



GRIFFITH JOURNAL OF
LAW & HUMAN DIGNITY

GRIFFITH JOURNAL OF LAW & HUMAN DIGNITY

Editor-in-Chief

Sofie Cripps

Executive Editors

Stuart Brown

Briahna Connolly

Editors

Ami Goeree

Heather Worthing

Kate Mitchell

Kayleigh Ng Cheng Hin

Samuel Schwartz

Stella Tsakires

Tracey Maccorquodale

Consulting Executive Editor

Dr Allan Ardill

Volume 9 Issue 2

2022

Published in February 2022, Gold Coast, Australia by the *Griffith Journal of Law & Human
Dignity*

ISSN: 2203-3114

CONTENTS

MARIE HADLEY, SARAH HOOK & NIKOLAS ORR	<i>IDEOLOGICAL VANDALISM OF PUBLIC ART STATUES: COPYRIGHT, THE MORAL RIGHT OF INTEGRITY AND RACIAL JUSTICE</i>	1
OLIVERA SIMIC	<i>AUSTRALIA, COVID-19, AND THE INDIA TRAVEL BAN</i>	35
LAURA SCHUIJERS & LEE GODDEN	<i>LAW AND LITIGATION FOR THE CONSERVATION OF FOREST COMMUNITIES</i>	71
CHARLES SAMPFORD	<i>POWER AND CORRUPTION: A BRIEF HISTORY AND A LONG FUTURE</i>	95

POWER AND CORRUPTION RISK: A BRIEF HISTORY AND A LONG FUTURE

PROFESSOR CHARLES SAMPFORD*

This article commences with definitions of corruption and integrity and relates them to each other and to power, its use and abuse. It then discusses how, as power evolves and grows, the opportunities for the abuse of that power to (i.e., corruption) grow too. Those opportunities deliver a history of corruption from ancient abuses of priestly, gubernatorial, and military power to modern state capture. The creation of power provides opportunities for abuse and the risk that those opportunities will be exploited in all countries, including Australia. Anti-corruption measures provide a form of insurance against that risk. The paper examines the development of anti-corruption measures from the execution of those caught out, to anti-corruption agencies, to national integrity systems, and to international collaboration to develop such systems. However, those who pursue power to abuse it for their own ends do not stand still. They collaborate in 'national corruption systems' and emerging global corruption systems. The paper argues that the remedy lies in the development of global integrity systems while strengthening our own integrity systems to build integrity and combat corruption at home and contribute to those goals abroad. The article concludes with a glossary of governance terms and relates them to integrity and corruption.

* Professor Charles Sampford (DPhil Oxon) is the Director of the Institute for Ethics, Governance and Law — a multi-university Strategic Research Centre headquartered at GU and established on the initiative of the United Nations University. He was approached by Griffith to be its Foundation Dean of Law and established the curriculum and research culture that has helped Griffith Law reach global rankings as high as #33 in the world and #1 in Australia. He led the ARC Key Centre for Ethics, Law, Justice and Governance and the ARC Governance Research Network — the only ARC Centre or Network in law or governance. Foreign Fellowships have been to Oxford and Harvard (the latter as part of a Senior Fulbright Award). He has published 32 books and 160+ articles and chapters and been invited to give over 300 keynotes and other public presentations. His work on ethics and integrity systems was recognized by the ARC as one of the 20 researchers across all Australian disciplines who had had the greatest impact ('Graeme Clark Outcomes Forum' in Parliament House Canberra).

CONTENTS

I INTRODUCTION	2
II 'CORRUPTION' AND 'INTEGRITY'	4
III THIS IS ABOUT POWER	4
IV EVOLUTION OF CORRUPTION.....	5
V GOVERNANCE AND RISK	7
VI THE EVOLUTION OF ANTI-CORRUPTION RESPONSES	9
VII INTEGRITY SYSTEMS AS A FORM OF RISK MANAGEMENT THAT PROVIDE INSURANCE AGAINST CORRUPTION.....	12
VIII INTERNATIONAL COLLABORATION.....	14
IX CORRUPTION SYSTEMS	15
X GROWTH OF POWER BEYOND NATION STATES AND THE OPPORTUNITY FOR GLOBAL CORRUPTION SYSTEMS TO EMERGE.....	17
XI SYSTEMIC COLLABORATION — BUILDING GLOBAL INTEGRITY SYSTEMS TO DEAL WITH GLOBALISING CORRUPTION SYSTEMS.....	19
XII NO ROOM FOR COMPLACENCY IN AUSTRALIA	21
XIII CHOOSING THE CIRCUMSTANCES OF THEIR RE-ELECTION	23
XIV AVOIDING ACCOUNTABILITY.....	24
XV CORPORATE POWER.....	25
XVI CONCLUSION	26
APPENDIX: GLOSSARY OF TERMS.....	27

I INTRODUCTION

I was born in Brisbane in 1952, but my family moved south the following year. I came to appreciate the move as corruption reached its apotheosis under the leadership of Sir Joh

Bjelke-Petersen,¹ Russ Hinze, Commissioner Terry Lewis, and the many who profited from mutually beneficial interactions with them. Return was not contemplated, even in jest. However, when Griffith approached me to see if I was interested in becoming a Foundation Dean of Law in January 1991, the prospect was exciting. Tony Fitzgerald's Inquiry had exposed the corruption and charted a course for reform of all Queensland's public institutions through the Electoral and Administrative Reform Commission. I was thrilled to meet him and was delighted that he agreed to chair the Advisory Board for the research centres I established and led (the National Institute for Law, Ethics and Public Affairs and, later, the Australian Research Council Key Centre for Ethics, Law, Justice and Governance). As someone coming from an ethics centre,² I was drawn into the process and recognised that this was distinct and better than the anti-corruption regime in Hong Kong which others were copying. I was able to proselytise the Queensland reforms and, particularly, the Queensland path to reform. Queensland went from the 'Deep North to a Global Governance Exemplar' in five years,³ proving wrong those who thought that change must take a long time.⁴ I have had the honour to address many international audiences on integrity and corruption. One of the issues I have turned to frequently, but not in an academic journal, is the relationship between power and corruption.

I will commence with definitions of corruption and integrity and relate them to each other and to power. I will then discuss how, as power evolves and grows, the opportunities for the abuse of that power to (i.e., corruption) grow too. Those opportunities deliver a history of corruption from ancient abuses of priestly, gubernatorial, and military power to state capture. I will then look at the development of anti-corruption measures from the execution of those discovered, to national integrity systems, and international collaboration to develop them.

However, those who pursue power to abuse it for their own ends do not stand still. I will emphasise the collaboration of the corrupt in national corruption systems and emerging global corruption systems. I will conclude by arguing that the remedy lies in the

¹ When I introduced him at a Key Centre function and said he was the reason I had come to Queensland, he joked that he could not take responsibility for that.

² I was Deputy Director and Principal Research Fellow (the research equivalent of Associate Professors) at the Centre for Philosophy and Public Issues at Melbourne University.

³ Charles Sampford 'From Deep North to Global Governance Exemplar: Fitzgerald's Impact on the International Anti-corruption Movement' (2009) 18(3) *Griffith Law Review* 559.

⁴ A view that stalls and eventually stymies reform.

development of global integrity systems while strengthening our own integrity systems to build integrity and combat corruption at home and contribute to those goals abroad.

II 'CORRUPTION' AND 'INTEGRITY'

Integrity and corruption are conceptually linked terms — with one the obverse of the other. Transparency International ('TI') defines corruption as the 'misuse of entrusted power for private benefit or personal gain' (including party political gain).⁵ By contrast, integrity is 'the *use* of public power for officially endorsed and publicly justified purposes'.⁶ The latter definition is primary because you cannot know what an abuse is if you do not know what the correct 'use' is. The form of official endorsement will vary from system to system but, in a democracy, the officially endorsed uses of public power are those set by the elected government and legislature. Indeed, democratic competition is about differing views as to how public power should be used for the benefit of citizens.⁷

III THIS IS ABOUT POWER

Both definitions centre on power — specifically its uses and abuses. This is not to restate Lord Acton's famous dictum (that power corrupts, and absolute power corrupts absolutely). The relationship between power and corruption is contingent rather than a necessary one. However, wherever there is power, there is the risk of its abuse. That risk must be recognised and minimised by appropriate governance and integrity measures (see below). We must recognise that corruption is attracted to ungoverned power — power that is not channelled by governance integrity measures towards the purposes for which the power is justified. For them, the point of gaining power is to use it in their own interest.

