

# The Rhetoric of Corruption & The Law School Curriculum: Why Aren't Law Schools Teaching About Corruption?

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## A Introduction

Corruption is a long-standing problem in the global economy. Corruption reduces economic growth and private investment, and it limits well-being through depressed per capita income, increased child mortality, and illiteracy.<sup>2</sup> One method of addressing the issues raised by corruption would be to teach students about the subject. This approach was advocated in the 2014 Poznan Declaration, a 'formal statement aimed at mainstreaming ethics and anti-corruption in higher education'<sup>3</sup> which was endorsed by 68 universities in an assembly in Poznan, Poland, as well as the World Academy of Art and Science and the World University Consortium.<sup>4</sup> The United Nations Office of Drugs and Crime (UNODC) has also focused on teaching about corruption in higher education, and it identified anti-corruption education in a variety of post-secondary institutions as a primary tool.<sup>5</sup> It seems apparent that law students should be included in this list, given a lawyer's advisory role in the transactions

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  - 2 See Sharon Eicher, *Corruption in International Business: The Challenge of Cultural and Legal Diversity* (Ashgate Publications 2009) 11–12, and the references cited.
  - 3 Alice Johansson, 'The Poznan declaration featured in Times Higher Education and University World News' (*Quality of Government Institute, University of Gothenburg*, 13 November 2014) <<http://qog.pol.gu.se/news/news-detail//the-poznan-declaration-featured-in-times-higher-education-and-university-world-news-.cid1246317>> accessed 26 May 2017.
  - 4 'Poznan Declaration' (26 September 2014) <[www.qog.pol.gu.se/digitalAssets/1497/1497769\\_the-poznan-declaration.pdf](http://www.qog.pol.gu.se/digitalAssets/1497/1497769_the-poznan-declaration.pdf)> accessed 26 May 2017.
  - 5 Margaret Suderman, 'UVic Law Faculty News' (2015) 73 *The Advocate Vancouver* 385, 385.

that underpin corruption, and yet, despite a UN project which generated extensive anti-corruption materials relevant to law students,<sup>6</sup> the issue remains largely absent from the law curriculum, in Asia and elsewhere.

Defining corruption has been an ongoing challenge, one that almost every published work on corruption has wrestled with.<sup>7</sup> In order to address the failure of law schools to teach law students about corruption, this chapter will not review that lengthy discussion, and adopts the working definition that corruption involves situations where private gain prevails over the duty to serve other interests.<sup>8</sup>

There are many reasons for the shape of the law curriculum in a given country, but in view of the acknowledged status of corruption as a major issue, particularly in a more globalised context for legal education,<sup>9</sup> why aren't law students taught about corruption? This chapter identifies the roles that lawyers may play in corrupt transactions, and then reviews some possibilities for teaching law students about corruption. In addition to considering how the dynamics at work in legal education have impacted teaching options in sample jurisdictions, this chapter considers some additional reasons for the reluctance to train law students about corruption. This chapter explores how

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6 See Anti-Corruption Academic Initiative (ACAD), 'The ACAD Menu of Resources', 'Defining Corruption I and II', 'Sources of Anti-corruption Laws', 'Roles and Obligations of Professions', and three 'Legal Advice and Counsel' concentrations, namely 'Anti-Corruption Laws', 'Enterprise Governance and Compliance', and 'Investigations and Litigation'; (*United Nations Office on Drugs and Crime*, 2014) <[www.track.unodc.org/Education/Pages/ACAD.aspx](http://www.track.unodc.org/Education/Pages/ACAD.aspx)> accessed 26 May 2017.

7 Eicher (n 2) 2.

8 Ibrahim FI Shihata, 'Corruption: A General Review with an Emphasis on the Role of the World Bank' (1997) 5(1) *Journal of Financial Crime* 14.

9 In this collection see Chapters 5 (at 00) and 6 (at 00); see also Marium Jabyn and Rogena Sterling, 'Better Lawyers, Better Justice: Introducing Clinical Legal Education in Maldives' in Shuvro Prosun Sarker (ed), *Clinical Legal Education in Asia: Accessing Justice for the Underprivileged* (Palgrave Macmillan 2015) 20–21; Shuvro Prosun Sarker, 'Empowering the Underprivileged: The Social Justice Mission for Clinical Legal Education in India' in Shuvro Prosun Sarker (ed), *Clinical Legal Education in Asia: Accessing Justice for the Underprivileged* (Palgrave Macmillan 2015) 182–183. However, references to the issue of corruption are rare even in discussions of globalised legal education; see eg compilation of 19 national reports to the 2014 Vienna Congress of the International Academy of Comparative Law in Christophe Jamin and William van Caenegem, *The Internationalisation of Legal Education* (Springer International Publishing Switzerland 2016) 315, 317, which mentions corruption twice in the chapter on Uruguay, but not in connection with a law degree. See also Christopher Gane and Robin Hui Huang, *Legal Education in the Global Context: Opportunities and Challenges* (Ashgate 2016) 129, where the index references the Singapore Prevention of Corruption Act.

corruption is understood, not in terms of legal definitions, but in the rhetoric functioning in the public sphere and the legal academy. This chapter considers how this rhetoric could lead to the conclusion that corruption is not a sufficiently serious issue – or that it is so overwhelming that not much can be done. This chapter argues that a country-specific rhetoric regarding corruption has been constructed through the widespread use of corruption indexes. The indexes, discussed in Section D below, support the understanding that countries with developed economies are non-corrupt, despite the involvement of companies in those countries with corrupt payments in cross-border cases. If a country does not view itself as corrupt, then corruption is not sufficiently serious to warrant inclusion in the curriculum. In contrast, in countries with higher perceived levels of corruption, teachers may acknowledge the problematic environment students will enter, but feel unable to discuss effective options. Examining how rhetoric may affect the perception of corruption as an issue in different contexts, and reflecting on how sample jurisdictions in Asia have responded to the challenges, should encourage more effective pedagogical discussion of a seemingly intractable issue.

## B Lawyers and Corruption

Lawyers are not necessarily the prime movers in corrupt transactions, but they merit study, in part because they help define and interpret law, thereby exploiting its indeterminacy.<sup>10</sup> The fundamental connection between lawyers and the law suggests that corruption is more than just an important social issue; it is a perversion of law. In keeping with their general obligation to assist clients with legal compliance, corporate lawyers have an obligation to advise clients about anti-corruption law and point out the dangers of acting without risk assessment and anti-corruption programmes.<sup>11</sup> Unwittingly or otherwise, lawyers may also play a supporting role in corrupt transactions,<sup>12</sup> particularly as intermediaries.

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10 Monique Nuijten and Gerhard Anders, 'Corruption and the Secret of Law: An Introduction' in Monique Nuijten and Gerhard Anders (eds), *Corruption and the Secret of Law: A Legal Anthropological Perspective* (Ashgate 2007) 14.

11 Suderman (n 5) 387.

12 See eg Arnold Tsunga and Don Deya, 'Lawyers and Corruption: A View of East and South Africa' (Cambridge University Press 2007) 92–95; Barry Rider, *Corruption: The Enemy Within* (Kluwer Law International 1997) 78–81.

The OECD Typologies on the Role of Intermediaries in International Business Transactions defines an intermediary as a person who is put in contact with or in between two or more trading parties.<sup>13</sup> In the business context, an intermediary is frequently understood as a conduit for goods or services.<sup>14</sup> In international business transactions, local intermediaries assist companies to navigate approval and licencing processes as well as cultural differences, but they also carry the potential for illegal payments.

Intermediaries are relevant to lawyers in two ways: lawyers use intermediaries themselves to assist with business transactions, and they are asked to be intermediaries.<sup>15</sup> An International Bar Association survey on corruption and the legal profession stated that

[a] common international corruption scenario ... involves a company approaching a law firm or lawyer to act as agent or middleman in a corrupt transaction that crosses borders in some manner and which directly or indirectly involves government officials. This corruption may take the form of bribery, facilitation payments, fraud, money laundering, among other potentially criminal conduct.<sup>16</sup>

Lawyers are one of the preferred intermediaries in money laundering and facilitation transactions, not only because of their ability to set up corporations, trusts and partnerships, but also because the attorney-client privilege can potentially be used to protect otherwise discoverable evidence. Lawyers' expertise therefore makes them potential partners in corruption,<sup>17</sup> but it also qualifies them as potential actors against corruption. As Kindra Mohr notes,

13 'Typologies on the Role of Intermediaries in International Business Transactions' (Final Report of the Working Group on Bribery In International Business Transactions) 5, para 7 (OECD, 2009) <[www.oecd.org/investment/anti-bribery/anti-briberyconvention/43879503.pdf](http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/43879503.pdf)> accessed 10 June 2017.

14 Ibid.

15 International Bar Association, 'Roles and Obligations of the Legal Profession' 8 (*United Nations Office on Drugs and Crime*, 2014) <[www.track.unodc.org/Academia/Pages/Topics/RolesAndObligations.aspx](http://www.track.unodc.org/Academia/Pages/Topics/RolesAndObligations.aspx)> accessed 10 June 2017.

16 '*Risks and threats of corruption and the legal profession: Survey 2010*' (International Bar Association 2010) 8; Eicher (n 2).

