather present in all group incentive programs. It is expected, given performance measurements’ trade-off between distortion and risk.¹¹⁰ Further, the trade-off can be minimized because officials have the tools – the threat of dismissal, demotion, prosecution, etc. – to pressure their peers and subordinates to meet reduction goals.¹¹¹

Using high-powered incentives is only deemed advisable when performance measures accurately gauge their intended variable.¹¹² Heinrich points out that “agency theory suggests that this finding is even more relevant for a high performance bonus system with aggregate (for

108. *Id.* at 728.

109. Carolyn J. Heinrich, *False or Fitting Recognition? The Use of High Performance Bonuses in Motivating Organizational Achievements*, 26 J. POL’Y ANALYSIS & MGMT. 281, 284 (2007).

110. See Baker, *supra* note 107, at 744–45.

111. Teamwork is discussed *infra*, Section B.5.

112. Canice Prendergast, *The Provision of Incentives in Firms*, 37 J. ECON. LITERATURE 7, 14 (1999).

example, state-level) measures of performance, where there are fewer competing agents by which to assess effort levels and more distinctive organizational or environmental contexts that influence performance outcomes."¹¹³

However, the quality of corruption performance measures does not meaningfully depend on the fact that there are "fewer competing agents by which to assess effort levels"¹¹⁴ because corruption performance measures do not measure productive output by public servants but rather measure a specific type of unproductive effort. For example, understanding a surgeon's skill, taking into account all relevant variables like the sickness and age of patients, depends to a significant degree on the success rates of other surgeons operating on similarly situated patients. But in the realm of measuring corruption, we already know what excellence is — minimal corruption.

Given the nature of the performance variable and its measurements, the value of aggregate or countrywide corruption performance measures is also not hampered by "more distinctive organizational or environmental contexts that influence performance outcomes."¹¹⁵ It would be very costly and difficult to find enough diverse and reliable sources of data to accurately measure the corrupt proclivities of individual public servants — i.e., to find many individuals who have interacted with a particular public servant and to find enough variation in these individuals' situations in terms of, for example, occupation. Plus, we would be unable to accurately disaggregate how public officials influence each other in terms of corruption. Using many performance measures that assess corruption on the national level substantially minimizes these difficulties. We can obtain a more accurate picture of corruption at the national level than at the level of individual public officials because we can more easily survey thousands of individuals' experiences with corruption when dealing with government, we can more easily get opinions from a very wide range of individuals, and this method does not require us to accurately disaggregate how "distinctive organizational or environmental contexts . . . influence performance outcomes."¹¹⁶ It also does not call for us to measure how public officials influence each other's tendency to be corrupt because we would be interested in the total amount of national corruption, not corruption by individual public officials. Further, the use of both experiential data (such as asking 3,000 random citizens in an LDC whether they or anyone living in their household has been asked to pay a bribe in the last year) and subjective measurements (such as asking an academic who specializes in Central America to rate the different levels of corruption in the region) poses no unique or added difficulties in measurement compared to similar experiential and subjective measurements of other social phenomena.¹¹⁷ While perfect measurements of social phenomena

113. Heinrich, *supra* note 109, at 284.

114. *Id.*

115. *Id.*

116. *Id.*

117. See generally Christopher Woodruff, *Measuring Institutions*, in INTERNATIONAL

cannot be had, corruption can be measured accurately enough to successfully construct incentive programs with corruption as the performance variable.¹¹⁸

5. Teamwork

Awarding incentive bonuses based on the performance of a team or group is generally not as optimal as providing incentives to individuals based on their own individual effort. This is because members of a group may be induced to free-ride if the group's product depends on the collective effort.¹¹⁹ The larger the team, the more prevalent free-riding may become.¹²⁰ Yet team incentive bonuses have been shown to be effective motivational tools,¹²¹ and some commentators "see many examples of team incentives chosen by firms and public organizations."¹²² In addition, teams may be able to create their "own reward or punishment mechanism such as a social norm to overcome [the free rider problem]."¹²³

Depending on the nature of the performance variable and its performance measurements, as discussed above, as well as potential resource constraints, an incentive program's best option may be to rely on team or group incentives over incentives for individuals. For example, while the sales performance of individual traveling salesmen may be accurately and inexpensively recorded, it makes less sense to attempt to measure how corrupt individual public officials are, given the cost and logistical difficulties that such an endeavor would entail.