While there are many ways that power can be abused for personal gain (the ingenuity of the corrupt is considerable), I wish to distinguish two different forms of abuse. One is

⁵ 'Personal' gain is very widely construed. It extends beyond personal enrichment and includes benefits to the power holder's family, associates, political party — indeed, anyone other than those who are the publicly intended beneficiaries of that power.

⁶ I will not go into detailed argument here, but I would distinguish between originally intended purposes and publicly justified purposes on the basis that the purposes for which institutional power is used may change over time. However, any new uses of entrusted power must be publicly justified and officially endorsed.

⁷ Note that this approach treats integrity as a process value rather than a substantive value. It is a question of living by the publicly stated values relevant to your role.

when the power holder uses the power directly for their own benefit — using property with which you have been entrusted for your own use, stealing entrusted money, using entrusted power to force others to do what you want. The other form of abuse is when the exercise of public power is for the benefit of another who rewards the power holder for the abuse — a corrupt exchange that we recognise as bribery. We could distinguish these two forms of abuse as unipolar and bipolar corruption. The power that is relevant to unipolar corruption is that which has been entrusted and which there is a risk of abuse. In bipolar corruption, the power held by the corruptor is as relevant as the power held by the corrupted. The risk lies in the power held by each and risk management needs to be applied to both.

IV EVOLUTION OF CORRUPTION

As power evolves and grows, so too do the opportunities for corruption. Human imagination, innovation, and drive give us scientific and engineering advances. They also give us new forms of social organisation — from the hunting party to the sovereign state, to the global corporation that bring together people, power, and resources capable of achieving much more than unco-ordinated individual behaviour. But that same imagination, innovation, and drive also generate new ways of abusing institutional power. The potential for corruption is built into all institutions because of the dynamics of collective action and agency. The reason why we create and support governments (and joint stock companies and international non-governmental organisations ('NGOs')) is because so often more can be achieved collectively than individually with the pooling of people power and resources for shared goals. However, that opens the possibility that institutional leaders may turn that entrusted power to their own benefit or use against their citizens/stockholders/bondholders.

Accordingly, the history of institutional innovation is also the history of corruption. I will not attempt a full history of either, but I will provide a few snapshots. In late Republican Rome, provincial governorships were seen as a license to amass personal fortunes through corruption. Cicero's prosecution of the Sicilian governor Verres in 70BC was remarkable for its oratory, audacity, and rarity. The Roman generals enjoying *imperium*, the power of command, started using that power against the Republic they were supposed to defend. In Medieval Europe, the Church claimed the power to provide

salvation and eternal life — and extracted a very good income from the sale of ‘indulgences’ and the provision of special masses.⁸ The great lords or ‘tenants-in-chief’ received land and serfs from the king so that they could provide men at arms to fight the king’s wars and defend his territory. However, these men at arms were often turned against the king to wrest extra privileges and sometimes the crown itself. The sovereign states that emerged in seventeenth century Europe were designed to eliminate reliance on these *over-mighty* subjects by creating a national bureaucracy, collecting taxes, and paying for a standing army. However, this created new opportunities for corruption by the bureaucrats and generals reminiscent of Ancient Rome. Nicholas Fouquet was Louis XIV’s minister of finance — having bought two public offices and being given a third as a favour by the corrupt Cardinal Mazarin, he was the leader of the ‘tax farmers’ who took a cut from the taxes they collected. He built Vaux le Vicomte, the most magnificent chateau in France and entertained the king in August 1661 in such a lavish manner that the King had him arrested.⁹ The following century, Napoleon used the army command given him to defend the French Republic to take it over — setting the example to be followed by hundreds of later generals, colonels, a flight lieutenant¹⁰ and even a master sergeant.¹¹ Thus, financial corruption and *coups d’état* became diseases of the modern state as the great power of the modern state attracted those who wanted to engage in unipolar corruption. As corporations grew in number and strength, some found a variety of ways to secure what they wanted from government through multiple forms of bipolar corruption.¹²

More recent multi-ethnic empires provided further examples of financial corruption. Christopher Columbus wanted to become Viceroy of the territory he conquered and 10% of all taxation. Robert Clive was not as demanding but made much more money in Bengal. Neither left a good example to the local inhabitants who finally regained control of their territory.

⁸ Those corrupt enough to think they could buy salvation from a supposedly omnipresent and omniscient God were likely to be in need of it.

⁹ The arrest was by a captain of musketeers named d’Artagnan — leading Dumas to craft a series of books about him and three other musketeers culminating in the story of the ‘man with the iron mask’.

¹⁰ Jerry Rawlings of Ghana.

¹¹ Samuel Doe of Liberia.

¹² From outright bribes to funding party elections.

V GOVERNANCE AND RISK

All institutions concentrate power, people, and resources to achieve certain publicly stated goals which are, or are seen to be, of benefit to the relevant community. However, that concentration of power, people, and resources could be used for other purposes that might harm that same community. Police forces and the armed services are supposed to protect citizens but can use their coercive force to secure bribes, to terrorise inhabitants, or even to seize state power. Banks and other financial institutions concentrate the resources of their shareholders, depositors, and others who entrust them with their money. These resources are supposed to ensure liquidity for those who engage in the provisions of goods and services to others. Yet, at the same time, those resources can be used in transactions that generate very high fees for the financial intermediaries because they create great risk for those who have entrusted their money to them.

For anarchists, the dangers are just too great. But most of us are sufficiently keen to reap the intended benefits of states and corporations that we are prepared to take a risk. The American revolutionaries considered the former issue very carefully. For them, governments are instituted to support the 'inalienable rights to life, liberty, and the pursuit of happiness'¹³, but they recognized that governments could abuse their power and turn against the people they were supposed to benefit. If so, revolution was justified. But the alleged abuses by the British government did not mean that they abandoned the idea of government. They sought to create new institutions of government that would support the claimed inalienable rights. However, they wanted to reduce the risk of future abuse¹⁴ by creating a system of 'checks and balances' that developed into a form of 'risk management' that we now recognise as 'governance'.

¹³ US Declaration of Independence 1776.

¹⁴ The drafters of the US Constitution not only looked to the alleged British abuses but also looked to ancient Rome to consider how that republic had gone wrong. While they initiated and/or developed some important protections against the abuse of governmental power, it was blind to a range of other abuses — not least with respect to Blacks whom they enslaved and Indians whose land they were stealing. The last is particularly ironic. The British drove the French out of North America in the 'French and Indian War' (known in Europe as the 'Seven Years War') making the American colonies far more secure. But the colonists were less willing to be taxed to pay for their security when they felt more secure. And their increased sense of security meant that they were much keener to take Indian land as far as the Mississippi. Other problems emerged from the choice of a strong executive — borrowing the British Constitution when kingly power was at its strongest since William III and stronger than it was ever to be again. Indeed, it is ironic that the 'loss' of the American colonies was the catalyst for the Crown's loss of its power to choose the Prime Minister when George III's Prime Minister, Lord North, finally convinced George III that he could not remain PM without the confidence of the House of Commons.

Governance is about the allocation and direction of power within individual institutions and within polities, as a whole. While the term is relatively recent, the idea is not and a number of 'governance disciplines' have been developed. All of them recognise and theorise corruption and other governance problems within institutions but do so in different ways.