17 See eg 'Report: Lowering the Bar' (*Global Witness*, January 2016) <[www.globalwitness.org/en/reports/loweringthebar/](http://www.globalwitness.org/en/reports/loweringthebar/)> accessed 26 May 2017, with accompanying videos on the same website at <[www.globalwitness.org/en/reports/undercover-new-york-full-length-videos/](http://www.globalwitness.org/en/reports/undercover-new-york-full-length-videos/)> accessed 26 May 2017; Rupert Neate, 'Undercover film shows how lawyers could

[L]awyers ... have tremendous influence over their clients' conduct, whether in the public or private sector, and they have the ability to encourage a client to conduct transactions in an ethical manner. In this way, the legal profession is a crucial resource to help deter and combat public – private corruption. On the other hand, lawyers can advise their clients in ways that will allow them to circumvent anticorruption laws and regulations.<sup>18</sup>

In addition to their role as legal advisors, law graduates take up positions as public servants and elected officials. As noted by Mark Levin regarding Japan:

Graduates of Japanese law schools are destined to become Japan's government, business, and social leaders. How those persons will weigh the moral challenges of their time will create the base for the next generation's social order.<sup>19</sup>

Legal training and influence is therefore significant in both the public and private sectors.<sup>20</sup>

Lawyers potentially play a role in corrupt transactions, but are they knowledgeable about the risks and the applicable law? In April 2010, the International Bar Association (IBA), in cooperation with the Organisation for Economic Co-operation and Development (OECD) and the UNODC, launched the Anti-Corruption Strategy for the Legal Profession, a project focusing on the role

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ease flow of "grey money" into US' *The Guardian* (London, 1 February 2016) <[www.theguardian.com/us-news/2016/jan/31/lawyers-grey-money-undercover-video-african-minister](http://www.theguardian.com/us-news/2016/jan/31/lawyers-grey-money-undercover-video-african-minister)> accessed 26 May 2017; on Australia, see Nick McKenzie, Richard Baker and John Garnaut, 'Top lawyers caught in undercover sting; police urged to investigate' (*The Sydney Morning Herald*, 24 June 2015) <[www.smh.com.au/national/top-lawyers-caught-in-undercover-sting-police-urged-to-investigate-20150623-ghvbt.html](http://www.smh.com.au/national/top-lawyers-caught-in-undercover-sting-police-urged-to-investigate-20150623-ghvbt.html)> accessed 26 May 2017.

18 Kindra Mohr, 'Have You Looked at the Model Rules Lately? Your Ethical Role in the Global Anticorruption Movement' (2013) 42(1) *International Law News* <[www.americanbar.org/publications/international\\_law\\_news/2013/winter/have\\_you\\_looked\\_the\\_model\\_rules\\_lately\\_your\\_ethical\\_role\\_the\\_global\\_anticorruption\\_movement.html](http://www.americanbar.org/publications/international_law_news/2013/winter/have_you_looked_the_model_rules_lately_your_ethical_role_the_global_anticorruption_movement.html)> accessed 26 May 2017.

19 Mark Levin, 'Legal Education for the Next Generation: Ideas from America' (2000) 3 *Asian-Pacific Law and Policy Journal* 3 <[http://blog.hawaii.edu/aplpj/files/2011/11/APLPJ\\_01.1\\_levin.pdf](http://blog.hawaii.edu/aplpj/files/2011/11/APLPJ_01.1_levin.pdf)> accessed 26 May 2017.

20 Suderman (n 5) 385.

lawyers play in fighting corruption in international business transactions.<sup>21</sup> The Anti-Corruption Strategy came about in part due to a shift in the focus of anti-corruption law and policy that emphasised the role of intermediaries, including lawyers, in international business transactions.<sup>22</sup> The Anti-Corruption Strategy has produced research indicating that lawyers are relatively ignorant of anti-corruption law. Despite the system of national and international laws, 'many lawyers remain unaware of the implications of this international anti-corruption regulatory framework on both their legal practice and on the legal profession.'<sup>23</sup> This is despite significant numbers of lawyers reporting involvement with suspicious transactions. In a 2010 IBA survey of 642 professionals from 95 jurisdictions,<sup>24</sup> more than a fifth of respondents said they have or may have been approached to act as an agent or middleman in a transaction that could reasonably be suspected to involve international corruption, and nearly a third of respondents said that a legal professional they know has been involved in international corruption offences.<sup>25</sup> Nearly 30 per cent of respondents said they had lost business to corrupt law firms or individuals who engaged in international bribery and corruption,<sup>26</sup> which suggests that even though lawyers do not necessarily engage in corrupt behaviour, they regularly encounter it.

According to the 2010 IBA survey, younger respondents (aged 20 to 30 years) were generally less aware of international anti-corruption laws and national legislation than older respondents.<sup>27</sup> To the extent that post-graduate professional training is understood to address the subject of corruption,<sup>28</sup> the 2010 IBA survey suggests that the effectiveness of these programmes should be examined. Bar associations and law firms were also reported as not addressing the issue very effectively.<sup>29</sup> Given this level of training in other contexts, and the educational mission of universities, the lack of education regarding corruption in law schools needs to be explained.

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21 'Survey 2010' (n 16) 6.

22 *'Anti-corruption compliance and the legal profession: The client perspective'* (International Bar Association 2013) 4.

23 'Survey 2010' (n 16) 6.

24 *Ibid* 8.

25 *Ibid* 6.

26 *Ibid*.

27 *Ibid* 6, 25.

28 See Section C(2), below.

29 'Survey 2010' (n 16) 24.

## C Sparse Teaching of Legal Ethics, Even Less Teaching about Corruption

### 1 *Legal Ethics Courses in the Law Degree*

One method of addressing the issue of corruption would be to sensitize law students to the challenges they may encounter. In places where corruption is present in the legal education sector, as noted in the example provided by authors Li, Li and Hu,<sup>30</sup> teaching about it in the course of the undergraduate degree presents additional challenges, but its inclusion may be even more important in that context.

The issue of corruption could be inserted into different courses currently in many law degrees, such as corporate law or corporate social responsibility.<sup>31</sup> One logical site in the law degree course for teaching about corruption is legal ethics and professional responsibility, but the difficulty here is that relatively few jurisdictions require students to study professional obligations in their law degree.<sup>32</sup> Information regarding components of the law degree worldwide is not comprehensive, but Maughan and Marhag cite research in jurisdictions such as Japan, Vietnam and Kuwait, where there was no requirement to address legal ethics training, noting a few exceptions such as Poland and Russia.<sup>33</sup> In a presentation at the Institute for Teaching Ethics and Professionalism (NIFTEP) in the summer of 2012, Fernando Dias Simões of the University of Macau Faculty of Law noted that law schools in Macau usually say their role is to graduate jurists, not to create lawyers or judges, and that legal ethics is not taken very seriously.<sup>34</sup> A number of authors in this collection (see, for example Chapters 10, 12, 13, and 14) note that law degrees in their jurisdictions retain a theoretical orientation.

<sup>30</sup> See Chapter 11, at 00.

<sup>31</sup> See Adefolake O Adeyeye, *Corporate Social Responsibility of Multinational Corporations in Developing Countries: Perspectives on Anti-Corruption* (Cambridge University Press 2012).

<sup>32</sup> See Helena Whalen-Bridge, 'The Lost Narrative: The Connection between Legal Narrative and Legal Ethics' (2010) 7 *Journal of the Association of Legal Writing Directors* 229, 239–241.

<sup>33</sup> Nigel Duncan, 'Addressing Emotions in Preparing Ethical Lawyers' in Paul Maharg and Caroline Maughan (eds), *Affect and legal education: emotion in learning and teaching the law* (Ashgate, 2011) 258.

<sup>34</sup> Fernando Dias Simões, 'Teaching Legal Ethics in Macau' (*Institute for Teaching Ethics and Professionalism (NIFTEP)*, 2012) <[www.academia.edu/1787426/Teaching\\_Legal\\_Ethics\\_in\\_Macau](http://www.academia.edu/1787426/Teaching_Legal_Ethics_in_Macau)> accessed 26 May 2017.

The US has one of the most entrenched professional responsibility teaching requirements, with law faculties required by the American Bar Association accreditation standards to teach students professional and ethical responsibilities since the Watergate scandal in 1972.<sup>35</sup> The ABA standards currently require that law schools establish a number of learning outcomes, including Standard 302(c); ‘the [e]xercise of proper professional and ethical responsibilities to clients and the legal system.’<sup>36</sup>

Law schools have the discretion to determine what content to teach. A 1994 survey of professional legal education in US law schools noted that 95% of respondent law schools had a required course in professional responsibility,<sup>37</sup> although many courses focused on black letter rules of professional obligations,<sup>38</sup> in part because students need to pass a standardised examination as part of their bar examination, the Multistate Professional Responsibility Examination.<sup>39</sup>

The ABA Model Rules of Professional Conduct, a model code upon which most state codes are based, admonishes lawyers not to engage in crime or fraud,<sup>40</sup> but does not expressly address corruption although the Model Rules apparently apply to such cases.<sup>41</sup> A 2009 survey of US legal ethics

35 Laurel Terry, ‘A Survey of Legal Ethics Education in Law Schools’ in SK Majumdar (eds), *Ethics in Academia* (Pennsylvania Academy of Science 2000) 65.

36 American Bar Association, ‘2014–2015 Chapter 3 of ABA Standards and Rules of Procedure for Approval of Law Schools’ (ABA, 2014) 15 <[www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_chapter3.auth-checkdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.auth-checkdam.pdf)> accessed 26 May 2017.

37 Terry (n 35) 66–67.

38 Ibid 69.

39 See Christine Mary Venter, ‘Encouraging Personal Responsibility—An Alternative Approach to Teaching Legal Ethics’ (1996) 58 *Law and Contemporary Problems* 287, 288.

40 See ‘Rule 8.4: Misconduct’ (*American Bar Association*, 2017) <[www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_8\\_4\\_misconduct.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct.html)> accessed 26 May 2017.

Rule 8.4 states in part that “It is professional misconduct for a lawyer to: ... (b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation”.