Burgess and Ratto state that a "key feature of team rewards is that they may induce peer monitoring . . . and hence reduce the extent of free-riding."¹²⁴ This would likely happen on two fronts. First, given that many peers would comprise the group of public officials eligible for incentive bonuses, peer monitoring would put pressure on individuals within the

HANDBOOK ON THE ECONOMICS OF CORRUPTION 105 (Susan Rose-Ackerman ed., 2006) (arguing that perception-based, subjective indices like the CPI or the World Bank's governance indicators are better than objective attempts to measure corruption given the gulf between the law on the books and the law in practice).

118. In *The Performance of Performance Standards*, Heckman, Heinrich, and Smith make a further point about the accuracy of performance measures: "performance systems that have been tried in the past have generally used short-run target measures that are only weakly related to long-run efficiency measures. If performance standards are to be put in place that motivate efficiency, long-term studies should be conducted to determine which short-run measures are strongly related to long-term efficiency criteria." This lack of correlation should not be an issue for performance measurements that gauge corruption within an LDC because long-run success is intricately tied to short-run improvements and measurements. James J. Heckman et al., *The Performance of Performance Standards*, 37 J. HUM. RESOURCES 778, 809 (2002).

119. Bengt Holmström, *Moral Hazard in Teams*, 13 BELL J. ECON. 324, 325 (1982).

120. See *id.*

121. See generally Luis R. Gomez-Mejia & David B. Balkin, *Effectiveness of Individual and Aggregate Compensation Strategies*, 28 INDUS. REL. 431 (1989). Gomez-Mejia and Balkin find that "there was little evidence that the 'free rider' effect was a major problem with the use of aggregate incentives for R&D employees." *Id.* at 444.

122. Burgess & Ratto, *supra* note 75, at 289.

123. Dixit, *supra* note 75, at 707.

124. Burgess & Ratto, *supra* note 75, at 290.

group to stop being corrupt because all of their individual incentive bonuses would be tied to the group's ability to reduce corruption in the LDC. Second, given that all the individuals comprising the top of the political and bureaucratic hierarchy would be eligible for incentive bonuses through the performance-based incentive program, intense monitoring of subordinates by superiors could occur at all levels of the hierarchy.¹²⁵ Politicians and high-level bureaucrats could rely on the power bestowed on them through their positions to pressure lower-level public officials — through the threat of demotions, sanctions, termination, and/or criminal prosecution — to stop being corrupt.¹²⁶ Further, with the establishment of an incentive program in their country, citizens could also become a significant source of pressure on public officials to reform their ways and reduce corruption.¹²⁷ Thus, many public officials eligible for incentive bonuses might feel pressure not only from peers and superiors, but also from the public. Finally, given that free-riding in this situation (i.e., being corrupt) would constitute a criminal act, peers, superiors, and citizens would have much stronger tools — numerous anticorruption measures — than most individuals have at their disposal within a team when others are free-riding. These once largely ineffective anticorruption measures would gain sharp teeth with the introduction of incentive programs because those responsible for enforcing the measures would have a large incentive to effectively do so: the possibility of years of substantial incentive bonuses.¹²⁸

6. Risk-Averse Agents

The simple agency scenario in the private sector assumes that agents are risk-neutral, but it is often assumed that bureaucrats in the public sector are risk-averse, as public officials cannot “easily diversify the risks of bad outcomes of public policies and agencies.”¹²⁹ If government employees are risk-averse, then they will prefer less sharp incentives — meaning that public officials will prefer a larger percentage of their salaries to be guaranteed base pay and a smaller percentage to be dependent on

125. A possible structural variation could be added to performance-based incentive programs to intensify the power of peer monitoring — granting public officials the power to deny their colleagues bonus payouts by a large supermajority vote. Requiring a large supermajority vote would substantially minimize the risk of abusing such a power. The criteria that would lead to the denial of bonuses could be left to the discretion of public servants jointly.