When lawyers look at institutions, they see formal rules (either constitutions or networks of contracts). They see problems arising from poorly drafted rules, and the answer lies in more and better rules. Ethicists look to informal norms and values. If there is a problem, it is that those values have not been clearly articulated, applied to those at the coalface, and the answer lies in properly doing so. Economists see institutions in terms of incentives and disincentives. Problems arise from perverse incentives, and the answers lie in aligning incentives with the behaviour required. Political scientists see institutions in terms of power, and institutional problems arise from those who exercise it and or how they exercise it.

In doing so, most governance disciplines explicitly acknowledge the importance of power and its abuse. Law seeks to set out what powers officials have; how they must be exercised; for whose benefit it is to be exercised; and, penalties for using it for other purposes. Ethics is always particularly concerned about how those who hold power should be exercising it — asking hard questions about their values, giving honest and public answers, and then living by those answers.¹⁵ Political science is, first and foremost, a study of how power is exercised. Economics is one governance discipline that avoids discussion of power because it seeks to describe a world in which all exchanges are voluntary and Pareto efficient.

All of these governance disciplines have important but limited insights into the nature, problems, and solutions for institutions including, of course, corruption. No single discipline can solve institutional problems by themselves, but together they go a long way towards such solutions. Such solutions start with clarity of values including values about means and the ends for which politicians promise to deliver if entrusted with the people's power. This should provide the basis for considering the ethical standards officials should

¹⁵ Charles Sampford, Carmel Connors and Noel Preston, *Encouraging Ethics and Challenging Corruption: Public Sector Ethics in Theory and Practice* (Federation Press, 1st Edition, 2002).

follow and the legal regulation and economic incentives to make it likely that those standards will be followed.

VI THE EVOLUTION OF ANTI-CORRUPTION RESPONSES

The long history of institutional power and its abuse by the corrupt has led to a wide range of responses. The first instinct is a strong 'legal' response in which the corrupt are executed by the King or Party. Not infrequently, the head of state who felt cheated did not take a chance on the accused being acquitted (Louis XIV was not the last to do so, though he only insisted on life imprisonment). The rule of law ruled out such certainties of outcome. But in any case, its limitations must be recognised.

Prosecutions still have a cathartic effect and may help to mobilise reform. Criminal laws can support other reforms. But they are not the key part of the answer. First, prosecutions take a long time and are frequently inconclusive. Even if successful they will not bring back the destroyed shareholder wealth, the stolen money, the uncollected revenue or even a significant proportion of it. Even for the few who are brought to justice, most of the wealth that has been destroyed or stolen will be irrecoverable. This is not just because it cannot be traced but often because it no longer exists. Second, as we all know, laws whose purposes are not internalised are rarely effective. This is where ethics comes in. Third, they do not address the key institutional questions of why the corrupt 'bad apples' got to such positions of power and were tempted to abuse that power for their own ends. If there are a lot more crooked CEOs or senior public servants, it is not because there are more bad people in a particular country; it is because its corporate, bureaucratic and/or political institutions generate a lot of temptations and opportunities for corruption and tend to promote those who will give in to those temptations.

The point is that many of the problems that lead to corruption are essentially institutional rather than individual, and you cannot fix institutional problems merely by punishing individuals. Much of this is appreciated. In fact, there are almost as many zealous proponents of ethics and institutional reform as single solutions to governance problems. After law reform has failed — as it always does if tried in isolation — the other solutions are preached from a range of soapboxes.

Those pressing for essentially ethical solutions emphasise that law is ineffective if not backed up by the values of those they are supposed to govern. This leads to attempts to create codes of conduct and to persuade relevant players to abide by them. Some enthusiasts (not including myself) push for a form of what I call 'bare ethics' — a supposed comprehensive solution involving voluntary codes and 'all regulation short of law'. Yet ethics without the sanction of law to back it up is a 'knaves charter,' a guide for the good and a dead letter for the bad.

Those pressing for institutional solutions are attuned to the institutional nature of many of these problems. They recognise that much of the problem lies in the opportunities and temptations for corrupt and unethical behaviour, and the difficulty in detecting it. The solution becomes the creation of new agencies and the reform of existing ones — ticking every box on the list of institutions that have worked in other countries.

Institutional solutions have taken a variety of forms — removing temptations to act corruptly, making it more difficult to act corruptly (from the separation of powers to administrative law), and making it easier to detect corruption (from regular audits and assets checks to financial tracking). By the late 1980s, a common response was the creation of a single, very powerful, anti-corruption agency along the lines of the Hong Kong Independent Commission Against Corruption ('ICAC') enforcing very strong anti-corruption law. However, this model caused concern for placing too much reliance on a dangerously powerful single institution. In the 1990s, the approach to reform taken in Queensland and Western Australia (two Australian states plagued by corruption) reflected a new approach. The answer to corruption does not lie in a single institution, let alone a single law, but rather in the institutionalisation of integrity through several agencies, laws, practices, and ethical codes. Instead of a single agency, what was needed is a *combination* of state institutions and agencies (courts, parliament, police, prosecutors, Director of Public Prosecutions), state watchdog agencies (ombudsman, auditor general, parliamentary committees), non-governmental organisations and the norms (including values and laws) and incentive mechanisms by which relevant groups live.

This combination has been given various names. Following work with the Electoral and Administrative Reform Commission and the Parliamentary Committee to which it

reported, I called it an 'ethics regime'.¹⁶ The idea was adopted by the United Kingdom Nolan Committee on Standards in Public Life¹⁷ and the Organisation for Economic Co-operation and Development ('OECD') which renamed it an 'ethics infrastructure'.¹⁸ Under the different names, this approach has become the preferred model for governance reform within national and sub-national jurisdictions.¹⁹ However, the term with the widest currency is Pope's 'national integrity system'²⁰ which was widely promoted by Transparency international ('TI') and is the term used in the subsequent joint work with TI, which I had the privilege to lead while working closely with Pope. Our team developed the conceptual analysis, methodology and a sophisticated tool for mapping and assessing 'integrity systems'.

In an effective integrity system, the relationships between the various elements of the system will be rich and varied. Relationships will be those based on powers and responsibilities set out in the constitution and other laws, on mutual involvement in each other's knowledge gathering or policy formation, and on support for each other's operational effectiveness. Some relationships will be supportive, some procedural and some will involve 'checks and balances'. However, these should not be seen as limiting

¹⁶ Charles Sampford, 'Law, Institutions and the Public Private Divide (Keynote address)' (Conference Paper, Australasian Law Teachers Association Conference, 1990) published as 'Law, Institutions and the Public Private Divide' (1992) 20 *Federal Law Review* 185.

¹⁷ Charmain Lord Nolan, *Standards in Public Life: First Report of the Committee on Standards in Public Life* (London: HMSO, 1995).

¹⁸ OECD, *Ethics in the Public Sector: Current Issues and Practices* (1996) ('*Ethics in the Public Sector*'); OECD, 'PUMA Draft Checklist' in *Symposium on Ethics in the Public Sector: Challenges and Opportunities for OECD Countries* (1997); OECD, 'Survey of Anti-Corruption Mechanisms in OECD Countries' in *Symposium on Ethics in the Public Sector: Challenges and Opportunities for OECD Countries* (1997); OECD, *Council Recommendations on Improving Ethical Conduct in the Public Service - Background note* (1998).

¹⁹ See e.g., Muhittin Acar and Uger Emek, 'Building a clean government in Turkey' (2008) 49(3) *Crime Law and Social Change* 185-203; Frank Anechiarico, 'Protecting integrity at the local level' (2010) 53(1) *Crime, Law and Social Change* 79; Nathalie Behnke and Jeroen Maesschalck, 'Integrity Systems at Work: Theoretical and Empirical Foundations' (2006) 30(3/4) *Pub Administration Quarterly* 263; Leo Huberts, Jeroen Maesschalck, and Carole Jurkiewicz, *Ethics and Integrity of Governance* (Edward Elgar, 2008).

