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Clash of Institutions: Clientelism and Corruption vs. Rule of Law

Christoph H. Stefes

Introduction

Fifteen years after the fall of Soviet rule, Armenia, Azerbaijan and Georgia remain plain examples of post-authoritarian transitions that have gone awry. There are differences between these three countries in terms of their political and economic developments. Freedom House, for example, has consistently ranked Armenia and Georgia above Azerbaijan in terms of economic liberalization and political democratization.¹ Moreover, Georgia certainly fares better than Armenia in terms of democratic development, taking into account that Georgia recently witnessed the rise of a young and reformist elite to political power (winter 2003). In contrast, Armenia appears to be stuck with a government that does not tolerate any opposition to its rule, as the brutal crackdown of a recent attempt at replicating Georgia's 'Rose Revolution' has clearly demonstrated (spring 2004).

Yet despite these variations, citizens in all three countries are equally struggling with having their rights and liberties respected and promoted by their respective governments. Democratization has seemingly reached the elite level, but has not trickled down to the common citizen yet. Political scientists call this type of 'shallow' democracy an illiberal or electoral democracy.² Freedom House's rating of the three countries' constitutional, legislative and judicial framework reveals no significant differences. Moreover, in contrast to Central Europe and the Baltic region, the South Caucasus has so far not provided a fertile soil for the rule of law.³ This shortcoming has not escaped the attention of Western governments and international organizations. The European Union (EU), the United States Agency for International Development (USAID) and the United Nations Development Programme (UNDP), among others, have poured billions of dollars into the South Caucasus to support the development of formal state institutions that are supposed to uphold the rule of law – so far, without much success.

The urgency with which foreign and local actors attempt to improve the rule of law raises three questions. First, why is the rule of law so crucial to

these countries? Second, why is it so difficult to establish the rule of law? And, finally, what has been and what needs to be done to promote the rule of law in the South Caucasus? In addressing the first question, the opening section of this chapter argues that the rule of law is a *necessary* – albeit not a *sufficient* – condition for enhancing and deepening democratic rule and for providing the security that economic actors need to engage in market activities.

Following the work of Robert Dahl, I argue in the second part that the rule of law is built on three crucial factors that are mutually reinforcing: effective state institutions and horizontal accountability, social constraints and civil society (vertical accountability), and psychological constraints at both the society- and elite-level (political culture).⁴ As the third and fourth sections point out, *systemic corruption* is a significant obstacle to the development of these three pillars of the rule of law. Therefore, corruption does not simply thrive on the feebleness of the rule of law, nor does it simply indicate the weakness of the *Rechtsstaat*. It undermines the rule of law in direct and indirect ways, targeting the three pillars on which the rule of law is built. The concluding section accordingly assesses the various anti-corruption measures that the three South Caucasian countries have implemented over the last few years. It also points towards further actions that governments should undertake to improve the rule of law.

The rule of law: necessary condition for democratic and economic development

This chapter largely adopts the definition of the rule of law by Thomas Carothers quoted in the Introduction to this volume. At its core, the rule of law entails the principle that the law constrains the state's exercise of power and regulates the relations between citizens. To make the rule of law meaningful, the law itself should 'enshrine and uphold the political and civil liberties that have gained status as universal human rights over the last half-century'.⁵ By relating these universal rights to the rule of law, it becomes readily apparent that the rule of law is a crucial foundation for democratic rule and especially for its Western form, commonly labelled *liberal democracy*.

The Vienna Declaration states that 'Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.'⁶ In other words, democracy is about popular sovereignty, about the ability of citizens to influence collectively binding decisions. This influence is indirectly exercised by holding public representatives accountable for their decisions via free, fair and competitive elections. A set of basic political rights and civil liberties guarantee that elections are indeed free, fair and competitive. Among these rights and liberties are the right to vote and to be elected, the right to form a political organization, freedom of information, etc.⁷ The protection of these rights and liberties makes the rule of law so crucial, because

without these rights, elections are usually uncompetitive and therefore not democratic.

Liberal democracy goes one step further than the basic definition of democracy by not only determining 'who' governs but also 'how' one governs, setting clear limits on the exercise of political power. Jack Donnelly states:

Liberal democracy is a very specific kind of government in which the morally and politically prior rights of citizens and the requirement of the rule of law limit the range of democratic decision-making ... Popular empowerment – democracy with no adjectives (or with most procedural adjectives) – will realize human rights only to the extent that the people choose to do so ... The liberal commitment to individual rights more than the democratic commitment to popular empowerment makes contemporary liberal democracies rights-protective.⁸

Again, the rule of law becomes a key ingredient of (liberal-) democratic rule. However, the rule of law is only a *necessary* condition of democracy – it cannot guarantee that the majority will indeed rule. This is so because the rule of law provides citizens with the opportunity to determine their fate, but cannot compel citizens to exercise their rights and liberties. Political apathy among a majority of the citizens easily turns a *de jure* democracy into a *de facto* oligarchy.⁹ Nevertheless, it must be concluded that without the rule of law, democracy cannot be realized. The same assumption holds true for the development of a market economy.