126. Making more public officials eligible for incentive bonuses would directly motivate more public officials to stop being corrupt (those newly included under the incentive program). As performance-based incentive programs for LDC public officials rely on both peer monitoring pressure and superior-subordinate monitoring pressure, the increase in the number of eligible public officials would not necessarily weaken the amount of monitoring pressure applied by each eligible public official. Even if a reduction in monitoring pressure per eligible public official occurred by an expansion of the eligible group, the aggregate amount of applied monitoring pressure could still increase given the added applied pressure from newly eligible public servants.

127. This point was first discussed in the Introduction.

128. See Part I, *supra*, for a fuller examination of this point.

129. Dixit, *supra* note 75, at 699.

incentive bonuses than risk-seeking or risk-neutral individuals.¹³⁰ The same will be true if an agent's outcome is partially determined by factors beyond her control, factors that do not have to do with her skill or level of exertion.¹³¹ Once again, this does not rule out the effective use of incentives; it only suggests that less high-powered incentives should be offered to the bureaucrats.

Public officials' risk profile will partially determine their willingness to continue to be corrupt versus their willingness to reform their behavior in hopes of qualifying for incentive bonuses. They would have to weigh the risks of persisting in breaking the law (particularly given the increased oversight of their colleagues) against the risk that, even if they do all they can individually to cut back corruption, the LDC still might not meet its performance benchmark to trigger bonus payouts. Regardless of the risk preference of LDC politicians and bureaucrats, the success of an incentive program aimed at reducing corruption does not entirely depend on the risk profile of agents because public servants' official salaries will not be reduced if they become eligible for incentive bonuses under newly established performance-based incentive programs.

7. Nonpecuniary Motivations

Numerous scholars have claimed that a danger with creating performance-based financial incentive programs for public officials is that officials devoted to public service at the outset will over time view themselves less and less as heroes or knights who serve the public primarily out of an altruistic sentiment or duty to the public good.¹³² Instead they might begin to shirk or simply not be as motivated as before to give the organization their best efforts as they, under the pressure of incentive programs, begin to define themselves more as self-interested seekers of financial incentive bonuses.¹³³ Thus, these scholars argue, the introduction of performance-based incentives might actually decrease the overall effectiveness of bureaucrats or at least distastefully create a perverse "system that turns knights into knaves."¹³⁴ Furthermore, even if the introduction of incentive programs does not decrease public servants' overall effectiveness, it may cost society financially because before the incentive program the public officials were motivated by a factor that cost society nothing: altruistic feelings.¹³⁵ Finally, incentive programs might actually decrease the interest that altruistic individuals have in working in the public sector and thus change the profile of public officials. As

130. *Id.*

131. *Id.*

132. See, e.g., Julian Le Grand, *Knights, Knaves or Pawns? Human Behaviour and Social Policy*, 26 J. SOC. POL'Y 149, 162 (1997).

133. *Id.*

134. *Id.* at 162-63.

135. This does not have to occur if, for example, an organization switches from equal pay for all similarly situated workers (all doctors, for example) to a performance-based pay system in which the total budget for salaries does not change.

expected, the prescription by scholars is to rely on low-powered incentives or no performance-related incentives at all if bureaucrats are motivated, at least to some extent, by altruistic motivations.