41 Kindra Mohr, ‘Have You Looked at the Model Rules Lately? Your Ethical Role in the Global Anticorruption Movement’ *International Law News* (Winter 2013, 42(1)) <[www.americanbar.org/publications/international\\_law\\_news/2013/winter/have\\_you\\_looked\\_the\\_model\\_rules\\_lately\\_your\\_ethical\\_role\\_the\\_global\\_anticorruption\\_movement.html](http://www.americanbar.org/publications/international_law_news/2013/winter/have_you_looked_the_model_rules_lately_your_ethical_role_the_global_anticorruption_movement.html)> accessed 26 May 2017. See also Juscelino F Colares, ‘The Evolving Domestic and International Law Against Foreign Corruption: Some New and Old Dilemmas Facing the International

courses indicates that while some courses teach law students about the Sarbanes-Oxley and securities laws, no course teaches law students about corruption.<sup>42</sup> Another indication of the scope of professional obligations teaching would be the Center for Computer-Assisted Legal Instruction (CALI), a non-profit consortium of mostly US law schools that conducts research in computer-based legal education and provides online modules for law schools.<sup>43</sup> CALI offers modules on Professional Responsibility, but none of its courses addresses corruption.<sup>44</sup>

In Canada, the Federation of Law Societies of Canada established a Uniform National Requirement that graduates of Canadian common law programs must meet to enter law society admission programs starting from 2015.<sup>45</sup> The National Requirement includes Competency Requirements in ethics and professionalism, including the fiduciary nature of the lawyer's relationship with the client, conflicts of interest, and confidentiality, but it does not address corruption.<sup>46</sup> In a survey of law schools in 2009, prior to implementation of the National Requirement, it was reported that 11 of the 16 law schools had a compulsory course in legal ethics, though with various descriptions.<sup>47</sup> Similarly, in Australia, law schools offer a law course that satisfies the academic requirements for admission to practice, the so-called 'Priestley 11', contained

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Lawyer' (2006) 5(1) Washington University Global Studies Law Review 1, 22, who writes that the incentives for going forward with a highly profitable transaction can put enormous pressure on US lawyers to provide 'an unqualified legal opinion that "[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent ...".

42 Andrew M Perlman, Margaret Raymond and Laurel S Terry, 'A Survey of Professional Responsibility Courses at American Law Schools in 2009' 4-6 (*Legal Ethics Forum*) <[www.legalethicsforum.com/files/pr-survey-results-final.pdf](http://www.legalethicsforum.com/files/pr-survey-results-final.pdf)> accessed 26 May 2017.

43 'Center for Computer-Assisted Legal Instruction' (CALI, 2013) <[www.cali.org](http://www.cali.org)> accessed 26 May 2017.

44 'Lessons, Professional Responsibility' (*Center for Computer-Assisted Legal Instruction*, 2013) <[www.cali.org/category/21-31-upper-level-lesson-topics/professional-responsibility](http://www.cali.org/category/21-31-upper-level-lesson-topics/professional-responsibility)> and <[www.cali.org/content/lessons-subject-outline-professional-responsibility](http://www.cali.org/content/lessons-subject-outline-professional-responsibility)> both accessed 26 May 2017.

45 'National Initiatives, Canadian Law School Programs' (*Federation of Law Societies*, 2017) <<http://flsc.ca/national-initiatives/>> accessed 26 May 2017.

46 'National Requirement, B(2), Ethics and Professionalism' (*Federation of Law Societies*, 2017) <<http://docs.flsc.ca/National-Requirement-ENG.pdf>> accessed 26 May 2017.

47 Federation of Law Societies of Canada, 'Final Report of the Task Force on the Canadian Common Law Degree (October 2009)' 32 (*FLSC*, 2009) <<http://flsc.ca/wp-content/uploads/2014/10/admission8.pdf>> accessed 26 May 2017, citing W. Brent Cotter and Eden Maher, 'Legal Ethics Instruction in Canadian Law Schools: Laying the Foundation for Life-long Learning in Professionalism' (20 February 2009, publication pending).

in the Uniform Admission Rules.<sup>48</sup> The authors of Chapter 3 assert that the inculcation of ethics and values is considered part of the core curriculum,<sup>49</sup> but courses in this area, on the whole, do not address corruption.

In Asia, Japan offers two types of law degrees. As of 2008, there were nearly 100 undergraduate law faculties, with approximately 200,000 students.<sup>50</sup> However, these undergraduate law faculties have never been considered part of the process of educating future lawyers,<sup>51</sup> and have functioned in post-war Japan as general education programs to produce a workforce in business, government, and other walks of life.<sup>52</sup> The majority of these students did not plan to be lawyers, and the programmes were not designed to prepare students to be practicing attorneys.<sup>53</sup> Although law professors in these programmes share a general, common understanding of the curriculum, there is no defined curriculum for undergraduate programs.<sup>54</sup> Students take a variety of courses,<sup>55</sup> and there is no indication that legal ethics plays a role in this programmes. Reforms in the 2000s produced a number of changes, including new graduate programs, or law schools, to train future lawyers.<sup>56</sup> As Kozuka notes in Chapter 7, one of the educational goals at the new postgraduate law schools was responsibility and ethics as professional lawyers,<sup>57</sup> and these law schools were subject to curriculum requirements, which included legal ethics.<sup>58</sup> However, Japan is widely known for its very small number of attorneys (*bengoshi*),<sup>59</sup> maintained in part

48 Council of Australian Law Deans, 'A Catalogue of the Teaching of Legal Ethics, Professional Responsibility, etc. in Australian Law Courses' (*CALD*, November 2008) 1 <[www.cald.asn.au/docs/4.1ethics.pdf](http://www.cald.asn.au/docs/4.1ethics.pdf)> accessed 26 May 2017.

49 Chapter 3, at 00, 00 (on ethics in legal clinics) and 00 (on pro bono activities). On joint student pro bono activities in Thailand and Singapore, see Chapter 13, at 00.

50 Setsuo Miyazawa, Kay-Wah Chan, and Ilhyung Lee, 'The Reform of Legal Education in East Asia' (2008) 4 *Annual Review of Law and Social Science* 333, 340.

51 See Miyazawa Setsuo and Otsuka Hiroshi, 'Legal Education and the Reproduction of the Elite in Japan' (2000) 1 *Asian Pacific Law Policy Journal* 1.

52 Miyazawa, Chan and Lee (n 50) 340.

53 Hisashi Aizawa, 'Japanese Legal Education in Transition' (2006) 24(1) *Wisconsin International Law Journal* 131, 133.

54 *Ibid* 138.

55 Masako Kamiya, 'Structural and Institutional Arrangements of Legal Education: Japan' (2006) 24(1) *Wisconsin International Law Journal* 153, 154–155.

56 Miyazawa, Chan and Lee (n 55) 339–340; Kay-Wah Chan, 'The Emergence of Large Law Firms in Japan: Impact on Legal Professional Ethics' (2008) 11 *Legal Ethics* 154, 166.

57 See Chapter 7, at 00–00.

58 Masako Kamiya, 'Structural and Institutional Arrangements of Legal Education: Japan' (2006) 24(1) *Wisconsin International Law Journal* 153, 165 and 194.

59 Kay-Wah Chan, 'Justice System Reform and Legal Ethics in Japan' (2011) 14 *Legal Ethics* 73, 73.

by a low passing rate for the bar. Because the passing rate has not increased from the reforms as anticipated, students in these programmes appear to be emphasising subjects examinable in the bar examination to the detriment of other courses,<sup>60</sup> including legal ethics.<sup>61</sup> Upon passing the bar examination, candidates then attend the Legal Training and Research Institute (LTRI), a sub-division of the Supreme Court, which includes coursework and apprenticeships.<sup>62</sup> The English language description of the LTRI programme emphasises ‘high ethical standards and professionalism’ which creates an approach in which ‘legal ethics is regarded as one of the priority subjects in the training of legal apprentices’,<sup>63</sup> although it is not clear how that teaching is conducted. There are no references on the official LTRI website to training regarding corruption, money-laundering, or anti-terrorism.

In Singapore, the Singapore Management University’s School of Law provides an interesting exception to the general lack of instruction about corruption in the course of a law degree. As part of SMU’s general university requirements, LLB students are required to take a course entitled ‘Ethics and Social Responsibility’.<sup>64</sup> Students in SMU’s graduate law degree, the JD, are also required to take the Ethics and Social Responsibility course.<sup>65</sup> Course outlines do not state that corruption or bribery is a required element, but syllabi generated by law professors include the issue.<sup>66</sup> As described in the Academic Year 2016–17 course description:

60 Shigenori Matsui, ‘Turbulence Ahead: The Future of Law Schools in Japan’ (2012) 62(1) *Journal of Legal Education* 3, 28; Chan(n 56) 168; Miyazawa, Chan and Lee (n 50) 348.

61 A bar examination has obvious relevance in ensuring that practitioners meet basic standards, but when it is perceived as unduly restrictive the impact on education is potentially quite negative (see Chapter 7).

62 Aizawa (n 53) 146.

63 ‘The Legal Training and Research Institute of Japan’ (*Supreme Court of Japan*, 2017) <[www.courts.go.jp/english/institute\\_01/institute/index.html](http://www.courts.go.jp/english/institute_01/institute/index.html)> accessed 26 May 2017.

64 The SMU School of Law includes three courses in this category of University Core Courses: Business, Government & Society; Ethics & Social Responsibility; and Leadership & Team Building; see SMU School of Law, ‘Curriculum’ (*Singapore Management University*, 2017) <<http://law.smu.edu.sg/programmes/bachelor-laws/why-smu-law/rigorous-challenging-curriculum/overview>> accessed 26 May 2017.

65 SMU School of Law, ‘J.D. Programme Brochure’ (*Singapore Management University*, 2017) <<https://law.smu.edu.sg/sites/law.smu.edu.sg/files/law/pdf/JD/SMU-Law-Brochure%202016%20%28FA-revised%29.pdf>> accessed 26 May 2017.

