

## Article

# Italy, Mexico, and the Legal Framework for Clientelism

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## Table of Contents

I. Introduction .....	1
II. Discussion of Terms .....	2
III. Selection of Cases .....	6
IV. Mexico's Turbulent Democratic History .....	8
V. Modern Political Corruption in Mexico .....	10
VI. Mexican Corruption and the Law .....	12
VII. Alleviating Mexican Clientelism .....	17
VIII. Italy's Recent Electoral History .....	19
IX. Italian Governmental Corruption .....	21
X. Italian Corruption and the Law .....	23
XI. Alleviating Corruption in Italy .....	26
XII. Comparing Italy and Mexico .....	27
XIII. Conclusion .....	28

## I. Introduction

A great deal of political science literature concerns what exactly constitutes “clientelism” and how this concept applies to Mexico and Italy. Very little literature exists, however, which examines these countries’ histories in light of this problem. Furthermore, none have examined the degree to which the legal framework of each of these countries has facilitated clientelism. A country’s legal framework can help shape its democratization process, and studying the law in two countries which are widely regarded as having clientelistic practices can give new insights into how democracies consolidate.

Section II of this article defines the terms “clientelism” and “corruption” and discusses their interrelatedness based on political science academic literature. Section III discusses the similarities and differences between Italy and Mexico, and highlights why a comparison between the two is appropriate. Section IV provides background information concerning Mexico’s efforts to become a consolidated democracy, and discusses how political corruption has undermined these efforts. Section V

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shifts this discussion to how corruption affects Mexico in the present day. Section VI sets forth Mexico's legal framework for corruption-related offenses. Section VII discusses potential solutions to Mexico's problems with corruption. Section VIII provides information concerning Italy's recent electoral history, and its past struggles with clientelism and corruption. Section IX focuses on how Italy's past clientelism has changed form, and arguably still affects Italy's modern political culture. Section X provides Italy's legal framework surrounding corruption-related offenses. Section XI discusses potential solutions for Italy's problems with corruption. Section XII provides a comprehensive comparison of the political and legal framework concerning clientelism and corruption in both Italy and Mexico. This article concludes that in order to effect meaningful change, Italy and Mexico should enact an exogenous anti-corruption commission.

## II. Discussion of Terms

Clientelism remains an important problem for countries attempting to consolidate democracy. Clientelism is a difficult concept to define, and encompasses a variety of different practices. However, in every form clientelism generally has the following characteristics:

- (a) the relationship occurs between actors of unequal power and status;
- (b) it is based on the principle of reciprocity; that is, it is a self-regulating form of interpersonal exchange, the maintenance of which depends on the return that each actor expects to obtain by rendering goods and services to each other and which ceases once the expected rewards fail to materialize;
- (c) the relationship is particularistic and private, anchored only loosely in public law or community norms.”<sup>1</sup>

A particularly egregious practice that would constitute clientelism, for example, is “the direct exchange of a citizen's vote in return for direct payments or continuing access to employment, goods, and services.”<sup>2</sup>

Corruption is commonly defined as “the misuse of public office for private gain.”<sup>3</sup> Clientelism and corruption are often linked, as the two

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<sup>1</sup> Derek W. Brinkerhoff and Arthur A. Goldsmith, *Clientelism, Patrimonialism and Democratic Governance* 3 (2002).

<sup>2</sup> Mathew M. Singer, *Buying Voters with Dirty Money: The Relationship between Clientelism and Corruption* 5 (2009).

<sup>3</sup> William L. Richter, and Frances Burke, *Combating Corruption, Encouraging Ethics: A Practical Guide to Management Ethics* 89 (2d ed. 2007).

concepts share the manipulation of public resources.<sup>4</sup> However, the two terms are distinguishable. Clientelism is an umbrella term that includes different categories. "Authoritarian clientelism" is clientelism kept in place by force.<sup>5</sup> Jonathan Fox, a Professor at the School of International Service, wrote extensively on the definition of clientelism, and on clientelism's effect on Mexican political culture. In defining "semiclientelism," he stated that if one could imagine a continuum with authoritarian clientelism on one end, and the absence of clientelism on the other, the gray areas where outright clientelism has declined but has not disappeared could be thought of as semiclientelism.<sup>6</sup> Semiclientelism should be used to describe regimes in transition from clientelistic authoritarianism to pluralist democracy.<sup>7</sup> Governments engaged in semiclientelism are more likely than governments engaged in authoritarian clientelism to use open, democratic practices, rather than force.<sup>8</sup>

Clientelism stunts the accumulation of social capital because, as there is a specialized relationship between the patrons and their clients, some actors are inevitably excluded.<sup>9</sup> These actors are then not able to participate in the process of interaction that would normally result in the building of social capital.<sup>10</sup>

Clientelism may also undermine the rule of law.<sup>11</sup> The rule of law is a key component of democratization, and its absence (or the perception of its absence) is likely to have a negative impact on a country's governmental efficacy.<sup>12</sup> Clientelism also increases the incentives for politicians to go through alternative channels to achieve their policy interests.<sup>13</sup>

Corruption in government can prove difficult to eliminate.<sup>14</sup> Corruption also might lower a regime's popular legitimacy.<sup>15</sup> In other words, if a nation's citizens see their elected officials engaging in corrupt practices the citizenry is less likely to believe that their officials have their best interests in mind.<sup>16</sup> A low perception of governmental legitimacy also arguably undermines a regime's stability.<sup>17</sup>

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<sup>4</sup> Singer, *supra* note 2, at 2.

<sup>5</sup> Jonathan Fox, *How Does Civil Society Thicken? The Political Construction of Social Capital in Rural Mexico*, 24 *WORLD DEV.* 1089, 1091 (1996).

<sup>6</sup> *Id.* at 1092.