A market economy can probably survive without formal rules and outside enforcement as long as goods and services are exchanged on the spot between citizens that know and trust each other. However, modern market places are complex entities in which actors, who usually do not know each other, exchange goods and services without full knowledge about the quality of the products and services. Moreover, the exchange might involve payments without immediate delivery and vice versa. Under such circumstances, formal law and outside enforcement substitute for trust, simplicity of market transactions and ordinary judgement. As a result, the rule of law increases the number of economic actors and the type of market activities that people engage in, making the economy more efficient. Without the enforcement of laws that regulate contracts and property rights, citizens would be hesitant to invest and trade, or they would do so in much less economical ways, relying on informal rules and norms that are imposing additional costs on the economic actors (e.g. in the form of bribes). In short, without the rule of law economic development will suffer, as several studies have confirmed.¹⁰

Three pillars of the rule of law

Having argued that the rule of law is crucial for democratic development and economic growth, the question arises how the rule of law can be established

and promoted in the long run. Building on the work of Robert Dahl, I contend that the rule of law is erected on three mutually dependent pillars, namely effective state institutions and horizontal accountability, social constraints and civil society, and a supportive political culture.¹¹

The rule of law requires an independent legal profession; honest, competent and apolitical law enforcement; and an independent judiciary that is qualified and empowered to review the legality and constitutionality of executive and legislative action.¹² All three requirements necessitate a strong state, defined as a state that is autonomous enough to make decisions independent from particular interests and able to implement these decisions, preferably with societal support. Yet post-Soviet states are notorious for being weak and incapable of defending the rights and liberties of their citizens. As Stephen Holmes rightly put it:

The principal lesson of the end of communism is not that state power endangers liberal rights, but exactly the contrary, that liberal rights are wholly unrealizable without effective extractive, administrative, regulative, and adjudicative authorities. Rights protection and enforcement depend on state capacities. Statelessness, therefore, means rightlessness.¹³

There are numerous factors that could undermine a state's strength. In the former Soviet Union, several states – including the three South Caucasian countries under study here – suffered from political turmoil and ethnic conflict in the wake of the collapse of Soviet rule, culminating in prolonged civil or ethnic wars. Interestingly, even after the end of these wars, most states have not been able to regain their strength. One of the reasons for this frailty is the fact that the post-Soviet state rarely acts as a cohesive entity. In fact, it has often disintegrated into separate fiefdoms run by state officials who are motivated primarily by private gain and not by the public good. In Western democracies, violations of official duties are usually kept under control through a system of checks and balances, or what Guillermo O'Donnell calls 'horizontal accountability':

In institutionalized [civil] democracies, accountability runs not only vertically, making elected officials answerable to the ballot box, but also horizontally, across a network of relatively autonomous powers (i.e., other institutions) that can call into question, and eventually punish, improper ways of discharging the responsibilities of a given official.¹⁴

This internal system of disciplining insubordinate officials is greatly augmented by external control exercised through societal groups. As several scholars emphasize, civil society is a vital ingredient of democratic rule. Civil groups play an important role in monitoring state officials, chastising any wrongdoings of officials, and bringing these violations to court.¹⁵ Indeed,

the expertise of watchdog groups is often solicited by state officials who regularly meet with civil society representatives to gather additional information about the performance of various state agencies. Needless to say, the institutions of horizontal and vertical accountability remain empty shells as long as citizens and officials do not value the rule of law and are not willing to fight for it. John Reitz nicely elucidates this point:

No set of legal institutions, processes, and substantive rules of public and private laws will be effective to do the things claimed for the rule of law, unless there is a legal culture – i.e., a combination of practices and attitudes concerning the law and legal system – that is supportive of the rule of law.¹⁶

In short, a legal culture, combined with a strong civil society and an elaborate system of checks and balances that constrain individual state institutions, but do not undermine state capacity, are essential for establishing and developing the rule of law. Figure 1.1 illustrates the arguments made in this and the previous section.

Unfortunately, the Soviet regime did not support the development of these three pillars. State repression of independent voices crippled civil society. The overbearing role of the Communist Party (CP) in the state-party apparatus made a mockery of any formal division of power. It also ridiculed the notion of an independent judiciary, as the court system was considered ‘an instrument of the political arm of the ruling class’ and was subordinate to the interests of the CP. ‘Consequently, the adjudicating role of the Soviet courts and law [was] weak.’¹⁷ Unfortunately, the Soviet Union not only left

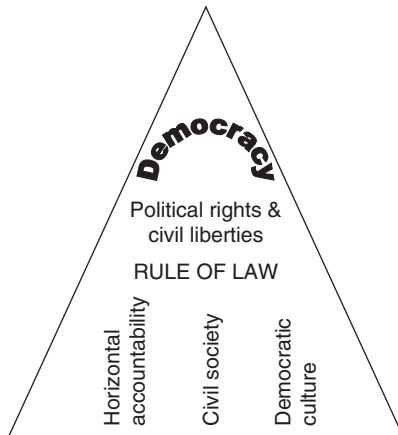


Figure 1.1 Three pillars of the rule of law and democracy

its successor states a shaky foundation upon which to build the rule of law – it also left a legacy that has made it very difficult to build this foundation.