66 See eg Eugene K B Tan, ‘LGST 001: Ethics and Social Responsibility Course Outline, AY 2009–10’, 4 (*Singapore Management University*, 2009) <[https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/0920/LGST001\\_EugeneTan.pdf](https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/0920/LGST001_EugeneTan.pdf)> accessed 26 May

The objective of the Course is to raise the awareness of students with regard to the multi-faceted ethical and social responsibility issues faced by businesses and corporate executives, whether individuals or organisations. The initial part of the Course will focus on critiquing various ethical and social theories developed by philosophers, economists, sociologists, management theorists and others. Both Western and non-Western theories will be examined. The Course also aims at developing the moral reasoning skills of students and applying them to the specific problems and dilemmas faced by individuals and organisations in the business and corporate world.<sup>67</sup>

As a course that all students are required to take regardless of their field of study,<sup>68</sup> Ethics and Social Responsibility is intended to be an introduction to business ethics generally, not a course in legal ethics. In an address by SMU President Arnoud De Meyer, the President noted that:

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2017; Elgin Tay, 'LGST 001: Ethics and Social Responsibility Course Outline, AY 2012–13, Class 12' (*Singapore Management University*, 2012) <[https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/1210/LGST001\\_ElginTay.pdf](https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/1210/LGST001_ElginTay.pdf)> accessed 26 May 2017; Gary Chan, 'LAW001 Ethics and Social Responsibility Course Outline, Topic 4' (copy on file with author); David N Smith, 'LAW 001 Ethics and Social Responsibility Course Outline, AY 2014–15' 4–5 (*Singapore Management University*, 2014) <[https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/1410/LAW001\\_DavidSmith.pdf](https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/1410/LAW001_DavidSmith.pdf)> accessed 26 May 2017; S Chandra Mohan, 'LAW 001, Ethics and Social Responsibility Course Outline, AY 2014–15', 4 (*Singapore Management University*, 2014) <[https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/1420/LAW001\\_ChandraMohan\\_v2.pdf](https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/1420/LAW001_ChandraMohan_v2.pdf)> accessed 26 May 2017; Ang Su-Lin, 'LGST 001 Course Outline, AY 2014–15, Class 7' (*Singapore Management University*, 2014) <[https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/1410/LGST001\\_AngSuLin.pdf](https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/1410/LGST001_AngSuLin.pdf)> accessed 26 May 2017; Andrew White, 'LGST 001 Ethics and Social Responsibility Course Outline, AY 2014–15, Class 10' (*Singapore Management University*, 2014) <[https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/1420/LGST001\\_AndrewWhite.pdf](https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/1420/LGST001_AndrewWhite.pdf)> accessed 26 May 2017; Tamera A Fillinger, 'LGST 001 Ethics and Social Responsibility Course Outline, AY 2015–16, Class 9' (*Singapore Management University*, 2015) <[https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/1510/LGST001\\_TameraFillinger.pdf](https://inet.smu.edu.sg/sites/courses/Documents/Outlines/UGRD/1510/LGST001_TameraFillinger.pdf)> accessed 26 May 2017.

67 SMU, 'LGST 001 – Ethics and Social Responsibility – Course Detail' (*Singapore Management University*, 2017) <[http://eservices.smu.edu.sg/psp/ps/EMPLOYEE/HRMS/c/SIS\\_CR.SIS\\_CLASS\\_SEARCH.GBL](http://eservices.smu.edu.sg/psp/ps/EMPLOYEE/HRMS/c/SIS_CR.SIS_CLASS_SEARCH.GBL)> accessed 31 May 2017.

68 Rathna N Koman and Helena Whalen-Bridge, 'Clinical legal education in Singapore' in Shuvro Prosun Sarker (ed), *Clinical Legal Education in Asia: Accessing Justice for the Underprivileged* (Palgrave Macmillan 2015) 140.

Universities must develop young minds with a strong sense of business ethics, and an appreciation that not all deals should be about maximising profit. At the Singapore Management University, every single one of our students, regardless of their field of study, is required to take a course in ‘Ethics and Social Responsibility’.<sup>69</sup>

In its course listings, the School of Law distinguishes between University requirements such as the Ethics and Social Responsibility course, and Law Core Courses, which include typical offerings such as contract, torts, and criminal law.<sup>70</sup> Law students therefore take a general course in ethics as part of the university’s mission to teach about business ethics, which explains the inclusion of topics on corruption. Students at SMU are exposed to the issue of commercial corruption, but it is not clear that the course makes the connection between corruption and the role of lawyers.

For faculties that teach a stand-alone ethics course, the SMU model offers an approach that, with slight modifications, would help to bring home the role that lawyers play in either allowing or discouraging corruption. The SMU model would however be a hard sell at faculties that do not already require law students to take a course in ethics. Such a course may also fail to adequately serve a jurisdiction with higher perceived levels of internal corruption. As noted in Chapter 14, corruption and criminal justice routinely capture headlines in Indonesia, and law graduates currently avoid employment with the judiciary or the prosecutor’s office partly because of concerns regarding corruption.<sup>71</sup> This context has prompted a completely different approach which focuses on directly on corruption. The US Agency for International Development (USAID) established the first anti-corruption legal clinics at Indonesian law faculties.<sup>72</sup> The Indonesian Network for Clinical Education (INCLE), a national network launched in 2015 to develop clinical legal education in

69 Arnoud de Meyer, ‘Welcome Address by SMU President Professor Arnoud de Meyer At MOA signing between SMU SKBI and Securities Investors Association (Singapore)’ (SIAS, 2017) <[http://sias.org.sg/index.php?view=article&id=401%3Awelcome-address-by-smu-president-professor-arnoud-de-meyer-at-moa-signing-between-smu-skbi-and-securities-investors-association-singapore&option=com\\_content&lang=en](http://sias.org.sg/index.php?view=article&id=401%3Awelcome-address-by-smu-president-professor-arnoud-de-meyer-at-moa-signing-between-smu-skbi-and-securities-investors-association-singapore&option=com_content&lang=en)> accessed 26 May 2017.

70 SMU School of Law, ‘Programmes, Bachelor of Laws, Curriculum’ (*Singapore Management University*, 2017) <<http://law.smu.edu.sg/programmes/bachelor-laws/why-smu-law/rigorous-challenging-curriculum/overview>> accessed 26 May 2017.

71 At 00–00.

72 USAID, ‘Democracy, Rights and Governance’ (USAID, 2017) <[www.usaid.gov/indonesia/democracy-human-rights-and-governance](http://www.usaid.gov/indonesia/democracy-human-rights-and-governance)> accessed 26 May 2017.

Indonesia,<sup>73</sup> now lists seven law faculties with legal clinics, five of which have anti-corruption clinics.<sup>74</sup> In a parallel development, the World Justice Project (WJP), a non-governmental organisation that works to advance the rule of law, announced in May 2015 that it would provide seed grants to pilot projects addressing the rule of law in Indonesia, including projects on judicial corruption.<sup>75</sup> One grant focused on monitoring judicial corruption in Indonesia's three largest cities – Jakarta, Bandung, and Surabaya – by partnering with several Indonesian law schools that operate a network of legal clinics.<sup>76</sup> Planned for the period 1 June 1 2015 to 1 June 1 2016, the project proposed four main activities:

1. Developing a judicial corruption monitoring manual for legal clinics, to be disseminated to civil society organizations and legal clinics, with an electronic version to be made available online;
2. Training legal clinics on handling reports of judicial corruption, with each participating clinic to receive 6 judicial corruption cases for analysis and review by the Judicial Commission and Anti-Corruption Commission;
3. Creation of a street law program, using the manual to educate local communities about judicial corruption; and
4. Developing an online complaint mechanism and hotline for confidentially reporting instances of judicial corruption, with the legal clinics working with the Witness Protection Agency to develop the website and hotline in order to ensure that these services protect whistle-blowers' confidentiality.<sup>77</sup>

Both the Indonesian anti-corruption legal clinics and SMU's business ethics course in Singapore offer intriguing possibilities about how to teach law

73 Indonesian Network for Clinical Legal Education, <<http://incle.org/#>> accessed 26 May 2017.

74 Ibid.

75 World Justice Project, 'Advancing Justice in Indonesia: WJP Announces Five New Grants' (WJP, 27 May 2015) <<http://worldjusticeproject.org/blog/advancing-justice-indonesia-wjp-announces-five-new-grants>> accessed 26 May 2017.

76 World Justice Project, 'Judicial Corruption Monitoring in Indonesia through Legal Clinics' (WJP, 2017) <<http://worldjusticeproject.org/opportunity-fund/judicial-corruption-monitoring-indonesia-through-legal-clinics>> accessed 26 May 2017.

77 World Justice Project, 'Judicial Corruption Monitoring in Indonesia through Legal Clinics' (WJP, 2017) <<http://worldjusticeproject.org/opportunity-fund/judicial-corruption-monitoring-indonesia-through-legal-clinics>> accessed 26 May 2017.

students about corruption. At the moment, however, they are the exception rather than the norm.<sup>78</sup>

## 2 *Professional Preparation Courses*

In jurisdictions that separate academic from professional or vocational training, professional obligations could be included in a post-graduate, vocational training phase. Nigel Duncan has argued that jurisdictions requiring a course in legal ethics in the law degree do so in order to prepare students specifically for legal practice, and that law schools which do not purport to do this do not have a compulsory course in legal ethics.<sup>79</sup> The Bar Association of England & Wales and the Solicitors Regulation Authority only require professional ethics during their vocational courses, and law degrees in Australia which are not designed to prepare students for legal practice are not required to comply with the 'Priestley 11'.<sup>80</sup>

The UK's separation of academic and vocational training<sup>81</sup> is the template that some common law countries in Asia have followed. For example, Hong Kong does not have a bar examination, and most applicants for admission complete the Postgraduate Certificate in Laws (PCLL).<sup>82</sup> All three law schools in Hong Kong offer this one-year program.<sup>83</sup> Legal Ethics is not a stand-alone course in the PCLL, but both the Bar Association and the Law Society have set benchmarks that include ethical training.<sup>84</sup> The PCLL offered

78 See also Ugljesa Ugi Zvekcic, 'Corruption in South Eastern Europe: Teaching Anti-Corruption in The Region' (United Nations Office on Drugs and Crime, Symposium of the Anti – Corruption Academic (ACAD) Initiative, Moscow, 30–31 October 2015) 39–55, 49 <[www.track.unodc.org/Education/Pages/ACAD.aspx](http://www.track.unodc.org/Education/Pages/ACAD.aspx)> accessed 28 May 2017; noting that anti-corruption teaching at the university level is sporadic in South-Eastern Europe, although a few universities teach it in Romania, Greece, Bulgaria, Macedonia, and Serbia.

