

The Role of Legislatures in Building the National Integrity System for Combating Corruption

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Those who talk about the peoples of our day being given up to robbery and similar vices will find that they are all due to the fact that those who ruled them behaved in like manner.
Niccolo Machiavelli, *The Discourses*, III (29)

1. Introduction

Corruption has become an issue of major political and economic significance in recent years. This has led to a resurgence of interest in analyzing the phenomenon in the diverse forms that it assumes within developing countries with an expectation that democratization and economic liberalization offer potential routes to dealing with the problem.¹

As our newspapers and news broadcasts remind us daily, corruption in many countries today must be confronted as a matter of urgency, and often as a prelude to economic growth and international trade.² Corruption is detrimental to both social as well

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1 See, Mark Robinson, *Corruption and Development: An Introduction*, in Mark Robinson Ed., *Corruption and Development*, (1998) at 1.

2 See, Johann Graf Lambsdorff, "An Empirical Investigation of Bribery in International Trade," Paper, (1998).

as economic health and well being whenever and wherever it occurs, regardless of the state of a country's development.³ Reports of corruption are increasing daily. This clearly suggests that, despite efforts in many parts of the world to contain it, corruption may actually be increasing.⁴ It also demonstrates that it is not something that is exclusively, or even primarily, a problem of developing countries.⁵

An elected national Parliament or Legislature is a fundamental pillar of any integrity system based on democratic accountability and has a very important role in combating corruption. Its task, simply stated, is: to express the sovereign will of the people through their chosen representatives, who, on their behalf, hold the Executive accountable on a day-to-day basis. Likewise, a government gains its legitimacy from having won a mandate from the people. The way in which this mandate is won is crucial to the quality of that legitimacy, and to the readiness of the citizens at home and governments abroad to accept it.

The modern Parliament as a watchdog, regulator and representative, is at the centre of the struggle to attain and sustain good governance and to fight corruption to be fully effective in these roles. Parliament must be comprised of individuals of integrity. If seen as a collection of rogues who have bought, bribed, cajoled and rigged themselves into positions of power, a Parliament forfeits whatever respect it might otherwise have enjoyed, and effectively disables itself from promoting good governance and minimizing corruption—even if it wants to do so.

There will always be people trying to enter politics for the wrong reasons, in the pursuit of personal power and self-interest, and devoid of any real commitment to serve the public. These constitute a fundamental challenge to any integrity system, and special attention is needed if they are to be denied the space to achieve their illegitimate ends. The premise of this article is to examine corruption and ethics and to pay a special attention to building a national integration system in combating the corruption.

3 See, Mushtaq H. Khan, *Patron-Client Networks and the Economic Effects of Corruption*, in Mark Robinson Ed., *Corruption and Development*, (1998) at 16-39.

4 See, Transparency International Corruption Barometer 2004 at www.transparency.org.

5 See, TI Source Book 2000, *Confronting Corruption: The Elements of a National Integrity System*.

2. Ethics in General

2.1. What is Ethics?

Ethics is defined as the study of proper conduct in guidance of moral principles such as compassion, freedom, good, justice, rationality, responsibility, and virtue. The word ethics comes from the Greek word *ethos*, “character.” Choices concerning what values to hold and how to treat oneself and one’s responsibilities to others are matters of character, or of ethics. The term ethics is often used interchangeably with the term morality, which is derived from the Latin word *mores*, “customs.” Philosophers sometimes make a distinction between ethics and morality holding ethics to refer to the cultivation of character and practical decision making while morality refers more generally to the set of practices a society holds to be right or just. Even among those who favor this distinction, a considerable overlap between fields of ethics and morality is recognized.

Our ethical beliefs help us distinguish right from wrong.⁶ They help us to define good and bad and to realize our vision of the good in our actions. Ethical beliefs help us sort through differences of opinion over what is good and what is bad.⁷

2.2. Ethos, Values, Ethics and Conduct

Despite the lack of consensus on what ethos, values, ethics and conduct actually mean –as stated before- they are often used interchangeably. In order to understand ethics in public life we should know what the terms refer to.

Ethos: the sum of ideals which define an overall culture in the public life.

6 There can be a long and perhaps acrimonious argument about the notions of right, fair and good. They are very much value-laden terms. The distinguished moral philosopher Bernard Gert leaves the definition of what morality is open to further questioning when he says: Morality is a public system applying to all rational persons governing behavior which affects others and which affects others and which has the minimisation of evil as its end and which includes what are commonly known as the moral rules at its core. See, Bernard Gert, *Morality: A New Justification of the Moral Rules*, (1988) at 6.

7 See, Susan N. Terkel, R. Shannon Duval, *Encyclopedia of Ethics*, (1999), at 80. Noel Preston says: “ethics is about what is right, fair or good; about what we ought to do...ethical claims are debatable and contestable.” Contrary to the moral absolutists, Preston acknowledges in respect of discussions on ethics that “we encounter conflicts of value, interest or sentiment, and choices between principles, decisions and actions.” N. Preston, *Understanding Ethics*, (1996) at 16.

Values: the individual principles or standards that guide judgment about what is good and proper.

Ethics: the rules that translate characteristic ideals or ethos into everyday practice. Ethics also refer to the collection values and norms, functioning as standards or 'yardsticks' for assessing the integrity of one's conduct. Ethics are a set of principles that provide a framework for acting. The moral nature of these principles refers to what is judged as right, just, or good conduct.