However, the concern that high-powered financial incentives would transform LDC politicians and bureaucrats from knights into knaves does not hold up against the reality that a major reason LDCs are poor is because a shockingly high number of LDC politicians and bureaucrats are already much more knave-like than knight-like.¹³⁶ The point of the performance-based incentive program articulated in this Article is to induce these corrupt agents into acting like knights with the hope that over decades of developing knight-like habits (or at least not being corrupt) they might ultimately internalize the mentality of knights (or the mentality of clean government) or, as a pragmatist might have it, effectively be knights, that is, true public servants upholding good government.

III. POSSIBLE DANGERS AND SOURCES OF OPPOSITION

Upon initial reflection, there appear to be numerous potential dangers associated with, and multiple possible sources of opposition to, performance-based incentive programs for LDC politicians and bureaucrats. I address these dangers and sources of opposition below and explain why they are either not hazardous at all or substantially less of a concern than one would assume. In any case, none of the worries below either individually or collectively is large enough to raise serious concerns about establishing performance-based incentive programs for developing countries.¹³⁷

A. Appearance of "Buying" Public Officials

Any organization or developed country that might contemplate establishing incentive programs for different LDCs needs to be aware of how LDC public officials and citizens might view such a program.¹³⁸ This concern about perceptions takes two forms: one legal and one nonlegal. First, there might be legal obstacles within LDCs that prevent the LDC public officials from legally accepting a financial payout from foreigners for any reason. Second, even if legal rules or principles allow foreigners to

136. The same reasoning applies to not worrying significantly about decreasing the interest that altruistic officials have in being employed in the public sector within many LDCs and thus having new public jobs filled by non-altruistic hires if performance-based incentive programs are established for LDC public officials.

137. One potential concern that is not included below (because it was shown in Part II.B.3 not to be a serious impediment to creating incentive programs) is the possibility that developing country public officials could effectively manipulate performance measurements to their advantage.

138. It is also important, but substantially less so, what citizens in developed countries would think of proposed performance-based incentive programs for LDCs. This issue is addressed below in Section C.

give financial payments to public officials within an LDC, the perception of accepting and being motivated by such payments could be harmful to the LDC public officials. If LDC politicians think, rightly or wrongly, that citizens of their country perceive the incentive program as a rogue tool meant to line the pockets of politicians in order to manipulate their government for the benefit of foreigners, then the LDC politicians would be more reluctant to consider the benefits of such an incentive scheme.

There are measures that an organization or developed country interested in establishing performance-based incentive programs for LDCs could take to reduce the likelihood that LDC citizens would think that the creator of the incentive programs was attempting to "buy" the LDC public servants. Given that there is little suspicion that current foreign aid and loan programs are attempts by the developed world to buy LDC public officials, it should not be difficult to convince any initially skeptical public officials or citizens that incentive programs are genuine attempts to pull LDCs out of the grip of corruption. Unlike current assistance programs, the performance-based incentive programs would distribute funds only when LDC politicians and bureaucrats collectively significantly reduce corruption. If anything, incentive programs should be viewed less skeptically than the developed countries' current practice of giving billions of dollars to LDCs despite the likelihood that a significant portion of the funds will be stolen. Many LDC citizens know that current foreign aid, despite the best intentions, is compromised because LDC leaders will take a percentage for themselves and their cronies. LDC citizens may also realize that developed country leaders and citizens are aware of this and yet still continue to give aid without the imposition of stringent requirements that must be met by LDC leaders before its distribution.¹³⁹ Performance-based incentive programs are designed to reduce the very activity that stands in the way of getting aid to those in need.

Additionally, it could be pointed out that because foreign aid is fungible, developed countries currently giving targeted assistance to LDCs are already in a real sense partially paying the salaries of public officials on any number of other local projects.¹⁴⁰ Thus, even if LDC public officials do not illicitly siphon off significant portions of ODA for themselves, they can still act in a manner that effectively redirects some ODA to government programs that the donors do not intend to support. For example, it is estimated that "around 40 percent of Africa's military spending is inadvertently financed by aid."¹⁴¹ To illustrate how the redirection of ODA

139. For a glimpse of the controversy of how the World Bank was attempting to change this in regard to its own financing, see Steven R. Weisman, *Wolfowitz Corruption Drive Rattles World Bank*, N.Y. TIMES, Sept. 14, 2006, at C1.

