



Most Anti-Corruption Programs Have Lacked Key Components

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ABSTRACT

The five field studies reported here and published research examined successful and unsuccessful anti-corruption programs, and the processes of corruption in Africa and Central America. They found most Third World governments' anti-corruption programs have lacked the appropriate mix of strategies and exercises needed to build new behaviors to overcome the core problem of a culture of corruption, or the hysteresis effect. The five studies led to development and testing of a model anti-corruption program. Test of the model program showed it could be assimilated by participants who lacked advanced education, and they could achieve an initial operational competence in a relatively brief period of training. The authors' five field studies found eight (8) components were necessary for successful anti-corruption programs, and these findings were bolstered by the published research of others that was empirically based. The eight components are: (1) the actual and visible support of the head of government or C.E.O., (2) behavior modification training for civil servants to build informal social controls and internalize negative reactions to corruption, (3) a public component to build public support and social conscientiousness, (4) a degree of career security for civil servants, (5) laws and formal structures, such as criminal statutes, ethics code, transparency, audit, legislative incentives such as the Foreign Corrupt Practices Act, other official and independent oversight, (6) exercises and follow up to operationalize new behaviors and feedback, (7) reduction and streamlining of government licensing and regulation of the economy, and (8) training to build new sensitivities to mission, professionalism, fiduciary duty, and peer group responsibility. The model program developed and tested included skill building, group exercises, role-playing, cohort projects, and practice scripts.

Keywords: Anti-Corruption, Lacked Key Components, Hysteresis, Ethics Code and New Behaviors

INTRODUCTION, CORRUPTION DEFINED

The importance of combating corruption almost cannot be overstated. It is a chief cause of poverty in most Third World States, and "a serious problem that affects the legitimacy of democracy, distorts the economic system, and contributes to social disintegration."¹ It wreaks

destruction on the rule of law, investment, democracy, trade, health, and education.² It defeats the will of the people, their legislative bodies, and elected executive authorities. It may surprise many to learn that nearly all impoverished states have some capacity for capital formation.³ However, our studies found banking systems

1 *Helping Countries Combat Corruption: The Role of the World Bank*, <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/coridx.htm>. Quotation from Secretary General C. Gavaria, cited in Konstantinos D. Magliveras, "A Critical Analysis of the Inter-American Convention Against Corruption," *International Enforcement Law Reporter*, *Transnational Bribery*, vol. 13, No. 8 (August 1997), at

<http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSEl=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSEl=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&expNewLead=id%3D%22expandedNewLead%22>

<http://www1.worldbank.org/publicsector/anticorrupt/corruptn/coridx.htm> &fpSetup=0&brand=ldc&_m=6d47b47dee2716af25dc72554f2d1d3d&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLzVzB-zSkAl&_md5=09030cb9dd6d267c042f4c4fb429c909&focBudTerm s=&focBudSel=all.

² *Helping Countries Combat Corruption: The Role of the World Bank*, *supra*.

³ World Bank News, "Developing countries to dominate global savings and investment, but the poor will not necessarily share the benefits," citing *Global Development Horizons*, 5-16-13, at <http://www.worldbank.org/en/news/feature/2013/05/15/de>



failing as a direct result of corruption. Too often corruption results in internal savings ending up in foreign banks and local banks holding uncollectible debts. The World Bank definition of corruption, as “abuse of public office for private gain,” was adopted for the authors’ studies.⁴ Corruption is sometimes referred to as “rent-seeking behavior.” Corruption, the studies found, should be considered as a legal problem. Whatever else it is, it is a breakdown in law, where the legal system becomes dysfunctional. All of the states studied had laws that prohibited corruption activities. The studies looked at corruption strategically, that is, as adversely affecting the capacity of the societies to utilize law. The failure to obey the laws revealed a lack of capacity of the society to utilize law. When corruption thrives, the very capacity for self-government is challenged. The five field studies examined the processes of corruption, its impact on banking, and successful and unsuccessful anti-corruption programs. Unfortunately, most Third World governments’ anti-corruption programs fail, yet the authors found solutions have been known for almost forty years.