Conduct: the actual actions and behaviors.

As ethos becomes translated into conduct, there is a move from the abstract to the concrete. However, the relationship between those concepts is complex and overlapping. Several commentators have tried to explain them. For example, "The critical link between ethics and values is that ethical standards and principles can be applied to the resolution of value conflicts or dilemmas."⁸

In addition, the concepts have been difficult to apply to the day-to-day operations of public life, "public administrators are still striving to develop an understanding of the ethics of their profession, not because it is so new, but because the understanding of the profession and its role in government has changed dramatically over the years."⁹

2.3. Illegal, Unethical and Inappropriate Acts

In examining conduct, it is useful to make a distinction between behaviors: illegal, *i.e.*, against the law which covers criminal offences to misdemeanors; unethical, *i.e.*, against ethical guidelines, principles, or values; and inappropriate, *i.e.*, against normal convention or practice. As we will discuss later, corruption may fall under any of these three headings. Its defining characteristics are the misuse of public office, roles or resources for private benefits (material or otherwise).¹⁰

The above distinctions have implications for how various problems are addressed. When wrongdoing involves an illegal act by an individual – for instance, fraud – the responses are less problematic

8 Kenneth Kernaghan, John W. Langford, *The Responsible Public Servant*, (1990), R. A Chapman, Ed., *Ethics In Public Service*, (1993) at 16.

9 See, Kathryn G Denhardt., "The Management of Ideals: A Political Perspective on Ethics", *Public Administration Review*, (March/April 1989) at 187-193.

10 For a discussion of the concept of corruption see, Dionysios Spinellis, "The Phenomenon of Corruption and the Challenge of Good Governance", paper prepared for the OECD Symposium on Corruption and Good Governance, March 1995.

than when they fall into the grey area of “unethical” or “inappropriate” conduct. The former case can be labeled as an aberration and dealt with through the standard judicial system (assuming the system functions well and the relevant laws governing actions by public officials are clear).

By definition, the management of ethics and conduct is not just about monitoring and policing behavior. It is also about promoting integrity and good conduct. It is about seeking some consensus on what is good behavior and giving public servants and legislators some guidance as to how they should act, make decisions, and use discretion in their everyday work.¹¹

2.4. Why is Ethics Important?

“The integrity of politicians and public servants is a critical ingredient in democratic society.”

*Alice Rivlin, Director of the Office of Management and Budget, United States;
Chair of the OECD/PUMA Ministerial Symposium on the Future of Public Services*

Ethics is one of the important checks and balances against the arbitrary use of the public power. It is a vital factor in creating and maintaining confidence in the government and its institutions. It also provides a basis to test practices, conventions and conducts generally, against which the public can be assured that its interests are being served and that due process is being observed. As such, it is a key factor in the quality of governance. Encouraging ethical behavior is not just about establishing a list of rules to be kept or a status to be attained. It is an ongoing management process that underpins the work of government; it is crucial to the functioning and evolution of governance. As Dennis Thompson observed, *“Ethics may be only instrumental, it may only be a means to an end, but it is a necessary means to an end. Government ethics provides the preconditions for the making of good public policy. In this sense, it is more important than any single policy, because all policies depend on it.”*¹²

11 See, OECD, Ethics in the Public Service: Current Issues and Practice, OECD Public Management Occasional Paper No. 14, (1996).

12 See, Dennis F. Thompson *“Paradoxes of Government Ethics”*, Public Administration Review, VOL. 52, NO. 3, (May/June 1992) at 254 - 259.

The absence of ethics is more noticeable than its presence as Dennis Thompson stated, “*When ethics are in disorder, when citizens reasonably believe they are, one should not be surprised that disputes about ethics drive out discussions about policies. Ethics makes democracy safe for debate on the substance of public policy. That is why it is so important. That is the sense in which it is more important than any other single issue*”.¹³

3. Corruption

In recent years, corruption has become an issue of major economical and political significance in many countries across the globe, including a number of developed western states. Corruption scandals are a prominent source of media interest and newspapers frequently broadcasting and publishing stories about illicit behavior by politicians and public officials. On account of heightened media attention, there is a widespread perception that corruption is on the rise both among the general public who demand effective action and politicians who are eager to derive political capital by adopting a forthright stance over the need to eliminate corrupt practices.¹⁴

3.1. Understanding Corruption

It is difficult to generalize the form that corruption assumes in different country contexts. There are differences between the form assumed by corruption in developing countries as compared to developed countries, and between forms of corruption that are growth-retarding or threatening political stability and those that are more benign and do not undermine the economic or political viability of nation states.¹⁵

A widely accepted definition of corruption is “the abuse of public roles or resources for private benefit.”¹⁶ Corruption may be categorized into three main forms: incidental (individual), institutional

13 *Ibid.*

14 See, P. Heywood, “*Political Corruption: Problems and Perspectives*”, *Political Studies*, VOL. 45, NO. 3, (1997) at 417-35.

15 See, P.D. Hutchcroft, “*The Politics of Privilege: Assessing the Impact of Rents, Corruption, and Clienteles in Third World Development*”, *Political Studies*, VOL. 45, NO. 3, (1997), at 639-58; M. Johnston, “*The Search for Definitions: The Vitality of Politics and the Issue of Corruption*”, *International Social Science Journal*, NO. 149, (1996) at 321-35.