²⁰ Petter Langseth, Rick Stapenhurst, and Jeremy Pope, 'The Role of National Integrity Systems in Fighting Corruption' (1997) 23(1/2) *Commonwealth Law Bulletin* 499. See also Jeremy Pope, *Confronting Corruption: The elements of a National Integrity System* (TI, 2000). The choice of the term 'integrity system' rather than 'anti-corruption' system was inspired. Corruption (the abuse of entrusted power for personal gain) is a derivative concept and a derivative goal. One cannot know what an abuse is without knowing what the legitimate uses of those powers are. Integrity (the use of entrusted power for publicly justified ends) is primary. We want effective institutions that deliver a sufficient proportion of their promises. If all we just wanted to avoid government corruption that goal could be achieved in theory by not having government and in practice from anti-corruption practices that prevented the government doing anything.

and negative but as part of the way that the integrity system keeps its elements to their mission and prevents them from abusing their power for other purposes.

While the term 'national integrity system' was used to describe the relatively well integrated and developed governance systems found in some western jurisdictions and advocated for others, every jurisdiction has an integrity system of some description in place, whatever its challenges. A National Integrity System ('NIS') can vary in completeness and effectiveness, but there is almost always some base on which it can be built. Even if it is not effective in promoting and supporting public integrity, it will almost always contain some institutions or entities that could become vital elements in an effective integrity system. Institutions that play no part in the integrity system in one context may play a prominent role in others (e.g., religious institutions do not appear in most descriptions of western integrity systems, but the Catholic Church played a critical role in the emergence of the Polish integrity system and liberal Islamic faith-based NGOs may be an important part of an emerging Indonesian system).

Since 2000, two methodologies have been developed by TI research partners to map and describe national integrity systems — an early, static 'tick box' model, developed by Jeremy Pope and Alan Doig, that seeks to take a quick snapshot of the individual elements of the integrity system, and a more recent, more ambitious dynamic model and methodology developed by Jeremy Pope and I that seeks to see the way that a particular integrity system is actually operating.

VII INTEGRITY SYSTEMS AS A FORM OF RISK MANAGEMENT THAT PROVIDE INSURANCE AGAINST CORRUPTION

Integrity systems can be seen as a form of risk management. One of the most important drivers of integrity system reform should be the identification of integrity risks. It is not necessary to prove that the risk has materialised (though this will provide conclusive evidence of the existence of the risk) for us to take action.

Like all insurance, there will be costs. Integrity measures utilise money and talent. While almost always ensuring better decisions and avoiding corrupt decisions, they may make decisions slow or timid, or even stall decision making completely in ways that prevent

public agencies providing the benefits they claim to deliver as surely as if they were acting corruptly.

Some important insights flow from this:

1. The purpose of integrity measures is to ensure, as far as is reasonably possible, that government agencies do what they claim to do.
2. Like all risk management, you should look at the probability of the risk and the seriousness of the risk as well as the costs of insurance.
3. Like insurance the cost of integrity measures is real but is generally a small proportion of the total. I am not sure what the cost of parliament, courts and the various integrity agencies is but let us assume that it is 5%. The purpose of the 5% investment is to ensure that we get the other 95%.
4. But if extra integrity measures eat into the 95% without significantly reducing risk, they are either not worth it, or the integrity measures have been poorly designed.
5. Similarly, if the extra integrity measures mean that we start getting a lot less for that 95%, they are either not worth it, or the integrity measures have been poorly designed.
6. Even if the risk has materialised, it does not necessarily require action if the risk is proven to be very rare or that it has been dealt with effectively.
7. However, confidence in integrity measures is important so that sometimes we may engage in integrity measures to ensure confidence. This is related to another point — that risk can never be fully quantified and, in human systems, a risk that is not addressed may encourage behaviour to exploit that risk. For these reasons, it is rational to err on the side of over insurance rather than under-insurance.

Having recognized the value of a risk-based approach, the next question becomes one regarding the means for reducing the risk that power will be abused. We can distinguish seven ways of reducing that risk.

1. Increase clarity in what behaviour is required (through codes, training, and availability of advice).
2. Reduce temptation — there is a temptation where governments have the power to make decisions that particularly favour individuals by increasing the value of their property in the broadest sense. The classic case is building approvals and rezoning.

If there is a betterment tax or a charge for service provision, there is less temptation.

3. Align incentives to the behaviour required
4. Reduce opportunity — ensure that those who benefit cannot be involved in the decision.

Those who are interested:

- a. Do not decide — conflict of interest rules.
 - b. Do not have input — lobbying rules for those who could benefit from government decisions and independent policy implementation for politicians who would like to ‘rort the pork’.
5. Make it easy to do the right thing (through formal processes backed by data and software).
 6. Increase likelihood of those who choose to do the wrong thing being discovered:
 - a. Transparency — we know what is done and who benefits and who has spoken to whom about what.
 - b. Integrity agencies — ICACs, ombudspersons.
 - c. Right to know/Freedom of Information (‘FOI’).
 - d. Independent internal and external auditors who report to a relevant parliamentary committee (in government) or audit committee in corporations.
 - e. Approval and checking processes that make it easy to do the right thing and hard to do the wrong thing.
 - f. Requirement to give reasons and defend them under administrative law.
 7. Increase sanctions on those who are discovered (while recognizing that increased sanctions are generally ineffective if the chances of being discovered are low).

VIII INTERNATIONAL COLLABORATION

Since the 1990s, there has been considerable international collaboration to strengthen the integrity systems of our nation states. There was benchmarking and comparative studies by OECD (comparing ‘ethics infrastructures’ in 1997) and the United Nations Office for Drugs and Crime (U). The United Nations Development Program (UNDP) and the World Bank provided aid for institutional strengthening within integrity systems. Unfortunately ‘donee’ countries would often fund ‘experts’ on their own institutions who

sought to replicate them within the 'donee' country without a great deal of regard for either the institutions that were already there or the new institutions being created in the likeness of the donor's own institutions. States have signed the United Nations ('UN') convention against corruption and various Group of 20 ('G20') initiatives. Companies have signed up for the UN Global Compact, the UN Principles of Responsible Investments, the Earth Charter, Greencross, Caux roundtable principles, International standard ISO 46000, the partnering against corruption initiative, Extractive Industries Transparency Initiative, and others. However, there are concerns about how these initiatives can be co-ordinated. But there are three serious reservations that this can be enough.

IX CORRUPTION SYSTEMS

While NISs were seen to be the answer to corruption, TI's early comparative studies generated some surprising results. While countries with stronger national integrity systems were generally less corrupt than those with weak national integrity systems, the correlation was not as great as it might be imagined. Some countries with very low levels of corruption seemed to lack institutions that TI's model of a national integrity system seemed to need. Some highly corrupt countries appeared to have all the elements of the TI model — and some new ideas and improvements of their own that should have made their integrity systems even more effective.

Unfortunately, the strength of a national integrity system is not the only relevant variable in determining the level of corruption.²¹ It is quite possible that the more significant variable is the strength of what I call the 'national corruption system' ('NCS') — which is, in many states, better organised, better resourced, and more effective than the NIS. This may explain why some states with apparently limited integrity systems are relatively free from corruption and some states with apparently extensive integrity systems remain highly corrupt. Coalitions of leaders are needed to create, reinforce, and integrate the institutions of the NIS and to co-ordinate their activities.²² While a NIS may be seen as the best way to promote integrity, the corrupt are often far more organised and (in some

²¹ See Alan Doig and Stephanie McIvor, 'The National Integrity System: Assessing corruption and reform' (2003) 23 *Public Administration and Development* 317. This article built on a TI-sponsored research study funded by the Dutch Government into the NIS in practice. It assesses the findings of the study to consider how the approach can work in practice, and what the approach can reveal about the causes and nature of corruption as well as the implications for reform.

²² This was a major conclusion of the first World Ethics Forum held in Oxford in 2006.

states) NCSs may be better organised, better resourced, and more effective — with long established patterns of behaviour, strong institutions, clear norms, and effective positive and negative sanctions. The NCS will seek to disrupt and corrupt the NIS. As a corollary, the NIS should positively react. It should not merely seek to deter, detect, and prosecute bribe givers and bribe takers but should first set out to map and understand the corruption system then plan how to disrupt and destroy it.

