

Corruption and Good Governance in Asia

Edited by
Nicholas Tarling

Routledge studies in the modern history of Asia

Corruption and Good Governance in Asia

In recent years much has been said about governance and corruption in Asia, both before and after the 1997 crisis. This edited volume analyses the causes of corruption in East and Southeast Asia and considers the means of limiting and, wherever possible, eliminating the problem through better governance.

Taking a country-by-country approach, the book explores the diversity in the quality of governance and patterns of corruption among countries and regions. Insightful analysis of these differences and similarities is used to argue that political will, appropriate structures and legislation, and political transparency are required if corruption is to be stopped. All these are needed along with a strategy relevant to the circumstances of the particular country concerned.

This volume outlines the key principles of good governance and the policies and practices essential for their application. *Corruption and Good Governance in Asia* represents an extremely valuable contribution to our understanding of corruption and how to tackle the problem.

Nicholas Tarling is a Fellow of the New Zealand Asia Institute, The University of Auckland, New Zealand.

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Introduction

Nicholas Tarling

Governance and corruption in Asia have been the subject of much recent writing, both before and after the crisis of 1997. The conference at the New Zealand Asia Institute, at which most of the chapters in this book were originally given as papers, sought to contribute to the debate in a number of ways.

First, it was felt that recent writing, though extensive, had in some ways been too narrow. Much of it was concerned with the misuse of foreign aid or the misapplication of foreign investment, and insofar as it was a question of reform or remedy it tended to focus on an external accountability. That is, of course, to be expected in an age of 'globalisation', and it is not irrelevant. But the conference and this book are based on the assumption that corruption takes different forms at different times, and that even a more limited and focused view will benefit from recognising that.

Second, it was also recognised that corruption takes different forms in different places at the same time. The conference was therefore based on a country-by-country approach rather than on a thematic one. The authors were invited to focus on corruption, in particular countries, in the hope – justified, the conveners concluded – that such an approach would freshen and broaden discussion of the problem. The risk was, of course, that – even more, perhaps, than in most conferences, and in most books based on conference papers – the papers would vary in approach, and theoretical coherence would be at a discount.

Third, the conference was also designed to contribute to policy-making. At first sight, its broad approach might seem to militate against that. There are, however, two points to be made on the other side. First, any attempt to tackle corruption will surely be more effective if placed in a larger context. Second, the conference found that there were, after all, a number of issues that came up in almost every case, understanding which would help in devising strategies for dealing with the particular forms that corruption assumed.

The book groups the chapters by region, East Asia and Southeast Asia, as a means of drawing out both similarities and differences. In an introduction to each part, the editor has sought also to point to the issues that the

regions and the countries have in common, dealing with which may form the groundwork for general and particular strategies. This Introduction outlines some of the discussion at the conference, and thus provides an additional context for the volume.

Like rust, as Robin Dare, the New Zealand Comptroller of Customs, put it, corruption never sleeps. The topic, too, is a broad one. However, when remedies or restraints are considered, it is desirable to choose a particular target. In an era marked first by 'development' and then by 'globalisation', it is not surprising that the recent and contemporary focus has been on the relation of 'public' and 'private', in particular on the usage that defines corruption as the abuse of trust, or more particularly the misuse of public power for private gain.

In some societies, if not all, such relationships have been customary, and seen, at least if contained within limits, as acceptable. They may also be instrumental or functional, ways of making new systems work. The two concepts are not necessarily distinct. What became customary was once new. What is new may adopt or adapt, build in or distort what has become customary.

Periods of systematic change may indeed offer particular opportunity. Will the restraints that accompanied custom survive? Are new systems being introduced without the promotion or acceptance of new conventions? Is 'corruption' required to make them work? Does it emerge in the process of transition? Does it become entrenched and stand in the way of further transition?

These are considerations that relate to transitions, to changes over time. Is corruption intrinsically related to any form of government more than another? The introduction of democratic systems seems to have enhanced corruption, but that may be a matter both of focus and of perception. Authoritarian and bureaucratic systems may locate corruption elsewhere, and it may be less obvious, even if widely thought to exist.

Even if democracy provides no less fertile soil for corruption, it may be better at checking its growth. That is an argument for democracy, aside from its essential merits, but the validity of the argument will depend on the extent to which democracy itself has taken root and the form it has assumed. The argument is somewhat circular. Success in dealing with corruption will help to establish democracy. It will have to be demonstrable and it will have to be worked for.

Democratic systems emerged, we should recall, because governments needed to draw on the wealth and support of their peoples: they needed assent for taxation and conscription; and they had to show how the money – and the lives – were spent. Governments in newer states, in Southeast Asia, for example, have often been able to avoid that course: not threatened by their neighbours, and able to secure aid and FDI on an unprecedented scale. Democracy, within the context of a civil society, has to be argued from different premises, so that it becomes more than merely a

ritual through which a ruling regime goes through in order to secure the legitimacy that it, perhaps only if, can provide.

The means of checking corruption may be available to governments whatever form they take, and they may even be part of or represented by a narrow, 'non-political', or managerial concept of 'governance'. But a survey of them may suggest their particular affinity with a working democracy. One means – necessary, though insufficient in itself – is 'transparency'. Only that can provide the basis for accountability on the one hand and confidence on the other. It is necessary not only for international investors and aid organisations. It is even more necessary at home, providing the material for discussion, for appraisal, and for criticism. Without it, it is impossible to determine priorities or to use resources in the most efficient and effectual manner. That is always important, in good times as well as bad, though it is likely to be more contentious in bad.

Many governments – often in kneejerk reactions to popular or media concern – resort readily to making laws and regulations, and New Zealand, which has, at least in the past, had a reputation as the fastest law-maker in the West – is among them. Laws do not, however, suffice on their own. For them to work against corruption, as against other social evils, they need the support of institutions, non-governmental as well as governmental, and of the media. Even if some of those may themselves be corrupt or become corrupt, it is better for them to exist in that form than not at all. They need, too, the support of opinion. People have not only to believe that it is a bad thing, but also to act on that belief.

Education must thus play a role, too. It must, however, not only be education delivered as part of a school curriculum. It needs also to be education by example. That must be given by governments themselves, and by politicians and officials. Particularly when privatisation is leaving more to business and to public/private arrangements, the obligation extends to the business world, too. If the focus is on the relationship between the public and private, it is not only the public sphere that must avoid corruption. Business itself needs a code of morality which it upholds and is seen to uphold, and it should extend not only to its relationship with government.

Nor, of course, is business in a globalising world merely a domestic matter. It is necessary for international business to work against corruption rather than accept it, only to protest and call on government when things go wrong or circumstances change. More broadly, it has to demonstrate that the sort of probity it wants to find in its customers, contractors and debtors also demonstrably marks its own practices. Other kinds of international intervention may otherwise be undermined. These include the work of a range of agencies and NGOs dedicated to improving 'governance' and 'fighting' corruption. There is indeed always a risk in a world of independent nations that international intervention will be resented as being too like the influence of the colonialists or imperialists of the past and their work thus is rendered ineffective or counter-productive. They

have to find ways of working with elements in each nation without arousing a 'nationalist' opposition or enabling a government to arouse it.

Accepting such a world, accepting, too, perhaps, that these are the possible constraints on corruption, and that they may work best if combined with a working democracy, we may still consider whether there are other conditions which discourage corruption and whether they can be established. Size seems to be a factor. It emerges, for example, when considering the relationship of public and private, on which we are focusing. If government becomes 'small' – less interventionist than in the post-Depression and post-war period or in the early years of independent states – that may provide less opportunity for corruption, at least in public/private transactions, though the process of deregulation and privatisation may provide a bonanza. It will still be necessary to avoid complacency, to guard the guardians. How good is the rust-proofing?

The size of states themselves – as distinct from governments – may also be a factor. Both history and contemporary experience suggest that a small state may be able to do a more thorough job than a large one. But it may also be unduly dominant. The conference was offered a striking paper on Singapore, inviting a reappraisal of accepted views.

The world of nation-states is a world of equal sovereignties, but very unequal sizes. Breaking up the large state is not a practical prospect. But the advantages of smallness might be achieved by a greater measure of decentralisation, and with that it is possible to couple greater participation and more democracy. So far, however, the record of decentralisation has not been persuasive. It is not sufficient in itself, even if loyally carried out.

Corruption has to be checked, and if possible eliminated, not only for the convenience of foreign investors or at the behest of foreigners, but in order to avoid waste and misdirection of resources, to the disadvantage of the mass of the people.

The essentials appear to include: (1) political will, whether sustained by democracy or not; (2) appropriate structures and legislation; (3) provision for their application at all levels; and (4) transparency. These must be combined with what one of our contributors terms in Howard Dick's phrase a 'search strategy' that will ensure their relevance to the circumstances of the particular country concerned.

The conference was convened in New Zealand. Distance does not necessarily lend enchantment or disenchantment to the view. No one thinks that New Zealand – which was quick to adopt many of the changes of the 1980s, predicated on the market, privatisation and deregulation – has it all sewn up. Rather, it was thought that New Zealand could share its experience with other states, both learning from them, and offering a perspective in some ways distinct from that taken on the shores of the Atlantic or the other side of the Pacific.

Keynote speech: corruption

Nicholas Tarling

‘Corruption’ is nothing new, but it attracted public and academic attention particularly after the Asian financial crisis of 1997. Was that because it had increased? Or because it had become more noticeable? Or because it had become less acceptable? If the last was the case, then we might ask: to whom had it become less acceptable? – to a local, a national, or an international community? These remarks seek to contribute to the debate by asking such questions and by offering an historical context and a geographical context not confined to Asia.

To offer or quote definitions may seem a trite way to begin. But the process can illustrate the way in which a word changes its meaning or, perhaps more frequently, acquires in different contexts or periods new meanings or overtones that do not entirely displace the earlier meaning. In the present case varying definitions suggest an element of commonality which turns out to be useful. Lying behind the word is the concept of an ideal from which we have fallen away, a concept of propriety which impropriety counters.

The definitions of the noun ‘corruption’ which the *Oxford English Dictionary* offers include the perversion of integrity by bribery; and the perversion of anything from an original state of purity. It quotes James Harrington: ‘The corruption ... of Monarchy is called Tyranny’; and it quotes Dean Swift, referring to ‘the continual corruption of our English tongue’. Other nouns I enjoyed finding included ‘corruptionist’ – a supporter or practiser of corruption, especially in public affairs – which I think there might be a case for bringing back into regular use – and ‘corruptress’ – which I doubt if I would dare to advocate using.

Verbs and adjectives carry a similar connotation. To ‘corrupt’ is to pervert, defile, make venal, bribe; to change from a naturally sound condition. Something corrupted is something adulterated, rotten, putrid, something debased, like money or language (Theobald amends corrupt texts), or someone’s character. Deciphering coded telegrams, the British Foreign Office would sometimes be stymied by ‘corrupt’ signals.

These meanings all tend to imply decadence from a system or practice that over time becomes imperfect, or perhaps an ideal which has – our

nature being what it is – never yet been realised. Yet at the same time – our nature, again, being what it is – we are inclined to recognise that the ideal must remain just that, and that no system or practice can do without a measure of corruption. No machine indeed can do without grease.

The past two generations of research on public and private bureaucracies have explored in great detail the way in which they really work, and pointed to the importance of informal relations and unofficial routines in overcoming ‘red tape’, or the obstructive consequences of formal rules, which are required to deal with a very diverse and constantly evolving reality.¹

The question may indeed usefully be seen as one of ‘measure’. Is anything that falls short of the ideal to be termed ‘corruption’? Is ‘minor’ corruption to be distinguished from ‘grand’ corruption, as it is by Transparency International? Logically there is no distinction; in practice perhaps there is. Scale seems significant. Giving the customs officer at an airport 100 cigarettes so that he can confiscate them but also wave you through may be corrupt on both sides: both are corruptionists, whether or not they are corruptors or corruptresses. Giving a putative client a nice lunch might be seen as corrupt, too, leaving him or her with a roseate view of the prospective contract. Taking someone to the opera after the contract is initialled – not necessarily to see Johann Strauss’s *Indigo and the Forty Thieves*, which includes a character called Don Corruptio – might fall into the same category. Surely, however, these should be regarded as relatively minor kinds of corruption (at least until you ascertain the prices of tickets at Covent Garden), even perhaps as necessary means of conducting business? Then, again, there are ‘goodwill’ gifts, like a bottle of alcohol at Christmas, ‘trivial’ matters, ‘normal practice’, qualifying the recipient in US police terms as a ‘grass-eater’ rather than a ‘meat-eater’.²

Such practices are to be distinguished from grander cases, in which, for example, a government minister or an intermediary may expect and be given 10 per cent of the value of a contract, or a high functionary reward loyalty not with air-points but with a monopoly. ‘Unlike imprecise forms of low-level corruption, . . . it cannot be claimed that presidential graft is good for society because it “softens the rigidities of the bureaucracy” for poor citizens, or represents socially desirable “speed money” for circumventing red tape.’³ Both minor and grander forms of corruption may indeed be forms of corruption. Do we nevertheless decide that we can put up with the former, or even accept that it is desirable, if not necessary? And if so, on what grounds? If once corruption is accepted, where can a line be drawn between forms that we would rule out or proceed against and forms that we would not rule out or proceed against? On what should anti-corruption focus?

It is a question not only of our contemporary view, but – as you would

expect an historian to suggest – of views that are or have been held in particular societies and at particular times and in particular circumstances. Meanings may change over time. So, too, may be the extent to which what we call ‘corruption’ has been deemed inevitable or acceptable, the ‘measure’ that may have been or may be applied. We may well conceive of ‘acceptance levels’, varying from place to place and from time to time. Societies may be agreed that a level of ‘corruption’ – of making ‘gifts’, of fulfilling mutual obligations between patron and client, of paying ‘speed money’ – is acceptable, even desirable. They are likely, however, also to have a sense of what is customary, and thus of what is excessive, outside the restraints of custom if not of law. Is custom being challenged by greed on the part of donors or recipients?

The *Encyclopaedia of the Social Sciences of 1931* proposed that the judgment as to when public power had been ‘misused’ for private profit should be left to ‘the best opinion and political morality of the time’.⁴ But times change. New opportunities, created by economic, social or political change, might encourage the breaching of customary limits. And, on the other hand, the attitude to ‘acceptability’ may also change: customary norms can be challenged from this direction, too: critics might come to consider the ‘accepted levels’ too high. Max Weber was keen to establish, as Michael Clarke points out, that the ‘disinterested formal approach to decision making was developed on a hitherto unheard of scale as one of the foundations of modern bourgeois capitalism and is not necessarily more “natural” or “just” than the traditional and particularistic mode of decision making’.⁵

The area of human activity in which ‘corruption’ occurs, or on which most emphasis is placed, also varies from time to time and place to place. In the broader sense the word can apply across a range of areas. Nowadays it is occasionally applied to actions within the ‘private sector’, though generally other words are used, fraud, corporate malpractice, insider trading, and so forth, and we concentrate on the relationship between the public and the private. It is on that indeed that most of the modern usage is focused, and the definitions of corruption in common use reflect that. ‘Its defining characteristics’, an OECD publication tells us, ‘are the misuse of public office roles or resources for private benefit, material or otherwise.’⁶ Clarke suggests ‘the abuse of bureaucratic office for personal or factional gain’.⁷ Pao-Min Chang describes it as ‘a subtle, discrete and illegal way for officials to secure extra income and enrich themselves’.⁸

That emphasis, peculiarly though not exclusively ours, is somewhat problematical. What are we to say of societies that did or do not distinguish so firmly between the ‘public’ and the ‘private’? Are they to be seen as never corrupt or always corrupt? ‘Because there was no fundamental difference between public and private funds [in seventeenth- and eighteenth-century Mataram], we cannot speak of political corruption’, Luc Nagtegaal tells us.⁹ And are we assuming that in our own society

corruption is confined to the public sector and its relationships with the private and does not by definition extend to the private? That is certainly an argument adduced by the devotees of privatisation, but it is not entirely convincing. To some extent indeed we have been confusing public and private, by making over monopolies to private interests, by demanding that public enterprises be run like businesses or as businesses, by demanding profits from state enterprises.

In imperial Britain old colonial hands would retire to business directorships, where their expertise was valued. Civil servants were, however, discouraged from taking jobs with former clients before two years had elapsed. Are such limits on what the French call *'pantouflage'* still in force or enforceable? Where do we place the new set of intermediaries who have emerged, the *'consultants'*? What limits are set on them? Should a country limit its use of retired international servants or former ministers?

When King James I was short of revenue, he created and sold monopolies, and he invented the baronetcy and sold that dignity. The administration of the French monarchy, particularly after Francis I's invasion of Italy, was marked by the venality of offices: dignities, honours and offices were sold to fund the monarchy and its foreign ventures. Those who practised the trade were, Jean Bodin thought, *'the most dangerous and pernicious plague in a Commonwealth'*, for

they sell the most sacred thing in the world, which is Justice, they sell the Commonweale, they sell the blood of the subjects, they sell the laws, and taking away all the rewards of honour, virtue, learning, piety, and religion, they open the gates to thefts, corruption, covetousness, injustice, arrogance, impulse, and to be short, all vice and villainy.¹⁰

Yet the practice persisted: *'offices yield the King a sure revenue, through the annual duties which their holders are obliged to pay him'*.¹¹ Indeed, despite Bodin, the system seemed acceptable. *'This abuse'*, as Voltaire put it, *'appeared to everyone not only irreformable, but useful; men were so accustomed to the shame, that they did not feel it.'*¹² It took a revolution to rid France of this excess: *'never again did the state openly sell the right to exercise a portion of public authority'*.¹³

Fortunes were made, even less *'legitimately'*, at times of crisis. War profiteers were nothing new in 1914–18: contracting to supply the army – and deprive the soldiers – was a not uncommon means of creating a fortune; it enabled the Duke of Chandos to commission Handel. Fortunes could, of course, be made in time of peace as well, particularly in times of dramatic change. The expansion of London, and of residential own-your-own housing after the First World War, was a source of fortunes, not least, perhaps, for those who had the *'good fortune'* to buy land along the

planned route of the Piccadilly and Metropolitan lines. And it is not only a European affair. Was I surprised when living in Brisbane I found that the Lord Mayor owned a lot of trans-river land that would be 'opened up' when a new bridge was constructed? The transformation of the USA in the late nineteenth and early twentieth centuries provided vast opportunities. The Muckrakers – as Theodore Roosevelt dismissively called those we would call 'investigative journalists', Ida Tarbell, Lincoln Steffens, the contributors to McClure's and Cosmopolitan – were to point it out – so were novelists like Upton Sinclair – and the Progressives to seek reform. 'With the great Government went many deep secret things which we too long delayed to look into and scrutinise with candid, fearless eyes', Woodrow Wilson declared at his inauguration in 1913. 'The great Government we loved has too often been made use of for private and selfish purposes, and those who had used it had forgotten the people.'¹⁴

Excess provokes criticism, and different ideas of what is proper are favoured. In some cases, indeed, those may evoke the original sense of 'corruption'. Criticising Sir Robert Walpole, Henry Bolingbroke conceived of a Patriot King who would restore a constitution that had been corrupted.

As soon as corruption ceases to be an expedient of government, and it will cease as soon as a PATRIOT KING is raised to the throne, the panacea is applied; the spirit of the constitution revives of course: and, as fast as it revives, the orders and forms of the constitution are restored to their primitive integrity.

The works of man, unlike God's, are prone to decline. 'All that can be done ... to prolong the duration of a good government, is to draw it back, on every favourable occasion, to the first good principles on which it was founded.'¹⁵ Like many golden ages, Bolingbroke's had never existed. But it was a way of asserting that the current regime was 'excessive' and that it breached the bounds of acceptance. That, of course, was an inviting role for an 'opposition', and it has remained so. Indeed, it has tended in recent times – in the absence of any big ideological issues – to become the main role of an opposition.

Are there political systems that are more or less susceptible to corruption than others? The systems that provided the above examples are diverse. A 'democracy' may be prone to 'corruption', since, particularly if strong ideological differentiation is absent, a government has to win support by other means, such as the 'trasformismo' by which Depretis retained power in the Italy of the 1880s. Guy de Maupassant offers us in his novel *Bel-Ami* a terrifying account of the Third Republic and the ways in which a man could make his way through contacts with press and politicians.

But is democracy more prone to 'corruption' than other forms of

government? That seems doubtful. First, it may make 'corruption' more obvious: an opposition is there to expose it, even if, when it attains power, it may itself indulge in it. Second, it may check it even so. Accompanying the democratic process, after all, are a free press and other watchdog features of civil society. An autocracy or an unchecked bureaucracy is surely likely to be worse. Even if it seeks to check corruption, it is likely to go for the small men, the fall guys.

Too few of those who study modern Asia study Latin America as well. Should we have been surprised by the kleptomania of Marcos or Suharto? When Trujillo, the president of the Dominican Republic (1930–61) took over the country's only shoe factory, he issued a decree forbidding anyone in the capital going barefoot. In the Cuba of President Zayas (1921–25) his wife always drew first prize in the national lottery and his daughter second. President Gomez of Venezuela (1910–35) made himself the nation's largest landholder. The Somoza business interests in Nicaragua included the national airline and the only shipping line. The president was also the local agent for Mercedes Benz.¹⁶

Examples of the historical experience of Asian countries support the approach advanced, with non-Asian examples, in the foregoing paragraphs: that, whatever the ideal – sometimes seen in terms of a glorious past rather than a glorious future – corruption has been unavoidable and indeed acceptable; that there have been customary as well as legal measures of acceptability, backed up in some societies by the existence of a critical opposition; and that they are likely to be challenged when changing conditions offer expanded opportunities, or alternatively they have themselves come to be seen as inadequate or inappropriate.

In imperial China, as Chang puts it, '[t]he sheer expanse of the empire, the limited resources available, the many layers of bureaucracy, and the poor system of communication and control, all militated against the policy of attractive monetary reward for public service'. It was assumed that government officials,

when sufficiently distanced from the watchful eyes of the emperor, would . . . multiply their modest incomes by exploring extra sources of revenue. All law enforcement officers, in particular, occupied strategic positions to extort or take bribes regardless of their ranks. In other words corruption was considered as a necessary evil in the Chinese bureaucratic tradition. It was even viewed by the common people as a socially acceptable practice as long as it was kept within reasonable limits.¹⁷

The secularisation of Chinese society, Chang argues, left the empire 'without a powerful and stable source of public morality and law'.¹⁸ There were, however, other means by which the empire coped with 'the perennial problems of bureaucratic corruption and social crimes, and was able

to keep them at least within manageable levels under normal conditions'.¹⁹ The state, for example, extolled the virtue of agriculture, while 'commercial activities were almost invariably and openly discredited and even suppressed for their opportunistic and exploitative nature'.²⁰ The imperial civil service and Confucian ethics 'restored a good measure of ranking and discipline among Chinese'. '[M]eticulous rules of rotation and avoidance were routinely practiced among ranking officials to prevent them from indulging themselves in blatant nepotism or establishing powerful home bases.'²¹

Imperial China was unique among polities for the size of its population. It sustained its political unity without a vast bureaucracy in part by avoiding change, and in part by ideological inculcation. There could hardly be a greater contrast than that with the emergent European states with which China was to come into direct contact from the sixteenth century onwards or with the nineteenth-century states aspiring to restructure themselves according to the prescriptions of the industrial revolution in Britain and the principles of the French Revolution. Whether by peaceful or warlike contact with them, China's traditional approach was undermined. The opportunities for corruption increased and the checks on it lost their force. Outsiders both benefited from it and criticised it.

In Tokugawa Japan, Richard Mitchell argues, 'bribery appears to have been ubiquitous', despite 'antibribery laws, moral restraints, and harsh punishments'. He suggests two particular reasons for it: 'low salaries for officials and the long-standing custom of giving gifts'.²² Post-Tokugawa Japan represents not a simple modernisation but a combination of modernisation with a revamped traditionalism. Many features of Tokugawa society reappeared in a new form. Gift-giving was of course one of them.

In addition, it was necessary to make the new institutions with which the Meiji oligarchy endowed Japan work. Corruption, it has been suggested, was part of the process of modernisation and industrialisation. That is a view that has been challenged in the case of the Latin American states, and it seems better to see it in terms of expanded opportunity – and, perhaps, diminished level of acceptance – in societies that are undergoing major change, whether or not that can properly be described as modernisation. Undoubtedly Japan underwent – on the instigation of the oligarchs – a major programme of industrialisation, and the links then established between government and industry remained. But it also undertook wholesale institutional changes.

Included in those – after some delay – was the introduction of an elected Diet. In the first election, in 1889, bribery was widespread, though perhaps not decisive. The ruling elite – anxious to control this novel institution – itself engaged in bribery. '[T]he time for next spring's elections is approaching', Nakai Hiroshi wrote to Inoue Kaoru, the Agriculture and Commerce Minister,

political parties will have to plan to exert all their efforts including paying sums of money, large and small, to attract businessmen . . . and to expand their party strength. . . . For the future we deeply desire to work out a plan whereby distinguished people should be sent to the Diet. Without a certain amount of money this is impossible, but if evidence of this is revealed it may on the contrary create a hostile reaction, in which case the scheme would lose its effectiveness. Therefore our present duty is to keep the details strictly secret.²³

By the 1920s the *genro* had died out. That was the decade of Taisho democracy, of manhood suffrage, of party rule. It was also a decade of increased corruption, and of increased perception of corruption. 'You know the world of politics is like a town where frauds, thieves and pick-pockets gather', Nagai Ryutaro, a member of the Kenseikai Party told his wife and children. 'That's where your father works.'²⁴ A decade, too, of 'economic storms', it was a decade of insecurity in industry and agriculture. The parties had to find new sources of support in business; or, if in opposition, in attacking the corruption that ensued.

Not that the right-wing critics of democracy were pillars of morality. In the early 1930s Kita Ikki, a rightist who had developed a radical plan for reconstructing Japan, accepted bribes from Mitsui, one of the *zaibatsu* which were among his alleged targets. Nissan, one of the new *zaibatsu*, also paid bribes to Kita Ikki and rightist army officers. Ishihara Koichiro, head of Ishihara Industries, gave 11,500 yen to Kurihara Yasuhide, one of the leaders of the mutiny of February 1936.²⁵

In the 1960s the transformation of Japan after the Meiji restoration was sometimes seen as a model for other Asian economies that might, it was hoped, also 'take off'. Not much attention was given to other aspects of the transformation, its relationship with aggressive foreign policies, or, indeed, its relationship with domestic institutions, traditional and modern. But its experience suggests that 'transplanted' institutions, if made to work, will work in particular ways, adopting and adapting, perhaps, older patterns of obligation and clientelism, displacing customary limits on bribery and corruption. The Philippines in the inter-war period offers another example. The patron-client relationship emerged on a national scale. The first president – the brilliant Quezon – was also the most powerful of patrons, effectively creating a one-party system. 'Our President has more power than Mussolini', said General Santos proudly.²⁶ These experiences help us to interpret the more recent experience of other Asian states.

The experience of Japan offers another suggestion, too. While 'corruption' is not explained by modernisation or industrialisation, it is true that newly-independent governments in post-war Southeast Asia were under great pressure to industrialise. The Burmese and Indonesian leaders, for example, connected the dependence from which they had emerged with

economic backwardness, and believed that industrialisation would consolidate their independence. The result was that – particularly in Burma – the government took a highly ‘interventionist’ role. Commingling public and private, that created new opportunities for corruption. Anxious to appropriate the benefits of post-colonial rule, the elite tended – again as in Japan – to become factionalised and compete for resources and contracts.

In Singapore Lee Kuan Yew, the first prime minister, had faith in his own generation, less in its successor. The founder leaders had put their lives in jeopardy ‘not to enrich themselves, but to change society’. That group could not be replicated ‘because it was not possible to recreate the conditions that made them different’. Its successors would become ministers only in the context of a range of rewarding career options. ‘Underpaid ministers and officials have ruined many governments in Asia. Adequate remuneration is vital for high standards of probity in political leaders and high officials.’ Singapore would remain

clean and honest only if honest and able men are willing to fight elections and assume office. They must be paid a wage commensurate with what men of their ability and integrity are earning for managing a big corporation or a successful legal or other professional practice.²⁷

The second half of the twentieth century was a period of unprecedented economic expansion, intensified in the later 1970s, 1980s and early 1990s. The expansion of overseas trade, the increase in international aid, and the growth of foreign direct investment offered possibilities for the accumulation of wealth hitherto undreamed of. It transformed the scale of corruption and overthrew the remaining customary restraints upon it. It remains indeed hard to explain the extraordinary greed of leaders like Marcos and Suharto, though comparison with Somoza and Trujillo might help.

In his new biography of Suharto, Robert Elson suggests that, widowed, aged in years and power, he lost his judgement of what was acceptable:

His love of those close to him and his unremitting homeliness led him to protect and enhance the extraordinary business privileges he extended to his children – licences for toll-roads, special import rights for consumer goods, the disastrous Timor car fiasco – notwithstanding the enormous cost to him politically.²⁸

He adds that his long period in power was

probably the greatest enduring period of growth and prosperity in Indonesia’s history, and brought hitherto only imagined levels of prosperity and hope to millions of Indonesians. . . . Whatever the damage caused by corruption, much of that growth was channelled into productive investment, into the elaboration of physical infrastructure and

communications, into education, into family planning, into agricultural and industrial development.²⁹

When the bubble burst in 1997, the Suharto regime was overthrown, and corruption, cronyism and nepotism were demonised in Indonesia and in other Southeast Asian countries as well. Was it 'excess' that produced criticism? The gap between the extraordinary wealth of the Suharto clan and the poverty into which many Indonesians were plunged was indeed deplored. Was it also that the measure of what was acceptable had changed? That may also be the case, but it is necessary to consider whose measure we are considering. Are we talking of a new Indonesian middle class – developed in the decades of prosperity – and now seeking a more rational form of government? Or are we talking of a change in attitude among foreign givers of aid and direct investors? Perhaps that is more significant, though of course it will also influence local opinion.

The case of Thailand – where the crisis began – may be relevant. In his famous analysis of a bureaucratic polity, Fred W. Riggs convinced us in the 1960s that there was no chance of 'take-off': capitalism was parasitic.³⁰ He was wrong, and, in a brilliant piece on capitalism in Thailand, Ruth McVey sought to explain why. The parasitic arrangement turned out to contain possibilities for intra-elite collaboration. Indeed, jockeying for position and factionalism in the military/bureaucratic elite suggested the need to ensure against political misfortune by creating an economic fortune. Wise investment could 'provide a safe landing in case of political adversity'.³¹ It led the way to foreign investment, too, to 'new men', with backing from foreign investors.³² But we might conclude that, in the event, it, too, however, had limits.

We might even add that international capital recognised those limits, and that one element in the post-1997 crisis is its attempt to find a new approach. Included in that is a different view of 'corruption' and of the measure to which it may be acceptable. What we would then be seeing is not the attempt to 'restore' some uncorrupted ideal, but the attempt to introduce a new model for the investment of international capital now that the old one had served its purpose. Politics – concealed rather than eliminated in authoritarian regimes – is now displaced by 'governance' and the 'rule of law': 'a politics of anti-politics', as Kanishka Jayasuriya puts it.³³ An historian of imperialism cannot help being reminded of those who sustained their purpose by finding native regimes overwhelmingly corrupt and determined that they had to be displaced. The methods are different. Is the objective quite so different?

And we should perhaps remember that colonial regimes were themselves not as free from corruption as they liked to think. The 1941 report of the Bribery and Corruption Enquiry of the House of Representatives ascribed corruption in Burma partly to a carry-over of abuses from the old kingdom and partly to the proliferation of new bureaucratic agencies:

In Burmese times, persons who were obliged to seek the services of government officials and clerks paid customary gratuities as a matter of course, objecting only when demands were excessive or when injustice resulted. Petty bribes made legitimate business run more smoothly. . . . Larger bribes which could buy favors at the expense of justice were frowned upon.³⁴

Now top-level officials were 'customarily honest and just', but they were remote, and below the top level was 'a miasma of administrative corruption and chicanery'.³⁵

Nor were the top levels always free of it. Officially, for example, corruption did not exist in the Malayan Civil Service. The Europeans were sent out 'to be honest', as Guy Hutchinson put it. But Hugh Bryson conceded that in the 1920s there was 'considerable corruption . . . or at least nepotism'.³⁶ The post-war British Military Administration was notorious. '[T]he rationing system never operated properly because of poor administration as well as graft and corruption at all levels'.³⁷

These comments are not meant to justify corruption, nor to argue that we should not work against it. They are offered with two purposes. First, they suggest that no group or groups of people have been or are particularly prone to 'corruption'. Second, that in all societies, even now, there are measures of acceptability. In working against corruption, we should bear those two points in mind.

One argument has been the 'waste' involved. Graft, Minxin Pei tells, 'may cost the Chinese economy 4 per cent of GDP each year'.³⁸ Was aid getting into the wrong hands? Is FDI being inefficiently used and so turned off?³⁹ Corruption not only means that money changes hands: perhaps worse, it cuts out debate, displaces choice.⁴⁰ There may still be questions of measure. The 'new' system has to be made to work. We simply cannot accept the extreme Thatcherite view that there is no such thing as society.

Nor can we assume that 'privatisation' is a guarantee against corruption. In the process of privatisation, there are certainly plenty of opportunities, as the experience of the Soviet Union, Vietnam, and the PRC particularly suggest. 'What is going on is grabbing and division of everything that belongs to no one', a Russian policeman told Caroline Humphrey. 'Law will be needed only when the property-owners have sucked it all dry and say "Enough!" then we'll play by the rules'.⁴¹

In post-Mao China officials had 'unprecedented discretion in the use and disposal of state funds and assets', while the regime's determination to end the madness of the Cultural Revolution removed the restraints of 'permanent revolution' and 'dazibao'. 'Rampant corruption arose because the decentralisation of power, a virtue, was accompanied by low levels of accountability and a lack of civic participation'.⁴²

Attempting to square the circle, the Vietnamese Politburo endorsed

'market socialism'. Whatever it has done for the economy, it has discredited the party. 'What remains', Gabriel Kolko wrote in 1997, 'is a party whose authority depends less and less on its moral standing as leader of a triumphant war than on its access to privilege and control of power.'⁴³ An architect of the changes, Nguyen Van Linh, had written in 1993:

Not a small number of people, including leading cadres in charge of high-level leadership and management apparatuses, have taken advantage of loopholes in mechanisms and policies to misappropriate public funds, accept bribes, and seek personal gains in an illegal manner.⁴⁴

In the public service in a deregulated state, corruption may increase, though it is also possible that it is simply more readily detected. 'These days', Mark Thornton has said of the New Zealand experience, 'people's time in the public service is one, two or three years before they move on to something else, so there's not that same extent of loyalty.' Traditionally, he added, 'the public service was associated with exactly that – public service . . . people are more individually oriented these days'. He also suggested that cases of corruption may be more readily exposed. 'It may well have been dealt with informally in the past. You would stay on in the public service but you would never get a promotion. Now there is less of a social bond between management and workers so you are fired, kicked out and prosecuted.'⁴⁵

And what of the 'middle way'? Is the 'partnership' between government and business a matter of 'crony capitalism', as Stephen Franks claimed?⁴⁶ Ross Armstrong, said Dr Cullen, 'stepped over a line which you can't step over in New Zealand, or at the very least was seen to step over a line, but perception is just as important as reality in this respect'.⁴⁷

Recent US experience suggests that business itself is rife with unacceptable practices, even if we tend now not to use the word 'corruption' for them. WorldCom has admitted a \$3.9bn fraud, and prompted Congress to advance a Bill that bans accountants from nine kinds of non-audit work, and sets up a new board to oversee audits of public companies, with the power to investigate and fine auditors.⁴⁸ Where do the 'critics and conscience of society' find themselves? The University of California system lost \$145m on its Enron investments. Harvard made millions from investments in a hedge fund that profited when Enron collapsed.⁴⁹

Finally, there must be givers as well as takers. The USA outlawed the use of bribes to win foreign business. Transparency International has urged that aid donors require bidders for the projects they finance to sign pledges not to offer bribes. 'Companies would have still less incentive to do so if governments of all industrialised countries ensured that corporate bribes were no longer tax-deductible.'⁵⁰ That requires international collaboration. Otherwise – as with the weapons trade – someone will be prepared to do it even if you are not.

Notes

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- 4 Palmier, in Clarke, op. cit., p. 207.
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Part I

East Asia

Introduction

Part I collects the chapters on East Asia. It is a region which shares more than geography: its societies have a long history and a long bureaucratic tradition. Yet in the imperialist period its states, already diverse in size, went through very different experiences, and the same applies in the age of globalisation. The cases of corruption on which the authors choose to focus are thus bound to differ. Even so, it may be possible to identify generalities or particularities that could contribute to programmes designed to improve governance and reduce corruption.

Observers of Japan's post-war economic performance have swung from perhaps undue wonder and admiration, if not emulation, to perhaps undue caution, even despondency. Extensive government intervention, bureaucratisation, and producer-oriented policies promoted rapid development, but that has come to a halt. The 'Japan Inc' system lent itself to corruption in two of the ways discussed by Nicholas Tarling in the Introduction: in the sense that private individuals gained at the public expense, and in the sense that institutions, including parliament itself, were mis-used or emasculated. Attempts to alter the overall system, challenging in themselves, were the more difficult to carry out, given the entrenched interests. Yet in the low-growth phase the public became more sensitive to corruption.

Will that be a means of breaking down the obstacles in face of change? Could Japan's democratic institutions be made a check on corruption? Policies in Japan are made by tight groups, as Dr Sato so clearly sets out in Chapter 1, and that will change only slowly. Citizen groups and lobbies could, however, help to make policy-making more pluralistic. Pressure from outside Japan would be limited in effect: it is a creditor nation.

China's economy is, by contrast, growing rapidly, while its political system is a complete contrast. Corruption arises in particular from rent-seeking during the transition from state-controlled production limited to capitalism. Anti-corruption measures since the early 1990s have had relatively little effect, even though capitalism has been accompanied by capital punishment. The urge to get rich quick is at odds with them. Indeed, the

tolerance of corruption has increased: it is seen as lubrication, a necessary stage in the reform process. Moreover, as Dr Chen argues in Chapter 2, there is a conceptual vacuum at the heart of the proclaimed system of the 'socialist market economy'. The government offers only slogans. To do more might challenge the Communist Party's hold on power. Could its rhetoric be used even so to check corruption? Or does it block action?

Two smaller East Asian states became industrialised economies in the late twentieth century. In both Taiwan and Korea, rapid industrialisation was associated with authoritarian government and institutionally and informally linked with it. Democratising regimes have sought to deal with the corruption involved, but with limited success.

Popular attitudes are obviously relevant. In Taiwan, corruption is so extensive – and so widely practised – that some consider the problem to be cultural rather than societal. The change of government in 2000 had disappointing results, as Professor Liu and his colleague point out in Chapter 3. There are critics, but often they are stronger among those in opposition than those in power. There have been attempts to draw the line between the acceptable and the unacceptable. Laws are not enough: they have to be enforceable and enforced. Democracy is important, but the type of democracy more so. Transparency is essential. But, above all, people must be persuaded that it is not, after all, the thing to do.

In the Republic of Korea the relationships that characterised the authoritarian regimes continue in the more democratic phase. As Kyong-soo Lho and Joseph Cabuay show in Chapter 4, the president's office remains very powerful, the economy is still highly regulated, elections are exceedingly costly and the relevant legislation contains loopholes. Kick-backs are common, even in the office of the president. Again changes of government have proved disappointing, offering, sometimes spectacularly, the mixture as before.

Vietnam is included in this part also, partly on historical and geographical grounds, partly because its more recent experience shares some features with that of its large neighbour. It wants to retain Communist Party dominance, but also engage in capitalist development. Its 'discourse' is contorted and provides no clear behavioural guidance. What Dr Fritzen describes in Chapter 5 echoes some of the comments of Dr Chen.

Under the pressure of the Thai Binh riots, the regime attempted 'grass-roots democratisation'. That did not reduce corruption, however, for there was no coherent reinforcement strategy, local institutions had no incentive, and local people had no training in participation. It did, however, raise expectations: it had a signalling effect. That may be of value in what is bound to be a slow process. Outside donors, however, want quick results.

The final chapter in this part of the book deals with the control of corruption in late colonial Hong Kong. Dr Ying Shang attributes its success to two changes: (1) the creation of a fully legalised regime, characterised by a

separation of powers among the judiciary, the executive, the civil service, and the checks and balances among them; and (2) the construction of a social consensus. It may be argued that Hong Kong is exceptional in respect of its size and experience. But its measures for controlling corruption may have a wider application.

1 Developmentalism, corruption, and marketization of public policies in Japan

Yoichiro Sato

Introduction

The debate among political economic scholars of Japan underwent a major shift during the 1990s. 'Revisionists' argued in the 1980s that bureaucrats were very powerful in Japan's economic policy-making and that their power was used for mercantile state goals. As the Japanese economy entered a decade-long recession in the early 1990s, the focus of the revisionists and non-revisionists alike has shifted from the economic threats Japan was perceived to have posed to the rest of the world to the economic malaise Japan's mercantile policy brought on itself.

Corruption has always been a major feature of Japanese politics, yet public discontent with it reached a new height in the late 1980s when most of the Nakasone and Takeshita Cabinet members were found to have directly or indirectly received unlisted stocks from the Recruit Company. While many other highly ranked politicians had previously been charged with corruption, in such cases as former prime ministers Eisaku Sato in the shipbuilding scandal and Kakuei Tanaka in the Lockheed scandal,¹ the 1990s witnessed a series of corruption cases resulting in dismissals and arrests of administrative bureaucrats.

The changing pattern of corruption is indicative of both structural changes in the Japanese political economy and the changes in the regulatory environment due to the series of political and administrative reform measures. Japan's economic regulations strongly discouraged cut-throat competition among the domestic producers and distributors and protected them from foreign competition. At the same time, bureaucratic guidance provided a leadership role in the process of structural changes, orchestrating among firms an orderly retreat from the sunset industries and concentrated the efforts to break into the sunshine industries. Given the close communication and policy coordination between the public bureaucracy and the industries, the use of corrupt politicians was only necessary for the sunset industries resisting retreat and the newly emerging or foreign industries who did not have effective bureaucratic channels of representation.

Since two conservative parties merged to create the Liberal Democratic

Party (LDP) in 1955, true party competition had disappeared from Japanese politics. The LDP consistently won a majority in parliament, and the opposition camp was divided, first, between the Socialists and the Communists. The fragmentation worsened with the split of the Democratic Socialists from the Japan Socialist Party and the creation of the Clean Government Party. The LDP dominance in the political arena was supported by an unlikely alliance of big businesses, small businesses, and farmers. The big businesses provided political funding, whereas small businesses and farmers provided organized votes for the LDP. The bureaucracy maintained policies, which favoured these groups, including active and tacit public endorsement of cartelization, protection from foreign imports, low-interest governmental loans, and lax labour protection. In their respective policy domains, bureaucrats created an increasing number of public and semi-public corporations to which policy implementation was delegated.² These public corporations also provided employment for the retiring bureaucrats.

The 1955 system, an iron triangle, was an unsustainable system, which burdened fiscal spending. The only viable check against the expansive tendency of the bureaucracy was the Ministry of Finance (MOF), especially its Budget Bureau, which controlled the budgeting process. The LDP politicians were mostly tied up with narrow sector-based interests and were little interested in the overall fiscal well-being of the government. Nevertheless, rapid economic growth in the 1960s and ever-growing tax revenue made the budgeting process less contested and parliament became a 'rubber stamp' institution. Increasing political intervention in the budgeting process after the mid-1970s as a result of the slower economic growth resulted in the MOF giving up its chastity, the balanced-budget principle, and issuing an increasing volume of deficit bonds.³

Japan's '1955 system' ended in 1993 when a coalition of former opposition parties, a new conservative party, and LDP defectors chose Morihiro Hosokawa of the Japan New Party (JNP) as prime minister. With the electoral reform, which abolished the medium-size district system for the House of Representative seats, a move towards a more effective multi-party system, or possibly even a two-party system, was expected. The triangular alliance of the LDP politicians, bureaucrats, and large businesses had ruled Japan for most of the post-war period. The end of the system was symbolized by the decision of Japan's Federation of Economic Organization (*Keidanren*) to withhold all political donations to the LDP.⁴

Despite the symbolic significance of the electoral reform, two of the more important tasks of the political reform (broadly defined) were put off. Administrative reform became an important issue in the late 1960s due to Japan's increasing budget deficit, but it was blocked and sabotaged by the bureaucrats. The politicians' ability to enact reforms in order to reflect the changing needs of their mass constituents was thus limited. Campaign financing and fund-raising activities by individual politicians

were redirected to the political parties, in order to increase party cohesion and transparency. However, loopholes remain.⁵

Many scholars have attempted to explain Japanese politics in the framework of pluralism or some derivation of it. To begin such a discussion, however, 'pluralism' has to be clearly defined. Those scholars commonly focus too narrowly on organized interests, thereby confusing corporatism with pluralism. Of particular concern is the role of representatives in interest aggregation, since most democracies in the world are representative democracies. In many democracies today, the roles of elected representatives and non-elected bureaucrats are diffused. The Japanese case will be examined in relation to the hypothetical 'Image III' model of the politician-bureaucrat relationship proposed by Aberbach, Putnam, and Rockman.⁶

The first part of this chapter will review the so-called '1955 system' of the triangular alliance. The second part will critically re-examine the politicians' triumph known as the *zoku* phenomenon. The third part will assess the new leadership styles of Prime Ministers Nakasone (1982–86), Hosokawa (1993–94), Hashimoto (1996–98), and Koizumi (2001–present) in light of the normative representation model. Divergence of the Japanese political system from this model, and the implications of the current political change in relation to this normative model will be discussed in the conclusion.

The 1955 system

Post-war consensus

Japan's dramatic post-war economic success caught the attention of foreign businessmen, scholars, consultants, and government officials. Earlier political-economic analysis of this Japanese success story employed the famous stereotype of Japan as a consensus-oriented society. Beginning with the 'Japan, Inc.' theory of James Abegglen, followed by Ezra Vogel's *Japan as Number One*, the initial American response was a positive evaluation of the cooperative relationship among Japanese businesses, government, and workers.⁷ Chalmers Johnson's *MITI and the Japanese Miracle* focused on the role of the bureaucracy in this developmental process by describing the leadership role of the Ministry of International Trade and Industry (MITI).⁸

Johnson's work indicated potential conflicts between Japanese businesses and MITI, and MITI's coercive leverage over the industries in such disputes. Nevertheless, the consensus paradigm long dominated American academic discussion due to the lack of studies on other ministries and cross-sectional studies. Rapid economic growth during the 1950s and 1960s also masked and postponed undercurrent conflicts by giving an increasing share of the growth to every party concerned in the form of government spending.⁹ However, discrimination between narrowly organized interests

and broader unorganized interests became apparent as the 'catch-all' strategy became unsustainable in a budget crisis.

Muramatsu and Krauss criticize Johnson for ignoring the role of politicians in forming the pro-economic growth consensus.¹⁰ Prime Minister Yoshida's policies of close security dependence on the USA, emphasis on economic recovery, and neglect of the ideologically divisive issue of constitutional reform were carried on by his successors with some modifications, according to Muramatsu.¹¹ Muramatsu and Krauss argue that Japanese politicians 'helped to create the general framework of goals in the post-war Japanese state and bureaucrats' role in the political economy'.¹²

In order to discuss the politician-bureaucrat relationship, Aberbach, Putnam, and Rockman provide a useful framework. They show a diffused nature of 'policy-making' and 'policy implementation' by suggesting four hypothetical models of politician-bureaucrat relations. 'Image I' assumes a clear division of labour between politicians, who make policies, and bureaucrats, who 'merely implement them'. 'Image II' assumes some diffusion of the two roles, but still maintains a division between bureaucrats, who 'bring facts and knowledge' (expertise), and politicians, who bring 'interests and values' (political sensitivity). 'Image III' sees further diffusion of the two roles. The only distinction is that 'whereas politicians articulate broad, diffuse interests of unorganized individuals, bureaucrats mediate narrow, focused interests of organized clienteles'. 'Image IV', the 'Pure Hybrid', is the complete deterioration of such distinction.¹³

Diffusion of government authority and private organizations is prevalent in Japan. Interest groups and the bureaucracy have been major sources of candidates to the legislature, although professional (second-generation) politicians are increasing. Administrative agencies provide channels of bureaucratic representation to the interest groups through semi-public organizations attached to ministries and agencies (*gaikaku dantai*). Post-retirement recruitment of the bureaucrats into these *gaikaku dantai*, private corporations, or industrial organizations ensure these communication channels.

Muramatsu and Krauss' description of the politician-bureaucrat relations in Japan resembles Image III. Despite their criticism, Muramatsu and Krauss are not so much in disagreement with Johnson. The general policy framework, for which Muramatsu and Krauss give credit to the Japanese politicians, did not contradict more specific bureaucratic goals. Furthermore, the promoters of the general conservative policy line were politicians with bureaucratic backgrounds. It is hard to believe that the war-devastated Japanese people did not care about economic development. The Japanese people were divided on the security issue. However, politicians made only a minimum arrangement (security treaty with the USA) and have postponed the ideologically divisive constitutional amendment issue until today. Thus, the politicians' contribution to forging the consensus was that they did not raise the constitutional reform issue.

It is pointless discussing whether it was bureaucrats or politicians who designed the grand strategy of security ties with the USA and rapid economic development. Given the international circumstances at the time, Japan did not seem to have any other realistic alternatives. Japanese politicians convinced voters of the 'inevitability' of the US-Japan security arrangement, and the economic development of the 1960s confirmed the 'correctness' of Japan's pro-US diplomatic orientation.

Consensus ends, but realignment still postponed

By the mid-1960s, however, this economic development came to threaten its own foundation. The rapid urban migration due to the industrialization curtailed the LDP's traditional support base: rural farmers and small retailers. Downplaying the ideological constitution issue kept the Socialists in check, but increasing urban problems (pollution, overcrowding, lack of social infrastructure, etc.) changed the dimension of conflicts.¹⁴ Instead of the Socialists, whose radical worker origins bound them to ideological matters, the Buddhist-backed Clean Government Party (CGP or *Komeito*) and the Japan Communist Party exploited urban dissatisfaction.¹⁵

These opposition parties mainly advanced in local political arenas. The two largest parties (the ruling Liberal Democrats and the opposition Socialists) were, however, unsuccessful in turning these urban dissidents into supporters. The LDP still largely relied on the organized votes of farmers and small retailers, and large corporate donations. The Socialists could not expand their support base beyond their client labour unions. Meanwhile, the advance of the Communist Party and the Clean Government Party in local elections demonstrated their successful appeal to the urban voters. Nevertheless, their success in national parliamentary elections was limited, thanks to Japan's electoral system. The advance of these parties was short-lived, and support for them first stabilized, and then declined.

Some analysts credited the LDP with the passage of a tough anti-pollution law in the early 1970s.¹⁶ They also cited the slowly but steadily improving urban infrastructure and the recovery of the LDP support in the mid-1980s as proof of the LDP's successful transformation into a catch-all party.¹⁷

However, these accounts need careful examination. Japan's electoral system systematically favoured rural voters. Under the medium-sized district system, two to six members were selected for the lower house seats from each district by single ballot voting. On one hand, this system caused competition between two or more candidates from the ruling LDP in some large districts. That enhanced the tendency towards candidate-centred election campaigns, and contributed to the high amount of campaign spending. At the same time, the system slightly favoured the two largest parties (LDP and JSP) by rewarding them with more seats than they could

win under a proportional representation system. More importantly, the delay in reapportionment during the rapid urban migration and the courts' reluctance strictly to adhere to the 'one person, one vote' principle also helped these two parties.¹⁸ Thus, one could argue that had the Japanese electoral system been more equally representative, urban problems could have been addressed much earlier and in a more thorough manner. Steinhoff believes that the rise of protest activities over environmental concerns was an indication of the LDP's unresponsive posture and the lack of alternative party channels, which could translate the dissenting voices into parliament seats.¹⁹

Initially, the LDP could deal with the redistribution issues (welfare, social infrastructure, etc.) by simply spending more. The rapid economic growth of the 1960s brought in an ever-increasing amount of tax revenue every year without a tax rate hike. Thus, the LDP became a catch-all party.²⁰ This positive-sum consensus ought to have collapsed due to the slowing down of the national economy caused by the 1973 oil shock. However, despite the slower growth, the policy formed under the period of rapid economic growth was tightly institutionalized, and bureaucrats, politicians, and constituents had developed vested interests in the old system of increasing government spending.

Japan's rapid economic growth also caused the problem of structural adjustment overseas, particularly in the USA. The American workers in displaced industries advocated protectionism, and Japan's advance into higher-technology industries further contributed to the problem. The long tenure of the LDP and its increased dealings with both the bureaucracy and interest groups produced increased policy expertise among the senior LDP politicians.²¹ Different sectors competed for their 'fair shares' of the limited budget increases as well as the 'given increases' (*tozenzo*) based on past achievement. Unable to prioritize budget items, the Ministry of Finance (MOF) and the LDP extensively relied on national deficit bonds, which were issued with artificially deflated interest rates, thus prolonging the 'positive-sum game' at the expense of the general taxpayers.²² While influential groups were awarded 'large-scale allocations', opposition interests were co-opted with 'side payments'.²³

***Zoku* politics under the budget crunch**

By the end of the 1970s, however, it was obvious that Japan's debt reliance had reached a dangerously high level (30 per cent of the annual budget was financed by deficit bonds). In the 1980s, the Nakasone administration placed zero-ceilings on most budget items in order to curtail the expenditure. It also tried to reduce the number of government agencies and semi-public corporations by abolishing or privatizing them. However, the high-growth, high-spending system had already become so rigid that bureaucratic resistance was intense. Bureaucrats, who wanted to defend

their turf, increasingly mobilized politicians with special policy expertise (*zoku*).

The increased policy expertise of the LDP *zoku* politicians was cited as proof of the LDP's dominance over the bureaucracy.²⁴ However, this interpretation of the LDP and Japanese politics needs a more critical examination. As was the case in setting Japan's basic policy framework of security ties with the USA and emphasis on economic development, the diffused nature of policy-making makes it extremely difficult to determine who is the dominant actor.²⁵ *Zoku* politicians' participation in decision-making was evident in the 1980s, but the extent of their influence needs further clarification.

Inoguchi and Iwai suggest two types of *zoku* involvement in decision-making. The first type, which they call the 'watchdog type' (*banken-gata*), entails the involvement of a small number of powerful politicians who defend the interests of specific industries and the ministry which has jurisdiction over those industries. The second type, 'hound dog' (*ryoken-gata*), is the involvement of a large number of politicians for the purpose of providing pork barrels to their district interests.²⁶ The hound dog type is further divided into two sub-types: 'leashed' and 'unleashed'. The former entails the existence of a centre of mobilization (usually senior *banken* politicians), while the latter entails a natural gathering of 'mobs'.²⁷

Inoguchi and Iwai's 'unleashed hound dog' type matches the Image III of Aberbach, Putnam, and Rockman: 'politicians articulate broad, diffuse interests of unorganized individuals, bureaucrats mediate narrow, focused interests of organized clienteles'.²⁸ Politicians do not always support the bureaucrats' interests; this is different from the 'watchdog' model. Politicians adjust ministerial interests in such a way that the aggregated whole roughly represents broader national interests.

Inoguchi and Iwai present three case studies of what they consider the 'unleashed hound dog' style of policy-making. The cases include the Commerce and Industry and Postal *zoku*'s battle against MOF's attempted taxation of office automation equipment, non-senior rice-district politicians' battle against MOF and the Ministry of Agriculture's (MAFF) attempted price cut in government purchases of rice, and a battle against MOF to 'defreeze' the local bullet train development, which was indefinitely postponed under the budget cut of the 1980s.²⁹ Nevertheless, politicians involved in these issues were given too much credit for their success because all these issues were largely inter-ministerial battles as well. In the case of taxation of office automation equipment, the electronics industry and MITI were siding with the Commerce and Industry *zoku*. The rice price battle was slightly different because MAFF and the farmers took different positions.³⁰ However, the unleashed LDP politicians were still standing for the narrowly defined organized interest of the farmers' union (*Zenchu*). The bullet train development also was a pet plan for the construction industry and real estate speculators (big contributors to the LDP).

The problem of the strong party/weak administration (*toko-seitei*) argument is twofold. First, the administration is never a solid entity. Each ministry's interests in government spending, almost without an exception, face resistance from the MOF. Second, ministries requesting budget allocations gain the support of politicians by providing services to their districts and channelling contributions to them from contractors. Thus, the picture of confrontation between the politicians and ministries is often inaccurate. With the exception of tax policy *zoku*, *zoku*'s role is to defend the client ministry and the industry's interests in budget battles against MOF, other ministries, and other *zoku*. The Japanese government's inability to cut the budget deficit indicates a relative decline in the power of the MOF *vis-à-vis* the LDP. Qualitative observation of Prime Minister Tanaka's penetration of the MOF bureaucracy supports this thesis as well.³¹ Nevertheless, in regard to other ministries, evidence of LDP dominance is mostly lacking. Even the MOF seemed to be regaining its strength as the long-wished tax reform finally succeeded in 1988, and the consumption tax rate was raised in 1995.

Thus, Inoguchi and Iwai's examples do not support Aberbach *et al.*'s Image III. Japanese politicians may sometimes overcome bureaucratic opposition, backed by strong organized interest groups. Nevertheless, in many cases, the politicians' effectiveness can be attributed to the division within the bureaucracy and their ability to mediate the bureaucratic disputes. Thus, these examples do not support the thesis that the LDP politicians 'articulate broad, diffuse interests of unorganized individuals'.

Muramatsu and Krauss are aware of the different nature of LDP influence:

All types of interests seek help from both political parties and the bureaucracy; but the more institutionalized interest groups – economic, agricultural, and educational organizations – tend to go more to the bureaucracy and the less institutionalized interest groups with newer policies to promote prefer a political party. In other words, one of the functions of the party system is to promote emerging interests.³²

Although Muramatsu and Krauss seem to overestimate the LDP's response to the emerging 'quality of life interests' (anti-pollution movements, social infrastructure lobbies, consumers, welfare interests, etc.), their distinction between 'elites' and 'other' pluralist elements is important.³³ Muramatsu and Krauss also note the increasing specialization of the *zoku* politicians.³⁴ This indicates that the LDP's increasing influence is not based on its ability to aggregate differing interests, but on its close working ties with the bureaucracy in most cases.

With the predominance of the bureaucracy divided along the jurisdictional lines of the immediate post-war period, plus the politicians' role closely confined to these lines, Japan's political system suffers from

chronic lack of central coordination. When broader national interests and sectoral interests conflict, inter-*zoku* adjustment does not function. It only results in a situation of 'agreeing in principle, disagreeing in substance (*soron sansei kakuron hantai*)'.³⁵

New leadership, central coordination, and realignment

Prime Minister Nakasone: new leadership and its limit

At the time of both internal changes (urbanization, white-collarization, and pluralization of the economic sector) and external changes (trade disputes, demands for deregulation, and globalization), Japan still could not alter the basic course set during the rapid economic growth of the 1950s and 1960s. Despite the great success of Japanese industries overseas, the urban Japanese did not receive the full benefit of development. Farmers and small retailers, protected under the old system, lost their opportunity to restructure and rationalize themselves due to the bureaucratic regulations that came with protection. The Japanese people became increasingly aware of their poor standard of living as more of them travelled abroad during the 1980s.

Prime Minister Nakasone had to deal with the overdue problem of transforming Japan's producer-based economy into a consumer-based one. With the slogans of 'expanding the domestic consumption' (*naiju-kakudai*) and 'administrative reform' (*gyosei-kaikaku*), Nakasone attempted to draft a deregulation plan for the Japanese economy. The Maekawa report, which spelled out the redirection of the Japanese economy, was welcomed both in Japan and abroad.

For this task, however, Nakasone had to rely on an extraordinary leadership method. Lacking strong support within the LDP, Nakasone went 'beyond the LDP and the bureaucracy to seek the support of public opinion'.³⁶ By using 'independent commissions', Nakasone highlighted 'broad problem areas' and laid out the 'framework for their resolution'.³⁷ The added power of agenda setting enabled Nakasone to push through some notable reforms, such as privatization of the deficit-laden national railroad, and the profitable yet outdated tobacco, salt, and telecommunication monopolies. It is also important to remember that despite his weak factional basis, Nakasone skilfully played the 'succession card' to manipulate other faction leaders (Takeshita, Abe, and Miyazawa). Nevertheless, Nakasone's leadership still lacked the power to prioritize the vested triad interests of bureaucracy-LDP-businesses and the emerging quality-of-life interests. Therefore, the reform efforts relied on uniform guidelines of budget, salary, staff, and organizational cuts. This approach left the task of prioritizing at the level of each ministry head.³⁸ Foreign pressure was also utilized in order to assist this intra-ministerial adjustment process.³⁹

As the foreign pressure to liberalize the Japanese market mounted, a

split within the Japanese conservative camp became apparent. The competitive industrial business sector saw Japan's inefficient agriculture, small business, and distribution sectors as an economic drag. Facing protectionism in the manufactured goods markets abroad, the Japanese exporters of industrial goods sought to defend their access to the protectionist-leaning overseas market at the cost of liberalizing the non-competitive domestic sectors.⁴⁰ When that was not successful or enough, they moved the manufacturing operation overseas, only taking the most competitive subcontracting suppliers with them.

Despite the over-representation of the rural districts, the decline of these traditional sectors was imminent. Realization of a scale economy through deregulation was essential for the restructuring of these sectors. This would have allowed what Matsuzaki called 'vertical adjustments'.⁴¹ This means Japanese farmers and retailers would become more competitive through rationalization and narrow the gap between domestic and international prices. On the other hand, what Matsuzaki calls 'horizontal adjustments', where adjustments take place only between opposing ministerial interests, would not bring about structural changes. This was the shortcoming of *zoku* politics. A prime minister capable of 'vertical adjustments' can promote reforms, but Japanese prime ministers have had only limited successes in this area.

Moving backward? From Hosokawa to Hashimoto

A series of political scandals surrounding the LDP triggered the first step towards a meaningful political realignment. In 1989, the LDP lost its majority in the House of Councillors. Although the Socialist Party was the 'net gainer', its support consisted of protest votes against the LDP, rather than active support of Socialist policies.⁴² While the LDP added urban white-collar and even some blue-collar workers to its traditional supporters during the 1980s, the allegiance of these new supporters was rather weak. Meanwhile, the Socialist Party failed to abandon its ideological mantra, continued relying on organized labour, and missed its opportunity to develop into a mass-based party.

A succession problem within the LDP's largest intra-party grouping, the Takeshita faction, resulted in a large defection, causing the fall of the Miyazawa Cabinet. The LDP defectors formed the Japan Renewal Party (JRP or *Shinseito*). The following 1993 election witnessed an almost 50 per cent reduction of the Socialist seats in the House of Representatives, while most of the LDP incumbents kept their seats. Nevertheless, in the face of the LDP's losing its majority (mainly due to the defectors), opposition parties including the JSP, JRP, CGP, Japan New Party (JNP), and another LDP-defector group, the Harbingers (*Sakigake*), agreed to form a coalition government on the platform of electoral reform. This marked the end of the LDP dominance that had begun in 1955.

The coalition government chose JNP's Hosokawa as the new prime minister. Lacking both the policy expertise of the *zoku* politicians and the strong backing of other politicians, Hosokawa's premiership relied solely on the legitimacy of pursuing political reform and his personal popularity among the urban voters. The source of his popularity, the image of a political amateur in the traditional sense, was enhanced through image politics on television.

The first major task of liberalizing the rice market had been part of the JNP's platform since its foundation. Nevertheless, the decision-making process on this matter was no different from the traditional LDP method. Farmers were kept in the dark, while politicians told them that Japan would not open the rice market. At the same time, the senior agriculture *zoku* and the bureaucrats were engaged in market opening talks with the USA and GATT negotiators. When the time came, the blame for the market opening was placed on foreign pressure.⁴³ This effectively buried one objective of the political reform: that the government abandon lies and the excuses of foreign pressure to justify change, and instead clearly explain to the people the complex facts behind difficult policy choices.⁴⁴

Angel and Ando point out three conditions in order to assure 'strong and efficient political leadership', which can 'reflect' people's interests in actual policies. First, new political parties must not be based on local *koenkai* (personal support organizations), interest groups, or labour unions, but on citizens' networks with diverse values. Second, disclosure of public information is essential in order to break the knowledge monopoly of the bureaucrats. Third, the staff system directly attached to the prime minister must be enhanced in order to rule over the vertically divided bureaucracy, and directly connect public opinion to policy-making.⁴⁵ Nevertheless, the issue of political reform was scaled down to the issue of 'electoral reform', and a comprehensive reform including the above-mentioned measures did not take place. The 1993 budget showed little change from the traditional distribution pattern despite the publicized pledge that the public investment priority would be shifted from industrial infrastructure (such as roads and harbours) to those directly related to living conditions (such as housing and sewage systems).⁴⁶

In 1994, the LDP retook power by allying with the Socialists. After two years of the socialist puppet premiership of Tomiichi Murayama, the LDP regained its parliamentary control in the 1996 election, which was held under the new rules for the first time. The LDP formed a new government under Ryutaro Hashimoto, who later became the successor of the Takeshita faction. JRP, CGP, JNP, and other smaller parties formed a new umbrella party, *Kaishin*, in order to meet the challenge of the anticipated election under the new single-member small-district system. However, they failed to consolidate into a unified opposition and split into several parties again. The largest of these opposition parties, the Democratic Party, mainly consists of LDP defectors and former Socialists. The national umbrella

labour union, Rengo, initially backed the Democratic Party, but later delegated choices of the parties to each member union, as the Democratic Party performed poorly in the following elections in 1998 and 2000.

Hashimoto differed from both Nakasone and Hosokawa because of his strong factional background. Like his boss, Takeshita, Hashimoto relied on intra-party, inter-*zoku*, adjustments of interests, rather than aggregating broader unorganized interests. However, his tenure marked a partial reform of the MOF. The overheated economic bubble of the late 1980s to the early 1990s resulted in the crash of the land and stock markets, causing massive non-performing loans in the banking sector. The MOF was forced to abandon its traditional 'convoy system', where bank failure was to be avoided by any means. Meanwhile, its lax supervision of bank lending practices and extra-legal interventions to support the stock market prices came to light, leading to a demand for allocation of its supervisory roles to another independent organization. The supervisory role was then transferred to the Financial Supervisory Agency (FSA).⁴⁷ However, implementation of a more transparent accounting method and rigorous supervision were delayed, and the balance of non-performing loans continued to worsen towards the end of the 1990s. Ironically, the public outcry against the 'convoy system' bailout blocked a massive and prompt infusion of public funds into the banking sector, making the problem unnecessarily bigger. The bank executives, who were only interested in the survival of their banks during the remainder of their tenure, resisted rigorous FSA inspection, and hid and rolled over their non-performing loans.⁴⁸

The Koizumi administration came with a bold promise of major surgery of the Japanese political economy. Unlike his unpopular faction boss and predecessor, Yoshiro Mori, Koizumi's rebel image galvanized the Japanese voters and boosted the LDP support, if only temporarily. With little ability or willingness to engage in factional politics, Koizumi depended heavily on his personal popularity, utilizing mass internet media to spread his policy messages. During the first year of his tenure, media willingly portrayed the 'Koizumi-versus-LDP old guard' image in reporting the reform agenda. However, as many reform efforts were blocked, more critical voices against Koizumi's incapacity to act were heard. On the postal reform, complete privatization of the mail delivery and abolition of the postal saving system were scaled down to a partial opening of the mail delivery services. Privatization of the highway construction and related services faces tough resistance from bureaucrats, *zoku* politicians, and rural municipalities that are dependent on national subsidies through construction projects. Koizumi left the task of closing and consolidating public corporations to the bureaucrats, and was made a complete fool when bureaucrats sabotaged his request. Banking reform was made more voluntary, and implementation of the new more transparent and timely accounting method may be delayed, as the Japanese stock market marked a 20-year low, suppressing the assessment of the bank capital.

Currently, the government is preparing a bill to tighten up the regulation of post-retirement employment of bureaucrats. Authorization of post-retirement recruitment into profit corporations requires the minister's approval for two years after retirement, and for the time being full cabinet approval would be required. Where to allocate the approving authority among three entities has been vigorously debated: the Personnel Affairs council (the strictest), the cabinet (moderate), or minister (most vulnerable to private influences).⁴⁹ It is likely that the temporary requirement of full cabinet approval will be quietly dropped as the controversy subsides. A two-year ban on lobbying public officials and a penalty provision are also included in the draft bill.