The development of a Soviet system of corruption

One of the most devastating legacies of Soviet rule has been systemic corruption – that is, highly institutionalized and widespread corruption. The classical definition depicts corruption as ‘behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence.’¹⁸ Corrupt behaviour includes a range of violations, including bribery, extortion, nepotism and embezzlement. The Soviet political and economic system provided a fertile soil for corrupt behaviour. Literally all goods and services, which were usually in short supply due to the inefficiencies of the command economy, were distributed through the Soviet state-party apparatus. Its officials thereby enjoyed a significant amount of discretion that they exercised without much external or political oversight. Moreover, the CP failed to provide an effective safeguard against corrupt activities in the state structure. In fact, the two hierarchies, party and state, often collaborated in these activities.

In a nutshell, Soviet officials had ample opportunity to better their income through the solicitation of bribes, and it was rather unlikely that they would be punished for doing so. Only a few of them accordingly resisted the temptation. As Konstantin Simis, a Jewish émigré, puts it: ‘In the 60 years of the Soviet Union’s existence, the country had gradually become more and more rotten with corruption, and in the 1960s and 1970s it turned into a kleptocratic state ... It can [therefore] be stated without fear of exaggeration that the average Soviet citizen is accompanied by bribery from womb to tomb.’¹⁹ Yet it was not just the sheer extent of corrupt activities that characterized the Soviet system of corruption. It was also the fact that corrupt officials and citizens increasingly followed informal rules and norms that were embedded in clientelist networks, which permeated the entire Soviet apparatus.

James Scott defines clientelism as

a special case of dyadic (two-person) ties involving a largely instrumental friendship in which an individual of higher socioeconomic [or political, C.S.] status (patron) uses his own influence and resources to provide protection or benefits, or both, for a person of lower status (client) who, for his part, reciprocates by offering general support and assistance, including personal services, to the patron.²⁰

Patron–client relationships may extend well beyond two individuals, forming large networks, which involve many actors at various hierarchical levels. In this vertical extension of dyadic ties, everyone – excluding the individuals at

the very top and the very bottom of the pyramid – is patron and client at the same time.²¹ In addition to the vertical extension of clientelism, a clientelist system also extends horizontally, connecting various individuals of the same socioeconomic or political status. These horizontal ties provide mutual support and protection, and allow individuals to coordinate their activities.

In the Soviet Union, such an elaborate system developed around the opportunities for making illicit gains through corruption. Since most of these opportunities were related to official positions in the state-party apparatus, myriad clientelist networks developed that overlapped with the formal institutions of this apparatus. Through these networks, public offices were sold, bribes were taken and shared with higher officials, and protection was granted from the top of the pyramid to the bottom. Protection was provided by involving officials in the CP and various state agencies through horizontal ties, connecting the various pyramids of corruption.

Specific rules and norms guided the behaviour of individual officials. It was generally known and understood by officials and citizens alike how much needed to be paid in the form of bribes to receive certain goods and services (e.g. a permit to move into a bigger flat, a travel permit, a driver's licence, etc.). These informal rules and norms provided an astounding degree of order in the corrupt system and provided its participants with set expectations and incomes depending on their official positions in the Soviet apparatus. F. J. M. Feldbrugge nicely captures this overlap of formal and informal hierarchies:

The Soviet elite has a pyramidal structure, endowed with ample privileges, and a broad base of millions of ordinary party members to whom a modest participation in the benefits of the system is granted, together with the expectation of advancement. It is this hierarchically constructed pyramid, which is the true owner of all power and wealth in the USSR.²²

The Soviet republics of the South Caucasus were no exception to the Soviet system of corruption. In fact, several reports indicate that Armenia, Azerbaijan and Georgia were amongst the most corrupt. Under the rule of Vasili Mzhavanadze in Georgia, Karen Demirchian in Armenia and Heydar Aliyev in Azerbaijan, corruption festered within the state-party apparatus and reached the highest levels of the CP. In regard to Georgia, Simis observes that 'a reckless orgy of corruption was raging almost openly in Georgia.'²³ In Georgia and Azerbaijan, the office of a district public prosecutor was sold for about 15 000 rubles, the position of chief of district militia for about 50 000 rubles, and the post of a first secretary of the CP's district committee for roughly 200 000 rubles.²⁴ Since the official salary of Soviet officials rarely exceeded 300 rubles per month, these positions must have generated enormous illegal income. Part of this income was shared with superior officials who in turn would turn a blind eye to their inferiors' illegal activities.

Moreover, the various militia chiefs, prosecutors and CP officials often colluded to provide mutual protection. After all, corruption was considered a serious crime during Soviet times, and Moscow's occasional clean-up campaigns executed through the KGB were feared. Yet even the KGB did not deter some officials from using the corrupt networks as covers for 'not only ordinary corruption but also for much graver crimes – torture, lawless imprisonment and murder'.²⁵

The breakdown of Soviet rule partially undermined the Soviet system of corruption and its corresponding rules and norms. Yet clientelism and corruption have proven to be highly resilient against the rapid changes of the 1980s and 1990s, leaving post-Soviet societies with formidable obstacles to develop the rule of law.