Organised crime (whether gangsters or corrupt cliques) will always attempt to suborn or intimidate police, judges and any one official or institution within the NIS. A corollary, however, is not always noted. The task of the NIS is not just to prosecute corrupt individuals. It is to disrupt the corruption system so that it is difficult for it to function. Corruption flourishes in well-established networks where trust is present on both sides of the exchange relationship. This phenomenon is as old as human civilisation; it is subject to continual change and redefinition. Too often, moral accusations are aimed at the failings of individuals, thus distracting attention from institutional and structural patterns of corruption. Systemic, pervasive sub-systems of corruption can and have existed across a range of historical periods, geographic areas as well as religious, political, and economic systems. A key operating feature of corruption sub-systems is that they are relatively stable networks that survive changes in personnel.²³ Such networks support the common good of elites or social groupings rather than uphold the national public good. The failure of public trust leads to solidarity networks within a state. It is important to understand how corrupt and unethical subsystems operate to reform and change them. We can certainly recognise a well organised corruption system in 1980s Queensland and in many other jurisdictions. We can also recognise some of the means of breaking corruption systems from the Queensland experience (sequential investigation with immunity for those who come forward when their information is still useful) and approaches to tackling other systemic abuses (general amnesties for those who tell all and a version of truth and reconciliation commission).²⁴

²³ See Richard Neilsen, 'Corruption networks and Implications for Ethical Corruption Reform' (2003) 42 *Journal of Business Ethics* 125. Neilsen identifies examples of exclusive corruption networks as criminal organisations such as the Mafia and the Japanese Yakuza and more subtle types of corruption networks, known as 'crony capitalism', as informal networks of large family businesses and where government officials control such activities as large loans from state bank that are not repaid, preferential government contracts, protected monopolies, investment banking and brokerage conflicts of interest, auditing, and consulting conflicts of interests etc.

²⁴ See Charles Sampford (n 3).

X GROWTH OF POWER BEYOND NATION STATES AND THE OPPORTUNITY FOR GLOBAL CORRUPTION
SYSTEMS TO EMERGE

For the last two decades, the primary focus of corruption studies and anti-corruption activism has been corruption within sovereign states. International activism was largely directed at co-ordinating national campaigns and to use international instruments to make them more effective domestically. This reflects the broader fact that, since the rise of the nation state, states have comprised most of the largest institutional actors and have been the most significant institution in the lives of most individuals. This action made states the 'main game in town' for the 'governance disciplines' — lawyers, political scientists, economists, and ethicists. It also made it fair game for the corrupt.

However, over the last twenty years, the flow of money, goods, people, and ideas across borders has threatened to overwhelm the system of sovereign states. Much activity has moved outside the control of nation states at the same time as nation states have 'deregulated'. In so doing, they have transferred power from those exercising governmental power at the nominal behest of many of its citizens to those with greater wealth and/or greater knowledge in markets in which knowledge is typically asymmetric.

It is now recognised that many governance problems have arisen because of globalisation and can only be addressed by global solutions. It must also be recognised that governance problems at the national level contribute to governance problems at the global level and vice versa. This is true of current issues from the melting Greenland glaciers to the ethical and financial meltdown of Wall Street. It is also true of traditional issues involving interlinked domestic and international conflict and the toxic symbiosis of foreigners paying bribes to officials which are deposited by subsidiaries in tax havens in helpfully secretive banks.

This is not about the United Nations and other intergovernmental organisations. Corruption within the UN system is limited because there is limited power. We have seen the 'oil for food' (in which almost all corruption was by the Iraqi government and corporations). We have seen 'jobs for the boys' and one or two cases of 'jobs for the

girlfriends'. The most serious issues are attempts to buy UNSC votes in an attempt to secure support for violent action that would otherwise be in clear breach of the UN Charter.

The forms of power that we need to be concerned with include those which are increasingly beyond state regulation. These include:

- The long standing and increasingly profitable operations of organised crime — including the arms trade and drug trafficking.
- Deregulated corporations who can operate in multiple companies and shift money and assets (especially intellectual property) to maximise profit and avoid regulation and taxation. These corporations have the opportunity to assist communities and economies to develop but often play one country off against another. Many will use their unregulated commercial power to secure compliance of states through corruption and offers states and/or political parties that they cannot refuse.
- Transport and shipping using flags of convenience.
- Banks and financial institutions who can move money from one currency to another, sometimes using bank bailout money to speculate against the currencies of the countries which saved them — and sometimes merely providing conduits for corrupt money to move beyond the hands of local enforcement authorities.
- Private military companies — the mercenaries who flourished in Europe before the rise of sovereign states and are re-emerging as sovereign states weaken. Some of these are employed by sovereign states to avoid their responsibilities under international law. Some are employed by corporations and may break the supposed monopoly (and general superiority) on the use of force by sovereign states.
- Surveillance by states across borders — aided by corporations whose are separately securing networks of surveillance.

There is an opportunity for global corruption systems to emerge with a combination of the above. We can see state capture through corruption, or the use of states as bases for operations in other states that are illegal and or highly damaging. Corrupt payments or corrupt favours can be used to ensure that corrupt actions are not defined as criminal — or passed but not enforced. When financial power is linked to surveillance or, worse, state

or non-state use of force, we enter potential nightmare territory. The abuse of financial power produced a global financial crisis in which banks pressed governments to save them (sometimes using threats that would otherwise be considered extortion).²⁵ When financial power is recklessly used to seek profits, we may face another global financial crisis.

This is not to say that a global corruption system has emerged. I am not suggesting that a majority of those in a position to do so act corruptly or that they succeed when they attempt to. Some attempts by corporate interests to stage coups have been spectacularly ineffective when using mercenaries — though commercial interests have sometimes been willing participants in coups backed by foreign governments. However, the risk is there and must be addressed to ensure that corrupt corporations do not profit at the expense of ethical ones and thereby become a larger part of global capitalism. We must also be on the lookout for behaviour that benefits corporations and governments at the expense of the communities they are supposed to serve for which excuses are proffered (such as ‘everyone else does it,’ ‘I have to serve my shareholders,’ ‘my workers are getting \$2 a day instead of \$1 per day,’ ‘health and safety regulation is the responsibility of the local government and we comply — and giving gifts to local inspectors is part of the culture,’ ‘it is legal to advertise tobacco so there should be no constraint on our advertising and packaging’). We must also be careful about the co-option, willing or wilfully blind, of those who do not see themselves as doing their job — such as bankers operating under strict secrecy regimes (which the Swiss nearly perfected before pressure from the EU and which other countries have taken up).

As emphasised above, governance reform and integrity measures are justified by the risk of corruption which may materialize. We do not have to await proof that the risk has materialised. Once it does, it will be much harder to deal with.

XI SYSTEMIC COLLABORATION — BUILDING GLOBAL INTEGRITY SYSTEMS TO DEAL WITH GLOBALISING CORRUPTION SYSTEMS

As always, this leads us to the question: *what is to be done?*

²⁵ I am reliably told that the Irish bankers demanded a government guarantee of their debts or all ATM machines would cease dispensing cash that afternoon.

The application of the NIS approach to global problems was suggested by Prof Ramesh Thakur when he was United Nations University Senior Vice Rector and UN Assistant Secretary General working with Kofi Annan on UN reform. In 2008, TI also recognised its value and commissioned me to write the conference overview paper ('From National Integrity Systems to Global Integrity Systems') for the 13th International Anti-corruption Conference 2008 (13 IACC).²⁶

In doing so, we should learn from the lessons of studying national integrity systems. The first lesson is that corruption does matter. Corruption is not a minor issue, let alone a sustainable alternative route to development. Corruption is linked to the failure of states to achieve the goals they set themselves for — the very simple reason that the power, people, and resources allocated to achieving those goals are used for other purposes. The second lesson is the approach to be taken in combating corruption. If corruption involves the abuse of entrusted power for personal gain, the attempt to limit corruption in an emerging global order involves identifying:

1. Areas of significant power.
2. The ostensible purpose (the claimed purposes that are used to publicly justify the existence of that power and the ends for which it may be legitimately used).
3. Potential abuses of that power by those who hold it and the benefits they and others will gain from them.
4. Potential corruption systems that may emerge to organise those abuses of power.
5. Potential integrity systems that disrupt corruption systems and increase the likelihood that powers are used for their ostensible purpose not abused for other purposes.

