



The Centre for Democratic Institutions

TACKLING CORRUPTION AND ESTABLISHING STANDARDS IN PUBLIC LIFE CORPUS CHRISTI COLLEGE, OXFORD 16-21 MARCH 2002

Convened by Dr Paul Flather, Fellow of Mansfield College, Oxford, and Secretary-General of the Europaem, an association of leading European universities and Dr Michael Pinto-Duschinsky, Senior Research Fellow at Brunel University.

Organized by the British Council.

Conference Theme

Fighting corruption has become all too essential an element in ensuring - and building - sound democratic governance the world over. This is recognized by civil society groups, NGOs, parliamentarians, democracy activists, and even international agencies such as the World Bank, OECD and the UN. It is seen as a key explanation for growing voter apathy and cynicism in advanced democracies, and poor economic and political development in emerging democracies.

There have been significant advances in the measurement of corruption, the institutions of restraint and the demands for accountability. Debates now focus on how transparency can be improved, what are the best means for ensuring accountability, how do we educate those involved in corruption, and who should be guarding the guardians, and how. This seminar was designed to ask if the new 'anti-corruption' industry has itself been taken over by Western corporate interests, whether the normal agencies of restraint such as courts and ombudsmen are up to the task, and if the spate of general anti-corruption declarations, agreements and acts, are making any difference.

After briefly reviewing key issues involved, including 'accountability', 'transparency' and 'capture', each day of the Seminar had an overarching theme - strengthening agencies of restraint, empowering the voiceless, educating business and banks, fighting political corruption. Each day also encompassed other activities including: talks from those with practical experience in the field; discussions; workshops; short 'insight' presentations by participants themselves; and some role-playing in coping with scams and crises.

Emphasis throughout was on the practical, the different perspectives within emerging and established democracies, and the impact of culture - with scope to share experiences and learn from each other.

The Director of CDI was invited to make three presentations to the Seminar and to chair a working group. The idea was to bring a practical understanding to the work and also to try to broaden the reflections by bringing an Asia-Pacific focus. The [full program](#) is attached. Roland Rich spoke at the sessions dealing with;

- Can disclosure laws control political corruption?
- How can we create restraint and pursue enforcement?
- What are the lessons for building institutions of Integrity?

He also chaired the group on Building Institutions with Integrity

He prepared a paper looking at the lessons [to be learned from the recent Enron collapse](#) in the United States.

Can Disclosure Laws Control Political Corruption?

Roland Rich's presentation dealt with two examples and some broad conclusions.

The first example concerned Thailand's 1997 Constitution. It is a most innovative document based on both idealism and realism. Among the innovative ideas are compulsory voting aimed in part at increasing voting numbers such as to make it too expensive for politicians to buy votes effectively, an apolitical Senate to oversee key administrative functions of the State and a requirement for politicians to disclose their assets. The National Anti-Corruption Commission administers the disclosure process and has the power to mount prosecutions for false disclosure. Penalties for false disclosures include banishment from political office for up to five years.

Two high profile cases have already been heard. In March 2000, the then Deputy Prime Minister, Sanan Kachornprasart, was stripped of his position after it was found that he falsely declared a sizeable portion of his assets to be a repayable loan. Presumably, he did not wish to disclose how he had come into so much money. He grudgingly accepted the decision.

The following year, Prime Minister Thaksin Shinawatra was found to have omitted hundreds of millions of dollars of his share portfolio from his declaration. He is the richest man in Thailand and he claimed this was an honest oversight by his wife who manages his business affairs. The fact that these shares were in the names of his household staff raised testy issues. The case went to the Constitutional Court, which eventually decided by an 8-7 majority that Prime Minister Thaksin should not be found guilty of false disclosure. His sweeping electoral victory subsequent to the charges being laid seemed to go some way to cure his legal problems.

The other example concerns the Leadership Code of Papua New Guinea administered by the Ombudsman Commission. While a worthy document, the lack of administrative resources and therefore follow through have limited the value of the Code. There is now considerable public cynicism about the value of the Leadership Code because of the lack of enforcement.

The two examples point to a number of difficult issues. Corruption exists in all countries but not all countries can adopt the same approach to combating it. The

tactics to be employed need to be tailored to a country's resources and capabilities. In the Philippines there is considerable machinery to prosecute corrupt officials but the Philippines concedes that its objective is not to eliminate corruption but to keep it to tolerable levels. In the Solomon Islands, which is descending onto lawlessness, the objective is far more modest – to show that there is not total impunity and that some criminals can be arrested and prosecuted. It may be possible to strengthen the objectives over time. But the first conclusion is that each country will need to work out its own tactics to meet achievable objectives.