Post-Soviet corruption and the rule of law

The breakdown of the CP and with it the collapse of the state-party apparatus clearly disrupted the system of corruption, taking into account that formal and informal hierarchies largely overlapped. Moreover, the advent of capitalism, privatization, liberalization and a cash economy undermined the corrupt rules and norms. Opportunities for corruption dried up in some areas (e.g. in most parts of the economy due to the abolishment of the State Planning Committees), and new ones arrived in other sectors – for example, insider deals often tainted the privatization process, benefiting a small elite at the expense of the public good. Moreover, new local currencies and the inflow of foreign (hard) currencies made it necessary to set new prices for corrupt deals. At the same time, the change from a barter to a cash economy made it easier to solicit bribes and to hide the illicit gains (e.g. in Swiss bank accounts). Many citizens of the former Soviet Union, whom I interviewed between 1998 and 2003, claimed that officials had become greedier and that personal connections mattered less than before the collapse of the Soviet Union. In general, these citizens thought that corruption had spun out of control and become more malicious.

Despite this (temporary) unrest, the corrupt networks of Soviet times demonstrated a significant degree of durability and adaptability. Tatiana Vorozheikina states:

The new patron–client relations were created as an overgrowth atop the former nomenklatura system of clientelistic relations, which in general had been destroyed only at its upper levels. At the middle and lower levels these relations quickly regenerated ... The old and new systems of clientelistic relations quickly fused, with access to public and private goods still largely the objects of clientelistic exchange. These goods included government jobs, housing, medical services, and economic resources.²⁶

The resilience of clientelism is not very astonishing, taking into account that these networks provided stability and material security to many officials and

a few privileged citizens in times of political turmoil and economic hardship. Moreover, officials had a keen interest in maintaining corrupt networks that provided crucial information and access to economic resources. The winners of the transition period were therefore often the same individuals who had already done very well during Soviet times. Furthermore, government officials relied on clientelism and patronage to shore up political support during turbulent times, as Ian Bremmer and Corry Welt argue in regard to Armenia's first post-Soviet government under President Levon Ter-Petrosian:

The government's basic strategy was to create extensive patron-client networks. Building on connections they had developed during the war years, ANM [Armenian National Movement] leaders acquired influence among substantial groups of industrialists, businessmen, and bureaucrats. By pledging loyalty to their patrons and involving them in the profit-making of a business or a government strategy, these individuals were assured survival in Armenia's uncertain economic and political climate.²⁷

The judicial and law enforcement institutions stand out among the most corrupt state agencies in the South Caucasus (and most other post-Soviet countries, for that matter). Several polls show that Armenian and Georgian citizens rank the police and the courts as the least trustworthy state agencies.²⁸ Indeed, corrupt networks – and their underlying rules and norms – have maintained a strong hold over these formal institutions. For instance, the sale of offices in the police forces of Armenia and Georgia is widespread. In Yerevan, the office of a low-level traffic police officer costs anywhere between US\$2000 and 5000. In addition, every traffic police officer pays about US\$10 each day to his superior, who shares this illicit income with his superior, and so forth. Taking into account that a police officer in Armenia earns less than US\$60 a month, it is obvious that he or she needs to rely on extracting bribes to make a living and to recover the initial investment that was paid to get his or her job. Unlike in Armenia, where the government has kept the hiring process somewhat under control, the practice of selling offices has caused the Georgian police force to expand by two to three times since independence. Needless to say, the ethical standard of the Georgian police force has suffered from the influx of greedy individuals.²⁹

Driven by the common goal to collect illicit gains, police officers are unlikely to blow the whistle and would probably be in grave danger if they did so. Dimitry Gelovani, a Georgian journalist, aptly summarizes the 'code of honour' among Georgian police officers:

The mentality of the policeman, which has become above all the honour of the uniform, differs hardly at all from the mentality of the criminal: the greatest sin among policemen is considered to be not bribe-taking (that is something normal), nor beating the innocent (also something normal), but informing on a crooked colleague. In short, the Georgian police remains

one of the isolated little islands of totalitarianism, supported by the nihilism of society when it comes to matters of law.³⁰