In studying global integrity systems, we should not cease to study national integrity and corruption systems as these are a part of the global systems which operate at global, regional, national, sub-national levels, as well as through corporations and the professions.

Unfortunately, governance experts are not well equipped to handle global problems. As we saw earlier, most are tied to mono-disciplinary approaches to institutions, their

²⁶ Charles Sampford, 'Global transparency: Fighting corruption for a sustainable future: From National Integrity Systems to Global Integrity Systems' (Conference Paper, 13 IACC, Athens, November 2008).

problems, and their solutions. This is exacerbated by the fact that most focus on one 'level' of governance: global, regional, national, corporate, professional, or not-for-profit institutions. However, many of the most intractable global problems involve mutually reinforcing weaknesses in institutions at the global, regional, national, sub-national level as well as corporations, professions, and NGOs. Corruption flourishes because of weaknesses in all levels. Thus, solutions to global problems do not lie in new norms or reformed institutions at any one level but the identification of normative, legal, institutional and governance changes at some or all levels and their integration into emerging Global Integrity Systems. We need multi-disciplinary, multi-country, multi-cultural research teams.

XII NO ROOM FOR COMPLACENCY IN AUSTRALIA

Queensland went from the "deep north" to a "global exemplar" in five years.²⁷ It became a model of national integrity systems and the basis for thinking about a global integrity system. However, Commonwealth governments have been less interested in the Queensland model than many other national governments. There may be many causes/excuses:

- Traditional feelings of superiority by national bodies.
- The emphasis on intra institutional integrity measures rather than jurisdiction wide measures (a useful part of any integrity system but one which works better with national integrity institutions).
- Memories of State corruption — reinforced by current examples.
- The view that there is more opportunity for corruption at state and, especially, local government (where fortunes can be conferred by rezoning and planning applications).
- The reforms of the 1970s and 1980s including what was widely called the 'New Administrative Law' and the ceding of boundary setting to the independent electoral commission.

However, there is a great deal of power at the national level. Indeed, the vertical fiscal imbalance between the Commonwealth and the states put most public moneys in the

²⁷ See Sampford (n 3).

hands of the Commonwealth. This is exacerbated by the states having responsibility for most of the expenditure (e.g., health, education, roads) for which they must seek federal funds. Accordingly, the Commonwealth has much more discretion over spending and taxes.

Unsurprisingly, those in government have been experimenting with how such power can be used/abused for personal or party-political gain. In Australia, the abuses are less likely to be for personal gain, at least when in office. The strength of the economy and the enormous salaries paid to senior executives, mean that those seeking great wealth are much less likely to enter politics than in nation states with weak economics in which official corruption is the best way to make money. Some seek to make that up with lucrative board positions after retirement from politics and use loopholes left in lobbying rules that do not count those employed by large companies as ‘lobbyists.’

This should not be a reason for relative complacency. The fact that our politicians are less likely to be in it for personal financial gain means that they are more likely to enter politics to gain power for their parties and themselves. Some of the worst abuses involve the use of entrusted power to secure re-election. Indeed, I have long argued that the one power with which we cannot entrust to politicians is the conditions for their re-election — not because all will abuse that power but that the temptation creates too great a risk.²⁸

There are two related areas where Commonwealth government power can be abused: by choosing the circumstances of their own re-election and by reducing their accountability prior to such elections. Intersecting with these opportunities are elements of corporate power that can be abused for corporate gain. I am not going to directly allege the abuse of such power — merely that there is a strong risk of such abuse and widespread agreement that the risk has materialised. In some areas, like government advertising there is universal agreement that the risk is present and that it has materialised. As I argued before three separate senate committee enquiries, the Liberal-National party coalition allege that the Australian Labor Party (‘ALP’) abused the power, the ALP allege that the Coalition had abused their power and the minor parties think that both had. That

²⁸ See invited submissions to Senate Finance and Public Administration Legislation Committee's 2002 inquiry and the Senate Finance and Public Administration References Committee in 2005.

is close to 100% agreement that the abuse has occurred. These risks are exacerbated by the opportunities for corporations to abuse their considerable power.

XIII CHOOSING THE CIRCUMSTANCES OF THEIR RE-ELECTION

Australian governments have largely eschewed the attempts at voter suppression rampant in the United States (despite some back bench urgings). However, virtue seems to stop there.

1. One major issue is the timing of elections. While most states now have fixed terms and fixed dates for elections, Commonwealth governments still retain the right to call an election whenever they want provided no more than three years have elapsed since the House of Representatives met after the previous election.²⁹ Governments can choose a time when they think they are most likely to win because there has been recent good news or likely bad news to come. It also puts the opposition at a distinct disadvantage in having to plan for multiple scenarios and to prepare policies and candidates for a potential early election.
2. Government advertising has been shifting from information campaigns to publicly funded advertisements for their policies — with a sharp spike in the third year of government. The Howard government's publicly funded campaign in favour of the GST was run the last few weeks before the calling of the 1998 election. As the legislation was not proposed to be introduced until after the election and would only be introduced in the case of a Coalition win, it seems impossible to deny that this was a direct subsidy to the election campaign.
3. Pork barrelling involves the expenditure of government funds to increase votes in marginal electorates, rather than according to general transparent principles of general application.
4. Power over political donation laws.
5. Power to make a lot of decisions favourable to favoured individuals and corporations — including corporate and, especially, media regulation.
6. Power to award lucrative contracts without tender.

²⁹ *Commonwealth of Australia Constitution Act 1900* (Cth) s32.

Both parties abuse their power in most of these ways. In relation to the second and third, they seem to be learning from each other, pushing the envelope further and using the bad behaviour of their predecessors as a precedent and/or justification for their own.

XIV AVOIDING ACCOUNTABILITY

Elections are the ultimate accountability mechanism, involving a choice between parties on their past performance in the exercise of entrusted power and their promises about the future exercise of that power. Between elections, integrity institutions are needed to do two things. First, they must ensure, as far as possible, that governments only exercise the powers they have for the purposes for which they are entrusted. Secondly, information about what they have done needs to be revealed and scrutinised so that electors can make informed choices about the parties they vote for.

Governments have many opportunities to use their powers to influence these accountability processes. They seem to be discovering those powers and using them more and more frequently.

1. Power to control information, including preventing public access to the information, collected with powers entrusted to them at public expense. While the New Administrative Law included FOI reforms, governments have been restricting access through fees and exemptions (including widespread claims of cabinet confidentiality, commercial in confidence and security).
2. Restrictions on judicial review — both in conduct subject to such review and in the courts in which cases can be heard (in some cases leaving only the High Court).
3. Power to make appointments to judicial office: while there has not yet been an attempt to stack the High Court American style, we are seeing more and more political appointments at lower levels of the judiciary (and members of the Administrative Appeals Tribunal (AAT) who review government decisions on merit).
4. Power to make appointments to other integrity institutions.
5. Cutting the budgets of integrity institutions who ask probing questions of government (e.g., Australian Information Commission and Australian National Audit Office).

6. Power to sack secretaries who used to be ‘permanent’ without reason (or rather, for the worst of reasons).
7. The statement of ministerial standards reads very well and bans misleading either the parliament or the people. However, the person with the power to decide whether there has been a breach and the consequences is the Prime Minister (‘PM’). The PM is fundamentally and irredeemably conflicted because the reputation of their government is likely to be affected. This is even worse when it is the PM who is accused of misleading or other breaches.
8. Finally, we have seen strong government opposition to the kind of anti-corruption agency that has been successful in Australian states and elsewhere. Instead, they push for a Commonwealth Integrity Commission that includes various measures that were used to Newman government to neuter the Queensland Crime and Misconduct Commission in 2013 and which hampered the effectiveness of Victoria’s Independent Broad-based Anti-Corruption Commission (‘IBAC’) until removed.