16 A more analytically grounded definition is that employed by Klitgaard, which derives from principal-agent theory, namely that corruption is “monopoly plus discretion minus accountability,” see, A. Goudie and D. Stasavage, “*Corruption: The Issues*” Technical Paper NO. 122, OECD, Paris, (1997).

(for example the public service) and systematic (societal). Some forms of corruption are confined to instances of malfeasance on the part of individual politicians or public officials, and are episodic rather than systematic. In other cases, corruption pervades particular institutions or sectors or individual actions. In the third case, corruption pervades the entire society and in the process becomes routinised and accepted as a mean of conducting everyday transactions.¹⁷

This kind of systematic corruption features in societies with the following characteristics: low political competition, low and uneven economic growth, a weak civil society, and the absence of institutional mechanisms to deal with corruption. In contrast, those societies which are relatively free of corruption are premised on the basis of respect for civil liberties, accountable government, a wide range of economic opportunities, and structured political competition. These are mainly, but not exclusively, characteristics of developed western states.¹⁸

There is another classification for corruption constituting “grand corruption” (practiced by elites), and “petty corruption” (practiced by bureaucrats).¹⁹ While both are detrimental to democracy, the existence of grand corruption can be especially problematic as its presence creates and condones an environment of cynicism and indulgence which in effect invites petty corruption.

The long-term combination of grand and petty corruption can lead to economic, social and political paralysis. Therefore, efforts to combat widespread corruption must focus on unethical behavior at the grand level.

To focus on grand corruption is not in any way to condone petty corruption, which can seriously damage the quality of life of the ordinary citizen particularly that of the most vulnerable members of society. But grand corruption can destroy nations: where it is rampant, there is no hope of controlling petty corruption.²⁰

17 See, Mark Robinson, *Corruption and Development: An Introduction*, *supra* note 1, at 3-4.

18 See, M. Johnston, “What Can Be Done About Entrenched Corruption?”, Paper Presented to the Ninth Annual Bank Conference on Development Economics, The World Bank, Washington DC, 30 APRIL-1 MAY (1997).

19 See, George Moody-Stuart, “The Costs of Grand Corruption: Economic Reform Today” (Center for International Political Economy) No. 4, (1996) at 19.

20 *Ibid.*

3.2. Economic Impacts of Corruption

Corruption is damaging for the simple reason that important decisions are determined by ulterior motives, with no concern of the consequences for the wider community.

First, toleration of corruption in an important agency; such as tax collection or the provision of public utilities may encourage its spread to other areas with harmful consequences.²¹ Second, corruption can contribute to an uncertain business climate. Firms pay bribes to obtain certainty, but the certainty may be illusory because they cannot enforce corrupt deals.²² Also, ingrained corruption can hold back state reform. Firms that have benefited from payoffs will resist efforts to increase the clarity of rules and laws. Their allies within the state apparatus will also oppose reform efforts designed to make the economy more open and competitive.²³

Dieter Frisch, former Director-General of Development at the European Commission, has observed that corruption raises the cost of goods and services; it increases the debt of a country (and carries with it recurring debt-servicing costs in the future); it leads to the lowering of standards, as sub-standard goods are provided and inappropriate or unnecessary technology is acquired; and it results in project choices being made based more on capital (because it is more rewarding for the perpetrator of corruption) than on manpower, which would be the more useful for development.²⁴ Frisch points out that when a country increases its indebtedness to carry out projects which are not economically viable, the additional debt does not only include the 10 to 20 per cent extra cost due to corruption; rather the entire investment, all 100 per cent of it, is attributable to dishonest decisions to proceed with unproductive and unnecessary projects.²⁵

21 See, T. Francis Lui, "An Equilibrium Queuing Model of Bribery", *Journal Of Political Economy* 93, (1985) at 760-81. Also see, Frank Flatters, W. B. Macleod, "Administrative Corruption and Taxation," *International Tax and Public Finance* 2, (1995) at 397-417.

22 See, Susan Rose- Ackerman, *Corruption and Government: Causes, Consequences and Reform*, (1999) at 17.

23 See, Arne Bigsten, Karl Moeno, "Growth and Rent Dissipation: The Case of Kenya," *Journal Of African Economics* 5, (1996) at 177-98.

24 See, Dieter Frisch, *The Effects of Corruption on Development*, A Paper Presented to the Africa Leadership Forum on "Corruption, Democracy And Human Rights In Africa", Cotonou, Benin, 19-21 September 1994.

25 *Ibid.*

If corruption cannot be brought under control, it can threaten the viability of democratic institutions and market economies.²⁶ In a corrupt environment, resources will be directed towards non-productive areas – the police, the armed forces and other organs of social control and repression – as the elite move to protect themselves, their positions and their material wealth. Laws will be enacted (e.g., the Public Tranquility Act 1982 in Sudan) and resources otherwise available for socio-economic development will be diverted into security expenditures. This in turn can cause the withering of democratic institutions as corruption, rather than investment, becomes the major source of financial gain.²⁷ This undermines the legitimacy of government, and ultimately the legitimacy of the state.²⁸

If that is the picture at the macro level, the view at the micro is no less cheering. An Indian commentator in *The Times of India*, writing at the close of the millennium, observed that: “The lack of transparent rules, properly enforced, is a major reason why talented Indians cannot rise in India. A second reason is the *neta-babu raj*, which remains intact despite supposed liberalization. But once talented Indians go to rule-based societies in the west, they take off. In those societies all people play by the same rules, all have freedom to innovate without being strangled by regulations. This, then, is why Indians succeed in countries ruled by whites, and fail in their own. It is the saddest story of the century.”²⁹

One of the most crucial elements for accelerating private sector development is an increasing flow of foreign direct investment (FDI). It is clear that corruption has a bad impact on FDI.