This camaraderie has allowed police officers to extort bribes and to commit other violations of official duties (e.g. the use of excessive force) with impunity. In Georgia, police officers from various precincts in Tbilisi repeatedly incarcerated and tortured individuals to extort money from family members. On none of these occasions were the responsible officers disciplined.³¹ Police officers could violate citizens' rights and liberties with an 'apparent lack of fear that they would be identified and punished', because of the complicity of public prosecutors and judges.³² In fact, collusion between the police, public prosecutors, judges and – as discussed in Chapter 5 – lawyers is widespread in the Eurasian successor states of the Soviet Union. To receive justice in the courtroom often means to pay a bribe. Bribes are also effective means to stop legal investigations and to receive acquittals. Finally, it is not uncommon for shady businessmen to pay off police officers and prosecutors who in return will freeze bank assets of competitors or arrest competitors on fabricated charges (e.g. illegal possession of firearms and/or drugs). Either way, a bribe can be very successful in creating and maintaining a business monopoly. Usually, these illicit payments are shared among the officials that are involved in the transaction. For instance, the bribe of a suspect in pre-trial detention is usually shared between the lawyer (who delivers the bribe), prosecutor and judge, each party receiving a third of the payment intended to get the suspect out of prison.³³

The pervasiveness of corruption in the legal system points towards the weakness of the rule of law in the South Caucasus. However, taking into account that corruption is systemic in the region, maintained through myriad clientelist networks, it is safe to conclude that corruption and clientelism are formidable obstacles to the establishment of the rule of law. They undermine the rule of law because they target its very foundation – horizontal accountability, a strong civil society, and the development of a legal culture. Of course, considering the tremendous political influence that governments exert over the legal system (especially in Armenia and Azerbaijan), corruption is just one obstacle to the rule of law. Yet for ordinary citizens, who usually avoid coming into conflict with their governments, it is likely to be the biggest threat to their rights and liberties.

First, clientelist networks overcome any form of official oversight and horizontal accountability, allowing police officers, judges and prosecutors to violate their official duties with impunity. This situation leaves citizens with few honest officials who would be able or willing to protect their rights, considering that whistleblowers live a dangerous life. It also means that citizens have to rely on bribes to get anything achieved. Of course, this contradicts the very core of the rule of law – namely, the notion that everyone is equal before the law. As the former chairman of the anti-corruption commission of

the Georgian Parliament explains:

Corruption is a way of life. People don't believe that the state will ever provide services or enforce the law, so they don't pay taxes. There are only two ways to survive here. To become financially strong yourself, or to place yourself under the protection of someone who is stronger. But there is no way to be a citizen; there is only a kind of feudalism, in politics, government and business.³⁴

In regard to the second pillar of the rule of law, clientelism and corruption have had a debilitating impact on the development of a vibrant civil society. In the past, several scholars argued that corruption would provide civic groups with an informal way to influence public policies 'unobtrusively through the back door'.³⁵ If there is no other channel of exerting influence, corruption might indeed be the only option to advance one's interest. Yet if other channels exist, even if they are only rudimentary, corruption will reduce the importance of these channels and undermine their development. Why should a businessman join an interest group if a bribe is more efficient? In other words, corruption discourages collective action and thereby the formation of strong interest groups. In his seminal work about the (under-) development of Russia's civil society, Steven Fish nicely argues that a weak state triggers a weak civil society.³⁶ The South Caucasian cases provide additional evidence for this argument. Furthermore, as a human rights activist revealed to me, parts of the Georgian government conspired with civic groups in the embezzlement of foreign aid. In order to avoid the annoyance of dealing with greedy civil society representatives, Armenian politicians have set up non-governmental organizations (NGOs) themselves to benefit from tax breaks and foreign assistance.³⁷ In short, as long as systemic corruption undermines the development of strong and independent civic groups in the South Caucasus, civil society will only be a weak ally in strengthening the rule of law.

Finally, systemic corruption provides only arid soil for the development of a legal culture. Corruption under Soviet rule caused the development of what Simis calls 'two separate systems of morality'.³⁸ On one hand, citizens trusted their friends and relatives, and usually abstained from betraying or stealing from them. On the other, Soviet citizens gave bribes to state officials with little moral concerns despite their tremendous mistrust of those officials. At the same time, citizens' acceptance of the corrupt rules did not necessarily imply that they were willing accomplices. In fact, Soviet citizens had little choice. If the same kind of corrupt system is still in place, which we can safely assume, it is unlikely that post-Soviet citizens are more inclined to adopt values and norms supportive of the rule of law. State officials are even less likely to adopt a legal culture, taking into account that the corrupt system feeds these state officials who would otherwise be forced to live on an official income below the poverty level.

In sum, systemic corruption is probably the biggest scourge of the rule of law in the South Caucasus and most other Soviet successor states.³⁹ Indeed, the corrosive effect of corruption is a common theme throughout this book. With this assessment in mind, the crucial question becomes how can governments fight systemic corruption, assuming that they have the political will to do so.

Promoting the rule of law – fighting systemic corruption

It is one of the paradoxes of effective governance that corruption undermines the rule of law, but that at the same time the establishment of the rule of law is necessary to fight corruption. Strengthening the three pillars of the rule of law will therefore be an arduous task, running counter to the material interests of top officials who benefit greatly from the corrupt system. Yet any success in bolstering civil society, horizontal accountability and a legal culture is also an important step towards debilitating corruption, which will prepare the ground for further advances towards the rule of law. In short, fighting corruption and promoting the rule of law are not only opposite sides of the same coin but also mutually reinforcing endeavours.