79 Nigel Duncan, 'Addressing Emotions in Preparing Ethical Lawyers' in Paul Maharg and Caroline Maughan (eds), *Affect and Legal Education: Emotion in learning and teaching the law* (Ashgate 2011) 258.

80 Ibid. see also Chapter 3.

81 In the UK, see Solicitor's Regulation Authority, 'Legal Practice Course Outcomes 2011' (SRA, September 2011) <[www.sra.org.uk/documents/students/lpc/LPC-Outcomes-Sept2011.pdf](http://www.sra.org.uk/documents/students/lpc/LPC-Outcomes-Sept2011.pdf)> accessed 26 May 2017.

82 Wilson Chow, 'Adding Realism to Professional Legal Education at the University of Hong Kong' in Caroline Strevens, Richard Grimes & Edward Phillips (eds), *Legal Education: Simulation in Theory and Practice* (Ashgate 2014) 231.

83 Feng Lin, 'Legal Education at a Turning Point: A Case Study of Hong Kong' in Christophe Jamin and William van Caenegem (eds), *The Internationalisation of Legal Education* (Springer International Publishing 2016) 131, 145.

84 Ibid 131, 146.

by Hong Kong University includes ethics in its courses on Criminal Litigation, Trial Advocacy, Mediation in Chinese, and Professional Practice and Management,<sup>85</sup> and it uses a pervasive teaching method that includes ethics.<sup>86</sup> Authors Chow, Ng and Jen also note that legal ethics are addressed in part in Simulated Client Interviews.<sup>87</sup> In Singapore, all applicants for a Singapore Practising Certificate must take the Preparatory Course leading to Part B of the Singapore Bar Examinations.<sup>88</sup> This course requires students to take a stand-alone module in Ethics and Professional Responsibility.<sup>89</sup>

It is reasonable to assume that some jurisdictions with separate vocational training would include instruction on corruption, money laundering, or anti-terrorism legislation, but even here there is variation.<sup>90</sup> This variation suggests that while professional training courses are one avenue for teaching law students about corruption, it is not a complete answer. Another difficulty in withholding instruction about corruption until the professional preparation stage is the implicit message of devaluation it sends. In view of the increased scrutiny of lawyers' involvement in corruption, and the suggestion that younger

85 Hong Kong University, 'PCLL, Full-Time Mode: The PCLL Regulations and Syllabuses (2015–16)' (HKU, 2015) <[www.law.hku.hk/syllabuses/PCLL%202015\\_16.pdf](http://www.law.hku.hk/syllabuses/PCLL%202015_16.pdf)> accessed 26 May 2017.

86 W W S Chow and F Tiba, 'Too Many "What's", Too Few "How's"' (2013) 4 *European Journal of Law and Technology* <[http://ejlt.org/article/view/183/281#\\_ednref50](http://ejlt.org/article/view/183/281#_ednref50)> accessed 26 May 2017.

87 See Chapter 9, at 00.

88 Singapore Institute of Legal Education, 'Admission to the Singapore Bar' (SILE, 2017) <[www.sile.edu.sg/admission-to-the-singapore-bar](http://www.sile.edu.sg/admission-to-the-singapore-bar)> accessed 26 May 2017.

89 Singapore Institute of Legal Education, 'Preparatory Course leading to Part B of the Singapore Bar Examinations, Course Information, Subject (vi), Ethics & Professional Responsibility' (SILE, 2017) <[www.sile.edu.sg/part-b](http://www.sile.edu.sg/part-b)> accessed 26 May 2017.

90 Compare eg the Singapore Institute of Legal Education, '2014 Syllabus (Indicative) for the Foreign Practitioners Examination' (SILE, 2013) <[www.sile.edu.sg/pdf/FPE\\_Ethics\\_\(2014\\_Indicative\).pdf](http://www.sile.edu.sg/pdf/FPE_Ethics_(2014_Indicative).pdf)> accessed 26 May 2017, which includes 'prevention of money laundering and funding of terrorist activities' in the Ethics and Professional Responsibility course, and the UK, where solicitors must complete the Legal Practice Course as part of their vocational training; see Solicitors Regulation Authority, 'Legal Practice Course' (SRA, 2017) <[www.sra.org.uk/students/lpc.page](http://www.sra.org.uk/students/lpc.page)> accessed 26 May 2017, and the 'Legal Practice Course Outcomes 2011' (Version 2, September 2011) 7, which details the requirements for the legal practice course including 'Money Laundering and Financial Services within Professional Conduct and Regulation', with Hong Kong University's 2015–16 PCLL Syllabus <[www.law.hku.hk/syllabuses/PCLL%202015\\_16.pdf](http://www.law.hku.hk/syllabuses/PCLL%202015_16.pdf)> accessed 26 May 2017, which does not include similar instruction.

lawyers may not be knowledgeable about it, the question of why law students are not taught about corruption remains.

### 3 *Law School Teaching Materials and the Anti-corruption Academic Initiative*

A perceived lack of teaching materials could explain the lacklustre interest in teaching about corruption. Unlike some areas of professional obligations,<sup>91</sup> jurisdiction-specific teaching materials regarding lawyers and corruption are not well-developed.<sup>92</sup> Training regarding corruption has been an accepted part of overall anti-corruption efforts,<sup>93</sup> and materials are available for tertiary education generally,<sup>94</sup> but as Nicholls and others note, materials specifically geared toward students of law have been lacking.<sup>95</sup> The Anti-Corruption Academic Initiative (ACAD) has attempted to address this need. ACAD is an academic support tool launched in 2011 by the UNODC and supported by Northeastern University (USA), the Organisation for Economic Cooperation and Development (OECD), and the International Bar Association (IBA).<sup>96</sup> ACAD is a collaborative academic project which has produced detailed academic modules,

91 In the US – one of the larger markets for casebooks on professional obligations – the publisher West Academic listed 73 textbooks in the category of ‘Professional Resp/Ethics’ as of June 2017 (*West Academic*, 2017) <[www.westacademic.com/Professors/ProductSearchResults.aspx?searchtypeasstring=BROWSE-BY-ANY&tab=1&subject=167](http://www.westacademic.com/Professors/ProductSearchResults.aspx?searchtypeasstring=BROWSE-BY-ANY&tab=1&subject=167)> accessed 26 May 2017.

92 Gary KY Chan and George TL Shenoy, *Ethics and Social Responsibility: Asian and Western Perspectives* (McGraw-Hill Education (Asia) 2016) 273–320, which addresses corruption but does not highlight the role lawyers play.

93 See Colin Nicholls (eds), *Corruption and Misuse of Public Office* (2nd edition, OUP 2011) 695–696.

94 See Peter Hardi, Paul M Heywood, and Davide Torsello, ‘Debates of Corruption and Integrity: Perspectives from Europe and the US’ (Palgrave Macmillan 2015) 1–2, which notes the development, by the Central European University Business School’s Centre for Integrity in Business and Government, of teaching materials on integrity and anti-corruption focused on the regional needs of Eastern Europe and former Soviet Union bloc; the materials are geared toward leaders in different market, political and legal environments and intended to teach critical thinking about corruption and integrity in order to prepare students to meet risks and conduct businesses that are sustainable in the long term.

95 Nicholls (n 93) para 20.17.

96 ‘The Anti-Corruption Academic Initiative (ACAD): An Overview’ (*United Nations Office on Drugs and Crime*, 2017) <[www.track.unodc.org/Academia/Pages/ACADOverview.aspx](http://www.track.unodc.org/Academia/Pages/ACADOverview.aspx)> accessed 28 May 2017.

case studies and reference materials, which are freely available on the internet to universities and other academic institutions.<sup>97</sup>

At the time this chapter was written, ACAD had developed extensive materials on 21 different topics, including approaches to defining corruption and sources of anti-corruption laws, and a separate section on Teaching Materials.<sup>98</sup> One topic provides an overview of the roles of, and obligations on, the legal profession,<sup>99</sup> and three topics are devoted to legal advice given by counsel regarding corruption: Anti-corruption laws, Enterprise Governance and Compliance, and Investigations and Litigation.<sup>100</sup> ACAD articulates seven distinct reasons why law students should learn about corruption:

Lawyer as intermediary – lawyers play an important role in ensuring the integrity of internal anti-corruption and anti-money laundering policies, and that appropriate procedures are in place when conducting internal audits or advising companies and organisations. Law students will discover that they play an integral role in educating others about their duties, liability and the importance of ensuring there are checks and balances in place.

Professional liability – Students will become familiar with the sometimes heavy penalties and serious consequences of breaches of professional codes of conduct and attempts to break or circumvent controls and the law.

Firm and Enterprise Anti-corruption Policies – This part will explain how lawyers must ensure that their firm or the organisation they advise in respect to anti-corruption and anti-money laundering policies and legislation should have a robust system of checks, balances and procedures to be transparent and accountable.

Reporting obligations (eg Anti-Money Laundering Officer or AMLO) – As will be explained, many organisations employ an AMLO or another person to ensure that suspicious circumstances or transactions

97 International Bar Association, 'Fifth session of the Conference of the States Parties to the United Nations Convention against Corruption' (*IBA Net*, 2017) <[www.ibanet.org/Article/Detail.aspx?ArticleUId=d8441bce-0004-4210-b2b1-6aa8ca69fb5d](http://www.ibanet.org/Article/Detail.aspx?ArticleUId=d8441bce-0004-4210-b2b1-6aa8ca69fb5d)> accessed 26 May 2017.

98 See 'Anti-Corruption Academic Initiative (ACAD)' (*United Nations Office on Drugs and Crime*, 2017) <[www.track.unodc.org/Education/Pages/ACAD.aspx](http://www.track.unodc.org/Education/Pages/ACAD.aspx)> accessed 28 May 2017.

99 See 'Roles and Obligations of Professions' (*United Nations Office on Drugs and Crime*, 2017) <[www.track.unodc.org/Academia/Pages/Topics/RolesAndObligations.aspx](http://www.track.unodc.org/Academia/Pages/Topics/RolesAndObligations.aspx)> accessed 28 May 2017.