Conclusion

Since the tightening of the budget in the late 1970s, increased participation by the Japanese politicians in decision-making has been evident. Nevertheless, most scholars made a leap of logic when interpreting this increase as meaning that politicians have more influence, or even that their actions better reflect public interests. A closer examination of the quality of such participation reveals that Japanese politicians' ability to effectively 'represent' their broad constituents is still limited.

To measure such effective representation, many scholars made the error of looking at issues where bureaucratic interests coincided with political (often partial) interests. In such cases, influence cannot be attributed to the bureaucracy, private groups, or the LDP alone. The only clear conclusion is the relative decline of the MOF. Furthermore, many scholars who see the *zoku* phenomenon as the politicians' triumph over the bureaucracy miss the point that the 'watchdogs' and the 'leashed hound dogs' do not represent public interests, but ministerial and institutionalized interests.

Sometimes, the public may misunderstand rational bureaucratic policy, and persuasion by politicians can help consensus-building. The recent performance by political leaders on this account has yielded conflicting evidence. Prime Minister Nakasone's 'lie' about the inevitable tax reform backfired. Politicians relied on American pressure to promote domestic reform agenda in the 'periphery' of the 1955 coalition. Agricultural and retail reforms were justified giving foreign pressure as the main reason.⁵⁰ In the 'core', however, annual talk of 'March meltdown' in the financial sector has become a ritual, while no quick resolution of the non-performing loan problem is in sight. Manufacturers do compete more rigorously as a result of the retail reform, but informal cartels remain in more regulated industries, such as liquor sales, construction, medical, and educational services.

People's needs change. Japan's producer-oriented economy of the past no doubt improved the living standard of a large segment of the Japanese

population during the 1950s and 1960s (at least in absolute monetary terms). However, the changing domestic demands of diversified interests since the late 1960s have not been met in a timely manner.

Public demands for administrative reform, deregulation, and decentralization directly challenge the status quo of the central bureaucracy as a whole. Electoral reform is only the first step towards the realignment of political forces. Political control of the administration will be the true test of how well Japanese politicians represent the Japanese people.

There is little doubt that corruption causes inefficiency. However, not all inefficiencies are necessarily corrupt, because economic efficiency is only one among many (often conflicting) objectives of governance. Without denying room for social, cultural, or other non-economic objectives of governance, however, it is still valid to argue that institutionalized inefficiencies attempt to preserve themselves through political means. Therefore, periodical screening of all inefficient policies is a requirement in good governance.

The producer orientation that characterized Japan's 'developmental state' is facing challenges on two fronts: economic globalization and rising consumerism. Public policies in this era demand a major retooling to cope with the shifting focus. Not all changes have to be in the direction of deregulation, privatization, marketization, and/or decentralization, but many do. To achieve a smooth transition, a rigorously pluralistic political system must be created.

Notes

The views expressed in this chapter are personal opinions and do not reflect the official policy or position of the Asia-Pacific Center for Security Studies, the Department of Defense, or the US Government.

- 1 For Prime Minister Kakuei Tanaka and his machine politics, see Jacob M. Schlesinger, *Shadow Shoguns: The Rise and Fall of Japan's Postwar Political Machine*, Stanford, CA: Stanford University Press, 1999, especially Parts One and Two; Takashi Tachibana, *Tanaka Kakuei Kenkyu – zen kiroku*, two vols, Tokyo: Kodansha, 1982.
- 2 See Frank J. Schwartz, *Advice and Consent: The Politics of Consultation in Japan*, Cambridge: Cambridge University Press, 2001.
- 3 Takao Kawakita, *Okurasho: Kanryo kiko no choten*, Tokyo: Kodansha, 1989, pp. 164–201.
- 4 With the LDP back in power, *Keidanren* decided to resume its role as a coordinator of political contributions, *Asahi Shimbun* (AS), 12 May 2003.
- 5 Major loopholes involve privately funded secretaries and family members of the politician, who are not regulated by Japan's anti-graft law, *AS*, 7 June 2002. For an historical and cultural analysis of corruption in Japan, see Richard H. Mitchell, *Political Bribery in Japan*, Honolulu, Hawaii: University of Hawaii Press, 1996, especially Chapter 6, pp. 109–32.
- 6 Joel D. Aberbach, Robert D. Putnam, and Bert A. Rockman, *Bureaucrats and Politicians in Western Democracies*, Cambridge, MA: Harvard University Press, 1981.

- 7 James C. Abegglen, *Business Strategies for Japan*, Tokyo: Sophia University and TBS Britannica Co., Ltd., 1970; Ezra F. Vogel, *Japan as Number One: Lessons for America*, New York: Harper Torch Books, 1985.
- 8 Chalmers Johnson, *MITI and the Japanese Miracle: The Growth of Industrial Policy, 1925–1975*, Stanford, CA: Stanford University Press, 1982.
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- 26 Inoguchi and Iwai, op. cit., pp. 257–60.
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- 31 Tanaka cultivated MOF bureaucrats by entertaining them, intervening in personnel decisions within the ministry, helping the retiring bureaucrats run for elections, and even paying them cash. Makoto Sataka, *Nihon Kanryo Hakusho*, Tokyo: Kodansha, 1986, pp. 44–51, 67–8; also Kawakita, op. cit., pp. 170–3.
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- 40 The 1984 ‘Brock Incident’ illustrates this domestic rivalry. Then US Trade Representative William Brock submitted to Japan a market liberalization programme. The programme was less demanding for the industrial goods markets, but more so for the agriculture products markets. It later became known that the programme was drafted by MITI and sent to Brock. Yasuharu Ishizawa, *Nichibei Kankei to Mass Media*, Tokyo: Maruzen, 1994, p. 156.
- 41 Matsuzaki, op. cit., pp. 2, 29–30.
- 42 In addition to the general public’s anger at the LDP in the aftermath of the Recruit bribery scandal, the unpopular consumption tax, Prime Minister Uno’s extra-marital affair, and the rice price-freeze angered housewives and farmers. Johnson, ‘The People Who Invented the Mechanical Nightingale’, p. 84.
- 43 Yoichiro Sato, ‘Sticky Efforts: Japan’s Rice Market Opening and U.S.–Japan Transnational Lobbying’, in Harumi Befu, ed., *Japan Engaging the World: A Century of International Encounter*, Denver, CO: Center for Japan Studies, Teikyo Loretto Heights University, 1996, pp. 73–99.
- 44 Angel and Ando, p. 29.
- 45 Ibid., pp. 39–41.
- 46 Ibid., pp. 33, 38–9; an argument that stability in budget distribution among public projects is the result of intense competition among the *zoku* politicians was refuted when the distribution pattern did not change despite the disappearance of *zoku* under the non-LDP coalition. Naoki Tanaka, *Nihon Seiji no Kousou*, Tokyo: Nihon Keizai Shinbunsha, 1994, p. 107.
- 47 Masaru Mabuchi, *Okurasho ha naze oitsumeraretanoka: Seikan kankei no henbo*, Tokyo: Chuokoron-sha, 1997, Chapter 4, pp. 193–255; Yasuharu Ishizawa, *Okurasho kaikaku: zasetsu no rekishi*, Iwanami Booklet No. 428, Tokyo: Iwanami Shoten, 1997.
- 48 An allegation that the FSA instructed the insolvent Resona Holding group to window-dress its books in order to qualify for a public bailout surfaced in 2003. Reiji Yoshida, ‘Memo Suggests FSA Horseplay’, *Japan Times*, 5 June 2003.
- 49 *Yomiuri Shimbun*, 10 May, 3 July 2003.
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2 The reform discourse and China's war on corruption

Xin Chen

Introduction

The past decade has seen the problem of corruption become a central concern of most nations in the world, irrespective of their economic systems or socio-political order. Corruption has been widely condemned for undermining the rule of law and weakening the institutional foundation on which sustainable economic growth builds. Analogies have been made with epidemics, likening corruption to 'a cancer which affects all elements of society'¹ and a pestilence that erodes moral and ethical values, contaminates human relations and crumbles social stability.² The global outrage over corruption has urged many national governments, international organisations, NGOs, and civic society to enter into conciliatory dialogues on joint combats over the problem.

From this worldwide campaign a rich academic and policy literature has emerged on both general and context-specific anti-corruption approaches and measures. Dominating the discussion are vigorous appeals for economic policy and public institution reforms facilitated by the free market of the Western orthodox model. Even the recent corporate scandals in the United States do not seem to have dampened the general confidence in the containing power of the 'invisible hand' over corruption. Transparency International's 'Corruption Perceptions Index 2002' seems to shore up this belief as well, as its top 25 least corrupted countries among the 102 ranked³ are mainly mature free market economies in the developed West.

Likewise, in its crusade against corruption since the early 1990s, China has also been stressing the important role of the market in establishing an accountable and well-functioning public management system, a motivated and transparent public service, and a healthy and independent legal and judiciary framework. It has also shown much less hesitation than before in uncovering and publicising wrongdoings on the part of Communist Party and government officials and has been pushing for strict disciplinary and criminal punishment of corrupt political elites and public servants.⁴

China's assertive policy intervention and punitive measures, however, have not produced the intended outcome of curbing corruption. On the

contrary, China is arguably witnessing the worst corruption crisis since the founding of the People's Republic in 1949.⁵ Frustrated and concerned that the recent national programme for developing the still backward West China will witness a new round of massive abuse of public funds,⁶ many in the leadership, the policy circle, and academia argue for more dynamic reform and a still more prominent role for the market. The deliberations, however, demonstrate a conspicuous absence of discussion on the impact of the reform discourse on how people understand the transition and how they behave in carrying it out. Like any other dominant discourse, the reform discourse embedded in official accounts constructs social conditions and possibilities for social practices prevalent in China today. Therefore, transcending the methodological focus and examining how the reform is defined, how the meaning is conveyed to the public, and how it has influenced social behaviour may shed some light on the roots of corruption.

Overview of China's anti-corruption effort

Corruption is commonly viewed in China as the worst 'social pollutant'. It is asserted not only to have distressed economic growth but also posed a grave threat to social stability.⁷ Corruption is a focal issue in official discussions and publications at all levels and in the everyday conversations among the populace. The tidal wave of anti-corruption campaigns continues to surge with government investigators actively engaged in hot pursuit of corruption cases. The official statistics indicate that between January 1998 and November 2002 central and local procuratorial organs filed more than 200,000 cases for investigation and prosecuted over three million suspects of corrupt activities. The official in the highest position of those facing capital punishment was a vice-chairman of the National People's Congress.⁸ Each disclosure runs the risk of highlighting the extent of corruption permeating Chinese politics and thus tarnishing the image of the Communist Party. Yet deeply concerned that pervasive corruption will eventually diminish the legitimacy of the Communist rule, the Chinese government seems determined openly to tackle corruption scandals.⁹

Definition of corruption

Corruption is a complex problem in China. Yet a widespread consensus exists among most Chinese on its definition, that is, the abuse of public office for the benefit of oneself or one's family, or friends, or affiliations.¹⁰ While in line with international mainstream descriptions, the Chinese notion includes activities beyond the immediate oft-quoted connotations of the word, namely, abuse of power, favouritism, misappropriation, influence peddling, fraud, insider trading, and abuse of public purse.¹¹ The broader 'corruption complex' in the Chinese context encompasses polit-

ical, economic, social, judiciary, law-enforcement, and occupational corruption.¹²

Political corruption is represented mainly by corrupt behaviour in the political process, especially in personnel appointments and promotions in public offices. Economic corruption refers to exchanges of power for money and other types of procurement. A Chinese tongue-twister from a con businessman in Guangdong Province best reifies the definition: 'You have power in hand, and I have money in bag. I buy your power with my money and use the power bought to obtain more money.'¹³ The definition of corruption in the judiciary and law-enforcement circles is often illustrated by a popular verse which mocks corrupt police officers, judges, and procurators for extorting bribes from both the plaintiff and the defendant and then complaining about the imperfection of the institutions of law.¹⁴ Social corruption alludes to indulgence in gambling, drug taking, sexual bribes, and other decadent pleasures, particularly with public funds. Occupational corruption includes unethical conduct in professional institutions and businesses, especially the practice of obtaining 'contributions' under duress from those seeking services.¹⁵

Although these different types of corruption vary in expression, their essence is considered to be the same: accessing, retaining and using power for corruption. It is thus believed that anti-corruption strategies should focus on the relationship between power and corruption and on the improvement of the exercise of political, economic, administrative, judiciary, and professional authority through institutional reforms. This approach signifies that China's anti-corruption campaign is primarily targeted at the 'demand side', or corrupt government officials and public employees, even as the voice for more emphasis on the 'supply side' of corruption, namely, those that give out bribes, seems to be growing louder in academic and policy discussions on the issue.¹⁶

Origins of corruption

In their studies of what breeds and sustains corruption, Chinese leaders and academics have shown a high level of familiarity with up-to-date Western concepts and empirical findings related to the topic. There are, for example, discussions of Confucian values, *guanxi*-based cultural infrastructure, greedy attributes in human nature, and corroded sense of moral and ethical values, as contributory factors.¹⁷ Yet the on-going debates and growing literature have focused mainly on 'rent-seeking' opportunities made possible by institutional flaws arising in the process of the market's replacing the state in economic decisions and management, and on the 'rent-seeking' behaviour of government officials and public employees facilitated by the continued state intervention in economy. 'Rent' refers to all unpaid transfers of income, goods or services to individuals as the result of 'favourable' decisions on government policies.¹⁸

Many in-depth studies have particularly examined the dual system policy, which allows the state's control and the market element to co-exist in various segments of the economy. One case in point is dual-track pricing, which includes state-fixed and floating market prices of commodities, interest rates of bank loans, import duties, and land lease fees.¹⁹ Other examples include the dual system of state allocation and market-based distribution of resources, and that reflected in the practice of granting 'preferential' provisions in tax rates, import tariffs, government subsidies, and other economic privileges to only some regions, industries and enterprises. Necessary or even unavoidable as it may be at the initial stage of China's transition to a market economy, the dual system strategy is blamed for having created considerable space for government agencies and individuals to seek private benefits with their allocation power over what the state controls, usually better and cheaper than what the market offers.²⁰

Other identified areas rich in economic 'rents' include the administrative examination and approval system, and management of public investment monies and government expenditures. The former refers to an array of excessive approval procedures administered by central ministries or their local branches in evaluating project proposals submitted by many sectors and industries, whether related to basic infrastructure construction, agricultural development, social and recreational service, commercial facilities, property development, or such like. That the procedures are cumbersome and often not transparent means that the system has become a hotbed for corruption. Similarly, allocations of public investment and government expenditures are often decided by administrative decision and are hence believed to have allowed 'rent-seekers' opportunities to cut kick-back deals with those competing for shares of the 'pork barrel', which are usually lucrative and risk-free.²¹

'Rent-seeking' behaviour in the judicial and law-enforcement circles is regarded as having more negative economic and social consequences than in other sectors because it often degenerates into crime and inflicts financial loss upon the state. Typical examples include customs officers, policemen, and tax collectors who work with criminals in money laundering, drug trafficking, smuggling, prostitution, producing and selling forgeries, or cooking the books for tax or import duty evasions. The seriousness of the damage caused by this type of corruption to the public confidence in the regime and political and social stability is obvious.²²

Therapeutic measures

Corruption defined as abusing public power for private gains is not a new phenomenon in China but rooted in its long history, bureaucratic tradition, and socio-political development.²³ Yet it has flourished at an unprecedented speed in recent years. Many in China believe that this is caused by weak institutions and flawed government policies resulting from a mixed

economy, generating economic rents in an extraordinary abundance. This assessment has resulted in China's anti-corruption war since 1993 targeting Party and government organisations, judicial departments, public security organs, and national and local economic administrative divisions. In the range of fire are also individuals in the hundreds of thousands of offices in these organisations, which manage or distribute public resources and services, and make, interpret and implement policies and regulations.²⁴

Much emphasis has been put on installing measures that may rein in corruption at its source. As market-driven reform has gradually reduced the role of the dual system in the economy, the anti-corruption focus has shifted to improving institutional structures for transparency and accountability. Among the first put into effect are regulations prohibiting government, military, judiciary, and law-enforcement agencies from taking part in business enterprises, and forbidding officials at or above the provincial/ministry level, their spouses, their offspring including their husbands or wives, to have private businesses or to work in foreign-investment ventures in the locale or trade under the officials' jurisdiction. Government and Party officials will also be audited upon leaving office. To promote greater integrity and transparency in Party and government officials' exercising their delegated authority, systems have been put in place to separate accounting channels for revenues and expenditures, for imposing and collecting fees or fines, and for managing social welfare funds. To block access to economic 'rents', a building market has also been set up to eliminate procurement of state contracts through bribery or political connections. Similarly, procedures have been installed to ensure that all government purchasing is made in an open and competitive manner. The central and local governments have also begun removing or simplifying administrative examination and approval procedures that affect hundreds of sectors and thousands of types of projects.²⁵ To clamp down on the manipulation of books, the accountant accreditation and chief-accounts' responsibility system has been introduced. Various locally passed self-serving taxation policies have also been outlawed in order to uphold the authority and unity of tax laws. To strengthen public institutions and enforce the law, efforts have been made to link up the on-line databases and networks of the Customs, state departments of taxation, foreign exchanges and exit-entry inspection, the Trade Commission, and banks, to cross-check wrongdoings and criminal conduct.²⁶

Attempts have also been made to encourage and empower citizens to expose fraud and corruption in government. The Beijing municipal government, for example, has set up a telephone 'hotline' for whistle-blowers and has publicised concurrent disciplinary measures for verified misconduct.²⁷ Complementing such government structural changes, the media has begun to play the role of a watchdog. The most powerful and popular examples are the *Jiaodian Fangtan* (Focus) programme aired by the Central Television station and *Nanfang Zhoumo* (Weekend of the

South), a newspaper published in Guangdong. Both are known for their daring and realistic discussions of corruption and other social issues. Many officials are said to feel uneasy about the show. Others are said to regard it as the 'gate to hell' and have even developed internal 'safety' policies to 'watch out for fire, theft and the "Focus"',²⁸

While not quite exhausting the list of anti-corruption measures taken by China, the above account should suffice to show its resolve to fight corruption in government and to improve the standards of the public service. The mechanisms are also in accord with international mainstream strategies for good governance, which advocate deregulation, expansion of the market, enforcing laws, promoting disclosure, investigative journalism, and social participation. Yet the determination and the all-out campaign do not seem to have been on target in terms of rooting out the sources of corruption. As acknowledged by many in China, the number of excessively serious corruption incidents, involving astronomical figures of money, has increased rather than declined in recent years. The numbers and rank of officials engaged in misconduct are also getting higher; and organised offences with the participation of employees in government, the judiciary, and other law-enforcement agencies continue to increase.²⁹ This disappointing situation suggests that China's anti-corruption effort should transcend the structural and methodological focus and look for explanations in the reform discourse, which covers how the reform is defined, how the meaning is conveyed to the public, and how it influences social behaviour. In other words, an understanding of how the concept of the 'socialist market economy' characterising China's reform is expressed and how it is comprehended and effectuated socially may help explain why corruption has worsened in tandem with the growth of the market forces in China.

Challenge to the reform discourse

The study of discourse in analysing a social phenomenon may be characterised as concerned with the interrelationships between language and society.³⁰ Examining texts and verbal expressions in a specific socio-political context, discourse analysis, in other words, is interested in how the world is constructed and how the 'common-sense' understanding of it is mediated through language.³¹ Language use in this sense of shaping and organising social relations and behaviour is viewed as 'practices' rather than simply linguistic structures or utterances.

Discourses result from attempts to create social order by limiting the spectre of possible meanings.³² The ability to produce meanings, and hence rule out or dominate possible alternative understandings, signifies the intrinsic political nature of discourse.³³ Its political nature is also determined by the fact that the 'defined and delimited set of statements that constitute a discourse' is 'expressive of and organised by a specific ideology'.³⁴ While 'language' is not everything, discourse analysis as an analyti-

cal approach will help explain how corruption has spread in China alongside its market-oriented reform.

Goal of reform

When China began its economic reform in 1978, the push came from the widespread sense, mainly among the central leaders, for a pressing need to re-establish the Communist Party's legitimacy and authority by improving economic performance and raising living standards.³⁵ Economic efficiency was thus the primary concern of the Communist regime when embarking on the reform. To achieve this goal, the post-Mao leadership has in the past 20 years voluntarily reduced the Party's authority and involvement in running the day-to-day administrative and economic affairs. It has also endorsed the gradual incorporation of market mechanisms fashioned on Western concepts and rules into China's economic institutions. Yet the reform and the marketisation were not meant to lead, nor have they led, to Western-style political democratisation as many scholars hypothesised it would in the 1980s. The economic development effort was and still is intended to strengthen the Party's rule and political legitimacy.³⁶

Definition of reform

Since the commencement of the reform, Chinese leaders have never hesitated to assert that the country will remain socialist and that Marxism will remain its ideological guidance. Yet it has not been easy for them to explain how China's socialism in the Marxist tradition should interact with the free market. The difficulty comes from the fact that socialism in this sense is supposed to be built on the negation of capitalism not only as a social order but also as an economic system. To integrate the two antagonistic schools of thoughts and practices thus requires both operational programmes and conceptual direction. The Chinese leadership has, however, shied away from this sensitive, if not impossible, mission. In its almost casual flirtation with the issue, it has come up with a series of slogans to specify the relationship between socialism and the free market. Whether or not these expressions are enough to provide a conceptual modal for the reform mandate and agenda, their content demonstrates a clear ideological choice and signals to potential and possible challenges how the reform should be understood.

Among the most influential slogans were 'Seeking truth from facts' and 'Liberation of mind' put forward at the beginning of the reform to prepare public opinions for the anticipated switch of focus from political correctness to economic pragmatism.³⁷ At the 12th National Congress of the Party in 1982, Deng Xiaoping announced 'Building socialism with Chinese characteristics' to justify the introduction of the market element into the planned economy. Then came the formulation of 'primary stage socialism'

(1987) to further rationalise the proposition for China to draw on remnants from capitalism to develop its rudimentary commodity economy.³⁸ Finally, 'socialist market economy' (1992) was put forward as the guiding principle for the reform.

Although the above rhetoric has provided little to bridge Marx's socialism and Adam Smith's capitalism, its implication for what the reform is about has been footnoted by Deng Xiaoping's much publicised pragmatic maxims 'to get rich is glorious' and 'let some people get rich first'.³⁹ Despite the embedded ideological conflicts, these simplified expressions of the reform discourse are able to 'shape thought, guide action, and induce commitment'. Specifically, it has fulfilled the function of popular persuasion in advertising economic pragmatism and evoking 'materialistic interests and impulses among the Chinese'.⁴⁰

Social reaction

Ambiguous as it may be theoretically, the notion of a 'socialist market economy' has formed a clear discursive space linked to the political agenda of the reform: the market-driven transformation is not meant to undermine the legitimate basis of the socialist ideology and hence the relevance of the Communist rule. Political stability and social consensus have been constant concerns of the Chinese government. Thus, by stretching the tolerance of China's Party-based ideology and practice to embrace the market element, the discursive themes of 'socialism with Chinese characteristics', 'primary stage socialism', and 'socialist market economy' may accommodate or help dissuade potential oppositional challenges from the Left or the Right. Furthermore, these notions are likely to direct the public attention to the economic freedom implied in them.

The public has indeed got the message that what is important at this stage of China's socialism is not to inquire into conceptual inconsistencies embedded in the socialism-plus-market formula but to develop the economy through whatever expedient or effective means available. The official preference for economic pragmatism over discussion of principles has formed 'a pervasive discursive space penetrating every single cell of society'.⁴¹ There has emerged an intense craze among the Chinese for making quick money and getting rich first. For a long while in the 1990s, the entire nation seemed obsessed with doing business. From the military to government bodies, from writers to police officers, from university professors to kindergarten teachers, from students to state employees, literally people in every walk of life were eager to either be directly involved or to moonlight in business operations.⁴²

As with the notion of the 'socialist market economy', 'let some people get rich first' also touches upon sensitive issues related to China's ideological orientation. The leadership has, again, chosen to shelve such important questions as how to negotiate between 'let some people get rich

first' and the socialist egalitarian principle, who should get rich first, how they should get rich, how rich should the lucky ones get before the gap with the poor would be considered too wide, and how the wealth of the affluent should trickle down to the rest of the population. On the uncharted money-making path, the only explicit guidance seems to come from Deng Xiaoping's famous economic axiom, 'it does not matter whether the cat is white or black, if it catches mice, it is a good cat'.⁴³ The seal on the Pandora's box of corruption is thus broken. Few Chinese seem to care any more about what means they should use when trying to make quick returns. What has followed is rampant corruption.

Impact on perception of corruption

Emphasising 'seeking truth from facts' and stressing that 'the only criterion for judging truth is social practice',⁴⁴ the reform discourse has enabled post-Mao leaders to attempt marketisation without immediately addressing the sensitive and controversial issue of ideological standards and principles. It is an expedient choice on the part of Deng Xiaoping and his colleagues in their search for quick economic progress so as to restore public confidence in the Communist leadership weakened by the Cultural Revolution. It has also proved convenient for Chinese decision-makers by not only making it legitimate to reorient the national economic programme without a coherent blueprint but also allow for flexibility and creativity in carrying it out. Moreover, it has enabled the leadership to explain away policy misjudgements and consequent economic fallouts. They have even coined a euphemistic saying for this approach, 'crossing the river by touching the stone under the water'.

The official reiterations of the central position of economic growth in the reform have made pursuing pragmatic and materialistic goals 'common-sense "assumptions" and self-evident "truth"'.⁴⁵ The explicit utilitarian and trial-and-error quality of the reform discourse has also provided the public with a performance index in their pursuit for economic progress and material affluence. Prevailing in daily economic activities, the 'no matter what it takes' outlook has also attracted paradoxical understandings of corruption and raised the social tolerance level of the problem.

Corruption is unavoidable

Informed by the reform discourse, a popular opinion held by many Chinese, especially economists, maintains that corruption is the necessary cost paid for modernisation.⁴⁶ The inevitability of corruption is believed to apply particularly to transitional economies. The problem, moreover, may be very acute at the initial stage of the transition because the market is still in its embryonic form. The celebrated explanation for China's case says

that its transition from the planned economy to free market is an incremental process, and well-developed market institutions do not come into being instantaneously. It follows that for a considerable period of time, state control and the market have to exist alongside each other in allocating resources and monitoring economic production and transactions. The dual-track system also exists in central and local government relations because decentralisation has transferred much administrative responsibility and authority to lower levels. Advocates of this approach are convinced that, although fraught with drawbacks, the dual-track system has facilitated China's impressive economic growth during its transition to market. They also applaud the system for making it possible to transform local bureaucrats 'from unproductive political entrepreneurs to productive economic entrepreneurs'. This is considered to be a critical factor in the success of Chinese economic reform.⁴⁷

Those holding this opinion do admit that the dual system and other expedient strategies adopted during the reform have limitations and gaps that have contributed to the growth of corruption. They also acknowledge that in the dual economic system, the state in general has monopoly control over, among others, key resources and utilities, infrastructure, education, and the health industry. All these are high in 'rent' content. Adding to it, political and economic decentralisation has resulted in the growth of special interest groups and hence expanded the scale and involvement of rent-seeking and other corrupt activities.⁴⁸ Yet because China takes an incremental approach to reform, they argue, going through a dual-system stage is inevitable. Corruption, for this reason, is unavoidable and may be viewed as a technical drawback in a strategy which is otherwise successful in bringing about economic growth and structural changes concurrently. Furthermore, runs the logic, just as 'primary-stage socialism' is expected to contain residuals from capitalism, it is natural for the economic transformation to be accompanied by 'irregular' operations.⁴⁹ The reform discourse has thus helped form a take-it-for-granted social understanding of corruption as part of a reform and growth package.

Corruption is instrumental

A related but more frank opinion often heard in China emphasises the positive effects of corruption. This argument maintains that the co-existence of China's high economic growth with an epidemic of corruption has attested to the international observation made by both academics and policy circles that corruption is not always economically harmful and that corruption seems compatible with Asian settings, if not others. The explanation accompanying this argument says that corruption in China serves to lubricate the wheels of the state machinery, compensate for market imperfections, and leads to more efficient results, at least at the initial stages of the reform. Chinese proverbs and old sayings are also invoked to illustrate

this line of reasoning. Examples include, 'When the water is too clear there are no fish'; 'A very honest person attracts no followers'; 'Men who are not wicked conquer no female hearts'.⁵⁰

That corruption can smooth the pathway for economic development is not a new idea. Serious discussions on its benefits date back to the 1960s.⁵¹ Yet the discursive line of China's reform has made it possible for a position in academic/policy discussions to become a normal way of understanding corruption. Furthermore, the naturalisation of corruption as a useful evil has not stayed confined to the arena of public opinion. It has, rather, become many individuals' reality in China. One often hears, for example, Chinese entrepreneurs and business owners say that they prefer corruption to bureaucracy.⁵² Another example is that people in some poor areas argue that corruption in the form of sexual bribery is a more effective measure to alleviate poverty than most national or local aid programmes.⁵³

Corruption is necessary

One would assume that with their Marxist background Chinese leaders would not heed the prescription that market-driven reforms would inevitably lead to equity. Yet their development strategy for the reform is exactly 'efficiency and growth first and equity second'.⁵⁴ As much of the Third World has experienced, China's reform strategy has not brought forth the anticipated scenario of equal economic opportunities. Nor have fair distribution mechanisms emerged from economic growth to trickle down the wealth to many whose 'iron rice bowl' has been broken to satisfy the reform quest for efficiency. Instead, economic growth has spawned wide income disparities in the country.

The growth-before-equity strategy is in accordance with Deng Xiaoping's dictum of 'letting some people get rich first'. It is intended as an incentive for competition and efficiency which it is assumed will lead to common prosperity. On the contrary, however, this discursive theme, as discussed earlier, has inspired a self-absorbed money rush among the average Chinese. It has also cultivated a mindset that considers 'getting rich' to be not only 'glorious' but also a social norm to follow. Moreover, as the only benchmarks are set by the new-rich, public expectations of what it is to be affluent keep growing. This has put enormous pressure on and provided a powerful impetus for administrators to generate revenues to supplement their employees' incomes.

Many resort to what an old Chinese saying suggests, 'When living on a mountain living off the mountain, and when living near the water living off the water'. In other words, they 'tap potentials' or 'create opportunities' (Chinese clichés in this context) in their institutions or walks of life. Irregularities and corruption are thus often part of the game as illustrated by a folk rhyme: 'Those in charge of goods of daily use wear better clothes,

those running cafeterias become chubby, those handling resources drive fancy cars, and those managing fuels enjoy roaring fire in the stove.⁵⁵

One such example is that, to generate more income, the police officials in a Northeastern Chinese city decided that officers were allowed to take commissions from the fines they collected from the prostitutes whom they caught, prostitution being illegal in China. The strong incentive of the decision was almost beyond imagination as the police collected more than 100 million Chinese yuan (about US\$10 million) between 1993 and 1996 in a city of about 900,000 people. There were so many wrongly fined cases that during those years most residents in the city were reported to avoid going out in the evening with companions of the opposite sex.⁵⁶

A similarly outrageous example happened in the rural outskirts of Xi'an City. With urban development, the local government decided to take over some land from a village. To maximise the compensation, the village heads organised the villagers to dig big holes on the land before the government's decision was put into action. They then allowed a garbage disposal company to use the holes as landfill sites, with a charge for every truckload. When government officials came to inspect the land and sign the deed, they had no other choice but to hire the villagers and their vehicles to move the garbage somewhere else, again with a payment for each load. To fill up the new holes, the government had to employ the same villagers to dig and transport dirt from another piece of land in the village, paying for both labour and loads. With these clever tricks, the villagers thus made four amounts of money on top of the land requisition settlement.⁵⁷

Many Chinese seem shocked when they hear extreme examples like this. Yet at the same time, they also expect their own administrators to be as 'flexible' and 'creative', and exploit the 'advantages' of their organisations and generate funds for their bonus and welfare benefits. As a defence, they often ask rhetorically, 'Isn't this in line with the reform slogans "liberation of mind", "invigoration of the economy", and "taking the path of getting rich"?'⁵⁸ Corruption has thus become a legitimate compensational measure.

Impact on the role of law

In its war against corruption, China has followed international wisdom in the legal structural domain. In just over 20 years, it has witnessed encouraging changes in its legal institutions, laws, and practices. According to the official statistics, since 1979 the People's Congress has passed more than 300 laws, the State Council has enacted 700 strong administrative decrees, and local legislatures have drawn up over 4,000 bills.⁵⁹ The motion for laying down an Anti-Corruption Law was tabled at the Second Session of the Ninth People's Congress in 1999, the first time since the People's Republic was founded, because many legislators believed that the existing

Criminal Law was not adequate to tackle power-abuse types of misconduct.⁶⁰ Yet in contrast to its noticeable accomplishments in gradually completing the statute book, China's law-enforcement efforts in curbing the surge of widespread corruption seem to have had little success. Many in China may readily find the culprit in a lack of transparent and predictable legal institutions and an honest and independent judiciary. Few, however, have discussed the impact of the reform discourse in shaping this reality of law enforcement in China.

Rule of the Party versus rule of law

Law enforcement does not function in a political vacuum or in an enclosed self-contained system. It operates within a social order that is sustained, to a great extent, by the participation of the public that acknowledges the articulation of the prevailing political hierarchy as the normal way of understanding the social structure. A political hierarchy is thus contextually specific. Its continuance often requires reiterations of the dominant definition, or discourse, which informs and reproduces social responses to the hierarchy and institutional practices within it, including law enforcement.

The official definition of China's economic reform has been articulated through a series of slogan-like assertions that are intended to continue the legitimacy of the Communist leadership but meanwhile establish the relevance of the market element in the uninterrupted socialist order. This discursive framework has shaped a political reality in which the role of the legal system in constraining the abuse of political power is greatly compromised. The central issue is whether the Party is above the law or vice versa, one that has troubled the Chinese during most of the reform era.⁶¹ At the abstract level, few, not even Communist leaders, would question that China should push for the 'rule of law'. Yet in real life, the conceptual inconsistency of the reform agenda casts a long shadow over whether the Communist Party and its political rule are the subject or object of the law. Until China finds an answer to this question, the legal system is unlikely ever to operate as an independent check and balanced institution *vis-à-vis* the political establishment.

Administrative interference

Embedded in the political hierarchy are constant interventions in the daily function of legal institutions and law enforcement by government bodies through which the Party's rule is effected. China has a long history of administration overriding the legal system. Although the 'independence' and 'impartiality' of the law have entered the Chinese vocabulary in recent years, the development of legal institutions does not seem to have broken away from the tradition. Not only was the process of legal development

initiated and supervised by the government, but the political rhetoric of the Party's rule has made it possible for administrative bodies at various levels to continue drafting decrees and laws for the People's Congress on the same stratum to pass. Many government departments also carry on with their practice of overruling laws with policy documents.⁶² A more profound impact is, though, that the lopsided power equation tends to attract the 'brains', the motivated and the aggressive away from sectors that are often overstepped in the political process. This in part explains why a concerted voice has yet to emerge from within the legal profession to contend with political and administrative interference, even though the market-driven reform has opened a window, small as it may be, for changes in its favour.

Likewise, on the anti-corruption front, the judiciary and law-enforcement agencies seem able to demonstrate their courage only in the campaigns launched by the government. By emphasising that the campaigns are 'organised by the government' and 'under the leadership of the Party', the official rhetoric, intentionally or not, also denotes their subordinate status.⁶³ The high value placed on maintaining the existing political order in the reform discourse, meanwhile, suggests that law-enforcement agencies have to operate delicately during the campaigns so that the exposed scandals, charges, and arrests would not lead to public confidence crises or kindle social riots.⁶⁴ Furthermore, because of the widespread irregularities in the race for economic profits, many corruption cases involve the economic interests of government at various levels as well. Administrative interference is thus daily and overwhelming in the handling of cases, through 'suggestive' phone calls, interceding 'informal notes' or other connections in and above a specific law-enforcement agency. This is acknowledged not only to have compromised the anti-corruption effort but also has provided a breeding ground for corruption in law-enforcement agencies.⁶⁵

Limitations of the law

To enhance the role of law enforcement in the political balance of power, many in China argue for the proactive role of law itself in changing social behaviour. They seem to believe that once the rules of the game for every component of the economy are in place, changes in how people conduct business will follow suit. Eager to establish a positive correlation between law and societal behaviour, they often criticise the People's Congress, the State Council, and local governments for being too slow in enacting bills on, for example, corporate, securities, urban land use and real estate, and bankruptcy. They believe that this tardiness is the reason for many wrongdoings and economic losses in these and related areas. They complain that many laws passed during the reform including those on agriculture, scientific and technological advancement, fishery, or environmental protection,

lack substance and hence fail to provide guidance for proper economic behaviour, which, in turn, has hindered rather than facilitated growth. They blame the technical inadequacies of the criminal law for the rapid increase of corruption. They find fault with the civil law for being unable to regulate public reactions to the emerging market.⁶⁶

It is perhaps still debatable whether the law can function as a proactive institution in 'shaping the incentives that affect the behaviour of economic actors'.⁶⁷ Yet even if it could, its role depends on the interests that it is intended to serve, how it is used, and the manner in which it interacts with other factors that may also affect individuals.⁶⁸ The laws passed during China's reform are clearly indicated to serve the 'socialist market economy'. Even advocates of the proactive role of law often readily crown the phrase 'rule of law' with the word 'socialist'.⁶⁹ This has not only drawn the boundaries for the role of law, whether proactive or reactive, but also indicates that imperfections found in many of China's laws are not simply a result of politicians not recognising the importance of law, as the above arguments seem to suggest. They are instead reflections of the problems inherent in China's theoretical premise for its 'socialist market economy' and hence the reform discourse. In this context, a folk Chinese rhyme has very well summarised the position of law in China's political process and society: it mocks law suits as nothing more than contests for stronger connections between those involved.⁷⁰ It follows that law seems better at forbidding than promoting social behaviour and at complementing than motivating moral values.⁷¹

Impact on morality

Upon retiring from office in the late 1980s, Deng Xiaoping exhorted his successors to advance the reform with one hand and aggressively attack corruption with the other. He warned them that the Communist Party might be removed from power if corruption among government and Party officials was not curbed in a timely manner.⁷² Deng's concerns were warranted as a survey conducted in Beijing in 1995 indicated that only 24.8 per cent of the respondents thought positively about the moral character of the average officials, and only 34.4 per cent believed that they were using their offices to 'serve the people'.⁷³ Public contempt has risen to a much higher level in recent years, graphic evidence of which is the great appeal of the popular saying that if a hundred randomly picked officials are lined up and shot without a trial for corruption, few, if any, would be wrongly sentenced.⁷⁴ Attempting to reinvent the image of the Communist regime, Deng's successors have mounted a vigorous moral campaign, in addition to structural reforms and law enforcement, to improve the morality of those in public office.

Yet their efforts – characterised by making official appeals and putting out editorials in Party and government organs, publicising model officials

and launching mass emulation movements, organising intra-Party self-examining functions, initiating study and training courses, and tightening disciplinary measures – seem to have made little progress. A major drawback lies in the fact that the values which the reform discourse has invested in China's prevailing political economy are at variance with the moral principles advocated anew by the leadership. Moreover, given that humans are knowledgeable, reflexive, and reflective social beings capable of justifying their actions,⁷⁵ the conceptual ambiguity of the 'socialist market economy' has established criteria, conditions, and contexts that allow many in public offices to decode and enact reform according to their own rationality. Their rationality is informed more often by prevalent materialistic temptations and expectations created by the market-driven reform than by Communist morals. Conduct based on such rationality, in turn, reinforces and reproduces the materialistic expectations which have resulted in the abuse of public offices becoming familiar routines of social life 'across space and time'.⁷⁶

Ideological and cultural logic in reclaiming the primacy of morality

Chinese leaders have openly announced that the Communist Party will strive to establish both the 'rule of law' and the 'rule of morals'.⁷⁷ Their logic in emphasising moral values is rooted in the Chinese Communist history, which bears witness to the enabling effect of morals in attaining and sustaining political power. This effect is not merely ideologically defined but also culturally conditioned. In other words, the Marxian socialist vision in which the 'masses' are the 'masters' and officials are their 'servants' working under their supervision and being paid like skilled workmen⁷⁸ resembles the Confucian vision of 'government by virtuous men', who are 'intent upon the task, not bent upon the pay',⁷⁹ who take upon themselves to look after the welfare of the people, and who seek to win the confidence and support of the people by setting 'the example of diligent toil'.⁸⁰ The remarkable parallel between the two expressions of moral principles in government helps to explain why the Communist movement appealed strongly to the average Chinese and eventually succeeded in China.

The Chinese Communist moral principles are built on a political discourse that may be summed up in one line: 'serve the people'. It is defined through such expressions as 'officials being the servants of the people', 'Communist Party members being the first to bear hardships and the last to enjoy comforts', 'hard working and plain living', 'be eager to meet the needs of the masses', 'seek no personal privileges', 'equality of all ranks and walks of life'.⁸¹ During the revolutionary years, these straightforward and down-to-earth discursive expressions translated the Communist ideology into a concrete 'cognitive foundation'⁸² on which attitudes, goals,

interests, and actions of those who joined in the movement were organised to achieve the Communist agenda. That these principles not only fitted into China's cultural heritage but also corresponded with the expectations of the bottom social stratum, which consisted of the majority of Chinese society, was crucial for the Communists to attain state power.

To help naturalise the discursive framework of 'serve the people' among the Communist recruits, a state distribution system based on the egalitarian principles of the Paris Commune was also adopted from the very beginning of the Communist movement. This system was continued until the reform and sustained a social environment that allowed little room for other moral discourses to develop. Complementing the egalitarian distribution system was a non-materialistic and non-pecuniary incentive mechanism. Efforts, achievements, and contributions were acknowledged with titles of honour, medals, trophies, certificates of merit, and political and administrative promotions. In cultivating the norms of thinking and behaving and in shaping social relations, the discursive theme of 'hard work' and 'plain living' and the corresponding incentive system thus disqualified other value standards and, in turn, reduced the potential for corrupt conduct in all-encompassing China today.

In recent years, a strong sentiment of nostalgia has prevailed among the ordinary Chinese for the 'honest' and 'upright' Communist administrators found in the 1940s and 1950s.⁸³ This may attest to the continuous mitigating influence of the Communist 'servants of the people' and the Confucian 'virtuous rulers' on public perceptions of governance. It also indicates that economic growth and material prosperity alone are not enough to gain the hearts and minds of the Chinese. To recreate the 'hegemony' of the Communist rule, that is, rule with consent through moral, intellectual as well as political leadership,⁸⁴ the leadership has to work hard on improving the moral standards of those holding public offices.

Moral principles reduced to slogans

The introduction of the market element into the economy is not supposed to change the principle of 'serve the people' and its connotations. This is primarily because China remains socialist in nature. Another equally important reason is that while laws and disciplinary measures are capable of providing minimum requirements for human behaviour, good moral systems, and value standards cultivate proper conduct and civic responsibility. Yet focusing on pragmatism and materialism, the reform discourse provides little rhetorical or practicable space for the Communist moral principles to continue their commanding influence. The conceptual ambiguity of the 'socialist market economy' has also hindered the leadership from mediating the Communist, Western, and traditional values so as to provide moral guidance to a rapidly changing society.⁸⁵ With the invisible hand 'waving almost visibly in China',⁸⁶ Deng's renowned mottoes of

'getting rich is glorious' and 'let some people get rich first' have, instead, oriented the nation towards a different set of morals and virtues. 'Serve the people', which was once the central discursive theme defining social relations and the identity of Party and government offices, is now reduced to a hollow slogan.

Mixed messages on moral values have also rendered moral campaigns impotent in offsetting the materialistic drive of China's society and the get-rich-quick mentality. In this context, the attempt to foster popular moral commitments has, rather, contributed to the ubiquitous utilitarian approach to morality. Indeed, for many, moral campaigns have become the means to accomplish personal gains.⁸⁷ An example in point is the 'Learn from Lei Feng' campaign across China in March every year. Lei Feng is China's most famous symbol of 'serve the people' and 'sacrifice for others'.⁸⁸ Once inspiring several generations of Chinese to do good for the public whenever and wherever opportunities occurred, the 'Lei Feng' spirit now seems relevant only in March when he is commemorated in the national emulating campaign. The relevance, for many, lies only in the prospects of commendation by higher authorities, which may lead to media publicity, book or film deals, or a 'voluntary work' allowance. Campaigns as such are not likely to encourage moral convictions but breed cynicism, as may be exemplified by a popular saying that to find the hundreds of thousands of 'Lei Feng' between April and next February, one has to check private fancy meal or entertainment functions (paid by public funds), or 'study tours' to sightseeing spots (sponsored by government money), or political games for promotion (through bribes), or fund-raising (graft extortion) activities.⁸⁹

Morality or corruption: the individual's choice

Although a discourse is attempted to create social order through producing permissible meanings, it is by no means able to completely impose 'a one-dimensional, dominant, shared set of ideas, which are then absorbed by a passive public'.⁹⁰ Under the umbrella of the discourse authority, social norms are also 'grounded in the knowledgeable activities of situated actors',⁹¹ who have 'the capacity to reflexively construct theories of their own circumstances and form courses of action'.⁹² Engaged in the 'dialect of control',⁹³ human action is a process of not only living by but also reproducing social structures, which define roles and rules. This process takes place at the levels of individuals' decoding and assessing discursive messages, awareness of what should be done, and recognition of possibility and power in a specific situation.⁹⁴

The reform discourse has sketched only a conceptual outline for defining China's transitional economy. In substantiating the broad scheme of 'socialist market economy', individuals, especially those in public office, are thus equipped with ample opportunities to add their own perspectives

and intentions to those expressed in the reform rhetoric. Based on their own beliefs, understandings, experiences, and other configurations of knowledge, their conduct or misconduct often results from their conscious decisions in response to their action contexts.

'Model' officials and employees selected through public appraisals for their exemplary performances in 'serving the people' are perhaps among the rapidly decreasing number of true believers in Communist values. While many admit that they increasingly feel lonely and almost pointless in resisting the nationwide rush to become rich first, they still affirm their abiding commitment to Communist values.⁹⁵ The majority of public servants, in contrast, seem trapped in an awkward predicament. On the one hand, they want to keep their pledge to serve the people unconditionally. On the other, they are not content only to watch or help others become rich. With moral standards in flux, many are frank about their concerns about missing out on the opportunity of a lifetime to become rich, or the pressure from their families urging them to go with the trend, or their craving for the life style of the new rich. Yet they are likely to be discreet and moderate in taking advantage of policy loopholes and their positions to feather their nests. They tend to become more daring before retirement, however, because of their worries about being once out of office, with the opportunity lost forever. Hence the recent addition of the phrase '59 phenomenon' to the vocabulary on corruption issues.⁹⁶

Less bashful about profiteering are officials who are convinced that for their 'dawn to dusk hard work in serving the people' they deserve as much as what the new rich have, if not more.⁹⁷ Similarly, former 'Red Guards' who are now in administrative positions are often heard saying that it is their turn to reap material profits and make up for the losses they suffered from the Cultural Revolution because of their naïveté.⁹⁸ Then there is the sanctimonious group who knowingly exploit the ambiguity of the reform discourse to come up with seemingly high-sounding but very misleading justifications for their wrongdoings. For example, their self-indulging banquets and other entertainments paid for by public funds are for 'making friendly contacts for work',⁹⁹ questions about the sources of their huge personal savings are symptoms of the 'red-eye disease',¹⁰⁰ criticisms of their wrongdoings are 'Leftist schemes attempting to discredit reform and undermine political stability by reviving class struggle',¹⁰¹ their harassing of whistleblowers is to 'enforce the rule of law',¹⁰² and their taking sex bribes is in line with the appeal that 'for its economic growth China should be ready to sacrifice a generation of women'.¹⁰³

Moral values have causal efficacy and restrictive power because people believe in and act on them. Whether exploiting, or confused, or misled by the reform discourse, public officials have the ability to understand and choose the modes of their actions in executing their power and responsibilities. Their 'reflexively monitored' choices¹⁰⁴ from the morality-corruption divide or continuum in various situations reinforce the

paradoxical nature of the reform discourse and reproduce the prevalent social mindset and behaviour of subjecting law and morality to pragmatism and materialistic desires.

Conclusion

China's corruption has a dominating discursive component, which has not been adequately attended to in the effort to contain and eradicate the problem. The neglect, or, more accurately, the evasion, probably indicates a certain level of official recognition of the conceptual problems inherent in the 'socialist market economy' discourse that has framed the socio-political economic reality of the reform. Yet to root out the source of corruption, China has to face the challenge of placing the structural shift of its economic orientation on more solid theoretical ground and filling the conceptual vacuum in the socialism plus the free market formula. Only then will it be able to construct an alternative discourse in which individuals in public offices and society may begin to resist the 'normalising force'¹⁰⁵ of corruption and reverse its reproducing dynamics. The confusions and possibilities for abuses of public offices that have arisen from the reform rhetoric have revealed the power of language. Yet the evolution of the reform discourse has also proved that discourse is not final or closed but can be 'constructed, deconstructed and reconstructed'.¹⁰⁶

Notes

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3 Public attitudes to corruption in Taiwan

Ching-hsin Yu and I-chou Liu

Introduction

Taiwan has earned its reputation in terms of political democratisation over the past decade. However, like other new democracies, Taiwan is not free from corruption. For example, the World Economic Forum (WEF) has recently ranked Taiwan's corruption as 23rd in a list of 80 as opposite to 3rd in overall competitiveness on the same list. Likewise, a private agency focused on the political and economic risks in East and Southeast Asia, Political and Economic Risk Consultancy, Ltd. (PERC), has rated Taiwan's corruption as 6th in a list of 12 countries. It is true that political democratisation does not necessarily bring about clean politics; it is also true that the fruits of economic and democratic achievement may be eroded by corruption.

In fact, the issue of corruption is not just an economic or an ethical problem in Taiwan. The long-dominant Kuomintang (KMT) was defeated in the 2000 presidential election. One major factor that contributed to the KMT's defeat in the election was the corruption issue. In spite of the KMT's achievement in bringing about economic prosperity in Taiwan, its long-term rule had harboured serious problems of corruption. The then-opposition party, the Democratic Progressive Party (DPP) won the election by raising the banner of reforming the KMT's money politics. Most Taiwanese expected that the DPP would be more able to deal with the issue of money and corruption in the political process, and, therefore, the DPP's assumption of political power would inject a new dynamics into the development of governmental ethics. The new political development provides a valuable opportunity for researchers to compare change and continuity in popular attitudes towards corruption before and after 2000.

This chapter aims to explore popular behaviour and perceptions of corruption between 1999 and 2001 when Taiwan experienced a significant political transition. Instead of providing objective indicators signifying Taiwan's corruption, based on various reports, it chooses to probe Taiwanese perceptions of certain corruption practices based on a cultural perspective. In particular, people's attitudes towards three (negatively)

cultural practices – lobbying, banqueting, and bribery – will be investigated through empirical surveys conducted by the Election Study Center of National Chengchi University, Taiwan.

Cultural perspectives on corruption

Corruption is an old practice. The literature of ancient history offers various types and processes of corruption that would be condemned by laws or codes of conduct, at least nominally. The study of corruption gained its prominence after the Second World War. Its causes and impacts in developing countries have been broadly discussed and corruption viewed as obstructive to modernisation. Recently, researchers, either from the academy or supranational organisations, have paid attention to the prevalence of corruption.¹ In particular, the financial storms and economic downturns in the new democracies in Asia and Latin America have led to a closer examination of corrupt behaviour in these countries. In addition to academic discussions, many policy-oriented non-governmental organisations (NGOs) also play a significant part in the battle against corruption. The study of corruption presents not only in-depth case studies but also abundant cross-national comparisons.²

The commonly accepted definition of corruption emphasises the use of public office for private gains.³ More detailed definitions may include exploitative behaviour by officials in the private sector for personal interests. Nonetheless, even though the practices of corruption are not new to researchers, looking for a clear definition of corruption is a difficult task. As described by Williams:

It may be that, like beauty, we feel unable to define corruption, but are nevertheless confident of our ability to recognise it when we see it. Unfortunately, the visibility of corruption is largely dependent on the nature of its environment and this, of course, differs from place to place, and from time to time.⁴

The scope of corruption presents another difficulty. Corrupt behaviour may be significant or petty. Policy favouritism or sale contracts to specific enterprises, such as the tax-free policy in certain industries, provide types of grand corruption. By contrast, a police officer who takes a bribe for not giving a ticket to a speeding driver or a government official who demands a tip for fast-tracking a citizen's application procedure on certain affairs are examples of petty corruption. Obviously, the measurement of corruption is inherently difficult due to its nature. The implementation of rule by law, while providing guidelines for channelling citizens' demands, has always preserved discretionary power for public officials in responding to citizens' demands. The opportunity for corruption may thus be created.

Regardless of the difficulties of definition, many reports have resorted

to objective indicators to evaluate and compare the degrees of government corruption. For example, supranational organisations such as the International Country Risk Guide and Transparency International have periodically published the level of corruption in certain countries. These organisations have provided statistical data on the magnitude of corruption practices in these countries. In addition, synthesised indicators are also employed to construct global comparisons. The results of these efforts are regular reports on countries' corruption and their comparative status of improvement or deterioration. These data even estimate the severity of corruption by government officials. For example, one World Bank memorandum indicates that as much as 30 per cent of international loans to Indonesia end up in the pockets of local officials.⁵

Among these endeavours, one noteworthy development is the index of perceived corruption conducted by Transparency International. Based on the evaluation of businessmen and academic/research personnel, Transparency International has continuously developed the corruption perceptions index (CPI) across nations. CPI, even though it is not an actual measurement of corrupt behaviour or cases, reflects the subjective perceptions of experts in a given country that other quantitative measurements are unable to reach. In addition to providing cross-national comparison, the CPI shows not only the 'amount' of corrupt behaviour, but also unveils the 'severity' of corruption in a given country.

Dominant measurements of these reports are based on subjective evaluation of corruption in a given country by elites or experts. It has been rare to find counterpart reports based on the perceptions of the general public, however. Even though the evaluations from social elites may more accurately reflect the truth of corruption than those of popular perceptions, many of these indicators mirror the degree of government corruption only by the malpractices of public officials. To some degree, these indicators are too 'objective' since they are constructed either by the number or the severity of illegal practices. Thus, the number will dictate everything. What is missing are some 'human' and 'cultural' essences in the evaluation of corruption.

Numerical indicators of corruption are important, but citizens' perceptions of government ethics are by no means less important. Citizens are key players in government affairs in a democratic political system: they see, perceive, and evaluate the ethics of public officials. These perceptions not only describe the current status of government ethics but also provide useful references for political elites. The pursuit of clean politics has been an underlying issue for politicians. For example, a high score in government ethics may win politicians credit for their effective governing. Likewise, a bad record of government ethics will trigger political opposition to the governing legitimacy of the ruled. It is clear that politicians will do whatever they can to convince their citizens of their determination to bring about clean politics in the political process. As a result, people's

perception of the status of government ethics not only represents the transparency of governmental affairs but also becomes the source of political competition.

Moreover, given its nature of aggregate indicators, the results of current corruption evaluation are unable to differentiate between various types of corruption. The inability to distinguish and classify different types of corruption will result in inaccurate interpretation of corruption reports. Concomitant impacts of corruption, both economic and political, will thus be difficult to assess. For example, corruption by high-level politicians as well as corruption by low-level bureaucrats may be equally weighted. But the impacts of the two kinds of corruptions are by no means identical. Worse still, the ambiguous content of corruption has created different standards of codes of conduct in different countries. Conducts that are classified as corruption by some countries may not apply to others, or even may be accepted as legal there.

More specifically, cultural differences between countries are influential in providing a clear-cut domain of corrupt conduct. In theory, the principle of the rule of law prescribes adequate guidelines for public officials as well as the citizens in their interactive process. The behaviour of public officials will thus create the images of the government ethics and citizens' perceptions of government corruption. In a broad sense, government ethics can be seen as people's perceptions, both cognitive and behavioural, of the integrity of the public officials. If the interactions between the public officials and individuals are institutionalised, which means the interactive process has been stabilised and valued, then the results of the individual's business with the government will be transparent and foreseeable. Abiding by those regulations will be the best way, even the only way, for individuals to achieve their goals.

However, things do not always go the way we expect. In practice, those regulations, however detailed, are still subject to personal interpretations when they are implemented. Either the public officials or individuals will decode the regulations at their convenience. Moreover, there are always 'grey areas' during the interaction between public officials and individuals. Public officials and individuals are able to pursue their own interests without openly offending against those regulations. Even worse, illegal practices, such as bribery, are likely to emerge in the process. Government ethics are thus eroded. For example, Hofstede's⁶ seminal study has outlined four cultural essences (power distance, uncertainty avoidance, masculinity or femininity, and individualism or collectivism) affecting an individual's perceptions of corruption. Different societies maintain distinct cultural backgrounds that will facilitate different applications of government ethics.

There has also been a sharp contrast between Western and East Asian societies. In the West, the codes of conduct for government officials are basically well written. The concept of the rule of law has been widely accepted by government officials and by citizens. By contrast, in East

Asian societies or in Confucian societies, codes of conduct between citizens and public officials may have different connotations. No one will deny that Confucian culture in East Asia has emphasised the importance of interpersonal relationships. The so-called *guanxi*, a network of connections which an individual can exploit to facilitate his/her own business, has been prominent in daily life.⁷ The establishment of *guanxi* comes from a variety of sources, such as family members, geographic origins, business partners, school alumni, association members, political parties, and so forth. Naturally, the process of establishing the *guanxi* network also varies. Some are purely family members where kinship bridges the connections. Some may come from mutual friendships during school days. Others will result from bartering benefits. It is widely believed that the more connections an individual has, the more likely his or her success as an individual.

The practice of *guanxi* also extends to the political process as individuals deal with government officials. Lobbying, banqueting, and gifts are particularly common. On the one hand, an individual may be familiar with the government official who is in charge of that business. The networking of *guanxi* will thus be initiated. On the other hand, an individual may not be familiar with the government official: then he/she will ask some acquaintances, either formally or informally, to step into the business. It is reasonable to believe that with the assistance of some important connections, the whole business will proceed smoothly. Hence, an intermediary will be introduced to lobby for the individual.

Similarly, wining and dining government officials is also widespread. The practice of wining and dining public officials, like the practice of lobbying, is carried out following the practice of *guanxi*. Banqueting behaviour is based on personal connections that create a friendly atmosphere. The individual will feel much more comfortable if the government official who is in charge of the business has been his/her guest at a banquet. It is reasonable to believe that the government official who has received an individual's special treats will be better disposed to the individual's concerns.

During the process of lobbying or banqueting, an individual may also give some gifts to public officials. Like lobbying and banqueting, gift-giving in Taiwan is a popular practice. It also represents a pattern of reciprocal behaviour: recipients of gifts will do the same some other time. Hence, an individual often maintains an expectation that governmental officials, like himself/herself, are also social animals who are used to these cultural practices. It is a natural course of thinking for an individual to shorten the distance between himself/herself and government officials by these practices, even though it may sometimes be against the legal regulations.

Therefore, the existence of *guanxi* is more a cultural phenomenon than an ethical issue in Taiwan. Nonetheless, the practices of *guanxi* have been suspected of being unethical. In particular, the implementation of *guanxi* is

often equated with corruption, since the former may include bartering lobby activities, banqueting, and gift-giving for a government official's favours. Such practices are not only cultural but also ethical. But, viewed from a cultural perspective, the distinctions between lobby, banqueting, and giving gifts to government officials and corruption are blurred.

The demarcations between gift-giving and bribery are even more difficult to identify. It is easy to define a bribe when an individual gives money to officials in exchange for favours, but it is difficult to define gift-giving as a bribe without the act of money-giving. On the one hand, the value or size of gift is debatable. In many oriental societies, farmers may regularly give self-raised livestock or products to government officials. Such behaviours are, first, seen as cultural norms to maintain *guanxi*. However, this *guanxi* will certainly ease the passage of a farmer's application for favours from the government. The effects of this gift-giving are predictable, even though they do not come from cash payment. On the other hand, instead of directly giving gifts to government officials, bribers may send gifts to an official's relatives. Some key persons, such as the official's wife, parents, brothers, sisters, close friends, and secretary, will receive the gifts, and transmit the message to the officials. In many instances an individual's affiliations are the common focus of bribes. Contributing money to an official's political party, for instance, may enhance the briber's future chance of gaining access of government projects or financial assistance. In other words, there exists a very fine line between gift-giving and bribery. Laws often fail to provide a clear distinction between them.

Negative cultural practices

Attitudes towards certain negative cultural practices represent people's general perception of government ethics. The sources that give rise to this perception mainly come from media reports, interpersonal communication, and individuals' experiences.⁸ Media reports may be the most important source. Those easily accessible information sources, such as newspapers, television, radio, and other communication media certainly play a significant role in shaping people's attitude towards government ethics. Also, interpersonal communication may reveal certain bad government practices to the general public. Family members, relatives, neighbours, and friends are sources of information that highlight the wrongdoings of government officials. Finally, there are personal experiences. Media reports and interpersonal communication, despite their importance, affect only rather distantly and indirectly the formation of people's perception. People's perception of government ethics based on these two sources may run the risk of exaggerating the seriousness of problems and thus obscure the truth of the situation. By contrast, personal contacts with public officials will provide direct references for an individual to evaluate government ethics. To some degree, personal experi-

ences will more faithfully reflect the situation of government ethics than either the media coverage or interpersonal communication.

Figure 3.1 reveals an interesting distribution of personal experiences of engaging in negative cultural practices. Similar to the distribution of people's attitudes towards cultural practices, over one-third of Taiwanese had engaged in lobbying when they were handling business with the government. The percentage ranged from 38.4 in 1999 to 34.6 in 2001. Even though there was a gradually decreasing trend during this period, the practice of lobbying seemed pervasive in the interaction between individuals and government officials.

Compared with lobbying, banqueting and gift-giving/bribery practices were less prominent. Less than 20 per cent of Taiwanese had engaged in banqueting behaviour during this period. The highest percentage of banqueting behaviour was 19.2 in 1999. This percentage fell to the low of 15.8 in March 2001 but then increased to 18.6 in September 2001. The percentage of people's gift-giving/bribery was relatively stable during this period. An average of less than 17 per cent of people had engaged in gift-giving/bribery in a stable pattern in four surveys.

In general, the trend of these three types of behaviour points to a

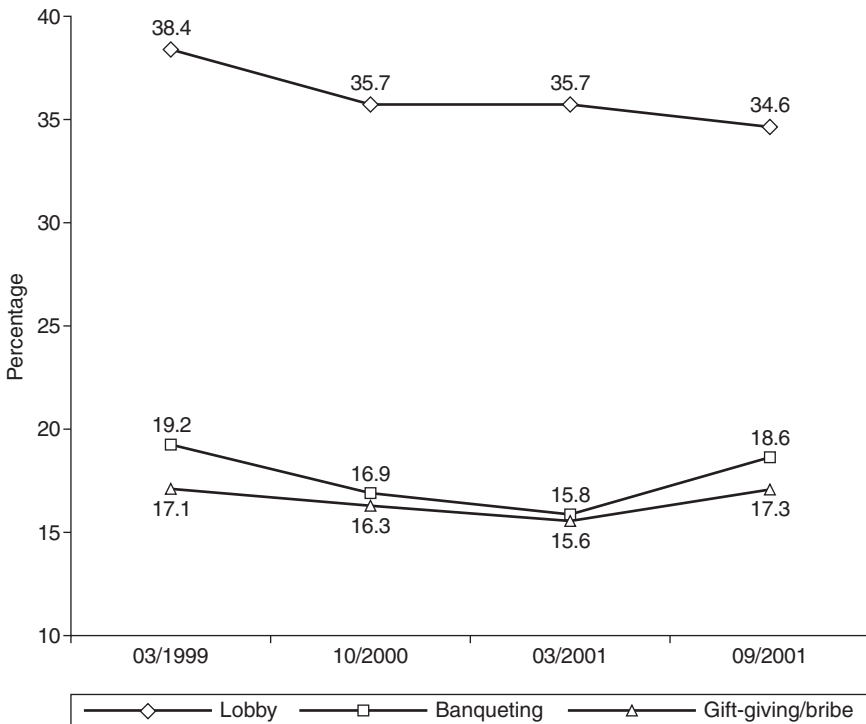


Figure 3.1 People's behaviour in negative cultural practices.

similar pattern. In 1999, when the KMT was still in power, the percentage of individuals engaging in these activities was high. Then they decreased in the year 2000, reflecting the change of political environment. Nonetheless, with the slight exception of lobbying, the general trend began to surge gradually in 2001.

Attitudes towards negative cultural practices

Lobbying, banqueting, and gift-giving/bribery are common practices in Taiwanese society. People have long recognised these practices, either through personal experience or by perception. In the following sections, we will explore people’s perceptions towards these practices based on survey data conducted from 1999 to 2001. Several statements concerning the practices of lobbying, banqueting, and gift-giving/bribery were presented to respondents. A higher score of agreement with these statements signals a higher negative perception of these practices. By contrast, a respondent expressing a lower score of agreement with these statements represents a more positive attitude towards government corruption.⁹

As shown in Figure 3.2, it is obvious that, among the three negative cul-

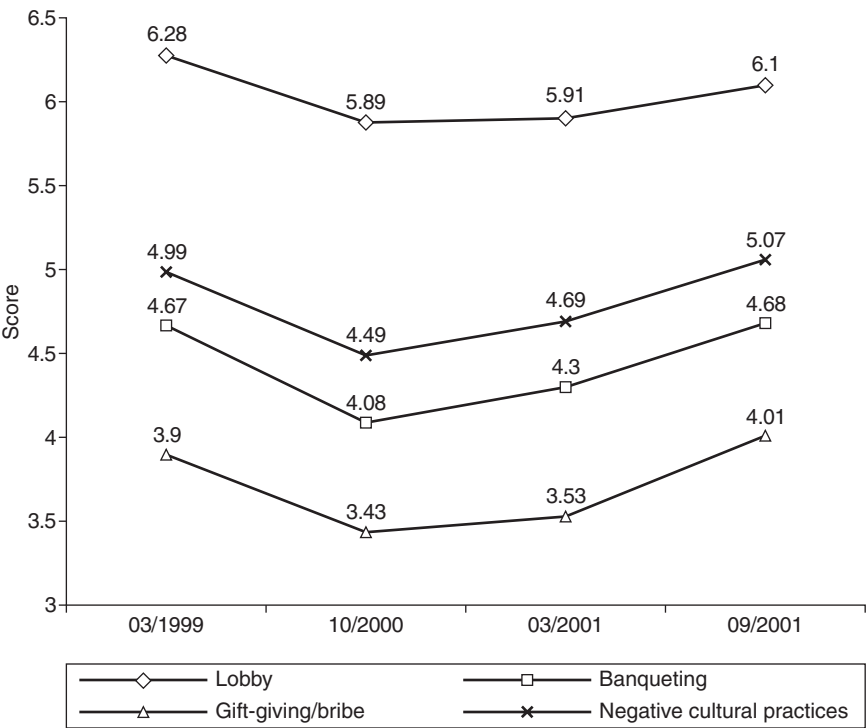


Figure 3.2 Attitude towards negative cultural practices.

tural practices, Taiwanese are more inclined to maintain a relatively tolerant attitude towards lobbying in the political process. On a score of 0 to 10, the average score for lobbying is much higher than those of banqueting and bribery. As compared to the statements of banqueting and bribery, a substantial portion of Taiwanese agree with the idea that lobbying government officials will enhance the desired results. This belief was consistent since the average score of lobbying was much higher than the other two statements throughout the four surveys.

In terms of the trend of people's perception on lobbying, the majority of Taiwanese believed that it would be much better to have someone influential speak on their behalf. The average score was 6.28 in 1999, which was high compared to other surveys. Then the score decreased rather substantially to 5.89 in 2000. The decrease in the score could be the result of people's expectations for the new government after the 2000 presidential election. However, the decrease of score did not last long. The score slowly increased in March and September 2001. The score in September 2001 was close to that of 1999, which implied possible disappointment in the government ethics of the new ruling DPP government.

The trend in people's attitudes towards the necessity of banqueting when people are doing business with the government is similar to that of lobbying. The average point of people's attitude was 4.67 in March 1999 but it decreased significantly to 4.08 in October 2000. However, the score began to increase after that. In March and September 2001, the average score of people's attitude was 4.30 and 4.68 respectively. The score in September was almost identical to that of 1999.

On the issue of people's attitude towards gift-giving/bribery when doing business with the government, Taiwanese were less inclined to believe that gift-giving/bribery would facilitate the process of doing business. The average score is 3.9 in 1999 and decreased to 3.43 in 2000. But the score increased to 3.53 and 4.01 in 2001. The trend seemed to return to the 1999 score.