<sup>7</sup> *Id.*

<sup>8</sup> John Durston, *Building Social Capital in Rural Communities (Where it Doesn't Exist)* 16 (1998).

<sup>9</sup> *Id.* at 15-16.

<sup>10</sup> *Id.*

<sup>11</sup> Singer, *supra* note 2, at 3.

<sup>12</sup> *Id.* at 10.

<sup>13</sup> *Id.* at 22.

<sup>14</sup> *Id.* at 25.

<sup>15</sup> Mitchell Seligson, *The Impact of Corruption on Regime Legitimacy: A Comparative Study of Four Latin American Countries*, 64 *J. POL.* 408, 413 (2002).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 418.

According to Guillermo O'Donnell, a deceased prominent Argentine political scientist, particularism (inside of which he includes clientelism)<sup>18</sup> “is antagonistic to one of the main aspects of the full institutional package of polyarchy: the behavioral, legal, and normative distinction between a public and private sphere.”<sup>19</sup> Therefore, clientelism is inherently incompatible with consolidated democracy because a democratic society is supposed to be propelled “not by particularistic motives but by universalistic orientations to some version of public good.”<sup>20</sup>

Clientelism is problematic for democracy for a number of reasons. Clientelism undermines the building of social capital because it slows overall economic growth.<sup>21</sup> Building social capital requires social programs to benefit the community as a whole in order to efficiently distribute public goods.<sup>22</sup> Clientelism undermines both the rule of law and a nation's political accountability, and increases incentives for politicians to raise revenue through corrupt channels.<sup>23</sup>

As neither Mexico nor Italy use force to keep their clientelistic practices in place, neither could accurately be called authoritarian clientelism. Mexico could arguably have been classified as authoritarian clientelism in the past due to the pervasive influence of the Institutional Revolutionary Party's (“PRI”) in political culture. However, the PRI's influence has lessened to the point that Mexico could be called semiclientelism.<sup>24</sup> Though it seems less clear, the DC's influence on Italian culture has waned to the extent that, like Mexico, Italy might also occupy the gray area known as semiclientelism.

### III. Selection of Cases

Clientelism and corruption often take place in countries with “high levels of poverty, weak democratic institutions, short democratic histories, and a large state economic presence.”<sup>25</sup> Although these traits do not generally describe Italy, Mexico *does* have relatively weak democratic institutions, a short democratic history (as the vast majority of its history

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<sup>18</sup> Merriam-Webster's Dictionary defines particularism as “a political theory that each political group has a right to promote its own interests and especially independence without regard to the interests of larger groups.” *Webster's Ninth New Collegiate Dictionary* 858 (9th Ed. 1983). In other words particularism, like clientelism, favors the interests of small portions of the population over the population's interests holistically.

<sup>19</sup> LARRY DIAMOND, MARC F. PLATTNER & PHILIP J. COSTOPOULOS, *DEBATES ON DEMOCRATIZATION* 29 (2010).

<sup>20</sup> *Id.*

<sup>21</sup> Pak Hung Mo, *Corruption and Economic Growth*, 29 J. COMP. ECON. 66, 68 (2001).

<sup>22</sup> *Durston, supra* note 8, at 4.

<sup>23</sup> *Singer, supra* note 2, at 22.

<sup>24</sup> Jonathan Fox, *The Difficult Transition from Clientelism to Citizenship: Lessons from Mexico*, 46 WORLD POL. 151, 158-159 (1994).

<sup>25</sup> *Id.* at 2.

has been under one party dominance) and a high income disparity.<sup>26</sup> Even if Mexico does not have a large state economic presence, this has become true only recently.<sup>27</sup> In contrast, Italy has a low income disparity,<sup>28</sup> a fairly long democratic history,<sup>29</sup> and has adopted neoliberal economics.<sup>30</sup> Italy does have fairly weak democratic institutions, however. Some of Italy's democratic institutions have been compromised by pervasive corruption, especially in bureaucratic fields.<sup>31</sup>

Italy and Mexico have been on opposite sides of the spectrum throughout most of history. Italy was a colonizing country and Mexico was colonized.<sup>32</sup> Mexico has maintained its current system of government since 1917,<sup>33</sup> while Italy has seen numerous transitions.<sup>34</sup> Mexico and Italy are also in completely different geographic “neighborhoods.”<sup>35</sup> To Italy's west are consolidated democracies with low rates of governmental corruption, but to its east are former Soviet satellite states with high rates of corruption.<sup>36</sup> To Mexico's north are the North American countries, with relatively low rates of corruption,<sup>37</sup> and to its south are the Latin American countries with higher rates of corruption.<sup>38</sup>

However, there are also similarities between the two. Both countries are relatively wealthy. Mexico and Italy rank eleventh (1,845,000 in millions of USD) and twelfth (1,805,000 in millions of USD) in terms of nominal GDPs, respectively.<sup>39</sup> Both countries rank low on the Corruption Percentage Index, with Italy ranking as the 69<sup>th</sup> least corrupt country and Mexico ranking as the 106<sup>th</sup> least corrupt.<sup>40</sup> These two facts taken together put both countries in an interesting position: Mexico is

<sup>26</sup> *Global Peace Index - Gini Coefficient*, Visions of Humanity (2007), available at <http://www.visionofhumanity.org/gpi-data/#/2010/GINI>.

<sup>27</sup> See generally PEDRO-PABLO KUCZYNSKI GODARD & JOHN WILLIAMSON, AFTER THE WASHINGTON CONSENSUS 170 (2003).

<sup>28</sup> *Global Peace Index - Gini Coefficient*, supra note 26.

<sup>29</sup> PAUL GINSBORG, A HISTORY OF CONTEMPORARY ITALY 402 (Palgrave Macmillan 2003).

<sup>30</sup> ANDREA MUEHLEBACH, THE MORAL NEOLIBERAL: WELFARE AND CITIZENSHIP IN ITALY 16 (2012).