26 “Corrupt officials, knowingly or not, display contempt for other people, no matter how minor or seemingly innocent their corrupt acts. This contempt harbors within it the seeds of megalomania that, if allowed to flourish, will eventually blossom into grosser and grosser acts ... where other people are considered expendable and other people’s lives are considered meaningless and useless. All corruption is a deceit, a lie that sacrifices the common good or the public interest for something much less ... [I]t gives comfort to social pathologies that divide, destabilize and desensitize. Not only does it point society in the wrong direction, but it also exhausts governmental legitimacy, supports the wrong kind of public leadership and sets the wrong kind of example for future generations.” See, *Gerald E. Caiden, “Toward a General Theory of Official Corruption,” Asian Journal of Public Administration, VOL. 10, NO. 1, (1988) at 19.*

27 See George Moody-Stuart, *Grand Corruption in the Third World Development*, (1997) at 12.

28 See, El-Wathig Kameir and Ibrahim Kursany, *Corruption as the Fifth Factor of Production in the Sudan* (1985) at 11.

29 See, Ankalesaria Aiyer, *“Indians Succeed; India Fails,” The Times of India*, 26 December 1999.

In a recent study,³⁰ Professor Shang-Jin Wei, a professor at the Kennedy School of Government, Harvard University, examined bilateral investments from 14 traditional source countries into some 45 host countries during the period 1990-91, with startling results.³¹ He compared corruption levels with marginal tax rates and concluded that on the scale of zero to ten – as used in the TI Corruption Perceptions Index—a full one point increase in the corruption level is associated with a 16 percent reduction in the flow of FDI – or approximately equivalent to a three percentage point increase in the marginal rate of tax. In other words, a worsening of a host government’s corruption level from that of Singapore (with a rating of near zero) to that of Mexico (with a rating of 6.75 at the time of the study) incurs a 21 per cent increase in the marginal tax rate on foreigners. That, in turn, is sufficient to eliminate the country’s expectations of FDI almost completely. Wei’s work encourages us to see corruption as being an additional – if unofficial – tax on the private sector and one to which international investors are sensitive and to which they react very negatively. So the message is clear: for a country to attract optimum levels of FDI, it must eliminate corruption and its illicit tax on investors.³²

Despite the flurry of activities around the globe in the last decade, the would-be reformer of corruption can still be at a loss as to where to begin.³³ History is littered with the pretence of reform – grandiose promises and a conspicuous inability to even try to deliver.

According to TI (Transparency International) an analysis of the failure of past efforts has identified a number of causes, including the following:

- The limits of power at the top. An incoming head of state may endeavor to address the challenge, but is effectively

30 See, Shang-Jin Wei, “How Taxing is Corruption on International Investors?” Harvard University, Mimeo, February 1997.

31 In his paper, Professor Shang-Jin uses two measures of corruption, both based on surveys of respondents. One is that conducted by Business International and the other is Transparency International (TI)’s Corruption Perception Index, an average of some seven to ten survey results on corruption. Noting that the two surveys are highly correlated, he takes this as his starting point and conducts an investigation into the relationship between the marginal rate of tax and its effects on FDI. A one percentage point increase in the marginal tax rate is shown reducing FDI by about five percent. *Ibid.*

32 In a region such as the Middle East which continually laments the reluctance of large investors to invest at home, or within the region, all of this is cause for reflection.

33 See, www.transparency.org.

impeded by the existing corrupt governmental machinery. Witness President Mkapa of Tanzania who, on his election in 1995, publicly declared his assets and those of his spouse, and called on other leaders to follow his example. The Attorney-General issued a public statement which many interpreted as implying that the President's actions were "illegal" (in that they were not required by law) and that it would be improper for other leaders to follow suit.

- The absence of commitment at the top. Lower ranking political and administrative figures may wish to effect change but be severely restricted by an absence of commitment at the leadership level.
- Reforms tend to overlook those at the top and focus only on the lower political and administrative levels, based on the assumption that those at the top either do not "need" reform or that they would be openly hostile towards anyone who attempted it. As a result, the law is seen as being applied unevenly and unfairly, and soon ceases to be applied at all.
- Overly ambitious promises leading to unrealistic and unachievable expectations. Those who promise what they cannot deliver, quickly lose the confidence of those around them.
- Reforms lack a specific and achievable focus and so fail to deliver concrete change.
- Reforms have taken place piecemeal and in an uncoordinated manner, leading to lack of ownership and commitment to effective implementation.
- Reforms have relied too much on the law, which is an uncertain instrument. In trying to change the way people behave, or too much on enforcement, which can lead to repression, abuses of power and the emergence of another corrupt regime. If a legal system is not functioning, the problem is more likely to lie in the judicial system (with delays, corruption and uncertainties) rather than in the letter of the law itself. If existing laws are not working, it is hardly likely that a new one will have impact.
- Institutional mechanisms are not implemented. Even where reform efforts are real, there still need to be insti-

tutional mechanisms to carry reforms forward after their initial champions have passed from the scene.