100 'The ACAD Menu of Resources' (*United Nations Office on Drugs and Crime*, 2017) <[www.track.unodc.org/Education/Pages/ACAD.aspx](http://www.track.unodc.org/Education/Pages/ACAD.aspx)> accessed 26 May 2017.

are reported to the relevant authorities. In certain jurisdictions, lawyers act as gatekeepers and ensure client due diligence, reporting of suspicious transactions, and protection of DNFBPs (Designated Non-Financial Businesses and Professions) from violations and legal sanctions.

Conflicts of interest – Students will see that many organisations will have procedures in place to assess any transaction or agreement and ensure there are no conflicts of interest within their own firm, and any organisation they represent is protected from legal, regulatory and reputational risk. An unreported or prohibited representation that results in a conflict of interest could result in serious legal consequences.

Code of professional responsibility – The code of ethics and responsibilities governing the legal profession must be adhered to by lawyers, judges and other members of the legal profession in order to avoid disciplinary action by the governing bodies, legal action, or damage to their professional reputation.

Confidentiality – This part of the course covers the special fiduciary duty owed by lawyers to their clients and the importance of confidentiality as well as disclosure of confidential information where compelled by law.<sup>101</sup>

ACAD sought to encourage the teaching of anti-corruption issues as part of courses such as law, business, criminology, and political science. The ACAD materials also sought to provide a basis from which to develop materials and courses suited to particular countries.

Initially there was little evidence regarding their adoption in law schools. For example, the University of Victoria Law School is associated with production of the materials,<sup>102</sup> and while the Law School has an upper class elective in professional obligations, the course summary does not include corruption law.<sup>103</sup> Another potential site for the use of ACAD materials is the International

101 ACAD, 'Roles and Obligations of the Legal Profession' (*United Nations Office on Drugs and Crime*, 2017) <[www.track.unodc.org/Academia/Pages/Topics/RolesAndObligations.aspx](http://www.track.unodc.org/Academia/Pages/Topics/RolesAndObligations.aspx)> accessed 26 May 2017.

102 Suderman (n 5).

103 The University of Victoria Law School Course Catalogue states: 'LAW 360, Legal Ethics and Professionalism, Units: 1.5, Hours: 30, Examines ethical and professional dimensions of the practice of law in Canada and other jurisdictions including the meanings of ethics and the nature of professionalism. Covers the knowledge and skills needed to identify and address ethical dilemmas arising in a legal context. Considers topics such as the nature and scope of a lawyer's duties; admission to, governance of, and critical issues affecting the legal profession; critical thinking about legal ethics and professionalism';

Anti-Corruption Academy, an international organization with membership open to UN Member States and international organizations, which aims to combat corruption through education, research and cooperation.<sup>104</sup> The Academy offers tailor-made trainings, as well as a Master of Arts in Anti-Corruption Studies (MACS)<sup>105</sup> and an International Masters in Anti-Corruption Compliance and Collective Action (IMACC),<sup>106</sup> but the curricula of these programs do not reference the ACAD materials.<sup>107</sup> A final example might be a March 2015 blog post querying the usefulness of the Poznan Declaration, where Harvard Law Professor Matthew Stephenson asked whether the development of practical tools such as a corruption syllabus would not be a better use of resources, apparently without knowledge of the existence of the ACAD materials.<sup>108</sup> More recently, regional ACAD meetings have produced materials that suggest jurisdictions are becoming knowledgeable about ACAD materials and are beginning to develop their own materials.<sup>109</sup> However, if an extensive, up-to-date collection of relevant materials exists, why isn't there more evidence that they are being used?

#### 4 *Why Law Schools are Not Teaching about Corruption: Rhetoric in Developed Economies*

The earlier sections of this chapter have explored some of the reasons why law students are not taught about corruption. In this and the following section, the

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University of Victoria, 'LAW 360 Legal Ethics and Professionalism' (*University of Victoria*, September 2015) <<http://web.uvic.ca/calendar2015-09/CDs/LAW/360.html>> accessed 26 May 2017.

104 See 'Frequently Asked Questions' (*International Anti-Corruption Academy*, 2017) <[www.iaca.int/faqs.html](http://www.iaca.int/faqs.html)> accessed 26 May 2017.

105 See 'Master in Anti-Corruption Studies (MACS)' (*International Anti-Corruption Academy*, 2017) <[www.iaca.int/general-informaiton.html](http://www.iaca.int/general-informaiton.html)> accessed 28 May 2017.

106 See 'International Master in Anti-Corruption Compliance and Collective Action' (*International Anti-Corruption Academy*, 2017) <[www.iaca.int/master-programmes/imacc.html](http://www.iaca.int/master-programmes/imacc.html)> accessed 28 May 2017.

107 For MACS see 'Master in Anti-Corruption Studies' (IACA, 2017) <[www.iaca.int/structure-and-curriculum.html](http://www.iaca.int/structure-and-curriculum.html)>, and for IMACC see 'International Master in Anti-Corruption Compliance and Collective Action' (IACA, 2017) <[www.iaca.int/imacc-structure-curriculum.html](http://www.iaca.int/imacc-structure-curriculum.html)> and <[www.iaca.int/images/sub/master/IMACC\\_CURRICULUM.pdf](http://www.iaca.int/images/sub/master/IMACC_CURRICULUM.pdf)> both accessed 28 May 2017.

108 Matthew Stephenson, 'Can Universities Teach People Not to be Corrupt? Reflections on the Poznan Declaration' (*Global Anti-Corruption Blog*, March 17, 2015) <<http://globalanticorruptionblog.com/2015/03/17/can-universities-teach-people-not-to-be-corrupt-reflections-on-the-poznan-declaration/>> accessed 26 May 2017.

109 United Nations Office on Drugs and Crime (n 78).

chapter considers a different kind of explanation, based on the rhetoric used to discuss corruption. This section applies a rhetorical approach used by James Boyd White<sup>110</sup> and others<sup>111</sup> to explore the ramifications of thinking about corruption in certain ways. In the context of corporate regulation, for example, White has considered how the statement that ‘corporations should maximize profit subject to applicable law’ is inconsistent with the idea that the proper aim of corporations is to maintain conditions that make meaningful economic and social activity possible.<sup>112</sup> Framing corporate regulation as a contest between profit and compliance ‘invites thought and discussion of an unproductive kind about ... important matters,’<sup>113</sup> and it structures the debate on how to regulate corporations in ways that lead to certain discussions while making others irrelevant.

The same can be said about corruption. In general, corruption levels are assessed via commonly-accepted measurement instruments, and these instruments create a ‘non-corrupt rhetoric’ for some countries. This rhetoric, partially true but somewhat misleading, has arguably resulted in the understanding in these countries that corruption is not a problem that lawyers will deal with, and therefore it need not be addressed in the course of the law degree. In countries with high levels of perceived corruption, a different set of perceptions may affect appetites for instruction in legal ethics and corruption in their own way. This and the following section of the chapter focus on how the understanding of corruption, at a societal level and even among faculty members, may affect curriculum priorities and teaching strategies.

(a) **Corruption Measurement Instruments: Transparency International**  
In discussions of how corrupt countries are, a common source of data is from Transparency International. This part of the chapter considers how the measurement of corruption arising from Transparency International data might shape the rhetoric of corruption, and how other data, such as prosecutions under the US Foreign Corrupt Practices Act (FCPA), tell a different story.

110 James Boyd White, *From Expectations to Experience: Essays on Law & Legal Education* (University of Michigan Press 1999) 111–123.

111 See eg Monique Nuijten and Gerhard Anders (eds), *Corruption and the Secret of Law: A Legal Anthropological Perspective* (Ashgate 2007).

112 White (n 110) 114.

113 Ibid 112–113.

To the extent that there is widespread awareness of corruption, part of that awareness must be attributed to Transparency International, a non-governmental organisation working to eradicate corruption,<sup>114</sup> which has 'spearheaded the fight against corruption' and made it possible to 'gauge and compare corruption across countries'.<sup>115</sup> Transparency International produces a number of different corruption surveys, but states that its Corruption Perceptions Index (CPI) is 'the most widely used indicator of corruption worldwide'.<sup>116</sup>

The CPI scores countries on how corrupt their public sector is perceived to be.<sup>117</sup> The Index relies on perceptions of corruption because, as Transparency International explains:

Corruption generally comprises illegal activities, which are deliberately hidden and only come to light through scandals, investigations or prosecutions. There is no meaningful way to assess absolute levels of corruption in countries or territories on the basis of hard empirical data. Possible attempts to do so, such as by comparing bribes reported, the number of prosecutions brought or studying court cases directly linked to corruption, cannot be taken as definitive indicators of corruption levels. Instead, they show how effective prosecutors, the courts or the media are in investigating and exposing corruption. Capturing perceptions of corruption of those in a position to offer assessments of public sector corruption is the most reliable method of comparing relative corruption levels across countries.<sup>118</sup>

The 2014 CPI ratings list the following as the 20 least corrupt countries. Countries achieve a rank based on a number of factors, which means that more than one country can hold the same rank:

- 1 Denmark
- 2 New Zealand

114 Transparency International, 'Overview' (*Transparency International*, 2016) <[www.transparency.org/whoweare/organisation/](http://www.transparency.org/whoweare/organisation/)> accessed 26 May 2017.

115 Eicher (n 2) 1.

116 Transparency International, 'Corruption Perceptions Index 2014: In Detail' (*Transparency International*, 2016) <[www.transparency.org/cpi2014/in\\_detail](http://www.transparency.org/cpi2014/in_detail)> accessed 26 May 2017.

117 Transparency International, 'What is the Corruption Perceptions Index (CPI)?' <[www.transparency.org/cpi2014/in\\_detail#myAnchor1](http://www.transparency.org/cpi2014/in_detail#myAnchor1)> accessed 26 May 2017.