THE EIGHT COMPONENTS OF SUCCESSFUL ANTI-CORRUPTION PROGRAMS

The core problem, studies found, to be the effect of cultures of corruption, or hysteresis. The authors’ five field studies found successful anti-corruption programs used a combination of strategies⁵ that have been successful to overcome this culture. There are eight (8) components: (1) the actual and visible support of the head of government, or C.E.O. in the case of multinational businesses studied, (2) behavior modification training for key civil servants, or company staff, to build informal social controls and internalize negative reactions to corruption, (3) a public component to build public support and social conscientiousness, (4) a degree of career security for civil servants, (5) laws and formal structures, such as criminal statutes, ethics code, transparency, audit, legislative incentives for businesses to implement accounting and compliance measures such as the Foreign Corrupt Practices Act and federal sentencing guidelines,⁶ other official as well as independent oversight, (6) exercises,

[veloping-countries-to-dominate-global-saving-and-investment-but-the-poor-will-not-necessarily-share-the-benefits-says-report](#). Sub-Saharan Africa’s situation noted.

⁴ *World Development Report: The State in a Changing World*, <http://webcache.googleusercontent.com/search?q=cache:76Em pK81vx8J:www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm+world+band+development+report+oxford+1997+corruption&cd=1&hl=en&ct=clnk&gl=us&client>. (last visited Feb. 27, 2013).

⁵ Thomas Dunfee, 21 *NWJ Int L & Business* 471; and field studies described below.

⁶ 15 USC Sec. 78dd-1; U.S. Sentencing Guidelines Sec. 8B2.1 mitigating effect of effective compliance program; the OECD Good Practice Guidance on Internal Controls, Ethics and

measures, and follow up to operationalize knowledge of laws and ethics code and new behaviors, and maintain the important feedback loop to respond and adapt to circumstances of each unit, (7) streamlining of government licensing and reduction of regulation of the economy to reduce corruption opportunities, and (8) a new sensitivities component of training to build a sense of mission, professionalism, fiduciary duty, and peer group responsibility. These conclusions were bolstered by empirically based published research of others.

Remarkably, most anti-corruption programs lack many or all these key components, and most have failed. They have lacked components needed to overcome hysteresis, or entrenched cultures of corruption. Another and encouraging finding from the field studies was the observation that corruption comes with highly leveraged social costs, ranging ten to fifty to one (ratios of 10:1 to 50:1) of immediate loss and social cost from corrupt acts to the amount of bribe paid. Leveraged social cost of corruption strongly suggests the expense of anti-corruption programs will prove sound investments, paying for themselves and well justified.

Five Field Studies

The authors’ five field studies, supplemented by the published empirically based corruption research of others, were conducted in Africa, Central America, and the U.S. Two field studies in Africa and two in Central America examined corruption processes, interviewing one hundred seventy-two informants. One study examined legal compliance/ethics programs of several multinational corporations and the U.S. Government, and anti-corruption programs in Africa and Central America. The field studies also looked at local laws, legal systems, judicial organs, court cases, impacts, and tracing the course of several government contracts.

The study of corporate and government legal compliance programs and anti-corruption programs were studied through thirty-two informants and various printed material. Compliance program informants included corporate general counsel, compliance officers, company trainers, program materials, program test results made available to the authors, and published industry studies.⁷

Compliance (Feb 18, 2010), OECD Recommendations of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions at <http://www.oecd.org/dataoecd/5/51/4488389.pdf>. This approach is part of what could become an evolution of behavior modification regimes. See Duane Windsor, Kathleen A. Getz, “Symposium Fighting International Corruption and Bribery in the 21st Century: Multilateral Cooperation to Combat Corruption: Normative Regimes Despite Mixed Motives and Diverse Values,” 33 *Cornell Int’l L.J.* pages 731-743 (2000).

⁷ Report, Ethics Programs, (2003), Conference Board, reports on over 100 companies’ practices; Carolyn Kay Brancato, Christian A. Plath, *Corporate Governance Handbook 2005: Developments in Best Practices, Compliance, and Legal Standards* (2005) Conference Board. Interviews, discussions with general counsel,

The techniques used by these programs included procedural memory, or muscle memory, behavior modification, enhancement of peer group values, and building a sense of mutual responsibility. Techniques included practice scripts, role-playing, sensitivity training, monitoring, and periodic reinforcement.⁸ Many companies had operations outside North America that utilized the same programs. The companies represented more than thirty compliance programs. Access to much of the training material was also granted. The programs all shared components that engaged the participants, achieved a level of acceptance and assimilation, and used behavior modification training. The programs were all based on an ethics code and a technique by which it was made relevant to the work of each unit. The programs also included on-going supplemental training and monitoring. Most included on-line components, which may not be practical in some Third World settings, unless computers and ISP were provided. All the corporate programs reported high levels of success. All reported meeting performance objectives.