It is obvious that there is a general pattern in people's attitudes towards the three practices. By combining the three cultural practices into one single indicator, the trend of general cultural practice resembles the specific cultural practices. The average score was high in 1999, then decreased in 2000, but began to increase in 2001. The score in 2001 was even higher than that of 1999. It seemed that the dramatic political change in 2000 did affect people's attitude towards government ethics. The new government was believed to bring clean politics into the political process. However, this expectation had gradually disappeared as time went on. The attitude towards those negative practices of most Taiwanese seemed 'back to the normal' again. This general trend also resembles that of the trend in behaviour of cultural practices indicated in Figure 3.1. This resemblance has reconfirmed that the DPP's winning of the presidential election in 2000 did bring about a new image of government ethics, unfortunately, this new image of government ethics did not last long.

People's characteristics and their perception of negative cultural practices

Given the general picture that people believe negative cultural practices will facilitate their business with the government, it is also necessary to explore further the relations between people's socio-demographic and political characteristics and their perceptions. In terms of gender, as shown in Table 3.1, there exists a clear gender difference only in the 1999 survey, in which male respondents are more likely to agree with the statements that negative cultural practices will enhance their business with the government. By contrast, the other three surveys do not show significant gender differences. Also, as opposed to the 1999 survey, the score reveals a sharp decrease in the 2000 survey for both male and female respondents, but turns into an increasing trend in the 2001 surveys.

As for the age factor shown in Table 3.2, there exists a constant trend over the four surveys that the younger respondents are more likely to agree with the statements. Young respondents maintain a more negative attitude towards government ethics than older respondents. In particular, the scores of respondents whose ages range from 20 to 39 show a sharp difference from those of respondents aged over 40. As with the gender factor, there is also a general trend of down-and-up along the four surveys, which means the turnover of political power did bring a brief alteration in perceptions of government ethics.

On education, as indicated by Table 3.3, like the age factor, there is also a clear association between respondents' level of education and their perception of government ethics. On the one hand, respondents with a high level of education are more inclined to agree with the statement that negative cultural practices will be conducive to personal business. On the

Table 3.1 Gender and perceptions of negative cultural practices

<i>Date</i>	<i>Gender</i>	<i>Number</i>	<i>Mean</i>	<i>s.d.</i>	<i>Result</i>
March 1999	Male	644	5.16	2.62	T = 2.369 $p < 0.05$ Males > Females
	Female	556	4.80	2.70	
October 2000	Male	638	4.43	2.92	T = -0.837 $p > 0.05$
	Female	587	4.56	2.76	
March 2001	Male	652	4.76	2.84	T = 0.953 $p > 0.05$
	Female	566	4.60	2.71	
September 2001	Male	634	5.02	2.71	T = -0.688 $p > 0.05$
	Female	644	5.12	2.63	

Table 3.2 Age and perceptions of negative cultural practices

<i>Date</i>	<i>Age</i>	<i>Number</i>	<i>Mean</i>	<i>s.d.</i>	<i>Result</i>
March 1999					F = 35.219
	(1) 20–29 years	346	5.82	2.24	$p < 0.001$
	(2) 30–39 years	334	5.56	2.66	(1) > (3) (4) (5)
	(3) 40–49 years	222	4.59	2.68	(2) > (3) (4) (5)
	(4) 50–59 years	125	3.82	2.59	(3) > (5)
	(5) 60 years/above	156	3.50	2.57	
October 2000					F = 49.930
	(1) 20–29 years	343	5.68	2.44	$p < 0.001$
	(2) 30–39 years	333	5.12	2.56	(1) > (2) (3) (4) (5)
	(3) 40–49 years	253	3.81	2.88	(2) > (3) (4) (5)
	(4) 50–59 years	121	3.34	2.62	(3) > (5)
	(5) 60 years/above	157	2.71	2.83	
March 2001					F = 33.386
	(1) 20–29 years	330	5.62	2.28	$p < 0.001$
	(2) 30–39 years	320	5.06	2.63	(1) > (3) (4) (5)
	(3) 40–49 years	251	4.46	2.71	(2) > (4) (5)
	(4) 50–59 years	138	3.93	2.93	(3) > (5)
	(5) 60 years/above	166	2.94	2.90	(4) > (5)
September 2001					F = 21.094
	(1) 20–29 years	333	5.77	2.49	$p < 0.001$
	(2) 30–39 years	321	5.58	2.50	(1) > (3) (4) (5)
	(3) 40–49 years	279	4.78	2.50	(2) > (3) (4) (5)
	(4) 50–59 years	146	4.00	2.37	
	(5) 60 years/above	191	4.26	3.12	

other hand, respondents with a low level of education tend to disagree with the statements. There are clear-cut differences between respondents having a college/university education and respondents having only primary education or less. In addition, higher-educated respondents show a rather constant perception of governmental ethics notwithstanding the change of government in 2000. The deviation of score between 1999 and 2000 surveys is limited. However, the change of government in 2000 did offer less-educated respondents a new anticipation of clean politics even though this anticipation paled away very soon.

Table 3.4 also shows that respondents' career differences do have significant impact on their perceptions on governmental ethics. White-collar respondents, either upper/middle or lower level, are more likely to agree with the statements than farmers/fishermen and blue-collar respondents. Also, both the farmers/fishermen and blue-collar respondents had revealed a rather dramatic change of perception in four surveys. Nonetheless, the general trend also shows a decline of score in the 2000 survey and a rise in the 2001 surveys.

In terms of the respondents' party support, revealed by Table 3.5, in

Table 3.3 Education and negative cultural practices

<i>Date</i>	<i>Education level</i>	<i>Number</i>	<i>Mean</i>	<i>s.d.</i>	<i>Result</i>
March 1999					F = 39.769
	(1) Primary/below	284	3.46	2.68	$p < 0.001$
	(2) Junior High	212	4.89	2.49	(5) > (1) (2)
	(3) Senior High	391	5.41	2.57	(4) > (1) (2)
	(4) College	171	5.94	2.29	(3) > (1)
	(5) University/above	138	5.90	2.24	(2) > (1)
October 2000					F = 41.239
	(1) Primary/below	293	3.00	2.84	$p < 0.001$
	(2) Junior High	215	3.99	2.72	(5) > (1) (2)
	(3) Senior High	392	5.10	2.64	(4) > (1) (2)
	(4) College	173	5.41	2.62	(3) > (1) (2)
	(5) University/above	143	5.61	2.37	(2) > (1)
March 2001					F = 27.324
	(1) Primary/below	305	3.59	2.98	$p < 0.001$
	(2) Junior High	204	4.04	2.78	(5) > (1) (2)
	(3) Senior High	387	5.19	2.60	(4) > (1) (2)
	(4) College	174	5.51	2.35	(3) > (1) (2)
	(5) University/above	146	5.54	2.26	(2) > (1)
September 2001					F = 21.853
	(1) Primary/below	346	4.26	2.79	$p < 0.001$
	(2) Junior High	208	4.44	2.48	(5) > (1) (2)
	(3) Senior High	399	5.48	2.63	(4) > (1) (2)
	(4) College	176	5.83	2.49	(3) > (1)
	(5) University/above	143	5.93	2.18	(2) > (1)

the 1999 survey, the KMT supporters are less inclined to agree with the statement that negative culture practices will enhance personal interests when they are doing business with the government. By contrast, the party neutrals, the DPP supporters, and especially the NP supporters represent another extreme by their strong agreement with the statement. In the 2000 survey, both the DPP supporters and the PFP supporters show stronger agreement with the statement than party neutral respondents. Compared to other party supporters, the PFP supporters continue to show a high level of agreement with the statement in the 2001 surveys. The DPP's assumption of political power had offered people an expectation of clean politics. As opposed to the 1999 survey, the score of 2000 shows that, regardless of different partisan support, respondents have tended to disagree with the statement that negative cultural practices will enhance personal interests.

One noteworthy development is that the DPP supporters have maintained a higher degree of agreement with the statement than the KMT supporters over the four surveys. It seems that the change of political power did not significantly affect the perceptions of the two parties' sup-

Table 3.4 Career and negative cultural practices

<i>Date</i>	<i>Career</i>	<i>Number</i>	<i>Mean</i>	<i>s.d.</i>	<i>Result</i>
March 1999	(1) Upper/middle white-collar	467	5.41	2.57	F = 12.654
	(2) Lower white-collar	385	5.15	2.61	$p < 0.001$
	(3) Farmers/Fishermen	86	3.64	2.65	(1) > (3)
					(4) (5)
	(4) Blue-collar	240	4.55	2.68	(2) > (3)
	(5) Others	22	3.46	2.73	
October 2000	(1) Upper/middle white-collar	441	4.83	2.79	F = 9.043
	(2) Lower white-collar	391	4.62	2.59	$p < 0.001$
	(3) Farmers/Fishermen	117	3.12	2.80	(1) > (3)
	(4) Blue-collar	258	4.36	3.14	(2) > (3)
	(5) Others	13	3.92	2.69	(4) > (3)
March 2001	(1) Upper/middle white-collar	421	4.95	2.59	F = 9.826
	(2) Lower white-collar	372	5.01	2.79	$p < 0.001$
	(3) Farmers/Fishermen	119	3.47	2.84	(1) > (3)
	(4) Blue-collar	283	4.49	2.79	(2) > (3)
	(5) Others	23	3.40	3.21	(4) > (3)
September 2001	(1) Upper/middle white-collar	454	5.27	2.69	F = 6.668
	(2) Lower white-collar	406	5.29	2.60	$p < 0.001$
	(3) Farmers/Fishermen	118	4.05	2.82	(1) > (3)
	(4) Blue-collar	282	4.92	2.51	(2) > (3)
	(5) Others	18	4.01	3.31	

porters. However, the score of the DPP supporters was high in 1999 when the DPP was still an opposition party; it then fell in 2000 and later slightly rose in 2001. A sharp contrast is also found for the KMT supporters. The score of the KMP supporters in 1999 was low but it increased substantially in 2001. Therefore, the change in political power did have a significant impact on people's perceptions of governmental ethics, at least for the DPP and the KMT supporters.

Conclusion

Culturally, Taiwanese people have long adhered to East Asian culture, or more specifically, Confucian culture. Social scientists have ascribed many attributes to Confucian culture. Even though these attributes may vary, the emphasis of personal harmony is one of the key essences that underline Confucian teachings. The impetus of pursuing personal harmony has discouraged the expression of individual self-interest in public for the sake of not offending the interests of others. However, it may encourage indi-

Table 3.5 Party support and negative cultural practices

<i>Date</i>	<i>Party</i>	<i>Number</i>	<i>Mean</i>	<i>s.d.</i>	<i>Results</i>
March 1999	(1) KMT	456	4.39	2.49	F = 12.120
	(2) DPP	320	5.49	2.73	$p < 0.001$
	(3) NP	58	6.15	2.34	(2) > (1)
	(4) TIP	8	5.56	1.72	(3) > (1)
	(5) Party neutrals	358	5.12	2.72	(5) > (1)
October 2000	(1) KMT	197	4.20	2.86	F = 4.666
	(2) DPP	370	4.73	2.84	$p < 0.001$
	(3) NP	14	5.13	2.31	(2) > (6)
	(4) TIP	2	4.86	4.07	(5) > (6)
	(5) PFP	256	5.00	2.82	
	(6) Party neutrals	382	4.05	2.81	
March 2001	(1) KMT	178	4.35	2.87	F = 4.317
	(2) DPP	355	4.93	2.78	$p < 0.01$
	(3) NP	10	4.56	2.69	(5) > (6)
	(4) TIP	6	5.82	3.59	
	(5) PFP	232	5.20	2.60	
	(6) Party neutrals	438	4.34	2.76	
September 2001	(1) KMT	205	4.90	2.63	F = 2.831
	(2) DPP	336	5.12	2.58	$p < 0.05$
	(3) NP	13	4.76	3.18	(5) > (7)
	(4) TIP	5	5.50	3.64	
	(5) PFP	200	5.71	2.70	
	(6) TSU	5	5.94	1.81	
	(7) Party neutrals	515	4.85	2.69	

viduals to undertake informal ways of achieving personal goals. The emphases on interpersonal harmony further expand to encompass people's political attitudes in the political process. Even though there are institutionalised rules and procedures in the political process, people may still try to meet their needs through informal personal connections. As a result, when people have something to do with the government, their attitudes and behaviour may reveal two distinct patterns. On the one hand, when people are doing business with the government, they are requested to follow the related regulations as far as they can. On the other hand, in addition to following the regulations, people will also resort to other measures to facilitate their needs. More often than not, people may adopt ultra-institutionalised measures to achieve their goals, even if they are flying in the face of existing state regulations.

In the study of popular attitudes towards ethics in the process of political participation in Taiwan, it is important not to ignore the cultural back-

grounds mentioned above. As Taiwan has become more economically developed and politically democratic, the rules and procedures addressing people's needs are also become more and more institutionalised. However, for a long time, there have been other practices through which people handle their business with government. The practice of lobbying is the most popular. More than one in three respondents have indicated the use of lobbying either by themselves or by their relatives. This distribution also reflects the social expectation that lobbying does matter when doing business with the government. The other two practices, banqueting and gift-giving/bribery have also continued, but in a less prominent way.

Finally, over the four surveys, the perceptive trend of these negative cultural practices shows an interesting development. The significant change in the political arena provided Taiwanese with an expectation of clean government and it did bring about a clear perceptive change at that juncture. Nonetheless, the perceptive change did not last long, and things became even worse than before. This result presents a challenging task for the new government in Taiwan, and perhaps also for all new governments elsewhere in the world.

Appendix

Table 3.6 Descriptions and measurements of variables

<i>Variable</i>	<i>Description and measurements</i>
Attitude towards bribery	Respondents are asked the degree of agreement or disagreement with the following statement: 'In our society, some people think that, when they are doing business with the government, the result will be more advantageous if they have given money or gifts to governmental officials who are in charge of this business' (0–10, 0 means strongly disagree, 10 means strongly agree).
Engage in bribery	Following the question of attitude towards bribery, respondents are asked the following question: 'Have you or your relatives engaged in bribing governmental officials?' (yes, no).
Attitude towards lobbying	Respondents are asked the degree of agreement or disagreement with the following statement: 'In our society, some people think that, when they are doing business with the government, the result will be more advantageous if they have asked some influential person to lobby those governmental officials who are in charge of this business' (0–10, 0 means strongly disagree, 10 means strongly agree).

continued

Table 3.6 continued

<i>Variable</i>	<i>Description and measurements</i>
Engage in lobbying	Following the question of attitude towards lobbying, respondents are asked the following question: 'Have you or your relatives engaged in asking some influentials to lobby governmental officials?' (yes, no).
Attitude towards banqueting	Respondents are asked the degree of agreement or disagreement with the following statement: 'In our society, some people think that, when they are doing business with the government, the result will be more advantageous if they have bought meals for the governmental officials who are in charge of this business' (0–10, 0 means strongly disagree, 10 means strongly agree).
Engage in banqueting	Following the question of attitude towards banqueting, respondents are asked the following question: 'Have you or your relatives engaged in buying meals for government officials?' (yes, no).
Attitude towards negative cultural practices	It is a combination of people's attitudes towards lobbying, banqueting, and bribery (0–10, 0 means strongly disagree, 10 means strongly agree).
Perception of governmental ethics	Respondents are asked to give an evaluation of the following statement: 'If using 0 to 10 to express the degree of government ethics, 10 means the government ethics are very serious, 0 means the government ethics are very good, what is your evaluation?' (0–10, 0 means very good, 10 means very serious).
Provincial origins	Based on the provincial background of respondent's father (Taiwanese Hakka, Taiwanese Min-nan, Mainlander).
Ethnic identity	Respondents are asked the following question: 'In Taiwan, some people think of themselves as Taiwanese, there are also some people who think of themselves as Chinese. Do you think of yourself as a Taiwanese, a Chinese, or both a Taiwanese and a Chinese?' (Taiwanese, both Chinese).
Party support	Respondents are asked the following question: 'Of the KMT, the DPP, the NP, the TIP, and the PFP, which do you support?' (KMT, DPP, NP, TIP, PFP, Others).

Notes

- 1 Viot Tanzi, 'Corruption Around the World: Causes, Consequences, Scope and Cures', *IMF Staff Papers*, 45, 4 (1998), pp. 559–94.
- 2 Caiden, E. Gerald, O.P. Dwivedi, and Joseph Jabbra, eds, *Where Corruption Lies*, Bloomfield, CT: Kumarian Press, 2001.

- 3 Pranab Bardhan, 'Corruption and Development: A Review of Issues', *Journal of Economic Literature*, 35 (1997), pp. 1320–46; Tanzi, op. cit.
- 4 Robert J. Williams, 'The Problem of Corruption: A Conceptual and Comparative Analysis', in Robert Williams, ed., *Explaining Corruption*, Cheltenham: Edward Elgar Publishing Ltd, 2000, p. 126.
- 5 *The Economist*, 1999, pp. 22–4.
- 6 G. Hofstede, *Culture's Consequences: International Differences in Work-Related Values*, New York: Sage Publications, 1980.
- 7 Min Chen, *Asian Management System: Chinese, Japanese and Korean Styles of Business*, New York: Routledge, 1995.
- 8 Ching-hsin Yu *et al.*, *Survey of People's Subjective Indicator of Government Ethics*, Taiwan: Election Study Center, National Chengchi University, 2001.
- 9 Descriptions and measurements of the score can be found in the Appendix.

4 Corruption in the Korean public and private sectors

Kyongsoo Lho and Joseph Cabuay

Introduction

On 24 May 2003, the International Anti-Corruption Conference (IACC) held in Seoul, concluded with a reaffirmation by its participants of their determination to fight corruption and safeguard integrity through efficient law enforcement and preventive measures, packaged under a new 'plan of action'. In a speech at the closing of the IACC session, President Roh Moo-Hyun described corruption as the biggest challenge to democracy and pledged that he would always stand ready to challenge corruption by all means. On the same day, Lee Ki-Ho, former senior presidential secretary for economic affairs, was arrested for abusing his power by pressuring a state-run bank to extend loans to Hyundai subsidiaries in June 2000.

During the anti-corruption forum in Seoul, the Korea Independent Commission against Corruption (KICAC) announced that it was developing a plan to fight against corruption in both the public and private sectors. The plan is designed to break the 'chain of corruption' in Korea. However, with other Korean public officials recently being charged with bribery even after a new code of conduct was publicly declared, the effectiveness of the KICAC's plan has yet to be proved.

As the fight against corruption continues after ten years of active anti-corruption efforts, South Korea is still suffering its effects today. Decades of authoritarian rule have left a legacy of closely bound relationships between the government and Korea's conglomerates, better known as the *chaebol*. The ties between the public and private sector were often Janus-faced in character. On the one hand, the highly centralized administration of Park Chung Hee, President of the Third Republic, used government intervention and assistance to stimulate and develop the growth of the Korean private and financial sectors. In doing so, selected industries such as Heavy and Chemical Industries (HCI) were given preferential loans and subsidies, which stimulated trade and investment in South Korea. Through a series of economic plans initiated by the Park Chung Hee administration, the relationship between the government and the private sector provided the momentum for Korea's rapid development.

The relationship between the two also served as a breeding ground for corruption in Korea. In the absence of effective regulations, oversight, and accountability measures, relations between the *chaebol* and the government often took the form of bribes, kickbacks, and nepotism. Many of the political and economic exchanges between the public and private sectors were often conducted in 'under the table' deals through personal relationships and preferences rather than legally based transactions. While structural inefficiencies do not necessarily equal corruption, the government's inability to correct structural problems within the public and private sector has led to the pervasiveness of corruption in Korean society.

Adding to the impetus of corrupt practices in Korea, cultural factors based strongly on regional origin and membership in clan organizations led by a small political elite enhanced the opportunity for corruption and sustained the collusive relationship between the *chaebol* and the government.¹ As a result, the public's trust in government and business throughout the years has slowly decreased.

Are there different types of corruption? This question is significant, especially since Korea wishes to attract foreign direct investment and transform itself into the international business hub of Northeast Asia. Internationally Korea is currently viewed as a nation in need of better transparency and accountability measures.

Defining corruption

According to the US Agency for International Development (USAID), the simple definition of corruption is the misuse of public authority for private profit. However, definitions of corruption and its impact will differ according to the socio-economic and political factors of each nation-state. There can be no assumptions that corruption always means the same thing or has the same effect or stimulus. The general consensus is that corruption entails a point of view, a standard of 'integrity' and a recognized framework of how corruption functions in specific instances. Corruption involves the actions of politicians, business people, and/or civil servants, who enrich themselves and their collusive partners by improper and illegal means through the misuse of public and private office.

Administrative corruption assumes two dimensions:² it occurs where, for example, services or contracts are provided 'in accordance with regulations' and also where transactions are 'against regulations'. In the first dimension, an official acquires private gain illegally for doing something that he is usually required to do by law. In the second dimension, the bribe is paid to acquire services or favours, which the official is prohibited from providing. In both dimensions, corruption occurs at all levels of the government and private sector and can range from 'high-level corruption' (affecting national/international policy) to more low-level varieties.

Public opinion can surpass legal definitions of administrative corruption, and the public view can define corruption in ways which can supersede existing laws. In instances where public consensus and legal definitions are not congruent, officials are more inclined to defer towards the public's view. As a result, legal provisions in place are transgressed. Therefore, it is *sine qua non* that the public be informed and enlightened as to the cause and effects of corruption.

In Transparency International's Corruption Perception's Index (CPI) of 2002, Korea with a GDP of about \$865 billion in 2001, ranked number 43 out of 102 countries with a score of only 4.5 out of 10.³ These CPI rankings, although subjective, are included in the overall analysis conducted by investors and buyers who may look to Korea for business transactions and investments.

In comparison to other nations in the CPI of 2002, Canada's GDP for that year was \$875 billion but ranked 7th, and Spain's GDP for the same year was \$828 billion but it was ranked 20th. On Transparency International's Bribery Payer's Index out of 21 countries, Korea also ranked a high 18.⁴

In 2001–02, corruption scandals once again hit the presidential level of government even as political platforms for anti-corruption were being conducted. Indeed, even after the recent prosecution of President Roh Moo-Hyun's close adviser, Yeom Dong-Young for bribery, the recent SK Global accounting fraud scandal demonstrates that corruption actively exists in the public and private sector of Korea.⁵

Causes of corruption

According to the Office of the Prime Minister of South Korea, there are three categorical causes of corruption in Korea: (1) organizational and administrative causes; (2) social and cultural causes; and (3) psychological and attitudinal causes (see Box 4.1).

Government-led economic development in the past few decades caused various approval and authorization rules and regulations to proliferate, which increased government corruption. The growth-oriented economic policy made it customary for government to award special privileges to certain companies, which, in return for special favours, provided illegal political funds to the politicians who had influence in shaping government policy and operations. Social and cultural factors such as authoritarian practices, emphasis on regional and academic connections, sectarianism, and paternalism encouraged the prevalence of corruption throughout the entire society.

However, with respect to social and cultural causes, it is important to note that cash gifts to express congratulations and condolences are also practised in both eastern and western cultures. Furthermore, privileges for ex-government officials, for example, former US presidents, who possess

Box 4.1 Causes of corruption

Organizational and administrative causes

- unrealistic or unnecessary regulations
- unclear definitions and operational standards in laws, rules, and regulations
- complicated and intricate administrative procedures
- low salaries and poor benefits for public officials.

Social and cultural causes

- collusive connections among politicians, government officials, and businessmen
- social structure which supports high-handed personal administration and privileges for former government officials
- cultural environment encouraging unreasonable and inordinate treatment, cash gifts commonly given to express gratitude, and excessive gifts (usually in the form of cash) commonly given to express congratulations and condolences.

Psychological and attitudinal causes

- low level of integrity and ethics in public office
- prevalence of egotism, nepotism, regionalism, and academic cliques in society.

Source: Office of the Prime Minister's overview of corruption,
available at www.opm.go.kr

certain social privileges based on their past political roles, indicate that high-handed treatment and social deference are found world-wide. Thus, these causes more accurately serve as general causes of corruption.

In the case of psychological and attitudinal causes, it is questionable whether a low level of integrity and ethics is the 'cause' or the 'effect' of corruption in Korean society. As in many other nations, geopolitical, historical, and economic factors significantly contribute to government policies and their efforts to build appropriate policies and legal structures to address corruption. Regardless of cultural, social, and attitudinal factors, the government is ultimately responsible for creating the proper mechanisms, incentives, and regulations against corruption.

Social and cultural factors, such as elitism, regionalism, sectarianism, and paternalism also exist in many developed and under-developed nations, including the USA, Europe, Africa, and South America. Therefore, social and cultural factors also serve as general characteristics.

History of corruption in Korea

For the past three decades, the economic success of South Korea has had a significant impact in Northeast Asia and served as a model of successful economic development. It had experienced Japan's colonial rule, American occupation, and its own debilitating war on the Korean peninsula. Its economic development strategy and its adoption of the American democratic system allowed the nation to rebuild and transform itself into the twelfth most developed nation in the world.

Three important factors serve as the backdrop for the development of corruption in Korea. First, the economic and structural vacuum caused by the end of Japanese colonialism caused great economic and social disarray on the newly divided peninsula. Furthermore, the US military forces occupying South Korea were ill-equipped and inexperienced in nation-building efforts and were side-tracked by the commitment to rebuild Japan after World War II. Thus, post-colonial Korea gave the middle class, who were desperately seeking economic security, the opportunity to secure positions of wealth, power, and influence during a period of social disorder.⁶

Second, the debilitating effects of the Korean conflict inflicted further human and economic suffering. It also left South Korea in a state of insecurity. The armistice signed in 1953 between North and South Korea did not provide the nation with confidence that hostilities would cease. The diplomatic talks to finalize the armistice had dragged on for two years, hindered by issues such as the exchange of prisoners of war and the military demarcation line. When the armistice was finally signed it was only intended to be a 'temporary' measure. The document, signed by US Lieutenant General William K. Harrison and his counterpart from the North's army, General Nam Il, said it was aimed at a ceasefire 'until a final peaceful settlement is achieved'. However, that settlement never came.⁷ The Geneva talks in 1954, at which the Korean peninsula was discussed, failed to resolve the issue.

Third, the adoption of the Nixon Doctrine during the Vietnam War added to the fear and insecurity throughout South Korea. The central thesis of the Nixon Doctrine was that the major effort to deter localized wars overseas must be made by the governments and by the people of the states affected by those wars, not by the USA. This suggested the possibility that US forces would be withdrawn from the Korean peninsula as well. Thus, South Korea began to give its military leaders significant power and influence, as the nation sought to develop a contingency plan in case US troops were ordered to leave. The threat that they would leave also forced the leadership to produce incentives for economic development in order to bolster its ability to protect itself from North Korea.

These three factors had a substantial effect on the Korean mind-set. The state of insecurity, the scars of human and economic suffering, drove Korea to devise alternative plans to secure its borders and interests. A

military-backed regime sought to increase the nation's economic capability to protect and preserve the nation's interests. As a result, South Korean military leaders working within the government acquired a significant amount of power without an adequate power-checking mechanism. That stimulated the development of corruption since the government now could exercise its power without fear of repercussions. Consequently, from 1948 to 1992, the military had an immense influence on politics and the economy, which also paved the way for the beginning of a collusive relationship between the government and big business. Furthermore, as this bilateral relationship matured, public and private leaders who benefited from illegal collusion were reluctant to set limits to it.

Corruption in the Korean government

The military-backed regimes had virtually unchecked power. Under authoritarian rule, the *chaebol* were coerced by the government to contribute regularly to privately established foundations, which existed in the administrations of Park Chung-Hee of the Third Republic, up to Roh Tae-Woo of the Sixth Republic.⁸ Those businesses which refused were punished and encountered difficulties when applying for loans and licences.

The public outcry against the military's political influence led to the adoption of a democratic system of government in 1993. However, the need to acquire campaign funds for political candidates and the low salaries of public officials increased the amount of corruption. As politicians needed funding to win elections, they accepted large sums of illegal contributions from the *chaebol*, who in return were given major government procurement contracts by the government. As the *chaebol* increased their business profits from these government contracts, it gave them even more financial power to influence elections and government policy-making.

The introduction of a democratic system in Korea still gave a significant amount of control of the legal, law enforcement, tax, and financial systems to the President. The President appoints all the Korean ministries and regional and local officials are appointed by the central government, which gives the President overall control from the national to the local levels of government. The South Korean economy, a product of government-sponsored economic plans, is also highly regulated by the government. Thus, the majority of business transactions require government permits and licences. Furthermore, government ministries without the approval of the legislative branch can change the rules and regulations on business and commerce.⁹

This centralized system required businesses to lobby the administration in order to receive favourable treatment by government officials, thereby fuelling a corrupt relationship between the government and private business. In exchange for commerce and business regulations being altered in

favour of particular businesses, government officials received monetary contributions, which party leaders and ministries used for election campaigns, sustaining favourable constituencies, and personal expenses.

Party leaders also profited by receiving money from candidates wishing to be included on the National Assembly's party list. A candidate's ranking on the party list usually depended on the amount of political contribution the candidate gave the party leadership. Moreover, the ruling party used the administrative systems to gather information to discourage businesses, interest groups, and individuals from supporting the opposition party. Those businesses or individuals who supported the opposition were subject to, for example, tax audits by the government.¹⁰ As a result, the ruling party had a significant advantage over the opposing party.

Although strict election laws do exist, that limit the amount of financial contributions to election campaigns and expenses, presidential and national assembly elections still need a lot of money to win. Comparatively speaking, in 1996 Korean parties reported raising US\$420 million, while in the USA, a country with six times the population and an economy 15 times larger than South Korea, the US Republican Party's fundraising goal in 2000 was reportedly set at only US\$179 million.¹¹

Politicians use their acquired funds to buy votes and gifts for voters, or hold lavish dinners for support groups. Additional expenses include the cost of maintaining campaign staff, cash gifts to journalists, and expenses for political rallies. Since National Assembly members' salaries are quite low, they are in constant need of money and are willing to take chances in order to increase their political funds even if it means acting against the law.

Hence, Korea's democratic system seems to prove both advantageous and detrimental in the fight against corruption. In the past three decades, government-led economic development had caused various approval and authorization rules and regulations to proliferate, which increased opportunities for government corruption. The growth-oriented economic policy made it customary for the government to award special privileges to certain companies, which, in return for special favours, provided illegal political funds to the politicians who had influence in shaping government policy and operation. In the era of democracy in Korea, the need for even more capital to finance elections grew and in the absence of viable anti-corruption measures, corruption seemed inevitable.

The existence of unclear definitions of laws and regulations against corruption, accompanied by low salaries for public servants, increased the opportunities for corruption in government. Furthermore, public servants who feared that they would be financially constrained by anti-corruption regulations against illegal donations did not actively support anti-corruption initiatives.

Some examples of corruptive practices in the Korean public sector are in government organizations that control tax, that exercise discretion for

payoffs, or regulatory agencies that relax control in favour of special interest groups, and pension/purchasing bodies that exercise discretion.

Cash gifts on trips, weddings, and other ceremonies are some of the customary methods of bribing public officials. However, a person accused of accepting bribes under these circumstances can be exonerated if the prosecutors fail to provide evidence of a *quid pro quo*, which illustrates an enormous legal loophole in prosecuting corrupt officials.

Top-level government officials do not feel guilty about accepting millions of dollars in the form of bribes and kickbacks since they seem to believe that their efforts contribute to the overall benefit of the nation. This act of impudence, which started during the Park Chung-Hee regime, has been passed on to different administrations despite the recent democratic process and has conditioned the public to adopt a sense of social deference for public incumbents.¹² Alas, this deference towards public officials has also conditioned the power elite to become accustomed to receiving bribes and kickbacks. Thus, a self-defeating prophecy based on psychological, attitudinal, and structural hurdles presents continuing challenges to anti-corruption policies.

Recent government corruption cases

The 'cash for summit' scandal exemplifies Korea's most recent and notable act of government corruption. In this particular case, the Hyundai Corporation is accused of paying US\$200 million to North Korea in order for it to participate in the North Korea–South Korea Summit talks led by President Kim Dae Jung in June 2000. Since the public was unaware of the cash bribe at the onset of the summit talks, they were led to believe that North Korea had a genuine interest in improving their relationship with the South. The North Koreans accepted the cash bribe but did not meet the expectations that South Korea anticipated. Ironically, North–South diplomatic relations with the advent of North Korea's nuclear brinkmanship have been severely strained. This act of international bribery also proved damaging to South Korea's reputation and political integrity in the international environment.

South Korea's anti-corruption law, introduced in January 2002, imposes stiff penalties for corrupt officials, including a jail term of up to ten years, fines up to 50 million Korean Won (US\$40,000) and a ban on employment by public or private companies lasting five years. The law also established an anti-corruption commission, with a specific mandate to investigate cases involving high-ranking officials. Before the commission was launched in January 2002, however, its first chairman-designate resigned because of his suspected involvement in a major corruption scandal.¹³

Lee Nam-Kee, who led Korea's top anti-trust watchdog until March 2003, is now in prison on bribery charges. His conviction coincided with the start of a special investigation of the alleged cash bribes to North

Korea before the inter-Korean summit of 2002. Lee is additionally charged with accepting 'travel expenses' from SK Corporation in 2002 for official business trips overseas.

Corruption in the Korean private sector

In Korea, the concept of the 'developmental state' has proved successful under the principles of democracy and a free market system. In the recent past, private corruption cases such as the Enron scandal in the USA may indicate that capitalism and free enterprise may incline individuals to focus too much on profitability and thus neglect their essential duty to be accountable and responsible to society and government.

The rampant increase in business corruption during the Asian financial crisis and the recent SK Corporation accounting fraud scandal seem to mirror the failure of the Korean business community to sustain responsibility for its shareholders, its clients at large, and the economy of the nation.

While expressing opposition to corruption by politicians and civil servants, businesses simultaneously engage in influence peddling and giving bribes to public officials. The contradiction was highlighted in February 2002 when the Federation of Korean Industry (FKI) announced that its members would no longer comply with the 'unjustified demands' for political funds.¹⁴

However, the South Korean economy is notable for being dominated by a few large *chaebol*, that have contributed illegal funds to politicians and parties in the past. Many in the media cast doubt on FKI's sincerity, but others welcomed it as indicative of a new awareness in the business sector of the need to curb political corruption.¹⁵

Recent private corruption cases

The brother-in-law of one of President Kim's sons, the proprietor of a construction company, was investigated for acting as a middleman in a corrupt deal. In June 2002, prosecutors alleged that one of the president's sons, Kim Hong-up, had accepted US\$820,000 from a construction firm, among other bribes. He was later sentenced to 3.5 years in prison.¹⁶

South Korean firms in the domestic non-life insurance business reportedly spend up to 100 billion won (US\$84 million) per year on kickbacks and illegal gifts to attract customers.¹⁷ So widespread has the problem become that the Financial Supervisory Commission placed 203 car insurance agencies suspected of paying kickbacks under surveillance.¹⁸

The social and cultural factors that exist in Korea must also be taken into consideration. Prevalent authoritarian practices, emphasis on regional and academic connections, and paternalism provide a rich environment for corruption in the business sector and Korean society as a whole. Similar to

the root causes of public corruption, a low level of integrity, ethics, prevailing egotism, nepotism, regionalism, and academic cliques stymie efforts to maintain ethical business practices.

The illegal collusion of state and capital, cartels, and supply chain kick-backs, provide examples of unethical business practices in the Korean business environment and for most business environments in general. Therefore, the new Roh Moo-Hyun administration is set to create more stringent anti-corruption laws to limit the debilitating effects of corruption. Additionally, the active involvement of the Korean media, consumer watchdogs, and continuous market competition make private corruption more difficult. Likewise, the current administration's ambitious plan to turn Korea into Northeast Asia's international hub further strengthens its determination to deter corrupt business practices in the short and long term.

Corruption also raises the cost of doing business. Since companies strive to lower costs, corruption is seen to be the antithesis of business productivity. As the need to attract foreign direct investment (FDI) remains a priority for Korea, efforts to deter corruption must continue. It is imperative to develop a business culture based on responsibility and accountability that serves as the foundation for anti-corruption regulations and oversight mechanisms in the private sector.

In both the public and private sector, the character of the leader remains critical to upholding integrity. Thus, the leadership of Korea's private industry whose actions directly affect political, economic, and social elements of society must be faithful to the principles of maintaining public trust by ensuring the welfare of shareholders and customers.

From a positive perspective, as markets grow increasingly aware and resentful of corruptive practices, over time these market conditions will filter out those who commit corruption. The prosecution of a power conglomerate such as SK Corporation proves that increasing public awareness and enhanced government anti-corruption laws set no limits on the ability to fight corruption in the private sector.

In a growing number of public opinion polls in Korea, the adoption of a democratic system and its electoral process may have made corruption in Korea more complicated and pervasive. On the other hand, there is also an argument, which states that the very principle of democracy and its ability to increase media and public awareness, have made the fight for corruption more effective. Thus, it seems that the introduction of democracy presents a double-edged sword, both advantageous and detrimental to the anti-corruption movement.

Recent efforts to counter corruption

President Kim Young-Sam, the first democratically elected president since 1961, promulgated a series of political reform bills to reduce political

corruption. A new campaign election law increased penalties for corruptive practices. The reforms also included raising the amount of government subsidies for political parties and for political candidates so as to reduce individual spending on campaigns. The reform bill was accompanied by a new accountability system for political contributions, which allowed parties and candidates to hand out anonymous receipts for political donations monitored by the election commission.¹⁹ This measure sought to equalize the competition between the ruling and opposition parties. Additionally, contributors making bank deposits under 'false' names to fund political parties were prohibited from doing so by the introduction of a 'real name banking system', an attempt to bolster transparency.²⁰

Korea's democratic system of government also promoted free speech, giving rise to public awareness and eventual action. In 1993, Kim Young-Sam, announced three major national tasks in response to the public's growing concern and lack of power to stop corruption. These national tasks were: (1) the eradication of corruption; (2) the activation of the economy; and (3) the establishment of national discipline. Accordingly, what can be viewed as the most important step within this bold initiative was the enactment of the 'Administrative Procedures Act' and the 'Act on Disclosure of Information by Public Agencies', which laid the groundwork for a transparent public service society. Due to its political legitimacy, contrary to the previous military-based regimes, the regime could give corruption eradication a top priority.

Unfortunately, due to lack of experience in combating corruption, these national tasks did not have a systematic procedure and lacked the detailed sophistication necessary to make a significant impact on corruption. While the government agreed that a lack of systematic approach was responsible for the ineffectiveness of anti-corruption measures, it also stated that a significant lack of ethics by public servants was to blame for its ineffectiveness. Kim Young-Sam decided that addressing public service ethics and the strengthening of public awareness were to be given priority.²¹ This change in strategy led the public to believe that the government lacked the system and direction to eradicate corruption. Moreover, the assumption that cultural factors were the major cause of corruption drew the focus away from structural issues, which were also significantly responsible for causing corruption.

The devastating effects of the Asian financial crisis of 1997 caused newly elected President Kim Dae Jung to continue Korea's determination to fight corruption. He believed that the major cause of the financial crisis was due to the overall corruption in Korean society. His efforts resulted in developing the Korean Comprehensive Anti-Corruption Programs, which emphasized three basic strategies:²² (1) identify root causes of corruption instead of relying solely on punitive measures for those that commit corruption; (2) create a systematic approach; and (3) win the hearts and

minds of the public to support anti-corruption mechanisms. As a result, the Anti-Corruption Bill, focusing on ten major areas, including tax and law enforcement reform for anti-corruption research measures, was passed, and also the Anti-Corruption Act, which addressed the administrative and legal sectors.²³ The difference between Kim Dae Jung's actions and those of his predecessors was the fact that prevention and exposure would be used in combination with reinforced punitive measures to fight corruption. The scope of President Kim's anti-corruption efforts was not bias of position and power; these anti-corruption methods also monitored and checked its effects in order to prevent possible countermeasures on anti-corruption initiatives.²⁴ During President Kim's administration, such mechanisms as the Regulatory Reform Committee, the Online Procedure for Civil Application (OPEN), and the online bidding system, which provided a more systematic approach to fighting corruption and increased the level of transparency of public activities, were met with both national and international acclaim.²⁵

Though President Kim's innovative efforts against corruption illustrated Korea's staunch determination to eradicate corruptive practices, corruption in his office eventually led to his political demise. Allegations of corruption on the part of President Kim's Prosecutor-General during the December 2002 election campaign and the subsequent accusation of bribery committed by two of President Kim's sons caused his resignation from the Millennium Democratic Party. He was forced to publicly apologize for these scandals and left office with a severely tarnished image. But his introduction of new mechanisms for oversight, analysis, and prosecution had set up a positive momentum to eradicate corruption.

Furthermore, the development of non-governmental organizations (NGOs), which function as watchdogs against corruption, were telling signs that the public wanted to have more say in fighting corruption. Since 2001, anti-corruption organizations such as the Korea Council of Citizens Movement, the Lawmakers Council for Political Reform, and the People's Solidarity for Democracy have served as examples of organized public awareness and its efforts to deter corruption.

The fight for corruption was also joined by international organizations. The international corruption watchdogs such as Transparency International have been instrumental by putting pressure on South Korea to create mechanisms to fight corruption. The combined actions of national and international anti-corruption organizations have had positive results. In January 2002, the Korean Ministry of Defense publicly announced its pact on integrity, while that same year Samsung Corporation was the first *chaebol* to be blacklisted for violating an integrity pact.²⁶

The International Monetary Fund (IMF), which provided South Korea with a \$57 billion monetary aid package during the 1997 Asian financial crisis, also strongly criticized Korea's inability to control corruption and demanded a strict macroeconomic policy as well as a restructuring of

South Korea's corporate and financial sectors as a condition for South Korea receiving its assistance.

Following a court ruling in 1989 that South Koreans have a constitutional right to information, the Act on Disclosure of Information by Public Agencies came into effect in 1998. There are now proposals to revise the law by reducing exemptions to prevent arbitrary decisions by public officials on non-disclosure, clearly stating the length of term for non-disclosure and making provisions to provide information via the Internet.²⁷

South Korea's press offers vigorous, independent coverage, including strong criticism of government policies and officials. Politicians and businessmen, however, sometimes use libel laws to punish journalists for articles that are critical, and the courts can jail journalists under criminal libel laws.²⁸

In South Korea, citizen groups actively participate in the fight against corruption. In December 2001, the NGO People's Solidarity for Participatory Democracy, acting on behalf of minority shareholders, won a landmark lawsuit against Samsung Electronics on several counts, including bribery of former South Korean President Rho Tae Woo. The court ordered Samsung's Chairman and nine executives to pay nearly 100 billion won (US\$84 million) for the misuse of company funds.²⁹

In April 2002, the South Korean government announced that it would work more closely with NGOs in the fight against corruption. The government procurement agency announced the introduction of an ombudsman system and a 'clean procurement committee' in an effort to break ties between government and its contractors. The new office will appoint members of civil society organizations, professors, and technicians as ombudsmen to monitor bidding and contract-awarding processes in order to enhance transparency.³⁰

Prosecution efforts by the Korean government

Figure 4.1 indicates the number of prosecuted corruption cases since 1972 with a significant rise in corruption cases prosecuted during the Asian financial crisis. While the figure indicates that anti-corruption measures were effective in executing punitive measures against corrupt officials, it also indicates the pervasiveness of corruption in Korean society.

Tracking awareness and integrity

Table 4.1 is an evaluation chart of the integrity systems in use in Korea showing the growing awareness of the government and public of the damage of corruption, as well as the policies and systems in place to eradicate it. A close examination of Table 4.1 illustrates a significant increase in anti-corruption programmes and transparency measures initiated by the government from 1993, when the current democratic system of government was introduced.

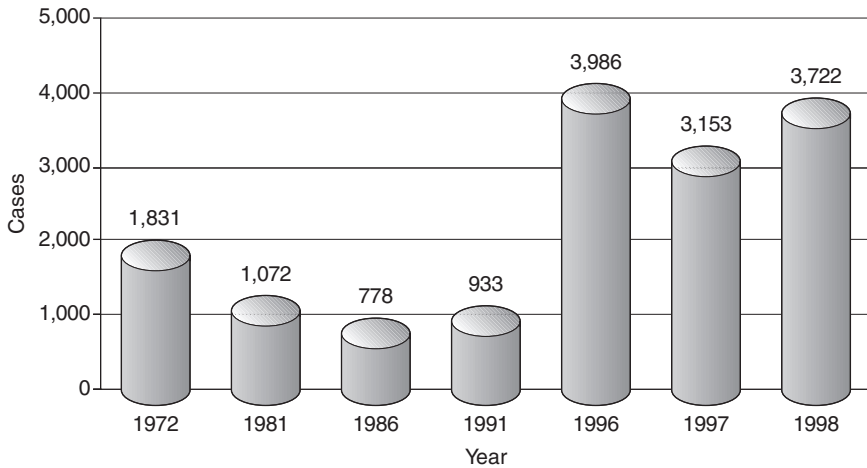


Figure 4.1 Number of criminal prosecutions of corrupt officials, 1972–98 (source: Office of the Prime Minister's overview of corruption, website www.opm.go.kr).

Conclusion

In retrospect, it is important to note that the most pervasive forms of corruption such as bribery, nepotism, and kickbacks are pervasive in many other countries besides Korea, including the USA. Lack of integrity and responsibility is a problem that affects many nations in one form or another.

Since the establishment of the Republic of Korea, 37 laws have been passed or revised against corruption. Moreover, a 'code of conduct' for public officials has been declared six times. Though these past legal regulations have not rooted out corruption in Korea, they illustrate the steadfast determination of public and private leaders to eradicate corrupt practices. At the beginning of the twenty-first century, Korea continues actively to enhance systematic anti-corruption measures, which may eventually stem the causes of corruption and identify its developing trends. In recent years, Korea has been relentless in its efforts to combat corruption in order to ensure its competitiveness in the global market. Though corruption continues to occur in Korean society, it is also being met with ongoing and earnest efforts to deter it and effectively prosecute corrupt individuals regardless of their position in society. Korea has actually prosecuted its own president for corrupt practices.

In the past, enacting punitive measures served only as a temporary deterrent and not the remedy to eradicate corruption in the public and private sector. In a maturing democracy, like South Korea, maintaining

Table 4.1 Evaluation table of integrity systems

<i>Government classification</i>	<i>Year</i>	<i>Government awareness</i>	<i>Government effort on integrity</i>	<i>Public awareness of corruption's damage</i>	<i>Public support for anti-corruption effort</i>	<i>Important integrity policy systems</i>	<i>Integrity policy results</i>	<i>Systematic integrity programmes</i>
1st Republic	1948–60	None	None	None	None	Board of Audit, Commission of Inspection, Commission of Supervision & Control	Low	None
2nd Republic	1960–61	Low	Low	Low	Low	Legislation of Law for Punishment of Election Fraud	Low	None
3rd Republic	1961–70	High	Low	Low	Low	Illegal Profiteering Management Law & Board of Audit and Inspection	Low	Low
4th Republic	1971–80	High	Low	High	Low	Official Disciple Movement	Low	Low
5th Republic	1980–87	High	High	High	Low	Movement for Social Purification & Public Service Ethics Act	Low	Low
6th Republic	1987–92	Low	Low	High	Low	New Life, New Order Movement	Low	Low

1st Civilian Government	1993–97	High	High	High	Creation of ‘New Korea’ Introduction of system to publicly disclose property held by government officials	Low	Low
					Execution of Real Name Financial System		
					Act on Election of Public Officials & Prevention of Malpractices		
					Administrative Procedures Act, Act of Disclosure of Information by Public Agencies & Framework Act on Administrative Regulation		
					War on Corruption Establishment of Anti-Corruption Programs	Undecided	
2nd Civilian Government	1998–2002	High	High	High	Presidential Commission on Anti-Corruption		High
					Introduction of Online Procedures Enhancement for Civil Applications (OPEN)		
					Introduction of the Integrity Pact		
					Introduction of various evaluation systems		

Source: Cho Eun-Young (2001: 5).

global market competitiveness and public awareness have been instrumental in pressuring the administration to become more responsive and accountable (through democratic principles and good governance). Consequently, a culture of responsibility and responsiveness is growing, and in due course the combination of democratic principles, global market forces, and public opinion will stand as an effective levee against the tide of corruption in Korea.

Notes

- 1 Verena Blechinger, *Report on Recent Bribery Scandals 1996–2000*, Transparency International (TI) Working Paper, from a TI workshop on Corruption and Political Party Funding, La Pietra, Italy, October 2000.
- 2 *Transparency International Source Book*, 2nd edn, Berlin: Transparency International, October 1997.
- 3 Transparency International, 'The 2002 Corruption Perceptions Index', website: www.gwdg.de/~uwww/2002/Data.html.
- 4 Transparency International, 'The 2002 Bribery Index', website: www.transparency.org/cpi/2002/bpi2002.en.html#bpi.
- 5 Another Presidential Adviser of the Roh Administration, Ahn Hee-Jung, is also suspected of receiving bribes from a businessman in an ongoing investigation of a 1999 lobbying case. In this case, Ahn is said to have received 200 million won from Kim Ho-Joon, former Chairman of the Bosung Group in July 1999, when Kim was struggling to salvage his troubled merchant bank. SK Global admitted to overstating its 2002 profit by 1.5 trillion won (\$1.2 billion) in the nation's biggest accounting fraud scandal.
- 6 David Kang, *Crony Capitalism*, Cambridge: Cambridge University Press, 2000, p. 24.
- 7 BBC News, 18 February 2003.
- 8 See Blechinger, op. cit.
- 9 Ibid., *Far Eastern Economic Review*, 30 November 1995.
- 10 Blechinger, op. cit.; *Far Eastern Economic Review*, 30 November 1995.
- 11 Kang, op. cit., p. 24.
- 12 *Korea Herald* (KH), Editorial, 22 April 2003.
- 13 Xiaobo Lu, 'East Asia', *Global Corruption Report 2003*, p. 133.
- 14 Ibid., p. 133.
- 15 Ibid.
- 16 Ibid., p. 135; KH, 26 April 2003; BBC News, 21 June 2002; Agence France-Presse, 12 November 2002.
- 17 Agence France-Presse, 12 November 2002.
- 18 Ibid., *Asahi Shimbun*, 5 January 2001.
- 19 Blechinger, op. cit.
- 20 Ibid.
- 21 Cho Eun-Young, *National Integrity Systems 2001*, Country Study Report, Seoul: The Seoul Institute of Transparency, 2001.
- 22 Ibid.
- 23 Office of the Prime Minister, Korean Government, website: www.opm.go.kr.
- 24 Cho Eun-Young, op. cit.
- 25 Kang Chul-Kyu, Speech at American University, 'Korea's Anti-Corruption Efforts and the Role of the KICAC', 3 May 2002.
- 26 An integrity pact is a contract in which bidders in a given public procurement process explicitly promise each other and the respective government not to

offer or pay bribes and to subject themselves to specific fines if they fail to live up to this promise.

27 Xiaobo Lu, *East Asia*, Global Corruption Report 2002, p. 136.

28 Ibid., p. 137.

29 Ibid., pp. 137–8; the *Financial Times*, 28 December 2001; *Korea Times* (KT), 21 February 2002

30 Ibid., p. 133; KT, 23 April 2002.

5 The ‘misery’ of implementation

Governance, institutions, and anti-corruption in Vietnam

Scott Fritzen

Introduction

Economics may have earned the sobriquet of the ‘dismal science’, but the study of policy implementation is no sunnier. Pressman and Wildavsky captured the mood of early implementation research with inimitable flair in the subtitle to their classic text *Implementation* (1973): ‘How great expectations in Washington are dashed in Oakland; Or, Why it’s amazing that federal programs work at all.’ Due to such seemingly depressing rendering of the great gaps between policy intentions and field-level realities, implementation research came to be characterized as ‘misery research, a pathology of the social sciences, if you will’.¹

The study of implementation as ‘misery’ has since been criticized as too concerned with the often contradictory priorities and unreadable intentions of elite policy-makers in far-off capitals. Alternative methodologies that begin from the dynamic situation faced by ‘street-level bureaucrats’ have been added to the range of tools open to the study of implementation. Yet concern over ‘implementation gaps’ is still a relevant starting point for cases where there is a strong normative appeal and urgency to the policy content under consideration.

Anti-corruption policies and programmes are a good example. Corruption – almost everyone agrees – is a serious problem afflicting nearly all developing countries. If ‘governance matters’² – to the private sector, to poor and vulnerable populations and to the viability of democratization efforts – then anti-corruption efforts are essential to improved development outcomes.

If various indices of corruption are to be believed,³ Vietnam should be a country where the outcomes of anti-corruption policies should matter nearly the most. According to Transparency International’s well-known index, Vietnam ranks a dismaying 85 out of 102 countries in the world, and has the third-worst score in all of Asia (after Bangladesh and Indonesia).⁴ The Vietnamese press itself is no less unforgiving. ‘To be poor is a misery’, lamented an opinion piece in the influential daily *Lao Dong*, ‘but to be poor because of corruption is a national humiliation.’⁵

This chapter examines implementation problems in a high-profile anti-corruption policy initiated by Vietnam's Communist Party leadership in 1997. The 'grassroots democracy' (hereafter GD) decree of that year, coupled with implementation guidelines and a slew of government-sponsored pilot activities, were an attempt to burnish the Party's flagging image in the aftermath of localized demonstrations against local government corruption that had generated a worryingly high level of participation. I draw on recent advances in the policy implementation literature to construct a framework for analysing the implementation of the grassroots democracy decree. This framework should be extendable to other anti-corruption policies, particularly nation-wide efforts that attempt to make entrenched institutions more responsive to local surveillance and control. After presenting a conceptual framework in the first three sections, I describe and assess the decree and its implementation. The final section asks what lessons would-be reformers can draw from the study of implementation as 'misery' in order to improve the performance of similar national anti-corruption programmes.

The chapter concludes that GD as practised in Vietnam has a flawed design that fails to address the incentives of front-line implementers (local People's Committee executives), and that these incentives have deep roots in the country's governance structure. However, there are indirect ways in which GD could contribute towards long-term improvements in local governance.

The problem of implementation in anti-corruption programmes

Corruption, presumably as rampant 25 or 50 years ago as today, has over the past ten years exercised the imaginations of developing country donors, non-governmental organizations (both national and international in scope), and senior leaders in governments (both authoritarian and democratizing) as never before. And there are good reasons for this. Corruption can be seen as central to various agendas that can make strange ideological bedfellows, such as the promotion of the private sector and as the watchdog role of civil society.

What are anti-corruption strategies meant to accomplish? The answer partly depends on the diagnosis of the root problem. Two broad lines of research can be distinguished. In the first, corruption is viewed in terms of individual decision-makers – either senior or field-level – with limited accountability for their actions and monopoly decision-making power in a particular field. Robert Klitgaard⁶ famously concluded that corruption results from the confluence of decision-making discretion and monopoly power of an agency minus accountability (' $C = D + M - A$ '). To address the determinants of corruption in this view requires tighter controls on administrative procedures, rule-based decision-making and the introduction of competitive markets for public services.

A second category of anti-corruption strategies looks at state capture, when 'corrupt people control the regulatory process and, from the top, make laws, policies and regulations that specifically benefit them'.⁷ Governance is more centrally implicated in the corruption problem, and governance reforms that introduce more substantive democracy and citizen control as a counterweight to the power of elites take centre stage.

Support for comprehensive *national-level* policies to combat corruption, as opposed to agency- or sector-specific work, has become a donor growth industry. National-level strategies are intended to weaken in a coordinated way by addressing multiple, interlocking props supporting corrupt behaviour in the public-sector environment. In theory, an overarching anti-corruption strategy would provide a legal framework, introduce new institutions to tackle corruption and provide incentives for civil society to take up a watchdog function.⁸ Various Southeast Asian governments have responded both to multilateral advice/pressure and to popular pressure with anti-corruption commissions of various types. Many have passed legislation in the past few years meant to reduce the risks of corruption.⁹

In Vietnam, where the issue of corruption is highly sensitive due to fears it could destabilize the one-party regime in a rapidly democratizing region, donors have not been so prominent. Only in 2002 was it reported that the government had agreed to ask for the assistance of one donor – the Swedish International Development Agency (SIDA), perceived to be a 'safe' partner for historical reasons including their long presence as a donor during the Vietnam War – in conducting a diagnostic study on the extent and causes of corruption. All anti-corruption policy initiatives to date in Vietnam have been internally driven. By 2002 the government claimed to have broad legislative props combating corruption in place, including the 'Anti-corruption Law' passed in 1998 (amended in 2001), 'Law Implementing Government Savings and Fighting Waste' and 'Law on Civil Servants' with various asset disclosure requirements.

Proponents for various anti-corruption strategies acknowledge (in their more sober moments) the potential difficulties of implementation. The key difficulty here is what might be termed a kind of 'orthodox paradox' of anti-corruption work, following Nelson's (1990) term for the difficulties of implementing neo-liberal reforms.¹⁰ The successful implementation of anti-corruption reforms where there is heavy resistance implies autonomy of government action and high levels of political will to overcome resistance; yet these are exactly the conditions that are hampered by systematic corruption. Nevertheless, there are few studies of the implementation of national anti-corruption programmes or strategies, in part because these are new initiatives and in part because the focus in donor circles arguably remains tied to a 'cook-book' approach, reflecting the can-do culture of the 'positive practitioner'.¹¹

Modelling implementation in national anti-corruption policies

Top-down and bottom-up explanations of 'misery'

What can the implementation literature teach us about implementing national anti-corruption programmes? Why do outcomes on the ground differ so greatly from policy intentions? In other words, how can we explain the 'misery' of implementation, both from the perspective of policy-makers and implementers?

Two macro-perspectives on implementation have dominated the field since its emergence in the 1950s. Although several attempts at a synthesis have been made,¹² analysts often gravitate towards 'top-down' or 'bottom-up' styles of explanation. The first stylized perspective adopts the metaphor of 'implementation-as-control'. This so-called 'top-down' view is concerned with how the intentions of policy-makers are implemented at the grassroots. It can be described as a 'correspondence' theory of implementation in that it assumes that a clear articulation of the intended policy exists and that the conceptual and practical difficulty lies in how to transmit this intention faithfully down the line of bureaucratic command. Deviations at the field level from the intentions of policy-makers count as an implementation 'gap' or 'deficit'. Theorists adopting this perspective look for deficiencies in the way policies are communicated, and standards of implementation enforced, by policy-makers to field-level implementers.

'Bottom-up' analysts,¹³ in contrast, begin with the assumption that 'street-level' bureaucrats often face an impossible task. Policy ambiguity, limited resources, and time pressures make it impossible to implement policies as intended and to fulfil the sense of public service with which most of them began their careers. Their response to this untenable situation is to 'develop conceptions of their work and of their clients that narrow the gap between their personal and work limitations and the service ideal'.¹⁴ To the extent that outcomes are deemed less than satisfactory from a policy-maker's point of view, this perspective would look for the reasons in the lack of resources and in the incentives embedded in the institutional environment faced by street-level bureaucrats.

Towards a synthesis

How can we adapt recent advances in implementation research to the diagnosis of implementation problems in national anti-corruption programmes? The goal of the analysis would be one shared by top-downers – to improve implementation. Yet I assume that local institutional conditions will be particularly binding on implementers of anti-corruption programmes, faced with the 'orthodox paradox' of anti-corruption work defined above.

Figure 5.1 presents a model of implementation drawing on both bottom-up and top-down perspectives. It outlines five categories of variables linking policy formation on the left side to implementation outputs and outcomes on the right. It places great emphasis on the ‘disposition of implementers’, i.e. the cognitive maps, incentives, and resources available to those ultimately responsible for implementing the most important provisions of the policy. Each of the following categories can be expressed as a set of questions aimed at identifying implementation problems:

- 1 *Policy design.* Within the policy design category, we can distinguish between policy content and resources available for implementation. Are clear, consistent statements of objectives and criteria for successful implementation provided in the legal framework underpinning the policy? And are resources sufficient for successful implementation made available, or a plan for resource mobilization in place?
- 2 *Inter-organizational communication and enforcement activities.* This category asks how the policy is communicated to lower levels, and within what framework of accountability? What levels of communication and enforcement effort are present?

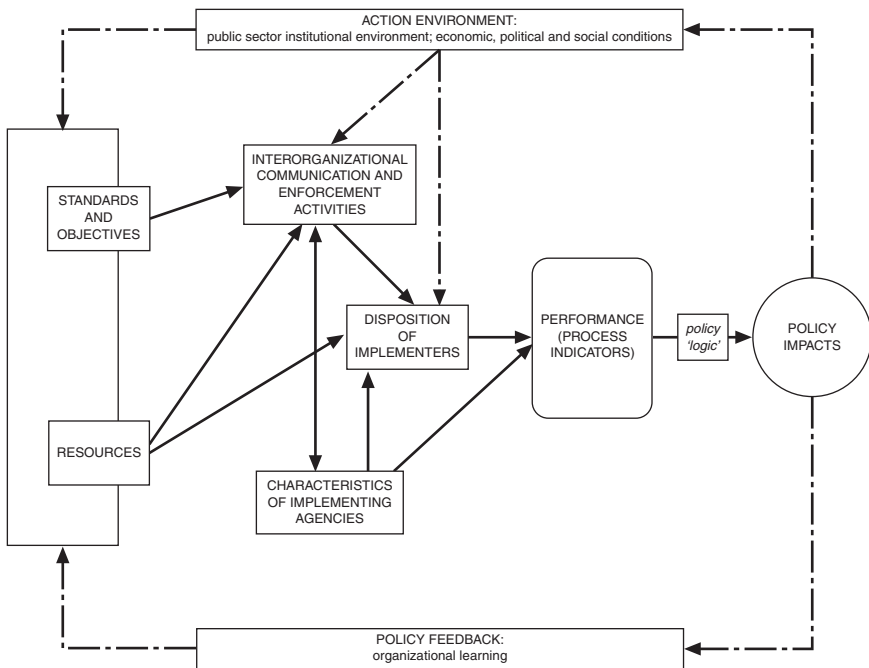


Figure 5.1 Modelling policy implementation (source: Adapted from D. Van Meter and C.E. Van Horn, ‘The Policy Implementation Process’, *Administration and Society*, 6.4 (1975), p. 463; Hill and Hupe, 2002: 186; and Fritzen, 2000: 14).

- 3 *Characteristics of the implementing agencies/disposition of implementers.* The institutional characteristics of implementing agencies have a profound effect on how lower levels perceive and act on upper-level directives. The disposition of individual implementers is closely linked to the characteristics of agencies in which they are embedded. It is also affected by other factors, such as their potential for incentives from non-agency sources (including corrupt transactions¹⁵). This category thus delineates key aspects of agency culture and accountability relationships.
- 4 *Implementation outputs and outcomes/impacts.* The three categories above jointly determine implementation outputs, which are linked, more or less tenuously, to impacts on the defined problem via their 'policy logic'. In other words, are there logically substantiated links between policy outputs – assuming perfect implementation – and the problems the policy is meant to address?
- 5 *Policy learning.* In reading Figure 5.1, the feedback loops on the borders are important, as they make the model dynamic. The lower feedback loop concerns *policy learning*. The assumption is that programmes may be redesigned both at key intervals in a formal process (the loop leading to policy redesign) and in a more informal, iterative process as local implementers adjust their expectations and behaviour to the actual implementation situation they face (the arrow leading to implementer disposition).
- 6 *Action environment.* The upper feedback loop is via the *action environment* to all three of the determinants of implementation noted above. The action environment is here broken into components such as the public-sector institutional environment, political support, and social and economic factors. (All these must be defined within the parameters of the policy at hand.) The influence of this environment lies in two areas. It structures or influences the formation of the policy in the first place. But there is a more dynamic sense as well. As policies work themselves out in a given environment, they may affect the environment in ways that change – for the better or worse, depending on the perspective taken, and in intended or unintended ways – those action environment influences on implementation. For example, a programme may over time empower a previously marginalized group to have a greater stake in a particular policy, changing the stakeholder alignment in ways that create new support or opposition to a policy.

The conceptual framework presented here is a way of structuring inquiry into observed implementation patterns of a particular policy. It incorporates some elements of both classically 'top-down' and 'bottom-up' approaches. The framework can be used to identify specific implementation constraints (as the top-down model stresses), but focuses much

attention onto the institutional environment at the local level and the dynamic impacts (often unpredicted) of implementation.

The framework may be particularly relevant to anti-corruption programmes for several reasons. Since anti-corruption efforts are politically sensitive, they are likely to be closely monitored by powerful political stakeholders in the 'action environment', intensifying the feedback loops from implementation outputs to redesign. Moreover, the policy logic underlying anti-corruption programmes is often tenuous, given the multifarious potential types and causes of the phenomenon. Finally, the bottom-up perspective, emphasizing constraints embedded in the local institutional environment, may be particularly relevant for anti-corruption work and its 'orthodox paradox'.

Policy formation under pressure: 'grassroots democratization' campaign as an anti-corruption strategy in Vietnam

'Revolutionary fervour' in Thai Binh?

Thai Binh province lies some 100km southeast of Hanoi in the fertile Red River Delta valley. The province prides itself on having been a locus of 'revolutionary fervour', in the words of a billboard outside the provincial capital, during the anti-colonial struggle. Several early leaders of the Communist Party hail from Thai Binh. At the central level, officials note the reputation of the province as having a high degree of grassroots organization; government-sponsored mass organizations are claimed to be particularly strong.

It was thus a shock to the leadership when, in mid-1996, reports of social 'disturbances' in several Thai Binh districts began filtering through the mass media. The Party's Youth Union newspaper, *Tuoi Tre*, then broke the story wide open with detailed articles noting 'mass demonstrations' against local government officials, linked to disputes over land allocation, the imposition of increasing numbers of fees and charges, and corruption by local officials, as well as a compulsory labour scheme. These demonstrations were carried out with a considerable degree of organization and purposefulness, albeit at the very grassroots level.¹⁶

Smaller-scale disturbances in Thai Binh continued to be reported (only through non-official channels) into 1998.¹⁷ These events continue to play a key role in the ever-changing line being negotiated between state and society and the borders of acceptable criticism of the government. A respected retired general, Party cultural apparatchik and member of the Communist Party Central Committee, Tran Do – himself from Thai Binh – wrote a series of widely distributed, open letters calling for systemic Party reform based on the experience of Thai Binh. Though stopping short of calling for multi-party reforms, General Do was ultimately expelled

from the Party (in January 1999) for espousing these views. Control over the 'packaging' of the Thai Binh 'lessons learned' thus became highly sensitive.

Rapid reform, growing inequalities

The Thai Binh 'disturbances' took place against the background of an economy that had posted some of the largest sustained rates of growth in the world over the 1990s. After seemingly interminable decades lost to war and later isolation and economic mismanagement, the closing decade of the twentieth century was, in development terms, perhaps the greatest in Vietnam's history. Vietnam enjoyed an average rate of economic growth of 7.6 per cent over the decade, placing it among the fastest-growing countries in the world, alongside its neighbour China. Yet economic reforms also brought significant dislocations, and the close of the decade found many examining Vietnam's experience from a more critical angle. Despite conflicting evidence, inequality – particularly urban–rural and inter-regional – appears to have grown sharply over this period.¹⁸ Those with the wherewithal to succeed in a market-driven economy were doing so, while others struggled.

Concerns over institutional quality have also been pronounced. Some observers find the government's commitment to the structural reforms necessary to recover high growth rates to be flagging.¹⁹ Perceptions of corruption in officialdom, already ranked among the highest in the world, are on a steady upward trend.²⁰ Some analysts began to paint a scenario of declining growth, increasing corruption, and rapidly increasing inequality.²¹

Formation of the 'grassroots democratization' policy

Official reaction to the Thai Binh disturbances shifted over their course. The first, 'knee-jerk' reaction was to suppress all news coming out of the province. Foreign reporters were barred from the area. The national press was also censored, and the editor of *Tuoi Tre* was disciplined. Events were vaguely blamed on 'external elements' seeking to undermine the government. But central authorities soon found they could not stem the tide of information; they thus sought to direct that tide. In self-critical pronouncements of senior statesmen, Thai Binh became a widely publicized example of corrupt *local* Party cells and government.²²

But the major official response began approximately one year after the first outbreaks, when the disturbances became the impetus behind national-level policy reform calling for the 'grassroots democratization' (*dan chu hoa tai co so*) of the commune level, and improved laws aimed at facilitating citizen 'complaints and denunciations' (*khieu nai to cao*) of corrupt local officials. The charge was led by conservative General Secretary Le Kha Phieu, who emphasized the danger of corrupt local officials

causing the people to ‘lose confidence’ in the Party. The grassroots democracy (hereafter GD) decree of 1998 was the ultimate legal expression of the campaign, and it dovetailed nicely with Hanoi’s official post-mortem on Thai Binh – that the problem of corruption was one of a few bad apples in the Party (as opposed to being widespread), and that most of the bad apples were to be found in various tiers of local government (as opposed to the centre). Viewed this way, the problem of controlling corruption was one of asserting control and better internal vigilance over the Party and local government apparatus, and the Party viewed GD as one way of doing this.