Strengthening civil society and improving horizontal accountability have been the main strategies in promoting the rule of law and fighting corruption. Taking into account that beliefs and attitudes only change slowly from one generation to the next, there have been few attempts to strengthen the third pillar of the rule of law. Unfortunately, despite much fanfare, the governments of the South Caucasus have until recently lacked the political will to fight corruption in a serious and consistent way, continuing the Soviet practice of tolerating corruption.

During Soviet times, anti-corruption purges were infrequent and often driven by political purposes – namely, by attempts to discredit political opponents. Moreover, these purges rarely targeted the top leaders in the Soviet republics. The purges in Georgia and Azerbaijan in the 1970s and in Central Asia in the 1980s were exceptional, made possible by political changes in Moscow (culminating in the appointment of Gorbachev to the post of General Secretary). In the usual course of events, however, Moscow turned a blind eye to the corrupt activities of the CP leadership in the Soviet republics in order to maintain their political allegiance to the central government.⁴⁰

Corruption has been used in much the same way as a tool to secure political loyalty after the fall of Soviet rule. Eduard Shevardnadze, whose political position as Georgia's president was always precarious in the light of two attempts on his life (1995 and 1998), tolerated widespread corruption within the 'power ministries' because of his dependence upon their loyalty. Jaba Devdariani states:

Interior and state security ministry forces played important roles in helping President Shevardnadze regain power in Georgia in 1992, and then in

stabilizing the country during the mid 1990s. However, many Georgians believe that in recent years the power ministries had emerged as obstacles to reform. Some also worried about the Interior Ministry's ability to influence domestic policy.⁴¹

Ter-Petrosian tacitly accepted the corrupt activities of his Interior Minister, Vano Siradegian, who successfully curbed mafia activities by taking over their shady businesses. In Azerbaijan, the Aliyev clan built its political base by distributing oil wealth among friends and cronies.⁴²

Yet even during the 1990s, which are generally considered lost years in terms of fighting corruption and establishing the rule of law, governments initiated some anti-corruption measures. In Georgia, the pressure of the young reformist wing within the presidential party and international financial organizations prompted Shevardnadze to agree to a thorough reform of the legal system, which included the introduction of qualification examinations for judges, combined with higher salaries. In another attempt to eradicate corruption, the Georgian government radically privatized commercial land, streamlining the privatization process to a degree that sharply reduced bureaucratic red tape.⁴³ In Armenia, the necessity to provide the central government with revenues to support Nagorno-Karabakh's struggle for independence against Azerbaijan had a disciplining effect on the bureaucracy. Ter-Petrosian and his successor Robert Kocharian centralized corruption into the hands of top government officials (e.g. Defence Minister Serge Sargsian), thereby keeping corrupt activities somewhat under control.⁴⁴ In fact, Transparency International, an anti-corruption think-tank, ranks Armenia among the least corrupt countries of the former Soviet Union.⁴⁵ Only the Azeri government, whose country's oil wealth enables it to ignore international and domestic pressure for reform, has so far failed to initiate any serious anti-corruption reforms.

Not counting Azerbaijan, anti-corruption reforms have developed new impetus in the South Caucasus since 2003. The 'Rose Revolution', which replaced former communist apparatchiks with young reformers, has opened up political space for an exhaustive anti-corruption campaign. The country's new president Mikhail Saakashvili is adamant about uprooting the corrupt system. In the wake of the inauguration of the new Georgian government, several former government officials were arrested on corruption charges. Moreover, several lower-ranking state officials were disciplined for soliciting bribes. Yet, as Saakashvili rightly understands, targeting individual officials is not enough. Fighting corruption needs systemic changes:

[These measures] will not last forever. Either [police officers] starve like this, or they will quit their job. Or they will resume their practices, which is more likely. What we need to do together with punishment is to give them higher salaries and to cut the number of officers. My dream is to have a policeman quitting his job, opening a grocery market around his corner

and have honest income. What we have right now in Georgia is an acting policeman opening a shop and not allowing anyone else to open it. This is a totally different system, right. So, we are changing this kind of system.⁴⁶

In Armenia, government officials have regularly met with several NGO representatives under the auspices of the Organization for Security and Cooperation in Europe (OSCE) to develop a comprehensive anti-corruption strategy. This strategy has since been watered down, as it went through the approval process of the various state agencies, but it still has enough teeth to cause a significant reduction in corrupt activities (though it will probably not reduce the corrupt activities of top government officials).

In short, the Armenian and Georgian governments are currently expressing the political resolve to improve the rule of law and tackle corruption head-on. In order to debilitate the corrupt networks that are undermining horizontal accountability and official oversight, the authority over hiring and promotion has to be placed under a separate state committee composed of well-paid officials and citizens. Moreover, salaries of officials should be raised to a level that enables them to live in comfort. This will probably require a significant reduction of the state bureaucracies, which are bloated and ineffective.