In some countries newly elected leaders arrive determined to clean up corruption, but are quickly overwhelmed by the size of the problems facing them. Yet others simply posture, making speeches, signing laws – all in the absence of any expectation that meaningful change will follow.

Some enact reforms, and then privately flout them. Former German Chancellor, Helmut Kohl, made great play of reforms designed to contain the problem of illicit political party funding, only for it to be revealed that his subsequent behavior was wholly contrary to everything he claimed to believe in. Time and again, optimistic electorates have returned governments pledged to confront corruption firmly and effectively. Governments have fallen over their inability to counter the phenomenon; others have been elected in the hope that they can do better. Yet, very few can point to enduring progress. A sustainable change must be achieved.

An added difficulty in developing countries and countries in transition has been the inherent weakness of the government itself. Some have to “invent” a government completely, rather than “re-invent” it.³⁴

4. Cultural Differences

Because legislative ethics is applied ethics, it inevitably touches on values which are deemed culturally specific. An ethics regime must be developed in a manner that respects and reflects the culture of the country. For example, gift giving represents symbolic importance in many societies, or for example what is seen in some countries as nepotism and a violation of the merit principle is seen as “helping your own” in others. However, while cultural differences may lead to variations in the ethics regime design, little disagreement exists among world political leaders and anti-corruption experts as to what constitutes proper public service.³⁵

Despite the differences amongst countries - both culturally and in terms of political and administrative systems - there appears

34 See, TI Source Book (2000) at 21.

35 See, for example, “Briefing Paper on Ethics and Governance,” Regional Ethics Roundtable, Mashatu Lodge, Botswana, October 16-17, 1998 (Washington, D.C.: National Democratic Institute for International Affairs), § 2.1-2; *National Integrity Systems: The TI Sourcebook*, pp. vii, 4-5; *Ethics in The Public Service: Current Issues and Practice*, OECD/PUMA, NO. 14 (Paris, 1996) at 14.

to be a growing convergence in what is seen as “good and proper” behavior. As stated in an article,

*“...there are fundamental values...that are closely associated with democracy, market economy, and professional bureaucracy ... political values of freedom and justice and the administrative values of efficiency, effectiveness, and responsiveness ...”*³⁶

Regardless of the cultural context, everyone could agree on two principles:

1) “Legislative and executive offices of government should make decisions based on the merits of the issue and not on pressure from external sources, such as money; and

2) In a democracy, it is important that citizens have confidence and trust in the government, and therefore, rules to guarantee that trust is not abused are necessary.”³⁷

5. National Integrity System: Accountability

If men were angels no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. – THE FEDERALIST NO. 51 (James Madison)

5.1. Vertical and Horizontal Accountability

In a democracy, there are two forms of accountability at work: “vertical accountability” by which the electors, the governed, assert control over the governors, and “horizontal accountability” where those who govern (the governors) are accountable to other agencies (the watchdogs).

36 See, Stuart Gilman and Carol Lewis, “Public Service Ethics: A Global Dialogue”, Public Administration Review, (October/November 1996).

37 See, Bernard Raimo, “United States Ethics Laws and Rules: A Report on a Meeting of a Delegation of Mozambican Members of Parliament with Washington, D.C. Ethics Experts,” (Washington, D.C.: National Democratic Institute for International Affairs, June 1995) at 6.

In principle, the governors and the governed are alike. There is no special group with political power. Political power is vested by the people themselves in chosen representatives, for a limited period of time. If the people are dissatisfied, they can remove those in power, either through the ballot box or through demanding their resignation or punishment.³⁸

However, throughout history, mere “vertical accountability” has proved inadequate to the task. If the governors cannot achieve re-election through support of a satisfied populace, they achieve it through a combination of secrecy (so that the electors are unaware of what is transpiring) and the building of systems of patronage. The governors may also indulge in short-term populist acts which may be in the longer-term detriment to the public. Not only will politicians tend to stretch the limits of their power and authority so as to govern with as little opposition as possible, in some cases they will multiply their interventions simply to prove their own importance.

Moreover, the political class which emerges with professional politicians largely shares a set of values at odds with the democratic ideal, and their initial promises are in stark contrast to their actions on assuming power. For example, in 1997 the Labour Government came to power in the United Kingdom, with strong pledges to end official secrecy. Their subsequent reforms were steadily watered down, to the point where some observers argue that the resulting reforms, far from making the government more transparent, could actually increase areas of secrecy.

The ancient democracies recognized and struggled with these contradictions. In Athens, in ancient Greece, the People’s Court, formed by a randomly-selected group of citizens sat in judgment on public controversies and had the power to reverse decisions of the legislative body, the People’s Assembly.³⁹ Similarly, in ancient Rome, the right of the citizen to appeal to the tribune of the plebs against decisions of the magistrates was seen as a cornerstone of liberty.⁴⁰ Both systems were democratic, as they were exercised by citizens, and were characterized by horizontal accountability, as the popular courts were effectively autonomous and independent political bodies.