XV CORPORATE POWER

Our economy has largely performed well. Most Australians want a market economy as well as democracy, with the latter regulating the former to ensure that it works for the overall benefit of Australians.³⁰ The kind of market economy we have developed has allowed the generating of considerable individual and corporate wealth. At the same time political parties are heavily reliant on donations. There is a temptation for the wealthy to seek, and politicians to grant, several valuable favours — higher levels of access; congenial laws, regulations, and regulators — and sometimes, even tender free contracts.

Media corporations have power, know it and exercise it. Media corporations can play favourites in promoting some politicians over others, or secure favours under implied threat of doing so. Indeed, politicians are so fearful of adverse coverage that they anticipate what media wants. There is a particularly dangerous cycle when powerful media companies seek to increase media concentration. Giving in to them helps increase

³⁰ Indeed, the benefits to be derived and the means for securing them should be the centre of political debate.

their power and increases the strength of the implied threat and the difficulty of saying 'no' to them.

XVI CONCLUSION

I started this article, like my own return to Queensland, with an expression of admiration for the Fitzgerald inspired governance reforms in response to Queensland's corruption crisis that came to a head in the late 1980s. I outlined meanings of integrity and corruption which are interlinked by their relationship to the use and abuse of entrusted power. This in turn highlighted one of the central themes of this piece: the links between power and corruption. We need institutions with the power, people, and resources to do, collectively, the things that we want to do but cannot readily do individually. That power will attract those who want to help the institution live up to this promise of beneficial collective action. However, it will inevitably attract those who want to use that power for personal gain. Accordingly, the history of power is the history of corruption. We must recognise that risk and build mechanisms to reduce that risk. Following the Fitzgerald reforms, best practice involves an ethics regime, or integrity system of norms, laws and institutions designed to promote integrity and combat corruption. At the same time, those who seek to abuse power are innovative, resourceful, and persistent and we must recognise that they will learn from experience and find new ways to seek and exploit power for private benefit. And they, too, are organised into what might usefully be seen as 'corruption systems'. This is not just true for national and sub-national levels of government but also regional, sectoral, or international levels.

We need action at all these levels. We need to recognise the innovations found within corruption systems and the innovations within integrity systems to both respond to, and get ahead of, the corrupt. There is a particular need for us to do so at the national level. The Commonwealth was an integrity innovator in the 1970s and 1980s with electoral and administrative law reform. But some of those elements have been attacked, eroded and all but defunded. And the innovations in Queensland and other states have not been taken up. It does not matter whether this is part of a deliberate plan, a series of responses to 'annoying' integrity institutions or merely random. As I emphasised, we need to recognise the risk and seek to minimise it.

Corruption thrives when vigilance diminishes and reform falters.

APPENDIX: GLOSSARY OF TERMS

Individuals and institutions

Despite Western emphasis on individuals, we live our lives largely in, and through, the institutions in which we work, play, and procreate. Even when we try to act like ‘individuals’, our lives are played out in an environment characterised by powerful institutions. Institutions and their governance are generally part of our most pressing problems (including those relating to national research priorities). Institutions are also almost invariably a key part of solutions to those problems — whether the institutions are NGOs, corporations, industry groups, regulators, government agencies, regional bodies, or international agencies.

Governance disciplines

The importance of good institutional governance is recognised by many disciplines which might contribute to institutional governance and reform. The problem is not that it is ignored: the problem is that each discipline has a strongly theorised but limited conception of institutions, which colours and structures their view of the nature of institutional problems and the best means for addressing them. For example, lawyers look at institutions and see sets of formal norms, ethicists see informal norms and the values the institution claims to further, economists see incentives and disincentives, political scientists see power relations, social psychologists see complex webs of interpersonal and group relationships, and management theorists see structures and systems. Accordingly, the problems are seen in the deficiency of laws, ethical standards, incentives etc. and the solutions are seen as lying in remedying those deficiencies. All these partial insights into institutions and their problems are important and any solution that ignores them is likely to fail. However, as proffered solutions tend to be developed from only one disciplinary perspective, they are necessarily limited, perhaps over-emphasising legislative solutions or the impact of economic incentives.

Governance

There are many different definitions of governance. However, at their base, they refer to the way that decisions are made within an organisation — whether a particular corporation, NGO, or government agency or within government.

Good governance

A narrow definition might see good governance in terms of institutional integrity (see above). However, I would prefer to see it as governance subject to *good governance values*. Such values include integrity and accountability but are not confined to these values. For governments such values would include:

- democracy
- respect for human rights and liberties
- adherence to the rule of law
- citizenship
- respect for the environment.

For corporations, good governance values would include:

- adherence to the rule of law
- adherence to the corporation's own constitution
- respect for customers, consumers, and members of the communities in which it operates.

The above values are stated in English and in Western terms. In saying that, I seek to avoid cultural relativism and claims to universal values. Values are universal only when stated in their most general terms. Good governance values (and bad governance values) can be found in all cultures and traditions. The good governance values are 'congruent' rather than 'identical' and arise historical and social circumstances that provide important nuances that can be 'lost in translation'. I argue that:

- All long-standing cultures deal with major social issues and provide a range of answers reflecting different interpretations of its ideals.
- During the 20th century, Western culture produced a range of interpretations ranging from Nazism to the inclusive, tolerant versions of liberal democracy.
- Other cultures are likely to generate a similar range of answers from the vicious to the sublime.
- Most cultures will include values that are very similar to Western liberal-democratic values.
- However, those values will not be identical to Western values but will be nuanced and influenced by the context in which they arose.
- Much can be learnt from comparing the rich and nuanced variations.

- Governance reforms should be based on the local versions of good governance for three reasons:
 1. It avoids giving a ‘free hit’ to the opponents of reform who would otherwise portray governance reform as a western import when in fact it is grounded in local culture.
 2. Good governance will take a firmer root if based on local versions of good governance.
 3. The good governance values will be more easily recognisable by the relevant population.

National integrity systems

While it is now fashionable to see national integrity systems as the answer to corruption, this is a relatively recent development. When corruption scandals strike, one of three responses results — tougher laws, ethical standard setting, or institutional reform. Each response has its weaknesses and strengths but is unlikely to be effective by itself. If a new law, ethical code, or new institution is successful, it is because it supports or is supported by other measures already in place. Nevertheless, the apparent success of a particular measure in one jurisdiction may lead some to see a panacea or ‘silver bullet’. During the 1980s, the most common response to corruption was the creation of a single, very powerful, anti-corruption agency along the lines of the Hong Kong ICAC. However, this model was criticised for placing too much reliance on a dangerously powerful, single institution. The NIS does not see the answer to corruption in a single institution, let alone a single law, but rather in the institutionalisation of integrity through several agencies, laws, practices, and ethical codes.

This approach has been given various names including an ‘ethics regime’³¹, an ‘integrity system’,³² and an ‘ethics infrastructure’.³³ However, the term with the widest currency is TI’s “national integrity system”.³⁴

³¹ Charles Sampford (n 15).

³² Jeremy Pope (n 20).

³³ *Ethics in the Public Sector* (n 18).

³⁴ Jeremy Pope (n 20)

Based on this, a national integrity system is a term that encapsulates the interconnecting institutions, laws, procedures, practices, and attitudes that promote integrity and reduce the likelihood of corruption in public life.

Given that integrity is the opposite of corruption, one may wonder whether it matters whether it is called an integrity system or an anti-corruption system. However, the distinction is an important one. Integrity systems are not built around the negative goal of limiting corruption but the positive goal of maximising integrity. The negative goal is necessarily implied by the positive one — if power is to be used in officially sanctioned ways, it should not be abused by being diverted to other ends. It is not enough to avoid government corruption (if that were our only goal, it would be achieved by abolishing government!). Institutions need to achieve the goals set for them by the people's representatives.