<sup>31</sup> See generally M. T. Galanti, *Is Italian Bureaucracy Exceptional? Comparing the Quality of Southern European Public Administrations*, 3 BULL. IT. POL. 5, 26 (2011).

<sup>32</sup> Field Listing: Independence, CIA World Factbook (2014), available at <https://www.cia.gov/library/publications/the-world-factbook/fields/2088>.

<sup>33</sup> Mexico, CIA World Factbook (2014), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html>.

<sup>34</sup> Italy, CIA World Factbook (2014), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/it.html>.

<sup>35</sup> See generally *Corruption Perceptions Index 2013 Results*, Transparency International (2013), available at [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2013/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2013/results).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> GDP (Purchasing Power Parity), CIA World Factbook (2013), available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html>.

<sup>40</sup> *Corruption Perceptions Index 2013 Results*, supra note 35.

the most corrupt country in North America, and Italy is the most corrupt founding member of the EU.<sup>41</sup>

This paper will seek to explain how two countries with different histories, geographical locations, and political cultures could share significant problems with corruption.

#### IV. Mexico's Turbulent Democratic History

Mexico under the PRI had the longest-lasting dominant single parties in Mexico's history.<sup>42</sup> Although the current Mexican system of government has made progress in eliminating the inherent corruption of dominant party politics, existing problems with corruption have proved to be difficult to eliminate.<sup>43</sup>

As it is not constitutionally permissible for the President to run for reelection, the incumbent President was historically allowed to select his successor, as the country only had one viable party.<sup>44</sup> Though alternative parties were allowed to exist, elections were frequently fixed.<sup>45</sup> As the corruption in the Mexican political system became more widely recognized, these alternative parties began gaining momentum. This culminated in the election of Vicente Fox, a member of the rival party PAN, in 2000.<sup>46</sup>

Latin America had borrowed large quantities of money from foreign countries leading up to the 1980's.<sup>47</sup> When the United States government attempted to strictly control inflation, it contributed to a Latin American recession.<sup>48</sup> This new austerity resulted in general dissatisfaction with the current political regimes in Latin American countries by their citizens.<sup>49</sup> Many countries in the region then adapted the Washington Consensus, which led to a general broadening of democracy, albeit with a greater economic disparity.<sup>50</sup> Mexico's entrance into NAFTA may also have helped with the country's democratization process.<sup>51</sup>

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<sup>41</sup> *Id.*

<sup>42</sup> Kenneth F. Greene, *Dominant Party Strategy and Democratization*, 52 AM. J. POL. SCI. 16, 22 (2008).

<sup>43</sup> *Corruption Perceptions Index 2013 Results*, *supra* note 35.

<sup>44</sup> STEPHEN D. MORRIS, CORRUPTION & POLITICS IN CONTEMPORARY MEXICO 43 (1991).

<sup>45</sup> James A. McCann and Jorge I. Domínguez, *Mexicans React to Electoral Fraud and Political Corruption: An Assessment of Public Opinion and Voting Behavior*, 17 Electoral Studies 483, 484 (1998).

<sup>46</sup> Polity IV County Report 2010, *Political Instability Task Force* (2010), available at <http://www.systemicpeace.org/polity/Mexico2010.pdf>.

<sup>47</sup> PEDRO-PABLO KUCZYNSKI GODARD & JOHN WILLIAMSON, *supra* note 27, at 21-22.

<sup>48</sup> *See generally id.*

<sup>49</sup> *See generally id.* at 22.

<sup>50</sup> Alicia Girón, *International Monetary Fund: From Stability to Instability. The Washington Consensus and Structural Reforms in Latin America*, in GLOBALIZATION IN THE WASHINGTON CONSENSUS, 43, 51-53 (2008).

<sup>51</sup> Mara Steffan, *The Political Impact of NAFTA on the Mexican Transition to Democracy, 1988-2000*, 10 J. INT'L AFFAIRS (2007), available at

Nonetheless, democracy was seen as under assault after the 2006 Mexican presidential campaign, as both the PRI and Party of Democratic Revolution (“PRD”) were widely suspected of committing voter fraud.<sup>52</sup> The degree to which these claims are accurate is debatable, but the civil unrest that resulted suggests that Mexico might not yet be a fully consolidated democracy.

The PRD has begun to show aspects of clientelism, even after the PRI lost much of its stranglehold on Mexican politics.<sup>53</sup> In 2004, the PRD’s party leaders stated publicly that its factionalization<sup>54</sup> had led to a heightened rivalry in the party.<sup>55</sup> According to Tina Hilgers, a Professor at Concordia University, the PRD “ally with vendor, taxi, and squatter organizations, using the groups’ electoral strength to increase their own bargaining power in negotiations for positions and policy direction inside the party. In return, they provide preferential treatment to the organizations’ members.”<sup>56</sup> Hilgers points to the long history of clientelism in Mexican politics, Mexico’s poverty, and its prospects of political stability as possible reasons why the PRD have successfully implemented such tactics.<sup>57</sup>

## V. Modern Political Corruption in Mexico

Extensive corruption exists among the Mexican elite.<sup>58</sup> A 2002 survey determined that the Mexican public’s low perception of legitimacy for their government might in part be caused by corruption,<sup>59</sup> although there was no way to prove direct causality.<sup>60</sup> Furthermore, a comparative study of four Latin American countries (El Salvador, Nicaragua, Paraguay and Bolivia) by Selingson alleges that political corruption does, indeed, undermine the perception of legitimacy of government.<sup>61</sup> This brings up several questions concerning Mexico’s clientelism and its electorate.

If political corruption does indeed undermine the people’s idea of legitimacy, to what extent does this corruption appear in Mexico? Jonathan Fox explored Mexico’s progress in establishing both free and fair

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<http://bcjournal.org/volume-10/>.