Expressed in several directives²³ issued from 1997 on, the policy mandates that local governments take all necessary steps to ensure that procedural democracy is respected at the local government level. Particular attention is given to ensuring that all government investments (particularly specific-purpose central government transfers, or ‘national programmes’) at the grassroots, and all taxes and labour contributions, are implemented equitably and transparently. The decree and the accompanying implementation guidelines are an attempt to set clearer local governance standards in areas of great practical concern to villagers. In this way, GD has become the idiom of choice for donors, the government, and the state media for the importance of ‘downward accountability’, a focal point for discussions on governance in the late 1990s.²⁴

The ‘policy logic’ of the grassroots democratization as an anti-corruption tool

More importantly for the discussion at hand, GD has become the focal point for the government’s own national anti-corruption strategy. Clearly, the central leadership is putting great weight on this particular strategy to combat corruption and control the perception that corruption is spiralling out of control in the countryside.

Grassroots democratization is intended to combat corruption via four mechanisms. The first is via provisions meant to increase the transparency of budget and special programme allocations. According to the implementation guidelines of the decree, the people (*nhân dân*) must be informed of all laws, policies, plans, and decisions of each level of the government, including all local budget allocations (Section 2). In addition, their opinions regarding these matters ‘must be considered and incorporated adequately’ by the People’s Committees or People’s Councils (the executive and representative bodies of local government in Vietnam, respectively) (Section 5). Thus, the commune budget is to be published and posted, and a full accounting of various expenditures made.

The second mechanism is via increased participation of ‘the people’ in decision-making and the establishment of various procedural safeguards (Section 3). Villagers have the right to discuss and decide directly on all

matters 'that have a direct impact on their interests and responsibilities', with special emphasis given to small-scale infrastructure works. For significant local works, at least two-thirds of the total population of a village must be present for a village meeting deciding on various aspects of the scheme, such as location, community contribution rates, and the establishment of implementation and monitoring boards.

Third, the decree foresees an active role for the people in policing or monitoring local government, and lodging complaints where the law has been broken. Several means for monitoring and inspection are indicated, including specific mechanisms for 'complaints and denunciations directly or through an inspection board of the people' in cases of any abuse of power or corruption on the part of local officials. Local authorities must 'receive complaints by the people and deal with the people's recommendations, complaints and denunciations in accordance with the law' (Section 5).

A final mechanism is already implied in the title of the decree. Although not a formal level of government, the village is recognized as the 'basic residential and social unit with a long and sustained history in Vietnamese society; it is the level at which democratization can be most directly and widely implemented' (Section 6). Village leaders should therefore be elected and have the basic responsibility to 'look out for the interests of the people, organize the activities of the village in cooperation with the mass organizations; and report violations of people's rights and the law'.

Figure 5.2 captures schematically the implied 'policy logic' of GD as an anti-corruption strategy. Central level officials directly empower communities with knowledge of their democratic rights (in terms of participation, decision-making and monitoring), while attempting to hold lower government officials accountable for implementing those rights. Pressure on local government should thus come from above (the central government leadership) and below (a newly emboldened populace 'armed' with the GD decree). Potential gains for the central level (better control over local government and a burnished image among the populace) and for communities (more effective use of development funds and political empowerment) are clear and plausible in this scenario.

But will local government implementers actually feel the hypothesized pressures and respond accordingly? That would appear to be the critical question on which the viability of the decree as an anti-corruption strategy depends. To examine it, I turn now to some initial evidence on how GD has been implemented over the past three years.

Implementing grassroots democratization

Very limited evidence exists with which to assess GD implementation. The policy initiative is considered only slightly less politically sensitive than the

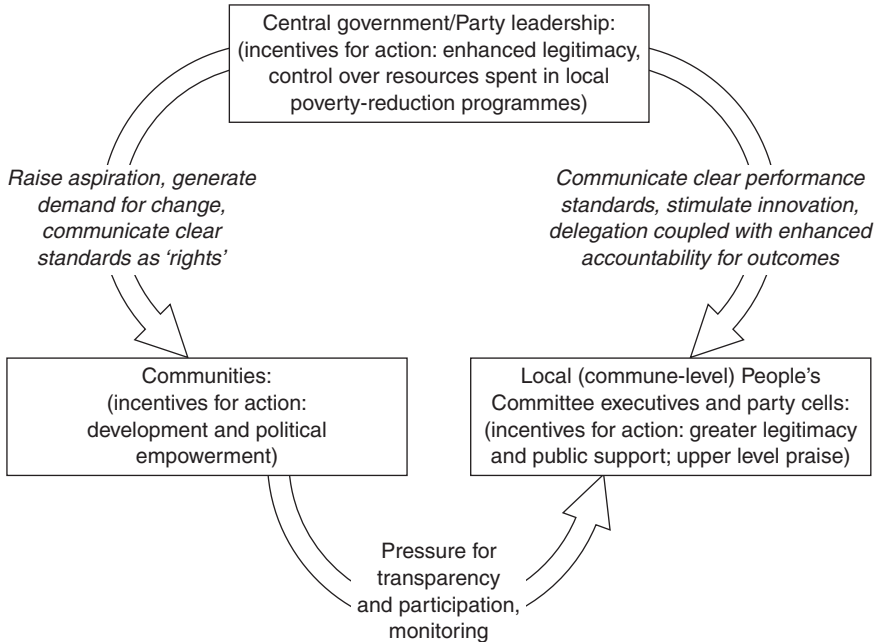


Figure 5.2 Modelling state–community synergies implied by grassroots democratization (source: Adapted from Work Bank, *Attacking Poverty: World Development Report 2000–2001*, Oxford: Oxford University Press, 2001, p. 112).

underlying issue of local corruption itself; as a result, few outsiders are allowed to conduct research directly on the topic. The Communist Party, which rarely cooperates directly with foreign analysts, is the primary ‘implementing agency’ at upper levels. And the policy is of a ‘framework’ nature; there are no specific programmes directly funded and implemented by the decree itself. One must therefore look to more indirect evidence of implementation.

The most promising areas in which to look for such evidence are special community-based infrastructure programmes, such as the government’s 135 Programme. These are typically funded by the national government, and selected, designed and implemented by local governments (primarily communes). Small-scale infrastructure is relevant to the assessment of grassroots democratization for a number of reasons. First, it is highly visible to the local population and even more likely than other sectors to suffer from corruption, notably in the awarding of contracts with significant cost overruns. It is no accident that the Thai Binh ‘disturbances’ were ignited by allegations of widespread fraud in the use of community infrastructure funds.

Second, a national programme – a block-grant transfer from the central government for which decision-making discretion is delegated to district or commune People's Committees – figures prominently in this sector, through Programme 135. This programme, which first saw implementation in 1999, targets 20 per cent (roughly 2,000) of the country's poorest communes, selected (somewhat subjectively) on the basis of overall socio-economic development, for block grants of roughly US\$20,000 per commune per year, sustained for several years. The funds are to be used for any community-based infrastructure, such as markets, roads or schools, selected ostensibly through a process of community consultation and voting. The 135 Programme is consistent with GD goals in that it departs from previous, highly centralizing planning modalities and attempts to set standards for budget transparency and community participation at the local level.

The following assessment is based on fieldwork in three provinces (Yen Bai, Quang Tri and Dak Lak) of the Northern Uplands, Central Coast and Central Highlands regions, respectively, carried out in 2000 and 2001.²⁵ The fieldwork was brief (one week per province) and exploratory, but benefited from good access to officials involved in 135 implementation from all four levels of the Vietnamese administrative system.

The 'standard' administrative system in Vietnam can be characterized in simplified form as follows. Lower levels each year forward requests for resources to higher levels that consolidate these requests and send them to yet higher levels, before allocation decisions (based on budget availability) are made and communicated downwards. Within such a system, localities – particularly at the commune and village levels – find it very difficult to predict allocations for certain essential investments supporting poverty alleviation (such as revolving credit programmes and agricultural extension and marketing assistance). In all such areas, the typical requests of localities are far greater than the availability of funds, in large part because there is little transparency in the decision-making process, and therefore meaningful prioritization of projects at the local level becomes impossible. Low funding predictability and decision-making power have led to the two phenomena, much discussed by Vietnamese analysts, of 'asking and giving permission' (*co che xin-cho*) and of lower levels being 'passively dependent' on upper levels to provide initiative to solve local problems (*nan y lai*). Both formulations imply that centralization coupled with a lack of predictability leads to bottlenecks in practice and weak incentives for local innovation and resource mobilization.²⁶

The 135 Programme departs from the 'standard' formula in that it is a transfer programme based on a benchmark indicator, known to all communes, of the equivalent of approximately US\$20,000 to be allocated per commune. This implied promise of stable resource availability under the programme has been highly popular with the communes selected to receive the funds.

Yet implementation has been disappointing in several ways that make limitations to the GD approach clearly evident. The 135 Programme does not transfer the block grants directly to the *commune* level, but leaves discretion over the actual division of funds among communes to provincial- and district-level officials, who intervene extensively in the inter-commune allocation, with no formula involved. In discussions with provincial and district officials in three provinces visited and at the central level, two reasons consistently emerged for the lack of enthusiasm over moving towards a commune-controlled block grant. The first is the ‘low level of education’ (*trinh do thap*) of commune residents, particularly minorities, in the poorest areas. Commune-level officials and residents were not considered to possess sufficient skills sets to manage decentralized funds, even for relatively small-scale infrastructure works. The second, related reason offered is that local people, if given the chance, were likely to make plans that deviated from the overall socio-economic development blueprints of districts and provinces; they were, in the phrase of the Ministry of Finance official, ‘unable to objectively assess their own needs’.²⁷

A second challenge facing programmes such as the Programme 135 – one directly addressing the rationale of the grassroots democratization (GD) decree – concerns the degree of transparency and inclusiveness of decision-making over the use of the funds at the local level. Making decision-making transparent implies that trade-offs between alternative investments be squarely addressed, often through some process of inter-village consultation in the case of commune-wide investments. Doing so in a way that includes relatively vulnerable households is a challenging task that places great demands on programme design and local capacities, for two reasons. Communities themselves are heterogeneous (often split between better-off and poorer households; men and women; various ethnic groups; more and less remotely positioned hamlets and households, etc.) and institutional incentives for those who are more powerful to include those who are less powerful, and for upper-levels to monitor the *quality* of local decision-making processes, are often very weak or non-existent.²⁸

The guidelines for the 135 Programme stipulate a method for reaching decisions including a participatory planning process for its commune-level block grants, based on GD principles. Key features of this process are based on the GD decree, including: (1) the convening of village-level meetings with prescribed quorums for reaching decisions; and (2) transparency in budget allocations, through a public acquittal of the national programme funds. Yet neither of these stipulations were followed in practice in the several localities visited in the three provinces. Officials claimed they were either impracticable (since administrative fees for the programme had been severely restricted at the insistence of the National Assembly, concerned over corruption and efficiency), or unnecessary (since local officials knew better than the local population what the highest priority investments were).

Explaining implementation barriers in grassroots democratization

Thus the limited evidence available suggests Programme 135 has been implemented in a strikingly 'top-down' manner.²⁹ Decision-making over which infrastructure projects are to be funded appears to be dominated in most cases by a few district-level officials and commune officials. It is highly improbable that the situation would be better in other, less high-profile, sectors and programmes.

This section analyses implementation barriers suggested by a review of stakeholder incentives based on interviews with officials at each level of government. To do so, it examines the policy logic summarized by Figure 5.2, and applies the model of implementation processes shown in Figure 5.1 to see where potential disjunctions may lie. To be effective, GD would require a conducive policy environment at the central level, appropriate inter-organizational design, and – a crucial and often unexamined feature – consistency with the incentives and interests of major stakeholders in the implementation process.

Policy design

Is the policy design of GD appropriate as an anti-corruption tool? Another way of asking this is, could the decree contribute to cleaner local governance if implemented as intended? Three points suggest that even at the level of design, the decree has serious problems.

First, grassroots democratization as currently formulated is primarily a symbolic or 'ideological' policy³⁰ – one espoused by the political elite in order to cement its legitimacy and which has multiple, ambiguous, non-prioritized and largely non-measurable goals. Although implementation guidelines for GD have been issued, these are not linked in a specific way to the implementation of specific national programmes – the major source of intergovernmental transfers – even in cases where doing so would be highly consistent with GD's policy logic.

Second, the decree is arguably based on an incomplete view of what is driving corruption overall in the Vietnamese governance context. It targets lower governmental levels, when in fact corruption is likely to be more systematic and to induce greater losses at upper levels. Local officials are not in a prime position to capture illegal rents associated with major infrastructure projects, for instance, as these are always decided by provincial or ministry officials.

Third, the policy assumes that local people will be willing to take up complaints against local officials and to insist upon their 'rights' (to information and participation) granted under the decree. That is highly questionable (a point explored further below).

Intergovernmental communication and enforcement activities

The decree has undoubtedly been communicated as a high political priority by the national media. However, commune-level officials interviewed showed a weaker understanding of the decree: two commune-level People's Committee chiefs had to be 'reminded' by district officials present what the decree actually was. 'Oh yes', said one after an uncomfortable pause, 'the one we had the meeting about in the district?'³¹ Vertical chains of communication may in fact be quite weak, since again the policy is not being consistently linked to intergovernmental transfers or national programmes, where the influence of the central government is strong.

If the communications picture is mixed, that for 'enforcement' is decidedly bleak. Pilot activities are largely exhortatory. There has been no attempt in the pages of the *Tap Chi Cong San* – the major Party organ for serious analysis of public administration reforms – to outline a realistic enforcement strategy to enforce minimum standards. Moreover, existing information systems monitoring the performance of local governments are overwhelmingly quantitative in nature, not *process*-oriented (as would be required to monitor implementation of the decree).

Finally, Vietnam lacks an overarching decentralization policy facilitating the transfer of meaningful decision-making to lower levels of government. The design of the implementation of programmes such as 135 tends as a result to be dominated by bureaucratic politics, where opposition to transparent and participatory decision-making is likely to be strongest.³²

Characteristics of implementing agencies/disposition of implementers

There are two key implementing agencies for grassroots democratization: technical agencies and the 'coordinating executives' at local level, i.e. key personnel (typically the chief or vice-chief) of the People's Committees. The former are concentrated at the deconcentrated, district-level offices of the line agencies, while it is the commune level where the coordinating executives can have the biggest impact on GD implementation.

Technical agencies

The technical agencies are essential to the implementation of GD, since they are directly tasked with delivering goods and services to communes and villages. For grassroots democratization to be realized, technical officials will have to be coordinated by district- and commune-level 'executives' (People's Committee chiefs and deputies, etc.) to take account of both local needs and a participatory process of implementation. Yet incentives for participatory, transparent implementation are dull at both senior

(ministry and provincial level) and local (district) levels of technical line agencies.

Grassroots democratization is a heavily *process*-oriented and *decentralized* initiative. Several characteristics of Vietnamese (and undoubtedly other) line agencies lead them to an organization-wide preference for quantifiable inputs that are centrally planned:³³

- A marked distrust of the lower-level technical capacities, this being by far their most common explanation of implementation gaps encountered in major programmes. Related to this is a fear that lower levels will misuse any discretionary power granted to them – for which higher-level officials delegating these responsibilities might be held accountable.
- An antipathy to coordination exercised by other sectors (such as 'lead agencies' in multi-sectoral programmes) and by the People's Committees of their own level, reinforcing a vertical, 'silo' organization observed in most provinces.³⁴
- Ambiguous accountability. Line agencies are subject to 'dual accountability' structure by which they are formally accountable to both the People's Committees and to the next highest level of their own sector. In practice, the sectoral accountability is higher (reinforcing a centralizing tendency).
- Limited accountability for outcomes, as there are very few performance measures for which these agencies are held accountable for reaching which relate specifically to the *integrated* impact of their work.
- Limited or no training in the participatory methods mandated under the GD decree.

Calls for greater transparency and local participation threaten sectoral agencies with decreased decision-making discretion and weaker relative autonomy.

People's Committee executives

The most crucial implementers of GD are People's Committee executives at local (district and commune) levels. Their incentives too are generally stacked against serious implementation of GD provisions. District executives are eager to be seen (by both district-level elites – e.g. Party cells – and upper levels) to be able to 'deliver the goods' efficiently. Zealous implementation of GD helps them little in this regard, exposing them to potential ill will by local elites (on whom they depend directly for their position³⁵) while laying them open to the charge of being inefficient administrators (since implementation of GD may result in greater transparency of local disputes over resources and delayed implementation of

some projects). And given its lack of clearly quantified success indicators, they feel little fear of being singled out for weak implementation of GD, provided reports are written and mantras duly recited. Leaders also wish to avoid open competition among their constituents for resources they may or may not control with discretion. This suggests a preference for non-transparent as opposed to transparent criteria, as well as for restricted access to information about entitlements. Reinforcing this preference is the likelihood in many cases that local leaders may stand to benefit personally from non-transparent allocation. There is a typically considerable grey area for supplementing income – both for the People’s Committee or Party coffers and personally, as well as cementing client networks – by keeping resource allocations and other decision criteria relatively opaque.

Commune People’s Committee leaders are in fact crucial implementers of the decree, since the participatory local planning and information sharing is focused on the commune and village levels. As in many anti-corruption programmes, the very implementers who are perceived to be the source of the problem (recall the Party’s ‘bad apple’ theory of corruption at the local level) are the most critical to implementation success – the ‘orthodox paradox’ noted in the introduction. Yet local leaders face weak incentives to implement GD. They have few mechanisms with which to hold line agencies or upper levels accountable for delivering inputs to which they are entitled (e.g. national programme allocations), and are thus likely to accept, rather than question, whatever goods come their way. Commune leaders are likely to exercise their influence as gatekeepers between external resources and community members in ways that strengthen their prestige among their commune administrative and economic elites. In this role, they also see themselves as the natural interpreters of community needs and aspirations, thus questioning GD requirements for an ‘excessive’ participatory planning process, for which there are in fact essentially no resources allocated and no guidelines specific enough to apply to particular programmes.

Action environment

The constraints examined so far could be considered the ‘supply side’ of GD implementation – whether government officials and leaders are likely to establish a participatory, transparent planning process as mandated by the decree. Action environment variables shown in Figure 5.1 suggest the *demand* for institutional change generated by the political as well as the grassroots social context is also constraining.

The political context

Decentralization is a prerequisite for meaningful GD; without substantial control over local decisions and resource allocation, local implementers

will have very little reason to expose themselves to greater pressures for transparency and accountability. Yet decentralization is not yet on the political agenda of the Vietnamese state in a meaningful way. Four general governance arrangements indirectly reinforce a centralizing tendency.

- Vietnam is a unitary state in which local governments exist as deconcentrated agents of the central government.
- Executive power in the Vietnamese system is overbearing, relative to the legislative and judicial branches,³⁶ limiting the scope for holding administrators accountable for delivering public goods in a transparent and participatory manner as prescribed by law.
- A facilitative framework for the role of the private sector and civil society has yet to be articulated within Vietnam's state-centric political ideology.³⁷
- Poor multi-sectoral (or horizontal) coordination is in part a legacy of the former system of command and control, when each ministry developed powerful interests in managing economic activities.³⁸

The net effect of all these governance arrangements is to reinforce a system in which accountability is primarily directed upwards (towards higher levels of government) and is, at the same time, somewhat blurred by overlapping spheres of authority and habits of intervention.

Grassroots social environment

An important element in the implementation theory of GD holds that 'vigilant villagers' will be emboldened to hold People's Committee executives accountable for ensuring rights granted to them under the initiative. In fact, villagers in many places are unwilling or reluctant to do so for several reasons. Villagers may have inadequate information regarding administrative procedures, particularly constraining in more remote localities where population density and literacy are lower, and distance to administrative centres and ethnic diversity are higher. Non-participatory previous experiences, such as labour mobilization as a form of local tax, may increase villager scepticism with regard to state calls for 'participation'. Finally, low levels of non-state-based social organization may constrain the expression of demands for greater administrative accountability. Government-sponsored mass organizations vary in their effectiveness, but are typically weak in remote localities targeted under government programmes such as 135.³⁹

Making the model dynamic

The model of implementation shown in Figure 5.1 holds out the potential for changes in the institutional environment and incentives underlying

implementer behaviour. Such changes could stem from policy learning and/or feedback loops from policy implementation to action environment variables.

Policy learning and adjustment are certainly plausible in the Vietnamese context; indeed, *doi moi* has witnessed an astonishing range of reforms covering most aspects of public administration. If political attention on GD is sustained and donors are able to support systematic experimentation in pilot localities, there is significant potential to make the policies and programmes associated with GD more realistic in their ‘policy logic’.

It is true that Vietnamese governance has centralizing elements impeding the potential of GD as an anti-corruption policy. Yet over time GD may bolster the position of local reformers willing to take risks in developing a broader base of public support beyond the networks of local elites. Some local governments eager to attract FDI already have strong incentives to improve governance quality (towards transparency, if not participation). And as Grindle and Thomas argue,⁴⁰ decision-makers, even in resource-poor developing countries, enjoy significant ‘room for maneuver and influence’ not reducible to the interests of organized groups or ‘the hold of history or culture on policy choices’.

Grassroots democratization may most effectively serve as an ideal against which poorly performing localities could be held to some account. It has the potential of raising expectations of people in relation to local administration. For those local chapters of mass organizations that are active advocates for their members (in addition to fulfilling their second function of disseminating government policies), GD provides a *potential* legal basis on which to insist on the greater responsiveness of local administrations. These potentially positive effects of GD, like most elements of Vietnam’s socio-economic reforms, will be realized unevenly throughout the country; but this very unevenness may facilitate comparison and nascent competitive pressures on the local government scene.

Implications for reformers

The experience of Vietnam’s grassroots democratization policy carries broader implications relevant both for the study of implementation and for those interested in making anti-corruption programmes and policies work more effectively. The above analysis has been built on a framework incorporating elements of both ‘top-down’ and ‘bottom-up’ perspectives on implementation.

From a ‘top-down’ perspective, there are serious reasons to doubt whether GD will have an appreciable impact, despite its important position in the government’s anti-corruption strategy. Its ‘policy logic’ – the theory linking programme outputs and root causes of the problem being addressed – is flawed, focusing attention on the commune level, when in fact corruption is undoubtedly endemic throughout the Vietnamese

system. Its 'implementation logic' – the assumptions it makes regarding the likely disposition of local implementers on whom the whole scheme rests – is also tenuous. District and provincial levels of government are often far removed psychologically as well as geographically from the village gates. Officials at these levels – not as a class known to have favourable attitudes towards decentralized, participatory processes – are unlikely to enforce its provisions rigorously against errant officials at the grassroots (provided there is no local outcry), or to use GD as a major criterion for assessing local government performance.

Such conclusions are important for would-be reformers in both donor and government circles, for whom anti-corruption policies have a compelling normative content. Looking beyond the case of GD, more thorough use of standard tools of implementation analysis – such as backward mapping and scenario analysis⁴¹ – certainly need to be incorporated into the design of anti-corruption efforts. At the simplest level, policy-makers can review a 'checklist' of conditions for hypothetically successful implementation, including the types of questions shown above. Local institutional environments also have a huge impact on implementer disposition, but as such variables are difficult to incorporate into 'checklists', they are often ignored. These points are all consistent with a 'top-down' emphasis on improving the design of policies and implementation processes.

Although GD is not likely to work 'as intended' from a 'top-down' perspective because of these flawed assumptions, it may make a meaningful contribution to anti-corruption efforts in time. It may bolster the position of would-be local reformers and encourage greater expectations on the part of the citizenry, in a feedback loop to the local political environment that could grow stronger. And policy learning – the ability to address some design flaws in the decree – is possible, particularly if donors become actively involved in helping the government pilot approaches to anti-corruption. This, more optimistic, reading of grassroots democratization raises two final implications.

First, 'implementation gaps' are conceptually a limited way of assessing implementation in developing countries. What Hill and Hupe⁴² refer to as the 'productive effects and necessity of conflict, negotiation and politics during implementation' should be incorporated into our assumptions about the likely implementation course of a highly ideological policy such as GD rather than dismissed as command-and-control deficiencies. Implementation analysts should ask 'what is happening and why' instead of mechanically assessing barriers to successful implementation from a central-level perspective. Such a view of implementation may be a particularly important corrective in Vietnam, where policy-makers tend to blame governance and implementation deficiencies on front-line implementers.

Second, the importance of analysing the 'requirements for successful implementation' should not blind us to the fact that conditions in developing countries almost never fulfil such checklist conditions. That is perhaps

especially true for anti-corruption programmes, suffering as they do from the 'orthodox paradox' noted earlier. When, and under what conditions, should reforms be promoted *despite* their incongruence with many powerful interests at central and local levels? Where should reformers begin in attempting to 'subvert' the multiple, interlocking props supporting corrupt behaviour in countries where corruption is systemic? Analysts must begin to look towards a broader framework when deciding what types of anti-corruption reforms may be meaningful in highly adverse environments. Such a framework has yet to be articulated, but would incorporate the potentially positive elements of conflicts over implementation, reflecting changing expectations and the creation or strengthening of nascent coalitions supporting change. For grassroots democratization and other anti-corruption efforts, the 'misery' of implementation would become a metaphor for the necessarily untidy process of using centrally initiated anti-corruption policies to contest governance practices in unanticipated ways.

Notes

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- 33 Nguyen The Dung, *Capacity Assessment for Viet Nam's National Target Program for Hunger Eradication and Poverty Reduction (Program Assessment)*, UNDP, Hanoi, 1999; B. van Arkadie, 'Managing the Renewal Process: the Case of Vietnam', *Public Administration and Development*, 13 (1993): 435–51.
- 34 The exception lies in the few provinces which can supplement central fiscal transfers with own-level revenue, strengthening their local People's Committee executives' position relative to line agencies. See Fritzen, 'Decentralization'.
- 35 People's Committee leaders are elected by the (legislative branch) People's Council; informally, they must be vetted by the local Party cell.
- 36 O. Bring, C. Gunnarson and A. Mellbourn, *Viet Nam: Democracy and Human Rights*, Stockholm: Sida, 1998; Thaveeporn Vasavakul, 'Rebuilding Authority Relations: Public Administration Reform in the Era of Doi Moi', Report to the Asian Development Bank, Hanoi, 2002.
- 37 L. Webster, 'SMEs in Vietnam: On the Road to Prosperity', Mekong Project Development, Facility, Private Sector Discussion Paper No. 10, 1999; Nguyen Thanh Tung, 'Law on Civil Organizations in Vietnam', unpublished Policy Analysis Exercise Master's thesis, Singapore, Public Policy Program, National University of Singapore, 2002.
- 38 See Van Arkadie, op. cit.
- 39 Pairaudeau, op. cit.
- 40 Grindle and Thomas, op. cit., p. 8.
- 41 D. Weimer and A. Vining, *Policy Analysis: Concepts and Practice*, New York: Prentice Hall, 1999.
- 42 Hill and Hupe, op. cit., p. 179.

6 Corruption control in Hong Kong

Ying Shang

Introduction

Hong Kong provides a case study in which rampant corruption by government officials was brought under control within two decades. Most studies of corruption control in Hong Kong argue that the government's unique strategies played the most important role, e.g. rigorous legislation (unexplainable wealth is an offence) and the creation of an independent anti-corruption agency.¹ Those strategies have been widely employed around the world, but they have not been as effective elsewhere as in Hong Kong.² Furthermore, a historical review of the strategies reveals that some of them were initiated in the post-war period when corruption was most rampant, but did not make substantial changes until the 1970s. Why similar strategies vary in effectiveness in different places and periods of time is still a puzzle to both government officials and scholars.

This study explains the puzzle with an analysis of regime type and its impact on strategies of corruption control and their effectiveness. The study argues that regime type not only shapes anti-corruption strategies, but also leads to divergent results for similar corruption control mechanisms. To develop this argument, the chapter examines the development of corruption control strategies in Hong Kong since World War II, dividing the inquiry into two stages: (1) corruption control under British colonial rule prior to the 1970s; and (2) corruption control under a *fully legalized regime* after the 1970s.

Hong Kong experienced an age of 'syndicate' corruption after World War II. Despite the effort of the post-war colonial government to curb rampant corruption, both the existing strategies, such as cadetship, and newly initiated ones, such as an independent anti-corruption agency, failed to take effect, while the separation of powers among major government branches was greatly reduced in the transition towards self-rule government. A *fully legalized regime* was established by the early 1970s, characterized by a separation of powers among the judiciary, the executive, the civil service, and a special law enforcement agency.³ The establishment of the separation of powers reinforced the checks and balances among them

and promoted the newly initiated strategies, including an independent anti-corruption agency, the regulation of power, a meritocratic civil service, and a mass reporting system. In the past ten years Hong Kong has become one of the leading governments in the world in official integrity.

The chapter is divided into two parts, which examine the prevalence of corruption, the strategies employed, and the impacts of the regime change in the two periods.

An age of ‘syndicate’ corruption

After World War II, corruption in Hong Kong developed into ‘syndicate’ corruption, in which all the officers in a government unit or section were involved in taking graft, viewing it as a ‘collective enterprise’. Despite widespread abuse of power in the post-war colonial government, it was tolerated by the public and the local media kept silent until the early 1970s. Although the Hong Kong government had been trying to tackle this problem, corruption remained prevalent among government officials in the post-war period. To further illustrate the ineffectiveness of corruption control during this period, this section reviews the characteristics of ‘syndicate’ corruption, the public’s perception of it, and the political impact of corruption in the post-war years.

‘Syndicate’ corruption

Ernest Hunt was the superintendent of the homicide squad in the Royal Hong Kong Police until 1974, when he was sentenced to jail for receiving bribes of HK\$6 million (about US\$1 million in 1960s) over his 18 years of service. In telling his story of a penniless but honest Glamorgan constable who became a corrupt millionaire policeman, Hunt revealed a general picture of ‘syndicate’ corruption in Hong Kong.⁴ ‘I believe that a large number of the police in Hong Kong are corrupt. Being “on the take” is a way of life. It is as natural as getting up in the morning and going to bed at night.’⁵

‘Syndicate’ corruption in Hong Kong refers to ‘a group of officers involved in the collection and distribution of money’.⁶ It differs from other forms of collective corruption in that it usually involves all the senior officers as well as the rank-and-file in a government unit. Membership in the group was often involuntary, and taking graft was organized as an ‘enterprise’.

Syndicated corruption made most of its money from gambling, followed by prostitution and drugs, all of which were illegal in Hong Kong. Nonetheless, these ‘businesses’ were allowed to continue with the direct knowledge, and, frequently, the participation of, the police. The linchpin of most syndicates was the detective sergeant, usually a Chinese officer, and more often than not he was the boss of an illegal business. He also

needed the cooperation of his British superiors, so he regularly paid off senior officers in the section as well as fellow officers who joined his 'businesses'.⁷ Virtually every police division had at least one syndicate in operation; some divisions had several. During the heyday of corruption, the money collected by the syndicates amounted to hundreds of millions of Hong Kong dollars annually.⁸ Syndicates also recruited the new arrivals. A new arrival who refused to join would be transferred to a 'barren' district.

Never stand in front of the bus!

Given the widespread syndicate corruption among government officials, the average person in Hong Kong found it wiser to accommodate the problem than to fight against it. 'Corruption is a bus – you may get on it, you may run alongside, but never stand in front of it.'⁹ This belief was widespread in Hong Kong until the 1970s.

Tolerance of corruption could also be found among the local Chinese elite, who traced it back to patronage practices in imperial China. A 'highly educated' Chinese lawyer in Hong Kong responded to Justice Blair-Kerr's inquiry by suggesting that

a Chinese in Hong Kong is more ready to pay a bribe ... without thinking of any moral issue ... corruption and bribery in Chinese history was not confined to the uneducated. It was rampant amongst the educated who had been appointed to office through Imperial Examinations. Similarly, ... corruption in Hong Kong is just as prevalent in the more educated class.¹⁰

Social unrest

Despite the public tolerance of corruption, public grievances gradually accumulated, and finally came to a head in the Godber scandal. Political instability and popular protests have been very rare in Hong Kong's history.¹¹ However, the 1973 Godber corruption scandal brought people from all walks of life into the streets, and public confidence in the colonial government plummeted. The political chaos that ensued after this corruption scandal revealed the extent to which corruption had been fuelling public indignation.

Peter Fitzroy Godber was the police chief superintendent and a former commander in the Kowloon district. He had come under investigation for corruption in 1973 because he transferred several million dollars to his foreign accounts just before retirement. Despite all the security that had been assigned to track him, Godber sneaked out of Hong Kong just before he was officially arrested, and headed home for Britain, where there were no laws that would convict him simply because of 'unexplainable wealth'.¹² News of his escape buzzed through the community, causing a public

uproar in a population that had long suffered from rampant corruption. 'Fight Corruption, Arrest Godber' became the unanimous public cry. It was widely believed at the time that if Godber had been found not guilty, it would have caused a signal for a local disturbance.¹³ T. Wing Lo even called it 'a crisis of [British] hegemony'.¹⁴

Corruption control under post-war colonial rule

Corruption control has always been an important issue on the agenda of Hong Kong's government, even in the post-war period when corruption was rampant. The Prevention of Corruption Ordinance of 1971 established more rigorous legal standards than had previously existed under the British legislation.¹⁵ This was a significant lag given that the first special law enforcement agency devoted to corruption control in Hong Kong was established in 1952. However, the ineffectiveness of the efforts under post-war British colonial rule was in striking contrast to the success of the fully legalized regime that replaced it in the 1970s.

After World War II, the British policy on colonial rule underwent a transformation towards democratic self-rule. The transition weakened the checks and balances in Hong Kong government, and strategies of corruption control became increasingly ineffective.¹⁶ Localizing the government gave expatriate officers discretion over the assignment of government offices and reduced the checking mechanism on these administrators. In addition, the expansion of government invalidated the 'small government' strategy that had been implemented to reduce the opportunities for corruption. Finally, the social desegregation between cadets and local community, as a direct consequence of government localization, dissolved the moral constraints on the desire for private gain. The following sections further examine these impacts.

Localizing the government and dysfunctional checks and balances

A separation of power and checks and balances among the judiciary, executive, and civil service was established in Hong Kong under British colonial rule. The British government appointed the chief justice with tenure, while the Governor of Hong Kong appointed the local judges. Judges had the right to review local legislation and administrative decisions.¹⁷ The civil service also was separated from the executive in 1861 under Sir Hercules Robinson, then governor, with the introduction of 'Hong Kong Cadetships'. The cadetship programme recruited civil servants through a competitive examination of educated young men from the British Isles to act as interpreters, who could be promoted to be department heads after a certain number of years of service. Before 1861, officials had been recruited from 'all sorts and conditions of mankind, many

being naval or military officers', and nepotism prevailed until the cadetship built up a public administration in Hong Kong.¹⁸ The cadetship replaced patronage and nepotism with a meritocratic recruitment system, which reduced opportunities for abuse of power.

The civil service localization, initiated in 1948, weakened the separation of powers and the checks and balances. Law enforcement branches started to lose their autonomy from the executive and became unable to carry out their checking function. The principle of localization meant that local candidates had priority over the expatriate officers and no expatriate officers could be enrolled unless there was no qualified local candidate. Localization almost destroyed the cadetship, and afforded department heads much more authority to influence civil service recruitment and promotion.¹⁹ As the case of Godber revealed, it had become a routine to take bribes in return for promotion to a higher, more profitable position. Transferring out officers who refused to join the corruption syndicates also became a common practice, thus allowing corruption to continue unfettered. Once a chief detective in the Corruption Investigation Department spent HK\$150,000 (about US\$25,000) to transfer his divisional superintendent.²⁰

The post-war Hong Kong government tried to solve the problem by establishing the first specialized law enforcement agency on corruption control – the Anti-Corruption Branch (ACB). However, the lack of separation of powers between the executive and law-enforcing branches prevented the newly initiated agency from being independent.

The ACB remained a small unit under the Hong Kong Police, while the police was the most corrupt department in Hong Kong, and obviously departmental interests conflicted with anti-corruption efforts. Although the Hong Kong Police remained the largest law enforcement agency, the ACB's maximum enrolment was no more than 34 officers. Nonetheless, the corruption syndicates the ACB was tasked to investigate were often several times larger than its total strength.²¹ Moreover, the ACB did not have permanent officers and most of them would be transferred back to other police departments after certain years of service. Being afraid of retaliation after ACB service, officers were less willing to carry out investigation vigorously, especially when the case involved their colleagues.

Expanding government powers and not reviewing obsolete rules

The colonial government had been using a strategy of small government, in which the functions of government were limited, thereby reducing opportunities for corruption: the more government services are provided, the more opportunities there are for the abuse of power. When the British took Hong Kong in the 1840s, it was mainly to serve commercial purposes. From 1947 to 1980, the government had only 30 departments, most of which discharged multiple functions. For example, the police were not

only in charge of social security, but also immigration and transportation until 1961. The total number of Hong Kong government employees was less than 24,000 in 1955, while they governed more than 2.5 million people.²² The strategy of small government became increasingly problematic as the population grew rapidly from one million before World War II to more than three million in 15 years.²³ While the government could barely meet the basic social demands, the strategy of small government resulted more often in law-breaking rather than law-abiding. When the government started to expand, the new posts provided a greater opportunity for those in public office to seek private gain. The expansion of public housing projects was followed by a surge of corruption in the Public Housing Department, which had the second largest corruption syndicate after the police.²⁴

Another consequence of government expansion was the failure to establish adequate rules and regulations to control opportunities for corruption. The colonial administration had been highly centralized before the 1970s. The secretariats in the Executive Council supervised all government branches, and made decisions affecting all aspects of life in Hong Kong. This centralized system was designed to ensure that the governor stayed fully informed of all situations and was in a position to exert effective control when necessary. However, the system became increasingly inefficient as the volume of business grew. Given their lack of decision-making authority, junior officials would pass along disputes for resolution to more senior officials, and the major secretariats were soon overloaded with paperwork. Once the secretariats were overwhelmed by items that needed immediate decisions, they barely had time to consider longer-term issues, such as reviewing outdated regulations, finding loopholes in government service regulations, and checking exercise of delegated power by junior officers. Moreover, a lack of standardization led to delays in government services, which encouraged the use of bribery to speed up bureaucratic procedures.²⁵

Desegregation and declining morale

In addition to the rapid growth of opportunities for corruption, the declining moral constraints in the public services also contributed to rampant corruption in the post-war colonial service. Although the self-discipline of the British colonial service had been widely acknowledged for over a century before World War II, the presence of upstanding officers in Hong Kong after the war was greatly reduced. One major reason for the deteriorating sense of ethics in the civil service was the desegregation between cadet officials and the local community during the civil service localization. It was an unwritten rule of the cadetship in Hong Kong before World War II that cadet officials remain socially segregated from the local community. Cadets did not marry into the Chinese, Eurasian, or Asiatic communities,

for a mixed marriage would have affected their careers.²⁶ This social segregation had two salutary effects on corruption control in Hong Kong. First, reducing personal connections with the local community prevented cadets from being forced by local relatives to indulge in nepotism, which easily led into self-profiteering through abusing government offices. Second, and more importantly, it helped cadets to maintain a higher ethical standard than was common in either Chinese or European society. Along with their superior education came a sense among the cadets of a higher moral code that should be adhered to as part of their pride.

One of the side-effects of localizing the colonial government in post-war Hong Kong was to eliminate segregation by providing more equal opportunities for local officers. By 1952, more than 95 per cent of the civil servants in Hong Kong were Chinese.²⁷ One of the greatest distinctions between the local officials and overseas officials was a difference in ethical standards. For example, there was a police subculture in Hong Kong, which worshipped Kwan-ti (Guan Di) as the professional god of the police.²⁸ This religious practice valued brotherhood above all other public obligations, and had been widely used as a means to cultivate cohesiveness within the corrupt syndicates.²⁹ The localization of the colonial government abolished the segregation between the Hong Kong cadets and the local officers, and the cadet's long-held ethics declined as well. This is why most expatriate officers who had become corrupt in post-war Hong Kong defended their behaviour by saying that everyone else in Hong Kong was even more corrupt. When the government eventually decided to take decisive action against corruption, the police organized large-scale protests and threatened a police strike that would paralyse Hong Kong's public security system.

A leading government in curbing corruption

After two decades of painstaking efforts by the Hong Kong government, syndicate corruption was eliminated from all government departments. Today corruption cases occur almost exclusively in an opportunistic and individual form. Public tolerance of corruption dramatically decreased when the actions of the anti-corruption agency proved the government's determination to curb corruption. More than ten international NGOs, including the Freedom House and Transparency International, have ranked Hong Kong high on official probity.³⁰ ICAC has become virtually *the* brand name for corruption control agencies. Although corruption cases involving senior officials have occasionally been investigated in Hong Kong since it was established in 1974, none of them has caused a major political crisis.

Elimination of syndicate corruption

The Independent Commission Against Corruption (ICAC) is an independent corruption control agency, which was separated from the Hong Kong Police in 1974. When the ICAC was first established, the immediate aim was to 'break the back of the organized, syndicated corruption within the next year or two'.³¹ By 1977, the director of the ICAC, J. Cater, proudly declared that no major corruption syndicates were known to exist at that time.³² Illegal gambling used to be a major source of income for corruption syndicates, and Cater reported that for 'much of the year 1977 no major (illegal) casinos were in operation'.

After the ICAC was established in 1974, it received 3,189 reports of corruption that year, 86 per cent of which concerned government departments. In 1988, corruption reports concerning the private sector exceeded reports of government corruption for the first time, and by 2001 the percentage of corruption reports concerning government departments had dropped below 50 per cent of total reports. While the numbers of reported corruption cases have continued to rise and reached an unprecedented high of 4,476 in 2001, reported cases in the government sector have remained roughly stable at one-third of that number (see Figure 6.1). In 2001, cases concerning the police dropped 15 per cent and cases in other departments dropped 5 per cent.³³ After the East Asian financial crisis, reported cases saw a sharp increase in the next year, but the Commissioner's Report found that 'the biggest contributing factor was a leap in the number of reports which were straightforward or of a simple and minor nature'.³⁴

Zero tolerance of corruption

Since 1977, the ICAC has required non-government organizations to carry out mass surveys as a major indicator of the effectiveness of their corruption control strategies. By 1988, these surveys were conducted biannually, and then increased to once every year in the 1990s.³⁵ The majority of interviewees were long-term residents of Hong Kong. The 1984 survey interviewed 1,043 valid households, more than 90 per cent of whom had been living in Hong Kong for over ten years.³⁶

One of the survey questions asked was 'How widespread is corruption thought to be in the government?' In 1977, approximately 38 per cent of the respondents believed that corruption was widespread in most government departments. The number had dropped to 5.8 per cent by 1984.

The survey question has been changed to whether corruption is 'very common, quite common, or uncommon' in Hong Kong. Some 8.5 per cent of the interviewees believed that corruption was very common in 1994, and the number dwindled to 1.4 per cent in 2001. At the same time, people who perceived corruption to be uncommon in the government rose from 30.1 per cent in 1994 to 67.4 per cent in 2001.

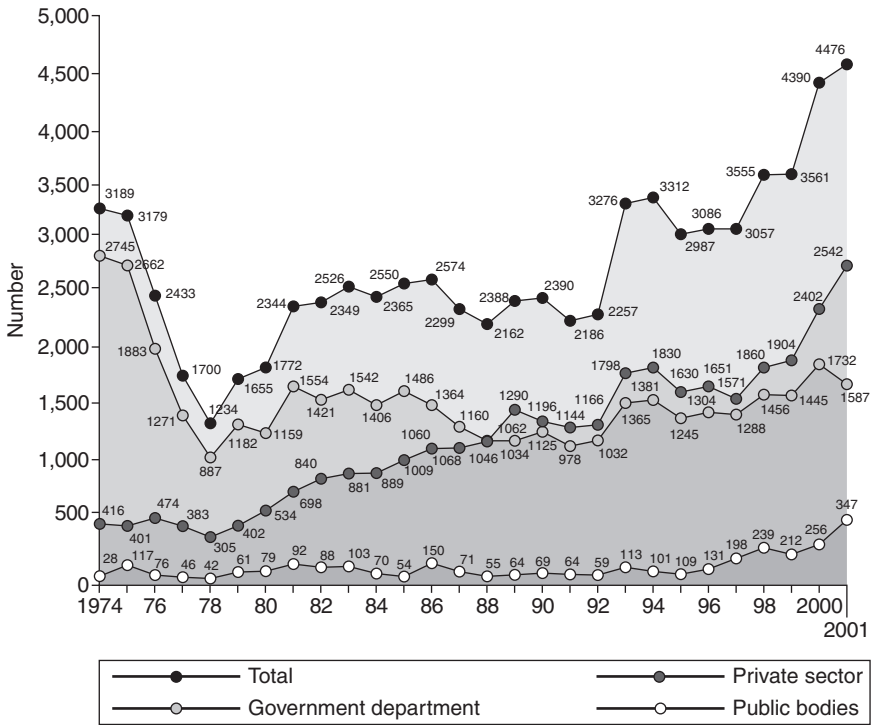


Figure 6.1 ICAC corruption reports, 1974–2001 (source: ICAC official web site <http://www.icac.org.hk/eng/0/1/7/24.html> (accessed: March 2002)).

In order to increase the accuracy of the survey, another question was added to the survey taken in the 1990s. It asked whether respondents had come across corruption in the previous year. A total of 7.8 per cent of the respondents answered yes in 1994, and the number decreased to 4.4 per cent in 2000. Those who had a personal experience with corruption were also asked about places where respondents had met corruption. In 1994, some 20 out of 1,000 respondents had experienced corruption in the government, but the figure decreased to only 5 out of 1,000 in 2001 (Table 6.1).

Public apathy towards corruption was also greatly changed after the creation of the ICAC. Before it was established, the Anti-Corruption Branch received only about 1,000 reports each year. The number surged to 3,819 in 1974. In addition, 65 per cent of those reporting in 1972 remained anonymous, while the percentage was reversed by 1988, with only 34 per cent anonymous reports.³⁷ The drop in anonymity in lodging corruption cases indicates the increasing popular trust in the capacity of corruption control agencies, as well as the decreasing tolerance of corruption in the public.

Table 6.1 Personal experience of corruption in Hong Kong, 1995–2001

<i>Year</i>	<i>Yes (%)</i>	<i>In government (%)</i>	<i>Number of persons who had personal experience of corruption (per 1,000)</i>
1995	7.80	28.6	22
1996	7.80	33.8	26
1997	8.30	26.7	10
1998	4.80	22.0	10
1999	6.40	24.2	15
2000	5.00	19.5	9
2001	4.40	13.5	5

Sources: *ICAC Annual Survey Reports*, 1995–2001.

Waning political significance of corruption

Compared with the social disturbance caused by corruption scandals in the 1960s and 1970s, corruption is now only highlighted in occasional media reports. Corruption has steadily waned on Hong Kong's political agenda. This is shown by the experience of a former unofficial member of the Legislative Council in Hong Kong who has been fighting corruption since the 1960s.³⁸ The member came to work in Hong Kong 50 years ago, was elected as Urban Councillor in the 1960s, and became a Legislative Council member in the late 1980s. For the past 40 years, she has been a strong advocate for Hong Kong's underprivileged, and was outspoken on the problem of corruption. Despite her significant contribution to the campaign against corruption in Hong Kong, she lost the election in 1995. She attributes this to the waning significance of fighting corruption, noting that the residents in Hong Kong now seldom approach her with problems of corruption as they once did.³⁹

Corruption control under a fully legalized regime

The transition to a democratic self-government was diverted towards building a fully legalized regime after the 1970s. Under this system, separation of powers is re-established based upon highly institutionalized government branches.

Separation of powers among the judiciary, the executive, and the civil service was established in Hong Kong by restoring the autonomy of the civil service. The authority to make appointments and promotions to government posts above point 30 of the master pay scale (HK\$20,165 in 1990, about US\$2,500 in today's dollars) was completely transferred from the department heads to the independent Public Service Commission (PSC).⁴⁰ The PSC was established through implementation of the Public Service Commission Ordinance of 1950 and strengthened during the administrative reform of the 1970s. Moreover, the Civil Service Bureau

was also established to take charge of the professional training of newly recruited government officials.

Judicial independence was established during the early period of colonial rule, and it was further strengthened during the reforms. In 1975, the Legislative Council passed a bill establishing the Judicial Service Commission to provide recommendations to the governor whenever a judge or magistrate's position needed to be filled. Since then, it has become customary for the governor to rely upon these recommendations for the appointment of judicial officials. The Commission consists of the chief justice (chair), two judges, an attorney-general, a barrister, a solicitor, and three lay members. The Commission is also independent of the Public Service Commission.

The separation of the civil service from the executive permitted the creation of an independent and specialized law enforcement agency: the ICAC as the fourth pillar of the Hong Kong government's endeavour to control abuses of power by government officials. Strengthened legislation against corruption enabled the judiciary to punish guilty officers severely. The prosecutor, the judges, and the advisory committees of the ICAC formed a checking mechanism against the potential abuse of power by the special law enforcement agency. The decentralization and further institutionalization of rapidly expanded government institutions have led this specialized government institution to review and improve the rules and regulations for public offices, in order to minimize opportunities for corruption. Finally, the reform also greatly increased government responsiveness to social demands by making a response to the public demands part of the routine work of each government branch. The increased voice of the citizenry has enhanced the identification of average Chinese citizens with the Hong Kong government and has facilitated the establishment of higher ethical standards among officials serving in the post-war government.

Independent commission against corruption: the fourth pillar

In 1973, Sir Murray MacLehose declared in the opening session of the Legislative Council that 'it was decided to transfer responsibility for the detection and investigation of corruption from the Police Force to an independent organization, standing apart from any department of the Government, and answering directly to the Governor'.⁴¹ From then on, ICAC became a fourth pillar of the regime and took its place alongside the administrative, legislative, and judiciary branches.

The legal status of ICAC is defined and guaranteed by the Independent Commission of Anti-Corruption Ordinance, enacted in 1974. The Basic Law further strengthened its position when Hong Kong was returned to China in 1997.⁴² Its independent legal status is the basis for ICAC's autonomy in handling its finances, recruiting personnel, and conducting investigations.

ICAC's annual budget requires approval by the Legislative Council, but ICAC has greater leeway compared to other branches of government. The budget for 1974/75 was HK\$8.5 million, and the supplementary provision amounted to HK\$12.9 million, mainly because of increased expenditures on the Godber case. The auditor general has access to the financial books of ICAC at any time, but some travel routes and service fees have been closed to scrutiny for security reasons.⁴³

ICAC officers are not part of the Hong Kong civil service, nor are they subject to job transfers that would post them under a senior officer whom they had previously investigated. All ICAC officers work on a contractual basis, at a higher salary scale than their counterparts in other similar departmental positions. However, ICAC officers can be dismissed at any time, without the right to appeal, if there is suspicion of their probity.⁴⁴

Public officials below the law

It is a fundamental principle of rule of law that everyone is equal before, and protected by, the law. However, when the government's efforts to battle corruption failed to make much impact, lawmakers in Hong Kong realized that British-type criminal procedures provided too much protection for officials who were operating illegally. Only by reducing the legal protections enjoyed by those in public office could the judiciary wield enough power to prevent abuses by public officials who were pursuing their private interests. The two unique features of the revised rules for official conduct were: (1) that public officers were deprived of their 'right to silence'; and (2) the passage of an 'unexplainable-wealth-is-offence' law.

Deprived of 'right of silence'

An important principle of Common Law is that a person has the right not to incriminate him or herself. In the United States, this protection is guarded by the Fifth Constitutional Amendment. It is widely regarded as a human right, even though it may sometimes protect those who caused great damage to US society, such as the former executives of Enron and Arthur Anderson. The problem here is that finding evidence to prove guilt in corruption cases is much harder than in other criminal activities.

In Hong Kong, the right to silence was challenged, and was eventually limited for public officers suspected of having been involved in illegal activities. When Hong Kong lawmakers were drafting the Prevention of Bribery Ordinance, they proposed that the attorney-general should be empowered to issue a notice to a suspect and to any other person whom the attorney-general believed to be acquainted with the facts relevant to an investigation, requiring these individuals to submit information. Failure to respond was an offence. The proposition encountered no objection

from the local community, but was opposed by the legal adviser to the Secretary of State, on the grounds that the suspect might be 'forced to incriminate himself'.

In order to support this new law, the Puisne Judge, Blair-Kerr, challenged the validity of the fundamental right to silence in cases involving corruption among public servants. He first pointed out that the right to silence is the right of criminals, but not the innocent, and quoted Bentham, who said that:

If all the criminals of every class had assembled, and framed a system after their own wishes, is not this rule the very first which they would have established for their security? Innocence never takes this advantage of it: innocence claims the right of speaking, as guilt invokes the privilege of silence.⁴⁵

The implication of this is that there should be no tolerance for dishonesty among public servants, and there is no such thing as 'fair play' for the officials accused of corruption. Blair-Kerr also pointed out that, just as a taxpayer has no right to remain silent when he is interrogated by the Inland Revenue Department about tax evasion, public officers in corruption cases also should not enjoy such a right.⁴⁶

Unexplainable wealth is an offence

In 1970, a judicial clerk in the Supreme Court was accused of receiving HK\$5,000 from a factory owner who brought a civil action for HK\$69,000. However, simply because the factory owner denied that the money was a bribe, the clerk, like many other officials who had been accused of corruption, was acquitted.⁴⁷ Three years later, 'Taffy' Hunt was sentenced to one year in jail because he failed to explain how he could afford a £1,765 deposit for his daughter's schooling in Switzerland.⁴⁸ The change that allowed a conviction in the second case was the creation of a law that made the unexplainable wealth of a public officer an offence. This is absent in British laws, but has made a major contribution in bringing justice onto officials involved in corrupt activities in Hong Kong.

In 1959, the Hong Kong government announced an amended Establishment Regulation 444, which authorized the governor to appoint a tribunal of three to inquire into whether a public servant has been '1. maintaining a standard of living above that which is commensurate with; or 2. in control of pecuniary resources in excess of, his official emoluments'.⁴⁹ If these two factors are proven at an inquiry, the suspect is required to explain how such pecuniary resources have come into his or her hands. Failure to provide a satisfactory explanation will lead to compulsory dismissal or retirement. 'Such a disciplinary measure aimed at catching corrupt offenders was, according to then Secretary of State, novel throughout the whole

Commonwealth and British dependencies.⁵⁰ In 1971, the principle was further established as law, when the Prevention of Bribery Ordinance (Section 10) was passed.

This rule is further strengthened by Section 21(2) in the 1971 Ordinance, which states: 'An accused is presumed to be in possession of excessive resources where any person whom, having regard to his relationship to the accused or to any other circumstances, is believed to be holding resources on behalf of the accused, or as a gift from the accused.'⁵¹ The section on unexplainable wealth was criticized as being an approach that was 'lazy and unthoughtful ... which introduced an informal and internal disciplinary offence into the formal system of criminal justice'.⁵² Other scholars justified it by saying that the pressing need to combat corruption in Hong Kong required such a heavy-handed approach.⁵³ Blair-Kerr supported this argument in his report when he wrote: 'I despair of the chances of any law-enforcement agency, operating a British-type system of criminal investigation and court procedure, of being able consistently to break into (corrupt) organizations of this kind.'⁵⁴

By 2000, 53 public officers in Hong Kong had been charged under Section 10, including the former chairman of the Stock Exchange, the former deputy of public prosecutions, and a former member of the Legislative Council.⁵⁵ After three decades of operation, this heavy-handed approach has proved to be a strong deterrent and is arguably the only way to establish the criminality of high-ranking officers.⁵⁶

The strategy of reducing legal protection for those in public office decisively reduced the ability of corrupt officers to evade punishment.

Guard the guardian

With its power to search, seize, and detain, ICAC is a government agent as powerful as a secret police force. However, ICAC has greater accountability than most other corruption control agencies. Several mechanisms are in place to prevent any abuse of power by ICAC, including the prosecutor and the courts, advisory committees, internal discipline, and the oversight of the governor/chief executive.

ICAC has the right to investigate corruption, but the decision to prosecute is beyond its control. These powers are held by the attorney-general and the judicial system, and even the governor may not influence these procedures. This is an important check against the abuse of power. In 1976, ICAC arrested over one hundred police officers in the Wan Chai division, but only 12 of them (and three civilians) were charged with conspiracy. During the trial, one pleaded guilty, 11 were discharged or acquitted, and three were found guilty.

Besides the veto power of the public prosecutor and the judges, four advisory committees, as representatives of the governor, review the daily work of ICAC. The committee consists of both official and non-official

members, and non-official members maintain a majority. The Advisory Committee on Corruption (ACOC) is supposed to advise the Commissioner of ICAC on any aspect of corruption in Hong Kong. It reviews the major policies of ICAC on finance, personnel, and administration, receives reports on disciplinary cases, scrutinizes the ICAC Annual Report before its submission to the governor, and submits the annual report to the governor.⁵⁷ Each of the three departments under ICAC also has a separate advisory committee.

In addition to advisory committee reviews, ICAC receives more rigorous and substantial checks through the internal disciplinary mechanism. During an investigation, access to information is strictly limited to the current case. All the activities and contacts that investigators make with informants have to be recorded and put on file. Ignoring these regulations leads to dismissal. These strict guidelines are meant to prevent the leakage of information which the investigating agents could utilize for personal advantage. The most effective checking mechanism of ICAC power is summary dismissal. All ICAC officers are contractual workers whose contracts are renewed only if their performance is satisfactory. The commissioner may terminate a contract without explanation, and dismissed employees have no right to appeal. Under the contract, termination is at three months' notice or on payment of a month's salary in lieu of notice.⁵⁸ The highest officer in ICAC ever to be dismissed was Alex Tsui, the former deputy director for the Operation Department in 1993. Given the high sensitivity of this issue, the Security Panel of the Legislative Council held its first public hearing since ICAC had been established.⁵⁹

The war against corruption can also be viewed as a war against the government, which might incur serious political and social costs. ICAC is a special branch founded to carry out this war, and it is not supposed to consider the impact of its activities on politics. Such a conflict of interest rose to crisis level in Hong Kong in 1976, ICAC's 'crunch year', when over one thousand reported cases were investigated, and 259 people were charged.⁶⁰ This 'strike-hard' campaign resulted in a large-scale strike of the police, who perceived it as unfair treatment. Contrary to expectations, Governor MacLehose announced a partial amnesty on all corruption cases committed before 1 January 1977. He had the power to move swiftly to prevent catastrophe as ICAC was under his sole and absolute discretion. This provided a safety valve to limit the political consequences of the ICAC's mission if necessary.

The specialized and independent Corruption Prevention Department

Checks and balances among the major government branches control the abuse of power only after violations have taken place. Regulations may, however, eliminate opportunities for corruption and may prevent

misconduct from occurring in the first place. This is another unusual strategy employed by the consultative rule of law regime in Hong Kong.

As a natural result of a highly institutionalized regime, Hong Kong has a specialized department, the Corruption Prevention Department (CPD), to review working procedures, provide suggestions for reform, and follow up on the implementation and effectiveness of these suggestions. This is different from the non-legalized regimes, in which regulation of power is more often *ad hoc* and insufficient. The CPD mainly focuses on examining specific working procedures and recommends improvements in specific contexts. It also has the responsibility to review all relevant Hong Kong legislation before an Act is passed. These methods could be classified under three general themes: (1) increasing the transparency of those serving in public office; (2) increasing the efficiency of those in public office; and (3) minimizing the duration of officials' tenure in public office.

Increase transparency

Lack of transparency is a common feature in any bureaucratic system. It provides not only opportunities to extort bribes but also an incentive to offer bribes. The demand for public housing greatly exceeded the number of units available in the post-war era. Other than knowing that they would have to wait for years, most people had no access to information about how the Housing Department processed their applications. In light of this situation, extortion and voluntary bribes became widespread because they seemed to be a short cut to gaining housing. Following the CPD's suggestion, the Housing Department tried to improve its service mainly in terms of increasing transparency. Although the standards for applications for public housing are open to the public, the status of any specific application can be found either by public inquiries to the department or by checking the department's official web site.⁶¹ After the programme was put in place, ICAC rarely received reports of corruption.

Increase efficiency

Delays in the government's service were another major factor leading to corruption. They were caused by a variety of things, including a lack of staff and facilities. Managing the mini-buses in Hong Kong was an example. Since the traffic police simply did not have enough staff to manage the mini-bus drivers, Triad criminal organizations in Hong Kong picked up the slack. The Triad 'police' controlled the number of mini-buses that could serve a business and collected a 'fee' which they shared with the police.⁶²

Increasing police strength became the solution. In the past 20 years, Hong Kong's police to population ratio has become the highest in the

world.⁶³ In 1993, Hong Kong had 27,000 police officers out of a total population of 5.8 million, meaning that there is one police officer for about every two hundred people. The US ratio is one to three hundred. Nowadays, Hong Kong traffic can remain orderly and expeditious even in the most crowded downtown areas and during rush hours.

Minimize officer tenure

In addition to the inefficiency of government services, the long tenure of an officer in one position can also increase opportunities for corruption. The CPD frequently urges departments to minimize the tenure of officers, from senior administrators to the rank-and-file. Most administrators can only stay in one position for one to two years, after which they will be appointed to another department. According to a 1973–78 government report, only two out of 123 senior administrators had stayed in one position for over five years, 16 of them had stayed for four years, 39 stayed less than two years, and 40 stayed for less than one year.⁶⁴

Rotating administrators has been also adopted by other governments. What has been unique in Hong Kong is that the rank-and-file officers are also subject to this principle. The Food and Environmental Hygiene Department (FEHD) has 2,700 officers whose duties include the arrest of illegal hawkers within their administrative districts. Since it is impossible to keep every officer under scrutiny while on duty, inspectors have almost full discretion in dealing with the hawkers. The CPD suggested that the FEHD increase ‘cross-district operations’, which means appointing a group of inspectors to a district in which they are not normally supposed to carry out their routines, so as to decrease the predictability of raids.

Constructing social consensus

Establishing higher-than-average moral principles for government officials is an important strategy in the fight against the desire of government officials for private gain. Paramount leadership and controlled mass media are the common tools with which to establish such ethical rules with binding force, but the fully legalized regime of Hong Kong prevents the government from utilizing either of them. The Hong Kong governor is bound under the constitutional laws, thus unable to play the paramount leadership. The media in Hong Kong are among the freest in the world, and have been well protected by the judiciary for over a hundred years. Nonetheless, the uniqueness of Hong Kong’s moral strategy is that it exerts ethical constraints by constructing a social consensus on official behaviour.

Public servants will normally discipline their behaviour voluntarily only when they believe that protecting the sanctity of government also serves their personal interests. Ethical codes from the British government had a declining binding force during the post-war transition period, for the

power monopoly held by the expatriates discriminated against local officers, and it was thus impossible to form a social consensus on higher official ethics. The transformation into a fully legalized regime eliminated the discrimination, and permitted the construction of a consensus, which may exert effective moral constraints over the desire for private gain. The Hong Kong government has three specific strategies to realize this aim, namely: (1) opening the higher echelons of administration to the local officers; (2) earning popular trust by providing a minimum number of social welfare programmes; and (3) setting up government institutions to facilitate social sanctions.

Opening the higher echelons to local officers

Expatriate officers monopolized the higher echelons of administration posts until the early 1950s. Despite the British policy of localization, progress towards integrating locals remained very slow, especially in the directorate class (i.e. department heads and deputy heads). Only seven Chinese were appointed as administrative officers between 1947 and 1960, compared to 41 expatriates. Progress accelerated after the recruitment of civil servants was separated from the executive and moved under the jurisdiction of the independent Public Service Commission. The percentage of local officers in the directorate rose from 19 per cent in 1970 to 39.2 per cent in 1980 and to 59.7 per cent in 1990 (Table 6.2).⁶⁵ After 1997, all directorate administrators were required to be Chinese.

Expatriate officers used to have priority in civil service recruitment. However, a principle of localization was that local people were to have priority, and local appointees became equal to expatriates for promotions based upon merit. Moreover, salary differences between the local officers and the expatriate officers were abolished in 1971.

Earning popular trust

When the expatriate officers came to Hong Kong in the late nineteenth century, they came as conquerors and rulers of a 'backward' community. Although Elizabethan Poor Laws had started to provide relief for the poor in Britain since the sixteenth century, none of the treatments were applied

Table 6.2 The composition of the directorate, 1970–90

<i>Year</i>	<i>Local (%)</i>	<i>Overseas (%)</i>
1970	62 (19)	262 (81)
1980	252 (39.2)	391 (60.8)
1990	728 (59.7)	491 (40.3)

Source: Annual Reports on the Public Service.

in Hong Kong until the 1970s. The aloofness with regard to the local welfare contributed to the absence of social consensus between the government and the governed.

Governor MacLehose (1971–82) contributed the most to reducing discrimination against the Chinese community. During the ‘MacLehose Decade’, the use of both English and Cantonese was permitted in the proceedings of the Legislative Council for the first time in the 130 years since British rule in Hong Kong. He carried out the largest public housing construction project in the history of Hong Kong, aiming to change the lives of 300,000 people who were still living in squatter huts. Schools were expanded to provide a minimum of three years’ secondary education for all. Unlike all his predecessors, he was ‘a relaxed, smiling, informal and benevolent governor, anxious to go out into the streets to learn of problems and then do something about solving them’. In addition, he was the first governor who openly acknowledged the rampant corruption within the government, and declared war on it.⁶⁶ MacLehose’s idea received a warm response from the public, which had started to benefit from the policy changes he had instituted. Table 6.3 shows the dramatic increase in the number of corruption reports received by the ICAC between 1969 and 1976, especially in 1974, when the ICAC was first established.

Institutional facilities for social sanction

The attitude of the expatriates towards the local community also changed during the ‘MacLehose Decade’. They went from dismissing the local people’s tolerance of corruption to actively seeking their cooperation in eradicating it. The government set up the Community Relations Department under ICAC, which specialized in this task. The former Commissioner of ICAC, Donald Luddington, said in 1979:

Table 6.3 Reports of corruption, 1969–76

<i>Year</i>	<i>Total</i>	<i>Non-anonymous (%)</i>
1969	1,048	30.91
1970	1,097	26.89
1971	1,230	30.32
1972	1,167	34.36
1973*	384	35.67
1974	5,958	34.78
1975	7,296	38.85
1976	6,921	47.00

Source: Annual Reports of ICAC, 1974–76.

Note

* 1 January–30 April.

I am sure that ... if people are basically honest and concerned about their personal integrity, they will not resort to corruption. Greed, the basic cause of most corruption in Hong Kong today, can only be held in check by an individual's code of honesty and his personal integrity.⁶⁷

CRD (Community Relations Department) is a government department with branch offices in each community district. CRD not only receives mass reports and coordinates the public relations of ICAC, but also plays a role in community service, aiming at encouraging mass participation in the fight to control corruption. Further to establishing direct contacts with the local people, CRD officers pay personal visits to residents' households, so as to understand the needs and grievances of the people. CRD staff are also deeply involved in various community activities and have even become major sponsors and organizers. Given the popular distrust of the police in the early 1970s, CRD invited police officers to join their training programmes in order to increase mutual understanding and popular support.⁶⁸ After almost three decades of effort, CRD has greatly contributed to the promotion of better moral standards, a greater awareness of a citizen's responsibility, and a stronger faith in the government among the local community. Table 6.4 illustrates the changes that have taken place since 1993.⁶⁹

Conclusion

In the past three decades, Hong Kong has made great strides in controlling corruption. The unique strategies of Hong Kong, such as establishing an independent corruption control agency, ICAC, have been widely accepted as effective tools in controlling the abuse of power among government

Table 6.4 Public attitude towards corruption, 1993–2000

<i>Year</i>	<i>Intolerant of corruption in both the public and private sectors (%)</i>	<i>Willingness to report corruption (%)</i>
1993	36.7	54.4
1994	39.8	63.6
1995	40.2	61.4
1996	43.4	60.7
1997	40.5	71.5
1998	82.0	65.5
1999	83.4	66.4
2000	83.7	64.7
2001	64.4*	65.5

Note

* In 2001, the choices were changed from yes or no to a scale from 0–10, in which 0 represents zero tolerance of corruption, and 10 refers to totally tolerable. Some 64.4 per cent of the interviewees chose 0 tolerance, another 20 per cent chose less than 3.

officials. While in some other countries, officials are still wondering why these strategies did not work well under their own political systems, this study suggests that features of the regime type help explain the discrepancy.