In regard to the second pillar, civil society, governments should take civic groups seriously and include them in the policy-making and implementation processes, which would increase governmental efficiency and legitimacy. Moreover, civil society and the media still lack full access to government documents that they need to become effective watchdogs. In Georgia, civil society has gained in status and influence due to Saakashvili's rise to power. The Armenian government, in contrast, is still greatly suspicious of NGO activities. It also seems important to provide citizens with a better understanding of bureaucratic procedures and their rights vis-à-vis state officials. Corruption often thrives on the ignorance of citizens.⁴⁷

Finally, anti-corruption campaigns often run into quicksand, facing stiff resistance from corrupt officials who sabotage any measures that would deprive them of their illicit gains. Facing this resistance, governments often concede defeat, especially if top government officials are the primary beneficiaries of the corrupt system. It is therefore crucial to maintain constant pressure on the government from both 'above' (the international community) and 'below' (civil society). Moreover, reforming state bureaucracies usually comes with a hefty price tag, which cannot be covered by governments alone. The financial support of the international community is therefore urgently needed in the fight against corruption.

Conclusion

Considering corruption as an indicator of the feebleness of the rule of law grossly underestimates the independent power of systemic corruption. In the

South Caucasus, as well as in other Soviet successor states, widespread and highly institutionalized corruption is the pervasive legacy of Soviet rule. The corrupt rules and norms that are embedded in the clientelist networks that pervade the state apparatus weaken the three pillars on which the rule of law is built: state capacity and horizontal accountability, civil society and a legal culture. Yet without the rule of law democratic transitions will remain shallow and economic growth will be unsustainable. Moreover, systemic corruption widens the gap between rich and poor so that economic growth will not foster human development. It is heartening to see that at least the Armenian and Georgian governments have understood the need to tackle corruption. At present, they appear to be determined to tackle corruption as the biggest obstacle to the development of the rule of law. Yet they will need all the support they can get from the international community and their societies to bring down their systems of corruption.

Notes

1. Freedom House, *Nations in Transit* (1998–2004). Available at <http://freedomhouse.org/research/nattransit.htm>.
2. See D. Collier and S. Levitsky, 'Democracy with Adjectives: Conceptual Innovation in Comparative Research', *World Politics*, 49 (1997), p. 430.
3. *Ibid.* The *Nations in Transit* rating of the 'Constitutional, Legislative and Judicial Framework' in East Central Europe and Eurasia is available at <http://freedomhouse.org/research/nitransit/2004/clj2004.pdf>. On a scale between 1 and 7, with 1 being the best and 7 the worst, Armenia, Azerbaijan and Georgia receive a rating of 5.00, 5.50 and 4.50, respectively, trailing far behind the Central European countries, which receive an average rating of 1.88.
4. R. Dahl, *A Preface to Democratic Theory* (Chicago: Chicago University Press, 1956).
5. T. Carothers, 'The Rule of Law Revival', *Foreign Affairs*, 77 (2) (1998), p. 96.
6. Vienna Declaration, part I, para. 8. Available at [http://www.unhchr.ch/huridocda/huridocda.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridocda.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument).
7. See R. Dahl, *Polyarchy, Participation and Opposition* (New Haven: Yale University Press, 1971), p. 2.
8. J. Donnelly, 'Human Rights, Democracy and Development', *Human Rights Quarterly*, 21 (1999), pp. 608, 620.
9. The United States serves as a clear example of democratic regression, taking into account the deplorable levels of political engagement among the lower strata of the American society.
10. For example, P. Mauro, 'Corruption and Growth', *The Quarterly Journal of Economics* (1995), p. 681.
11. *Supra* note 4.
12. J. R. Reitz, 'Constitutionalism and the Rule of Law: Theoretical Perspectives', in R. D. Grey, ed., *Democratic Theory and Post-Communist Change* (Upper Saddle River: Prentice Hall, 1997), p. 113.
13. S. Holmes, 'Cultural Legacies or State Collapse? Probing the Postcommunist Dilemma', in M. Mandelbaum, ed., *Postcommunism: Four Perspectives* (New York: Council on Foreign Relations, 1996), p. 56.
14. G. O'Donnell, 'Delegative Democracy', *Journal of Democracy*, 5 (1994), p. 61.