<sup>52</sup> Mark Weisbrot, *Irregularities reveal Mexico's election far from fair*, The Guardian, (2012) [available at](http://www.theguardian.com/commentisfree/2012/jul/09/irregularities-reveal-mexico-election-far-from-fair) <http://www.theguardian.com/commentisfree/2012/jul/09/irregularities-reveal-mexico-election-far-from-fair>.

<sup>53</sup> Tina Hilgers, *Causes and Consequences of Political Clientelism: Mexico's PRD in Comparative Perspective*, 50 LATIN AM. POL. & SOC'Y 121, 134 (2008).

<sup>54</sup> To “factionalize” means “to split into factions.” “factionalize.” *Merriam-Webster.com*. [available at](http://www.merriam-webster.com/factionalize) <http://www.merriam-webster.com/factionalize> (2015).

<sup>55</sup> Hilgers, *supra* note 53, at 132.

<sup>56</sup> *Id.* at 134.

<sup>57</sup> *Id.* at 138.

<sup>58</sup> Seligson, *supra* note 15, at 413-414.

<sup>59</sup> *Id.* at 413.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 429-431.

elections and associational autonomy in the context of their relationship to clientelism.<sup>62</sup> Fox stated that even though Mexico held elections, it failed to meet the threshold for democracy in the 1990s.<sup>63</sup> Discussing Mexico's transition to a more semiclientelist government, Fox stated "[W]hile the transition from clientelism to semiclientelism may look like a step in the direction of responsive government, the erosion of strict controls on voter compliance may also *increase* the incentives for state managers to rely on electoral fraud to minimize uncertainty. This may be happening in Mexico."<sup>64</sup> Thus, although agents of reform in Mexico may have given the appearance of making significant change, they may also have merely shifted the avenues through which political corruption might be utilized. Increased citizen oversight over the distribution of food, the National Solidarity Program aimed at improving the conditions of the poor, and the National Indigenous Institute have had mixed success in balancing the autonomous and semiclientelist forces within the Mexican government.<sup>65</sup>

Somewhat counter-intuitively, one reason Mexico might have a corruption problem is because members of congress and the president are prohibited from running for consecutive terms.<sup>66</sup> Reforming laws such as these might spawn the birth of a new class of "career politicians" who would be motivated to keep clean for fear of losing their jobs.<sup>67</sup> Changing these laws would likely only be a partial fix, however, many countries where politicians can run consecutive terms also have high rates of corruption.

## VI. Mexican Corruption and the Law

Mexico has ratified three anti-corruption conventions: the Organization of American States (OAS) Inter-American Convention Against Corruption (ICAC), the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the United Nations Convention against Corruption (UNCAC).<sup>68</sup>

The OAS provides standards of correct conduct and mechanisms to enforce said standards.<sup>69</sup> The convention prohibits bribery (broadly, including the discharge of official duties in order to gain any advantage) and the official misuse of property.<sup>70</sup> The agreement took effect in 1997.<sup>71</sup>

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<sup>62</sup> Fox, *supra* note 24, at 152-154.

<sup>63</sup> *Id.* at 181.

<sup>64</sup> *Id.* at 160-161 (emphasis in original).

<sup>65</sup> See generally *id.* at 169-170.

<sup>66</sup> LEE STACY, MEXICO AND THE UNITED STATES 278 (Marshall Cavendash, 2002).

<sup>67</sup> See generally Mathew R. Cleary, *Electoral Competition, Participation, and Government Responsiveness in Mexico*, 51 AM. J. POL. SCI. 296-297 (2007).

<sup>68</sup> Frederick T. Stocker, SURVEYING MEXICO'S ANTI-CORRUPTION LANDSCAPE 10 (2012).

<sup>69</sup> OAS Inter-American Convention against Corruption, Art. III available at <http://oas.org/juridico/english/Treaties/b-58.html>.

<sup>70</sup> OAS Inter-American Convention against Corruption, Art. VI.

<sup>71</sup> Stocker, *supra* note 68, at 10.



Member states complying with the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions must have established that bribery of a foreign public official<sup>72</sup> and money laundering<sup>73</sup> are both crimes punishable by law, and provide accurate monetary accounting.<sup>74</sup> The Convention also provides for extradition between member states.<sup>75</sup>

Italy and Mexico are both members of the UNCAC.<sup>76</sup> The UNCAC provides that each member state must “develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”<sup>77</sup> Member states are required to develop and implement policies which affect these general principles.<sup>78</sup> The UNCAC also seeks to facilitate public trust through transparency in the procurement of government contracts<sup>79</sup> and public reporting.<sup>80</sup> It requires criminal penalties for the following crimes: bribery of national public officials, bribery of foreign public officials and officials of public international organizations, embezzlement, trading in influence, abuse of functions, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, laundering of proceeds of crime, concealment, and obstruction of justice.<sup>81</sup> The UNAC also provides for international cooperation among member states for conducting criminal investigations.<sup>82</sup> The Mexican Constitution defines “public official” as follows:

- (i) persons who have been elected as representatives in a public election; members of the federal judiciary office, and members of the judiciary office of the federal district; (ii) officers, employees and

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<sup>72</sup> The OECD’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Art. I *available at* [http://www.oecd.org/daf/anti-bribery/ConvCombatBribery\\_ENG.pdf](http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf).

<sup>73</sup> The OECD’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Art. VII.

<sup>74</sup> The OECD’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Art. VIII.

<sup>75</sup> The OECD’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Art. X.

<sup>76</sup> *United Nations Convention against Corruption Signature and Ratification Status as of 5 September 2014*, United Nations Office on Drugs and Crime (2014) *available at* <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>.

<sup>77</sup> United Nations Convention against Corruption, Art. V *available at* [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf) [hereinafter “UNCAC”].