140. See JAGDISH N. BHAGWATI, *THE ECONOMICS OF UNDERDEVELOPED COUNTRIES* 210 (1966). Bhagwati recounts: "The Austrian government was planning to build a power plant from its own funds and wished to use Marshall Plan funds to rebuild the [Vienna] Opera House. When the American authorities failed to see that the Opera House was essential and withheld funds for this purpose, the Austrian government merely switched their financing plans: they reconstructed the Opera House from their own funds (previously earmarked for the power plant) and successfully secured Marshall Plan aid for the power plant!" *Id.*

141. COLLIER, *supra* note 4, at 103.

occurs, assume that France gives \$200 million in ODA to Mali specifically to build schools, and that Mali already has part of its government budget allocated to the same task. Mali can then choose to take some of the money in its budget allocated to building schools and shift it to other government spending. For example, a portion of the Mali budget that was previously allocated to building schools can be shifted to meet the salaries of public officials. If this occurred, France would in effect be contributing to the payment of those salaries. Considered in this light, financial incentive programs for LDC public officials do not represent a radical departure from the targeted foreign assistance programs already in place.

If the same incentive program is offered to public officials in many LDCs simultaneously, it would strengthen the perception that the incentive programs are genuinely aimed at helping LDCs break the grip of harmful corruption. Ideally, the group of eligible LDCs would represent varied political systems, geographic regions, cultures, religions, ethnicities, and income levels to help dispel possible views that incentive program founders were attempting to illicitly or unduly influence a particular group of LDCs.

The identity of the organization interested in establishing incentive programs for LDCs is also important in enhancing the credibility of the programs. As mentioned earlier, if individuals desire to fund an incentive program, it would be appropriate for them to allow others — e.g., a group of NGOs or developed countries or the United Nations — to design and administer the program. Coalitions of program founders and/or program designers could be deemed more legitimate than individual organizations or countries establishing an incentive program on their own. A coalition conveys to participants that numerous countries and organizations believe in the efficacy of the programs. The same is true for coalitions of private foundations or NGOs. Governments could consider partnering with private organizations and vice versa. Also, all potential donors, not just individuals, could donate adequate funds to the United Nations or another intergovernmental organization, allowing those organizations to establish and operate the incentive programs.

Finally, if legal obstacles exist within LDCs that prevent politicians and bureaucrats from accepting financial payouts from foreigners (or from anyone for that matter), a referendum should be conducted to decide whether an exception should be made for bonus payouts from performance-based financial incentive programs that aim to reduce corruption within the respective countries. If a referendum is not a viable option, then the legislature of the LDC should seriously consider creating an exception in the law solely for a detailed performance-based incentive program.

It is unknown how many LDCs would decline to take part in foreign-financed performance-based incentive programs. Performance-based financial incentive programs established by a coalition of DC governments, intergovernmental organizations, private foundations, or NGOs would very likely be perceived to be legitimate by the letter of the law and public opinion in many if not most LDCs. However, even if only a small

percentage of LDCs initially allow incentive programs to be established for their public officials, any ultimate success that this group of LDCs experiences in reducing corruption could be a significant factor in later convincing other LDCs to allow similar programs to be established for their public officials.