118 Ibid.

3	Finland
4	Sweden
5	Norway
5	Switzerland
7	Singapore
8	Netherlands
9	Luxembourg
10	Canada
11	Australia
12	Germany
12	Iceland
14	United Kingdom
15	Belgium
15	Japan
17	Barbados
17	Hong Kong
17	Ireland
17	United States <sup>119</sup>

A major difficulty in measuring corruption is the tendency to characterise poor countries, where corruption affects the daily lives of people, as the most corrupt – but wealthier countries do have corruption, merely different types of it.<sup>120</sup> In particular, the ‘perception’ approach taken by the CPI has been criticised.<sup>121</sup> Charles Kenny stated that it ‘doesn’t take a detailed look’ at Transparency International’s CPI to ‘work out which type of countries are viewed as particularly corrupt by the policy risk analysts, aid agency economists, and think-tank staff’; the least corrupt are the rich countries, and the most corrupt at the bottom of the list are the poor countries.<sup>122</sup> Alex Cobham has argued that the technique of aggregating the opinions of ‘an internationally focused elite’

119 Transparency International, ‘Corruption Perceptions Index 2014: Results’ (*Transparency International*, 2016) <[www.transparency.org/cpi2014/results](http://www.transparency.org/cpi2014/results)> accessed 26 May 2017.

120 See Adam Graycar and Olivia Monaghan, ‘Rich Country Corruption’ (2015) 38 *International Journal of Public Administration* 586, 586.

121 See ‘Is Transparency International’s measure of corruption still valid?’ *The Guardian* (London, 3 December 2013) <[www.theguardian.com/global-development/poverty-matters/2013/dec/03/transparency-international-measure-corruption-valid](http://www.theguardian.com/global-development/poverty-matters/2013/dec/03/transparency-international-measure-corruption-valid)> accessed 26 May 2017.

122 Charles Kenny, ‘Is the U.S. as Corrupt as the Third World?’ *Bloomberg Business* (New York, 14 July 2014) <[www.bloomberg.com/bw/articles/2014-07-14/corruption-is-perceived-as-greater-where-income-gaps-are-big](http://www.bloomberg.com/bw/articles/2014-07-14/corruption-is-perceived-as-greater-where-income-gaps-are-big)> accessed 26 May 2017.

does not even produce an accurate picture of perceptions.<sup>123</sup> He asserts that the CPI ‘embeds a powerful and misleading elite bias in popular perceptions of corruption.’<sup>124</sup> This chapter does not evaluate whether the rhetoric created by the CPI is elitist, but rather asserts that in the context of illegal payments to public officials, the CPI focuses attention on recipient countries, as opposed to paying countries.<sup>125</sup> While Transparency International acknowledges that the CPI is limited in scope and does not provide information on levels of actual corruption in countries overall,<sup>126</sup> it has become a main proxy for measuring levels of corruption. For more developed countries that are perceived as less corrupt by survey respondents, the CPI strongly suggests that corruption is something that happens elsewhere.

(b) A Different Story: FCPA Prosecutions

The US has been the primary source of international prosecutions for bribery of public officials, and the primary legislative vehicle for prosecutions is the Foreign Corrupt Practices Act (FCPA). Prosecutions under FCPA frequently result in settlements, and as reported in 2011, the largest 10 FCPA settlements all involved companies in countries deemed the least corrupt on the CPI: Germany, the U.S., the Netherlands, France, Japan, and Switzerland.<sup>127</sup> As of 23 December 2014, the company names on the list had changed slightly, but the country representation from developed countries with non-corrupt reputations remained steady.<sup>128</sup> Comparing CPI data with FCPA prosecutions produces a rather striking comparison: countries rated as the least corrupt according to CPI are at the top of the largest FCPA settlements list. Do countries that perceive themselves as non-corrupt have something to teach students after all?

123 Alex Cobham, ‘Corrupting Perceptions Why Transparency International’s flagship corruption index falls short’ (*Foreign Policy*, 22 July 2013) <<http://foreignpolicy.com/2013/07/22/corrupting-perceptions/>> accessed 26 May 2017.

124 Ibid.

125 Nicholls (n 93) 697–698.

126 Transparency International, ‘What is the Corruption Perceptions Index (CPI)?’ (*Transparency International*, 2016) <[www.transparency.org/cpi2014/in\\_detail#myAnchor9](http://www.transparency.org/cpi2014/in_detail#myAnchor9)> accessed 26 May 2017.

127 Merrill Goozner, ‘The Ten Largest Global Business Corruption Cases’ (*The Fiscal Times*, 13 December 2011) <[www.thefiscaltimes.com/Articles/2011/12/13/The-Ten-Largest-Global-Business-Corruption-Cases](http://www.thefiscaltimes.com/Articles/2011/12/13/The-Ten-Largest-Global-Business-Corruption-Cases)> accessed 26 May 2017.

128 Richard L Cassin, ‘With Alstom, Three French Companies Are Now in the FCPA Top Ten’ (*FCPA Blog*, 23 December 2014) <[www.fcpablog.com/blog/2014/12/23/with-alstom-three-french-companies-are-now-in-the-fcpa-top-t.html](http://www.fcpablog.com/blog/2014/12/23/with-alstom-three-french-companies-are-now-in-the-fcpa-top-t.html)> accessed 26 May 2017.

The background of some of the FCPA settlements suggests that a lack of oversight, legal and otherwise, was involved. In the \$137 million settlement by the French company Alcatel-Lucent in 2011, the SEC alleged that Alcatel's subsidiaries used consultants who performed little or no legitimate work to funnel more than \$8 million in bribes to government officials in order to obtain or retain lucrative telecommunications contracts and other contracts. In a press release, Robert Khuzami, Director of the SEC's Division of Enforcement stated that 'Alcatel and its subsidiaries failed to detect or investigate numerous red flags suggesting their employees were directing sham consultants to provide gifts and payments to foreign government officials to illegally win business,' and that 'Alcatel's bribery scheme was the product of a lax corporate control environment at the company.'<sup>129</sup> There is no suggestion that lawyers were the main source of corrupt practices in these cases, but it is difficult to image how the transactions could have proceeded without legal agreements drafted by lawyers, as well as legal advice and supervision from counsel.<sup>130</sup>

Using U.S. prosecutions under FCPA as a proxy for levels of corruption presents problems just as the CPI does, albeit a different set of problems. The FCPA settlements do not represent actual amounts paid by the defendant companies to public officials; the settlements are negotiated agreements for settlement of alleged FCPA violations, and the manner in which the amounts are arrived at differs from case to case and is not necessarily transparent. The negotiated amounts could include a civil penalty, disgorgement and pre-judgment interest.<sup>131</sup> However, the availability of alternative sources of data, flawed as it may be, provides a different picture of whether a country has a corruption problem.

In response to criticism regarding CPI, Transparency International generated a new instrument, the Bribe Payer's Index. The 2011 Bribe Payers Index ranked 28 of the world's largest economies according to 'the perceived likelihood of companies from these countries to pay bribes abroad.'<sup>132</sup> This index

129 US Securities and Exchange Commission, 'SEC Charges Alcatel-Lucent with FCPA Violations' (SEC, 27 December 2010) <[www.sec.gov/news/press/2010/2010-258.htm](http://www.sec.gov/news/press/2010/2010-258.htm)> accessed 26 May 2017.

130 Steptoe & Johnson LLP, 'Lessons from Alcatel-Lucent's \$137 million FCPA settlements' (10 March 2011) <<http://documents.lexology.com/edac9154-5221-445b-9454-4188428334b5.pdf>> accessed 26 May 2017 ('The gravamen of both DOJ's and SEC's internal controls charges was Alcatel-Lucent's inadequate procedures for vetting, contracting with, and overseeing third-party consultants around the world').

131 See the discussion of negotiated settlements at FCPA Professor, 'FCPA 101' (FCPA Professor LLC, 2016) <[www.fcpaprofessor.com/fcpa-101#q16](http://www.fcpaprofessor.com/fcpa-101#q16)> accessed 31 May 2017.

132 Transparency International, 'Bribe Payers Index Report 2011' (*Transparency International*, 2016) <[www.transparency.org/bpi2011/results](http://www.transparency.org/bpi2011/results)> accessed 26 May 2017.

would appear to focus on corruption payments from companies in the largest economies. However, if the 2011 BPI is compared with the top ten on the FCPA list from the same year, it produces the same – inverted – list of countries produced by the CPI. The countries that are perceived as unlikely to ever bribe abroad are the countries of origin of the companies engaged in the largest FCPA settlements:

TI BPI Index 2011 <sup>a</sup>	BPI Rating <sup>b</sup>	Top Ten FCPA Settlements: By Country <sup>c</sup>	FCPA Settlement Amount (in USD)	Countries Appearing at the Top of Both Instruments
Netherlands	8.8	<i>Germany</i>	800 million	<i>Germany</i>
<i>Switzerland</i>	8.8	<i>United States</i>	579 million	<i>United States</i>
Belgium	8.7	<i>United Kingdom</i>	400 million	<i>United Kingdom</i>
<i>Germany</i>	8.6	Holland/Italy	365 million	
<i>Japan</i>	8.6	France	338 million	
Australia	8.5	<i>Japan</i>	218.8 million	<i>Japan</i>
Canada	8.5	<i>Germany</i>	185 million	<i>Germany</i>
Singapore	8.3	France	137 million	
<i>United Kingdom</i>	8.3	Hungary/ <i>Germany</i>	95 million	<i>Germany</i>
<i>United States</i>	8.1	<i>Switzerland</i>	81.8 million	<i>Switzerland</i>

a Transparency International, 'Bribe Payers Index Report 2011' (*Transparency International*, 2016) <[www.transparency.org/bpi2011/results](http://www.transparency.org/bpi2011/results)> accessed 26 May 2017.

b Ibid, emphasizing that 'countries are scored on a scale of 0–10, where a maximum score of 10 corresponds with the view that companies from that country never bribe abroad and a 0 corresponds with the view that they always do'.

c As of 29 December 2011; see Richard L Cassin, 'With Magyar In New Top Ten, It's 90% Non-US' (*The FCPA Blog*, 29 December 2011) <[www.fcpablog.com/blog/2011/12/29/with-magyar-in-new-top-ten-its-90-non-us.html](http://www.fcpablog.com/blog/2011/12/29/with-magyar-in-new-top-ten-its-90-non-us.html)> accessed 26 May 2017.