<sup>78</sup> UNCAC, Art. VI.

<sup>79</sup> UNCAC, Art. IX.

<sup>80</sup> UNCAC, Art. X.

<sup>81</sup> UNCAC, Arts. XV-XXV.

<sup>82</sup> UNCAC, Art. XLIII.

in general any person who fills an employment position or commission of any nature in the federal congress or in the legislative congress of the federal district; and (iii) public officials of autonomous agencies, who shall be responsible for acts or omissions featured during their respective terms and duties.<sup>83</sup>

In 2012, the Mexican Senate approved the Anti-Corruption Prosecutor's Office.<sup>84</sup> The Office has still not been approved by the lower house in the Mexican legislature.<sup>85</sup>

Mexico has also adopted a variety of statutes which prohibit bribery of domestic foreign officials, including the following: the Federal Law on Administrative Accountability of Public Officials (which applies to all federal public officials and those who handle public resources), the Federal Law on Accountability of Public Officials (which applies to executive officials and some judges), the Federal Law on Transparency and Access to Government Public Information, the Law on Government Acquisitions, Leases and Services, the Law on Government Construction and Public Work and Related Services, the Federal Law Against Organized Crime and the Federal Criminal Code.<sup>86</sup> Additionally, several laws require that books kept by corporations be accurate, including the Commercial Code, the General Corporation and Partnership Law and the Federal Tax Code.<sup>87</sup> Article 111 of the Federal Tax Code sets a penalty range of 3 months to 3 years imprisonment for those who violate the accurate record keeping provisions.<sup>88</sup> Bribes are not deductible.<sup>89</sup>

Violations of the Federal Criminal Code can result in fines, imprisonment and dismissal of a public official.<sup>90</sup> If the bribe does not exceed "500 times the annual minimum wage in Mexico City" then the term of imprisonment could vary from three months to two years.<sup>91</sup> If the amount of the bribe exceeds 500 times the annual minimum wage in Mexico City then the sentencing range is from two to fourteen years.<sup>92</sup>

These laws will only be applied foreign corporations if the following conditions are met:

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<sup>83</sup> Luis Rubio Barnetche, Bertha Alicia Ordaz Aviles and Hector Cuevas Gonzalez, *Mexico*, in ANTI-CORRUPTION REGULATION 175 (2013).

<sup>84</sup> *Stocker*, *supra* note 68, at 11.

<sup>85</sup> *Id.*

<sup>86</sup> *Barnetche, Aviles and Gonzales*, *supra* note 83, at 172.

<sup>87</sup> *Id.* at 175

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Stocker*, *supra* note 68, at 12.

<sup>91</sup> *Id.* at 13.

<sup>92</sup> *Id.*

(1) the offender is within Mexican territory or the crime has an effect in Mexico... (2) the offender has not been tried in the country in which he perpetrated the crime; and (3) the crime that is being prosecuted is considered a crime in both the foreign country and Mexico.<sup>93</sup>

The Federal Anti-Corruption Law for Government Procurement applies to a great deal of conduct in its prohibition of bribery, including the following conduct:

promising, offering or delivering money or any other gift to a public official or to a third party in consideration for doing or refraining from doing any act that is within such public official's duties or within the duties of another public official, for the purposes of obtaining or maintaining certain benefits or advantages, regardless of whether the money or gift is accepted or received, or whether the expected result is actually obtained;

promising or offering money or any other gift to a third party that may intervene, in any way, in the design and drafting of any call for a public auction or of any other act in connection with a federal public contracting procedure;

undertaking conducts that imply or have the purpose or effect of obtaining any unlawful benefits or advantages in federal public contracting;

intervening personally, but upon behalf of a third party that is banned from participating in a federal public contracting procedure, for purposes of such third party obtaining, whether totally or partially, the benefits that are embedded in the corresponding contract;

and

promoting or using influence, economic or

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<sup>93</sup> *Id.*

political power, whether real or fictitious, on any public official, for purposes of obtaining a personal benefit or advantage, or a benefit or advantage for a third party, regardless of whether there is any acceptance by the public official, or whether the expected result is actually obtained.<sup>94</sup>

In 2012, Mexico adopted the Federal Anti-Corruption in Public Procurement Law, which applies to everyone involved with the federal government,<sup>95</sup> and prevents Mexican individuals and entities from bribing foreign public officials.<sup>96</sup> Individuals who violate this law face fines from \$5,000 to \$250,000.<sup>97</sup> Corporations face fines from \$50,000 to \$10 million and face being disbarred for up to 10 years.<sup>98</sup> Companies, however, may disclose violations in order to receive lesser penalties.<sup>99</sup>

Individuals may also recover for bribery in tort, under Article 1910 of Mexico's Federal Civil Code.<sup>100</sup> Though the Ministry of the Public Function is currently responsible for the administrative enforcement of anti-bribery laws, it has recently been abolished.<sup>101</sup> The formation of a National Anti-Corruption Commission is being discussed to take its place.<sup>102</sup>

Mexico clearly has an established legal framework to deal with corruption. Nevertheless, it clear that problems with corruption still exist in Mexico, as discussed earlier in this article. It is important to note that recently the president of Mexico, Peña Nieto (ironically, a member of the PRI) proposed the formation of a National Anti-corruption Commission.<sup>103</sup> This might be the exogenous actor the government needs to destroy existing semiclientelistic channels. If the Commission is approved, the degree to which it will be successful, obviously, will be contingent upon its ability to keep itself free from outside sources of corruption.

## VII. Alleviating Mexican Clientelism

Several factors can be antagonistic towards democratic

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<sup>94</sup> *Barnetche, Aviles and Gonzales, supra* note 83, at 173.

<sup>95</sup> *Stocker, supra* note 68, at 13.