The post-war colonial government in Hong Kong tried to deal with increasingly rampant corruption with some of the newly initiated strategies, but none of them made a significant impact until the fully legalized regime was founded. A fully legalized regime is characterized by a separation of powers among the judiciary, the executive, the civil service, and the checks and balances among these powers. In addition, government branches are highly institutionalized with clearly defined power boundaries. Separation of powers permits the founding of an independent corruption control agency, and the institutionalization of government powers leads to the sophisticated regulation of power. Legalized institutions shape the moral strategy by constructing a social consensus rather than through a paramount role model effect and coercive education. The success of corruption control strategies is based upon a fully legalized regime, and transplanting these strategies without changing the corresponding political structure is unlikely to make real progress.

Notes

- 1 See Rance Lee, ed., *Corruption and Its Control in Hong Kong*, Hong Kong: The Chinese University of Hong Kong, 1981; Bertrand de Speville, *Hong Kong Policy Initiatives Against Corruption*, Paris Development Center of the Organization for Economic Co-operation and Development, 1997.
- 2 Countries that have established anti-corruption agencies based on the Hong Kong model include Australia, China, Malawi, South Africa, Pakistan, Tanzania, Uganda, and Zambia.
- 3 For discussions of the regime type in Hong Kong, see also Wei Pan, 'The Myth of Democracy and the Consultative Rule of Law Regime' (Min Zhu Mi Xin Yu Zi Xun Xing Fa Zhi Zheng Ti), *China Social Science Quarterly*, Hong Kong, 31 (Fall, 2000): 35–49.
- 4 Before this story was published, the correspondent, Andrew Fyall, verified Hunt's memoir with Governor MacLehose, the Police Commissioner, Director of the Independent Commission of Anti-Corruption (ICAC), other senior officials, and the officers who used to work with Hunt in Hong Kong. These surveys found that the story told by Hunt was most likely true.
- 5 *Daily Express* (Hong Kong), 'Yes, I got away with millions – like many others', 14 January 1975.
- 6 Blair-Kerr, *Second Report of the Commission of Inquiry under Sir Alastair Blair-Kerr*, Hong Kong: Government Printer, September 1973, p. 23.
- 7 Ibid.
- 8 *ICAC Annual Report*, Hong Kong: Government Printer, 1976, pp. 1–8.
- 9 Blair-Kerr, op. cit., p. 24.
- 10 Ibid., p. 20.
- 11 Lau Siu-kai, *Society and Politics in Hong Kong*, Hong Kong: The Chinese University of Hong Kong, 1982, p. 1.
- 12 Unexplainable wealth of a civil servant became a criminal offence in Hong Kong after the 1970s. It was never instituted as a law in England.

- 13 Peter Harris, *Hong Kong: A Study in Bureaucratic Politics*, Hong Kong: Heinemann Asia, 1978, p. 84.
- 14 T. Wing Lo, *Corruption and Politics in Hong Kong and China*, Buckingham and Philadelphia, PA: Open University Press, 1993, pp. 88–93.
- 15 Only a few countries had specialized legislation on corruption control by the 1970s. The Hong Kong government had consulted most of the advanced legislation by the 1970s, including Singapore, Ceylon (now Sri Lanka), Malaysia, and Zambia. See Jeremiah J. Wong, 'The ICAC and Its Anti-corruption Measures', in Rance Lee, op. cit., p. 47.
- 16 Special thanks to Professor MacFarquhar for his help in understanding the different performance of British overseas civil servants in different colonies and the increase in corruption in the British foreign service in the post-war era.
- 17 There were several occasions when Hong Kong judges ruled that a piece of subsidiary legislation was *ultra vires*, for it reached beyond the powers delegated to the appropriate authority. A judge in Hong Kong could also order an official to reconsider a decision if he believed the decision was completely irrational, failed to follow proper procedures, or breached the rules of natural justice. See Norman Miners, *The Government and Politics in Hong Kong*, 5th edn, Hong Kong: Oxford University Press, 1998, p. 59.
- 18 H.J. Lethbridge, *Hard Graft in Hong Kong: Scandal, Corruption, the ICAC*, Hong Kong: Oxford University Press, 1985, pp. 24–7.
- 19 'Machinery of Government: A New Framework for Expanding Services', McKinsey Consultant Company, May 1973, pp. 12–14.
- 20 T.S. Cheung and C.C. Lau, 'A Profile of Syndicate Corruption in the Police Force', in P.L. Lee Rance, ed., *Corruption and its Control in Hong Kong*, Hong Kong, Chinese University Press, 1981, p. 208.
- 21 Blair-Kerr, op. cit., p. 79.
- 22 Lau Siu-kai, op. cit., pp. 3, 50.
- 23 Ibid., p. 3.
- 24 See Blair-Kerr, op. cit., and Lethbridge, op. cit.
- 25 'Machinery of Government', p. 4.
- 26 Interview with Informant 1, a former senior second-generation Hong Kong police officer whose family has been serving in the Hong Kong Police Force since the 1940s. Hong Kong, 2001.
- 27 Miners, op. cit., p. 94.
- 28 For more about the brotherhoods in Chinese history, see David Ownby, *Brotherhoods and Secret Societies in Early and Min-Qing China: The Formation of a Tradition*, Stanford, CA: Stanford University Press, 1996, and Prasenjit Duara, *Culture, Power, and the State: Rural North China, 1900–1942*, Stanford, CA: Stanford University Press, 1988.
- 29 Tak-sing Cheung and Chong-chor Lau, p. 207.
- 30 Transparency International, *2001 Corruption Perception Index: Framework Document*, <http://www.transparency.org/documents/cpi/2001/cpi2001.html> (accessed: February 2002).
- 31 *ICAC Annual Report 1975*, Hong Kong: Government Printer, p. 1.
- 32 Ibid.
- 33 *ICAC Annual Report 2001*, Hong Kong: Government Printer, pp. 9–11.
- 34 *ICAC Annual Report 2000*, Hong Kong: Government Printer, p. 10.
- 35 *ICAC Annual Survey*, 1984, 1986, 1988, 1994, 1995, 1996, 1997, 1998, 1999, 2000, Hong Kong: Government Printer. Special thanks to Professor Chen Jianmin in the Department of Sociology and Professor Kuan Hsien-chi in the Department of Political Science, Chinese University of Hong Kong, for their help in the access to these surveys.
- 36 *ICAC Survey*, 1984, Hong Kong: Government Printer, pp. 8–9, 12.

- 37 ICAC Official Web Site, <http://www.icac.org.hk/eng/0/1/7/24.html> (accessed: February 2002). Leslie Palmier, *The Control of Bureaucratic Corruption*, New Delhi: Allied Publisher Private Limited, 1985, p. 131, and *ICAC Annual Report*, 1974.
- 38 *South China Morning Post*, 'The Warrior Queen', 5 November 1986.
- 39 Interview of Informant 2, a former unofficial member of the Legislative Council of Hong Kong. Hong Kong, 24 October 2001.
- 40 Miners, op. cit., p. 92.
- 41 *ICAC Annual Report*, 1974, p. 1.
- 42 Basic Law, Article 57, 101.
- 43 Wong, in Rance Lee, op. cit., pp. 53–8.
- 44 Ibid.
- 45 Blair-Kerr, op. cit., p. 31.
- 46 He quoted Mr Justice Ackner in *Clinch v. Inland Revenue Commissioners*, to the effect that:
- The so-called 'right of silence' currently alleged with such emphasis and favour by many lawyers as going to the very root of British notions of justice, seems to find no place in the field of tax avoidance – a fortiori where tax evasion is concerned. Mr. Potter [counsel for the Commissioners] tells me that in the field of Value Added Tax the inquisitorial powers of the Customs and Excise Commissioner far exceed those of his clients ... far from being entitled to remain silent, the individual is subject to penal sanctions if he refuses to supply the very information that may lead to his conviction. Had such powers been reserved for use in the detection of the most serious offences in the criminal calendar, doubtless there would have been, not acclamation, but a public outcry, judged by the emotion that has been generated by the recent suggestion of a very learned Law Reform Committee ... when one explores this aspect of legal philosophy, there seems to be much that is irrational.
- 47 Hsien-chi Kuan, 'Anti-corruption Legislation in Hong Kong: A History', in Rance Lee, op. cit., p. 28.
- 48 Andrew Fyall, 'Corruption Unlimited', *Daily Express (Hong Kong)*, 17 January 1975.
- 49 Hsien-chi Kuan, in Rance Lee, op. cit., p. 25.
- 50 Ibid., p. 25.
- 51 Prevention of Corruption Ordinance, 1971.
- 52 Bernard Downey, 'Combating Corruption: The Hong Kong Solution', *Hong Kong Law Journal*, 16 (1976): 33.
- 53 Hsien-chi Kuan, in Rance Lee, op. cit., p. 32.
- 54 Blair-Kerr, op. cit., p. 26.
- 55 Data compiled from the *ICAC Annual Report*, 1974–2000.
- 56 De Speville, op. cit., p. 48.
- 57 *The ACOC Annual Report*, Hong Kong: Government Printer, 1999, p. 4.
- 58 Independence Commission of Anti-Corruption Ordinance, Section 8(2).
- 59 Security Panel of the Legislative Council, Committee on Security Affairs, 'On the Dismissal of Former Deputy Director, Mr. Xu Jia Jie, of the Operation Department of ICAC', Hong Kong: Government Printer Office, 1994.
- 60 *ICAC Annual Report*, 1976, pp. 17–18.
- 61 Waiting List Application Number, http://www.info.gov.hk/hd/eng/hd/public/waiting_list_f.htm (accessed: January 2002). Requested information can be found at http://www.info.gov.hk/hd/chi/hd/code/index_f.htm (accessed: January 2002).
- 62 Materials concerning the corruption involving police and triads over mini-buses

were obtained from Elsie Tu's personal archive in the Hong Kong Baptist University Library, Special Collection Section.

- 63 Department of Justice, Bureau of Justice Statistics, 'The World Factbook of Criminal Justice Systems', <http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjhon.txt> (accessed: March 2002). Raymond Wacks, *Police Powers in Hong Kong*, Hong Kong: Faculty of Law, University of Hong Kong, 1993, p. 5. Also see K. Sinclair, *Asia's Finest: An Illustrated Account of the Royal Hong Kong Police*, Hong Kong: Unicorn, 1983. The US currently has 663,535 police officers. Bureau of Justice Statistics, <http://www.ojp.usdoj.gov/bjs> (accessed: March 2002).
- 64 Chen Jing-min, *Hong Kong Independent Commission Against Corruption*, Beijing: China Book Press, 2001, p. 204.
- 65 Miners, op. cit., p. 94.
- 66 The full text of the speech given to the Legislative Council on 18 October 1972 by H.E. The Governor, Sir Murray MacLehose, K.C.M.G., M.B.E., Hong Kong: Government Printer, p. 19.
- 67 *ICAC Annual Report*, 1979, p. 41.
- 68 *ICAC Annual Report*, 1978, p. 54.
- 69 Data compiled from *ICAC Annual Survey*, 1993–2001.

Part II

Southeast Asia

Introduction

This part of the book comprises chapters on Southeast Asian states. The Southeast Asian experience is even more diverse than the East Asian, and some have argued that its unity lies only in its diversity. Yet its history reveals some common features. For centuries, for example, the region has for the most part been sparsely populated, only in the past century or so attaining the current density. As a result, control over men was more significant than control over land, and it may be that the strength of patron–client relationships even today owes something to that past. State-building was always a challenge, and in some respects regimes are still attempting to make modern states out of the colonial structures set up in all the area except Thailand.

Singapore, an essential base for the British colonial venture, was never expected to become an independent state. That it perforce did in 1965, when it was extruded from recently founded Malaysia. A small state, it has nevertheless survived and prospered, run throughout four decades by a strong government in the hands of the People's Action Party.

Considering Singapore in the present context prompts definitional questions. Does corruption encompass patronage? That is of particular importance in respect of Southeast Asia, where patron–client relationships are often unusually significant. Perhaps it may be suggested that, not that they are in themselves corrupt, but that they provide favourable conditions for corruption, in the sense that public resources may be used for personal purposes, even if not necessarily merely for pecuniary gain.

Can the long-standing PAP rule in Singapore be viewed as one of Southeast Asia's patronage systems? If so, and those are after all seen as corrupt, then its rule as a whole must be seen as corrupt, despite the fact that it has been able to suppress the more obvious forms of personal corruption and its high Transparency Index ratings notwithstanding. Perhaps, it may be thought, Alfred Oehlers' chapter (Chapter 7) draws too wide a definition. Alternatively, PAP rule might be seen as 'corrupt' in an older sense: a democratic form of government exists, but it is operated in an authoritarian way.

Young countries fix on development as the highest priority and tend to suspend political and social niceties. The PAP legitimises itself by its economic success, but also emphasises threats from within and without. Criticism, more likely to come from its more 'cosmopolitan' citizens than the 'heartlanders', it does not welcome. But, though it is able to dominate a small and compact state, it is clearly concerned over continuity, and it is difficult to see that its system can be sustained in the longer term.

In the Philippines, by contrast, almost every public relationship is corrupt. Is that related to its traditional patron-client culture? Has that been transformed or distorted by the growth of the state, the expansion of the economy, and the adoption of democratic forms? Or is the reverse the case? The increase in decentralisation – itself a reaction to the kleptocracy of the Marcoses – seems to have expanded corruption, not reduced it. The legal arrangements for checking corruption exist, but do not operate as they should. Corruption penetrates the fabric of society, and it is hard to know how and where to begin to deal with it. Natural disasters – and dealing with their outcome – appear only to offer it an increased opportunity, as Greg Bankoff argues in Chapter 8.

That question is raised even more acutely in the case of Burma, though for different reasons. The military regime seems corrupt in both senses of the word. Yet though it seems so deeply entrenched, there may be no need to despair, Peter Perry suggests in Chapter 9, pointing to the East European experience. If a new regime is installed, it will have to work out ways of dealing with corruption in the more normal sense.

The same problem, it is suggested, still lies ahead in Indonesia. It is, of course, in a position to change its system, and it has begun the task. Until it is further down the track, arguably tackling corruption should be deferred. The contrary view is that the two processes should be combined. Institutions should be established in ways that do not facilitate corruption or depend on it. The regional parliaments have not set a good example. In Indonesia, as in the Philippines, decentralisation has not checked corruption, and Ahmad D. Habib discusses this in Chapter 10.

Malaysia, like Taiwan and Korea, has engaged in rapid development, in its case particularly under Dr Mahathir over the past two decades. An increasingly authoritarian state – though, like Singapore, still democratic in form – has been much involved. Malaysia's ethnic structure has given development a special slant. Affirmative action has brought advantages, especially to the Malays, but, if its time has past, it is difficult to change course. The attempt to create a Malay middle class required – paradoxically enough – substantial patronage. 'Money politics' resulted. No one faction dominated, however, and that meant that corruption could be exposed, if only subsequently to be replicated. Rents were distributed, perhaps rightly, but neither transparently nor accountably. Some of those involved were corrupt. Mahathir himself was concerned with patronage, not profit. Edmund Terence Gomez describes the Malaysian case in Chapter 11.

Corruption, it has been argued, was in some sense the source of Thailand's economic transformation, transforming the 'bureaucratic polity' that Fred W. Riggs had identified. Increasingly, however, it became a source of national as well as international criticism. Though deeply divided, the soldiers intervened ostensibly to stem it, but they overreached themselves. Pressed by the 1997 economic crisis, the civilians moved towards a wholesale political reform. Much of it, however, represented middle-class Bangkok discontent with the way democracy had worked in the provinces. It is not clear that the plethora of institutions set up will work effectively. Some, indeed, argue that the current premier, narrowly acquitted on corruption charges, rules in the authoritarian manner of the old militarists, as Nualnoi Treerat points out in Chapter 12.

Those seeking exemplary remedies are unlikely to find them in Southeast Asia. In some ways the wealth created or made available by globalisation has intensified the opportunity for governments and elites to sustain patronage systems and expand them. Foreign pressure may be countered by nationalism. Is one merely to hope? Thailand's elaborate attempts to set up effective institutional restraints prompt only limited optimism.

7 Corruption: the peculiarities of Singapore

Alfred Oehlers

Introduction

Where corruption is concerned, the label ‘peculiar’ may be a particularly apt description of Singapore. Few countries enjoy the standing Singapore commands, being widely regarded around the world as a country where corruption is virtually non-existent. This highly positive image is, in many respects, thoroughly well deserved. Singapore does boast an extensive legislative framework – backed by a highly efficient policing regime – that has all but obliterated the worst traces of corrupt activity.¹ Reflecting its success in these efforts and the confidence that has consequently been inspired in the eyes of many, it regularly receives highly commendable reviews in international surveys tracking the level and extent of corruption. In these comparisons, Singapore is consistently rated as one of the least corrupt countries in the world. This certainly is no mean feat, bearing in mind the pervasiveness of corruption in pre-independence Singapore.² In a region, moreover, where corrupt practices are routinely accepted as a normal part of everyday life, this definitely makes Singapore an aberration. By the standards of its Southeast Asian neighbours, Singapore *is* peculiar.

This chapter will suggest these peculiarities do not end there. From a somewhat speculative and perhaps, provocative, approach, it will be argued Singapore may be considered peculiar for at least one other important reason. While it is certainly true Singapore stands apart from other countries where the corruption stakes are concerned, what truly differentiates Singapore is not so much the *absence* of corruption *per se*, but the unique *form* it assumes in the island republic. In Singapore, it will be argued, the practice of corruption takes on a distinctly political hue. Operating through a system of official as well as unofficial inducements and incentives, it is a practice that has as its chief objective the securing of the political acquiescence of the population, and through that, the maintenance of the political pre-eminence of the ruling People’s Action Party (PAP).

This is, admittedly, a somewhat unconventional view of corruption in Singapore, and one, it might be added, that is rarely discussed in public.

It does possess, however, a certain resonance in the private domain, where fragmentary concerns of this nature have been voiced time and again in various ways, but have not as yet been articulated into a more reasoned and cohesive view of the matter.³ This chapter may be seen as a small contribution to the development of such a view, and perhaps also of a continuing dialogue on the entire issue of corruption in Singapore.

Given the unusual thrust of the chapter, the nomination of a point at which to begin the discussion must be debatable. An arguably good place to start, however, may be the widely held notion that Singapore is, in some sense, corruption-free. Though certainly supported by indicators of various sorts, this notion exists very much as an article of faith, and is rarely subjected to any close scrutiny. There is some need to confront and interrogate this notion in order to assess its credibility. In so doing, some significant insights into conditions in Singapore may be gleaned. This is a task that will be pursued in the following section.

Singapore's corruption-free image

To a significant extent, the image of Singapore as a pristine-clean, corruption-free country rests heavily on the surveys conducted by a variety of organizations monitoring corruption. There are, of course, a large number of these, both of a commercial as well as non-commercial nature, with each producing an impressive array of indicators gauging the level and extent of corruption around the world. Some of the more influential of these include the Berlin-based Transparency International and its annual *Corruption Perceptions Index*; the Hong Kong-based Political and Economic Risk Consultancy Ltd (PERC) and its series assessing corruption trends in Asia; Business International – currently owned by the Economist Intelligence Unit – and its index of corruption; and finally, Political Risk Services, which produces a *Corruption in Government* index to assess the level of such activity.

A small sampling of some of the indicators compiled by these organizations will be sufficient to demonstrate the extremely favourable position Singapore commands in these assessments. Table 7.1, for example, presents data extracted from the annual *Corruption Perceptions Index* produced by Transparency International. As it should be readily apparent, Singapore scores extremely well in this index, consistently being ranked far ahead of other Asian nations, particularly those from Southeast Asia.

This favourable perception of Singapore is strongly corroborated by annual surveys conducted by PERC. As reported in Table 7.2, in PERC's series tracking corruption trends in Asia, Singapore has always held the distinction of scoring lowest in perceptions of corruption. As a result of this, it has consistently been ranked first in this index – an honour enjoyed since 1995.

Indices of this nature can and do play useful roles, guiding commercial

Table 7.1 Transparency International, Corruption Perceptions Index, rankings of selected countries, 1995–2002

Country	1995	1998	2001	2002
China	40	52	57	59
Hong Kong	17	16	14	14
India	35	66	71	71
Indonesia	41	80	88	96
Malaysia	23	29	36	33
The Philippines	36	55	65	77
<i>Singapore</i>	3	7	4	5
Thailand	34	61	61	64

Source: Transparency International (www.transparency.org).

Note

Rank is out of 41 countries in 1995, 85 countries in 1998, 91 countries in 2001, and 102 countries in 2002.

Table 7.2 Political and Economic Risk Consultancy Ltd, corruption trends in Asia, scores of selected countries, 1995–2001

Country	1995	1996	1997	1998	1999	2000	2001
China	7.30	8.00	8.06	6.97	9.00	9.11	7.88
Hong Kong	2.80	2.79	3.03	2.74	4.06	2.49	3.77
India	7.00	6.86	8.20	7.40	9.17	9.50	9.25
Indonesia	7.30	7.69	8.67	8.95	9.91	9.88	9.67
Malaysia	4.60	5.00	5.80	5.38	7.50	5.50	6.00
Philippines	6.60	6.95	6.50	7.17	6.71	8.67	9.00
<i>Singapore</i>	1.20	1.09	1.05	1.43	1.55	0.71	0.83
Thailand	5.90	6.55	7.49	8.29	7.57	8.20	8.55

Source: PERC (www.asiarisk.com/lib10.html).

Note

Scores are scaled from 0 to 10, with 0 being the best grade possible and 10 the worst. Scores for 2002 were only available to registered subscribers of the service. According to the Corrupt Practices Investigation Board (CPIB) in Singapore, however, Singapore has retained its first place for 2002, though comparative scores for other countries were not presented. CPIB, 'Singapore's Transparency International and PERC Rankings', http://app.cpiib.gov.sg/data/News_Doc/news_article2.htm, accessed 12 August 2003.

and other decisions as well as shedding light on aspects of a country's social, economic and political profile. They are also useful in a comparative sense, highlighting the relative incidence of corruption in different countries. In especially this last regard, these indices have been extremely valuable for the government in Singapore. The release of each favourable result is customarily greeted with much fanfare and publicity, and portrayed as once again affirming Singapore's dominant lead as a 'safe' venue for international investors. The media blitz that accompanies such events is extensive, contributing as much to the mythology of Singapore as a country devoid of corruption as the rankings themselves.

While of undoubted utility to a variety of users, it should always be remembered that these indices are far from perfect and do suffer a number of significant limitations and shortcomings. Many, for example, have been criticized for their methodological weaknesses.⁴ Further, based as they are on the subjective perceptions of respondents, there is also an inherent danger the surveys may be predisposed to particular findings. This danger is heightened considerably since most surveys typically only poll the expatriate managers of large multinational corporations. Often, what is reported on are issues of significance to, and the subjective perceptions of, such expatriate managers, and not matters that may be of wider relevance to the issue of corruption.⁵ The findings, as such, may hardly be described as representative either in terms of the respondents polled or the range of issues canvassed. All that is captured, in effect, is a small subset of issues relating to corruption, directly affecting the operations of foreign investors. All other corrupt activity is ignored.

This bias towards a narrowly focused conception of what constitutes corrupt activity is in fact inherent in the very conceptual underpinnings of these surveys. Most of them typically employ a definition of corruption based on a United Nations Development Programme (UNDP) conception as activities involving 'the misuse of public power, office or authority for private benefit'.⁶ As should be clear, while this is a fairly reasonable definition capturing in all likelihood a significant proportion of corrupt activity, it nevertheless remains restricted in its coverage, confining corruption to a well-defined set of activities. In particular, by emphasizing the malpractices and malfeasance of public officials, the definition ignores other forms of corruption practised by other actors in society. Significantly, it also ignores corrupt practices guided by motives other than personal profit, whether these are perpetrated by public officials or otherwise.

These findings carry important implications. Despite the great store that is placed on indices such as those mentioned, it will be quite reasonable to suggest the significance of these indices may have been exaggerated considerably. In all truth, the indices only provide an indication of the existence and incidence of a particular type of corruption – a parasitic or predatory corruption involving the abuse of public office for private gain. They offer little guidance on wider issues concerning corruption, and indeed, the potential existence of altogether different forms of corruption.

In the light of the foregoing, how then should the extremely favourable scores and rankings achieved by Singapore in these indices be interpreted? Viewed in a narrow sense, they may certainly be taken to be indicative of the absence of a particular form of corruption in Singapore – the parasitic or predatory variety, bane to all foreign investors. Even if such corrupt practices did indeed exist, Singapore's exceptional ratings on these indices would tend to suggest they are rare occurrences, and in a comparative sense, definitely far less obtrusive, spectacular and scandalous than in other countries. When viewed in another light, however, these results are

suggestive of a different and perhaps, more important insight. In emphatically declaring Singapore free from one form of corruption, the indices draw attention to the possibility that corruption in Singapore may manifest itself in a *different* form, unrecognized and uncaptured in surveys.

Bearing this latter point in mind, a potentially fruitful line of enquiry may be pursued. In a speculative sort of way, if it were to be hypothesized that corruption did indeed exist in Singapore, then what form might it be expected to take? To answer this question, it may be useful to examine the evolution of Singapore's political economy since independence was gained in 1965. The identification, in particular, of some salient and enduring features of this political economy may prove instructive in delineating the broad contours of any corruption that may exist. This will be the task of the next section.

Singapore's political economy

The evolution of Singapore's political economy may be considered anything but usual. Cast off from the Federation of Malaysia in 1965 following two years of an acrimonious and ultimately ill-fated merger, the fledgling republic had to carve for itself a niche in the world using the very slender resources at its disposal. Led firmly by the PAP, it experimented with and pioneered a series of innovations that – clearly today – served to sustain the development of the country well. In this atypical journey to where it presently stands, there are, of course, a number of important facets meriting attention. The distinctive developmental model pursued, for example, involving a unique blend of free-market conservatism together with a paternalistic Asian authoritarianism, certainly stands out. So too does the critical role assumed by foreign investment within this model, propelling very much the entire trajectory of development of the nation. Broader social and political issues also deserve consideration, such as the ever-present tensions around ethnicity and communalism, as well as the enduring preoccupation with a Singaporean identity. The list could go on, but the point should be apparent.⁷

Despite the diversity of issues that might be canvassed, it would be fairly uncontroversial to suggest that in considering the broad sweep of Singapore's modern history, one particular feature certainly captures most attention: the uninterrupted rule of the PAP, first under the leadership of Lee Kuan Yew, then from 1990, Goh Chok Tong, and soon, it is widely rumoured, Lee Hsien Loong – the eldest son of Lee Kuan Yew. This remarkable continuity in political leadership, dating back to when self-government was first granted by the British colonial authorities in 1959, dominates the history of the nation and very much defines what Singapore is all about. Given this exceptionally long period in office, the PAP has put an indelible stamp on the country, defining its very character, modes of thought and conduct. In many respects, the notion of a 'Singapore Inc.',

embodying a corporate identity and ethos defined by the PAP, may be much less a fiction than conventionally thought. In view of the high degree of interpenetration between party and government, as well as the pervasiveness of government in everyday social, economic and political affairs, Singapore may be as much the PAP, as the PAP is Singapore.

In the light of this centrality, the PAP considers itself much more than just a political party. In its view, it is without question a fundamental institution in Singapore society – most definitely the principal architect of past successes, but perhaps more importantly, a fixture essential to the future survival of the country.⁸ With such an elevated sense of importance and indeed, duty, it is not surprising the PAP jealously guards its power and pre-eminent position in Singapore politics. Unlike most other political parties around the world – and with disturbing similarities to totalitarianism – it considers itself *inseparable* from government, and indeed, nation.

As others have pointed out before, the protection of this pre-eminent position is largely achieved through a range of punitive measures governing political activity in Singapore. There are, for example, a vast array of stringent rules – explicit and otherwise – governing the boundaries of permissible political discussion and debate. Similarly strict rules apply to political organization, constraining the formation of political groups, their recruitment, funding, operations, and ultimately, survival. Further inhibiting political discussion, all forms of print and broadcast media are directly or indirectly controlled by the PAP, as well as all channels of telecommunications, including the Internet. According to some observers, further, with its dominance of parliament, the party has also routinely amended electoral rules in order to place it at an advantage over rivals. A series of constitutional innovations has also been introduced, designed to buttress its role in Singapore politics.⁹

It bears emphasizing that, in all this, the central objective of the party and its functionaries has been – and remains – the maintenance of political power. In this respect, though these measures have undoubtedly been controversial and debatable, it must nevertheless be recognized that the motives guiding these actions certainly are reflective of a higher order of thinking and purpose, beyond the mere pursuit of personal vanity, enrichment or pecuniary gain (although these may very well be by-products of the process). It is, above all else, political survival and the retention of power by individuals and the party that are the central project.

This insight into the party and wider political elite in Singapore is extremely instructive. It certainly suggests that if corrupt behaviour were to be countenanced in such quarters, this would be of an order markedly and qualitatively different to that found in other countries. Bearing this in mind, the inappropriateness of conventional understandings of what constitutes corrupt behaviour should readily be apparent. Under the peculiar circumstances of Singapore, where public office may be used or indeed, abused, for higher political purposes, a rather different conception of what

corruption involves is necessary. Sketching what this might be, together with a consideration of some specific practices that may fall under this rubric, will be the task of the following section.

Understanding corruption in Singapore

What might the retention of political power entail? Viewed in a narrow light, this may simply be taken to mean the successful re-election of a given political party. Imperfect as this may be, for a great many political parties around the world operating in diverse forms of democracy, such a straightforward understanding could well be more than adequate. In the case of Singapore, however, any understanding of this process must be taken further, particularly in the light of the pervasive role and influence exercised by the PAP over nearly every aspect of life in the country. For the PAP, the retention of power implies far more than just a simple victory at the ballot box, important as this may be. For it to govern as effectively as it has done in the past and exercise the degree of influence it has always possessed, a wider consent and acquiescence to its authority must be secured and reproduced over time.

At one level, this acquiescence is obtained through an overarching hegemonic project articulated by the PAP. The constituent elements of this project are, of course, diverse. Historically, however, it is possible to identify a number of critical efforts that have made important contributions to the elaboration of this framework. The persistent efforts to try in some way to craft a national identity as well as inculcate a set of common national values are one such. So too are the ideology of meritocracy and imperative of stability and survival, in what is portrayed to be a highly uncertain and hostile world. Even the careful management of crises and panics – whether of an economic origin or attributable to so-called ‘declining’ social, moral or political mores – is relevant in this regard. Together, operating through extremely powerful channels such as the mass media and socializing agencies like the education system and national service, these have all contributed to the articulation of a view that emphasizes the precarious and vulnerable nature of Singapore’s existence, and the consequent need for strong, decisive leadership. In so doing, the PAP has been cast in absolutely indispensable lights, all Singaporeans must accept it as a matter of necessity.¹⁰

Significant as this hegemonic framework may be, it must be recognized as but one part of a much larger story. As others have pointed out, while formally eschewing any notion of a ‘welfare state’, the PAP nevertheless maintains an elaborate system of welfare support for citizens.¹¹ These provisions, of course, may be seen in an entirely positive light as the efforts of a paternalistic government seeking to enhance the well-being of its charges. For present purposes, however, it should be noted that another less charitable and considerably more sinister interpretation is possible. In particular, when viewed as potential instruments of corruption, these may

equally be construed as inducements seeking to influence the public into particular modes of behaviour supportive of, or at the very least, not prejudicial to, the interests of the PAP. Such practices, of course, are by no means unusual and have strong parallels with systems of clientelism and patronage found in other countries, especially in Southeast Asia.¹² Definitions of these abound,¹³ but to paraphrase one coined in a previous study of the phenomenon in a different context, this is a form of corruption that typically involves the following: the use of public resources by politicians to create and maintain an incentive scheme to induce a constituency to perform their bidding.¹⁴

With such a definition, a considerable number of PAP practices may be seen in a very different light, as a small sample will illustrate. The discussion will first focus on a range of budgetary and extra-budgetary measures frequently used by the PAP. Following this, some attention will be given to its programme of public housing renewal, and finally, some issues relating to employment and career advancement in Singapore will be raised.

Budgetary and extra-budgetary measures

This category covers a diverse range of instruments, ranging from the more traditional fiscal measures such as taxation and expenditure, to a series of discretionary payments the PAP has often made under a variety of guises. Focusing on the issue of taxation to begin with, it would be fair comment to point out the PAP has regularly made use of various rebates and concessions as ‘sweeteners’ in its budgets. These are rarely instituted as permanent features of the taxation system, but offered on an *ad hoc*, one-off basis, as and when it suits the PAP.¹⁵ On the other side of the ledger, through its expenditure, it is also clear the PAP maintains an extensive system of subsidies in services such as education and health, public infrastructure, and business development.¹⁶ During its many years in office, moreover, the party has also often made discretionary payments through schemes of different sorts. One particularly well-known practice involves the so-called ‘topping-up’ of Central Provident Fund (CPF) accounts: an exercise involving an independent contribution by the PAP to all accounts held with this compulsory retirement savings scheme.¹⁷ Further, in the midst of the severe economic downturn that has gripped the nation since late 2001 – and, it might be added, just prior to general elections in November that year – yet another scheme was announced to facilitate transfers of a similar nature. Dubbed the ‘New Singapore Share Scheme’, this allotted citizens ‘shares’ according to their level of income, with the lowest income brackets receiving the largest allotments. Part of this allotment was immediately redeemable for cash, thereby providing the needy with a critical source of supplementary income. The remaining shares held, meanwhile, guaranteed an annual dividend payment as well as bonuses related to the rate of economic growth achieved.¹⁸

In implementing these various measures, the PAP has always maintained that they have only been possible because of the superior past performance of the economy. The likelihood of their being offered again in the future, it is indicated, is also entirely dependent upon such growth being maintained. This connection is perhaps clear in the case of Singapore shares, where future payments are related explicitly to the rate of economic growth. It is no less a binding condition, however, in the case of the other transfers mentioned. In public statements accompanying any new initiatives in these areas, the precondition of satisfactory growth is always stressed.

In most other contexts, this would not seem to be an exceptional requirement, with any serious political ramifications. This being Singapore, however, the obverse is almost always the case. In the construction of the popular imagination – and partly as a result of the hegemonic framework assiduously cultivated by the PAP itself – it is widely understood that the PAP has been the lynchpin behind Singapore's superior economic performance in the past, both as a result of the economic and political acumen of the party and the political stability it provides. This is a belief, of course, that does have some real basis and is not entirely fictional. But on the basis of this understanding, it is also widely believed the PAP is essential to future economic progress. As a measure of the success of the hegemonic project pursued by the PAP, the two indeed are often conflated and regarded as inseparable. In making transfers conditional on continued growth, therefore, the PAP may be exploiting this popular tendency to identify such growth with the party. While seemingly linked to neutral criteria, the benefits to be derived from budgetary and extra-budgetary measures in fact have very political strings attached. For these to be enjoyed, the return of the PAP to office, and more widely, a perpetuation of the extensive system of control it exercises, would be essential.

Of course, it is difficult to assess the extent to which these considerations might influence the political behaviour of Singaporeans. Casual observation together with anecdotal evidence certainly suggests, however, there is some substance to the claims and that they cannot be lightly dismissed. From the point of view of this chapter, though, what is perhaps more important is not so much a tangible measure of how such practices may influence the political behaviour of Singaporeans, debatable as this may be. What is surely more significant is the recognition that there does exist a system of inducements or incentives, funded through the public purse, to induce citizens to behave in ways favourable to the PAP. On the basis of the foregoing, this would most certainly appear to be the case.

Public housing renewal

Public housing estates were first developed in the late 1960s as a response to the chronic housing problems besetting Singapore. By all accounts,

these estates served the needs of the time extremely well, providing cheap, affordable housing on a mass scale. By the 1980s, however, this housing stock was deteriorating considerably. In addition, the expectations of residents were rising, both in terms of the aesthetics of such estates, as well as more practical matters such as the amenities offered.¹⁹

In response to these and other pressures, a programme to improve the older estates was launched during the 1990s. As with most things involving the PAP, the programme had characteristically high ambitions, involving far more than just a simple sprucing-up and fresh coat of paint. While there have certainly been variations from case to case, it typically called for extensive renovation to the exterior as well as interiors of buildings, costing taxpayers significant sums of money.²⁰

From the outset, it may be questioned, of course, whether it is appropriate for public funds to be used to upgrade dwellings that are, in the main, privately owned. This is an especially relevant consideration since there are considerable benefits associated with such a programme, not all of which accrue to the public. Thus, while the improvement of the overall aesthetics and amenities offered in estates may certainly confer some benefits to the wider public, it must also be acknowledged that through such upgrading, the values of residential property in these estates is also improved significantly. These improvements in value, however, are in large measure captured only by the owners of the property alone, and not the wider public.

Leaving this point aside, there is one further aspect to the upgrading programme that is especially contentious, and of direct bearing to the present discussion. Being taxpayer funded, it would be reasonable to presume that the programme is administered in a fairly impartial manner, with clearly defined criteria for the selection of estates and their ordering in terms of priority. In reality, however, nothing is further from the truth. In extremely well-publicized declarations, it has been made clear by the PAP that the scheme is explicitly tied to the level of voter support for the party. Consequently, estates in electorates that return opposition candidates at elections will be ranked much lower than those returning PAP candidates, and even within the latter group, the specific place occupied on the ladder will be determined by the extent of such support in relation to other PAP-held electorates.²¹

Clearly, in tying the upgrading programme to the level of voter support, the PAP is creating a powerful incentive system to influence the voting behaviour of the public and their wider political allegiances. The potential of these efforts to deliver concrete outcomes in favour of the party should not be underestimated. In Singapore, the family home is arguably the most important asset people will own, and one, moreover – through leveraging – that exercises a profound influence over the standards of livelihood enjoyed and life chances of family members. In politicizing this critical aspect of Singaporeans' lives, the party has placed itself in a very strong

position to ensure the perpetuation of its rule. As observed by one commentator, in the peculiar way that democracy functions in Singapore, the tables have been turned. 'Rather than the government being accountable to the people, the people [are] now explicitly made accountable to the government.'²²

Employment and career advancement in Singapore

As noted before, the government is a key player in the Singapore economy. By virtue of this, it also stands as one of the largest employers through arms such as the civil service, military, government-linked companies, statutory boards, and other entities. As such a significant employer, the PAP is in a unique position to influence the career opportunities and trajectories of a vast number of individuals. This, in itself, must be recognized as a powerful factor capable of colouring the political outlook and behaviour of citizens. While the politicization of public sector employment in Singapore certainly has not occurred to the extent that it has in other countries, the significance of this phenomenon should not be completely discounted. For the sake of retaining their jobs and keeping their career prospects positive, the many employees in government-linked entities may be induced quietly to acquiesce to the prevailing status quo rather than be disruptive in any way.²³

Such behaviour is all the more likely given the operation of various schemes – official and unofficial – for the accelerated career advancement of particular individuals. As is well known, such schemes operate throughout the public sector. Under these, individuals deemed to possess the 'right' mix of qualities are endowed with generous scholarships for further training or education, and rewarded with 'fast-track' promotion to higher positions of responsibility and authority.²⁴ These promotions carry significant benefits. Senior civil servants (and politicians) in Singapore are extremely well recompensed by international standards.²⁵ Significant as such remuneration may be, however, it only represents a fraction of a far larger overall package that may potentially be received. In being identified as 'star performers' in Singapore, such individuals are invariably invited to serve as advisers, consultants, and board members in a variety of public as well as private sector organizations. The payments, bonuses, and other perks associated with such additional employment together contribute to a total income that can only be described as considerable.²⁶

In searching for these 'star performers', the PAP traditionally casts its net wide to include promising talent from the private sector. Indeed, reflecting this practice, many currently serving senior civil servants – and even politicians – were recruited or 'co-opted' in this manner. This migration of personnel from the private to public sector – and recently, in reverse as well – has given rise to a very interesting phenomenon. As others have noted, what has emerged in Singapore is an extremely

closely-knit elite controlling the top echelons of government as well as the commanding heights of the economy. This elite is clearly distinguished by the close political affiliations it shares, but also increasingly, intimate social, and even familial connections.²⁷

Taken together, the influence that is exercised by these various schemes for the creation or advancement of an elite should not be underestimated. At one level, they definitely have some direct usefulness in 'buying' the support of particular individuals. Their real utility, however, may reside more widely in the demonstration effect they provide to society at large. Illuminated through them are the very real and tangible benefits to be derived by embracing particular sorts of behaviour considered acceptable by the party. At a minimum, with a mere conformity to the wishes of the party, some form of relatively assured employment may be derived. More active support by word and deed, in comparison, has the potential to earn accelerated progression, and perhaps even eventual elevation into the exalted ranks of the elite. On a darker note, what are also clearly illuminated are the dangers involved in engaging in any form of dissent or opposition. Such activity may be quite correctly perceived to be, at the very least, detrimental to the career prospects of anyone daring to do so. Bearing in mind the pervasive influence of the PAP across the public and private sectors, however, it may even be seen as suicidal.

To what extent does all this actually affect the political behaviour of employees and citizens? Again, it is nearly impossible to answer this question with any sense of confidence. On the basis of observation and anecdotal evidence yet again, however, it may certainly be suggested this is a consideration that is difficult to ignore completely. As pointed out before, though, what should matter here is not so much an exact indication of the extent of the phenomenon. The key issue to bear in mind is that through its position as a significant employer, the operation of various career advancement schemes, and cultivation of an elite in society, the PAP has successfully created another powerful system of incentives that could potentially induce citizens to perform its bidding. That is the nub of it.

It should be stressed that in making the points above, there has been no intention of implying there is anything inherently illegal in any of the practices mentioned. These all, without a doubt, fall well within the letter of the law in Singapore. They appear, moreover, to possess considerable legitimacy in the eyes of the general public, as evidenced by the fairly widespread tolerance of their existence, despite occasional rumblings about some specific aspects or incidents.

The widespread acceptance of these practices may partly be attributable to the successful operation of a number of state-sanctioned ideologies. Directly and indirectly, these provide some justification and rationalization of the various practices employed. Historically, recourse has been made, for example, to notions of a just, caring, and paternalistic Confucian state as justifications for episodes of generosity involving dis-

bursements from public funds. So-called 'top-ups' to CPF accounts as well as transfers under the Singapore share scheme certainly fall under this category. More typically, however, the inducements and incentives on offer are justified on the basis of economic rationalism and meritocracy. Hence, the extremely generous employment terms of select personnel as well as their accelerated progression through the ranks, are all justified as necessary to attract and retain scarce talent in critical public and private sector roles. Such handsome compensatory packages, moreover, are argued to be in any case quite appropriate, given the meritorious standing of the candidates involved.²⁸

While ideological justifications such as these are significant, one other factor behind the wide tolerance of these practices bears noting. Generally, in the operation of this system of incentives and inducements, the machinations and manipulations by the PAP remain largely invisible. Thus, in most part, the compensations appear to be called forth and delivered by a neutral market mechanism, and not the direct hand of the PAP. The generous employment terms mentioned previously are a case in point. It is the market compelling these, not the PAP. Similarly, though substantial private benefits flow from the public housing upgrading programme, these are not directly delivered by the PAP itself. It is again the market, through the escalating values of affected properties, that is responsible for these benefits. The system is quite unique in this regard, harnessing the market to achieve its objectives. It definitely stands in contrast to other countries, where the practice of corruption contravenes or subverts the market entirely and is therefore fundamentally dysfunctional in nature. Significantly, in working with the market, the PAP also very effectively distances itself from such practices. With matters at a safe arm's length, the party remains insulated from any potential negative consequences that may arise. This, again, is in strong contrast to other countries, where the practice of corruption is highly personalized and associated with clearly identifiable personalities, parties or groups. The negative repercussions of such corruption are thus easily laid at the door of such actors. In Singapore, however, that is not the case. Blame is easily attributed elsewhere, with the considerable role of the party in events very often escaping the attention and ire of the public.

Conclusion

As far as corruption is concerned, Singapore most definitely qualifies as being peculiar. It is peculiar because there is an absence of a more common form of corruption typically found elsewhere. But it is also peculiar because of the unique form corruption assumes in the country itself. As this chapter has suggested, this is a strongly 'political' form of corruption, where an entrenched party uses public resources to preserve a pre-eminent position in politics.

Despite its evident distinctiveness, how different, then, is Singapore from other countries where corruption may be found? In the light of this chapter, probably not very. To the extent that the practices in Singapore canvassed above amount to the dispensation of state patronage to favoured individuals, constituencies and party-based networks,²⁹ there is really little to separate the country from others, such as its immediate neighbours in Southeast Asia. In common with these neighbours, similar forms of patronage and clientelism appear to be practised. These, moreover, seem to have identical purposes in mind. At the end of the day, as in these other countries, it is all about maintaining a government in power.³⁰ Bearing this in mind, perhaps one final observation about Singapore may be apt. With respect to corruption, the principal peculiarity of Singapore may be that it is not all that peculiar after all.

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Notes

- 1 This has been described by some commentators as a 'comprehensive' approach to fighting corruption. See, for example, J. Quah, 'Singapore's Anti-Corruption Strategy: Is This Form of Governance Transferable to Other Asian Countries?', in J.B. Kidd and F.J. Richter, eds, *Corruption and Governance in Asia*, New York: Palgrave Macmillan, 2003, pp. 180–97. See also Muhammed Ali, 'Eradicating Corruption: The Singapore Experience', paper presented at the Seminar on International Experiences on Good Governance and Fighting Corruption, 17 February 2000, Bangkok (http://www.info.tdri.or.th/reports/os_paper/ali.pdf).
- 2 For some indication of the extent and causes of such early corruption, see J. Quah, 'Combating Corruption in Singapore: What Can Be Learned?', *Journal of Contingencies and Crisis Management*, 9, 1 (2001): 29–35.
- 3 As seasoned Singapore-watchers will readily attest, Singaporeans need little prompting in private conversations before launching into a litany of complaints against the government, some of which include allegations of questionable practices. These comments are rarely repeated in public. More recently, a number of individuals and non-government organizations have assumed a more

assertive stance, making use of the medium of the Internet to raise issues of social and political concern, and occasionally the odd inference to corruption. Some of these include the Think Centre (<http://www.thinkcentre.org/>), Singapore Window (<http://www.singapore-window.org/>), the Singapore Internet Community (<http://www.geocities.com/newsintercom/>) and in a more humorous vein, TalkingCock.com (<http://www.talkingcock.com/>).

- 4 See, for example, T. Lancaster and G. Montinola, 'Comparative Political Corruption: Issues of Operationalization and Measurement', *Studies in Comparative International Development*, 36, 2 (2001): 3–28.
- 5 L. Lim and A. Stern, 'State Power and Private Profit: The Political Economy of Corruption in Southeast Asia', *Asian-Pacific Economic Literature* (APEL), 16, 2 (2002): 18–52.
- 6 United Nations Development Programme, *Fighting Corruption to Improve Governance*, New York, UN, 1999, 7.
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 - 15 Ramesh, *op. cit.*
 - 16 Obtaining a precise assessment of the full extent of such subsidies, however, is notoriously difficult. Of a direct, indirect as well as implied nature, most remain 'hidden' within the budget, while others are channelled through statutory boards, government-linked companies and other associated instrumentalities. See, for example, Low, *Political Economy of a City-State*; Perry *et al.*, *op. cit.*, and Ramesh, *op. cit.*
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 - 18 'Singapore to Distribute Billion-Dollar State Stocks to Citizens', *Agence France Presse* (AFP), 12 October 2001; 'Singaporeans Rush to Cash-In Government Shares in Downturn', AFP, 12 November 2001.
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 - 29 Lim and Stern, *op. cit.*, p. 38.
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8 Profiting from disasters

Corruption, hazard, and society in the Philippines

Greg Bankoff

Introduction

Corruption and disasters are perceived to be endemic to the Philippines. Indeed, newspapers and social commentators alike frequently talk about a 'culture of corruption' pervading the body politic¹ or of corruption as a total systemic affliction that has metastasised like cancer cells to all parts of government and the surrounding society.² Defined simply by the World Bank as the misuse or abuse of public office for private gain (1997), corruption is held to be so pervasive that it has called into question the very nature of Philippine democracy and caused the state to be variously labelled a *kleptocracy*, a government led by thieves, a *narco-democracy*, the rule of criminal overlords in collusion with bent politicians, or the abode of *crony-capitalism*, where the political and economic spoils of office are shared between a select group of family, friends and key supporters.³ Just as insidious as corruption, however, are the disasters caused by natural hazards that afflict the country with monotonous regularity. According to the Belgium-based *Centre for Research on the Epidemiology of Disasters* (CRED), which has compiled one of the most comprehensive records on the occurrence of natural hazards in the world since 1900, the Philippines experiences more such events than any other country. Between 1950 and 2001, there were 526 disasters, an average of more than ten a year, affecting over 65 million people (EM-DAT). In the quarter century 1950–75 alone, the islands experienced 2,126 recorded earthquakes⁴ and were shaken on average five times a day by such events, though most are too faint to be felt.⁵ There are 220 volcanoes, 21 or 22 of which are classified as active.⁶ Aside from this seismic activity, the Philippines is also prone to climate-related hazards especially in the form of powerful typhoons that sweep across the islands from the Southwest Pacific, mainly in the period from June to November. On average, over 20 typhoons a year pass through the PAR (Philippine Area of Responsibility), some with wind speeds in excess of 200 kilometres an hour.⁷

Hitherto, there has been little attention paid to exploring the links that might exist between these two characteristics of Filipino society: the

propensity of corruption and the frequency of hazard. Corruption has been identified in six main areas of government: namely electoral fraud, legislative privilege, revenue assessment and collection, regulatory and licensing arrangements, law enforcement, and appointments and promotion.⁸ Yet graft is also pervasive in a seventh area of government activity: disaster management and relief. And since hazards and the disasters that they generate are all too frequent in the archipelago, the opportunity and scale of such abuse are also commonplace. Corruption and hazard are not disparate aspects of life in the Philippines: the nature of one and the frequency of the other are closely associated.

‘Culture of corruption’

The notion that Filipino society has a long history of corruption is often used both to explain its prevalence and excuse its continuance. Certainly the conditions that foster criminality have been a characteristic of the state in the archipelago. The initial archipelagic-wide administration was a colonial one, that of the Spaniards who between 1565–1898 evolved a hybrid-like structure that was partly theocratic, intended to facilitate the evangelisation of the indigenous population, and partly rapacious, designed to extract as much as possible from them. ‘They do not come to judge but to rob’ observed a Jesuit missionary of the sixteenth century with regard to the provincial magistracy.⁹ The profit motive remained a major consideration in the choice of a colonial administrative career: what was at stake were the *caidas*, literally the ‘droppings’ of office. As an official was simultaneously governor, magistrate and treasury official, within his jurisdiction, the pickings could be lucrative: price fixing, licence exemptions, unfair trading practices, contraband, extortion, bribery, and fraud. Offices were openly auctioned to the highest bidder and so few were willing to make such an investment without expectation of substantial returns.¹⁰ Charles Cunningham concludes:

From the point of view of these officials, the Philippines were neither governed for the good of the natives, nor for the residents, nor for the honour of Spain, nor for the propagation of the Catholic religion, but merely for the profit and advancement of those who were on the ground to take advantage of their opportunities.¹¹

Corruption in the subsequent American colonial state is more difficult to assess. The new regime was anxious to demonstrate the benefits of its administration in contrast to that of the Spaniards in terms of both its greater efficiency and its greater egalitarianism. The resultant model has been characterised as one of *cacique democracy*, where the colonial bureaucracy was effectively penetrated by the indigenous elites at all levels of the administration, including, with the establishment of a national

legislature in 1907 and self-government as an autonomous commonwealth in 1935, the very highest. Elite families used their influence and wealth to win elections and their office to enhance their power.¹² The extent to which they were able to subvert the colonial bureaucracy in their own interests to both enrich and entrench themselves is only hinted at in the existing scholarly literature and still awaits a major study.¹³ An important development during this era, however, was the expansion of direct government intervention in the economy to promote growth. As the role of government to sponsor, develop or employ expanded, so did the opportunities for politicians and civil servants to grant special favours, licences and contracts become more lucrative. Bigger government presaged further corrupt practice and, in the process, undermined the evolution of a more meritocratic system in the Philippines.¹⁴

Independence in 1946 brought little reprieve: those families who had so skilfully manipulated the colonial state to their own advantage simply inherited the colonial structure of government. Any brake that the US administration may have exercised over the unbridled wielding of public office for private gain was lifted and corruption not only persisted but showed 'no signs of abatement'.¹⁵ Corruption starts at the top with the politicians. Member of Congress have at least five 'special purpose funds' in the form of the Countrywide Development Fund, the Congressional Initiative Allocations, the Public Works Fund, the School Building Fund and the Farm-to-Market Roads allocation that place in excess of P50 million (US\$943,000) annually at the discretionary disposal of House of Representatives and Senate seat holders.¹⁶ The diversion of public funds to campaign coffers reached scandalous proportions under President Ferdinand Marcos (1965–86) but has not ceased under subsequent presidents. The nepotistic business dealings during the administration of Corazon Aquino (1986–92) earned her term in office the dubious sobriquet of *Kamag-anak* or 'Relatives Incorporated' and the then Senator Gloria Macapagal-Arroyo (subsequently President of the Republic) has had a hard time dispelling the rumour that her 1995 election campaign was bankrolled by reputed *juteng* boss Bong Pineda.¹⁷

Corruption is also rife in the bureaucracy where government contracts provide ample opportunity for graft and malfeasance, while the ponderous wheels of administration and justice frequently require 'grease' to enable them to revolve more quickly or, on occasion, to turn at all. Again, this is nothing new but is a characteristic of government in the Philippines that can be traced back to the workings of the Spanish colonial administration where the importance of political exigencies and the inability to pay adequate salaries had much in common with the current situation.¹⁸ A distinction can be made between the opportunities for corruption arising from 'income', that is the use of government power to extort money, and that ensuing from 'expenditure', that is the diversion of infrastructural and procurement expenditure to uses other than those officially intended.¹⁹

The massive expansion of government services in the latter half of the twentieth century, no less in the Philippines than elsewhere, has created many new lucrative and increasingly innovative ways in which to plunder the public purse.

Forms of corruption have been variously differentiated between individual, incidental or spontaneous, on the one hand, and systemic or institutionalised on the other.²⁰ The first is seen as the private endeavour of an individual public official or one working in unison with his or her immediate fellows to undertake acts of petty bribery or extortion and small-time embezzlement of public funds. It is characterised by a lack of systematic organisation and the immediacy of its activities. Corruption becomes systemic when it is organised, recurrent, well entrenched, and involves the participation of other officials up and down the official hierarchy of several government agencies. 'Under systemic corruption', comments Ledivina Cariño, 'an informal corruption organization coexists with the formal organization and mandates a quota for all personnel, rates for each person who participates in, shields or abets corruption, and rules for their recruitment, participation and termination.'²¹ While the first form can be detected in all states to a greater or lesser extent, the latter is much more characteristic of developing countries. Both are rampant in the Philippines.

The extent of corruption is difficult to assess. The *Tanodbayan* (Ombudsman) calculates that the government loses as much as a hundred million pesos a day through corrupt practices, equal to a sum of P1.4 trillion pesos (US\$48 billion) since 1988. This amount exceeded the country's entire foreign debt of US\$40.6 billion in 2000.²² Other estimates evaluate the loss at about 20 per cent annually of the national budget equivalent to about 3.8 per cent of GNP. Based on these figures, the aggregate cost of corruption amounted to P609 billion between 1995–2000 or more than the entire budget of P593.7 billion pesos in 1999.²³ Applying these same percentages means that P125 billion out of the 2001 national budget ended up in the pockets of self-serving bureaucrats.²⁴ So widespread is corruption at all levels of certain government departments that the latter's ability satisfactorily to provide mandated services are often seriously compromised.

The Department of Education, Culture and Sports (DECS), one of the most infamous bureaucracies in this respect, is barely able to deliver the most basic educational services to the country's 15 million public school children. Only 65 per cent of funds allocated for the procurement of text books are used for such purposes; the rest is lost in kickbacks and payoffs to various officials: a 20 per cent cut to the national office, 5–20 per cent for the regional offices, 5 per cent for the Department of Budget to release the funds, and a further 5 per cent to the Office of the President to approve the contract.²⁵ While educational and medical procurement offer particularly lucrative opportunities for such practices, corruption is equally prevalent in other government agencies that provide more material evid-

ence of their utility. The Department of Public Works and Highways (DPWH) is also notorious for its malfeasance, both in the way contracts are awarded and in how projects are implemented. Pre-qualification, bidding, and awarding of contracts are often more a matter of privilege, favour, reciprocity (*utang ng loob*), and bribery than of open competition. At times, there is even collusion between officials and contractors that, at its most flagrant, can amount to the designing of ghost or dummy projects. Kickbacks to legislators, their aides, mayors, and government engineers are estimated at between 20–40 per cent of project costs. Contractors, in turn, recupérate these sums and make profits by overpricing, using sub-standard materials, skimping on contractual requirements, and paying low wages. In extreme cases, only about 40 per cent of the allocated budget is actually spent on project implementation. Based on an outlay of P104 billion for road and bridge construction between 1995 and 1999, it is estimated that about P8.3 billion per year was lost in kickbacks. As the outlay for roads and bridges accounted for 5.2 per cent of the national budget in 1999, corruption in this sector alone amounted to 2 per cent of the national budget.²⁶

Certainly the overwhelming popular perception is that the public sector is corrupt. A series of national surveys conducted by the Social Weather Stations (SWS) between 1998 and 2000 found that 70 per cent of respondents considered that corruption was rife in the government and only a mere 18 per cent thought to the contrary (Figure 8.1). The figures were even higher in the National Capital Region (88 per cent) and among those classified as belonging to upper and middle-class sectors defined as ABC socio-economic groups (87 per cent).²⁷ Among the main findings were that corruption was perceived to be the second-most common subject of public

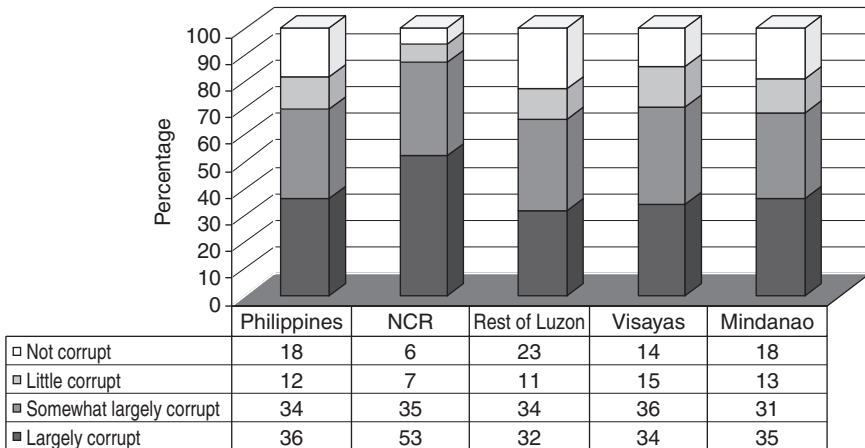


Figure 8.1 Perceived extent of corruption in the public sector, 2000 (source: *Special Issue on Corruption* (SWS 2001: 4)).

dissatisfaction with government after the failure to control inflation, that graft was considered to be greater in the public than the private sector, that the origin of corruption was perceived to lie more with the bribe-receiver (66 per cent) than with the bribe-giver (33 per cent), and that the level of corruption was considered highest at national level (84 per cent) compared to the provincial (40 per cent) and municipal levels (27 per cent). The five government agencies considered the most corrupt were the Department of Public Works and Highways (14 per cent), the Philippine National Police (11 per cent), the Bureau of Internal Revenue (9 per cent), the Bureau of Customs (8 per cent), and the Department of Education, Culture and Sports (7 per cent).²⁸

The international community also shares the Filipinos' perception of their government as corrupt. The Corruption Perception Index (CPI) ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians, through surveys based on the perceptions of business people, academics, risk analysts, and the general public. The CPI awards states scores that range between 10 (highly clean) and 0 (highly corrupt). According to the 2002 survey, the Philippines rated 77th out of a total of 102 countries. Even within the greater Eastern and South Asian region, the country does not rank well with only Vietnam, Indonesia and bottom of the scale Bangladesh faring worse (Figure 8.2). The Hong Kong-based Political and Economic Risk Consultancy (PERC) survey of 700 expatriate businessmen working in 12 Asian economies found that apart from Singapore, Hong Kong, and Japan, virtually all other countries were below the average with the Philippines scoring nine out of ten on a descending scale of corruption.²⁹ Other international

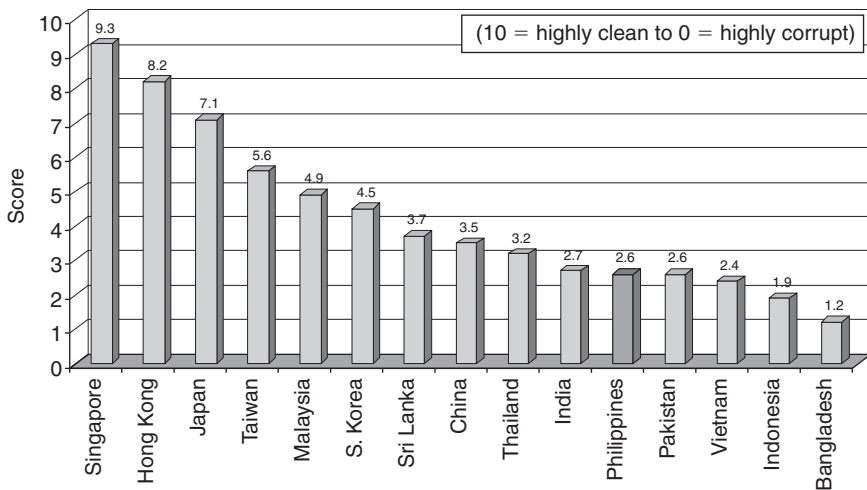


Figure 8.2 The Philippines compared to other Eastern and South Asian nations, CPI 2002 (source: *Corruption Perception Index* (TI 2002)).

surveys have not been quite so harsh. In a survey of the six main Southeast Asian economies commissioned by *The Economist* magazine, the Philippines ranked second only behind Singapore in terms of least corruption and most transparency and scored a respectable third with regard to the potential for social unrest behind Singapore and Thailand.³⁰ In a further survey of international investors that year, however, it was found that concerns over corruption, cronyism, ethics, and the lack of governance had overtaken poor infrastructure as the major impediment to foreign investment in the Philippines.³¹

So pervasive is the domestic and international perception of corruption in the Philippines that it is sometimes contrasted with the regularity of natural hazards, that other national characteristic so often associated with the archipelago. Thus an editorial in *The Philippine Free Press* compared the unexplained depletion of the government's disaster relief fund in 1995 to a tropical storm and asked how much of the money had really gone to aid the people affected and how much had been 'stolen by the typhoon of government thieves' that had been blowing for years and costing Filipinos billions of pesos.³² But, in fact, the analogy goes beyond the purely literary: the increasing magnitude if not frequency of the one provides more opportunities and occasion for the other. In the Philippines, there is a close link between disasters caused by natural hazard and corruption of all persuasions.

Corruption and disasters³³

The last three decades of the twentieth century have been decades of momentous change and political upheaval in the Philippines. The nation and its people have endured long years of dictatorship under Ferdinand Marcos, *cronyism* and economic mismanagement, the 1983 assassination of Benigno Aquino, the People's Revolution and the elevation of Corazon Aquino in 1986, military unrest and the Reform, the Armed Forces Movement, constitutional machinations, first, under Fidel Ramos and then under Joseph Estrada, the renewal of ethnic violence in Mindanao, EDSA Two and Three, and the elevation to the presidency of Gloria Macapagal-Arroyo in 2001. But there is another politics or history that usually remains below the public horizon. This other story of flooded streets, drought-stricken fields, shattered communities, flattened buildings, buried homes, and lost parents, children or livelihoods is much closer to the real-life experience of most Filipinos than the countless reports on the intrigues and manoeuvrings of politicians. In particular, the succession of major disasters that overcame the nation between 1990 and 1991 proved sufficient to temporarily displace *sleaze* from the headlines. While it is difficult to always establish that the frequency of all types of disasters is rising, there is little doubt that they exert an increasing impact on the lives and property of most Filipinos.³⁴ The accelerating processes of urbanisation and

industrialisation render more communities vulnerable to disasters, and human activities put more people at risk from their consequences. At no time has this vulnerability been so manifest in the Philippines as during the early 1990s. The Baguio earthquake in July (the most destructive of such events to hit the archipelago last century) and Typhoon *Ruping* in November 1990 (that destroyed 60 per cent of the country's second largest conurbation), the eruption of Mt Pinatubo in June (the second largest of the twentieth century) and the Ormoc flood in November 1991 (that killed over 7,000 people), while not the only major disasters to afflict the nation in recent decades, were certainly among the most devastating.³⁵

However, the vulnerability of any society to hazard is also partially determined by the way it is structured. Not only are some among the rich and powerful better able to cope with crisis situations but a few actually seem to profit from them through their greater ability to benefit from the economic opportunities presented for graft and malfeasance by relief and rehabilitation operations. It is even possible that disasters may act as important mechanisms for consolidating and increasing social inequalities within societies subject to their frequent occurrence. The way in which class interests are articulated within the debate over disaster management and relief assistance is important in understanding the reasons why governments in the Philippines have historically paid insufficient attention to natural hazards and have consistently failed to take adequate measures to prevent, mitigate, or ameliorate their effects. Not appreciating the close relationship between society, corruption, and its physical environment hinders a true understanding of the political dynamics within the nation.

Disasters furnish situations whereby some among the rich and powerful are able to become richer and more powerful, to profit politically and financially from the provision of emergency-related services and relief assistance or through graft and corruption. Some in the elite have learnt to manipulate crisis situations in order to consolidate their hold on power and serve their own economic interests. For many holding public office, disasters provide a perfect opportunity for political grandstanding, affording a very visible platform from which to dispense largesse in the form of relief items or rehabilitation schemes. Individual politicians often use the aftermath of natural hazards personally to distribute relief material in their constituencies. The eruption of Mt Pinatubo was 'a publicity godsend' in the 1992 election of officials from the President down to mayors and local council members.³⁶ The geologist Kelvin Rodolfo observed hundreds of politicians descend on the disaster scene with relief goods: 'the big players in helicopters bearing media crews, the small ones in jeeps with a couple of sacks of rice and a few canned sardines: hand out some goods, take some pictures with devastation in the background, and go, never to return'.³⁷ Similarly, after Typhoon *Rosing* devastated areas of Quezon province in November 1995, a group of national politicians toured

the distressed areas in three Air Force trucks distributing 2,000 bags of relief goods.³⁸

In particular, the continuing calamity of Mt Pinatubo engendered much political posturing as lahar and mudflows threatened to engulf entire communities and, in the process, deprive politicians of their constituencies through resettlement schemes.³⁹ As 2–3-metre waves of lahar menaced 21 towns in the area surrounding the volcano, billions of pesos were expended in mainly futile attempts to protect towns or divert mudflows; some P3.8 billion (US\$152 million) had already been expended on engineering countermeasures by October 1992.⁴⁰ Contrary to substantial scientific advice, the government constructed dams, dykes, sinks, and revetments to save areas lying in the path of the lahar from destruction rather than allowing the flows to reach the sea as quickly as possible. As Kelvin Rodolfo quipped: ‘To do nothing about it is bad politics.’ It became an absolute electoral necessity for local politicians and officials to press for more money and greater efforts to save threatened communities within their electorates.⁴¹

The nature of the political system in the Philippines with its emphasis on patronage, regionalism, and lack of strong central government only intensifies partisan rivalry and factional infighting with regard to disaster management and relief. More than simply making political capital out of disasters in the Philippines, however, some among the political elite and those with family or social ties to them actually make a profit from these emergency situations through corruption, fraud, and graft. Specifically, they are able to consolidate and even enhance their financial and political position in society directly through the misappropriation of public money designated for relief and rehabilitation programmes or, more circuitously, through the patronage that control over such funds confers upon them. Nor is corruption only confined to the highest echelons: it is symptomatic of a ‘culture’ that permeates all levels of the public service down to relief workers at the disaster site and the voluntary labours of NGOs, though the scale in the latter cases is often petty.

There are frequent allegations that those in authority use the circumstances surrounding a disaster to divert relief funds to their own pockets.⁴² Again, the billions of pesos disbursed in emergency services after the eruption of Mt Pinatubo and the continuing calamity of the lahar flows provided ample opportunity for graft. Overall, the Central Luzon Task Force, the principal NGO engaged in relief operations in the area, estimated that more than P7 billion (US\$280 million) of public funds remained unaccounted for in 1994, much of which had been used for political purposes.⁴³ Otherwise money might simply disappear as it passed through the various levels of government. In the wake of Typhoon *Rosing* in 1995, municipal executives in charge of implementing public-works projects denounced the practice of kickbacks whereby some 20 per cent of the appropriation was lost in payments to officials.⁴⁴ Eight senators subsequently demanded a full

account of the year's P2 billion (US\$80 million) Calamity Fund that Malacañang already claimed had been depleted by releases for past disasters.