The fact that larger payments in corruption cases originate from companies in more developed economies and flow to less developed countries is also apparent from the details of FCPA cases. The largest FCPA settlement at the time this chapter was written concerned a French transportation company, Alstom. Alstom and its subsidiaries admitted to paying bribes to government officials to obtain business in power, grid and transportation projects from state-owned

entities. Part of the US case centred on Indonesia, where Alstom paid bribes to an Indonesian lawmaker and members of Perusahaan Listrik Negara, the state-owned electricity company in Indonesia, to secure \$375 million in contracts. Alstom also tried to hide the scheme by hiring consultants, who acted as the conduits to pay the bribes to government officials.<sup>133</sup> In addition to the US prosecution, Alstom was investigated for alleged corruption in the UK, France, Switzerland, and Brazil. The UK Serious Fraud Office charged Alstom's UK unit in 2014 over alleged corruption related to transportation projects in India, Poland and Tunisia.<sup>134</sup>

FCPA settlements indicate significant corrupt behaviour of the part of companies based in developed countries, and yet these are the same countries which multiple Transparency International instruments have rated as non-corrupt. The rhetoric of corruption which characterises these countries as non-corrupt therefore appears to be deep-seated and resistant to alternative sources of data.

#### D Why Law Schools are Not Teaching about Corruption: Professorial Attitudes in Developing Economies

■ As per sequential order we renumber the section heading, please check and confirm.

The foregoing discussion of rhetoric suggests that, in countries perceived as less corrupt, there is no pressing need to educate students about the subject. As yet there is insufficient information about how the rhetoric of corruption functions in legal academia, but it appears relevant to the question of why corruption is not in the law curriculum.

In countries with higher levels of perceived corruption, there are suggestions that a different rhetoric is at play which inhibits appetites for instruction in legal ethics and corruption in its own way. The Public Interest Law Network, or PILnet, conducted a study in 2014 on attitudes towards the quality of legal education in Russia.<sup>135</sup> The survey noted that law schools offer very little in the way of professional ethics so far, despite the fact that instructors recognise

133 Gina Chon, 'Alstom to pay record \$772m fine for bribery' (*Financial Times*, 22 December 2014) <[www.ft.com/content/0a8989c6-8934-11e4-9b7f-00144feabdco](http://www.ft.com/content/0a8989c6-8934-11e4-9b7f-00144feabdco)> accessed 28 May 2017.

134 Jeremy Hodges, 'Ex-Alstom Ethics Official Is Charged in U.K. Corruption Probe' (*Bloomberg Business*, 12 May 2015).

135 Olga Shepeleva and Asmik Novikova, 'The Quality of Legal Education in Russia: Stereotypes and Real Problems' (PILNet, January 2014) <[www.pilnet.org/dmdocuments/The%20Quality%20of%20Legal%20Education%20in%20Russia%20%28English%20Translation%29.pdf](http://www.pilnet.org/dmdocuments/The%20Quality%20of%20Legal%20Education%20in%20Russia%20%28English%20Translation%29.pdf)> accessed 26 May 2017.

their responsibility to train ethical lawyers.<sup>136</sup> Ethics courses in law school are taught in a sequence of philosophical disciplines and are devoted to abstract examination of morality.<sup>137</sup> Professional ethics are touched upon in courses on specific areas of the law, but there is no detailed consideration of professional rules of conduct.<sup>138</sup>

The survey, conducted via informal interviews with representatives from law schools, employers, and students, did not ask specifically about corruption, but respondents raised the issue themselves in response to questions about legal education. The survey queried the lack of practical training for law students and whether law schools should better prepare students for legal practice. Among a number of other obstacles to practical training, respondents noted the common perception that the Russian judicial system is flawed and corrupt. Instructors could not ignore corrupt practices and did not wish to support the reproduction of such practices, leading one respondent to wonder: 'if we're going to prepare an effective lawyer, then we should introduce a new foundations course – giving and receiving bribes.'<sup>139</sup> This understanding has led some in the academic community to reject the very notion that a law school should prepare students for the actual practice of law, opting instead to help students understand what the ideal is.<sup>140</sup> Instructors understood that students could encounter serious pressure from employers and other figures to commit improper acts, but they noted that they might not have the answers on how to stand up to these pressures.<sup>141</sup> In this rhetorical context, there does not appear to be any space in which to conduct practical discussions in the classroom.

It is difficult not to sympathize with these views, which are reasonable responses to a highly problematic environment. The ACAD project now contains material that jurisdictions facing these challenges might find helpful, such as 'teaching ethics in highly corrupt societies,'<sup>142</sup> and descriptions of different teaching approaches.<sup>143</sup> Individual law schools and professors would need to

136 Ibid 21.

137 Ibid 21–22.

138 Ibid 22.

139 Ibid 14–15.

140 Ibid 15.

141 Ibid 22.

142 Howard Whitton, 'Teaching ethics in highly corrupt societies: Concerns and opportunities' (U4Brief, Bergen: Chr. Michelsen Institute 2009) <[www.track.unodc.org/Academia/Pages/Topics/Introduction.aspx](http://www.track.unodc.org/Academia/Pages/Topics/Introduction.aspx)> accessed 30 May 2017.

143 See Besa Arifi, 'Corruption and the Environment – The Case of Jugohrom Ferroalloys' 20; Prakas C Bhattarai and Mahesh Nath Parajuli, 'Seminar Methods of Delivering Anti-Corruption Knowledge in Classroom: A Nepalese Experience' 112; Mirela P Bogdani,

develop ACAD material to suit their jurisdictions, but for the time being, that development is also being supported by regional ACAD conferences, such as the one held in Moscow in 2015.<sup>144</sup> The anti-corruption legal clinics in Indonesian law faculties discussed above offer another potential response to the frustration expressed in the research on Russian legal education. However, law schools in all countries will likely have to reckon with how the rhetoric of corruption in their jurisdiction affects whether the subject is in the law curriculum at all, and the challenges to be faced if it is included.

## E Conclusion

The issue of corruption has received much international attention, but has yet to acquire much traction in law school curricula. This chapter has reviewed the reasons why students in a law degree should be taught about corruption, but even if change is desired, major issues remain. For some jurisdictions, inserting a legal ethics course in the law degree, which could serve as a platform for teaching about corruption, raises concerns. For example, a US law teacher in Japan noted that

For many of my colleagues, a frightening legacy remains from the educational indoctrination methods used in Imperial Japan, particularly those relating to the 1890 Imperial Rescript on Education. For others, there appears to be a reluctance to allow faculty members to paternalistically impose their own moral views on university students who have already completed their development into adults.<sup>145</sup>

Academics have noted the potential for mindless adoption of an anti-corruption ethic,<sup>146</sup> which would be antithetical to the critical thinking universities try to bring about. The subject matter of corruption also raises political sensitivities and the thicket of cultural differences. In Asia, the issue of *guanxi* – the

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<sup>144</sup> ‘Challenges of Designing Anticorruption Course: In-Between Public & Criminal Law’ 174, in United Nations Office on Drugs and Crime (n 78).

<sup>144</sup> Ibid.

<sup>145</sup> Mark Levin, ‘Legal Education for the Next Generation: Ideas from America’ (2000) 3(1) *Asian-Pacific Law and Policy Journal* <[http://blog.hawaii.edu/aplpj/files/2011/11/APLPJ\\_01.1\\_levin.pdf](http://blog.hawaii.edu/aplpj/files/2011/11/APLPJ_01.1_levin.pdf)> accessed 26 May 2017.

<sup>146</sup> For the opposite view, see Matthew Stephenson (n 113).

importance and use of personal relationships in deals and dispute resolution – complicates discussions of corruption.<sup>147</sup>

On the other hand, if any institution is suited to challenging established rhetoric and suggesting potential solutions, it is the university. When law students become lawyers, they will be required to participate in systems of internal control that are supposed to guard against corruption and related issues, and they are entitled to have frank discussions regarding the dimensions of the problem and how to think about it. As the site of the law degree, the university is also attuned to the challenges posed in its jurisdiction. Authors Wang and Young argue in Chapter 2 that beyond generally accepted cultural differences, neurological differences also set Asia apart from other jurisdictions.<sup>148</sup> To the extent that jurisdictions in Asia do pose particular issues, law faculties here should rise to the task, because generic teaching materials do not necessarily address these challenges, and because no one understands the context better than they do. As Chesterman argues in Chapter 1, Asian law schools are in a strong position to innovate.<sup>149</sup> Awareness of the role that corruption plays in all jurisdictions should encourage that innovation, and at a minimum it should prompt needed conversations<sup>150</sup> in the course of the law degree about what is needed to address this complex problem in different environments.

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147 See Leland Berto, 'From Socialist Ethics to Legal Ethics: Legal Ethics, Professional Conduct, and the Chinese Legal Profession' (2011) 28(2) *UCLA Pacific Basin Law Journal* 210, 231–232; Alan Smart and Carolyn L Hsu, 'Corruption or Social Capital? Tact and the Performance of Guanxi in Market Socialist China' in Monique Nuijten and Gerhard Anders (eds), *Corruption and the Secret of Law: a Legal Anthropological Perspective* (Ashgate 2007) 167–189; Judith Irwin, 'Doing Business in China: An Overview of Ethical Aspects' (Institute of Business Ethics, Occasional Paper 6, July 2012) <[www.ibe.org.uk/userfiles/chinaop.pdf](http://www.ibe.org.uk/userfiles/chinaop.pdf)> accessed 26 May 2017; see also Chris Provis, 'Guanxi, Relationships and Ethics' (2004) 6(1) *Australian Journal of Professional and Applied Ethics* 47–57, which suggests that *guanxi* should not only be understood as an Asian phenomenon.

148 See Chapter 2, at 00–00.

149 See Chapter 1, at 00–00.

150 White (n 110) 113.