<sup>96</sup> *Id.* at 14.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Barnetche, Aviles and Gonzales, supra* note 83, at 174.

<sup>100</sup> *Id.* at 173.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Mexico's Incoming President Proposes Anti-Corruption Commission*, Latin American Herald Tribune (2013) available at <http://laht.com/article.asp?ArticleId=638527&CategoryId=14091>.

consolidation, including “biased electoral rules, principal-agent problems, clientelism, and authoritarian political cultures.”<sup>104</sup> These problems may potentially be alleviated by promoting an active electorate and fostering cooperation of the elites and the Mexican people.<sup>105</sup>

Merely holding elections, of course, does not ensure they are free or fair. As long as clientelism in Mexico still exists, the will of the Mexican people is more likely to be stifled by the will of the elite. Mathew R. Cleary, an assistant professor of political science at Syracuse University, operationalized both electoral competition and nonelectoral political participation, and asserted that the best way to effectively end clientelism in Mexico is through the latter.<sup>106</sup> This increased participation would include activities such as protests, assemblies and the holding of frequent “town hall” style meetings in which a constituency can directly meet with their representative to voice their concerns.<sup>107</sup>

Cleary’s research was in response to a popular hypothesis that political corruption in Mexico would dissipate if there were more electoral competition, and the apparent paradox that corruption remains despite increased electoral competition.<sup>108</sup> His research suggests the two were not as related as previously thought, and that the only way to end such practices would entail a great deal of citizen involvement.<sup>109</sup>

However, one of the drawbacks of this approach is that electoral participation seems to be directly related to socioeconomic status and literacy,<sup>110</sup> and so increasing participation in order to improve government responsiveness might involve underlying societal changes. In other words, if Mexico continues to do well economically then corruption might solve itself, because as its median level of income goes up so might electoral participation.<sup>111</sup> If this were the case, it would seem to coincide with modernization theory.

### VIII. Italy’s Recent Electoral History

Italy has undergone numerous regime changes in its political history.<sup>112</sup> Italy’s Christian Democracy (DC) became the dominating force in politics, with the Italian Communist Party being the DC’s main opposition.<sup>113</sup> However, during the late 1950s and ‘60s support for

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<sup>104</sup> Cleary, *supra* note 67, at 283.

<sup>105</sup> *Id.* at 284.

<sup>106</sup> *Id.* at 296.

<sup>107</sup> *Id.* at 287-88.

<sup>108</sup> *Id.* at 295.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 296.

<sup>111</sup> *Id.*

<sup>112</sup> *Italy – Political Parties*, Encyclopedia of the Nations (2014) available at <http://www.nationsencyclopedia.com/Europe/Italy-POLITICAL-PARTIES.html>.

<sup>113</sup> *Id.*

Christian Democrats faded.<sup>114</sup> The DC, as a “catch all” party, began to shift alliances with other parties to stay in power.<sup>115</sup> The DC achieved this goal consistently until it lost considerable support in 1994.<sup>116</sup>

In the late 1970s the clientelistic practices of the DC had begun to take its toll on the Italian infrastructure.<sup>117</sup> Giuseppe Di Palma, a professor at the University of California, Berkely, noted that “[p]olitical clientelism has built a spider web of partisan alignments and dealings reaching all sectors of society.”<sup>118</sup> Furthermore, clientelism affected “those connected with the building and control of infrastructure, such as welfare, education, housing, transportation, communication, cooperatives, and the like.”<sup>119</sup> According to Mario Caciagli, a professor of comparative politics at the University of Florence, “In the 1980s the whole Italian system seemed to become an enormous clientelistic network.”<sup>120</sup> Though the DC finally lost its grip on Italy in 1994,<sup>121</sup> it should be noted that there is significant elite continuity from the DC into the contemporary Italian parties.<sup>122</sup> This elite continuity could be taken as one reason why clientelism, although not in a “party” form, might still exist in Italy today.<sup>123</sup>

### IX. Italian Governmental Corruption

Transparency International has identified several major problem areas relating to Italian governmental corruption.<sup>124</sup> First, the Italian legislative branch has little independence from the executive branch, which enables the executive branch to act without much accountability.<sup>125</sup> Second, regulations concerning political donations are rarely enforced, and the public does not have access to records of expenditures by political parties.<sup>126</sup> Corruption costs Italy €60 billion each year, but only €293 million is recovered through penalties.<sup>127</sup> This is likely because OECD’s

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> GIUSEPPE DI PALMA, SURVIVING WITHOUT GOVERNING: ITALIAN PARTIES IN PARLIAMENT 6 (1977).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Mario Caciagli, *The Long Life of Clientelism in Southern Italy*, in *COMPARING POLITICAL CORRUPTION AND CLIENTELISM* 164 (2006).

<sup>121</sup> *Italy – Political Parties*, *supra* note 112.

<sup>122</sup> GEOFFREY PRIDHAM, POLITICAL PARTIES AND COALITIONAL BEHAVIOR IN ITALY 16 (2013).

<sup>123</sup> Jordan Gans-Morse, Sebastian Mazzuca and Simeon Nichter, *Varieties of Clientelism: Machine Politics During Elections* 1 (2010).