But there were also more indirect ways for some among the political and financial elite to profit from disaster situations than simple embezzlement. These are the schemes that involve collusion between government officials and private contractors over the awarding of relief-related contracts. Sometimes it is simply a question of who gets what and why. In 1992, for example, a contract to quarry along the Taug Dike in Angeles City was awarded to a relative of Mayor Edgardo Pamintuan and a friend of Councillor Lito Ganzon despite evidence that rampant quarrying in the previous year had contributed to a breach of the dyke and the flooding of several barangays including the city's CBD.⁴⁵ Ten of the 16 sectional contracts awarded for the construction of a DPWH-funded anti-lahar dyke between Clark Airbase and Magalang in Pampanga were allegedly given to Governor Bren Guiao and another five to Congressman Carmelo Lazatin.⁴⁶ Accusations were also made that 'red tape' and 'political meddling' had been responsible for shoddy and inadequate workmanship and inordinate delays in the completion of many Pinatubo-related projects.

Patronage, however, was not the only method of enrichment associated with the continuing Mt Pinatubo disaster. Zambales Governor Amor Deloso maintained that almost all contracts for anti-lahar schemes were overpriced. His claims were basically confirmed by DPWH Secretary, Jose de Jesus, whose validating team found that several private contractors had inflated their costs by an average of 50 per cent or a total of P350 million (US\$14 million).⁴⁷ Later de Jesus himself was to face charges for signing 'grossly overpriced' contracts worth P338 million (US\$13.52 million) for a de-silting project awarded to an unlicensed foreign firm with an authorised capital of only US\$1,000.⁴⁸ The very nature of lahar proves conducive to a huge variety of scams associated with relief and reconstruction projects. On 1 October 1992, the Senate began investigating irregularities in DPWH-awarded projects worth billions of pesos that had subsequently been destroyed by new lahar flows. In particular, Senator Maceda questioned whether some contractors had actually completed all of the P7 billion (US\$280 million) worth of dam construction, dredging and other projects paid for in such a short time period, some in only three weeks 'which could have been achieved only by Superman and Superboy combined'.⁴⁹ As Rodolfo succinctly comments: 'While many lowlanders and Aytas were starving and dying in makeshift evacuation camps and relocation centers, much profit was being made in building ineffectual protective dams and dikes, largely ignoring scientific, moral, and common sense.'⁵⁰

The response of successive administrations in the Philippines has been constrained as many of those profiting from disaster situations are themselves members of the same political and financial elites who support the government. However, the 1992 bill appropriating P10 billion for relief and rehabilitation activities associated with the Mt Pinatubo eruption con-

tained stiff penalties for persons who took advantage of the crisis. The bill provided for fines of between P50,000 to P1 million (US\$2,000–40,000) or imprisonment from six to 15 years for those buying and selling relief goods. Public officials found guilty of graft were to be permanently disqualified from holding public office.⁵¹ The government also took measures to stop the overpricing of goods during times of shortage, passing the so-called Price Tag Law and ordering the closure of 85 contravening stores in 1995.⁵² While the authorities sometimes lack the wherewithal and often the will to act, there are also problems inherent in the need to make swift decisions and provide rapid relief to prevent further loss of life and property. ‘You know our [department] is alleged to be the most corrupt’, said DPWH Secretary Gregorio Vigilar. ‘But please note that our objective [as far as diking is concerned] is to protect lives and minimise damage to property. To me, corruption is a [side issue].’⁵³ Disaster and corruption are such integral aspects of society in the Philippines that the two are mutually interwoven: disasters certainly provide the framework and opportunity for corrupt practices to flourish but, perhaps, those same practices actually intensify the effects of hazards, more readily transforming them into disasters.

Corruption and society

Despite the pervasiveness of corruption throughout the body politic, there is no lack of a legal framework with which to prosecute those responsible for its occurrence. The Philippines has all the trappings of a strong state without, however, the wherewithal to execute its purpose: the problem is not so much one of inclination but of implementation. The demise of Joseph Estrada, or, more particularly, the manner in which his brief presidency came to an end in January 2001, reveals the nature of the problems that beset the Philippines. Accused by a disgruntled associate of receiving regular pay-offs from illegal gambling activities, he was eventually impeached before the Senate. A televised extravaganza that was broadcast in its entirety to huge audiences across the nation, the trial was forestalled before the judicial process had run its course and Estrada forced to step down through a combination of largely middle-class instigated public demonstrations and the defection of the high command of the army.⁵⁴ He was arrested under his successor, Gloria Macapagal-Arroyo, and charged with ‘plunder’ of the state. On the one hand, the fact that the president was impeached for corruption attests to the strength of the country’s legal and institutional frameworks. On the other hand, his removal from power was effected in a completely extra-constitutional and non-legal manner despite retrospective attempts to legitimise the act. People, it seemed, simply did not have sufficient confidence in the integrity of the proper procedures to await a judgement, a scepticism that is partly borne out given the inordinate length of the subsequent criminal proceedings. As a recent

survey of expatriate businessmen working in Asia concluded: 'Estrada may be gone, but how much in the Philippines has really changed?'⁵⁵

As the circumstances surrounding the case of former President Estrada aptly demonstrate, an elaborate legal framework already exists in the Philippines. In the first place, the accountability of public office as a public trust is specifically enshrined in four of the country's constitutions.⁵⁶ Second, the probity of the nation's officials is also the subject of numerous other pieces of legislation ranging from the Administrative Code of 1917 and the Revised Penal Code of 1932, to the Anti-Graft and Corrupt Practices Act of 1960 (RA3019), to the Anti-Gift Decree (PD46) and the Civil Services Act (PD807) passed during the Martial Law period.⁵⁷ Since the restoration of democracy, the scope of such legislation has been extended to include a Code of Conduct and Ethical Standards for Public Officials and Employees (RA 6713) of 1989, the Act Strengthening Civilian Supremacy over the Military (RA 7055) and the Act Defining and Penalizing the Crime of Plunder (RA 7080) both of 1991. Third, the punitive threat of such legislation has been further enhanced through the establishment of a series of presidential anti-graft and investigative agencies to probe corrupt practices. In fact, there have been no less than 13 such bodies since President Elpidio Quirino first created an Integrity Board in May 1950. Many of these were short-lived affairs, some only a matter of months, and only a few endured more than a couple of years, most notably the Complaints and Investigation Office of President Marcos (1970–86), the Presidential Commission on Good Government of Corazon Aquino (1986 to present) and the Presidential Anti-Graft Committee of Diosdado Macapagal (1962–64).⁵⁸ Most recently, Gloria Macapagal-Arroyo established her own Presidential Anti-Graft Commission in April 2001.⁵⁹

As the author of a study on accountability and transparency for the United Nations Development Programme in 1998 concludes, the Philippines needs no more laws. Rather, what is needed is a thorough re-examination of the existing ones to remove ambiguity and duplication, and to ensure that those that remain express the general will of the people and are enforceable with their support.⁶⁰ Since 1978, the main constitutional check on graft and related matters has been exercised by the Office of the *Tanodbayan* and through the jurisdiction of the *Sandiganbayan*, agencies that were both somewhat ironically established by Ferdinand Marcos, arguably the most corrupt of all presidential incumbents. The former is an Ombudsman tasked with enforcing the public accountability of government and probing complaints made against public officials. He is also empowered to initiate investigations on his own account.⁶¹ The *Sandiganbayan* is a special court with jurisdiction over civil and criminal cases involving graft and corruption. Its jurisdiction was subsequently expanded during the Aquino presidency to include military personnel and appeals from its judgments restricted to the Supreme Court for review on certiorari.⁶² As most recently restructured (RA 8249 of 1997), the court is com-

posed of a Presiding Justice and 14 Associate Justices with its main office in Metro Manila but with the facility to hold hearings in the regions.

The number of cases filed before the *Tanodbayan* can be seen to reflect both the pervasiveness of corruption in government circles and the efficacy of remedial procedures. A total of 71,668 complaints were referred to the Ombudsman between 1988 and 2001, an average of a little over 5,000 a year, with the number of cases rising considerably during the presidency of Fidel Ramos (1992–98) before falling back to an annual rate of between three to four thousand (Figure 8.3). Of the total, however, only 27,610 complaints or not quite 39 per cent were actually dealt with over this period. In nearly all the early years, many cases were simply left pending though the situation improved dramatically towards the second half of the 1990s. More worrying, however, than the backlog that suggests underfunded and overstretched personnel is the large number of cases that were simply dismissed, fully 87 per cent of the total. In most years, the number of prosecutions rarely exceeded 12–16 per cent though there has been a discernible upward trend in recent years with the annual average reaching nearly 22 per cent. Even worse than the low rate of prosecutions is the rare number of cases in which a penalty is imposed – on only 554 occasions since 1988. This figure amounts to only 15 per cent of all prosecutions, to about 2 per cent of all cases actually heard, and to less than a derisory 1 per cent of all complaints made, though there has been a noticeable improvement in the ratio of penalties imposed to all prosecutions since 1997 (Table 8.1).

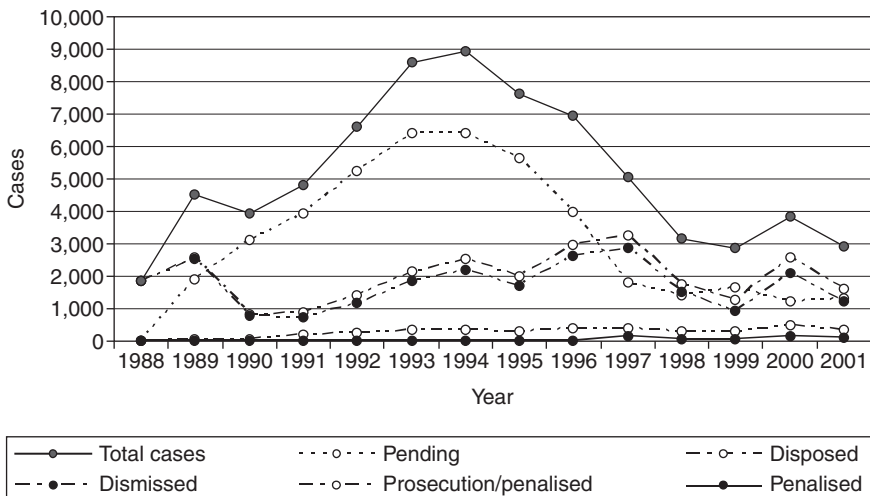


Figure 8.3 Status of cases before the *Tanodbayan*, 1988–2001 (source: *Statistics on Criminal/Administrative Cases of OMB-Central Office from CY 1988 to 2001* (OMB 2002)).

Table 8.1 Status of cases before the *Tanodbayan*, 1988–2001

<i>Year</i>	<i>Total cases</i>	<i>Pending</i>	<i>Disposed</i>	<i>Dismissed</i>	<i>Prosecutions</i>	<i>Penalties</i>
1988	1,868	6	1,862	1,862	0	0
1989	4,499	1,906	2,593	2,539	54	0
1990	3,940	3,119	821	753	68	0
1991	4,823	3,947	876	704	172	0
1992	6,616	5,221	1,395	1,161	234	0
1993	8,580	6,420	2,160	1,828	332	18
1994	8,941	6,427	2,514	2,192	322	6
1995	7,636	5,652	1,984	1,676	308	1
1996	6,954	3,980	2,974	2,603	371	21
1997	5,048	1,799	3,249	2,847	402	148
1998	3,171	1,402	1,769	1,502	267	42
1999	2,886	1,638	1,248	937	311	70
2000	3,814	1,235	2,579	2,109	470	129
2001	2,892	1,306	1,586	1,237	349	119

Source: *Statistics on Criminal/Administrative Cases of OMB-Central Office from CY 1988 to 2001* (OMB 2002).

Notwithstanding this promising trend, however, the impression created by such data only reinforces the idea that the government is corrupt, that its officials are largely immune from prosecution and, even if found guilty, are rarely punished. There are many reasons for this state of affairs that are too numerous and too contentious to elaborate at any length here. Some blame the past and a history of colonialism that has never been completely effaced from the body politic of the nation. The more radical accuse capitalism and the failure to realise proper 'cultural consciousness'.⁶³ Others blame culture, a tradition of gift-giving and reciprocity that places family and kinship above community and nationhood.⁶⁴ Still others see poverty as the root cause of all evil, small salaries, and a bloated bureaucracy that promote graft and malfeasance as a survival strategy.⁶⁵ Whether these rationalisations have any meaningful explanatory value are questionable and are probably just as much a matter of ideological persuasion, disciplinary approach or alternative agenda. But there are aspects peculiar to the composition of contemporary Filipino society that, though by no means singular in themselves, may provide some insights into the nature of corruption and its operation. One, of course, is the frequency and magnitude of natural hazards, already discussed. A second is the media and how it works and a third is the process of governmental decentralisation undertaken since the passage of the 1991 Local Government Code.

Corruption in a modern nation-state is not merely a matter of politicians and public officials but has its roots in the wider community and what people view as the responsible exercise of power and the practices they will accept and support. In an ostensibly democratic society, the

media acts as a primary watchdog checking on the probity of politicians and the conduct of civil servants. However, pay-offs to reporters in the Philippines have become a matter of routine, many of whom receive monthly retainers from businessmen and politicians. Depending on their seniority and positions, journalists during the 1992 presidential election campaign were paid from P10,000 to P50,000 a month to report favourably on candidates' activities, or not, depending on circumstances. Apart from elections, a particularly lucrative form of journalism is known colloquially as AC-DC or Attack-Collect-Defend-Collect, a kind of reportage that involves attacking a person for a fee at the behest of a rival and then defending the same person, again for remuneration. In a survey conducted between 1997–98, 71 per cent of journalists admitted to receiving bribes, 48 per cent a number of times or often.⁶⁶ As with corruption in government, poor salaries, inadequate training, and an entrenched value system have all been variously blamed for the regularity of this occurrence.⁶⁷

Rather than making the wheels of government more transparent, the media often only adds to the 'fog' of corruption through conferring a false sense of public legitimacy on underhand activities and turning 'news' into a marketable commodity that can be bought and sold like anything else. Moreover, the nature of media coverage, its fickleness, and the endless search for the sensational that sells newspapers, frequently only compound the problem. Disasters and calamities, for instance, are natural subjects but yesterday's disasters make poor copy and are soon replaced on the front page by fresh emergencies, of which there is no shortage. After the main eruption of Mt Pinatubo, droves of Manila-based journalists 'scurried' to the site but news soon 'dwindled to a trickle' as journalists saw only 'the same thing over and over again. As the event got longer, the story seemed to get shorter. The process was not media-genic.'^{68,69} And just as media coverage of disasters often creates photogenic images for political figures, so it has also been accused of 'aiding and abetting a beggar mentality' among the survivors of these events. Extensive television footage of relief materials thrown from military helicopters to flood-stranded refugees quarrelling over the goods only reinforce images of the poor as parasitical dependants incapable of supporting themselves and somehow wanting in human dignity.⁷⁰ The media, in short, often only compounds a culture of corruption and victim in the country.

Another development held by experts as instrumental in creating the recent 'wave of corruption' in the country is the process of decentralisation of national government brought about by the enactment of the Local Government Code of 1991 (RA 7160), itself a reaction to the authoritarianism and centralisation instituted during the martial law presidency of Ferdinand Marcos (1965–86). The aim of the reform is to devolve more administrative authority to the various *sangguniangs* (local legislative bodies) by entrusting them with a greater degree of regulatory and fiscal responsibility. But attempts to devolve more authority to provincial, city,

municipal, and village levels have often only favoured local elites who use their influence to back candidates sympathetic to their own interests.⁷² Rather than making government more accountable, Robert Klitgaard contends that this attempt at decentralising administration only diffuses the traditional politics of patronage from the national to the local level and disperses it throughout the country.⁷³ He argues that it allows governors and mayors the opportunity to foster monopolies within their own localities, broadens their discretion over local business and related matters, and inhibits any effective system of accountability.

Whether such a harsh assessment of local government reform in the long term is really warranted is too soon to say. After a history of subversion to national government throughout the dictatorship years, there are increasing indications that a more dynamic Local Government Unit (LGU) sector is now asserting itself, one that is both more responsible and responsive to community needs and one where power can be meaningfully exercised. In the short term, however, there appears to be some justification to such claims. A comparison of the number of cases filed before the *Sandiganbayan* between 1990 and 1998 broken down by respective departments of government shows that by far the largest number of such complaints involved the Department of the Interior and Local Government (DILG). Not only did the DILG account for 4,874 out of the 10,615 cases or 46 per cent of the total but the sum of money involved, P3.86 billion (US\$77.14 million) or nearly 40 per cent of the total P7.749 billion (US\$193.7 million), was more than three times greater than that of the next most cited department, Finance (Figure 8.4). Moreover, municipal mayors constituted nearly half (166 out of 339 individuals) of the number

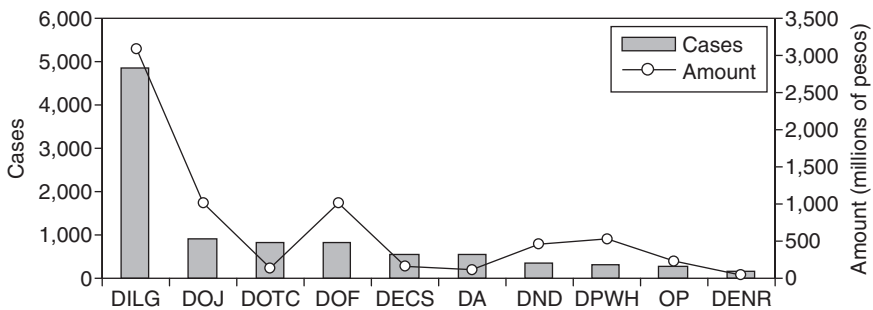


Figure 8.4 'Top ten' department cases filed before the *Sandiganbayan*, 1990–98 (source: *Inter-Office Memorandum* dated 30 January 1999, Office of the Ombudsman).⁷¹

Key:

DILG (Interior and Local Government); DOJ (Justice); DOTC (Transport and Communications); DOF (Finance); DECS (Education, Culture and Sports); DA (Agriculture); DND (National Defense); DPWH (Public Works and Highways); OP (Office of the President); DENR (Environment and Natural Resources)

of so-called 'bigfish' cases filed by the Ombudsman and pending before the *Sandiganbayan* as of 31 December 1998.⁷⁴ An alternative interpretation, of course, might explain the corrupt practices of local government officials as just more 'visible' in respect to the law and so more easily prosecuted than those committed by more powerful bureaucrats at the national level. Still, the whole question of rapid decentralisation of government after years of authoritarian rule, as is also presently under way in Indonesia, seems to invite further study in this respect.

Conclusion

Corruption, or rather measures taken to combat it, has moved steadily up the national agenda of states like the Philippines. Since the Asian financial crash of 1997, multilateral lending agencies and other funding sources have increasingly made evidence of 'good governance' a precondition for further borrowing. In the case of the Philippines, greater commitment to rooting out corrupt practices in government was made a requirement by the country's foreign donors for a pledged US\$2.6 billion in new loans and aid for 2001.⁷⁵ Indeed, the entire recent anti-corruption drive often seems to blend seamlessly with the 'western' neo-liberal agenda and its promotion of macro-policy reforms such as lowering tariffs and other trade barriers; unifying market exchange and interest rates; eliminating enterprise subsidies; minimising enterprise regulation, licensing requirements and other barriers to market entry; privatising and de-monopolising government assets; enhancing transparency in the enforcement of banking, auditing, and accounting standards; and improving the tax and budget administration.⁷⁶ This approach understands the workings of corruption more from the perspective of Robert Klitgaard's pseudo-formula of $C = M + D - A$ where 'M' is monopoly, 'D' is discretion and 'A' is accountability. 'It takes', he argues, 'monopoly plus a lot of discretion without any accountability to have corruption.'⁷⁷

The nature of corruption as this chapter attempts to show is, perhaps, a more complex matter than one of simply economic sector reform and greater governmental transparency. Rather, it is often interwoven into the fabric of society and the 'mutuality' that exists between culture and environment. The interaction of environmental processes with the patterns of production, allocation and internal social differentiation within complex societies privileges some sectors and disadvantages others.⁷⁸ In the Philippines, corruption is clearly linked to a whole range of social, economic, and political factors whose past legacy and current practice give rise to the evidence of graft, malfeasance, embezzlement, profiteering, nepotism, and other nefarious activities. But corruption is also occasioned by the magnitude of natural hazards and the frequency of the disasters that they spawn. Moreover, as the opportunities for corruption multiply in parallel to the increase in the number of such events, the two may even

function as integral mechanisms regulating the flow of power and wealth within a society. This observation may have application not only to the Philippine situation but also to many other states in Asia and beyond.

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9 Corruption in Burma and the corruption of Burma

Peter Perry

This account of Burma's corruption looks at both a practical and an intellectual problem.¹ In both of these there are elements particular to Burma. Régimes so totalitarian and so long lasting as that currently in power in Burma are now exceptional. This chapter also deals, however, with particular versions of general problems which arise in any attempt to provide an account of political corruption, a phenomenon which has only recently begun to be taken seriously as an intellectual enterprise. At least in terms of recognition of the importance of corruption Burma is well placed. Furnivall frequently raises the issue in a book published half a century ago.² However, these issues are not the rationale of this chapter. Rather it is the combination of importance and neglect which makes them an essential starting point.

The word corruption is used often, loosely and inexactly, not only in everyday conversation and in the media but also by scholars. This limits its intellectual usefulness at least until some discussion and then definition have taken place. Without that, it indicates little more than that most people do not trust most politicians. Of course, the word is used outside the political sphere though in practice the adjective is very often subsumed into the word and corruption is understood to mean political corruption. That first step towards making corruption into an intelligible concept is assumed in this chapter, and my chosen definition varies from that of Alatas³ only by insertion of the word political: 'abuse of (political) trust in the interest of private gain'. Note at once the ideas of wrongdoing, deviation, and conflict of interest, to note but three, in what is a very rich and thought-provoking statement. While it is not hard to find accounts of corruption which take its presence for granted, its apologists⁴ never defend it as an ideal but simply in functional and interim terms. That defence does not work for Burma. Finally, it should be noted that the definition of Alatas, a Singaporean, Muslim sociologist, with largely third world experience is very much in tune with contemporary Western ideas.

It is not the only possible approach. Quite apart from an abundance of cryptic and epigrammatic statements, of which Acton on power and cor-

ruption is merely the best known, Aung San Suu Kyi's use of the word by focusing on outcomes nicely complements Alatas's ideas. She writes: 'It is not power that corrupts but fear. Fear of losing power corrupts those who wield it and fear of the scourge of power corrupts those who are subject to it'; and she refers to the 'humiliation of a way of life disfigured by corruption and fear'.⁵ These observations certainly point towards the frequently used pathological analogy – corruption as a chronic ailment – without contradicting Alatas's position which gives trust a central place.

Trust invokes such ideals as honesty, rule of law and orderly political process. What does a view of corruption thus derived and defined mean for a country whose legal system, constitution, and public service undoubtedly exist but which is in practice run by dictators whose decisions are more often arbitrary than consistent and where political trust, even within the élite, and honesty in general within the state apparatus are scarce commodities? Is Burma in such a condition that enquiry into political corruption is made meaningless by the scale of the phenomenon? Should this chapter come at this point to a full stop?

Two reasons are proposed for not giving up. Burma may not have much actual rule of law, but it has rules and laws to excess. Proliferation, complexity, and uncertainty of operation are the environment in which corruption thrives and corruption itself certainly favours the third of these. The nature and extent of private gain-driven deviance from the letter of the law are certainly worth talking about. Second, even without real law, the concept of public interest as opposed to private gain is not meaningless. Nor is the idea of conflict of interest implicit in the definition. The individualistic character of Burmese society, that of the Burman majority in particular, is often discussed and tentatively related to Buddhist ideals. That does not mean that when the citizen interacts with the government there is not plenty of room for disagreement, and for the needs and demands of the many to fall foul of the capriciousness and greed of the empowered minority.

Two more issues call for discussion. Burma has a very large informal sector. This is almost inevitably so when a regime seeks to exercise control in detail and yet fails to deliver. Burma has black markets galore, smuggling across every border, and a great deal of illegal trade (retail and wholesale) within the borders. All three are lubricated – another commonplace analogy – by corruption without being totally and completely corrupt. It is almost certainly the case that this informal economy is larger than its official counterpart and has been so for several decades. In the process the pathological analogy gives way to commensualism⁶ and the phenomenon of corruption itself becomes much less clear-cut. Corruption is to be recognised as a widespread and, in practice, certainly in aggregate, unmeasurable component of a vital informal sector which in turn is essential for the country's everyday survival. Simultaneously much of what it does and stands for – making planning or national delivery of, say, welfare

impossible – is Burma's greatest long-term problem. At best, it provides a life raft – not the right vessel for an ocean voyage, and no such vessel has been on offer in Burma during the past 50 years. Meanwhile the élite enjoy a first-class cruise paid for by corruption.

Finally, there is the question of evidence. Burma is one of those countries where corruption is well known to the point of being conspicuous. Even so, the connections between corruption and secrecy, deception and lying cannot be ignored, nor can the actuality that what is known and seen is but an uncertain and flawed part of a larger whole. To Western eyes the flagrancy still comes as a shock, especially when it reaches the stage of practical instructional manuals such as the one reviewed in the *Far Eastern Economic Review*, 28 June 2001.⁷ The author, a former commercial first secretary at Singapore's Rangoon embassy advises on such matters as bribing customs officials, setting up an overseas 'shell company' to hide foreign exchange, buying property through an 'unofficial wife' and even how to find someone to go to jail on your behalf. The fact remains that corruption tries to avoid leaving a paper trail, and so study depends upon observation, anecdote, rumour, hearsay, and experience as reported by journalists and travellers and analysed by academics – scholarship second or third hand. It should also be noted that official statistics are both scarce and generally unreliable. There is little against which to benchmark data on corruption. As to 'travellers' tales', Burma was, as an act of policy, made as inaccessible as possible between 1962 and 1988: almost no tourists, very few research visits, restrictions (especially geographical, to Rangoon and Mandalay) on journalists. There is very little research based on field study by active scholars especially by comparison with, say, Malaysia or the Philippines at this period and Burma is often the missing link in surveys of the region. What is in the quality media is as close as we come to abundant evidence – and still far from it. This is not to dismiss the contributions of, say, Bertil Lintner, Mya Maung or Steinberg⁸ or of annual reviews in *Asian Survey* and occasional pieces in *Far Eastern Economic Review*, *Asiaweek*, and *The Economist*, but to emphasise their scarcity value.

How then to proceed? First, the more distant past, monarchical and colonial, must be discussed though not at great length. Its connections to the present situation are more interesting than profound. The post-independence story has three parts: the U Nu period, 1948–62; the Ne Win period, 1962–88 at the end of which the military régime wobbled but did not fall; and a period of paralysis since 1988. In practical terms the last of the three matters most, in terms of explanation, the preceding heyday of military rule. Under Ne Win there was an extensive and deep-rooted system of rule with detailed control and centralisation of decision. These, its main features, have been no more than modified since 1988. But changes in economic policy in the past 15 years, though more accurately described as superficial than fundamental, have increased opportunity and

rewards for corruption while the absence of real political change has inhibited any effective assault.

Before Ne Win

Thant Myint-U's work on pre-colonial Burma⁹ reveals a state arbitrary and demanding, from which the citizen was wise to keep his distance. The resemblance with contemporary Burma ends there and scarcely extends as far as corruption. And what would that concept mean in a political order lacking any real bureaucracy? Attempts to create such an apparatus in the last years of pre-colonial upper Burma were not a success. The existence of real continuity notwithstanding, a degree of nostalgia is mobilised when resistance to modernisation is on the agenda. But there is little significant connection relevant to discussion of present-day corruption even in such issues as nepotism.

Colonial rule was in theory equally distant, but in practice it was much more intrusive and, as a modern bureaucracy, harder to escape at least in the lowlands. It was also much written about, by George Orwell, by J.S. Furnivall,¹⁰ a major authority on colonial administrative practice on the basis not least of his time in Burma, and by the less well-known Maurice Collis,¹¹ a civil servant turned man of letters. The consensus is that bribery was commonplace among Burmese officials in every department but not at the highest levels of the public service. As economic policy was directed towards resource development for global markets, an economic success story except in terms of equity and social justice, there were opportunities for native entrepreneurs (as well as for Indians and Chinese) to get rich and to use corrupt paths in doing so. Taylor¹² uses as an example from the inter-war years Kyan Aung, a revenue surveyor who used his corruptly enhanced income to buy land, as a moneylender (essential in the expanding rice industry), in fisheries, and in local government contracts. Each of these in turn provided opportunity for corruption. When he was prosecuted, the cases failed because there were no witnesses. There is certainly continuity into the post-independence period, but almost no comment on the possible role of war and occupation, proverbially fertile ground for corruption, and the U Nu phase (1948–62) had a reputation not only for some degree of political success and a mild version of socialism but also for chaos and corruption. Hence for two years (1958–60) within the period Ne Win was in power with a 'clean-up' brief. Not only did he achieve some success and reputation but he stepped down. In 1960 the *New York Times*¹³ reports not only a record harvest but that corruption, inefficiency, and bureaucracy are being eliminated: foreign investors were guaranteed ten years' protection against nationalisation, and wisely, as it turned out, remained cautious. In this same period the army hugely, and again apparently competently, expanded its business operations from a traditional commissariat base to a very wide stake in the economy, gaining in the

process a reputation (if not the reality) of competence which was to stand it in good stead for at least a vital few years when in 1962 it resumed power.

State socialism

The core policies and practices associated with the régime which came to power (led by Ne Win) in 1962 have proved remarkably durable, the more remarkable given their negligible economic success. The two key elements are control and consequential scarcity. A *Financial Times* report of 23 October 2002 emphasises the latter – it is after all more newsworthy – while recognising the role of the former. It could almost have been written 40 years ago. Avowedly socialist and committed to resource development the regime quickly nationalised the more modern sectors of the economy – minerals, timber, what little manufacturing there was, and all but the smallest of shops – as well as actively intervening in agricultural production and marketing, and small-scale retailing. Within two or three years most goods were in short or erratic supply, except to the political élite, the military and the public service, and the delivery of rice via the compulsory procurement system was falling well short of target and potential. In each case corruption played a part.

In 1966 the *New York Times* reports:¹⁴ ‘the centre of the mess is commodity distribution’ and describes ‘Rangoon’s grim streets with block after block of barricaded closed stores with shelves empty, with sidewalk pedlars offering only tin spoons and plastic soap dishes’. The black market expands to fill the need, at first mainly for necessities – fish paste, the essential protein at four times the official price (and the ration was only one-twentieth of the need), and good-quality rice (not usually available via government stores). Twenty years later a much wider range of goods is available. O’Brien¹⁵ notes this change and is told that most are smuggled: ‘were there many rich customs men I asked ... and I received only a little smile and a little laugh by way of an answer’. The black market had become generally open – ‘no hole-in-the-corner affair ... rows of cassette players, motor bikes, cosmetics ... without apparent harassment and only token police intervention’.¹⁶ Government tacitly accepted that the markets met a demand which it was dangerous not to supply. There were also specialised black or at least irregular markets. In the gem trade in the 1980s these probably accounted, smuggling included (and of course smuggling provisioned black markets in general), for 95 per cent of the trade.¹⁷ This had in the period before 1962 been a remarkably clean trade. Gems could be safely sent through the post to Paris dealers¹⁸ but a 1963 report describing the government takeover discreetly talks of ‘resort by some traders to methods of business which cannot be regarded as normal’.¹⁹ All these black and irregular markets were corruption-dependent and corruption-generative, to get the goods, to persuade officials not to act, in their rela-

tionship with state shops and wholesalers, even in the means used by purchasers to pay high prices. Corruption is here most evidently a circular and self-sustaining phenomenon.

Alongside black markets corruption has been and remains important in every other sector. The basis of sex tourism is, according to the *Far Eastern Economic Review*,²⁰ bribery of officials. Acetic anhydride, an essential for drug manufacture, was smuggled from India in the early 1990s, probably with assistance from the army.²¹ Most jade was smuggled as late as 1989.²² The stream of examples and anecdotes is endless. More important but less well known is the role of corruption in the rice trade, important because this was planned to be the engine of Burma's economic growth and the failure of that growth, in part due to corruption in the procurement (i.e. compulsory purchase) process, is one of the root causes of Burma's economic decline. Mya Maung provides detailed accounts. In essence, 'the real cause of the shortage of rice ... was ... a highly inefficient system that was riddled with corruption, and smuggling of paddy rice by farmers, government officials and merchants to fetch higher prices in the unofficial/black market inside Burma and across the border'.²³ This was the basis of both scarcity in local markets and of the failure of rice export. His farmer, probably a composite of several individuals, not only bribes and cheats officials but observes the barges of private buyers drawn up alongside government barges on the river and the transfer of rice from one to the other, in return for a bribe as well as a price, to supply the black market. A second source was private mills, permitted to operate by government so as to overcome inadequacies in the state system. They sold illegally on to the black market to supplement incomes set by the government at a very low level. This is one of the few cases where the simple and often alleged connection between remuneration and corruption probably holds true in simple terms. He also notes that rice is sold in two classes, superior for certain élite groups and inferior quality for the rest. The whole operation is set in a context of incompetence and lack of technical expertise, the relative importance of each contributing factor being impossible to quantify.²⁴

The black markets and the procurement system are the initial heartland of Burma's corruption and have retained that role in a much expanded version. By 1976 the *Far Eastern Economic Review*²⁵ writes of corruption at the highest levels, abuse of state property, opening (illegal) retail businesses (i.e. joining the black market), acquiring land in the name of relatives, smuggling wealth overseas. These are all acts of corruption within the Alatas definition. O'Brien noted that by 1990 the army's 'unofficial dealings ... [in] ... opium, jade, rubies, pearls and probably teak were by far the biggest benefits',²⁶ overtaking by implication shopkeeping and small-scale local bribery. The gradual opening up of Burma to outside business interests, a trend rapidly accelerated after 1988, provided more opportunities. In the timber trade, for example, probably one of the less

corrupt in the 1960s and 1970s, a trade journal in 1985 describes traders visiting Rangoon several days a month 'to massage their contracts'²⁷ and the rapid development of Thai interests and involvement shortly thereafter is said to have massively increased corruption.²⁸ In the minerals area 'signing bonuses' of millions of dollars are reported, \$5 to \$10 million in the oil and gas sector in 1991,²⁹ and a highest level of \$3.5 million in the gemstone sector in 1992.³⁰ Even if, as is likely, these bonuses contained a legal component destined for the state treasury, it would be most surprising if they did not also contain a personal component.

For most of the period 1962–88 a resource-rich part of the country, in essence the mountainous periphery, was not effectively controlled by the central government but by insurgent minorities, commonly ethnic and occasionally ideological in character. Seasonal armed conflict was the most evident outcome but trade and resource exploitation were inhibited rather than suppressed, and opportunities for corruption were abundant, 'border' taxes, local and occasional deals – not least in the expanding drug trade – were probably more extensive than was recognised at the time. When, rather unexpectedly, most of the insurgencies collapsed in the early 1990s to be replaced by regional-scale long-term deals – operating franchises in return for peace and pay off³¹ – corruption increased. The drug trade in particular thrived whatever its legal status, commonly on the basis of cross-border trade and therefore cross-border corruption. Generally the situation outside Burma was more fluid, especially in Thailand. The large mesamphetamine trade from Burma to Thailand that developed in the later 1990s was reported in 1999 to be based on corruption on both sides.³² By 2001 the Thai authorities had become officially if not in practice entirely zero tolerant but the Burmese army remained heavily involved, necessitating an awkward readjustment.³³

There is almost no evidence of more than occasional and short-lived diminution of corruption, little expression of concern at the highest level. The reasons for this latter are self-evident. As to the popular level, Burmans in particular are slow to protest or even organise in the face of a ruthless government. Until the rice runs low the tolerance level is very high, perhaps an expression of popular Buddhism, even though that position may be disputed by scholars. Official actions against corruption have been nothing more than occasional and selective but may reveal a vestigial puritanism or more often the advantages to be gained by finding a scapegoat, appearing to do something against the drug trade, for example. When the whole of the Myanmar Investment Commission was dismissed in 1999,³⁴ the accusation listed 'ineptitude, corruption and philandering'. At least the first two of these are almost invariably and inextricably connected. Regional military commanders are certainly expected to keep corruption within limits while yet able to put together a personal fortune.³⁵ Younger officers are often more hard-line in this area on such grounds as the connection between reported high levels of corruption and weak

foreign investment,³⁶ but such an attitude rarely survives promotion to those levels where opportunities are greatest.

For more than 40 years both everyday life and the political and administrative apparatus in Burma have been thoroughly corrupted. Distributive mechanisms are predominantly irregular, dominated by black markets. Any kind of citizen–government interaction will require a bribe. For most participants corruption is a survival mechanism. This in turn leads to explanation in terms of low wages and salaries,³⁷ a limited account which too often ignores the role of government policy and practice. Burma's poverty is both an outcome and a cause. It is part of that corruption generated in part by need, but much more by greed – the point at which individual morality enters the picture – and by misguided policies coupled with unwillingness even to consider alternatives. Again this is to put Burma into the mainstream of corruption scholarship. As to the drug trade, resource concessions, and bribery at the middle and higher levels of government: whatever explanations may be invoked, there is not the slightest doubt as to their immorality and their connectedness. The problem lies not in this area of explanation but in recognising and implementing the alternative paths – or at this stage paths to alternatives – known as reform. But even the need remains unrecognised.

How big? How much?

Comparisons of the informal sector in Burma with the legal economy were and are often made. Made at different dates by individuals of differing expertise and opinion and on different definitions, they are not easily compared. *The Wall Street Journal*³⁸ in 1988 suggested an informal sector three times bigger than its counterpart. Mya Maung suggests a black market equal to its official counterpart in the 1970s and larger by the 1980s.³⁹ At the other extreme Hill and Jayasuriya writing in 1986 put non-legal trade at about or more than one-quarter of legal imports.⁴⁰ It is hard to believe that the illegal sector has not been at least as large as the illegal for two decades or more. Two points follow from this. It is ridiculous to view corruption as an extra or even just as a temporary and transient burden capable of simple abolition without a great deal of bother or adjustment. Corruption is a core component, even a core value, the basis for individual and official decision-taking. Second, the 1987 decision to grant Burma LDC (least developed country) status is based on government figures. These are known to be wrong and in any event represent (more exactly misrepresent) only part of the picture. The role of the informal sector in general and corruption in particular is not admitted. Burma is an inappropriately developed rather than underdeveloped country and not so little developed as to justify this quasi-privileged position.

Particular accounts are similarly problematic as to hard data. They too deal in round numbers, the millions of dollars of signing bonuses already

discussed. An alternative method of high-level evaluation asserts in 1984 that a colonel's unofficial income was about ten times his official salary.⁴¹ Lower down the scale a middle-ranking official on the India border was reported in 1994 to receive \$12,700 a month in bribes.⁴² The *New York Times* in one 1985 issue reports: a bribery level of 3 per cent on external contracts; a \$500 bribe on a typical cross-border smuggling trip divided equally between Thai and Karen; merchant seamen allowed to bring in one car a year – a very lucrative privilege; and rubies and jade smuggled to Thailand to buy sports shirts and, of course, spare parts.⁴³ These latter were the real Achilles' heel of Burmese economic life. At the grass-roots level the differences between black market and free market prices, often reported, are useful indicators, though as in almost all these examples corruption is not the whole story. In or about 1983 when petrol was often scarce and the supply never reliable, the black market price ranged from four to forty times the official.⁴⁴ Four years later the *New York Times* gives a factor of 15+ for Rangoon and perhaps 30+ elsewhere and also mentions unreliability of supply.⁴⁵ Even when the supply was at its most reliable, the black market in petrol was a 'nice little earner'. In rice the factor as reported in the *New York Times* and *The Economist* ranged from 1.5 to 4 during the period 1962–87.⁴⁶ In 1985 the same paper reports food other than rice at 2:1, kerosene at 12:1.⁴⁷

Conclusion

In the first half of the twentieth century Burma was clearly a wealthy country. Most of its resources were being developed effectively and with modest environmental damage. There was room for further growth. What was needed was a mechanism and method to continue development while distributing the profits away from expatriate capitalists and a local élite into the mainstream of Burma's life. That exercise was proposed but never effectively put into action. Corruption alongside a range of other circumstances and interacting with them – greed, inexpertise, ideological ineptitude are but three examples – is one of the reasons why. The intellectual and practical problem is to try to extract the corrupt component from the larger matrix of misery. For even accepting that LDC status represents exaggeration, Burma's experience has for 50 years been miserable and remains so. Almost every other country in the region has done better and some of the most successful, notably Malaysia, combine that success with a less generous resource base, significant ethnic problems, better government and less corruption. It is interesting to note parallels with the experience of Europe's communist satellites, perhaps most closely with Romania. In those countries régime and policy change have occurred more or less at the same time as it stopped short in Burma. There the situation remains: élite enrichment on the basis of abuse of power. Redistribution was never really tried, theft was preferred and privileged. In the last

resort, individual morality cannot be left out of the discussion and the declining tone of private and even public morality in Burma during this period has been commented upon. Change seems unlikely, but so it did in Europe in the 1980s. Argument as to how Burma could change proceeds at the political and intellectual levels but it should be noted that what happened in Europe owed much less to argument than to material discontents and awareness not only of gross internal inequity – *nomenklatura*⁴⁸ privilege – but that the neighbours were much better off. (Even so, régime change led to the transformation of corruption, not an immediate diminution.) On this basis, Burma's isolation, still enforced on most of the population by law as well as poverty, is significant. What once protected Burma's cultural integrity and now fails to do so becomes part of the élite's defensive apparatus allowing it to remain parasitically attached to the country's resource base and to appropriate a rich surplus from it. Régime change is then the key issue as far as corruption control and its reduction go. The élite may have managed corruption but soon lost interest in serious reduction. Signs of change are few and, when they occur, may be misleading or misread. However, experience in Europe and Asia suggests that such change can occur and often peacefully. At least some of Europe's ex-communists who have returned to political life could be described as genuinely reformed, and as already noted these velvet revolutions came from within. Sadly, such a proposed reformation in Burma is normally reported in terms of demotion, dismissal, reprimand or punishment. Even as Burma's situation remains more and more exceptional in global as well as regional terms, so evidence of change is scarce. But more happily, that global perspective also entitles us to expect the unexpected and to at least hope for a happy ending to a sad story.

Notes

- 1 For the author's general position on political corruption, see Peter John Perry, *Political Corruption and Political Geography*, Aldershot: Ashgate, 1997 (including discussion of Burma and Thailand, pp. 47–56).
- 2 John Sydenham Furnivall, *Colonial Policy and Practice: A Comparative Study of Burma and Netherlands India*, first US edition, New York: New York University Press, 1956, pp. 164–5, 170–8, 269–71.
- 3 The best modern introduction. Syed Hussein Alatas, *Corruption: Its Nature, Causes and Functions*, Aldershot: Avebury, 1990.
- 4 For example Samuel Phillips Huntington, *Political Order in Changing Societies*, New Haven, CT: Yale University Press, 1968, pp. 59–72; Robert King Merton, *Social Theory and Social Structure*, Glencoe, IL: Free Press, 1949, pp. 71–81.
- 5 Michael Aris, ed., *Freedom from Fear and Other Writings*, London: Penguin, 1991. (This is a collection of Aung San Suu Kyi's major writings to 1991, together with four appreciations.)
- 6 Commensualism is the biological term for mutually beneficial while not necessarily equal partnership between organisms.
- 7 H.C. Matthew Sim, *Myanmar on My Mind: A Guide to Living and Doing Business in Myanmar*, Singapore: Times Books International, 2001.

- 8 Bertil Lintner's work appears in *Far Eastern Economic Review* (FEER) and in book form, e.g. *Land of Jade: a Journey through Insurgent Burma*, Edinburgh: Kiscadale Publications, 1994; Mya Maung, *The Burma Road to Poverty*, New York: Praeger, 1991 and *The Burma Road to Capitalism*, Westport, CT: Greenwood, 1998; David I. Steinberg, *The Future of Burma: Crisis and Choice in Myanmar*, Lanham, MD: University Press of America, 1990.
- 9 Thant Myint-U, *The Making of Modern Burma*, Cambridge: Cambridge University Press, 2001, is a comprehensive account of this period.
- 10 Furnivall, op. cit.
- 11 Maurice Collis, *Trials in Burma*, London: Ams Press, 1938.
- 12 Robert Henry Taylor, *The State in Burma*, London: Hurst, 1987, pp. 165–7.
- 13 *New York Times* (NYT), 12 January 1960.
- 14 NYT, 27 February 1966, 21 June 1966.
- 15 Harriet O'Brien, *Forgotten Land: A Rediscovery of Burma*, London: Bloomsbury, 1991, p. 122.
- 16 Caroline Courtauld, *In Search of Burma*, London: Frederick Muller Ltd, 1984, p. 17.
- 17 R.E. Kane and R.C. Kammerling, 'Status of Ruby and Sapphire Mining in the Mogok Stone Tract', *Gems and Gemology*, 28 (1992): 161.
- 18 M. Bevinley, 'La liste de Mogok', *Révue de Gemmologie*, 138–9 (1999): 62–6.
- 19 Anon., 'Gem Trading Difficulties', *Journal of Gemmology*, 9, 3 (1963): 108–9.
- 20 FEER, 13 January 2000.
- 21 FEER, 10 June 1990.
- 22 *Mining Journal* (Annual Review), 1989: A95.
- 23 Mya Maung, *Capitalism*, p. 127.
- 24 Mya Maung, *Poverty*, pp. 123–30.
- 25 FEER, 9 April 1976.
- 26 O'Brien, op. cit., p. 124.
- 27 *Asian Timber*, 4 July 1985, p. 48.
- 28 FEER, 22 July 1993.
- 29 FEER, 8 August 1990.
- 30 Kane and Kammerling, op. cit., p. 160.
- 31 *Asiaweek* (AW), 18 December 1992. NYT, 3 May 1970, discusses its earlier parallels.
- 32 AW, 13 August 1999.
- 33 *The Australian*, 17/18 February 2001.
- 34 AW, 8 September 2000.
- 35 AW, 3 September 1999.
- 36 *Asia Yearbook*, 1999, pp. 84–9.
- 37 For example, David I. Steinberg, 'Myanmar in 1991: The Miasma in Burma', *Asian Survey*, 32, 2 (1992): 150. This explanation is clearly relevant to petty corruption, but of limited use as a general evaluation.
- 38 *Wall Street Journal*, 12 October 1988.
- 39 Mya Maung, *Capitalism*, p. 127.
- 40 Hal Hill and Sisira Jayasuriya, *An Inward-Looking Economy in Transition: Economic Development in Burma since the 1960s*, Singapore: ISEAS, Occasional Paper no. 80, 1986.
- 41 NYT, 17 May 1984.
- 42 FEER, 9 June 1994.
- 43 NYT, 24 November 1985.
- 44 *Minerals Yearbook* (US Dept. of Interior – Bureau of Mines), 1983; NYT, 16 April 1987.
- 45 NYT, 16 April 1987.

- 46 Reports are intermittent but not infrequent. High factors are more likely to be noted than low.
- 47 NYT, 12 September 1985.
- 48 The *nomenklatura* in the Soviet Union and its satellites was the élite group not purely political, legally entitled to special privileges in a variety of areas, education, health care, housing, for example, and notorious for their abuse. The parallels with Burma are not exact but they are of interest. Such situations are almost always generative of corruption.

10 Governance in Indonesia

Developing search strategies

Ahmad D. Habir

Introduction

Despite a higher than expected growth in GDP of 4 per cent in 2003, Indonesia is still at the bottom of the list of Asia's former crisis countries. The growth, just as in previous years, has been fuelled mainly by consumption. The country's corporate sector is still burdened by heavy debt. The investment climate is deteriorating due to red tape, corruption, increases in legal minimum wages, some excessive regional government taxation, a potential power crisis, and a weak legal system.

Why is Indonesia still lagging so badly behind the other Asian countries in recovering from the crisis? Many focus on the inability of the government to implement the programmes prescribed to it by the International Monetary Fund and the World Bank or its lack of political will to do so. In addition, the lack of good governance, both in the government and the corporate sector, is considered as another serious obstacle to recovery. Such arguments presuppose that solutions to overcome the crisis require minimising the role of the government in order to allow markets to be effective, and assume that, if that could be done, the Indonesian crisis could be overcome.

However, others contend such arguments oversimplify the challenges facing Indonesia. Mishra, for example, argues that Indonesia is undergoing a 'systemic transition', that is, a potential societal transformation that lies beyond the ability of traditional structural adjustment programmes to resolve. According to Mishra:

Systemic reforms by their very nature are rare phenomena. They are history in the making. The opportunity for total reform comes once in a lifetime if at all. Indonesia is no different. The current transition is only its second attempt after independence to establish a pluralist democracy. It is sparked by an economic crisis which bears easy resemblance to the disastrous economic situation in the early 1960s. It takes place against the backdrop of frustrated expectations of a whole generation, which has seen its future prospects tumble, and its life

plunged into uncertainty. Forty percent of these live in cities compared to less than a tenth just after independence. Issues of great merit and national importance: the relation between state and person, between town and country, between centre and region, between state and religion, between the military and the civilian, commonplace in the first phase of democracy in the early 1950s have now returned with even greater force to the public arena.¹

In a similar vein, Howard Dick argues that the ‘challenge of sustainable development should be reconceptualised as a problem of “search strategy” in which politics are an essential part of the process and institutions are formed to embody learning-by-doing’.² Therefore, a long-term political evolution is to be expected, instead of the quick fixes promised by political reforms. Poor countries aiming for developed status today face the challenge of double transitions: the economic transition of going from poor to rich and the political transition from autocratic to democratic.

The difficulties along the way can lead to an uncertain intermediate state in which the ‘lack of economic progress frustrates political reform and the lack of political reform frustrates economic progress’.³ Because of the problem of double transitions, Dick states that a ‘search strategy’, a sophisticated form of muddling through or learning through trial and error, is more appropriate than a programmatic change strategy in which a clear predetermined path is set, as for example, in the case of the letters of intents and reviews characterising the relationship between the IMF and Indonesia during the crisis.

For each country, the transitional zone is largely unmapped. The experience of developed countries – and perhaps the failures of some other undeveloped one – may be a rough guide but the social and political terrain invariably differs. Society must somehow be led or conduct itself across its own terrain, ideally in the shortest time and without extreme conflict and hardship.

Search strategy can ... be reconceptualised as one of iterative social learning. By studying the experience of other countries and through its own processes of trial and error, a society must be able to reject unviable paths and identify those offering good long-term prospects. Ideologies are like virtual reality glasses, whose vision must be tested over actual ground. The essence of such social learning is conflict and its resolution. In this way the experience of myriad small and large groups is diffused and gradually formulated in rules. These rules or institutions embody social knowledge, so that once unknown terrain begins to acquire recognised features and pathways.⁴

However, Indonesia’s history in the twentieth century was not conducive to the learning of democracy as seen in the timeline (Table 10.1).

Table 10.1 Indonesian political periods, 1901–98

<i>Year</i>	<i>Politics</i>	<i>Economics</i>
1901–20	Ethical Era	Expansion and boom
1920–30	Reaction	Expansion (after 1923)
1930–42	Repression	Depression and recovery
1942–45	Occupation	Catastrophic decline
1945–49	Revolution	Uneven recovery
1950–57	Parliamentary Democracy	Rehabilitation
1957–66	Guided Democracy (1959)	Stagnation and decline
1966–73	Modest Reform	Economic recovery
1974–98	Repression	Rapid development
1998–	Democratisation	Crisis and stagnation ⁵

Periods of democracy were few and episodic. Authoritarianism was the dominant strain of governance. Learning about authoritarianism and the patrimonial strain that went with it was easier than learning about democracy.

However, the politics of the latest period of democratisation is the learning process that should give rise to structures and institutions that have popular support. This goes against the current conventional policy wisdom that politics should be avoided in developing the economy and the institutions of the country. Indeed, the more politics there are, the better it is.

Has there been more politics in the democratisation period? Has it been the type of politics that provides the learning process that would indeed give rise to institutions that have popular support? In this chapter, three cases related to governance will provide illustrations of the processes and their implications: the first, constitutional reform, the second, state enterprise reform, and the third, corporate governance reform.

Constitutional reform

The 1945 constitution established a strong executive branch under a president, who was both head of state and head of government. In addition, the president was the Supreme Commander of the armed forces, with the powers to declare war, make peace, and conclude treaties. The president appointed ministers of state and appointed and dismissed judges. The president could declare states of emergency and veto legislation passed by the legislature. In sum, government power was concentrated and unified by the constitution, with separation of powers featuring minimally in the government structure.

In the constitution, popular sovereignty was in the hands of the People's Consultative Assembly (MPR). Its principal functions, as

described in the constitution, were to elect the president for a five-year term, to amend the constitution, and call the president to account to explain his or her actions. The lack of separation of powers was illustrated both by the MPR's reviewing laws on the basis of constitutional principles and by the majority of the MPR's coming from the legislative body. About one-third of the MPR were appointed, with direct representation of the military, provincial assemblies, and functional groups. The other two-thirds comprised the directly elected national legislature, or People's Representative Assembly (DPR), that had little clear power relative to the president as the chief executive.

Following the collapse of the New Order regime, the respective powers of the presidency and the legislature have been subjects of constitutional reform proposals. The four amendments to the 1945 Constitution have changed the structure of the Indonesian state, while still affirming its basis as a unitary state, the presidential system, and state ideology.

In brief, these amendments achieved the following:

- moves towards asserting democratic, civilian control over the military, and the phased removal of the military from political affairs;
- measures to strengthen and clarify the legislative powers of the DPR;
- measures to strengthen the oversight and accountability powers of the MPR *vis-à-vis* the president;
- steps to clarify the 'hierarchy of laws' so that the president's decree-making powers and the government's freedom to make regulations are constrained;
- the inclusion in the constitution of statements on basic human rights;
- direct election of the president and vice-president;
- creation of an upper chamber to represent the regions; and
- creation of a constitutional court.

The major constitutional changes include:

- The exercise of the sovereignty of the people under the provisions of the constitution rather than through the MPR. This ended the role of the MPR as the single supreme state institution. Its limited powers include making constitutional amendments and swearing in the elected president and vice-president. It will consist of elected representatives only, i.e. members of the DPR and the House of Regional Representatives (DPD). There will no longer be appointed representatives such as the military and societal group representatives. Future constitutional amendments can only be introduced by a third of the MPR members and amendments can only be passed by more than 50 per cent plenary session vote with a quorum of two-thirds of MPR members.
- The introduction of the principle of separation of powers between the legislature, the executive, and the newly independent judiciary.

- The introduction of a directly elected president serving as both head of state and head of government who can only be impeached on grounds of breach of the constitution, criminality or moral turpitude, but not as previously on policy grounds.
- The president and vice-president will be directly elected on a single ticket requiring an overall majority of the vote and at least 20 per cent of the votes in half of the country's provinces – the top two candidate pairs will enter a run-off election.
- A president can hold office for no more than two terms.
- The establishment of a Constitutional Court tasked with constitutional review of legislation, resolution of disputes between state institutions, admissibility of impeachment proceedings, disputes relating to election results and cases on the dissolution of political parties.
- The establishment of a second chamber of the legislature, the House of Regional Representatives (*Dewan Perwakilan Daerah* or DPD), with general oversight powers and joint legislative powers with the House of Representatives (DPR) on issues affecting the regions.
- The independence of the national election commission (KPU).
- The provision that the participants in elections to the DPR and Regional Legislative Assemblies (DPRDs) will be parties, while the participants in elections to the DPD will be individual candidates.
- An independent Judicial Commission to oversee judicial ethics issues and Supreme Court appointments.
- A provision for an independent central bank.
- The abolition of the Supreme Advisory Council.

The implications of these changes to the system are:

- A directly elected president will have greater legitimacy and public support.
- The president will be able to take responsibility for government policy under legislative oversight without threat of impeachment.
- The government needs to maintain majority to pass legislation; thereby it has to build ties with other political parties in legislature.
- Candidates will be nominated by parties so most likely they will be from parties and coming from the ranks.
- The president and the vice-president will be nominated and elected as a ticket so there are opportunities for alliance-building across parties.
- Regional autonomy will gradually be curtailed through the strong role of the national government and the influence of the 'central' major political parties. The regions will still have greater administrative authority but power will remain with the central government. The DPD will be a check on this centralising by the government.

(Van Zorge Report, 28 June 2002, 2 September 2002)

While, all in all, the amendments will provide greater democracy, more accountability in government, and a better system of checks and balances, the laws and regulations to implement the new constitutional amendments still remain to be enacted. Because the amendments were pushed through by a cross-party subcommittee of the MPR's Ad Hoc Committee I and not through a widespread public debate, some observers have argued that the constitutional amendment process was not a democratic one and therefore would not be sustainable. Their preference would be to rewrite the entire constitution, as was the case in South Africa and Thailand. Others, however, point out that a more incremental approach is more appropriate for the Indonesian case because the 1945 constitution still had widespread legitimacy among the public.

State enterprise reform

State enterprise reform, including the policy of privatisation, is a prime example of the conventional wisdom emanating from international multi-lateral agencies. But the slow and contentious pace of the state enterprise reform can be seen to be a natural outcome of the stages of conflicts and resolutions that make up the search and learning process.

Historically, in many countries, state enterprise sectors have rarely achieved the aims set out for them by governments. Expected to combine the best of the public and private sectors, they have rarely fulfilled that expectation. Indeed, at times they have combined the worst of both. Deficiencies in governance play a major role in failure in performance. As a result, state enterprises have absorbed a large share of government budgets. Consequently, when governments run into financial problems, they began to consider how to turn state enterprises around. By the 1980s, two ways of doing so became important, one being privatisation and the other, the strengthening of governance. The first assumed that state enterprise performance could only be improved through privatisation; while the second preferred to improve governance on the assumption that privatisation was either not feasible or not desirable.

To complicate matters, there are many definitions of both privatisation and governance. Privatisation can mean: (1) the transfer of ownership from the public to the private sector; (2) the transfer of production previously in the public sector to the private sector; (3) government pricing of goods and services at market prices instead of fees for goods and services supplied; and (4) the deregulation of the economy by relaxation or removal of government regulations interfering with market forces.⁶

As commonly perceived, privatisation is a complement to governance. Governments can be substantial owners and shareholders through state enterprises, and they also act as a regulator in the economy. Where state enterprise performance lags, which is more common than not, weak governance is a contributing factor. Privatisation programmes are meant to shift

governance of the enterprises to private hands, which are assumed to be more efficient, given a competitive framework.

Another more political view takes a multi-stakeholder perspective centring on a state enterprise sector that can generate resources. Stakeholders compete for these resources to gain or retain social dominance. The challenge is to establish rules of the game that will allow the competition to be played out through mechanisms such as voice, vote or choice rather than through dominance and violence.⁷

However, the consensus required for such an outcome is highly unlikely. The more probable scenario is the imposition of the government's own criteria for evaluation, making privatisation the controversial policy that it usually is. The relative power of actors involved will determine the direction of the policy and its implementation.

From the political point of view, privatisation is driven by attempts to capture and keep rents. Conflict and controversy most often arise when the privatisation in question has the potential to create, redistribute, or reduce rents. Such rents may not only be financial in nature, but may be denominated in power and prestige, too. Politicians also wish to avoid or minimise the negative political impacts of privatisation. For example, selling state enterprise shares to foreign companies or citizens may not be looked on as favourably by politicians as by economists, even if it could facilitate the privatisation.

Other important stakeholders include civil servants, state enterprise managers, labour unions, and consumers. Privatisations threaten to weaken the power base of civil servants by reducing the resources available to them. State enterprise managers could share the same concerns, and at the same time be worried about losing the managerial autonomy that they may have and that allows them access to resources. They also face the threat of being removed after privatisation. This is the primary concern of employees and labour unions of state enterprises. Since new private owners would usually come under a mandate of creating more efficiency, the threat of dismissals is very real. Consumers may face higher prices if subsidies existing under the state regime are reduced or removed after privatisation, or if the change is from a public to a private monopoly. On the other hand, if efficiency results from the change in ownership, both lower prices and better service may result. The implication of this heterogeneity of interests is that privatisation is more effective if done on a case-by-case basis.⁸

In recent years, privatisation in Indonesia has not progressed as smoothly as hoped. Indeed, the reverse is true. One of the main reasons is that it has been conducted in a period of crisis where political reform, institutional change, and redistribution of resources are all happening at the same time. The need for political financing, for example, financing political parties, is intertwined with a corruption-driven political competition.⁹

Over the years, a wide range of policy tools have been used for state enterprise reform. Those have included restructuring, mergers, joint operations, and privatisation using public share offerings and direct placements. In recent years, the privatisation aspect has been an important and sometimes controversial part of the IMF programme for Indonesian economic recovery. The tools have also included attempts at accountability for high performance, such as the classification of state enterprises into categories of 'very healthy', 'healthy', 'less healthy' or 'not healthy' based on financial criteria, as well as the introduction of monitoring tools common in the private sector, such as corporate plans and yearly work plan budgets. More recently, the government has tried to encourage good corporate governance practices on a more systematic basis.

At the more macro level, supervision of state enterprises has shifted between the Finance Ministry and the technical ministries depending on the relative political strengths of the ministries as they struggled to control state enterprise resources. Supervision has also been shared between the Finance and technical ministries at times when political power has been in the balance. Recently, a separate ministry with sole responsibility for state enterprise supervision was established, to be dissolved after a few years in existence, then resuscitated once more in 2001.

The reform process has therefore been more piecemeal and *ad hoc* rather than systematic and strategic. The reasons lie in the historical development of the state enterprises as a national source of political power rather than as business entities. Those opposed to past reform directions include the economic nationalists ideologically predisposed against any moves towards a more competitive and market-oriented system. Opposition also comes from those viewing state enterprises as governmental instruments to achieve objectives, such as stabilising prices, providing employment, promoting regional development, and controlling strategic areas. These and others may also share the view of state enterprises as a necessary counterweight to a private sector dominated by Chinese Indonesian businesses and foreign investment.

In the state enterprise sector, pilot projects have been undertaken in order to implement corporate governance principles in the industries such as in PT Astra, PT Indosat, and PT Timah, the tin state enterprise. For example, PT Timah had its corporate governance practices assessed by an international accounting firm. The assessment included definition of roles and powers, code of conduct, board and management appointments, board skills and resources, board independence, business/community consultation, strategy-setting, risk management, and procurement control.

Despite advances in corporate governance in the state enterprise sector and despite the formal mechanisms of oversight, the governance of Indonesian state enterprises remains at a relatively high dysfunctional level. The underlying problems causing this include:

- 1 Excessive government intervention, for example, the imposition of multiple objectives that have led to unclear performance demands for state enterprise managers, leading in turn to confusion, de-motivation, or at worse, the opportunity to misuse managerial positions under the screen of the unclear performance demands. The unwieldy government supervisory structure on state enterprises gives rise to multiple reporting lines to ministries with conflicting agendas. At the same time, the government has regulated industries where state enterprises operated, such as setting electricity rates, fuel prices, road tolls, transportation fares, etc.
- 2 Internal unduly bureaucratic structures that have tended to concentrate power in the members of the board of directors. Excessive staffing, both at the senior and lower levels, has also contributed to top-heavy organisational patterns.
- 3 The poor quality of management at state enterprises, caused in part by the lack of incentives through relatively low levels of salary as compared to their private sector counterparts. In recruitment of managers, political criteria have often been emphasised over experience and ability. Indeed, managers have been known to bid for top positions in state enterprises, resulting in a network of patronage obligations that encouraged rivalry and competition rather than teamwork and cooperation. For the most important positions, the president of the country would have the major or decisive say in the decision.
- 4 No clear system of accountability. This includes weak and rudimentary financial and auditing mechanisms. The press has performed a watchdog function but needs professional improvement in that area.
- 5 Nationalist sentiment that has prevented reforms that have been directed at privatisation of state enterprises. The self-interest of managers, board of directors and commissioners, ministers, business groups and others benefiting illegally from the state sector has prevented reform aimed at greater transparency and accountability.¹⁰

Since the crisis, the legislature has increased its strength relative to the presidency. The legislators have taken an executive role in their oversight of state enterprises and in the privatisation process. With the strengthened role of the legislative branch relative to the presidency, the state enterprise sector has become more vulnerable to exploitation and capture by parliament.

The exploitation of state enterprises occurs because, first, implementation of good corporate governance reform has been at a formal level only. Second, political parties have not been held to standards of accountability and transparency. Consequently, with the approach of national elections in 2004, hidden fund raising has reportedly been at fever pace, as political parties do not have many legitimate sources of funds. For example, the amount of dues from memberships is said to be minimal.

There is a law on the books that forbids excessive contributions to political parties, Law 2/1999 on Political Parties, Article 14, that legislates that a political party can only receive funds from individuals to the maximum extent of Rp. 15 million and a maximum of Rp. 150 million from companies. The amount has to be included in the political party financial reports that are required to be sent to the Supreme Court at the end of each year and 15 days before and 30 days after each national election.¹¹ However, enforcement of the law seems to have been non-existent.

Given the obstacles above, what is the direction of privatisation, and in general, state enterprise reform, in Indonesia? On this, Hal Hill, a long-time observer of the Indonesian economy, makes these salient points:

Ideally, state enterprise reform requires at a minimum:

- 1 A competitive market environment – a private monopoly is not better than a public one.
- 2 Corporatisation of state enterprises to ensure that they are run on an effective commercial basis, and that assets yield commercially acceptable rates of return.
- 3 Where social goals are assigned to a state enterprise, the objectives need to be clearly specified, and there needs to be an appropriate provision for the costing of these additional responsibilities.
- 4 Accurate and transparent reporting procedures in monitoring state enterprise performance.

The Indonesian government, Hill says, might pursue state enterprise reform through a variety of means. One is ‘the removal of state enterprise monopoly rights and privileges ... probably politically the easiest reform to introduce’. A second step is ‘introducing a requirement that state enterprises meet acceptable financial performance targets, with the additional requirement that all subsidies (both explicit and implicit) to them are estimated and openly recorded in the state budget.’

Third, to facilitate the reform process, the interests of relevant stakeholders will need to be taken into account, and the support for them which was previously supplied by state enterprises may have to come directly from the government budget. This may be costly, but the payments will be ‘one-off’ in nature. The interests here could be extensive, since Indonesian state enterprises have been an instrument for so many policy objectives. One example is that they have been used to promote regional development, and so some sort of compensation for local groups may be necessary. Another example is that state enterprises are frequently used as a means of supplementing the remuneration of senior civil servants, and here too alternative methods would be required. Perhaps most important of all, state enterprises are seen as a bulwark of *pribumi* commercial participation.

Disposal of state enterprises, Hill adds, should be pursued ‘in a

completely open and transparent fashion . . . Where privatisation is introduced, it is desirable that, unlike the case of Semen Gresik and others, the sale takes the form of majority private ownership to ensure that the new owners can introduce the necessary firm-level reforms.¹²

Other policies could include:

- 1 To alleviate concerns of a majority private ownership recommended above, the remaining shares could be distributed through a broad-based privatisation strategy with the aim of spreading share ownership to the population at large, or to specific groups, such as the poor or labour unions.
- 2 A master plan for privatisation with political support from the government, including parliament. Such privatisation should be implemented in a competitive environment. Selling state enterprises to the private sector would remove many of the political and administrative interference from ministries. Partial divestiture would be less effective. Private placements should be transparent to prevent favouritism to cronies. Given the experiences in Bulgaria, Panama, and Ecuador,¹³ an expert group can be formed, in the Indonesian case by the Indonesian Transparency Society, for example, to evaluate whether the privatisation process complies with the law and to assess the transparency of the procedures. The Ministry of State Enterprises has released a master plan for 2002–06 that includes restructuring of state enterprises as well as privatisation. However, it was not clear whether the plan had been discussed with parliament prior to its release. Related to this are the calls for a law on privatisation to be issued by the parliament.
- 3 Developing good corporate governance in state enterprises. This includes merit-based recruitment and promotion systems, in government agencies and state enterprises (both Board of Directors and Board of Commissioners) to provide insulation from political interference. Other key areas are establishing credible financial controls and appropriate wage and salary levels.
- 4 Contracting for services with a private company, either national or foreign, that was formerly held by state agencies or enterprises. For example, SGS, the Swiss surveyor company, had once been contracted by the Indonesian government to take over the function of the notoriously corrupt customs department.
- 5 Monitoring by independent and reputable civil society groups such as the Indonesian Corruption Watch, Masyarakat Transparensi Indonesia, and others. Units specialising in state enterprises could be established in such organisations or a specialised centre focusing on state enterprises could be established.
- 6 Devising public rankings of state enterprises on good corporate governance criteria to pressure government and management to perform better in these areas. Rating agencies should issue the ratings.