B. Intensifying Illegal Scramble for Political Power

While it is most likely that any intensified competition for political power brought about by the introduction of an incentive program would drive current politicians to clean up their act and might also lead to more capable and honest individuals deciding to enter politics, it is possible that no such beneficial effects would come to pass. Instead, the incentives might attract those who would try to manipulate the political process in their favor. This slim potentiality is effectively mediated by the fact that noncorrupt public officials could monitor and prosecute individuals responsible for irregularities at any point in the election cycle. Public officials generally, and specifically those in charge of monitoring elections, who are eligible for performance-based bonuses would have the incentive to effectively monitor elections and pressure their subordinates to do the same.¹⁴²

To avoid the risk that political candidates would use intimidation and violence to attempt to sway elections to make themselves eligible for incentive bonuses, incentive programs could make future politicians ineligible for incentive bonuses if they take power through intimidation, violence, and/or military action. If such a clause is added to incentive programs, it should only apply to future politicians since there is no benefit from preventing current politicians who have already illegally seized power through force from participating in performance-based incentive programs. In the unfortunate event that a politician takes power through force after an incentive program is already in place, then there would be no choice but to follow Kant's advice and patiently wait for the leader to leave before resuming the program.¹⁴³

C. Opposition from Developed Countries and Legality Issues

If benchmarks are met, performance-based financial incentive

142. If the threat of prosecution is not enough, another potential way to reduce the likelihood of a harmful battle for political power would be to give the losing political candidates financial bonuses if they receive at least a certain percentage of votes cast, assuming that the LDC reduces corruption enough to meet performance benchmarks. The need for such a policy would vary depending on the structure of the political and electoral systems.

143. See Immanuel Kant, *To Perpetual Peace: A Philosophical Sketch*, in *PERPETUAL PEACE, AND OTHER ESSAYS ON POLITICS, HISTORY, AND MORALS* 107, 136 (Ted Humphrey trans., 1983). Kant poses the question "'May a people rightfully use rebellion to overthrow the oppressive power of a so-called tyrant (*nontitulo, sed exercitio talis*)?'" His response is "it remains wrong in the highest degree for the subjects to pursue their rights in this way"

programs would provide LDC politicians with yearly bonuses that would dwarf the salaries of many DC politicians. Some of these politicians might scoff at the idea of being paid less than LDC politicians and hence refuse to create incentive programs for LDCs, regardless of whether they agree that existing foreign aid has not been working and that incentive programs for LDCs could be a solution.¹⁴⁴ If such sentiment begins to brew, it would be necessary to emphasize to DC politicians that many of their LDC counterparts are already taking home more money than they are because of the existing pervasive corruption and that incentive bonuses are needed to help the poor in LDCs by paying LDC public officials to significantly reduce corruption.

It is unlikely that the general public within developed countries would object to their governments' funding incentive programs for LDC public officials.¹⁴⁵ Public support for foreign aid is high among the twenty-two developed country members of the OECD Development Assistance Committee. In a 2002 survey, all twenty-two member countries had a supermajority of citizens who believed in the principle of helping poor countries — in fact, the lowest support among the twenty-two countries came from Austria, where 68.7% of the public was in favor of assistance.¹⁴⁶

To preempt any potential resistance from DC citizens against their countries' funding incentive programs, DC politicians could make a responsible effort to convey the need for and worthiness of the incentive programs in LDCs. This effort could include an informational campaign highlighting: the dire need of individuals within LDCs, the reasons for the failure of previous foreign aid efforts, and how incentive programs offer a promising solution. It would also be important for politicians to publicize how much their current government provides in ODA — for example, the U.S. government dedicates only 0.88% of its total federal budget to ODA,¹⁴⁷ not 20% like Americans, on average, believed in a 2001 survey.¹⁴⁸ If some Americans are against ODA because they think it constitutes too large a percentage of the federal budget, their resistance to ODA might turn into support once they are informed of the actual amount spent on ODA. Further, it would be critical to stress that LDC public officials would only

144. Of course, if LDC incentive programs are funded by private organizations, the above issue would effectively be moot.

145. While a large majority of developed country citizens would likely support incentive programs, such programs may increase DC citizens' awareness of widespread corruption in LDCs, including theft of ODA, and could consequently increase opposition to noncontingent ODA. This would be a welcome development that is supported by many scholars and, as previously mentioned, is the approach of the U.S. Millennium Challenge Corporation.