<sup>124</sup> *Italy – Corruption Challenges*, Transparency International (2014) available at <http://www.transparency.org/country#ITA>.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

statute of limitations period bars many potential claims.<sup>128</sup> Additionally, Italy does not have an independent anti-corruption authority, and there is no dedicated whistleblower legislation in Italy.<sup>129</sup> Transparency International also noted, however, that Italy had made some improvements, as Italy is considering additional legislation and resources for public auditing have improved.<sup>130</sup>

Some have pointed to Italy's large bureaucracy as an explanatory variable for its widespread corruption.<sup>131</sup> In Italy, bureaucrats have been largely complacent about the problem of government corruption, and in many cases are in place because of it.<sup>132</sup> Partisan appointments have been a major problem in Italy, especially because these appointments are sometimes done for personal and partisan gains.<sup>133</sup> As an example, Italy, in an attempt to purge patronage from its government, requires all prospective bureaucratic appointees to pass a civil service examination.<sup>134</sup> However, the lengthy bureaucratic work that goes into the civil service requirement meant that politicians could appoint temporary replacements intermittently, sometimes over a period of years.<sup>135</sup> Additionally, in some cases these examinations were fixed.<sup>136</sup> Between 1973 and 1990, nearly 60 percent of Italian civil servants were appointed outside normal procedures.<sup>137</sup> There have also been reports of Italian patrons exchanging jobs for votes.<sup>138</sup>

Interestingly, one likely cause of Italy's widespread corruption was the campaign finance reform laws of 1974.<sup>139</sup> When it was no longer acceptable for corporations to openly donate to political parties, the corruption became internalized – corporations unable to go through legal channels to encourage politicians to vote for their interests, had greater incentives to form backroom deals with elites.<sup>140</sup> Corporations in Italy have also demonstrated their willingness to give bribes to public officials.<sup>141</sup>

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<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> MIRIAM A. GOLDEN, POLITICAL PATRONAGE, BUREAUCRACY AND CORRUPTION IN POSTWAR ITALY 1-3 (2000).

<sup>132</sup> *Id.* at 9-12.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 15-16.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 17.

<sup>137</sup> *Id.* at 16.

<sup>138</sup> *Id.* at 16-17.

<sup>139</sup> *Id.* at 23.

<sup>140</sup> *See generally id.* at 21-22.

<sup>141</sup> *Id.* at 23.

## X. Italian Corruption and the Law

Italy has adopted a variety of international agreements in order to alleviate its problems with corruption. These include the Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the EU 1997, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997, the UN Convention against Transnational Organised Crime 2000, the UN Convention against Corruption 2003, the Council of Europe Criminal Law Convention on Corruption, and the Council of Europe Civil Law Convention on Corruption 1999.<sup>142</sup> The ratification process has begun on Combating Corruption in the Private Sector, but it has not been finalized.<sup>143</sup>

The Italian Criminal Code (ICC) provides for fraud, misappropriation and similar offenses.<sup>144</sup> Fraud is punishable by imprisonment from six months to three years, and is used when more specific fraud offenses do not apply.<sup>145</sup> Government-contracting fraud is punishable by one to five years' imprisonment.<sup>146</sup> The Civil Code provides for offenses related to a corporation's assets, activities and communications.<sup>147</sup> Legislative Decree no. 58/1998 provides for the offenses of market manipulation and insider trading.<sup>148</sup>

The ICC also prohibits bribery of a public official and persons in charge of a public service if he or she "receives a consideration, or accepts the promise of, money or other advantages/other things of value, in relation to an act of his office."<sup>149</sup> Bribery offenses for domestic officials under the ICC span a wide variety of conduct, and include proper bribery, bribery for performance of the function, bribery in judicial acts, unlawful inducement to give or promise anything of value, trafficking of unlawful influences, and instigation to bribery.<sup>150</sup> Until 2002, there were no offenses covering bribery of private corporate officers.<sup>151</sup> Now, there are also bribery offenses pertaining to private corporate officers, managers in charge of bookkeeping and ordinary employees.<sup>152</sup> Corporations are subject to fines of anywhere from €2,580 to €1.549 million.<sup>153</sup> Terms of imprisonment for individuals found guilty of bribery range from one to ten

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<sup>142</sup> Roberto Pisano, *Corporate Crime, Fraud and Investigations in Italy: An Overview* 3 (2013).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 1.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 2

<sup>150</sup> *Id.* at 3-4.

<sup>151</sup> *Id.* at 4

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*



years, and vary based on the offense charged.<sup>154</sup>

The ICC also details offenses for money laundering, financing terrorists and false accounting.<sup>155</sup> Tax offenses under the ICC include filing a fraudulent tax return by using false invoices, filing a fraudulent tax return by using other fraudulent means, filing a false tax return, failure to file a tax return, issuing false invoices, concealment or destruction of account books and fraudulent underpayment of tax.<sup>156</sup>

Public prosecutors are responsible for investigating corruption charges.<sup>157</sup> In investigating the above-mentioned offenses public prosecutors may compel a person to attend an interview, compel the production of documents, issue search warrants and seize funds in bank accounts.<sup>158</sup> Corporations in which the management commits these offenses may be subject to penalties, fines, disqualification and confiscation.<sup>159</sup>

Non-criminal regulations that restrict corruption also exist. The receipt of gifts by Italian government members and their relatives, Italian public administration employees, and employees of state-owned or state-controlled corporations is restricted.<sup>160</sup>

Italy has comparatively lighter punishments for domestic abuses than Mexico. Though some might claim that the key to reducing corruption in Italy lies in stiffer penalties for corruption-related offenses, it is also possible that the key to reducing corruption in Italy is the more proactive enforcement of existing laws. Again, perhaps this could be accomplished by establishing a centralized agency through which to deal with fraud.

If there are to be more stringent regulations established concerning fraud, they should be narrow in scope in order to reduce semiclientelism in Italy. While reducing bribery among Italian government officials and foreign nationals might improve perceptions concerning the rule of law in Italy, for example, this would do little to alter Italy's existing political structures. Instead, it might be more efficient to include penalties such as permanent disqualification from office for domestic fraud in order to reduce semiclientelistic practices.

## XI. Alleviating Corruption in Italy

Transparency International has a variety of recommendations for how Italy can lessen some of its corruption problems, including adopting stricter rules governing the conduct of elected officials, revising existing statute of limitations periods for corruption-related offenses, introducing

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 6-7.

<sup>156</sup> *Id.* at 7.