- 7 Auditing by external auditors.
- 8 Training Boards of Commissioners and Boards of Directors on internationally accepted good governance practices.
- 9 Implementing anti-monopoly and bankruptcy laws.
- 10 At a general level, developing a strong judiciary system is a requisite for stamping out corruption and providing a foundation for good corporate governance.

Strong democratic institutions are essential for economic reform, including privatisation. In that context, it is important for the government to agree with the parliament on the strategy of state enterprise reform and privatisation, so that individual sales can proceed within the guidelines agreed upon without parliamentary interference. Under the new state enterprise law which provides the guidelines for, among others, privatisation, there could be that opportunity, although many remain sceptical that could be the case in the short to medium term as the process of institution-building continues to evolve.

Corporate governance reform

Corporate governance, narrowly defined, is the protection of shareholder interests. It is this definition, derived from the USA and the UK, that has been the dominant concept of corporate governance used worldwide, in Indonesia as elsewhere. During the crisis, the IMF through conditions in its Letters of Intent agreed upon with the Indonesian government, placed the issue of corporate governance in the national policy framework.

However, the corporate governance reform envisioned by the IMF, World Bank, and its domestic supporters has been slow to gain a hold in Indonesia, despite assumptions regarding the desirability of the convergence of corporate governance systems. Notwithstanding awareness of the need for better governance engendered by the Asian financial crisis and corporate governance reform, corporate governance itself has not improved markedly since the crisis, despite the pressures from the multi-lateral agencies and international investors. Indonesia remains among the worst-rated countries in the world in international corruption surveys. Anecdotal evidence suggests money politics and cronyism are rife, not only at the centre but also in the regions. Publicised cases such as the Lippo Bank and BNI scandals indicate that corporate governance in Indonesia has a long way to go.

According to an analysis of ownership–management patterns and the economic performance of Indonesian publicly listed companies in the pre-crisis and post-crisis period,¹⁴ affiliation to a business group shows significant differences in a firm's profitability and debt dependency, and so does the type of group: established or rapid-growth. Companies in business groups have higher profitability and debt dependency than non-group

private firms. Firms in nine established business groups showed high profitability and high debt dependency in the pre-crisis period and a relatively high rate of survival of the crisis. But firms in eight rapid-growth business groups showed low profitability and high debt dependency and suffered badly from the crisis.

The study shows, through analysis of six business groups (Gudang Garam, Sinar Mas, and Astra as established groups and Gajah Tunggal, Texmaco, and Humpuss as rapid-growth groups), that some prevalent assumptions on business groups and the impact of corporate governance can be challenged. For example, concentrated ownership combined with management by owners may not necessarily be obstacles to good corporate governance, if there is no other key stakeholder and no collusion with the government, as in the case of Gudang Garam.

On the other hand, the assumption that the monitoring ability of foreign creditors would be the cause of good governance did not hold true in each case where there was a dependency on foreign debts, as in the Sinar Mas, Astra, and Gajah Tunggal groups. Over-lending took place even in the Astra case, where there was open disclosure on all group business activities. Showing their share of culpability to the Asian crisis, foreign creditors show higher priority on profits than exerting discipline over customers. At the same time, foreign creditors would exert that discipline in the debt restructuring process, as was the case with the Astra restructuring.

The assumption that public listing in the stock exchange contributes to corporate governance does not necessarily hold either. The Gajah Tunggal Group case shows that public listing of only profitable businesses within the group can also result in over-borrowing as creditors misread the overall financial health of the business group. At the same time, as noted above, full disclosure by the publicly listed Astra could not prevent over-borrowing.

One of the roles of professional managers is to provide the brakes on owner excesses. However, in practice, owner-managers have the final say in decision-making in group management (even without an explicit managerial position). The role of the professional manager is therefore severely limited. The effectiveness of the newly introduced system of independent commissioners on the Board of Commissioners would also seem to be in question.

On the other hand, the assumption that information asymmetry between owner-manager and creditors is a possible cause of governance failure does hold. For example, business groups disclose partial information by listing only good performing businesses to raise the funds which in turn are supplied to various group businesses hidden from monitoring by creditors. A case in point that led to excessive investment was the Gajah Tunggal Group.

Finally, collusion with government as a cause of governance failure is

shown in the cases of the Texmaco Group and Humpuss Group. The owner-managers used political leverage to pressure banks to lend. State banks did not refuse because of the risk of political punishment. At the same time, their status as state banks assured them that, as a last resort, the government would bear possible losses. In the case of Texmaco, its exposure in the stock exchange did prevent such collusion.

Self-governance in business groups (owner-managers) therefore does not work under conditions of collusion. At the same time, professional management has little impact on internal governance. This implies a combination of measures targeting business groups, creditors, and collusion.

Business groups should publicly list their key holding companies, not operating companies, in order to ensure better transparency and to expose more of their operations to market discipline. However, because exposure in the market is not sufficient, the monitoring function of the Indonesian capital market should be strengthened, to include a real threat of exit in the event of rule-breaking. An institutional capacity to enforce bankruptcy and liquidation is necessary to strengthen governance by creditors. Banks, particularly state banks, should be publicly listed so that creditors are exposed to market evaluation.

To prevent governance failure owing to collusion, checks and balances within the government need to be developed so as to control possible collusion between government and business. Watchdog systems in society and government can also monitor possible alliances between owners of business groups, domestic creditors and the government. Finally, underlying all reforms is the need to strengthen the mass media and the legal system.

Conclusion: crisis and processes of democracy

In present-day Indonesia, in the aftermath of the Asian financial crisis, the country has gone from an absolute Soeharto state to a democratic, or perhaps more accurately, a more pluralistic one. And in the aftermath, political reforms, institutional changes, and the redistribution of resources are happening at the same time. In another sense, however, much of the absolute structure of the previous state is still in place, adding to pent-up tensions let loose by the end of the New Order.

Reforming a patronage and crony-based system requires the dismantling of a political system that is based on the maintenance of political power through distributing spoils to clients and cronies. However, since patrons, clients, and cronies are dependent on the survival of patronage regime, such fundamental changes to the regime will be opposed. Unless the regime change is accompanied by a shift in the aim of politics – from distribution of spoils to distribution of public services – sustainable reform is unlikely. Such a shift will be a long-term process, because of the need to develop a credible system of law that would ensure the rule of law.

However, a recent World Bank study questions such conclusions.¹⁵ Available empirical evidence indicates that such reforms do little to improve governance, it suggests, and argues that different approaches are needed for different settings. This would imply that the template approach to governance as currently prevalent is misplaced. It also suggests that the emphasis on orthodox regulatory and legal measures should be lessened and that more attention should be focused on the challenge of state capture and other extralegal influence and political funding.

Emphasis in the future should be on the need for:

- transparent information and knowledge, e.g. financial data, e* governance tools, transparent disclosure of parliamentary votes, etc;
- understanding political forces affecting policy-making;
- collective action through a systematic participatory and consensus-building approach involving all key society–state, civil society, and private sector stakeholders;
- strengthening political leadership through mechanisms rewarding integrity, external checks, and balances and measures to address the links and networks between some business groups and politicians;
- integrating ‘influence’ and ‘capture’ into the analysis of the political economy of misgovernance.

Notes

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11 The state, governance, and corruption in Malaysia

Edmund Terence Gomez

Governance, corruption and development

In East Asia, one key issue that emerged out of active state intervention in the economy to generate growth was extensive corruption. The mainstream view of the political economy of development is that corruption is an integral part of the political process, since the close links between state and capital are central to achieving rapid economic growth.¹ Politicians in power provided business with a pro-growth regulatory regime and cheap capital. In return, business supplied politicians with monetary resources to preserve their grip on power. This barter of state-generated economic rents for funds created a tight alliance between ruling parties and business that transformed these nations into newly industrialised countries (NICs). Since much of the flow of money between business and politicians was either illegal or skirted the letter of the law, corruption was seen as a structural problem, that is an inevitable aspect of the developmental state.²

Analysts of East Asia also hold the view that the problem of corruption is due to authoritarianism, a common feature of the political system of countries in this region when they embarked on the road to NICdom. Corruption involving state leaders was rampant when Taiwan, South Korea, the Philippines, and Thailand had an authoritarian political system. However, although these four countries have become democracies, corruption remains a serious issue within their political system. In the Philippines, the removal of President Joseph Estrada was due to allegations of corruption. In Thailand, the election of Thaksin Shinawatra's party to power was mired in controversy involving allegations of 'money politics'. In Taiwan, the election of opposition leader Chen Shiu Bian as President was attributed to exposés by Kuomintang (KMT) members of abuse of party funds by key government leaders. There is sufficient evidence to argue that following democratisation in Thailand, South Korea, and the Philippines, the scale of corruption has indeed increased appreciably.³ At the same time, corruption is not an issue in authoritarian Singapore. This suggests that it is too simplistic to argue that corruption only thrives in a situation where democracy does not exist.

Corruption has taken on various forms in different countries following democratisation. In Thailand, under authoritarian rule, the influence that capital had over the state had been minimal. During this period, the nexus between politics and business had been characterised by businessmen seeking out patrons among government leaders to secure access to state rents. Following democratisation, businessmen began moving into the political arena, eventually even securing control of the executive. With the growing involvement of businessmen in mainstream politics, money politics emerged as a new phenomenon during general elections, involving extensive vote-buying with funds raised from the private sector. With control of the executive, these business interests have secured domination over policy making, usually for vested interests.⁴

In the Philippines, elite families had independent power bases that allowed them to influence presidential elections.⁵ That changed with the rise of authoritarianism under Ferdinand Marcos, who moved to check the influence of elite families in politics by distributing rents to a new set of rentiers. The 'crony capitalism' sponsored by Marcos led to the emergence of new tycoons. Under the Estrada government, business tycoons who had emerged before and during the Marcos regime were appointed to the new cabinet, suggesting that with the return of a more democratic system, big business was re-asserting its control over the executive by influencing presidential and general elections through the channelling of funds to select candidates. The illegal channelling of funds to politicians eventually contributed to the fall of Estrada.⁶

In South Korea, under the authoritarian rule of Park Chung Hee, funds had flowed from *chaebols* (big businesses) to politicians and bureaucrats in power, but there had been little distinction in the way these enterprises were accorded preferential treatment by the government. During the tenure of Kim Yong Sam, democratically elected to power in 1992, some *chaebols*, in particular Samsung, reportedly came to be closely associated with the new president.⁷ After the 1997 currency crisis, the Kim government was embarrassed when it was revealed that the president's son had an interest in another *chaebol*, Hanbo, a new enterprise that benefited from state patronage but went bankrupt. The Hanbo scandal indicated that allegations of nepotism were just as rife in democratic Korea as in authoritarian Malaysia and Indonesia.

The nature of the links between the state and big business in these East Asian countries indicates that the influence of capital over politics has increased appreciably following democratisation. The changing pattern in the balance of power between capital and the state in democratised countries is having a bearing on the flow of funds from business into politics. Political funding by business has contributed to a significant rise in the phenomenon of money politics, involving the use of funds in the political arena to secure control over the state so as to influence the form of distribution of state-generated rents. Since the links between politicians and

capitalists heavily influence political contests, this brings into question the quality of democracy emerging in East Asia.

To understand the form and implications of the links between state and capital in East Asia, two key issues need to be analysed in greater depth. There is a need to understand the politics of the state, that is to establish the institutions or actors in whom power is centred, including determining if political power has been secured through the aid of capital. Second, an analysis is required of the development of the corporate sector, particularly the rise of big business, to determine the nature of the relationship between capital and the state. In order to deal with these issues, the concept of 'political business' has been developed.

Defining political business

Figure 11.1 provides a model of the practice of political business and the impact of the nexus between state and capital on the corporate and financial sectors as well as the political system. Politicians holding office in government use their power to distribute to party members or select business associates state-created rents in the form of licences, contracts, subsidies, and privatised projects. Funds to acquire these rents are secured through favourable loans from banks and other financial institutions owned or controlled by the state and well-connected businessmen. Distribution of these rents by party leaders to members helps them secure or promote their positions in the party and in government. The recipients of these rents use numerous corporate manoeuvres, such as shares-for-assets swaps and reverse takeovers, to capture control of public-listed companies, usually characterised by concentration (large firm size) and conglomeration (multi-sectoral diversification). These companies, in turn, are used for other types of corporate manoeuvres, including mergers, acquisitions, and takeovers, to develop their business interests. As share prices escalate, corporate equity is used as security to secure more loans from banks for further acquisitions. These corporate strategies contribute appreciably to an increase in the stock exchange's market capitalisation.

Political patronage, sophisticated but unproductive corporate manoeuvres and the rise in market value of quoted equity contribute to the emergence of a well-connected 'new rich'. The emergence of this new rich leads to concentration of corporate wealth, while selective distribution of state rents results in corruption, business scandals, and conflicts-of-interest involving senior government leaders. Companies controlled by well-connected businessmen are involved in insider trading and manipulation of stock prices. State patronage also creates avenues for politicians to gain access to large sums of money for political activities, particularly to fund campaigns during party and general elections. In some cases, as firms grow large enough to achieve autonomy from the state, they channel funds to political parties, or factions within ruling parties, in an attempt to influence

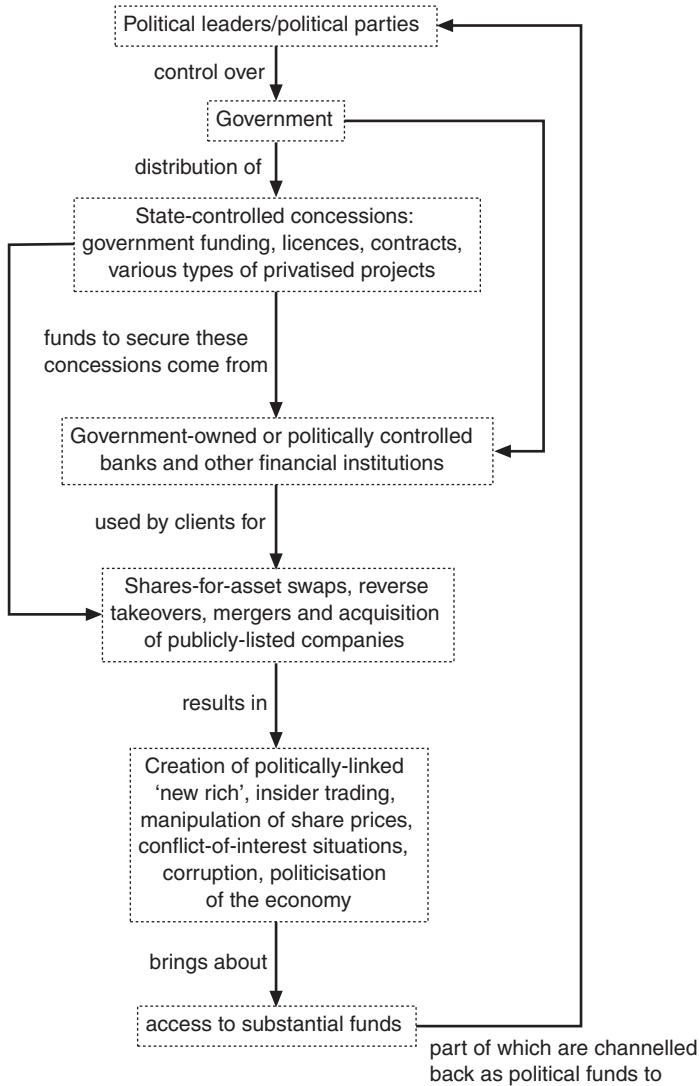


Figure 11.1 Model of the practice of political business.

government policies. In other instances, business elites form political parties or participate directly in presidential elections in an attempt to secure control over the state.

On the other hand, certain positive outcomes can arise from political business ties. State patronage through positive discrimination can be used to rectify social problems like wealth and income disparities between ethnic communities, while the need to promote domestic entrepreneurship

and create indigenous businessmen can be dealt with through political business ties. Selective rent distribution can also help to promote industrialisation and diversification of the economy.

In many cases, however, financial institutions owned by the state have been an avenue for well-connected companies to secure funds on favourable terms in order to generate growth, primarily through acquisitions, contributing to the rise of huge enterprises within a relatively short period. This has led to the problem of huge gearing ratios among many of these conglomerates, though such loans are manageable with continued support from financial institutions and the state. In many instances, huge, but normally short-term, loans from abroad, as well as significant foreign portfolio investments, are crucial for promoting the growth of such companies as well as grossly increasing their market capitalisation on local stock exchanges. Such forms of loans and portfolio investments, however, contribute to financial crises when large numbers of investors withdraw their funds from the stock markets.

In other words, the business style of these large-scale companies, and their manner of growth – that is whether a vertical, horizontal or diversified pattern of growth was employed – appear to be a factor determining their capacity to deal with economic crises. Well-connected firms tend to focus on services and other non-tradables, such as real property, construction, infrastructure, and import-substituting manufacturing. Well-connected enterprises are also frequently involved in unproductive business ventures, usually adopting a conglomerate style of growth, with limited focus on developing expertise in a particular industry or with little attention on research and development.

Another facet of political business is that funds raised in the corporate sector are channelled into the political arena to fund party and general election campaigns or to buy the support of party members to create and maintain power bases. These links between state and capital lead to differences among political elites, as well as widespread cases of corruption, nepotism, and conflicts-of-interest. In a number of cases, disclosure of such improprieties precipitates profound political change.

Political business ties are widespread in East Asia, although the form that such links take differs. In Taiwan and Malaysia, the KMT and the United Malays' National Organisation (UMNO) respectively each have direct or indirect control over a vast array of corporate assets. In Japan, major corporations fund particular factions within the ruling Liberal Democratic Party (LDP). In the Philippines, capitalists secure influence over the state by funding select politicians. In Thailand, businessmen have established political parties to capture control of the state. Similarly in South Korea, one leading capitalist made an unsuccessful bid for the office of president during the 1992 campaign. The emergence of conglomerates during the Suharto regime (1966–98) was attributed to the close personal ties established between their owners and leading politicians.

The dynamics of political business in each East Asian country has evolved with political or regime change. The form of evolution of political business ties determined the scale of economic and political crises after 1997. Since the rationale for the award of state rents to businessmen influenced the pattern of development of enterprises owned by these capitalists, it had a bearing on the extent to which these firms were affected by the crisis, both economically and politically.

To understand the nature of political business in a country, there is a need to deconstruct the concept of the state, with the central analytical focus on political parties, factions⁸ or politicians who have hegemony over the state. The inadequate focus on the links between political parties or politicians and business in East Asia is surprising as states in this region had played a key role in promoting public and private enterprises and new capitalists. In South Korea, Taiwan, Malaysia, Indonesia, Singapore, Thailand, and the Philippines, politicians in power heavily influenced rent creation and distribution in the corporate sector through various policy mechanisms. On the other hand, in Japan and China, powerful factions in the ruling parties, the LDP and the Chinese Communist Party (CCP) respectively, influenced how state economic rents should be distributed.

How, and why, factions are created and controlled also differs among countries. A faction, normally formed around a leader to influence policy direction, is usually short-lived. This, however, has not been the case of the five major factions in the LDP, which appear more institutionalised. In Malaysia, UMNO is fraught with factions that are loosely based and tend to have a shorter lifespan, depending on the longevity of their leader; inevitably, these factions have differing access to rents depending on the influence of their leader. In Japan, Taiwan, and Malaysia, factional disputes within the ruling parties have been a major factor in precipitating political crisis or change.⁹ In Thailand and the Philippines, factionalism has contributed to incessant party-hopping and 'turncoatism' as influential leaders move, usually with their supporters, between parties that provide them with the best hope of securing a place in the executive arm of government. In both authoritarian and more democratised countries, factionalism has also influenced the volume of funds flowing into the political arena, especially during party elections, as politicians distribute money, corporate equity, and other rents in order to buy support and accelerate their ascendancy in the party hierarchy. In Malaysia, the volume of funds disbursed during contests for posts in UMNO is considerably more than the amount of money used during campaigns in general elections.

The fact that political elites who control the state determine the form of rent distribution would suggest that most rents have been unproductively deployed, inevitably inhibiting growth. This, however, has not occurred in East Asia where politicians in power have promoted an agenda of rapid development. As government leaders strive to create an industrial order capable of self-sustaining growth or international competitiveness,

'selective intervention' by the state and the desire to 'pick winners' to promote their industrial drive have been used to justify preferential treatment in the distribution of rents.¹⁰ The importance of cultivating domestic entrepreneurs in industry so as to ensure that a country is not overly dependent on foreign corporations for technology development is another reason used to legitimise selective rent distribution. Through control over the financial sector, the state had also been able to influence business ownership patterns and reform managerial style, both of which have had an impact on the form of capital development.

Most authoritarian regimes in East Asia, specifically in Malaysia and Singapore – and Indonesia before it democratised – have also recognised that one way to justify their form of political control was to ensure economic growth. Economic growth had helped quell discontent over suppression of political rights. Moreover, in Malaysia and Indonesia, there was a legitimate need to develop indigenous capital, correct equity imbalances along class and ethnic lines and promote inter-ethnic business co-operation. The ability of the government to implement policies involving patronage favouring select ethnic communities or individuals has been attributed to the existence of a strong state, one that has been independent of capital.

The increased use of money in politics in democracies does not mean that participatory politics heightens corruption and impairs the quality of economic development. The countries badly affected by the currency crisis include Indonesia and Malaysia, which had yet to undergo a transition to democracy before 1997. Singapore, on the other hand, was not as badly affected by the crisis, and even though power is concentrated in the hands of one party, the government has consistently acted to check corruption. Since there are widespread allegations of corruption in Malaysia and Indonesia but not in Singapore, this suggests that it is not a question of form of governance, i.e. whether it is democratic or authoritarian, that determines levels of corruption and unproductive or questionable forms of rent distribution. Rather, it is an issue of political will and independence from capital. The emphasis on political will indicates again the importance of focusing on the executive or parties in power, as well as the capacity of the electorate to check such abuse of power.

With the growing impact of capital over the political system, the importance of creating an autonomous state, i.e. one that is independent of capital, has become crucial. There is similarly a need for the creation of a state that is accountable and transparent, through the promotion of independent institutions that can check a strong executive, if government leaders resort to unethical or undemocratic means to remain in power. This suggests greater attention should be focused on the issue of separation of powers in government as well as the need for autonomous agencies or institutions like the Anti-Corruption Agency or an attorney-general who can act independently in the event of allegations of wrong doing.

If a more genuine form of democracy is to emerge in East Asia, the influence that capital can acquire over the state has to be curbed by preventing politicians or parties from seeking funding from business. The desire for businessmen to enter politics only because they have the means to capture control of the executive will also be checked. Political insulation or autonomy from business will help improve the state's coordinating capacity. Business–government dialogue and cooperation can be undertaken on a more equal footing and conducted in a transparent and accountable manner, helping to reduce corrupt rent-seeking while ensuring that the outcomes of such state–capital proximity will serve public interests. State intervention in the economy in order to encourage economic development or to re-shape the character of domestic capital can be pursued without fear of consequences. One means of creating a more autonomous state and curbing the influence of capital is to ensure transparency in the funding of political parties.

Electoral reform: funding political parties

The growing abuse of money in politics in East Asia reflects a phenomenon that is already of some concern in democracies of the West. Key issues in this regard are disclosure of sources of party funds, regulation of spending during electoral campaigns and equitable channels of funds to parties contesting elections. This is important because, as Paltiel has surmised, funding of political parties is usually an attempt to ‘surmount the democratic constraints of “one man one vote” to gain disproportionate influence in the decision making process’.¹¹

In most democracies, as election campaigns become increasingly sophisticated and expensive, political parties and politicians depend on business for funds. Contributions to a party by business are normally calculated in relation to the anticipated political benefit in return for the funding. Politicians thus become indebted to capital; or only candidates selected to represent specific business interests in government are actively funded. Inevitably, political parties in government are hindered from pursuing policies in the public good because of their financial dependence on big business.

To check excessive use of money in electoral campaigns, there is a need for legislation on disclosure of sources of funds, requiring political parties to publish annual accounts providing detailed information on its sources of funding. Another view is that state funding of elections should be implemented, to ensure fairness in fund distribution as well as to curb wastage of money during election campaigns. State funding of political parties to finance their activities has also been suggested so as to enable politicians to dispense with the need to approach outside sources, especially influential individuals and big business, for money.¹²

To circumvent unequal access to funds by political parties, countries

like Costa Rica, Austria, Argentina, Germany, Sweden, Italy, and Israel, have introduced the practice of funding political parties from the national budget, either by subsidising electoral campaigns or by allocating funds on a regular basis to parties.¹³ Three reasons have been cited for considering public funding of parties. First, membership fees, the main traditional source of a party's funds, have declined appreciably, mainly due to the decline in political party membership. Second, the expenses in election campaigns have grown, due to the availability of campaign technologies that are far more expensive than labour-intensive forms of campaigning. Third, since escalating campaign costs have contributed to political scandals, public funding can help curb corruption as politicians need not look for means to fund their campaign.¹⁴ A number of criteria have been used in drawing up legislation to curb exorbitant electoral expenditure. All parties should have access to state funding to contest the general election. To ensure that only serious and legitimate parties and candidates contest elections, they are allowed to recoup their expenses based on the popular vote they obtain after an election.

Most East Asian countries have legislation to limit the amount of funds that can be used by a candidate during an electoral campaign. The legislation also includes the need for parties to file a campaign budget after the election. In most countries, however, electoral candidates are not required to disclose their sources of funding. Moreover, electoral candidates seldom ensure that their campaign expenditure remains within the stipulated budget, suggesting little attempt to control distribution of funds during elections.¹⁵

Legislation has, however, been introduced in some East Asian countries to channel funds from the state budget to political parties. Japan appears to have gone furthest among East Asian countries in terms of reforming financing of political parties and checking flow of funds into politics. Under the Political Funds Control Law (1994), all Japanese political parties are entitled to state subsidies to fund their activities. The object was to curb the need for politicians to seek funding to finance electoral campaigns that were becoming increasingly expensive.¹⁶ The legislation, introduced as a means to reform the political system, principally to check corruption, also stipulates the types of political organisations that are permitted to receive funds from the private sector or individuals: political parties, political fund organisations specified by a political party and a fund-managing organisation of a politician, of which he is only permitted one. Public disclosure of such funding is also required.¹⁷

The Public Officials Election and Recall Law in Taiwan regulates funding involving a politician or a political party during an election. While individual candidates are entitled to government subsidies to fund electoral campaigns, political parties are not. Under this legislation, contributions from an individual to a candidate in an election cannot exceed more than US\$700, while the maximum amount an individual can make to a

party cannot exceed more than 20 per cent of his annual income, or US\$7,400, whichever is less. The maximum donation an enterprise can make to a candidate in an election is US\$11,000, while the total sum by a firm to a party cannot exceed more than 10 per cent of its annual income, or a maximum of US\$111,000.¹⁸ Taiwan was the only country in East Asia with legislation requiring companies to disclose political donations to political parties or politicians until Singapore introduced a similar regulation in early 2000.¹⁹

In Thailand, monetisation of politics was so severe that it necessitated constitutional reforms to deal with the problem. A number of articles were written into the new constitution to introduce greater transparency in the electoral system, curb vote-buying and party hopping, as well as to limit change of government due to factional disputes. To create greater transparency in politics, an upper house comprising members who were not politicians was to be directly elected to monitor the activities of parliamentarians and legislation passed through the lower house. To discourage vote-buying and improve the accountability of elected members, multi-member parliamentary constituencies were broken up into single-member units. To curb MP-buying, politicians are barred from switching parties less than 90 days prior to an election. The prime minister was to be chosen by an open vote in parliament. To stem factional rivalry, the right to call a vote of no-confidence was limited to once a year and ministers who left or were dismissed from cabinet had to relinquish all their political positions. An independent Election Commission was established to monitor elections with the power to disqualify candidates guilty of vote-buying or fraud. However, no new regulation was introduced requiring disclosure of party funding nor were there attempts to regulate abuse of funds during elections. During the first elections held after the introduction of this new constitution – the election of members of the upper house – vote-buying still was rampant.

In spite of the legislation introduced in some parts of East Asia on party funding, no country has imposed the regulation that political parties publish their annual accounts. In this regard, in Japan and Taiwan, the extensive use of funds during elections persists or has grown in spite of legislation on state funding of parties and the need for disclosure of sources of funds during elections. This suggests the significance of factionalism in the main parties, that is the LDP and the KMT. Politicians or factions appear to have covert access to funds from big business as they are in a position to influence policy decisions through their position in the ruling party.

The state and capital in Malaysia

Malaysia provides an interesting case study in the context of political business and the capacity of a strong state to curb or perpetuate corruption.

The history of Malaysia, long led by an authoritarian regime, has been replete with cases of corruption and conflicts of interest involving political leaders. Since the 1997 crisis, which led to unprecedented demonstrations calling for the resignation of Prime Minister Mahathir Mohamad, the government has been presenting the idea that it is moving stridently to check corruption.

Capital and state in Malaysia have long been closely intertwined, providing a key avenue for politicians to gain access to funds from private business. Public-private ties have influenced forms of corporate development that have not always been productive and entrepreneurial. The award of rents by the state to select individuals has not been conditioned by an expectation of high performance standards. One reason for the close links between politics and business and the inability of the state to discipline rent recipients is the implementation of policies based on affirmative action, which have also emerged as a mechanism to secure political support for the ruling elite.

In 1970, the government introduced the New Economic Policy (NEP), an ambitious 20-year social engineering plan to achieve national unity by eradicating poverty, irrespective of race, and restructuring society so as to achieve inter-ethnic economic parity between ethnic communities. The NEP's primary focus was to ensure equitable distribution of corporate equity between the predominantly Malay *bumiputera* (or 'sons of the soil') and the predominantly Chinese non-*bumiputera*. The NEP entailed partial abandonment of the *laissez-faire* style of economic management in favour of greater state intervention, primarily for ethnic affirmative action, including the accelerated expansion of the Malay middle class, capital accumulation on behalf of the Malays, and the creation of Malay capitalists. This was to be attained by increasing *bumiputera* corporate equity ownership to 30 per cent and by reducing the poverty level to 15 per cent by 1990. The measures used to achieve these goals included requiring companies to restructure their corporate holdings to ensure at least 30 per cent *bumiputera* ownership.

In 1981, when Mahathir was appointed prime minister, he voiced his intention to create an ensemble of dynamic, entrepreneurial Malay capitalists. He argued that in 1981, after ten years of the NEP, although the government had managed to increase the volume of corporate equity held in the name of *bumiputeras* to 12.5 per cent, little progress had been made in developing Malay businessmen in control of large corporations. By 1980, no firm among Malaysia's top 100 quoted companies was owned by the government or *bumiputera* individuals. It was this situation that Mahathir sought to rectify.

To aid his vision of creating huge companies with international reputations led by Malay capitalists, Mahathir appointed his confidant, businessman Daim Zainuddin, as finance minister in 1984. Both men appeared obsessed with developing the Kuala Lumpur Stock Exchange (KLSE),

making it one avenue to help create domestic capitalists. Within just over a decade of Mahathir's tenure as prime minister, the KLSE's market capitalisation relative to gross domestic product (GDP) had emerged as the highest in Southeast Asia. Between 1989 and 1993, equity market capitalisation as a percentage of GDP increased from 105 per cent to 342 per cent. By 1997, the KLSE had emerged as the 15th largest in the world in terms of market capitalisation.²⁰

By the mid-1990s, a number of huge quoted conglomerates, controlled primarily by well-connected Malays, had emerged. The prime minister's high degree of autonomy had allowed him selectively to distribute government-created rents to this select group of businessmen so as to help them swiftly develop their corporate interests. Mahathir justified this form of patronage, via policies such as the NEP – and since the mid-1980s, privatisation – by arguing that the best way to create Malay capitalists was to distribute rents to those most capable of generating wealth.²¹ Some of these men, supposedly representative of the dynamic, entrepreneurial class that Mahathir was trying to create, had managed to develop huge conglomerates within a short time. Unlike some prominent Chinese entrepreneurs who operated through unlisted firms, well-connected businessmen developed their corporate assets through the use of one or more quoted companies.

In the mid-1990s, Malaysia's leading corporations included a number of firms controlled by *bumiputeras*, almost all of whom were linked to one of the then three most powerful politicians – Mahathir, then deputy prime minister and finance minister Anwar Ibrahim, and Daim. The Malays in control of major firms included Halim Saad, Tajudin Ramli, Wan Azmi Wan Hamzah, Rashid Hussain, Shamsuddin Abdul Kadir, Azman Hashim, and Mahathir's sons, Mirzan and Mokhzani. A few Malay businessmen, like Tunku Abdullah and Azman Hashim, had emerged as businessmen of some repute prior to Mahathir's ascendancy to the premiership. A number of well-connected non-*bumiputeras* also quickly developed huge firms with state patronage. These businessmen included Vincent Tan Chee Yioun, T.K. Lim, Ting Pik Khiing, Lee Kim Yew, Tong Kooi Ong, and T. Ananda Krishnan. All these men had been privy to state patronage in some form, specifically the award of privatised contracts.²²

The way in which privatisation was implemented, involving the selective distribution of rents,²³ reflected an important aspect of Malaysia's political economy: the institutional and organisational structure of the government and ruling party had had a major bearing on the form of development of the corporate sector. An analysis of institutional control of government would indicate the hegemony that ruling politicians have come to have over the state. One party, UMNO, has hegemony over the ruling multi-party coalition *Barisan Nasional* (National Front), and by extension, the government. Through consistent amendments to the party constitution and because of factionalism at the lower echelons of the party,

power has come to be concentrated in the office of the UMNO president. Within government, through amendments to the Federal Constitution and through systematic undermining of the other arms of government – the judiciary, the legislature, and the bureaucracy – power has come to be concentrated in the office of the executive.²⁴ The president of UMNO also serves as prime minister. This concentration of power in the office of the executive has enabled ruling politicians to distribute rents at will to select businessmen.

With growing political hegemony over the state, Malaysian politics subsequently became more personalised. Factional politics and the need to develop a grassroots base in UMNO were other reasons contributing to the rising number of well-connected businessmen and politicians-cum-businessmen. In 1991, after Anwar was appointed finance minister, he began developing his power base in UMNO by expanding his own breed of politicians-cum-businessmen. The use of money in politics intensified and a corporate base became an important means to raise funds and finance political ascendancy.

The politician with the most influence over the corporate sector was, however, former Finance Minister Daim, who had little grassroots support and owed all his political appointments – as UMNO treasurer and government economic adviser and then again as finance minister – to Mahathir. Daim had come under heavy criticism from UMNO members for continuing to develop his corporate influence – and base – during his tenure as finance minister from 1984 to 1991. After his appointment to the Treasury in 1984, Daim announced that he had divested his vast business interests, including shares in companies involved in virtually all key sectors of the economy – banking, plantations, manufacturing, wholesaling and retailing, property development, and media. Despite this, in 1992, one year after he had stepped down as finance minister, the total value of Daim's assets was reportedly RM1 billion, including assets in Australia, Britain, Mauritius, and the United States.²⁵ While holding public office, although Daim claimed that he had no active interest in business, he was still widely regarded as the most powerful figure in corporate Malaysia. This was because his closest business associates, Halim Saad, Wan Azmi Wan Hamzah and Tajudin Ramli, had quickly emerged as major corporate figures controlling enterprises ultimately owned or controlled by Daim or UMNO.²⁶ Halim, for example, who had publicly acknowledged his role as trustee of most of UMNO's vast corporate assets, would eventually secure control of the party's most important companies through Renong, an ailing quoted firm.

By the early 1990s, although Mahathir, Anwar, and Daim had overwhelming influence over distribution of state rents, there were different reasons why these political leaders channelled concessions to businessmen. These had a bearing on the pattern of development of the enterprises owned by the recipients of these rents.

Anwar appeared to use his influence in government to develop his political base in UMNO. This led to the rise of a large group of businessmen who were primarily UMNO members. Since they ventured into business principally to use their corporate base to secure ascendancy in UMNO, their style of business was unproductive, with many showing little capacity to build on the rents they secured from the government. No Malay businessman linked to Anwar has yet to emerge as a major corporate figure.

Mahathir was much more selective in distributing rents, especially during the 1990s, after he had strengthened his position in UMNO. He had a genuine belief in his ability to pick 'winners' who could help fulfil his vision of creating Malay conglomerates with the capacity to venture abroad and compete internationally. Such capitalists would later include a number of non-Malays.

In the case of the Daim-linked businessmen, the situation is slightly more difficult to analyse. It is, for example, difficult to distinguish between the wide range of corporate assets actually owned by Halim, Wan Azmi, and Tajudin, and those they hold in trust for Daim or UMNO. This situation revealed that corporate ownership and control patterns, involving well-connected companies, were rather complex.

Moreover, since the rise of most key businessmen was linked to the patronage of influential politicians, wealth accumulation depended on whether their patrons remained in power. Most Malay and Chinese businessmen who emerged under Anwar's patronage no longer figure prominently in business or have had to struggle to protect their corporate interests. Similarly, when Daim fell out of favour with Mahathir, corporate assets owned by his business allies and proxies were taken over by the government.²⁷ This divestment of assets owned by businessmen linked to Anwar and Daim was used by the government as evidence of its attempt to improve corporate governance in Malaysia.

Corporate governance in the Malaysian context

Following the currency crisis in 1997, and the widespread public displeasure with wealth concentration and corruption arising from political business, the government announced that emphasis would be given to governance of the corporate sector. Errant firms and directors would be prosecuted in order to ensure the development of more transparent and accountable corporate transactions. Given the concentration of power in the office of the executive and the close links between politics and business, however, there is a need to situate the discussion of corporate governance in Malaysia.

Corporate governance is defined primarily in terms of the proper and accountable management of a company so as to ensure that its shareholders receive a fair return on their investments and that the interests of other

fund providers are protected.²⁸ The need to ensure 'proper governance' of the corporate sector arises because it is quite possible that a 'principal-agent' problem may occur because of differing interests, i.e. between the investors (principals) and managers (agents) of a firm. With their control over an enterprise, agents may undertake corporate activities that may adversely alter shareholder value, affecting the principals' investments.²⁹

The issue of ownership and control of enterprises is central in most definitions of corporate governance. All shareholders of a firm have a legal right to the organisation's assets and a say in how they are used to secure a good return on their investment. With the development of the corporation and with an increase in the number of investors in the enterprise, however, the need for a divorce between ownership and control has become imperative.³⁰ Management control, with the board of directors vested with powers to run a company on behalf of the shareholders, has become the norm. These directors have a fiduciary duty to equity owners of their corporation, to ensure that it is developed in their interest. Good corporate governance stems from the need for directors to comply with this duty.

Definitions of corporate governance also point to the importance of the banking sector in financing corporate growth and to the independent role of public regulatory institutions in enforcing proper management of funds invested in an enterprise. Iskandar and Chamlou warn that 'when bad management is combined with weak banks, under-regulated capital markets, and poorly enforced laws for external discipline, the results can be disastrous: firms, stock markets, banking systems, and even economies can implode'.³¹

Blair argues for the need to bring a broader understanding to corporate governance than the mere monitoring of the management of companies and the protection of minority shareholders and funding institutions.³² For Blair, an analysis of corporate governance should encompass a review of legal and institutional arrangements in order to 'determine what publicly traded corporations can do, who controls them, how that control is exercised, and how the risks and returns from the activities they undertake are allocated'.³³ Public governance of the corporate sector is thus crucial, through the creation of a legal and institutional environment that monitors and supports the efficient use of resources, to ensure wealth creation that will benefit society.³⁴

Almost all studies of corporate governance focus on similar issues, that is the selection and remuneration of directors, whether banks or institutional investors, such as pension funds or mutual funds, should be active in the management of firms in which they have investments, and forms of control over corporate activities such as mergers and takeovers. Even in Malaysia, when new regulations and institutions were introduced to enforce greater governance over the corporate sector, these were the key questions that animated the debate.³⁵ However, due to the overwhelming

influence that the state – or people in control of the executive – has over the corporate sector, the introduction of these new institutions and regulations have not contributed to any meaningful reforms.

Political business ties have influenced the nature of public governance. This has affected the performance of corporations and their ability to generate wealth. Politicians with hegemony over the state can, as mentioned, determine which firms secure privatised rents, to what extent their activities can be funded by banks and through stock market activities, and who gains, through various government policies, control of key economic sectors, like the banking industry. The nature of policy implementation has had a major impact on property rights, which have had a crucial bearing on the development of the corporate sector.

Wealth concentration and corporate reforms

Given the concentration of power in the office of the executive, an analysis of ownership patterns of corporate Malaysia would suggest monopolisation of economic sectors. Interestingly, this is not the case in the analysis of the top 100 firms listed on the KLSE in 2002. A number of these quoted companies do, however, come under the umbrella of one holding company or are controlled by one businessman.³⁶ This form of grouping, involving the use of a holding company – and, in some cases, cross-holdings and pyramiding – reflects the most important form of corporate control. This corporate grouping pattern also indicates the conglomerate-style growth adopted by a number of Malaysian businessmen since the early 1980s.

Limited interlocking stock ownership among the top 100 quoted firms suggests a number of important developments between 1970 and 2002. There is much evidence that the political elite has attempted to accumulate wealth through business allies.³⁷ Between the early 1980s and late 1990s, businessmen linked to influential politicians like Daim and Anwar, and the children of the prime minister and businessmen favoured by him, began to secure a dominant presence in the corporate sector. These well-connected businessmen have not managed to secure control over key economic sectors partly because of conflicts among the political elite over control of lucrative corporate assets.

Another factor contributing to the failure of wealth concentration was the collapse of some major well-connected conglomerates involved in cross-holdings.³⁸ Among the most notable examples of corporate groups with cross-holdings were Renong (controlled by Halim Saad), Multi-Purpose Holdings (controlled by T.K. Lim), Tongkah/Pantai (controlled by Mokhzani Mahathir) and Lion Corp (controlled by William Cheng). Following the 1997 crisis, all four groups were burdened with a debt crisis and had been subject to takeover and/or were restructured by mid-2001. The Lion Corp group required massive restructuring to deal with its huge debts, the heavily indebted Renong was taken over by the government and

restructured, Lim lost control of his debt-ridden but asset-rich Multi-Purpose Holdings to Daim's allies who then dismantled the group, while the prime minister's son, Mokhzani, relinquished control of the Tongkah/Pantai group to apparently friendly allies relieving him of his and the group's debt problems. The gearing problems of these large corporate groups highlighted the practice of cross-holdings as a means for one person to secure control over a number of quoted companies with little or no personal equity interest in these firms. Through this mechanism, the majority shareholders of the holding company could appoint directors to a number of other quoted firms, usually to help them ensure that vested corporate ventures were implemented even though these business deals were not in the interest of minority shareholders. Moreover, since this pattern of control allowed one person or family to have control over board appointments, minority shareholders had little recourse to removing errant or irresponsible company directors, even in the face of gross violations of fiduciary duties. The subsequent dismantling or restructuring of these four groups contributed to the deconcentration of corporate equity. Interestingly, in spite of the new regulations introduced to enhance corporate governance and transparency, no attempt was made to curb the practice of cross-holdings and pyramiding.

There is no evidence of wealth concentration or much intra-ethnic business cooperation involving *bumiputera* capitalists. Even firms owned by businessmen who share the same political patron, have seldom, if ever, worked together. There is no evidence that Daim's business protégés, Halim, Tajudin, and Wan Azmi, have cooperated in any business venture.³⁹ On the contrary, there was much competition among them in some sectors. Halim's Renong group had an important interest in the telecommunications sector through Timedotcom, where he was in competition with Tajudin's TRI group, which owns Celcom, a major telecommunications company. Interestingly, in spite of their need to restructure their assets after the currency crisis, Renong and TRI did not attempt to merge these two telecommunications enterprises, even though link-ups with other firms in the industry were attempted. Other Malays, like Azman Hashim and Rashid Hussain, were in keen competition with one another in the financial sector, while Renong also has a huge interest in Malaysia's second largest bank, Bumiputra-Commerce Bank. When the government called for banks to consolidate, there were no attempts by *bumiputeras* in the financial sector to cooperate to merge their enterprises. The bank consolidation exercise was characterised by competition among well-connected Malays to become one of the few anchor banks approved by the government.

Interlocking directorship is a concept of as little importance as interlocking stock ownership. Two major types of interlocking directorate ties characterise such links: ownership ties, in which two or more organisations are jointly controlled by a single board of directors, and direct interlock

ties, in which two companies share one or more persons as members of their respective boards.⁴⁰ The direct interlocking directorate tie is common in Malaysia. Theoretically, these ties should help reduce competition and enhance monopolisation of economic sectors. The large voting rights of these common directors allow for greater internal corporate control, leading to greater inter-company transactions which need not necessarily be beneficial to all the shareholders of a firm, particularly minority shareholders.

The interlocking directorate ties of most importance involve owner directors. Owners hold directorships in a number of firms under the control of a holding company. This common tie can be used to facilitate transactions that benefit owner directors and not minority interests. One example of an owner director is T.K. Lim, a director of Multi-Purpose Holdings and its associated company, Bandar Raya Developments. Lim also sits on the board of Land & General, controlled by Wan Azmi, in which he also had an interest. Quek Leng Chan and Vincent Tan, through holding companies, own controlling interests in all firms listed under their names.

The studies by Lim, Tan, and Sieh revealed that interlocking ownership and directorships were important in the ownership and control patterns of the corporate sector during the 1970s.⁴¹ By 2002, there was less interlocking stock ownership and directorship among Malaysia's leading public-listed companies. The interlocking stock ownership patterns that exist are those within one group of companies.

The rise of large, diversified corporate groups has come to characterise the pattern of growth adopted by some of Malaysia's most prominent businessmen. Historical examination of Chinese enterprise since the colonial period suggests that diversified growth had been a popular business strategy, mainly due to the desire to venture into any field that promised quick profits or had a strong potential for growth.⁴² From the early 1980s, a similar pattern of growth was adopted by a number of Malays in control of large quoted enterprises. One significant difference in the conglomerate-style growth adopted by Chinese and Malay businessmen was that a majority of the latter developed their diversified corporate base through acquisitions funded by bank loans. A smaller number of Chinese in control of the top 100 firms also adopted this pattern of growth. Growth through acquisitions funded by loans was popular from the early 1980s through to the mid-1990s. Businessmen who adopted this style of growth when developing their corporate base included Halim Saad, Tajudin Ramli, Wan Azmi Wan Hamzah, Mirzan Mahathir, Mokhzani Mahathir, Vincent Tan, and William Cheng.

Other corporate groups, though diversified, gained credibility by focusing on one or two industries. YTL Corp developed a reputation for itself, first in construction and then in power production. Oriental and Tan Chong focused principally on car assembly, while Public Bank was only involved in banking and financial services, and Tan & Tan on construction

and property development. Others, like plantation-based Kuala Lumpur-Kepong group, were forced by circumstance to diversify – because of the decline of the plantation sector – but remained focused in their new ventures.⁴³ The firms that did not depend considerably on bank loans to develop their corporate base tended to cope better with the crisis that occurred in 1997–98. More importantly, most companies taking bank loans to finance their conglomerate style growth appeared to have strong political ties.

A number of businessmen who adopted conglomerate style growth, through access to bank loans, encountered problems revamping their groups, even four years after the crisis. In 2001, Tajudin sold back to the government the national airlines, MAS, that had been privatised to him in 1993. The government took over the light rail transit project privatised to Halim's diversified Renong group. Tan's well-diversified Berjaya group continues to face gearing problems. Despite divesting assets, Cheng's highly-diversified Lion group struggles to deal with the mountain of debts it has accumulated. Mirzan was fortunate when a state-owned enterprise bought out the debt-ridden firms owned by his listed firm, Kumpulan Perkapalan, which had gone on an acquisition binge in 1996. Since there was little clear focus in enterprise expansion by many well-connected businessmen, and since political patronage involved easy access to loans and government privileges, there appeared to be little caution in the manner they developed their companies. This style of growth contributed to their rapid collapse when the crisis occurred.

Another reason for the decline of most leading Malay capitalists is that since most of them were closely linked to – and dependent on – senior politicians, their corporate activities were often influenced by these politicians and affected by political crises. In 1993, for example, Daim ensured that Renong, controlled by Halim, divested ownership of the then highly profitable media companies, the New Straits Times Press and TV3, to businessmen linked to Anwar. Anwar had then forged close ties with Daim to mount his bid for the post of deputy president of UMNO. When Anwar and Daim fell from power, so too did businessmen linked to these politicians. Malay capitalists who have remained relatively independent appear to have fared better. Shamsuddin Kadir, of the Sapura group, remained unaffected by the 1998 political crisis in UMNO. Tunku Abdullah, who controls the Melewar group, has not been dependent on UMNO politicians for business support and privileges. Moreover, Malaysian Assurance Alliance (MAA), Abdullah's main listed enterprise, has remained focused on the insurance industry.

Although the debt crises faced by well-connected businessmen and the nationalisation of privatised projects raised concerns about public and corporate governance, the government continues to play a dominant role in channelling important assets into the hands of a select minority in a non-transparent manner. Executive hegemony over the state and its

impact on public and corporate governance became very evident with the government's consolidation of Malaysian commercial banks.

Case study: bank consolidation and the politics of power

Long before the 1997 crisis, the government had been intent on consolidating the domestic banking sector. Malaysia then had 58 banks and financial institutions serving a population of about 24 million. In mid-1999, the first government proposal associated with Daim sought to merge financial institutions around six anchor banks. When this bank consolidation exercise was proposed, Multi-Purpose Bank, a relatively small financial enterprise in terms of assets and number of branches was given anchor bank status. One major shareholder of the bank in the 1980s, then known as the Malaysian French Bank, was Daim. He later entered into a deal with the Multi-Purpose Holdings (MPHB) group, then controlled by the Malaysian Chinese Association (MCA), a member of the ruling Barisan Nasional, involving the exchange of his huge interest in the Malaysian French Bank for a controlling stake in United Malayan Banking Corporation (UMBC). The Malaysian French Bank was renamed Multi-Purpose Bank, while the MPHB group eventually fell under the control of T.K. Lim. Lim, though then associated with Daim, would later forge close ties with Anwar.

When Daim became finance minister in 1984, he sold his stake in UMBC to a government-controlled agency, Pernas, allegedly at an inflated price, which came to be known as the 'UMBC scandal'. Pernas passed control of UMBC to Mohd Noor Yusof, who had served as Mahathir's political secretary.⁴⁴ UMBC was subsequently enmeshed in numerous allegations of corruption and was sold to government-controlled Sime Darby and renamed Sime Bank. After the 1997 crisis, when it was revealed that Sime Bank was laden with huge non-performing loans (NPLs), it was merged with RHB Bank. UMBC's brief history reflected the way ownership of a major bank was passed between government bodies and well-connected businessmen, usually at the expense of the former and to the benefit the latter.

Not long after Anwar was removed from office, Lim lost control of the MPHB group to businessmen reputedly associated with Daim.⁴⁵ When Multi-Purpose Bank was given anchor status, the other institutions that were to be merged with it included the much larger RHB Bank and the International Bank Malaysia (IBM). Daim had acquired a stake in IBM before he was asked to re-join the cabinet in 1998 to help Mahathir deal with the currency crisis. Of the six anchor bank groups, the Multi-Purpose Bank grouping had the largest number of financial institutions, which would have given the enlarged enterprise a significant national presence (Table 11.1).

Another major bank in the Multi-Purpose Bank group was PhileoAllied Bank, then controlled by Tong Kooi Ong who was also closely associated

Table 11.1 Bank consolidation exercise: anchor banks and their partners

<i>Members</i>	
<i>Original six bank groups</i>	
Malayan Banking Maybank Finance Aseambankers	Pacific Bank, EON Bank, EON Finance, Malaysia International Merchant Bank, Delta Finance, KBB, Sime Finance
Multi-Purpose Bank Multi-Purpose Finance	RHB Bank, RHB Sakura, Sabah Bank, Sabah Finance, Oriental Bank, Oriental Finance, Bolton Finance, MBf Finance, International Bank Malaysia, Merchant Bank, PhileoAllied Bank
Bumiputra-Commerce CIMB	Hong Leong Bank, Hong Leong Fin, CCM
Perwira Affin Bank Perwira Affin Merchant Bank Affin Finance	Arab-Malaysian Merchant, Arab-Malaysian Bank, Bank Utama, Utama Merchant Bank, BSN Bank, Asia Commercial Finance, Arab-Malaysian Finance, BSN Finance
Public Bank Public Finance	Wah Tat Bank, Hock Hua Bank, Sime Merchant Bank, Inter Finance, Advance Finance
Southern Bank	Ban Hin Lee Bank, Perdana Merchant Bank, Cempaka Finance
<i>Subsequent ten</i>	
Malayan Banking	Mayban Finance, Aseambankers Malaysia, Kewangan Bersatu, PhileoAllied Bank, Pacific Bank, Sime Finance Bank
Bumiputra-Commerce Bank	Bumiputra-Commerce Finance, Commerce International Merchant Bankers
RHB Bank	RHB Sakura Merchant Bankers, Delta Finance, Interfinance
Public Bank	Public Finance, Hock Hua Bank, Advance Finance, Sime Merchant Bankers
Arab-Malaysian Bank	Arab-Malaysian Finance, Arab-Malaysian Merchant Bank, Bank Utama Malaysia, Utama Merchant Bankers
Hong Leong Bank	Hong Leong Finance, Wah Tat Bank, Credit Corporation Malaysia
Perwira Affin Bank	Affin Finance, Perwira Affin Merchant Bankers, BSN Commercial Bank, BSN Finance, BSN Merchant Bank
Multi-Purpose Bank	International Bank Malaysia, Sabah Bank, MBf Finance, Bolton Finance, Sabah Finance, Bumiputra Merchant Bankers, Amanah Merchant Bank

Table 11.1 continued

	<i>Members</i>
Southern Bank	Ban Hin Lee Bank, Cempaka Finance, United Merchant Finance, Perdana Finance, Perdana Merchant Bankers
EON Bank	EON Finance, Oriental Bank, City Finance, Perkasa Finance, Malaysian International Merchant Bankers

with Anwar. Although Tong only became involved in the banking sector in 1994, he quickly developed the PhileoAllied Bank into a dynamic, technologically innovative bank. The capture of the PhileoAllied Bank by Multi-Purpose Bank was probably the latter's biggest coup.

Under the bank consolidation exercise, prominent Malays like Azman Hashim (of the Arab Malaysian group) and Rashid Hussain (of RHB Bank) did not get anchor bank status. Nor did the Hong Leong Bank, controlled by Quek Leng Chan, then reputedly associated with Anwar. Azman had close ties with UMNO and much experience in the banking sector, but was never closely associated with Daim. When it was announced that Azman's bank was to be merged with a rather small institution, not led by a businessman of any prominence in the banking sector, it fuelled speculation of significant intra-Malay fighting among political and business elites. Although the Arab-Malaysian Bank was then burdened with a large volume of NPLs, it made better sense to let this group have anchor bank status, given Azman's experience. Similarly, Rashid had managed to develop a financial conglomerate of some repute, though his bank was also burdened with problems, partly arising from its post-crisis merger with Sime Bank.

The Hong Leong group had taken over MUI Bank in 1993, renamed it Hong Leong Bank, and quickly developed the bank into a thriving enterprise. Since Hong Leong Bank carried the 'stigma' of being too closely linked with Anwar, it was to be merged with the Renong-controlled Bumiputra-Commerce Bank. It appeared that two dynamic banks, PhileoAllied Bank and Hong Leong Bank, both associated with Anwar, were to be brought under the indirect control of Daim. Meanwhile, bumiputeras with a significant presence in the banking sector, like Azman and Rashid, were to lose their control over enterprises that they had developed relatively well without the aid given to other badly managed institutions.

Inevitably, following the announcement of the proposed bank consolidation exercise, there was considerable public protest. The Chinese business community was upset that the merger of some of the most enterprising Chinese-owned banks would diminish their presence in this

sector. With a general election then impending, and since Mahathir was aware that the Barisan Nasional needed non-Malay, especially Chinese, support to secure a strong presence in parliament, the number of anchor banks was increased from six to ten. Hong Leong Bank, Arab Malaysian Bank and RHB Bank were given anchor bank status.⁴⁶ This decision to increase the number of banks from six to ten reportedly sparked a rift between Mahathir and Daim.

When the bank consolidation exercise was revised, PhileoAllied Bank was re-assigned from Multi-Purpose Bank to the Malayan Banking (Maybank) group. Maybank is controlled by the national trust agency, Permodalan Nasional (PNB), which falls under the jurisdiction of the prime minister. Another shareholder of PhileoAllied Bank was Mahathir's second son, Mokhzani, who had acquired an indirect stake in the bank before the consolidation exercise was first proposed. Mokhzani's quoted Tongkah Holdings had cross-holdings with Pantai Holdings, another listed firm. Pantai and Tongkah jointly owned a 28 per cent stake in public-listed Avenue Assets, the single largest shareholder of PhileoAllied, the owner of PhileoAllied Bank. Although Mokhzani was then close to Daim, Tong was reportedly reluctant to merge his bank with Multi-Purpose Bank.⁴⁷

Under the revised bank consolidation scheme, Maybank offered Avenue Assets a share-swap deal valued at RM1.2 billion to take over PhileoAllied Bank. Avenue Assets held out for, and eventually ensured, that PhileoAllied got RM1.3 billion cash from Maybank for the bank's equity. Maybank was reportedly not keen on paying so much – in cash – for PhileoAllied Bank because the merger of the two banks would have contributed little to enhancing Maybank's dominant position in the banking sector. With the sale of its bank, PhileoAllied became a cash-rich shell company.

In January 2001, soon after the sale of PhileoAllied Bank, the Securities Commission, under the control of the Finance Ministry, informed PhileoAllied's shareholders, which included Avenue Assets, that they could not divest their interests in their now cash-rich shell company. Nor could they make any changes in substantial shareholding without the prior consent of the Commission. This stipulation by the Securities Commission was unprecedented in Malaysian corporate history. According to the well-controlled domestic press, the stipulation by the Commission reflected the growing importance of adequate corporate governance, specifically to protect the interests of minority shareholders. It was, however, noteworthy that similar conditions were not imposed by the Securities Commission on Tajudin Ramli, Daim's ally, whose company, Naluri, controversially received RM1.8 billion for the sale of the national airline MAS to the government, a takeover implemented around the same time as the PhileoAllied Bank sale. It appeared that Daim was preventing Mokhzani from using the substantial funds he had gained access to through the sale of PhileoAllied Bank.

In early April, Daim voiced his intention to take long leave, and not long after, Mokhzani announced that he intended to divest all his corporate interests. Since Mokhzani's direct corporate holdings were in Pantai and Tongkah, which owned a sizeable chunk of Avenue Assets, he did not violate the conditions imposed by the Securities Commission when he divested his business interests. Mokhzani stated at the time that he was divesting his corporate holdings because his involvement in business was giving rise to baseless allegations of nepotism. In order to protect his father's name, he had decided to focus his attention on his involvement in politics – Mokhzani was then treasurer of UMNO Youth. But in June he relinquished that post too. Since Mokhzani divested his assets at a loss, other factors could have influenced his decision to get out of business. When Mokhzani divested his equity holdings, ostensibly to concentrate on politics, Daim issued a statement that the public should respect his decision.

Mokhzani divested his controlling stake in Pantai to Lim Tong Yong, a little-known businessman who controls a listed soap-making company, Paos Holdings. While Lim justified the Pantai takeover by pointing to its potentially profitable interest in the healthcare sector, the company also had a large stake in debt-ridden Tongkah.⁴⁸ In late May, the government's postal service, Pos Malaysia, was sold to PhileoAllied. There was no prior disclosure by the government of its intention to privatise the profitable Pos Malaysia or to secure a backdoor listing for it by injecting it into PhileoAllied. Pos Malaysia could have secured a public listing on its own merit, but its board of directors had reportedly decided not to list the company because of poor market conditions.⁴⁹ Since Pos Malaysia was privatised while Daim was on leave, the decision to transfer control to PhileoAllied was unlikely to have been his.

The issues relating to PhileoAllied, the bank consolidation exercise and the privatisation of Pos Malaysia raise many questions about corporate and public governance in Malaysia. What were the criteria for choosing the anchor banks and their merger partners? Why was PhileoAllied Bank sold to Maybank, which was not keen on this merger, when it could have been merged with one of the other nine smaller anchor banks? Why did the Securities Commission impose conditions on PhileoAllied, but not on Naluri, when both firms received huge sums of government money from the sale of assets? Why was Pos Malaysia privatised, without notice, to a company ultimately controlled by a person who bought out the firms owned by Mokhzani? Were these corporate manoeuvrings linked to an apparent souring of the relationship between Daim and Mokhzani? Interestingly, the differences between Mahathir and Anwar were due to the latter's opposition to the government acquisition of the assets of a debt-ridden company owned by Mahathir's eldest son, Mirzan.

These political manoeuvrings for control of corporate assets in the banking sector indicate a number of important developments since 1998.

With Anwar out of government, corporate assets owned by his allies were being taken over by men not aligned to his faction. Businessmen linked to Daim benefited most from the redistribution of these assets. That precipitated new disputes among political and business elites, and exposed Daim to severe criticism even from his own party members. Daim's attempt to secure overwhelming influence over the consolidated banking industry was a major cause of the rift between him and Mahathir. When Daim resigned as finance minister in June 2001, neither he nor the prime minister stated the reasons for his resignation.

With Daim now out of favour, and since he still had significant influence over the corporate sector, Mahathir moved to reduce his influence over the corporate sector. In July 2001, the government announced that it would take over United Engineers Malaysia (UEM), the most profitable listed company in the Renong group, which had, by then, come to be saddled with debts amounting to around RM25 billion. In view of the long-standing links between politics and business involving Renong and UMNO, the domestic press argued that a restructuring of Renong/UEM would help alleviate corporate governance concerns that had affected investor confidence in the KLSE.

The UEM takeover, the privatisation of Pos Malaysia, and the bank consolidation exercise provide important insights into two key issues. First, these corporate activities throw much light on the structure of the state and the way power in government has increasingly come to be centred in the hands of one man, the prime minister, Mahathir. All other arms of the government and public institutions have become subservient to the executive. Second, it reveals the impact that this concentration of political power can have on the issue of property rights of businessmen in the corporate sector.

The bank consolidation, the UEM takeover, and concentration of political power also draw attention to the issue of ownership and control of domestic firms. In Malaysia, even majority ownership of a company means nothing in the face of a strong state determined to push through government policies or corporate restructuring. Those most susceptible to being subject to a takeover of their corporate assets are probably those who have benefited most from state patronage, but were unfortunate enough to be aligned to a political patron who has since fallen out with the prime minister. Halim, a protégé of Daim, has been forced to relinquish ownership of Renong/UEM. Despite Halim's long-standing claims to ownership and control of Renong, he gave up his interests in this conglomerate without a fight. Other businessmen closely aligned with Daim were similarly forced to relinquish their vast control over the corporate sector.

This manoeuvring of corporate assets at the behest of political leaders also indicates that through ostensible enforcement of corporate governance, politicians in control of the executive have transferred corporate assets into the hands of their allies. Moreover, while the selective imposi-

tion of rules and regulations on some enterprises has helped create the impression of an increasingly well-governed corporate sector, irregularities continue to occur, mainly to serve powerful vested interests.

Conclusion

Although the development of the corporate Malaysia was strongly influenced by Mahathir's policies, and he alone dominated the state, this concentration of political power did not contribute to concentration of corporate equity in the hands of an elite group. In mid-2001, there was evidence not of wealth concentration but of rather wide dispersal of ownership of corporate equity in the top 100 quoted firms. In 2001, a list compiled by *Malaysian Business* of the country's 20 wealthiest business people also reflected this rather wide dispersal of wealth ownership.⁵⁰ In fact, the combined wealth of these 20 business people amounted to RM41.7 billion, only about 10 per cent of the KLSE's market capitalisation.⁵¹ More importantly, it does not appear that any of these 20 wealthiest business people hold corporate equity in trust for influential politicians.

This lack of wealth concentration is due to conflicts among Malaysia's political elites. Between 1997, when the currency crisis occurred, and 2001, two influential politicians, Anwar and Daim, who had significant indirect control over important corporate enterprises, had been marginalised by Mahathir. The vast corporate assets owned by their business allies have been re-allocated to government institutions or other private individuals. While it is unclear if Mahathir's allies will come to secure ownership of these corporate assets, the prime minister evidently had the capacity to control how companies are developed.

In spite of the executive's dominance over the corporate sector, there is no evidence that Mahathir personally corruptly benefited from the shuffling of business assets, though there is some evidence of nepotism. Mahathir's commitment to his – sometimes unviable – economic agenda and the need to respond to political crises also adversely affected the development of these enterprises. One serious outcome of Mahathir's commitment to his economic visions has been the debt crisis in the private sector. In the process, the rights of shareholders have seldom been respected while company directors remain ultimately accountable to the prime minister and not to the investors in companies they lead. This is particularly true of firms controlled by well-connected businessmen. Institutions and individuals who have ownership of key corporations seem to have little control over these enterprises. Control appears ultimately to be in the hands of political elites to whom these businessmen are closely linked.

However, in spite of the political business nexus, institutions established to ensure proper governance of the corporate sector have the capacity to perform effectively, and have, in fact, a good reputation in terms of

regulating the equity and financial markets. But, in view of executive hegemony, the relevance and effectiveness of these institutions depend primarily on government leaders. Regulatory institutions can – and usually do – act independently, but are also used as tools by powerful politicians for vested interests. These politicians can ensure that the regulatory institutions do not act against favoured businessmen, in spite of evidence of corrupt practices.

An argument could be made that with the departure of Daim, the business sector no longer held the view that this is a state acting in its own interests. Moreover, with Mahathir's stated desire to put an end to the promotion of politically-linked firms, the domestic press argued that corporate governance in Malaysia would improve appreciably. But structural reforms necessary to promote transparency and accountability in government were not being implemented. The concentration of power in the executive and the lack of autonomy of regulatory institutions to act against corruption and corporate activities not in the interests of shareholders did not serve to inspire confidence that genuine reforms were imminent in Malaysia.