146. Jude Fransman & Henri-Bernard Solignac Lecomte, *Mobilising Public Opinion Against Global Poverty*, OECD DEVELOPMENT CENTRE POLICY INSIGHTS 1, 3 (2004), available at <http://www.oecd.org/dataoecd/33/41/31484642.pdf>.

147. "In 2006, net ODA by the United States was USD 22.7 billion," while the United States' ODA/GNI ratio was .17%. OECD, *supra* note 64. The U.S. federal budget for 2006 was \$2.568 trillion. U.S. Office of Mgmt. and Budget, FY 06 Budget Priorities, tbl. S-1 (Budget Totals), available at <http://www.whitehouse.gov/omb/budget/fy2006/tables.html>.

148. PROGRAM ON INT'L POLICY ATTITUDES, UNIV. OF MD., AMERICANS ON FOREIGN AID AND WORLD HUNGER: A STUDY OF U.S. PUBLIC ATTITUDES 6 (2001), available at http://www.worldpublicopinion.org/pipa/pdf/feb01/ForeignAid_Feb01_rpt.pdf.

receive the incentive bonuses if significant progress in reducing corruption occurs. Finally, if incentive programs successfully induce some LDCs to improve, it would be likely that some initially skeptical DC citizens would come around to the idea of supporting incentive programs that target corruption.

If one developed country or a group of DCs establishes a performance-based financial incentive program, one would not expect the program to face challenges of legality, either domestically or internationally. As was mentioned earlier, foreign aid is considered acceptable, even if it can encourage corruption. To a certain extent, ODA is already given to influence the behavior of LDCs; this would also be true of incentive programs targeting corruption, yet the influence would not be masked, but explicit.

It would also likely be legal for individuals, NGOs, or private foundations within developed countries to create an incentive program for LDC public officials to reduce corruption. Nevertheless, to maintain the appearance of propriety, any individual interested in funding an incentive program would be wise to donate the money to establish the program to a coalition of NGOs, private foundations, developed countries, and/or international organizations. It would also be prudent for any NGO or private foundation desiring to launch an incentive program to join other NGOs, private foundations, developed countries, and/or international organizations in the endeavor. The most appropriate comparison to incentive bonuses for the purposes of DC anticorruption laws is the awarding of well-known honors, like the Nobel Prizes. The altruistic nature of incentive programs for LDC public officials would shield those private individuals or organizations from legal challenge.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was concluded in 1997.¹⁴⁹ The OECD Convention prohibits payments made to foreign public officials "in order to obtain or retain business or other improper advantage in the conduct of international business."¹⁵⁰ Incentive programs appear not to fall within the concern of the OECD Convention because they do not attempt to gain any private business or other improper advantage.¹⁵¹

The United Nations Convention against Corruption uses similar language to the OECD Convention: "Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence" the offering "of an undue advantage" to a foreign public official "in order that the official act or refrain from acting in the exercise of

149. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions art. 1, Dec. 17, 1997, 37 I.L.M. 1.

150. *Id.*

151. The same can be said of the U.S. Foreign Corrupt Practices Act (FCPA), which was passed in 1977 to stem gifts to foreign government officials that were meant to gain influence over such officials. The International Anti-Bribery & Fair Competition Act of 1998, Pub. L. No. 105-366, 112 Stat. 3302 (1998), amended the FCPA to comply with the provisions of the OECD Convention. The illicit influence with which the FCPA concerns itself is virtually the same as in the OECD Convention.

his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.”¹⁵² As with the OECD Convention, incentive bonuses associated with a performance-based incentive program for LDC public officials do not appear to fall within the purview of the United Nations Convention because such bonuses are intended to motivate public servants to perform their jobs honestly and the incentive program would not seek any advantages for itself.