<sup>157</sup> *Id.* at 2.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 3.

an educational program in schools dealing with the causes and consequences of corruption and establishing an independent anti-corruption body.<sup>161</sup>

Apart from the establishment of an exogenous entity to deal with its corruption problems,<sup>162</sup> another potential way for Italy to reduce corruption is for community organizations and NGOs to organize with the purpose of forming a more responsive government.<sup>163</sup>

Perhaps Italy has yet to go completely through an extensive consolidation process, and once it has maybe its institutions will be able to defend themselves against clientelism. This scenario seems less likely, however, as democracy is not necessarily a teleological process.

## XII. Comparing Italy and Mexico

For two countries with such stark differences, Mexico and Italy both had very strong political parties that were able to take advantage of their positions. In Mexico, the system allowed for complete dominance by the PRI.<sup>164</sup> In Italy, the proportional representation system meant that the DC would have to form coalitions with other prominent parties to consistently stay in power.<sup>165</sup>

In both Mexico and Italy, the existence of government officials with unchecked power led to growth in governmental corruption. PRI-era Mexico's strong executive<sup>166</sup> and its consistently PRI-led congress assured there was little horizontal accountability to the system.<sup>167</sup> This allowed patrons to use subversive political channels without being held culpable.<sup>168</sup> Italy's bureaucracy, too, decreased the necessary horizontal accountability to ensure the responsiveness of government.<sup>169</sup> Bureaucrats, in many cases appointed for party loyalties, look the other way instead of voicing complaints against governmental corruption.<sup>170</sup>

Perhaps the most striking similarity between Italy and Mexico is

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<sup>161</sup> *National Integrity System – Italy*, Transparency International (2014) available at <http://media.transparency.org/nis/cogs/?Country=ei>.

<sup>162</sup> See generally Giuseppe Di Vita, *Corruption, Exogenous Changes in Incentives and Deterrence* 2-3 (2006).

<sup>163</sup> See generally DONTELLA DELLA PORTA AND ALBERTO VANNUCCI, *CORRUPT EXCHANGES: ACTORS, RESOURCES AND MECHANISMS OF POLITICAL CORRUPTION* 12 (1999).

<sup>164</sup> *Greene*, *supra* note 42, at 22.

<sup>165</sup> *Italy – Political Parties*, *supra* note 112.

<sup>166</sup> Nikolas K. Gvosdev, *Mexico and Russia: Mirror Images?* 10 *Demokratizatsiya* 488, 489 (2002).

<sup>167</sup> Todd A. Eisenstadt, *Off the Streets and into the Courtroom: Resolving Postelectoral Conflicts in Mexico*, in *THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES* 90 (1999).

<sup>168</sup> See generally Andres Schedler, *The Criminal Subversion of Mexican Democracy*, 24 *J. DEMOCRACY* 5, 16 (2014).

<sup>169</sup> *Golden*, *supra* note 131, at 5.

<sup>170</sup> *Id.* at 9-12.

that both countries had a single dominant party for a prolonged period of time (or, in Italy, a party that was able to form coalitions to stay consistently in the majority). This dominant party then took advantage of power, seeking to maximize the likelihood of getting elected outside the realm of democracy. Though any attempt to apply this to a larger pattern might be extrapolation, as corruption exists without the existence of political parties, in both of these instances whenever a single party dominated the political process corruption became rampant.

Both countries had pervasive, corrupt party systems that abruptly came to an end. The PRI, although still active in Mexico, is no longer the only viable electoral choice.<sup>171</sup> The DC dissolved in 1994, though there is some continuity between the DC and modern Italian political parties. Mexico has recently made strides away from clientelism.<sup>172</sup> While corruption in Italy seems to have stagnated, despite new legislative efforts to the contrary.<sup>173</sup> The fate of these two nations will help analysts to determine the causal relation (if indeed there is one) between dominant party systems and the corruption they seem to create.

### XIII. Conclusion

Both Mexico and Italy have purged themselves of dominant party politics, but the clientelism of the previous administrations seems to have become entrenched. In Italy's case, a major factor seems to be that after the DC was dissolved, many of its former members merely switched parties. The pervasive corruption in both countries suggests that there need to be major institutional changes to make the systems more accountable to the electorates.

Mexico has become a consolidated democracy only recently, and has since made strides toward alleviating its corruption problem. Italy, by contrast, has been considered a democracy for a longer time, but its corruption problems have endured. Both have made attempts to quash their pervasive corruption problems, but have met with mixed success. The future of clientelism in both countries is far from certain, but history has shown that ending a pervasive corruption problem is difficult.

Perhaps the most striking thing about studying the anti-corruption legislation of both Italy and Mexico is that both countries have an accessible legal framework set up to deal with the issue. Some of these laws, of course, were not enacted until after the PRI and DC lost much of their power. Still, it appears that in countries struggling with clientelism the answer does not lie in crafting additional legislation. Obviously some anti-corruption legislation is necessary, but such legislation alone is not sufficient. What is missing, rather, is a mechanism to ensure that existing legislation is enforced.

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<sup>171</sup> *Polity IV Country Report 2010*, *supra* note 46.

<sup>172</sup> *Fox*, *supra* note 24, at 160-161.

<sup>173</sup> *Italy – Corruption Challenges*, *supra* note 124.

Italy's legislature is currently engaged in talks to establish a separate entity to deal with corruption. Such an entity might be necessary in order to ensure that any attempts to eliminate corruption come from an exogenous source. Mexico currently lacks such an entity as well, although the current President of Mexico recently proposed a National Anti-Corruption Commission. The success of such an anti-corruption agency in either country remains to be seen, but the fact that both countries are attempting to establish such an entity is an encouraging sign. If Italy and Mexico are successful, they will improve their popular legitimacy and strengthen their social capital as they continue down a path towards healthy democracy.