38 See, Biancamaria Fontana, *The Failures of Human Agency: Accountability in Historical Perspective*, University of Lausanne Publications (1997).

39 See, Morgan H. Hansen, *The Athenian Democracy in the Age of Demosthenes*, (1991) at Chap. 8.

40 See, Claude Nicolet, *Le Metier de Citoyen Dans la Rome Republicaine*, (1976).

By contrast, the ancient Chinese, the later Roman empires and the old European monarchies saw a bureaucratic class emerge that, in its time, served as a buffer between the people and the governors. Where their sensitivities were infringed, they were able to indulge in passive resistance--to question, to delay and to redirect the impact of orders from above, and so exercised a limited form of vertical accountability in a non-democratic environment.

Paradoxically, in the modern state, the bureaucratic class that emerged historically and which often served as a buffer to protect the citizens, has, in a large part, itself become part of the problem. It has never been designed to be answerable to the people, and to some extent its upper echelons are themselves dependant on the political class. Yet in many respects the bureaucracies have wrested considerable power from the political élite, including such independent agencies as central banks and self-regulatory bodies. Thus, what started out as a barrier against the actions of despots can now be seen by the public as being itself despotic. In the end, the people feel that their will is disregarded, and that the people's elected representatives lament the escape from their own control to a multiplicity of bureaucratic agencies.

In a democratic environment, success of vertical accountability would seem to be most favorable. In theory, those who govern and those who are governed are alike, with the rulers being chosen from among the people for finite terms, and entrusted with power only temporarily. If they govern badly, the people, the governed, can vote them out. If they abuse their powers, the people can demand their punishment and/or resignation.

Despite of this, the concept of vertical accountability has proved inadequate. Politics has become a profession, and as such has acquired its own rules and standards, to which the political class subscribes--those who govern and those contesting for power alike. Transparency vis á vis the people is seldom seen as being an advantage to the rulers, who have a vested interest in controlling what the governed know and precisely how what is going on is presented to them (hence the emergence of "spin doctors").

Those who govern benefit when they can hide behind the technicalities of government and paint a less than accurate picture of their own activities.

Hence, vertical accountability fails for several reasons--the people are not adequately informed of the activities of the governed; they have no power to investigate precisely what abuses may have

taken place; and the process of elections is only periodic, so that even in free elections an administration is judged on the totality of its performance over time as perceived by an electorate, rather than held to account for specific acts of abuse.⁴¹

5.2. Checks and Balances in Building Horizontal Accountability

The objective in any integrity system is to build a system of checks and balances within the framework of agreed fundamental principles (usually enshrined in a written constitution or basic law). In effect, a self-sustaining “virtuous circle” is achieved, in which the principles at risk are all monitored, by themselves and by others.

This is “horizontal accountability”, which differs from “vertical accountability” in that the actors are accountable to each other across a horizontal plane, rather than accountable upwards in a hierarchical structure of diminishing width. In essence, it means that no one person or institution is in a position to dominate the rest. As such, it constitutes a denial of the “absolute power” that corrupts “absolutely”, in Lord Acton’s famous maxim.⁴²

However, a self-sustaining circle can be constructed based on integrity or on deceit. Every post-holder is potentially at risk--be it the head of government, a judge, an auditor or a junior official--although some are obviously more vulnerable than others, based on the value of the decisions they make and the processes they control. The challenge is to construct a transparent and accountable system, which has two primary objectives: the first is to prevent fraud from taking place, and the second to make the principal players believe that there is a realistic chance of fraud being detected.

Monitoring corruption cannot be left only to public prosecutors and to the forces of law and order. Action cannot depend solely on detection and criminal prosecution. Rather, action must include a combination of interlocking arrangements. In part, this approach includes improving the transparency of relationships, and to the extent possible, preventing the development of relationships which can lead to corruption. It includes transparency in the financial affairs of key players and the prospect of reviews being conducted by independent institutions which are likely to be outside any particular corruption network.

41 TI Source Book (2000).

42 “Power tends to corrupt and absolute power corrupts absolutely.” The observation was made in a letter from Lord Acton to Mandell Creighton, April 1887.

Although corruption can never be completely monitored, it can be controlled through a combination of ethical codes, decisive legal prosecutions against offenders, organizational change, and institutional reform.

5.3. National Integrity System

It is generally accepted today that modern government requires accountability. Without it, no system can function in a way which promotes the public interest rather than the private interests of those in control.

Basically, the task in developing countries and countries in transition, is to move away from a system which is essentially top down: one in which an autocratic ruling elite gives orders which are followed, to a greater or lesser degree, by those down the line. The approach is to move instead to a system of “horizontal accountability”; one in which power is dispersed, where none has a monopoly, and where each is separately accountable.

In such a system, there must be a free press. But the press must respect certain limits imposed by law – for example, avoiding defamatory attacks on individuals. The free press must be accountable, not only perhaps to a Press Council (which may or may not be a statutory body) but also, and ultimately, to the courts. For their part, the courts are no longer servants of the ruling elite, but rather act with independence and enforce the Rule of Law and the rule under the law. Yet such independence is not absolute – Judges are answerable for their individual decisions through a system of appeals, and each Judge is accountable for his or her integrity and competence to another body, be it a parliament or a judicial services commission. That body, in turn, is accountable else where, and ultimately to the people through the ballot box. The strands of accountability link the various elements, or “pillars”, and in such linking they brace and strengthen each other.