D. Precipitating Poorer Governance

Although unlikely, two scenarios could materialize: (1) LDC public officials eligible for incentive bonuses under an existing incentive program could purposefully, at first, become more corrupt so that in the future they could more easily reduce corruption and receive bonus payouts, or (2) corrupt LDC public officials that do not yet have an incentive program in place for their country could decide to become more corrupt in hopes of getting an incentive program in the future.

The situation in the first scenario can be avoided by not adjusting performance benchmarks downward even if the level of corruption worsens. Accordingly, public officials would not have an incentive to initially worsen their behavior because doing so would only make it more difficult to ultimately meet the benchmarks that would qualify them for the incentive bonuses.

As for the second scenario, relatively clean LDC governments that might not qualify for incentive programs would have institutional power to resist public officials becoming more corrupt. It would be reasonable to assume that they would resist the temptation of doing harm to their country for the uncertain chance that they would be considered as candidates for an incentive program targeting corruption if they became sufficiently corrupt. If an LDC is very corrupt but not one of the ten LDCs offered incentive programs initially, as discussed earlier, some public officials in the LDC might be tempted to draw attention to themselves by becoming more corrupt, and the LDC would have little institutional capacity to stop them. It seems unlikely that public officials would employ such a strategy, however, because there is no guarantee that it would result in success. Coordinating such a strategy among hundreds of politicians and thousands of bureaucrats would be difficult. Moreover, even if such strategists could pull off a dramatic increase in corruption that draws international attention, there is no guarantee that such attention would have the desired persuasive effect on the committee in charge of selecting LDCs for financial incentive programs. Finally, if incentive programs successfully reduce corruption in the first batch of ten developing countries in which they are offered, it would appear likely that new incentive

152. United Nations Convention against Corruption art. 16, *opened for signature* Dec. 9, 2003, 2349 U.N.T.S. 41.

programs would be created for other LDCs. Yet, if the first generation of incentive programs proves unsuccessful and no or few bonuses are paid out, then there would be a lack of enthusiasm for establishing new incentive programs — giving corrupt public officials in an LDC not already covered by an incentive program no motivation to become more corrupt in the hopes that an incentive program would be established for them.

E. Solidifying Politicians' Expectations of Money

At the end of a successful incentive program, after thirty years of LDC public officials receiving large financial bonuses, those officials might demand continued bonuses of roughly comparable sizes or consider drifting back to the bad old days of endemic corruption. While public officials might expect good salaries after the conclusion of an incentive program, the risk that they would actually resort to corruption rather than, for example, demand higher salaries is likely minimal. Furthermore, the discussion should be placed in the proper context. LDC citizens should prefer a well-functioning, clean government whose public officials expect to be well compensated for good performance over a poorly functioning, corrupt government whose public officials simply steal whatever they can get away with. While public officials' salaries would probably not be nearly as high as incentive bonuses after the conclusion of a successful incentive program, it would be very likely that official salaries would be significantly higher than at the start of an incentive program. This is partly because citizens would likely be willing to support wages that sustain the clean governance, and partly because, after thirty years of cleaner government and the benefits that go along with it, one would expect the LDC to have the resources that would allow it to pay higher public sector salaries.

What is of utmost importance is to establish clean governance conducive to sustained economic growth; that makes all other challenges of development, e.g. in health care and education, more manageable. If this can most effectively be accomplished by offering politicians and high-level bureaucrats incentive bonuses, then discomfort with the fact that the bonuses might enrich those who receive them should not be allowed to overshadow the real societal benefits engendered by the program.

CONCLUSION

Since those who are corrupt are often those who are in positions of political power, it has been a monumental challenge to successfully encourage these individuals to reform their behavior. Performance-based financial incentive programs for poor and low middle-income countries can establish an environment of clean governance favorable to long-term economic, social, and political development. Paying abusers to stop abusing may seem distasteful, but there is probably no faster way to

improve the lives of millions than to do just that.