Disclosure requirements provide a cost effective tactic in virtually all countries. Basically, disclosure laws require corrupt officials to lie on the public record. The role of the enforcement agency can be limited to eliciting and making available the various disclosure statements. If officials are not able to investigate the veracity of the statements, there may be others in the media, civil society or the Opposition who can investigate these. This is a workable division of labour.

Disclosure laws also have the advantage of simplifying prosecution. In Australia, many prosecutions of corrupt officials are for perjury in the course of cross-examination under oath or for false information in formal disclosure statements, as this is often the crime that may be simplest to establish. Similarly, Al Capone was ultimately convicted of tax evasion.

The final conclusion is that information is power. Disclosure should be seen as a broad concept applying to government held information. A former Prime Minister of Thailand, Chuan Leekpai, once said, "what the government knows, the people should know". New technology including the widespread use of the Internet is allowing for the democratisation of information.

What are the lessons for building institutions of Integrity?

The presentation examined two contrasting examples, one in an industrialised country and the other in a developing country. They point to the need to adopt appropriate mechanisms to fit the situation.

A decade ago in Queensland, enquiries into police corruption snowballed into a judicial commission looking at all aspects of corruption in the state all the way to the Premier's office. Many transactions were seen to be or suspected to be corrupt. Even a defamation settlement in which a media baron paid out a huge amount of money to the Premier of the state was held by the Australian Broadcasting Authority to be a scheme to hide a bribe. Judge Tony Fitzgerald brought down his report in which he said that the problem was so great that it would not be effective for him to make specific reform recommendations. Instead, he called for a wide-ranging public debate on corruption and ethics.

The public debate led to the defeat of the incumbent corrupt government and the prosecution of a number of officials including the then Premier. It also led to the establishment of the Queensland Integrity system with many new oversight offices (including an anti-corruption commission) as well as new rights of appeal and of freedom to information. This is an ongoing process with the media and the public providing continuous assessment of government integrity. While problems remain, all agree that significant progress has been made.

In Papua New Guinea, there is also a deep problem of systemic corruption and one political response was to establish an anti-corruption commission. Unlike the Queensland example where the process was far broader and more inclusive, in PNG a 'silver bullet' solution was sought. Officials involved in anti-corruption work in PNG were wary of establishing a new institution. Developing countries have a history of creating new bodies but then starving them of funds and resources resulting in limited effectiveness.

In this case the officials involved in anti-corruption work in PNG proposed a better approach – to cooperate across departmental lines without forming significant new architecture. In this case the method was to bring together ad hoc teams of officials for specific investigations. The Police Fraud Squad, the Ombudsman's office, the Prosecutor's office and the Auditor's office all agreed to second officers to the ad hoc team and to allow the process to be observed by Transparency International PNG (as the civil society watchdog). The ad hoc team was called the National Anti-Corruption Agency but its members continued to belong to their home Departments and thus no significant new resources were required. NACA's first investigation, proved to be a success.

The conclusions to be drawn are that fighting corruption is a job for the entire community. In Queensland it took the form of public debate, election results in which the crooked politicians were voted out of office, media investigation and opinion, public disenchantment expressed in various ways including talk back radio and finally political and administrative action. It is a continuous and iterative process. One cannot jump from A to Z, nor is progress without its hiccoughs.

The other conclusion is that anti-corruption machinery must fit the situation of the country in question. In Queensland where community resources are large and the tax base is significant, elaborate machinery is appropriate. In PNG it is not. Anti-corruption machinery can only work in a system of rule of law and will fail if it does not have the support of the public, the government and the courts. In many cases the solution might be to find ways to make existing machinery work better by creating cooperative arrangements and bringing in civil society to act as watchdog.

The ultimate enemy is public cynicism.

How can we create Restraint and Pursue Enforcement?

This subject was covered in the paper written for the conference concerning the [Enron case](#). It was a fascinating session in that it was conducted by way of video link with an audience of practitioners and students in New Delhi. Chief Vigilance Commissioner N Vittal presented a paper based on his Indian experience. There was considerable discussion focusing on many issues ranging from anti-corruption machinery to the troubles caused by corruption in the cricket world.

Conclusion

The seminar brought together participants from some 25 countries ranging from Africa, Southeast Asia, the Caucasus, Latin America, the Middle East and the Balkans as well as from a number of western democracies. The participants included

Ministers, Parliamentarians, judges, prosecutors, anti-corruption officials, civil society leaders and academics. The width of participation added a fascinating variety to the discussion.

As there were also participants from the World Bank, the British Council and USAID, a number of follow-up activities were discussed. As is often the case with such seminars, the most useful aspect was the networking opportunity and the ability to draw on the expertise and skills of fellow participants in the future.