Under a system of “horizontal accountability”, a “virtuous circle” is perfected: one in which each actor is both a watcher and is watched, is both a monitor and is monitored. A circle avoids, and at the same time answers the age-old question: “Who shall guard the guards?”

But creating a “virtuous circle” is easier said than done. Age-old traditions and trainings have to be turned on their heads, and the process is obviously one which is likely to take a generation,

if not generations, to perfect. Even then, ultimate perfection will always be elusive.

While the contemporary wave of democracy has held much promise, in practice, democratic gains are being threatened and undermined by corruption, abuse of power and nepotism. Simply to democratize is to introduce a different form of vertical accountability – downwards, rather than upwards. But the need to tear fashion instrumentalities of governance runs very much deeper than simply moving from a totalitarian system to one in which the people periodically have a voice.

The shift is thus from a system of vertical responsibility – be it the tyrant or the leadership of the one party state – to one of horizontal accountability, whereby a system of agencies of restraint and watchdogs are designed to check abuses of power by other agencies and branches of government. These include: the courts, independent electoral tribunals, auditors-general, central banks, professional organizations, Parliaments (and Public Accounts Committees), and a free and independent media.

However, the passage of transition is slow and painful. In some societies it has been a question of rehabilitating what was once there before; in others, notably in Eastern Europe, it can be a question of constructing the modern state literally from the ground upwards. There are no institutional memories of times of horizontal accountability, no living memories of how things once were, and could be again.

Such accountability mechanisms, when designed as part of a national effort to reduce corruption, comprise an integrity “system”. This system of checks and balances is designed to achieve accountability between the various arms and agencies of government. The system manages conflicts of interest in the public sector, effectively disperses power and limits situations in which conflicts of interest arise or have a negative impact on the common good. This involves accountability, transparency, prevention and penalty.

An integrity system embodies a comprehensive view of reform, addressing corruption in the public sector through government processes (leadership codes, organizational change, legal reforms, procedural reforms in bureaucracies etc.) and through civil reforms. Even if corruption is endemic, it tends to be the result of systemic failures. The primary emphasis is on reforming and changing systems, rather than on blaming individuals.

The whole edifice of government is sustained and its integrity maintained (or undermined) by a bottom-up process. As is often observed, “the fish may rot from the head”, and corruption may filter down through poor leadership examples and practices but, it is public awareness and, where warranted, public outrage, that is a society’s ultimate defense. Where all else fails, the final sanction is revolution. However, the assumption underlying the approach advanced here is that evolution, not revolution, can be an effective and a preferable route to society participation – through democratic processes and involving the private sector, media, professions as well as NGOs. Thus, reform is initiated and sustained not only by politicians and policy makers, but also by the members of the civil society.

Reform programs, particularly those in developing countries and countries in transition which have been supported by international or donor agencies, have tended to focus on a single area and exclude other areas. These are “single pillar” strategies. Frequently the choice has been made of a “pillar” that is relatively “safe”, at the expense of addressing more difficult and more challenging areas. Certainly, a “National Integrity System” reform program can accommodate a piecemeal approach, but this must be coordinated and within the bounds of a holistic program which embraces each one of the relevant areas.

Underpinning the integrity system approach is the conviction that all of the issues of contemporary concern in the area of governance – capacity development, results orientation, public participation, and the promotion of national integrity – need to be addressed in a holistic fashion. The overall goals should include:

- Public services that are both efficient and effective, and which contribute to sustainable development;
- Government functioning under law, with citizens protected from arbitrariness (including abuses of human rights); and
- Development strategies which yield benefits to the nation as a whole, including its poorest and most vulnerable members, and not just too well-placed elites.

5.4. Building an Integrity System

The establishment and maintenance of integrity in the public life include a number of elements. These cover: legislation, regulations and codes of conduct; a society whose religious, political and

social values expect honesty from politicians and officials; professionalism among officials; a sense of positive elitism and integrity among senior civil servants; and a political leadership which takes both public and private morality seriously.

Together, these various elements establish and foster a tradition of ethical public life and an ethical environment in which politicians and officials are generally assumed to be honest. Within such an environment it is also assumed that the laws and means of detection and investigation are sufficient to make it risky and costly to break the rules, accept bribes or become involved in fraud.⁴³ However, it is vital to bear in mind several crucial points--

- The ethical environment must be owned, enforced, adapted and applied equally and consistently across the public sector;
- The ethical environment must be self-sustaining and integrated; if the ethical environment has potential weak points, new means of accountability must be introduced, or existing means upgraded and reinforced to counter these weaknesses;
- The ethical environment requires political commitment and leadership to inspire confidence and trust, but it should not always be the politicians who have the sole responsibility to own and enforce it; and,
- The ethical environment depends on micro-level changes (the details of reform) in order to deal with the consequences of failure. Failure can result in: weak guidance on standards of conduct or poor compliance with procedures; management indifference or ignorance; aggregated decision-making powers; inadequate financial and management information systems; lax working practices; poor staff relations; sub-organizational autonomy; poor recruitment and training policies; and little or no attempt to control, monitor or police the increasing contact with private sector values, practices, personnel and procedures.⁴⁴

43 See Alan Doig, "Honesty in Politics and Public Spending: The Ethical Environment," Paper Presented to the Second Seminar on the Status and Prevention of Corruption, Santiago, Chile, (4-6 July 1994) at 4.