Notes

- 1 See, for example, Chalmers Johnson, 'Political Institutions and Economic Performance: The Government-Business Relationship in Japan, South Korea and Taiwan', in F.C. Deyo, ed., *The Political Economy of the New Asian Industrialism*, Ithaca, NY: Cornell University Press, 1987, pp. 136–64.
- 2 Meredith Woo-Cumings, *The Developmental State*, Ithaca, NY: Cornell University Press, 1999.
- 3 See Edmund Terence Gomez, ed, *Political Business in East Asia*, London: Routledge, 2002.
- 4 Richard F. Doner and Ansil Ramsay, 'Competitive Clientelism and Economic Governance: The Case of Thailand', in Sylvia Maxfield and Ben R. Schneider, eds, *Business and the State in Developing Countries*, Ithaca, NY: Cornell University Press, 1997, pp. 237–76; Tom Wingfield, 'Democratization and Economic Crisis in Thailand: Political Business and the Changing Dynamic of the Thai State', in Gomez, 2000, pp. 250–300.
- 5 Alfred W. McCoy, ed, *An Anarchy of Families: State and Family in the Philippines*, Madison, WI: University of Wisconsin, 1993.
- 6 See, for example, Paul D. Hutchcroft, *Booty Capitalism: The Politics of Banking in the Philippines*, Ithaca, NY: Cornell University Press, 1998, and John T. Sidel, *Capital, Coercion and Crime: Bossism in the Philippines*, Stanford, CA: Stanford University Press, 1999.
- 7 Chang Ha-Joon, 'South Korea: The Misunderstood Crisis', in K.S. Jomo, ed., *Tigers in Trouble: Financial Governance, Liberalisation and Crises in East Asia*, London: Zed Books, 1998, pp. 222–31.
- 8 Factions are defined here as relatively organised groups within a ruling party that compete for control over the executive arm of government. In East Asia, most factions are normally formed around particular leaders rather than on particular ideologies. For a more detailed discussion of the issue of factionalism, see F.P. Belloni and D.C. Beller, eds, *Faction Politics: Political Parties and Factionalism in Comparative Perspective*, Santa Barbara, CA: ABC-Clio, Inc,

- 1978, and R. Goldman 'The Nominating Process: Factionalism as a Force for Democratization', in G.D. Wekkin, D.E. Whistler, M.A. Kelly, and M.A. Maggiotto, eds, *Building Democracy in One-Party Systems: Theoretical Problems and Cross-National Experiences*, Westport, CT: Praeger, 1993.
- 9 In the 1993 general election in Japan, the LDP lost power for the first time since 1955. The loss was attributed to a crisis within Prime Minister Takeshita's faction, which contributed to a split within the party. LDP members formed new parties that became part of the multi-party coalition that formed the new government. In Malaysia, in 1987 and 1998, factional disputes in UMNO resulted in the formation of formidable new opposition coalitions led by former government leaders. These opposition coalitions emerged as a major threat to the dominance of the ruling coalition during the 1990 and 1999 general elections. In the presidential elections in Taiwan in 2000, the KMT lost power for the first time in 50 years to the Democratic Progressive Party (DPP). The DPP would probably not have won the presidential election if not for factionalism within the KMT which led to the emergence of a third presidential candidate, James Soong, a former KMT stalwart, who drew the second largest volume of support during the election.
- 10 Stephan Haggard, *Pathways from the Periphery: The Politics of Growth in the Newly Industrializing Countries*, Ithaca, NY: Cornell University Press, 1990; Sanjaya Lall, *Learning from the Tigers: Studies in Technology and Industrial Policy*, Basingstoke: Macmillan, 1996.
- 11 K.Z. Paltiel, *Political Party Financing in Canada*, Toronto: McGraw-Hill, 1970. See also Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform*, Cambridge: Cambridge University Press, 1999.
- 12 Paltiel argues that parties require funds for three main activities. First, to contest elections; second, to maintain a viable inter-election organisation; and third, to provide research and advisory services for the party's leadership and elected representatives. Paltiel, op. cit., pp. 8–9.
- 13 J. Mendilow, 'Public Party Funding and Party Transformation in Multiparty Systems', *Comparative Political Studies*, 25, 1 (1992), pp. 90–117.
- 14 H.E. Alexander, ed., *Comparative Political Finance in the 1980s*, Cambridge: Cambridge University Press, 1989. See also A.J. Heidenheimer and F.C. Langdon, *Business Associations and the Financing of Political Parties: A Comparative Study of the Evolution of Practices in Germany, Norway and Japan*, The Hague: Martinus Nijhoff, 1968.
- 15 See Wolfgang Sachsenroder and Ulrike E. Frings, eds, *Political Party Systems and Democratic Development in East and Southeast Asia*, vols I and II, Aldershot: Ashgate, 1999.
- 16 Under this Act, for a political party to qualify for state subsidies, at least five of its members had to be parliamentarians or the party had to secure at least 2 per cent of the total votes cast during a national-level general election. This subsidy scheme quickly became a major source of income for Japanese parties. In 1995, just a year after this scheme was introduced, just eight political parties received approximately US\$260 million from the government, which amounted to about two-thirds of their combined revenue. For further details, see T. Shinoda, 'Japan', in Sachsenroder and Frings, op. cit., pp. 89–90.
- 17 Ibid., p. 117.
- 18 See H.H. Guo, S.H. Huang, and M.H. Chiang, 'Taiwan', in Sachsenroder and Frings, op. cit., pp. 179–219. Guo *et al.* also point out that political donations by individuals and companies are subject to tax relief, and that this benefits the KMT since the party still has vast interests in the corporate sector.
- 19 Disclosure of political party funding by corporate firms is important from the point of view of company shareholders. Company directors are obliged to

- inform shareholders before providing funds to particular political parties. See K.D. Ewing, *The Funding of Political Parties in Britain*, Cambridge: Cambridge University Press, 1987.
- 20 Between 1995 and 1997, before the currency crisis, an appreciable increase in the number of firms listed on the KLSE was recorded, from 529 to 708. See Low Chee Keong, 'Corporate Governance in Malaysia', in Low Chee Keong, ed., *Financial Markets in Malaysia*, Kuala Lumpur: Malaysian Law Journal, 2000, pp. 436–49.
 - 21 For an extensive critique of the implementation of privatisation, see K.S. Jomo, ed., *Privatizing Malaysia: Rents, Rhetoric, Realities*, Boulder, CO: Westview Press, 1995.
 - 22 For an in-depth study of the rise of these well-connected *bumiputera* and non-Malay businessmen, see Edmund Terence Gomez and K.S. Jomo, *Malaysia's Political Economy: Politics, Patronage and Profits*, Cambridge: Cambridge University Press, 1999.
 - 23 One key criticism was that the government implemented privatisation in a non-transparent manner. Most major privatisations did not evolve through public–private collaboration involving open discussion. Almost all major privatised projects were awarded based on private discussions between the prime minister, his closest allies and select businessmen. The most prominent privatisations, including the Bakun Dam, monorail and sewerage projects and the sale of Malaysia Airlines (MAS) and the Heavy Industries Corporation of Malaysia (HICOM), have been dismal failures. There was no transparency when all these projects were privatised.
 - 24 Following a political struggle in 1987, when he narrowly managed to retain power, Mahathir moved to concentrate power in the office of the prime minister and UMNO president. This concentration of political power significantly reduced the bureaucracy's influence in policy planning and implementation.
 - 25 *The Star*, 19 May 1992.
 - 26 Between the early 1970s and late 1980s, UMNO managed to acquire huge interests in the corporate sector. The prominent role of UMNO firms in the corporate sector led to allegations of conflicts-of-interest and corruption when the party's companies secured major government contracts. During the late 1980s, a faction within UMNO split to form a new party and began to make claims on the party's corporate investments. In 1990, because of such problems, Mahathir permitted the transfer of UMNO-owned companies to private individuals, all of whom were closely aligned to Daim.
 - 27 More details on the takeover of assets controlled by Anwar allies and Daim protégés are provided later in this chapter.
 - 28 A. Shleifer and R. Vishny, 'A Survey of Corporate Governance', *Journal of Finance* 52, 1997, pp. 737–83; Haider A. Khan, 'Corporate Governance of Family Businesses in Asia', ADB Institute Working Paper Series No. 3, Tokyo: Asian Development Bank Institute, 1999; and Magdi R. Iskandar and Nadereh Chamlou, *Corporate Governance: A Framework for Implementation*, Washington, DC: The World Bank, 2000.
 - 29 Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property*, New York: Harcourt, Brace & World, Inc, 1967; Shleifer and Vishny, op. cit.; Iskandar and Chamlou, op. cit.
 - 30 John Scott, *Corporate Business and Capitalist Classes*, Oxford: Oxford University Press, 1997; Berle and Means, op. cit.
 - 31 Iskandar and Chamlou, op. cit., p. 17.
 - 32 Margaret M. Blair, *Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century*, Washington, DC: The Brookings Institution, 1995.

- 33 Ibid., pp. 3–4.
- 34 Ibid., pp. 235–6.
- 35 In 1998, the Ministry of Finance established the Finance Committee on Corporate Governance, which proposed the Malaysian Code of Corporate Governance in February 1999. The new Code has two primary objectives. First, to encourage disclosure in order to ensure that investors are aware of the way their company is being managed. Second, to remind company directors of their responsibilities. The four principles of corporate governance set out in the Malaysian Code refer to effective leadership by directors of companies, transparency in determining the remuneration of directors, ensuring the accountability of directors through adequate internal controls and an independent external audit and the promotion of dialogue between a company's management and its investors. See Low, pp. 436–51.
- 36 The holding company structure exists whenever one parent or holding company controls the composition of the board of directors, or controls more than half the voting power, or holds more than half of the issued share capital of another subsidiary company. This definition is extended to include a company which is a subsidiary of a subsidiary. The holding company uses the system of pyramiding, which allows the owner to maintain control over corporations with a relatively small investment. For a more in-depth discussion of the merits and de-merits of the holding company structure, specifically in the Malaysian context, see Sieh-Lee Mei Leng, *Ownership and Control of Malaysian Manufacturing Corporations*, Kuala Lumpur: UMCB Publications, 1982, and Lim Mah Hui, *Ownership and Control of the One Hundred Largest Corporations in Malaysia*, Kuala Lumpur: Oxford University Press, 1981.
- 37 See, for example, Gomez and Jomo, *Malaysia's Political*, and Gomez, *Political Business in East Asia*. See also Edmund Terence Gomez, *Chinese Business in Malaysia: Accumulation, Accommodation and Ascendance*, Honolulu: University of Hawaii Press, 1999.
- 38 While the cross-holding structure provides a lot of benefits to the majority shareholder of the holding company, it has no value for, and provides little protection to, the minority shareholders of the firm or those under his control. The cross-holding structure is also useful for enhancing – or distorting – the value of the equity of the holding company if it has ownership of profitable listed subsidiaries or associate companies. This is of primary importance to the holding company's majority owners as it allows them another means to gain access to bank loans, with the equity of profitable firms used as collateral. The main benefit of the cross-holding structure is that it allows the majority shareholder to protect his interests in profitable firms from hostile takeovers.
- 39 See Gomez and Jomo, *Malaysia's Political* and Gomez, *Political Business in East Asia*. See also Peter Searle, *The Riddle of Malaysian Capitalism: Rent-Seekers or Real Capitalists*, St Leonards/Honolulu: Allen & Unwin/University of Hawaii Press, 1999.
- 40 Ronald S. Burt, *Corporate Profits and Cooptation: Networks of Market Restraints and Directorate Ties in the American Economy*, New York: Academic Press, Inc., 1983, pp. 3–4.
- 41 See Lim, Sieh, and Tan Tat Wai, *Income Distribution and Determination in West Malaysia*, Kuala Lumpur: Oxford University Press, 1982.
- 42 See Gomez, *Chinese Business*; James V. Jesudason, *Ethnicity and the Economy: The State, Chinese Business and Multinationals in Malaysia*, Singapore: Oxford University Press, 1989; Yoshihara Kunio, *The Rise of Ersatz Capitalism in Southeast Asia*, Singapore: Oxford University Press, 1988.
- 43 For case studies on the YTL Corp, KLK, and Oriental groups, which profile the growth of these enterprises from the time of their incorporation, see Gomez,

Chinese Business. These case studies indicate that these companies' standing as leading Malaysian firms is due to their adoption of a predominantly vertical or horizontal pattern of growth when developing their enterprise.

44 Edmund Terence Gomez, *Political Business: Corporate Involvement of Malaysian Political Parties*, Cairns: James Cook University Press, 1994.

45 These men included Chan Chin Cheung, once associated with the Renong group, and Akhbar Khan, a Singaporean businessman closely linked with Daim.

46 See Table 11.1.

47 See *Malaysian Business*, 16 November 1999.

48 Pantai subsequently divested 1.2 per cent of its 16 per cent equity in Tongkah, while Tongkah sold off, at a loss, 12 per cent of its 32.5 per cent equity in Pantai to help reduce debts. Tongkah also has RM462.5 million worth of bonds due in 2004.

49 PhileoAllied agreed to pay the government RM800 million for Pos Malaysia – RM550 million in cash, and the balance through a five-year, 5 per cent convertible loan from the government. As the government can elect to convert its loan into equity, it has the option of becoming PhileoAllied's largest shareholder with 32.9 per cent at any time over this five-year period.

50 *Malaysian Business*, 2 January 2001.

51 Ibid.

12 Combating corruption in the transformation of Thailand

Nualnoi Treerat

Introduction

For many years, Thais have waited in vain to see corrupt politicians and officials punished as corruption has been a serious problem in Thailand. Political reform through constitutional change aims to increase not only democratization, but also the degree of checks and balances as well as the degree of decentralization. The 1997 Asian economic crisis revealed widespread corruption problems. Such problems are seen as part of the cause of the crisis. However, the crisis provided the opportunity to reform. During the past five years, attempts to combat corruption have increased considerably. The chapter aims to discuss political reform and changes in mechanisms to fight corruption, and to analyse the country's governance and the effectiveness of the new environment.

Political reform and changing anti-corruption mechanisms

One of most significant changes in Thailand in recent years has been the growth and influence of non-governmental organizations (NGOs).¹ This development can partly be traced to groups working on rural development and environmental issues in the 1980s. NGOs since then have generally gained enhanced status and helped to propel the movement for a stronger civil society. A common goal has been to empower people and communities through approaches favouring greater decentralization and people participation in political and policy processes. This led to the demand for political reform. There were 15 constitutions in Thailand during the period 1932–97. The constitutional reform process that began around 1991–92 was highlighted by a long protest against the unelected prime minister that subsequently led to the May 1992 military crackdown. The hard work of civil society finally paid off in 1997, when the country promulgated a new constitution, aptly called the 'people's charter'.

The essential substance of the 1997 constitution focuses on the promotion and protection of the rights of the citizen and community in the broader perspective, the provision of people participation in governance,

increasing decentralization and role of local governments, and inspecting the exercise of state power.

Under the 1997 constitution, the democratization of the country's political institutions has been advanced in various ways. The members of the Senate, not just the House of Representatives, now have to go through the electoral process. This amendment changes what had previously been an appointed body. Currently, the Senate has much more power to monitor the performance of the government. The Senate, thus, has been converted from an ineffective law-making body into a monitoring institution.

The constitution also effected changes in electoral rules and introduced a 'combination system' of elections. The new rules added a party-list system for a fifth of the seats in the lower house (100 seats), while maintaining the traditional member constituency elections for the rest of the house (400 seats). The expressed reasons for this amendment were three-fold: first, the party system would be strengthened because people would cast their votes directly for parties, instead of individual candidates. Second, the parties would, in effect, have the whole country as their national constituency, and thus make vote-buying more prohibitive. Finally, representatives from party lists would be encouraged to adopt a national vision, and thus a policy platform, because they would be appealing to voters nationwide. However, if a party receives less than 5 per cent of the total national votes, its candidates will not be eligible for party-list members and such votes are regarded as worthless. The system aims to create large strong political parties as in the past most governments were formed of a coalition of three or four political parties which hardly implemented the policies promised during election campaigns. Also, the 1997 constitution determines that a representative who is appointed as minister must resign from the House within 30 days.

Focusing on monitoring the use of state power, the 1997 constitution has created independent institutions to combat corruption and wrongdoing. Such independent institutions include the Constitutional Court, the National Counter-Corruption Commission, the Electoral Commission, the Administrative Court, the Ombudsman, and the State Audit Commission. These organizations are independent in the sense that their structure and operations are beyond the formal control or influence of politicians and political parties. The nominations of members to these bodies are reviewed by well-qualified selection committees, and finally are chosen by the Senate. The new constitution has introduced a system of monitoring and a system of impeachment as means to check the behaviour and performance of politicians and high-ranking bureaucrats.

In sum, the march towards political reform through constitutional change has increased not only the degree of democratization, but also the degree of decentralization as well as the degree of people participation in the country. It is hoped that this will give rise to a more equitable distribution of political as well as economic power among the people.

Country governance

As in many other countries, corruption in Thailand has become diverse and complex both in size and form. It involves small and large sums of money. Transactions implicate junior to high-ranking government officials, bureaucrats, and politicians alike. It is a scourge that spans both the public and private sectors. For some observers, part of the problem appears rooted in Thai culture in that wealthy people are valued regardless of the source of their fortune. In a sense, there are weak cultural controls against abuses of power for private gain. In fact, many people see corruption as a short cut to prosperity and to wider acceptance in society.

Contemporary patterns of corruption

The most excessive examples of corruption, perhaps involving large sums of money, and a complicated cast of players that includes politicians, bureaucrats, and private parties, can be found in government procurement. Many studies point out that corruption in government procurement normally involves a network consisting of a politician who supervises the organization, high-ranking bureaucrats in the department, as well as lower-ranking officials in charge of the project, and a group of businessmen. In 2000, several surveys were conducted to get a better picture of the corruption problem. These included the perceptions and experiences of corruption among Thai household heads, businesspeople, and civil servants (Box 12.1).

The research project that undertook the above surveys also looked at government procurement. The findings showed that the procurement process was characterized to a high degree by barriers to entry, enabling corrupt officials and crooked businessmen to extract large amounts of economic rent. Many artificial barriers were created to limit the number of potential bidders, ranging from the specification of the products to be procured and the qualification of the contractors that could bid. There were even outright dirty tactics such as physically hauling away competitors who happened to show up. And when the bidding succeeds in including all possible competitors, the bidders often collude. The study also pointed out that bribes occur at every stage in the procurement process, beginning at the stage of departmental budget preparation where politicians and businessmen, with the cooperation of civil servants, initiate 'pork-barrel' projects.² Although collusion among businessmen, bureaucrats, and politicians in office is the common pattern of corruption in Thailand, there are some exceptions. For example, in the construction sectors, the owners of construction companies or their relatives would enter politics directly to ensure they would get the government contracts. The results were confirmed by a study of 'Business, Government and Corruption':³ on the large public projects, government officials, politicians, and businessmen collude

1 The survey of household heads⁴

Household heads rank corruption in the public sector as the third most serious national problem, followed by the poor economy and cost-of-living. They view politicians as more corrupt than bureaucrats. They believe corruption is getting worse, especially among politicians.

The vast majority of people do not have to pay squeeze money at government offices, public utilities, and similar places; and generally they are satisfied with the services they receive. The bribe-taking from households concentrated in a small number of offices, but the amounts are truly large. These offices are those that have influence over significant monetary transactions, namely the land department, the revenue and the customs offices, and the transport department (which controls vehicle licensing), and the police. These five offices accounted for 95 per cent of perceived total corruption income. In general, people are confident that bribes paid to government offices will ensure a better service or result.

Almost one-third of households were offered money to buy votes during the last general election in 1996. And one-tenth of households were solicited for bribes by some public office. The average amount asked from each solicited household was around ten thousand baht (US\$250) per household per year.

2 The survey of business environment and governance⁵

Business enterprises experienced inefficiencies related to bureaucratic red tape. On average, senior managers spend 14 per cent of their management time dealing with laws and regulations. To avoid bureaucratic inefficiency, business firms give irregular 'additional payments' to get things done. Approximately 79 per cent of the interviewed firms said that it was 'always, mostly and frequently' common to pay some extra money. Most of them knew in advance about how much this extra money was and agreed that after the payment, the service is delivered as agreed.

The public officials that most frequently requested extra payments after contact is established are: government procurement agents (57 per cent), politicians influencing policies affecting enterprises (44 per cent), and traffic and other police officers (39 per cent). When considering average annual amounts of extra payments, firms paid the highest to the customs authority, followed by government procurement offices, politicians influencing firms, and lastly the tax agency.

In the bidding process to get government contracts, firms said unofficial payment was one of the major problems. About 18 per cent of responding firms paid extra money up to 5 per cent of the contract value; around 11 per cent said they paid up to 10 per cent; about 8 per cent paid up to 20 per cent; and around 2 per cent paid more than 20 per cent.

3 The survey of public officials⁶

Most respondents thought corruption was part of life in Thai society. Bribery was seen as normal and customary.

‘Position buying’ in government sectors was said to be the root of corruption. Approximately 43 per cent admitted that there was ‘position buying’ in their own departments.

‘Position buying’ is done using money and non-money approaches over a long period of time. The process involved politicians and their representatives.

to obtain corruption revenue. The practice caused a leakage in the government budget, increased the burden on taxpayers, and reduced the quality of work. Officials and politicians were able to siphon off 10–20 per cent of total project costs through such methods. The bulk of corruption in Thailand seems to be occurring mainly at the intersection between business and politics.

Ranking Thailand's corruption

For many years, Transparency International (TI), a leading anti-corruption non-governmental organization, has measured the Corruption Perceptions Index (CPI) for many countries. The CPI ranks countries around the world using various polls conducted by different organizations. The CPI score ranges from 0 to 10, where the minimum score of 0 indicates that the country is perceived to be totally corrupt and the maximum score of 10 means that it is perceived to be totally clean.

Viewing Thailand's CPI scores from a longer perspective, it should be noted that it experienced an improvement from a score of 1.85 during the period 1988–92 to a score of 3.33 in 1996. However, the index for Thailand slipped after 1996, from 3.33 to 3 in 1998.⁷ This decline occurred during the period of the Asian financial crisis in which problems of governance were seen as partly to be blamed. However, the index remained stable at 3.2 during 1999–2002 and then slightly increased to 3.3 in 2003. In this regard, although progress has been made in combating corruption in Thailand, much more remains to be done (Figure 12.1).

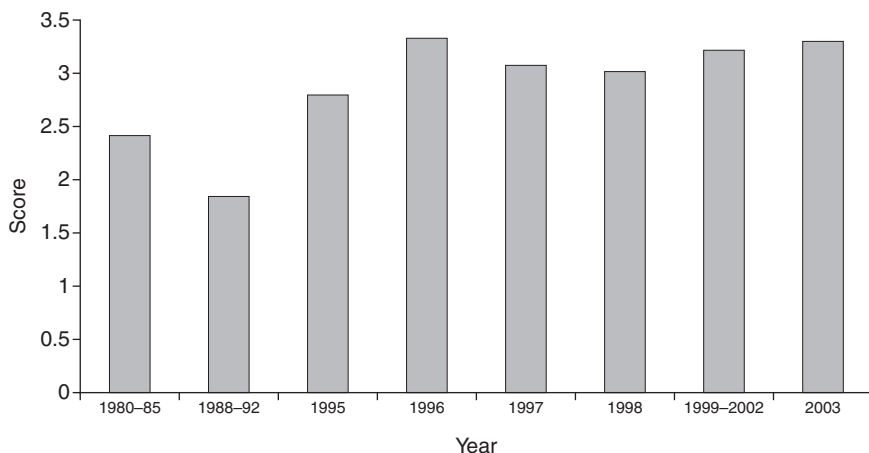


Figure 12.1 Transparency International, Corruption Perception Index (CPI), Thailand scores, 1980–2003.

From a broader perspective, corruption in Thailand may be understood in relation to its ‘quality of governance’. An index developed by Jeff Huther and Anwar Shah combines measurements of citizen participation, government orientation, social development, and economic management.⁸ In the Huther and Shah ranking of governance quality, Thailand is placed 43rd among 80 countries in the world and is characterized as having ‘fair’ governance. Although the index presents only a ‘snapshot’ of Thailand and cannot capture the full range of issues, it still provides a sense of the quality of its governance.

Another perspective of the quality of governance in Thailand is estimated by Kaufman *et al.* (2003). The study covers six dimensions of governance: voice and accountability, political stability/lack of violence, government effectiveness, regulatory framework, rule of law, and control of corruption, for 199 countries (Figure 12.2). On a scale from –2.5 to 2.5, where the higher values correspond to governance ratings, all indicators in 2002 showed Thailand’s ranking above the 50th percentile. Compared with 1996, three indicators, including voice and accountability, political stability/lack of violence and control of corruption, had improved, and the rest had deteriorated.⁹

In addition, freedom of the press is an important indicator since the media are a major mechanism in fighting corruption. The annual survey of press freedom by Freedom House showed that there was a significant improvement from a score of 54 in 1994 to a score of 31 in 1996 (Figure 12.3). The score increased slightly after 1996 to a score of 34 in 1997. This pattern coincided with the CPI score. However, the index remained at around 29–31 during 1998–2002, suggesting that Thailand has substantial freedom of the media.

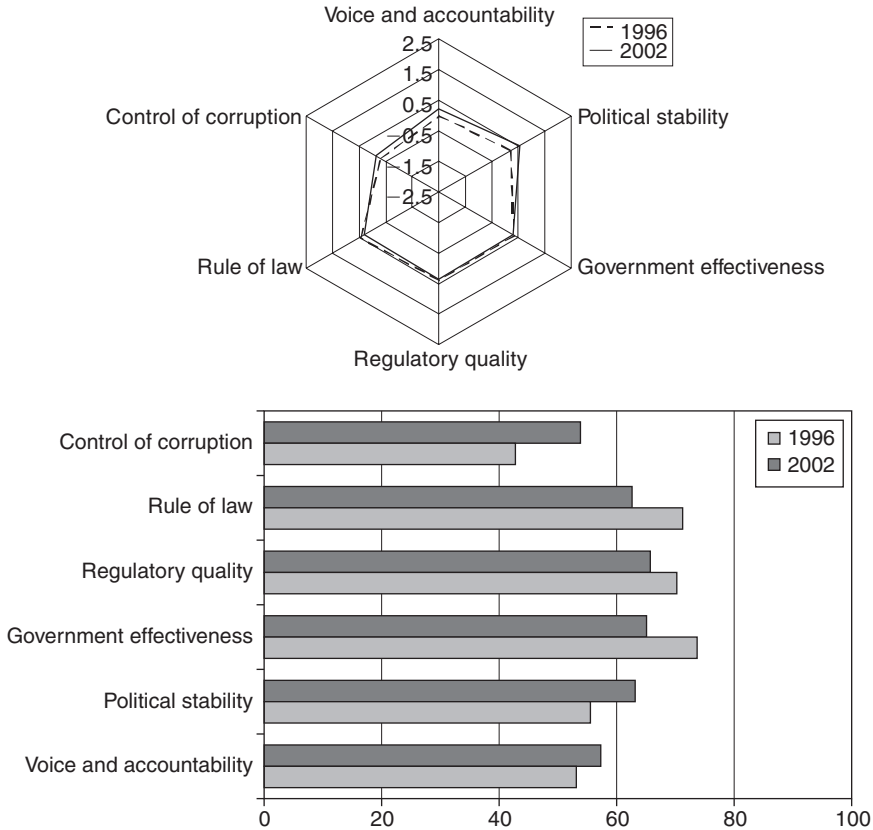


Figure 12.2 Thailand governance indicators, 1996 and 2002 (source: D. Kaufman, A. Kraay, and M. Mastruzzi, *Governance Matters III: Governance Indicators for 1996–2002*, Washington, DC: World Bank, 2003).

The increasing mechanisms for combating corruption

Apart from measures to ensure clean elections and government and enhance electoral accountability in the Senate, independent institutions have been employed as a main mechanism to check and balance the system. The National Counter-Corruption Commission and the office of the Auditor General of Thailand were set up independently from the government. These organizations have been assigned to monitor and combat corruption. The constitution aimed to strengthen the country's legal backbone so as to combat corruption in the following areas:¹⁰

- *Reducing potential conflicts of interest of public officials:* Cabinet members cannot hold partnerships or own shares of more than 5 per

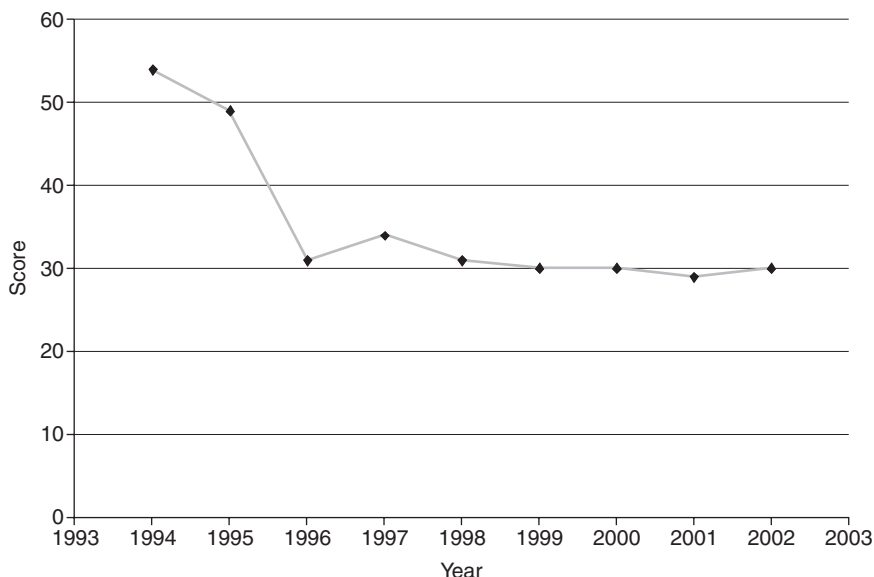


Figure 12.3 Freedom House Annual Survey of Press Freedom, Thailand scores, 1994–2002.

Note

0–30 = free, 31–60 = partly free, 61–100 = not free.

cent in business companies and cannot take part in commercial transactions with state agencies. Political parties also have to declare the size and source of donations received to the Election Commission for public disclosure.

- *Monitoring the wealth of public officials:* The new rules require that top politicians and senior civil servants must declare their assets and liabilities before and after gaining their positions to the National Counter-Corruption Commission. The commissioners can verify whether or not the declared assets and liabilities are correct. In the event of faults and flaws in the disclosure, the commission is empowered to investigate and prosecute.
- *Increasing investigation of abuses of public office:* The constitution mandates the National Counter-Corruption Commission to investigate complaints of corrupt practices and to prosecute officials and propose penalties for violators, including removal from office. Public officials and private businesses involved in corruption in state transactions, as well as public officials who are aware of corrupt practices but fail to act against them, are subject to severe sanctions.
- *New channels to report and complain about corrupt practices:* There are now more channels for the public to complain against the abuse

of power and corruption of public officials. People can file a case at the Administrative Court or report to the Ombudsman. They may also, after gathering no fewer than 50,000 signatures, file a petition to the Senate to compel investigation of the highest officials of government.

During this period of constitutional reform, several attempts were also made to reform the bureaucracy itself, aimed at improving its performance and probity. These efforts started as early as 1996 when the Civil Service Commission initiated an action plan for bureaucratic reform. Several seminars were organized on issues of 'Good Governance' and 'Bureaucratic Reforms'. In May 1997, the government unveiled a master plan for bureaucratic reform that would result in 'downsizing', or reducing the number of government officials. And on 1 October 2002, the new bureaucratic system started. There are two main changes: first, the organization was adjusted to focus on the main duty of ministry; second, a new budgeting system aiming at the performance base was adopted.

The challenge for civil society

While the 1997 constitution lays down the infrastructure and mechanism to fight corruption, the new constitution also ensures civil rights and civil liberties by making several provisions to allow people to know and participate directly in state decision-making which, in turn, should lead to the prevention or reduction of corruption. The measures encouraging a stronger civil society include:

- *The right to know.* Under sections 58–59 of the constitution the people are entitled to access information concerning the records of government agencies except when the disclosure of such information will jeopardize national security, public safety, or individuals' interests as protected by law. This right is defined in detail by the Information Act, passed by the parliament almost at the same time as the approval of the constitution. Building on the momentum of constitutional reforms, an Official Information Act (OIA) was enacted to enhance popular access to information involving government operations. Parliament passed the law just a month ahead of the ratification of the 1997 constitution. The Act is intended to allow citizens greater knowledge of public sector practices, which have historically been largely restricted from public view. Apart from allowing people access to information about government affairs, the Act encourages popular participation in monitoring government activities, both at the national and local levels. It is hoped that the public can analyse and decide for themselves whether or not the state's undertakings are appropriate. Moreover, by providing access to state information, the law expands the public's rights in dealing with the state.

- *Freedom of the press.* Under sections 39–41, the government may not impose a ban on printing, newspaper publishing, radio or television broadcasting, except when it is imposed by a court judge under the law or when the country is in a state of war or armed conflict. The 1997 constitution decrees that an independent state agency will be set up to distribute radio frequencies and supervise radio and television broadcasting. This agency will be appointed by the Senate. Officials or employees of media organizations, including those of state-owned organizations, shall enjoy the liberty to present news and express their opinions under the constitutional restrictions without the mandate of any government agency, state agency, state enterprises or the owner of such businesses, providing that it is not contrary to their professional ethics.
- *Decentralization and local government.* During the political reform, decentralization was also perceived as the way to promote real democratization, reduce vote buying and money politics and fight corruption. Many local organizations have been founded. Currently, Thailand has 7,950 local governments. Under section 78, the state shall decentralize powers to localities for the purpose of independence and self-determination in local affairs, develop local economies, public utilities and facilities, and information infrastructure in the locality thoroughly and equally throughout the country. Although the local governments have autonomy to lay down policies for their governance, administration, personnel administration, and finance, in some degree the local governments are regulated by the state. In the past, all local spending was routed through the national budget. Local people had no chance to monitor spending decisions made at this level. Constituency MPs competed to gain access to this budget. Local influential people acted as canvassers for these constituency MPs at election time. Voters who were poor had to rely on local influential people in time of need (for loans, jobs, etc.). They sold their votes to these canvassers both for the direct gain and because of debts of obligation. Hence vote buying and selling persisted. Decentralization was intended to attack this problem in several ways. First, it transfers spending decisions from the national budget process to local bodies. Second, it empowers local people to monitor and oversee local budget spending. Third, local spending is seen as contributing to the reduction of poverty. The law determines that the local revenue must account for at least 20 per cent of the national government revenue in the fiscal year 2001 and this proportion increases to 35 per cent in fiscal year 2006. This provision ensures that the central government must transfer grant, personnel, and projects to local governments. However, the development of local governments in Thailand is in the first stage, and there are still many problems: corruption in such local procurement,¹¹ inefficiency in administration, low level of public participation, local

influence and vote-buying. Strengthening local governance is important. This requires more popular participation and involvement in the local governments, as well as training programmes and packages for local administrators so as to promote better understanding of good governance and its implementation.

The aftermath: five years of constitutional reform

The critical challenge for anti-corruption actors is to assess the relative effectiveness of new players and new rules, so that their impact can be significant and sustainable. At the basic level, if the goal is to make corruption a high-risk and low-reward activity, the new players and rules may be subjected to four criteria focused on curbing opportunities and incentives for corruption:¹²

- 1 *Opportunities*: Does it lessen the number of transactions and opportunities for corruption?
- 2 *Gains*: Does it reduce expected gains or benefits from corrupt transactions?
- 3 *Probability of punishment*: Does it increase the likelihood or probability that corrupt officials will be detected or exposed, prosecuted, and punished?
- 4 *Magnitude of penalty*: Does it add to the magnitude of penalties for corrupt acts?¹³

In addition to assessing policies and programmes from this perspective, it is also crucial to evaluate them in relation to a country's 'quality of governance'. Building on Huther and Shah's framework, Vinay Bhargava and Emil Bolongaita emphasize the importance of understanding a country's governance and operating environment in designing policies and programmes to deal with problems of corruption.¹⁴ For example, they point out that certain policies, such as reducing state involvement in the economy and allowing more competition in the private sector, promise tremendous anti-corruption effects in a poor governance environment because they reduce the scope of corruption and thus curb the number of tempting opportunities. In contrast, an anti-corruption agency, introduced in a poor governance country where corruption is systemic, is likely to have little effect because it can easily be embedded in a context where sanctions are not effectively enforced, corruption opportunities are rampant, and agents of the state are susceptible to corruption.

Following the passage of Thailand's constitutional reforms, many observers were concerned about the financial and human resources available to operate the new institutions. Such resource constraints would naturally limit the ability of these organizations to execute their respective mandates. Reports of attempts by some politicians to place their people in

these new offices only served to fan public fears. The disclosure of major cases of corruption had been too few and far between. The cases also demonstrated that only lower-ranking officials were punished.

Other observers found fault with the stringent requirements of certain constitutional provisions. A particular issue was the numbers needed for popular petitions to force Senate investigations of high-level corruption. Although this measure sounds powerful, in practice it is very difficult to use. The founder of such a petition would first have to identify himself to the Senate and authenticate each of the 50,000 signatures, at the risk of going to jail if some signatures are found to be falsified. It puts the people and organizations willing to fight corruption into the spotlight, which can be very dangerous.

A mechanism designed by law, this can create obstacles for people seeking to participate in monitoring the use of power. If the transaction cost of public participation is too high, the level of public participation will be low. Also, the transaction cost of people's participation in fighting corruption is increased if anyone who witnesses corruption and reports this to officials may get hurt. The witness protection system in Thailand is quite weak. This is especially true in cases against influential people, and many corruption cases involve influential politicians and senior officials. To strengthen the role of public participation, whistleblower protection should be built in, as well as mechanisms to reduce transaction cost.

In many ways, it was the stirrings of social empowerment that made the ground fertile for the major changes in Thailand's basic political charter and other institutions. The expansion and assertion of civil society combined with reformist officials to execute sweeping shifts in the ways and means of governance. But the challenge of making this change in Thailand a 'long-term' proposition remains. Only a few months after the new constitution was promulgated, however, there was social movement against corruption (Box 12.2).

In this regard, some argue that aspects of Thailand's hierarchical and deferential culture may need to be shaken because it helps sustain a patronage system that perpetuates corruption in political and economic spheres. But attempting to change the culture and values of Thai society would undoubtedly require an enormous effort from the public and private sectors as well as civil society. Past efforts along these lines have been generally ineffective. This result seems hardly surprising because they were not combined with efforts to reduce opportunities for corruption and increase the prospects of being punished.

There still remains the question whether new players and new rules in Thailand are effective, significant, and sustainable. In this section, four areas that play an important role in combating corruption are discussed.

Box 12.2 The role of civil society: a case study of public health ministry's drug and medical supply procurement scandal

On 28 October 2003 the Criminal Court for Politicians in Positions sentenced former Public Health Minister, Rakkiat Sukthana, to 15 years in jail after finding him guilty of taking bribes from a drug company. This was the first case in which an ex-minister has been sentenced to jail on the charge of corruption after the new constitution, and the second case since 1960.

Prior to this verdict, Rakkiat Sukthana was found guilty on the charge of unusual wealth, the court then ordering the seizure of 233.88 million baht (approximately US\$5.8 million) on 30 September 2003. In addition, Rakkiat Sukthana was earlier found guilty by the Constitutional Court of concealing his assets. He was banned from political positions for five years.

For many years, Thais have waited in vain to see corrupt politicians punished as happens in other countries in the region. However, in fact, the bad guys are big and powerful. This all happened in 1998, when the country faced an economic crisis, and thus a tightened budget. The 1997 economic crisis resulted in a considerable reduction of the budget allocation for procurement of equipment, construction and investment, forcing administrators looking for personal gain from such allocation to look for other sources. At the same time, the budget for medicine and medical supplies procurement could hardly be reduced but had to be increased instead, especially because the crisis reduced the number of patients attending private hospitals but correspondingly increased their number in public hospitals. With increasing unemployment and declining income, more people had to rely on public sector service at the time when the state had to tighten its belt. These factors affected the budgets of community hospitals, forcing staff, especially hospital administrators, to solve problems of resource shortage in their respective hospitals. In this situation, the Minister of Public Health asked the government for additional money for medicine and necessary medical supplies. This created the opportunity for those seeking their own interest who in the past had not interfered with such budgets.

In June 1998, many doctors at district hospitals were told by senior persons in the Public Health Ministry to buy drugs and medical supplies from recommended companies. It turned out that the prices from these companies were much higher than market prices. Some doctors were told that if they didn't want to buy from these companies, they need not do so, but they had to give 15 per cent of the budget as the commission fee instead.

More expensive prices for medicine immediately affected patients because they had to pay real prices without any subsidies from the

government, except those people who were defined as poor. Despite deteriorating economic conditions among the public, this problem put a great deal of pressure on community hospitals.

The case was revealed by the President of the Rural Doctor Society (RDS), the association of district hospital doctors founded in 1978 to resolve public health problems in the rural areas. In the past the role of RDS had been to provide information and suggestions on public health problems in the rural areas for the Ministry and also for its members. This was the first movement of RDS against the corruption of the high-ranking officials. The RDS president urged the government, the Counter-Corruption Commission and the Office of the Auditor-General to investigate all irregular purchasing documents.

The corruption in medicine and medical supplies procurement in the Ministry of Public Health considerably disturbed the general public. To come out against corruption by public officials in an organization, though rare, is not new in Thai society. However, this particular case clearly differed from others because the movement against corruption covered rather a long period, had continuity and eventually spread widely to other areas. It was thus in many ways a strange and new phenomenon for Thai society.

The actions of the president and some members of the RDS were uncharacteristic in Thailand, where it was unusual for a civil servant to challenge orders from higher officials. Doing so could result in being harassed or being transferred to remote areas or being given an inactive post. Therefore, the RDS's action received attention from the media, some senior officials in the Public Health Ministry, academics, NGOs, and the general public. The media, including newspapers, television and radio, followed up and reported on the case on the front page every day for more than two months.

The movement was supported by the general public. Finally, the government had to set up a fact-finding committee led by a retired senior public health official. The results of the investigation of the committee confirmed the scandal involved politicians and high-ranking officials in the ministry.

The public pressure was continued by a group of 30 NGOs. They called for the resignation of the ministers and Permanent Secretary of the Public Health Ministry. The group announced they would gather the 50,000 signatures necessary to request the impeachment of the ministers and the Permanent Secretary. In two months the NGO network had collected over 50,000 signatures and submitted the petition to the President of the Senate, who was appointed from the old system. This became the first case of a public petition under the terms of the 1997 constitution, even though the President of the Senate refused to continue the process, claiming that there was still no law to determine the process.

The success of the movement arose from an accumulated clamour for political reform, going as far back as 14 October 1973 when the ideology of service to society had spread to medical students. Such an ideology took concrete form when these students became rural doctors, establishing the Rural Doctor Federation, which later became the Rural Doctor Society. For more than 20 years the RDS had been involved with social development and rural public health systems. In 1998, the RDS stepped into a new role of scrutinizing the performance of the Public Health Ministry, moving against corruption on a continuing basis, thus avoiding loss of budget funding and punishing some culprits, though only partially. The success of the movement could not be separated from the social movement calling for more political reform, though the evolution of the RDS constituted an important internal factor.

Although the movement was started by the RDS, the long hard work of a coalition consisting of the NGO network, the public health group and the media with support from the public contributed significantly to make the case. The movement resulted in the resignations of two ministers, transfer of the Permanent Secretary, dismissal of three high-level officials, sacking of five high-level officials and reprimands for 22 other officials. In addition, the minister's consultant was sentenced to jail for six years by the Criminal Court for Politicians in Positions. Finally, the ex-minister were sentenced to jail 15 years as mentioned earlier.

In an attempt to penalize the wrongdoers, the network is still calling the NCCC to proceed with legal action against other high-level officials who escaped the first-round investigation.

The overall performance of the new mechanism

In the past two years, the National Counter-Corruption Commission can claim some significant successes. It tackled several cases of false statements of assets and liabilities submitted by high-ranking politicians. Those included the two well-known cases of Thaksin Shinawatra, Thailand's Prime Minister, and Sanan Kachornprasart, the former Minister of Interior and Secretary-General of the Democrat Party. Sanan Kachornprasart resigned from his cabinet post before the Constitutional Court could issue its verdict. The court eventually found him guilty. He immediately resigned as member of the House and was banned from public office for five years. The commission also found Thaksin Shinawatra guilty of concealing his assets and the case was elevated for appeal to the Constitutional Court for final adjudication. In a close and controversial vote of 8-7, the Court in early August 2001 acquitted him of the charges. However, on the same day, another Thai Rak Thai Party MP, Prayuth Hahakitsiri, was

found guilty by a clear 12–1 majority of concealing his wealth and was sentenced to a five-year ban from politics.

Up to October 2002, the Constitutional Court had ruled on 18 cases in which the NCCC has indicted an official under the 1997 constitution for providing false or incomplete information in their statement (6 cases) and for failing to submit an Asset and Liability Statement (12 cases). The court has concurred with the NCCC in 17 cases, except the Thaksin case. The ruling has been highly controversial.¹⁵

Regarding the performance of NCCC, approximately 1,646 corruption cases were submitted to the NCCC in 2000, the number increasing to 2,179 cases in 2001. Of these, 30 cases accused politicians in positions of dishonesty or corruption and 45 cases were concerned with the unusual wealth of politicians and government officials. The rest mainly involved government officials. However, each year the number of new cases are more than the completed cases, leading to an increase in unresolved cases.

Freedom of the press

Under the new constitution, a person shall enjoy the liberty to express his or her opinion, make speeches, write, print, and publicize. Many politicians have tried to defend or use measures, both legal and illegal, to protect themselves. Some journalists were filed in the court and some were threatened or killed.¹⁶ In the past, government might try to intervene and influence the electronic media directly as the state owns most of the country's television and radio stations, or the authorities might issue warnings to publishers. But the way the constitution promoted press freedom had led to a change from intervention through state mechanisms to intervention through use of business power, i.e. use of commercial advertising to curry political support in the press. This can be done by the allocation of advertising of the state agencies or enterprises. In some cases when politicians are very close to big businessmen, advertising by the business sector may be used to tackle the media. Thaksin Shinawatra's government has been accused of applying both political and economic pressure on the media in order to silence critical voices.¹⁷

Freedom of the press has been viewed as an effective mechanism in the fight against corruption. Media can help to expose and investigate corruption. In Thailand the number of investigative journalists has increased considerably, for example, the two famous cases mentioned above, those of Thaksin Shinawatra and Sanan Kachornprasart, were investigated and reported in the newspaper *Prachachart Turakij* before the NCCC's investigation. In the case of corruption in drugs and medical supplies procurement, the involvement of media in helping the NGO to investigate and report to the public contributed to the pressure on the government to respond. The media helps to keep the attention of people

focused for a long period, and also helps to protect witnesses and people who expose the case. The success of the movement against corruption in the Ministry of Public Health was partly due to the media. Strengthening press freedom is necessary if anti-corruption mechanisms are to be effective.

Notes

- 1 See J. Laird, *Money Politics, Globalization and Crisis: The Case of Thailand*, Singapore: Graham Brash Pte Ltd, 2000.
- 2 Nipon Poapongsakorn *et al.*
- 3 See Pasuk Phongpaichit, Sungsidh Piriyaarangsarn, Nualnoi Treerat, Noppanan Wantheasakul, Apasri Juthathep, Wisanu Wongsinsirikul, and Chantira Thanawatanawong, 'Business, Government and Corruption', Research project submitted to the National Counter-Corruption Commission, 2000.
- 4 See Pasuk Phongpaichit, Nualnoi Treerat, Yongyuth Chaiyapong, and Chris Baker, 'Corruption in the Public Sector in Thailand: Perceptions and Experience of Households', Research Project on Anti-Corruption Strategy in Thailand in the Year 2000, supported by Asia Foundation, World Bank, and Office of the Civil Service Commission of Thailand.
- 5 See Sauwanee Thairungroj, Pornpong Sumanan, Thanavath Pholvichai, Rungroj Benjamasutin, and Nithitah Benjamasutin, 'Thailand: Business Environment and Governance Survey', Research Project on Anti-Corruption Strategy in Thailand in the Year 2000, supported by the World Bank and the Office of the Civil Service Commission of Thailand.
- 6 See Supachai Yaowaprapas, 'Corruption in the Public Sector: Perceptions of the Civil Servants and Anti-Corruption Action Plan', Research Project on Anti-Corruption Strategy in Thailand in the Year 2000, supported by World Bank and Office of the Civil Service Commission of Thailand.
- 7 The CPI ranking for Thailand has stayed at 3 to date (2001).
- 8 See Jeff Huther and Anwar Shah, 'Applying a Simple Measure of Good Governance to the Debate on Fiscal Decentralization', Working Paper 1894, World Bank, March 1998.
- 9 See D. Kaufman, A. Kraay, and M. Mastruzzi, *Governance Matters III: Governance Indicators for 1996–2002*, Washington, DC: World Bank, 2003.
- 10 See Orapin Sopchokchai, Ryratana Suwanraks, and Panniya Binsri, 'The Thai Constitution and New Mechanism for Transparent and Anti-Corruption Society', paper presented at the conference on 'Transparent and Clean Public Service Society', 18–19 November 2000, Chonburi, Thailand.
- 11 In many cases, corruption at the local level is linked to that at the national level.
- 12 See Jeff Huther and Anwar Shah, 'Anti-Corruption Policies and Programs: A Framework for Evaluation', Working Paper 2501, World Bank, 2000. For an expanded treatment, see Vinay K. Bhargava and Emil P. Bolongaita, 'Making National Anti-Corruption Policies and Programs More Effective: An Analytical Framework', paper prepared for the World Bank's Global Distance Learning Program on Combating Corruption in the Asia-Pacific.
- 13 Huther and Shah note that research findings suggest that the probability of paying penalties is more likely to make an impact than the magnitude of the penalty.
- 14 Bhargava and Bolongaita.

- 15 See James R. Klein, 'The Battle for Rule of Law in Thailand: The Constitutional Court of Thailand', paper presented at KPI Congress IV: Five Years of Political Reform Under the New Constitution, 8–10 November 2002.
- 16 See Reporters Without Borders, 'Thailand annual report 2002', available at <http://www.rsf.org/>.
- 17 See Freedom House, 'Annual Survey of Press Freedom 2002'.

Part III

Viewpoints

Introduction

The Auckland conference included coverage of New Zealand, but not in any sense that it was preening itself. New Zealand has not been free of corruption. What it has done, however, is to create a number of institutions that, along with public opinion, help to check it, even amid the uncertainties and opportunities created by deregulation, corporatisation and privatisation. Those institutions, Judge Satyanand shows in Chapter 13, are not merely governmental. The private sector has adopted the same methods as the Ombudsman.

Finally, James Kember offers a concluding comment on corruption and anti-corruption practices.

13 Corruption: a challenge for modern governance

Anand Satyanand

Introduction

New Zealand, in the context of Asia and the Pacific, may be characterised by three things. The first is its remoteness and small size. The second is its part-Polynesian history and its indigenous Maori people. The third is its mode of government and administration. Although small and far away, New Zealand has many linkages with Asia and energetically pursues links of trade and commerce and cultural contact, bilaterally with many Asian countries, and multilaterally by means of membership of Asia-based organisations such as APEC and ASEAN. Its Polynesian connections make notions such as sharing¹ well known and it is accordingly natural to share ideas and to accept insights from others. So far as government and administration are concerned, New Zealand has adopted modern means of public sector management with a number of mechanisms available for redress of wrongs – the courts, recourse to ombudsmen for maladministration, freedom of information, and so forth.

New Zealand rates consistently as among the least corrupt countries in the world.² Yet it is not a country which is free from corruption. In 2000, the State Services Commissioner, the person in charge of the body which administers the country's public sector filed in Parliament his annual report and had to say that:

well publicised cases this year of former employees of the Inland Revenue Department, the Department of Work and Income (now a division of the Ministry of Social Development), and the Immigration Service have reinforced the realisation that New Zealand is not immune from corrupt practice on the part of public servants. The cases have generated media comment and inevitably increased public disquiet. Confidence in the behaviour of public officials is so important that [I] have decided to use my annual report on the State services, the first of the new millennium, to confront these concerns directly.³

Because of the then unprecedented nature of the cases mentioned, the Commissioner proceeded to devote detailed attention to the matter of

corruption, the importance of an honest state sector, definitions of corruption, the amount of risk and the action necessary to maintain high standards. In this chapter, these experiences are revisited, and a picture of our country presented in order to have others make comparisons and to register both similar themes and different approaches. In other words, the spectre of corruption is unhappily one to be shared, especially by those seeking strategies for solution.

At all events, the most notorious kinds of corruption can easily be recognised and described. So whether the corruption is large or small scale, it is questions of identification and eradication that are important. In the context of India, then President Narayanan said in 1997, 'Corruption is one of the greatest challenges now confronting [the country].'⁴ In another Asia-Pacific state, Papua New Guinea, Simon Pentanu, Chief Ombudsman of that country in a speech called 'Dealing with Corruption' given in Canberra Australia in 1998, but published in June 2000, said:

The answer to corruption is becoming clear and plain. It is by and large about leadership. Honest creative competent leadership throughout all arms of government. This type of leadership is all about self-empowerment, which is the only viable antidote.... We have to salvage ourselves and our ship of state.⁵

It can thus be stated that agreement will be reached without difficulty that corruption is something which needs attention, even where in a setting like New Zealand, for example, the number of cases may be smaller. Corruption is not confined to any country or continent because a small amount of reflection will bring to mind, for example, the Matrix – Churchill or 'Cash for Questions' scandals of recent times in the United Kingdom, the Carrefours du Développement scandal in France, each of the Flick, Barschell, and Hesse controversies in Germany, and either the Watergate or Iran-Contra affairs in the United States.

The New Zealand State Services Commissioner put the matter in the following way.

If corruption is so rare in the New Zealand State sector, why should we be concerned about a handful of cases? There are three reasons. First ... such cases undermine citizens' confidence in public institutions on a scale disproportionate to the offence. In a country that relies largely on voluntary compliance with tax laws, benefit administration and range of licensing and registration arrangements, citizens' compliance is directly related to their trust in the way in which their personal information will be held, the honesty of the officials administering the law and citizens' perception that all are treated equitably. This public confidence is fundamental to a successful civil society. Secondly, our [New Zealand's] admirable track record in these matters

cannot be taken for granted. There are plenty of overseas examples to demonstrate that once it becomes established, corruption is difficult and costly to eliminate. Openness – that is a willingness to acknowledge the risks and to prosecute those who transgress – is fundamental to minimising such risks. Finally, a State sector and private sector free of corruption contribute to a fair society and a well-performing economy. Neither equity nor efficiency is served by corruption. In recent years international financial institutions which were once tolerant of, or at least philosophical about, a degree of corruption in countries where they were funding development programmes, have brought the eradication of corrupt practices closer to the top of their agenda.

It may therefore be of interest to describe what may be termed the ‘chemistry of the New Zealand public sector’ and the very limited amount of corruption that has been found to exist and to examine some of the mechanisms that ensure, for the moment, that it is kept to a minimum.

The New Zealand Public Service is comprised of 38 Government departments plus a number of Crown Entities and State-Owned Enterprises. In answer to a question at a Conference on 9 April 2003 the State Services Commissioner described the number of employees in the core public service at 31,000. Latest estimates put the population of the country at just on 4 million, there being two major ethnicities, European and Maori, the latter being 15 per cent. To this should be added a smaller number of other groupings, people of Pacific Island descent comprising 6 per cent and those of Asian origin 5 per cent. In other words, New Zealand can be described as a predominantly European but significantly multi-cultural country where in day-to-day living there is considerable evidence of Maori and Polynesian themes. Something of that same ethnic mixture comes to be represented in those employed by the State.

During the past 20 years the New Zealand public sector has been the subject of widespread reform as what is now known as New Public Management has come to be applied. This has had a number of constituent elements. Laws governing labour organisations and the negotiating environment were passed. State-Owned Enterprises undertaking operations on a commercially viable basis were established. A number of activities more suited to the private sector – such as railways, insurance, telecommunications, and banking – were sold. A State Sector Act restructured public sector management and aligned the public sector with private sector employment regulations. Employment came to be undertaken by means of contracts renewable after specific terms rather than being on a long-term and sometimes lifetime basis. The foregoing and other items have had considerable effects on New Zealand life, a major one being reduction in the number of public sector employees from more than 90,000 to 30,000 in that 20-year period.

With a tradition born of a colonial past, which emphasised things such as self-help and an egalitarian approach, New Zealanders can be said to dislike either excesses or abuses of power, which in the context of a small society they are able to remonstrate, when necessary. To describe the New Zealand community in a sentence, the elements of a relatively small but reasonably well-educated and egalitarian-minded community emerges, which dislikes unfairness and which will not tolerate corruption of the kind described by the New Zealand State Services Commissioner. All of these things have a bearing in keeping the amount and degree of corruption at low levels.

Many corrupt actions will be illegal in the sense of breach of the criminal law. The New Zealand Police have responsibility for enforcement of the criminal law and the Crimes Act, the Summary Offences Act, and Misuse of Drugs Act are available for use in prosecutions before the Courts.

In addition, for specific matters of fraud of a more serious complex and multiple kind, a specific Serious Fraud Office was established in 1990, set up to facilitate the detection, investigation, and expeditious prosecution of serious and/or fraud offenders. This office involves the resources of multi-disciplinary teams of investigators, forensic accountants, and prosecutors. The inception of the New Zealand Serious Fraud Office reflected a trend around the world to establish such agencies, given the increasing difficulty faced by law enforcement agencies using traditional methods to come to grips with serious or complex fraud offending. More than 100 prosecutions have been taken with a record of successful prosecution, it is said, of more than 90 per cent. International fraud is now becoming a focus of interest for the Serious Fraud Office, and there is a growing need for it to use modern technology in detection.⁶

New Zealand was the first English-speaking country in 1962 to adopt by legislation the previously Scandinavian notion of Ombudsman methodology. This envisages the independent investigation of citizens' complaints about an act of maladministration by a Government department or agency. The Ombudsman is furnished with sufficient powers to inquire and obtain such information as may be necessary to form a view of the matter under complaint and to make a recommendation for redress, where that is appropriate. The New Zealand Ombudsman office has functioned now for more than 40 years with there being now three Ombudsmen undertaking some 6,000 cases per year, brought to them by ordinary individuals. The ready availability of a complaint mechanism is thus something to which New Zealand citizens have relatively easy recourse. The work of the New Zealand Ombudsmen, though conducted according to an individual New Zealand statute, broadly accords with the internationally accepted definition of Ombudsman, that being

An office provided for by the Constitution or by action of the Legislature or Parliament and headed by an independent, high-level public

official, who is responsible to the Legislature or Parliament, who receives complaints from aggrieved persons against Government agencies, officials and employees, or who acts on [his] own motion, and who has the power to investigate, recommend corrective action, and issue reports.⁷

All investigations undertaken by Ombudsmen are conducted in private. When an Ombudsman believes a complaint can be sustained, this opinion is reported to the Government department or organisation concerned along with any recommendation for action. A copy of this report may also be made available to the responsible Minister. At the local government level, over which, in New Zealand, the same Ombudsmen have jurisdiction, the Ombudsman reports the finding to the organisation and may provide a copy of it to the Mayor. Ombudsmen have no authority to investigate complaints against private companies and individuals or decisions of Judges.

At the beginning of the 1980s, following a thoroughgoing study by a Government-appointed Committee comprising senior civil servants, New Zealand passed an Official Information Act and became a 'freedom of information' country. This is based on the principle that information shall be made available unless there be a good reason for withholding it. The purposes of the Act are to increase the availability of official information to the people and provide for proper access by bodies corporate to official information relating to themselves but at the same time, where it is in the public interest, to protect official information from disclosure and to preserve such things as individual privacy. The Official Information Act, by and large, covers all Government departments, statutory bodies and State-Owned Enterprises, with the exception of the Courts. Ombudsmen can review a decision by a Government organisation to refuse supply of information, and the formal recommendation of an Ombudsman, after such review, is binding unless overridden in very limited circumstances. The Official Information legislation also contains provisions that permit citizens to be advised of reasons for decisions.

In short, the Ombudsmen, whether acting in their jurisdiction on complaints about maladministration, or in their jurisdiction to make available, where appropriate, official information, play a role in ensuring the transparency and accountability of Government. It follows that the Ombudsmen can in the course of this work become aware of evidence of corruption and can be in a position to recommend action regarding it.

Statutory measures against corruption have continued to be added to the law in New Zealand. In April 2000 Parliament passed the Protected Disclosures Act, which enables employees who observe serious wrongdoing in or by an organisation to disclose it to what are called 'appropriate authorities', such as the Ombudsmen, the State Services Commissioner, the Commissioner of Police, the Auditor-General, the Director of the

Serious Fraud Office and others. In circumstances where that is done, the notifying person will be protected from civil, criminal or disciplinary proceedings, or retaliatory action which might be taken by an erstwhile employer. New Zealand thus joined those countries which have what is termed 'whistleblower' legislation.⁸

One of the functions of the State Service Commission, which superintends the Public Service and its staff, is to promote appropriate values and standards of behaviour for the Public Service. That organisation publishes a specific Public Service Code of Conduct, which comprises three principles, first, that 'employees should fulfil their lawful obligations to Government with professionalism and integrity', second, that 'employees should perform their official duties honestly, faithfully, and efficiently, respecting the rights of the public and their colleagues', and, third, that 'employees should not bring their employer into disrepute through their private activities'.⁹

In a small country there is the opportunity for a considerable amount of cross-fertilisation of ideas and concepts. The Ombudsman concept permits independent investigation of complaints of maladministration. That model, after having been applied for a great many years in the public sector, has come to be taken up in two New Zealand industries. First, the Banking Ombudsman scheme began in July 1992. It arbitrates unresolved disputes about banking services in an independent and impartial manner and such help is available free to the complainant. The Banking Ombudsman is, in the instance of that industry, furnished with power to award compensation to cover direct losses of up to \$100,000, inconvenience of up to \$2,000 and some costs. There is a reporting mechanism to a Banking Ombudsman Commission, which comprises representatives of the banks and consumer organisations. Episodes of corruption, if any, may be complained of through this means. In 1995 an office of Insurance and Savings Ombudsman was set up, an independent body to help consumers resolve their complaints against participating insurance and savings companies. Again, this is a free service to consumers operating independently of the insurance and savings industry and funded by levies upon companies involved in the scheme. The Insurance and Savings Ombudsman's jurisdiction extends to investigation of personal and domestic insurance, where less than \$100,000 is involved and the person is able to approach the Ombudsman after having taken it up with the insurance company in question.

One can therefore see the mirroring or modelling in the private sector of something which has proven to be successful in the public sector. Parliamentary Ombudsman methodology has proved successful for New Zealand citizens and for the public sector. The adoption of many of the methods employed by the Parliamentary Ombudsman – inquisitorial approach, informal resolution, use of alternative dispute resolution means – assist its success in the private sector. Note that industry Ombudsmen

have the power to make binding orders in certain circumstances, whereas Parliamentary Ombudsmen are restricted to recommendations, as in the original Scandinavian conception of Ombudsman.

The above offers a brief survey of measures available to combat corruption from the standpoint of a small country in the Asia-Pacific region. It is from the standpoint of a country which has registered a high placing in the well-known Transparency International Corruption Percentage Index for a number of years. That assessment, conducted each year, is not an assessment of the corruption level in any country but an assessment of the level at which corruption is perceived by people working for multinational firms and institutions as affecting the commercial and social life in that country. It can be said that New Zealand is fortunate in having very low levels of corruption and that, with the measures described above, that is likely to continue in the future. The principal New Zealand representative for Transparency International (an international non-governmental organisation), Dr Peter Perry of the University of Canterbury, said recently:¹⁰ 'Corruption is an ever-present threat, globally increasing and better tackled before rather than after the event. All commentators agree that good governance is the best preventative.'

Notes

- 1 A Polynesian (Maori) proverb has it, '*nau te rourou, naki te rourou, ka ora te iwi*' which translated means '*From your foodbowl and from my foodbowl the people will be fed*'.
- 2 On 28 August 2002 the Transparency International Year 2002 Corruptions Perceptions Index published in Berlin, rated New Zealand second equal, slightly behind Finland and equal with Denmark.
- 3 State Services Commissioner's Annual Report on the State Services, p. 1, para. 2.
- 4 *International Herald Tribune*, 13 August 1997.
- 5 Published by the Ombudsman Commission of Papua New Guinea, Wellington, 2000.
- 6 See, for example, *New Zealand Official Yearbook 2000*, Wellington, 2000, p. 502.
- 7 International Bar Association, Ombudsman Committee definition.
- 8 Protected Disclosures Act 2000, New Zealand Public Acts 2000, no. 7.
- 9 Public Service Code of Conduct published pursuant to s. 57 of the State Sector Act 1988, September 2001, ISBN-478-24409-6.
- 10 *New Zealand Official Yearbook 2000*, op. cit., p. 501.

14 Corruption and anti-corruption

Afterword

James Kember

That corruption exists in the Asia-Pacific region is not the true revelation of the preceding chapters, corroborative as they are. The real insights come from the observations that the battle still wages between the forces of transparency and good governance, on the one hand, and, on the other, the still cancerous growth of corruption.

Just as revealing of course is the clear evidence that ‘corruption’ takes many forms, and that what might in one system be viewed as illegal is no more than accepted business practice – or at least accepted and unstigmatised pragmatism – in another. While the examples of anti-corruption relate to small economies, there is nothing to suggest that size is a limiting factor.

Patronage and family ties are to be found in China as they are in the smallest island states. In one, the recourse to *guanxi* or relationships is accepted as a means to keep one’s head above the crowd; while in the smallest states, those holding the reins of power often sit uncomfortably close to family responsibilities and obligations. Where these customary obligations are viewed as paramount, there is some question in the mind of the alleged transgressor whether an action is truly ‘corrupt’ – whatever the law of the land might prescribe. Furthermore, in these days of greater mobility, the need for a heightened awareness and appreciation of differing cultural norms is a matter for new migrants as well as for those countries where such migrants are arriving.

Whatever the forms and definitions of corruption, a potion of remedies is on hand to deal with the canker. Transparency is certainly part of the picture. As Shane Cave of Transparency International New Zealand observed in an oral presentation at the Auckland conference, corruption prospers in secrecy. A climate of openness, on the other hand, is conducive to limiting the scope for underhand dealings and practices that siphon off funds from their legal intent. If corruption is the act of inducing a violation of duty, especially by means of pecuniary considerations, then sunshine can, as some have commented, be a wonderful disinfectant. Furthermore, what applies to central or regional governments clearly also has parallels in the way governance is managed in international institutions, as Mark Baird, formerly with the World Bank, observed.

Developing trust between various interested sectors also has its place. Shane Cave cited the value of a proper relationship between the media and banking. The media can be instrumental in the role of public watchdog. But that is not to say that all its members are beyond the reach of temptation or remain without bias and prejudice or vested interest in their reporting. Other organisations and groups also have their part to play in monitoring activity in the public and corporate sectors.

As the papers on anti-corruption efforts, and the contributions of others, showed, there are ways forward. Of primary importance, a reliable and workable set of legal measures must be set in place in each jurisdiction. Ying Shang's papers demonstrated this in respect of Hong Kong. But in terms of the region more generally, there is no question of one size fitting all: legislative measures have to meet, address and if necessary square off against the social and other obligations of the society to which they apply.

In many cases, of course, the issue will be one not so much of formulating a legal framework but rather, as Greg Bankoff noted in his contribution on the Philippines, a matter of implementation which, experience suggests, often falls short of the laudable objectives that lie at the heart of the law or regulation concerned.

The New Zealand experience offers some insights. The first country in the English-speaking world to establish the post of an Ombudsman, it has for over 20 years been a 'freedom of information' country rather than one whose bureaucracy is governed by principles of 'official secrets'. In addressing some of the challenges of corruption, Judge Satyanand draws the conclusion that good governance is corruption's best preventative. It is a logic that is scarcely refutable.

Some broader measures can also be factored in. Democratic societies are often seen as offering the best basis for curbing corruption. Sadly, that is not to say corruption is absent from even highly-democratic states. What democracy offers, however, is a climate for anti-corruption institutions to develop, with the prospect of an advanced degree of effectiveness.

A number of the chapters referred to the area of political reform: the need to have robust electoral laws, clear guidelines on payments to political parties fighting elections and to those subsequently elected. Practices, developed over the course of time, differ between Japan and Korea, between Indonesia and Thailand. But the inference is patent enough: certain electoral and parliamentary funding systems are more open to abuse than others. Similarly, the practice of government sectors owning enterprises relevant to their own operations, as Xin Chen noted in respect to China, has been a fertile ground for illegal practice. Central government moves to arrest such practice are to be applauded, but must be accompanied by the clear reassurance that this will not simply be followed by recourse to backdoor methods of maintaining such forms of ownership.

Populous countries present their own challenges. But, as Scott Fritzen

indicated, the experiments in Vietnam in greater village and grassroots initiatives do have potential for curbing corrupt practices. Moreover, as districts themselves begin comparing notes, the horizontal learning processes should also serve to strengthen the new-found democratic practices.

Throughout, there remains the critical imperative of educating people to reject corrupt practices, for whatever purpose. Anti-corruption agencies, such as the ICAC in Hong Kong, maintain that this is a process that must begin with children at a relatively young age, before they come under peer or other pressure. Institutions of governance, to monitor and work against corrupt forces, are paramount in importance; but these have to be credible as well as visible. Integrity and trust are the hallmarks of good practice. Anti-corruption forces themselves need to be as far as possible beyond temptation and possible interference. In this regard, Judge Satyanand notes that appointees to the post of Ombudsman in New Zealand are officers of parliament, not of the government of the day.

We have entered the twenty-first century. While corruption of old remains, there are new forms to be contended with. The need to keep abreast of developments was highlighted by a former New Zealand Director of Customs, Robin Dare. Sophisticated e-crime through data manipulations demands even more sophisticated responses by law enforcement agencies. Border control officers face a myriad of pressures, dealing with large numbers of people and goods on a daily basis, mostly involving at least two jurisdictions, with at least one beyond the reach of national forces.

Robin Dare recalled that enforcement agencies, in addressing corrupt practices, had to be on the constant lookout not only for acts of commission, which might be traced, but also for acts of deliberate omission, where the onus of proof of a corrupt practice might be more considerable. He was also frank in noting occasional instances where border control staff found themselves not above the blandishments of illegal pecuniary advantage.

While, as noted previously, levels of acceptance and understanding about what constitutes corruption change over time – and place, there is no denying its existence, nor that the efforts to curb and eliminate it merit greater support, from the public, from media, as well as through legislative practice. Whatever the short-term gain for an individual from a corrupt act, society at large pays a heavy price, particularly – but by no means solely – in economic terms. Corruption, as others have remarked, is something best dealt with before rather than after the event. Transparency, good governance, and education are part of the mix; and it is hoped that in its way this volume will have made its own contribution in highlighting both some of the issues and some possible remedies.

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