15. See, for example, L. Diamond, 'Toward Democratic Consolidation', *Journal of Democracy*, 5 (1994), p. 4.
16. Reitz, *supra* note 12 at p. 116.
17. D. Lane, *State and Politics in the USSR* (New York: New York University Press), p. 192.
18. J. S. Nye, 'Corruption and Political Development: a Cost-Benefit Analysis', *American Political Science Review*, 61 (1967), p. 421.
19. K. Simis, 'The Machinery of Corruption in the Soviet Union', *Survey*, 22 (1977), pp. 46, 55.
20. J. Scott, 'Patron-Client Politics and Political Changes in Southeast Asia', in S. Schmidt et al., eds, *Friends, Followers, and Factions: a Reader in Political Clientelism* (Berkeley: University of California Press, 1977), p. 124.
21. *Ibid.* at p. 127.
22. F. J. M. Feldbrugge, 'Government and Shadow Economy', *Soviet Studies*, 36 (1984), p. 532.
23. K. Simis, *USSR: the Corrupt Society* (New York: Simon & Schuster, 1982), p. 55.
24. *Supra* note 18 at p. 42. M. Voslensky, *Nomenklatura: the Soviet Ruling Class* (Garden City: Doubleday, 1984), p. 188.
25. J. Tarkowski, 'Old and New Patterns of Corruption in Poland and the USSR', *Telos*, 80 (1989), p. 54.
26. T. Vorozheikina, 'Clientelism and the Process of Political Democratization in Russia', in L. Roniger and A. Günes-Ayata, eds, *Democracy, Clientelism, and Civil Society* (Boulder: Lynne Rienner, 1994), p. 113.
27. I. Bremmer and C. Welt, 'Armenia's New Autocrats', *Journal of Democracy*, 8 (1997), p. 83.
28. Georgian Corruption Research Centre (in collaboration with UNDP), *Investigation of Corruption Problems in Georgia* (Tbilisi, Georgia, 1998); A. Aghumian, *Corruption in Transitional States: Political, Economic, Legal and Cultural Dimensions. Case Study of Armenia* (Yerevan: Organization for Security and Cooperation in Europe, 2002).
29. All of this information is derived from interviews that I conducted with Armenian and Georgian human rights activists, lawyers, state officials and entrepreneurs over the course of several years (from 1998 until 1999 in Georgia, and in 2003 in Armenia). In order to protect my sources, no further information about my interviewees is provided.
30. D. Gelovani, 'Georgia: Police and Thieves', *IWPR's Caucasus Reporting Service* (3 June 1999). Available at <http://www.iwpr.net>.
31. US Department of State, *Country Reports on Human Rights Practices: Georgia* (1999). Available at http://www.state.gov/www/global/human_rights/1999_hrp_report/georgia.htm. Human Rights Watch, 'Letter to Mr. Kakhaber Targamadze, Minister of Internal Affairs, and Procurator General Hamlet Babilashvili from May 11, 1998', unpublished.
32. Human Rights Watch, *World Report 2000: Georgia*. Available at <http://www.hrw.org/wr2k/Europe/Georgia.html>.
33. This seems to be a common practice throughout the former Soviet Union, as my research in Armenia, Georgia and Uzbekistan indicates, leading me to the conclusion that this practice was already deeply rooted in the Soviet legal system.
34. D. Usupashvili, cited in A. Lieven, 'Georgia: a Failing State?', *Eurasia Insight* (30 January 2001). Available at <http://www.eurasianet.org/departments/insight/articles/eav013001.shtml>.
35. J. Scott, *Comparative Political Corruption* (Englewood Cliffs: Prentice Hall, 1972), p. 508.
36. S. M. Fish, *Democracy from Scratch* (Princeton: Princeton University Press, 1995).

37. A. Ishkanian, 'Civil Society in the Caucasus: the Role of NGOs in Armenia', paper presented at the IREX Caucasus Regional Policy Symposium 2004 (27 March 2004). Available at <http://www.irex.org/programs/completed/conferences/symposium04/Ishkanian.pdf>.
38. *Supra* note 22 at p. 289.
39. How big a scourge ultimately depends on several political and economic factors that are further discussed in C. H. Stefes, 'Systemic Corruption as an Intervening Variable in Post-Soviet Political and Economic Transitions: Armenia and Georgia in Comparison', paper presented at the IREX Caucasus Regional Policy Symposium 2004 (27 March 2004). Available at <http://www.irex.org/programs/completed/conferences/symposium04/Stefes.pdf>.
40. I. Bremmer, 'Post-Soviet Nationalities Theory: Past, Present, and Future', in I. Bremmer and R. Taras, eds, *New States, New Politics: Building the Post-Soviet Nations* (New York: Cambridge University Press, 1997), p. 3.
41. J. Devdariani, 'Georgia's New Ministers of Interior, State Security Grapple with the Legacy of Mistrust', in *Eurasia Insight* (28 November 2001). Available at <http://www.eurasianet.org/departments/insight/articles/eav112801a.shtml>.
42. M. Ottaway, *Democracy Challenged: the Rise of Semi-Authoritarianism* (Washington, DC: Carnegie Endowment for International Peace, 2003), p. 61.
43. For an extensive analysis of the Georgian system of corruption under Shevardnadze, see C. H. Stefes, 'The Incompatibilities of Institutionalized Corruption and Democracy in the Former Soviet Union: the Case of Georgia' (PhD diss., University of Denver, 2002).
44. For a detailed discussion of Armenian and Georgian corruption, see C. H. Stefes, *Understanding Post-Soviet Transitions: Corruption, Collusion and Clientelism* (Basingstoke: Palgrave Macmillan, forthcoming).
45. Transparency International, *Transparency International Corruption Perceptions Index 2003*. Available at <http://transparency.org/cpi/2003/cpi2003.en.html>.
46. M. Saakashvili, speech at School of Advanced International Studies (SAIS), Washington, DC (24 February 2004).
47. For a list of anti-corruption measures, see Stefes, *supra* note 42, ch. 9.

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