44 According to J. Patrick Dobel from John Hopkins University there are seven principles as focal commitments for public Integrity: 1. Be truthfully accountable to relevant authorities and publics. 2. Address the public values of the political regime. 3. Build Institutions and procedures to achieve goals 4. Ensure fair and adequate participation of the relevant stakeholders. 5. Demand

If the leaders of reform are not seen as having integrity themselves, the entire anti-corruption effort can derail and the public commitment to reform falters. But integrity is not an end in itself; rather, it is a path leading to the delivery to the public of the services they are entitled to receive from those who govern them.⁴⁵

The Nolan Committee on Standards in Public Life (U.K. 1995) has suggested that there are seven relevant principles applying to all aspects of public life:⁴⁶

Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their families, or their friends.

Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.

Objectivity: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices based on merit.

Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership: Holders of public office should promote and support these principles by leadership and example.

competent performance effectiveness in the execution of policy. 6. Work for efficiency in the operation of government. 7. Connect policy and program with the self Interest of the public and stakeholders in such a way that the purposes are not subverted. For detailed information see, J. Patrick Dobel, *Public Integrity*, (1999) at 21.

45 *Ibid.*

46 See, <http://www.archive.official-documents.co.uk/document/parliament/nolan/nolan.htm>.

5.5. Pillars of National Integrity System

The ultimate goal of establishing a National Integrity System is to make corruption a “high risk” and “low return” undertaking. As such, the system is designed to prevent corruption from occurring in the first place, rather than relying on penalties after the event.

While there are variations around the world, the most usual “integrity pillars” of a society which is seeking to govern itself in an accountable fashion include:

- Executive;
- Parliament;
- Judiciary;
- Civil service;
- “Watchdog” agencies (Public Accounts Committee, Auditor-General, Ombudsman, Police, Anti-Corruption Agency, etc.)
- Civil society (including the professions and the private sector);
- Mass media;
- International agencies.

6. Conclusion

As the key representative institution in a democracy, national legislatures must be included in any anti-corruption effort. Indeed, the legislature constitutes a critical “pillar” in the overall fight against both grand and petty corruption, primarily through its consideration and adoption of anti-corruption laws, as well as the oversight of government agencies.⁴⁷ Legislators can raise public awareness about the high costs of corruption and the ways to fight it. In order to more effectively combat the corruption problem, however, legislators must first clean up their own houses.⁴⁸ Toward this end, they

47 See, Petter Langseth and Rick Stapenhurst, *National Integrity Systems: Country Studies*, (Washington, DC: Economic Development Institute, World Bank, 1997) at. 5. According to the authors, the seven other pillars of “worldwide policy responses to corruption” include: political will, administrative reform, the judiciary, “watchdog” agencies, public awareness, the media and the private sector. *Ibid.*

48 The Parliamentary Centre concurs: “Parliamentarians must lead by example, ensuring their own personal integrity and that of their parliament, so that it will be a credible actor in governance and in efforts to control corruption.” See, *Controlling Corruption: A Parliamentarian’s Handbook* (Ottawa, Canada: The Parliamentary Centre, 1998) at. 5.

must establish standards of official conduct for themselves — *i.e.*, rules that outline and encourage proper conduct. The standards embodied in the rules reflect a consensus of society's expectations. Without them, legislators have nothing to guide their behavior and the public has no way of gauging their representatives' conduct.

All too often however, the unethical behavior of a few members can cast a pall on the entire institution — it is perceived as part of the problem rather than the solution. While legislative misconduct often occurs in transition or developing countries, no country is immune from this issue. For example, ethics scandals in both Ireland and the United Kingdom led to massive reforms of parliamentary ethics rules. In addition, the United States Congress has endured its share of scandals, despite more than 200 years of democratic tradition and the development of a complex set of ethics rules designed to deter improper conduct. In Australia, parliamentary ethics scandals in 1997 and 1998 have led to record low trust of public officials.⁴⁹ Indeed, 56 percent of respondents in a 1995 poll indicated that they had lost faith in the Australian political system.⁵⁰ Such crises of confidence often lead to the reform of ethics rules, in both traditional as well as emerging democracies. As stated before, the legislature constitutes a critical pillar in the fight against corruption and the other unethical behaviors.

49 According to a May 1998 poll: Australians view the honesty and ethics of both State and Federal Parliament as only slightly better than those of car salesmen. . . Only 7 percent of Australians believe that Members of both State and Federal Parliament are of high or very high standards of honesty and ethics... [Ratings of] State and Federal Members of Parliament hit all time lows. Source: "Politicians Fall to Low Levels of Honesty and Ethics— Only Car Salesmen Rate Lower," The Roy Morgan Research Center Pty Ltd, Finding 3088, May 21, 1998. Available at <http://www.roymorgan.com.au/polls/1998/3088/>.

50 Source: The Bulletin, October 14, 1997. Quoted in Dr. Andrew Brien, "A Code of Conduct for Parliamentarians?" Report Prepared for the Parliament of Australia, (September 14, 1998) at 5. See, <http://www.aph.gov.au/llibrary/pubs/rp/1998-99/99rp02.htm>.