The African and Central American anti-corruption programs were examined through ex patriot officials who conducted the largest programs, participants, well placed government officials, locally available printed material, and published material from the United States Agency for International Development, World Bank, Transparency International and academic journals. There were three programs with anti-corruption components in place during the time of the studies.⁹ Interviews included persons conducting the programs, civil servants and political level officials from both the host state and the sponsoring state. The previous programs that had been tried had focused on law, governance, law enforcement, and finance, but lacked behavior modification techniques. They reportedly relied on lectures. The programs in progress were part of a kind of receivership in all but name, and democracy building/rule of law efforts. Oral reports were heard of other early programs, but there was insufficient information available to assess.

training personnel, corporate directors, and accountants, at New York City, January 2003, American Institute of Certified Public Accountants, New York City, February 2003, Conference Board governance program, New York City, January 2004, Conference Board governance program, February 2005, Conference Board program on legal compliance training, San Diego, March 13-15, 2007; review of federal training material and discussions with training officer, at Lansing, Michigan, February 2011, August 2011, March 2012.

⁸ Laura Montocchio, "Repetitive Skill Practice: Blending Experiential Learning & Technology," Training Topics (Mar 4, 2010), at <http://www.trainingindustry.com/sales-training/articles/repetitive-skill-practice-blending-experiential-learning-technology.aspx>; D. R. Shanks, M.F. St. John, M.F., Characteristics of Dissociable Human Learning Systems, Behavioral and Brain Sciences, vol. 17, issue 3, pp. 367-395 (1994), at <http://discovery.ucl.ac.uk/142639/1/download2.pdf>.

Previous programs that were examined showed little evidence of lasting impact. The three anti-corruption programs in place at the time of the studies were withdrawn by the United States within two and half years for non-compliance by the host state. None of these programs used behavior modification, training in fiduciary duty, sense of mission, or a public component to delegitimize corrupt acts or build public support. It is not surprising that no lasting changes were found.

The receivership programs in progress consisted mainly of formal structures and rules. The programs required that the enacted national budget be followed, that a retired foreign national senior civil servant approve each department's expenditures and contracts, plus technical assistance, aid, and some forbearance on debts. In practice, the host state did not comply with the program agreement. The early termination of the program followed the discovery that the host state concealed unbudgeted payments, unauthorized contracts, and various corrupt activities. During the programs, business informants advised that there was no change in demands for bribes, kickbacks and other arrangements. Local certified public accountants told of no change resulting from the programs. Their work met with strong interference, limited access, dubious or disappeared records, and concealment of their reports. This experience supported a conclusion that programs limited to formal structures and rules are of doubtful value. Such programs do not change corrupt wills or motivation.

The four studies of corruption processes looked at the characteristics, deal making, holding deals together, and vulnerabilities of corruption. They included interviews with bribe payers, bribe recipients, corrupt officials, law enforcement, attorneys, judges, diplomats, civil servants, business persons, and many others with information.¹⁰ Underlying the study of corruption is examination of the capacity of a society to utilize law. The capacity approach is part of the analysis used by the U.S. Agency for

⁹ The Interviews with Professor Milton Konvitz at Cornell University, July 1986 and 1987, at Ithaca, respecting the pioneering Liberian Codification Program and related rule of law activities from the 1950s to 1980, and with participants (civil servants, judges, retired officials, and local attorneys) in other African programs, and government officials, diplomats, members of Western information gathering agencies, two anthropologists with experiences covering the times involved.

¹⁰ Interviews with Professor Milton Konvitz at Cornell University, July 1986 and 1987, at Ithaca, respecting the pioneering Liberian Codification Program and related rule of law activities from the 1950s to 1980, and with participants in various programs, including civil servants, government officers, judges, high court appellate judges, attorneys, local academics, diplomats, members of Western government agencies, visiting anthropologists, and business managers.