In placing power in the hands of individuals or groups, human communities are taking a risk — that the benefits to be gained from use for the justified purposes of the institution outweigh the risks of its abuse. Integrity systems are designed to increase the likelihood of the benefit of the intended use of power and reduce the risk of the abuse.

Integrity and corruption

It is interesting that the OECD's preferred term is not 'anti-corruption infrastructure' and TI, despite its central and fundamental focus, does not call it an 'anti-corruption system'. This raises the question of what is meant by 'integrity'.

Integrity and corruption are conceptually linked terms — with one the obverse of the other. TI defines corruption as the 'misuse of entrusted power for private gain'.³⁵ By contrast, I see 'integrity' as 'the *use* of public power for officially endorsed and publicly justified purposes'. The latter definition is primary because you cannot know what an abuse is if you do not know what the correct 'use' is. The form of official endorsement will vary from system to system but, in a democracy, the officially endorsed uses of public power are those set by the elected government and legislature. Indeed, democratic

³⁵ Transparency International, *What is Corruption?* (Web Page) <<https://www.transparency.org/en/what-is-corruption>>.

competition is about differing views as to how public power should be used for the benefit of citizens.

Accountability

Officials are accountable if they are required to demonstrate that they have acted within the power entrusted in them for purposes that are publicly justified and officially approved. In national integrity systems, it is common for agencies to be 'mutually accountable' rather than hierarchically accountable.

Institutional integrity

Where organisations use their power for publicly stated and officially authorised purposes they exhibit 'institutional integrity'. This is analogous to individual integrity. An individual has integrity if they are true to their principles and do what they say they will. Institutions have integrity if they operate to further the goals that are publicly set by democratically elected governments.

Individual and institutional ethics

This is consistent with, and is underpinned by, our approach to ethics. We see ethics acting as the coordinating force because it asks fundamental values questions. For many ethicists, the fundamental ethical question that individuals face is: *how should I lead my life?* For me, ethics is about asking hard questions about your values, giving honest and public answers, and living by them. If we do, we have *integrity*. This is as true of institutions as it is of individuals.

As I see it, members of institutions face similar questions:

- How should we lead our lives together?
- What is the institution for?
- On what basis can we justify the power and authority that we are given even though there is, as in all concentrations of power, a risk of abuse?
- What values does it further and should we further to justify the power and authority given to us and/or tolerated by the community we claim to serve?

Transparency

Transparency is a key process value in the practice of ethics and the achievement of integrity (and hence countering corruption), good governance, integrity systems and necessary for accountability.

Transparency involves publicly stating the values we claim to further in both general and specific terms, the means we are taking to achieve them and the extent to which they have been achieved. This is critical to personal ethics and allows us to be true to ourselves. It is particularly important in institutional ethics to ensure that organisations think about where they are going, how they are going to get there and what progress they are making. Transparency is an essential part of the operation of integrity systems — both agencies and institutions monitored and the agencies and institutions undertaking the monitoring.

This might appear to be an imperialistic statement about one governance value. However, similar stories can, and often are, told about other values. At times ‘liberty’, ‘human rights’, ‘the rule of law’, ‘democracy’ and, nowadays, ‘sustainability’. What the statement above actually sets out is the interconnectedness of governance values in theory as well as in the practice of national integrity systems.

Transparency does not mean that all information is provided to everybody about everything. The revelation of some information would totally compromise institutional integrity and the ability of institutions to do their jobs as well as compromising important human rights. Public revelation of those suspected of corruption would both tarnish the innocent and protect the guilty. Revelation of whistle-blowers can put lives at risk as well. The details of what information particular kinds of institutions provide to their members and to those they affect may need to be carefully worked out, balancing, and respecting a range of important values. However, the above schema provides a clear guide. The focus of transparency demands and the information that is scrutinised should concentrate on claims about values an institution seeks to further, its means for achieving them, the risks of non-achievement especially through the abuse of power and the extent to which those values are being achieved.

However, there is a broader argument for transparency. Where institutions are established to serve a particular community (governments to serve citizens and joint stock companies to their ultimate owners), the presumption must be that the information belongs to the citizens and stockholders and that the information should be readily

available to any one of those who want it. It is up to the government or corporation to justify to its citizens/owners that it is in their interests that such information is not available. Such arguments can be made based on national security or competitive advantage. However, that case must be made and accepted by the citizens and ultimate owners respectively.

Where an organisation's claim to benefit a wider group than its members is a key part of its pitch for the privileges that it enjoys (e.g., the claim that the privileges of incorporation further broader societal goals such as prosperity, diversity, and liberty), transparency as to those values, means, risks and achievements is also justified.

How does globalisation affect these values?

Some governance values need major work in a globalised world — especially citizenship and democracy, terms which migrated from the city states of antiquity to much larger entities in the modern era. The competing meanings of *equality* become even more perplexing when they move outside the nation state to a globalised world.

Values such as the rule of law, liberty, human rights, and transparency do not need much development, but their application is wider and the institutions and integrity systems that will achieve them will look very different.

REFERENCE LIST

A Articles/Books/Reports

Acar, Muhittin and Uger Emek, 'Building a clean government in Turkey' (2008) 49(3) *Crime Law and Social Change* 185–203

Anechiarico, Frank, 'Protecting integrity at the local level' (2010) 53(1) *Crime, Law and Social Change* 79

Behnke, Nathalie and Jeroen Maesschalck, 'Integrity Systems at Work: Theoretical and Empirical Foundations' (2006) 30(3/4) *Pub Administration Quarterly* 263

Charmain Lord Nolan, *Standards in Public Life: First Report of the Committee on Standards in Public Life* (London: HMSO, 1995)

Doig, Alan and Stephanie McIvor, 'The National Integrity System: Assessing corruption and reform' (2003) 23 *Public Administration and Development* 317

Huberts, Leo, Jeroen Maesschalck, and Carole Jurkiewicz, *Ethics and Integrity of Governance* (Edward Elgar, 2008)

Langseth, Petter, Rick Stapenhurst, and Jeremy Pope, 'The Role of National Integrity Systems in Fighting Corruption' (1997) 23(1/2) *Commonwealth Law Bulletin* 499

Neilsen, Richard, 'Corruption networks and Implications for Ethical Corruption Reform' (2003) 42 *Journal of Business Ethics* 125

Organisation for Economic Co-operation and Development, *Ethics in the Public Sector: Current Issues and Practices* (1996)

Organisation for Economic Co-operation and Development, 'PUMA Draft Checklist' in *Symposium on Ethics in the Public Sector: Challenges and Opportunities for OECD Countries* (1997)

Organisation for Economic Co-operation and Development, 'Survey of Anti-Corruption Mechanisms in OECD Countries' in *Symposium on Ethics in the Public Sector: Challenges and Opportunities for OECD Countries* (1997)

Organisation for Economic Co-operation and Development, *Council Recommendations on Improving Ethical Conduct in the Public Service —Background note* (1998)

Pope, Jeremy, *Confronting Corruption: The elements of a National Integrity System* (Transparency International, 2000)

Sampford, Charles, 'From Deep North to Global Governance Exemplar: Fitzgerald's Impact on the International Anti-corruption Movement' (2009) 18(3) *Griffith Law Review* 559

Sampford, Charles, Carmel Connors and Noel Preston, *Encouraging Ethics and Challenging Corruption: Public Sector Ethics in Theory and Practice* (Federation Press, 1st Edition, 2002)

Sampford, Charles, 'Law, Institutions and the Public Private Divide' (1992) 20 *Federal Law Review* 185

B Legislation/Treaties

Commonwealth of Australia Constitution Act 1900 (Cth)

C Other

Sampford, Charles, 'Global transparency: Fighting corruption for a sustainable future: From National Integrity Systems to Global Integrity Systems' (Conference Paper, 13 IACC, Athens, November 2008)

Transparency International, *What is Corruption?* (Web Page)

<<https://www.transparency.org/en/what-is-corruption>>