International Development.¹¹ The scope of the four corruption studies was the legal system, other dispute resolution in the states, other government decision making, contract corruption, theft and embezzlement. One of the West African studies examined the actual functioning of corruption through study of all reported large debt cases in the previous nine years, and interviewing persons admitting to involvement in corruption or claiming firsthand knowledge of such acts.

Debt case informants also included bankers, attorneys, judges, and business people and government officials. Over one hundred corruption incidents were examined. This study also looked at the statutes, all regulations, many other court cases, and documents.¹²

Successful Programs Go Beyond Laws and Formal Bodies

Anti-corruption programs which are chiefly limited to laws, oversight agencies, audit, and other formal structures have not been highly successful, as was also observed about lecture-based programs.

An unsuccessful program began in South Korea in 2001. A change of party and government brought the enactment of new statutes clarifying corrupt acts, creating an investigative bureau, audit mechanism, and inspectors.¹³ However, by 2012, it appeared to be business as usual. The ruling party had "stripped away" the independent counsel provisions.¹⁴ The outgoing President publicly apologized for a string of corruption scandals, involving allies and relatives, who "influenced the appointment of top posts in police, prosecution and government intelligence."¹⁵ Laws,

regulations, transparency rules, audits, competitive bidding, and structures such as investigative and prosecutorial bodies were circumvented. Attitudes and motivations were not changed.¹⁶

In Ethiopia is several years into a serious anti-corruption effort. These include laws, one-stop streamlined investment and licensing, and asset disclosure for public officials and relatives.¹⁷ However, its ethics code and commission have proven ineffective, hindered by complex bureaucratic rules and practices, over regulation, absence of behavior modification, buy in, and operationalizing of new behaviors.¹⁸ In Ethiopia reforms focused on the formal controls. In practice they have been frustrated by entrenched civil servants.¹⁹ As recently as early 2014 and 2016, an informant, interviewed by one of the authors, stated his own recent experience supported this conclusion.²⁰ The informant described how a multiple bid and transparency processes were actually exploited by civil servants to block awards and ultimately favor certain businesses.

An empirically based study documents with data this weakness of formal-only anti-corruption institutions in eight African states.²¹ In Kenya, Tanzania, Ethiopia, Malawi, Uganda, Benin, Zambia, and Ghana the authors found formal structures defeated by actors lacking motivation.²² The researchers described outcomes as highly dependent on actors' motivations and politics.²³ Evaluation by the General Accounting Office of anti-corruption programs in Benin, Mozambique, Nigeria, South Africa, Uganda, Ghana, Malawi, Tanzania, and

¹¹ USAID HANDBOOK ON FIGHTING CORRUPTION, *supra* note 3, at 12, 12-14.

¹² Details reported in T. Rasmusson, "Corruption Dynamics," at <http://www.ethics&dev.edu>.

¹³ Craig P. Ehrlich, Dae Seob Kang, "Independence and Corruption in Korea," 16 Colum. J. Asian L. 1 (Fall 2002).

¹⁴ *Id.*, 3

¹⁵ C. Sang-Hun, "South Korea President Apologizes for Corruption Scandals," New York Times, July 24, 2012, at <http://www.nytimes.com/2012/07/25/world/asia/lee-myung-bak-of-south-korea-apologizes-for-corruption-scandals.html>.

¹⁶ J.K.M. Ohnesorge, 14 Conn. J. Int'l L. 467, 472-473 (Fall 1999).

¹⁷ German Ministry for Economic Cooperation and Development, "A Snapshot of Corruption in Ethiopia," Business Anti-Corruption Portal at <http://www.business-anti-corruption.com/country-profile/sub-saharan-africa>.

¹⁸ Citing World Bank study and author's experiences. A.G. Mariam, "Mining Corruption in Ethiopia," Ethiopian Review, pp. 1-17, November 3, 2013 at <http://www.ethiopianreview.com/index/tag/ethiopia-federal-ethics>. "Ethiopia Arrests Minister, 11 Others Over Corruption," 11-5-2013, at www.reuters.com/article/2013/05/11. Study of corruption problems in Ethiopia in World Bank, "Report of a World Bank Mission to Support the Program of the Federal

Democratic Republic of Ethiopia to Improvement Economic Governance and to Combat Corruption," Dec. 1998, at www1.worldbank.org/publicsector/anticorrupt/EthiopiaGCA.pdf. German Ministry, *Id.*

¹⁹ A.G. Mariam, above.

²⁰ Interviews at Ann Arbor, Michigan, December 2014, May 2016 and April 2017 with academic working on a large project in Ethiopia.

²¹ Rene Torenlvied, Carolien M. Klein Haarhuis, Polarization and Policy Reform: Anti-Corruption Policymaking in Sub-Saharan Africa," 45 J. of Peace Res., pp. 223-240 (March, 2008). 2010 study found a failure to implement laws and internal controls and a judicial system subject to executive influence in Tanzania. "A Snapshot of Corruption in Tanzania," GAN Integrity Solutions, Business Anti-Corruption Portal (May 2015) at <http://www.business-anticorruption.com/country-profiles/sub-saharan>. Political interference with anti-corruption programs was found in Ghana, Tanzania, Uganda, and Zambia, and a lack of political will in Malawi. Alan Doig, David Watt, Robert Williams, "Measuring "Success" in Five African Anti-corruption commissions," Anti-Corruption Authority, pages 57-58, 65-70, 73-76, 79-82 (2005) at u4.no/publications.

²² Torenlvied, above, pp. 229-237; Doig, .

²³ Torenlvied, above, p. 236.

Zambia made similar findings.²⁴ Indonesia was found to have a similar experience with an anti-corruption agency absent the political will and motivation.²⁵

The Public Component

Changing behaviors the effect of cultures of corruption, overcoming hysteresis, means changing the conduct of civil servants, business and heads of government. It also requires changing public attitudes about corruption, awareness of corruption and using democracy to police conduct of civil servants and business.

The public component does not mean strident militancy in which "social action is facilitated by rapid change through militant advocacy . . . aimed towards more equitable redistribution of resources and power for the disenfranchised and poor."²⁶ That can lead to negative consequences.²⁷ The poor are distracted by the needs of finding sustenance and militancy can lead to cooption. Social action stresses local dialogue, grassroots representation, elimination of paternalism and respect for cultural uniqueness. However, political demonstrations such as boycotts are not particularly effective.²⁸ "[M]any countries operate on pseudo-democratic or authoritarian systems that are not responsive to public pressure."²⁹ Instead, the Singapore approach of public input, civic projects and clubs with activities such as beautification of public spaces engage citizens and involve them in civic improvement, and help to build community and responsive government.³⁰

The Singapore miracle was the transformation of a thoroughly corrupt state entrenched for generations in the space a two decades.³¹ Most studies of Singapore's anti-corruption program omit mention of the community building component. Also omitted in many accounts is public education, which proved helpful.³² Constructive

social action stresses democratic participation which "fosters community involvement by stressing self-help and deliberate improvements." These include community development initiatives, adopt-a-park, youth leadership community development, school civic projects, youth leadership camps, sports, community engagement projects, and various groups, such as the People's Association, Youth Civic Participation, and National Youth Council.³³ It uses engagement by communities to build a support for anti-corruption efforts toward reducing corruption.³⁴ In that sense, democracy can be anti-corruption weapon. The constructive Singapore projects built citizens' responsibility for the quality of their society and provide feedback and a sense the government is responsive.³⁵ In effect, Singapore was found to have succeeded in having civil servants and the public internalize negative reactions to corruption.³⁶ An empirical study comparing programs in Singapore and Malaysia found the difference was "very strong" negative reactions to corruption on the part of civil servants and the public that were immediate and automatic among those in Singapore.³⁷ The experience in Malaysia illustrates the problem of emphasis on law and formal structures, and omitting the public component and the visible support of the head of government, where over a billion dollars of public funds appear to have disappeared and the recommendation of the anti-corruption commission resulted in the government stopping a probe of the missing funds and jailing critics, as part of a history of intolerance toward transparency.³⁸

Head of Government, Civil Servants and Public

Successful programs in government also had the visible support of the head of government. This was found as well in successful government anti-corruption programs and multinationals' legal compliance programs.

²⁴ G.A.O., Report to subcommittee on African Affairs, Committee on Foreign Relations, U.S. Senate, "U.S. Anti-Corruption Programs in Sub-Saharan Africa Will Require Time and Commitment," pp. 32-39, found at www1.worldbank.org/publicsector/anticorrupt/GAO-04-506.pdf; GAO report number GAO-04-506, "Foreign Assistance: U.S. Anticorruption Programs in Sub-Saharan Africa Will Require Time and Commitment," (May 17, 2004) at www.gao.gov/assets/250/242163.html.

²⁵ Joanna MacMillan, "Comment: Reforms and Public Corruption: Why Indonesia's Anti-Corruption Agency Strategy Should be Reformed to Effectively Combat Public Corruption," *Emory International Law Review*, 25 *Emory Int'l L. Rev.* 587, 591-595.

²⁶ Benjamin J. Lough, "Importance of Public's Internalization of Anti-Corruption Bias," *International Social Work*, 51:4 532-543, 536 (July 2008).

²⁷ B.J. Lough, *Id.*, 536.

²⁸ B.J. Lough, *Id.*

²⁹ B.J. Lough, *Id.*, 537.

³⁰ Innovations in Civic Participation, "Singapore," ICP, pages 1-6, 3, at www.icicp.org/resource-library/icp-publications/global last accessed 11/10/2016. W.B. Kimball, "Singapore's People's Association," CIA Historical Review Program, Release 22 Sept 93, pages 1-6 (1993), at <https://www.cia.gov/library/center-for-the-study-of-intelligence>, last accessed on 11/10/2016. In a 1971 visit, one of the authors (Rasmusson) visited projects and was also told even that civil servants undertook these activities in their off time.

³¹ P.M. Nichols, "The Psychic costs of Violating Corruption Laws," 45 *Vand. J. Transnat'l L.* 145, 175-210 (January 2012).

³² B.J. Lough, *Id.*, 539.

³³ Innovations in Civic Participation, *Id.*, pages 2-3.

³⁴ B.J. Lough, *Id.*

³⁵ W.B. Kimball, *Id.*, pages 4-5.

³⁶ P.M. Nichols, "The Psychic Costs of Violating Corruption Laws," 45 *Vand. J. Transnational Law* 145, 182-210 (January 2012).

³⁷ *Id.*, pages 182-201.

³⁸ "Malaysian Officials Stifle Dissent," *Wall Street Journal*, page A7 (December 31, 2016-Jan. 1, 2017).

Singapore is one of the success stories that illustrates this.³⁹ It had much to overcome, being one of the most corrupt states in Asia prior to 1961.⁴⁰ In addition to mobilizing informal social controls of the public and civil servants against corruption, Singapore improved civil servant pay and career path security.⁴¹ Initially, it could not afford to increase pay of civil servants, and began by reducing opportunities for corruption.⁴² Above all, Singapore was blessed with a head of government, Prime Minister Lee Kuan Yew, who gave strong and visible support to the anti-corruption program.⁴³ Similarly, our study of successful programs of U.S. multinational firms found such support from C.E.O.s to be an essential component.⁴⁴

Singapore achieved a 180 degree change in a few decades in the anti-corruption climate by addressing the internalization of negative attitudes on the part of the public and civil servants, and officials, campaign to change public perceptions of corruption, the second highest expenditure per capita (after Hong Kong) in combating corruption, the political will from the top, and high pay for civil servants.⁴⁵ This was behavior modification throughout a society: civic associations, public education and workplace.⁴⁶

In this, Singapore and Malaysia make for a revealing contrast. The two were once politically tied, gained independence at about the same time and have somewhat similar ethnic population mixes.⁴⁷ However, Malaysia has not met with the same success against corruption. Empirical quantitative analysis of the differences in the experiences of Singapore and Malaysia support the conclusion that informal social controls and culture need to be addressed, or to operationalize functionality needed in an anti-corruption program.⁴⁸ The researcher saw that the "'why' cannot be found in just the words that constitute the laws, because the words are quite

similar" in the laws of each state.⁴⁹ However, he failed to see that that in Malaysia the program motivated and empowered the public in civic spirit as well as connecting strong negative feelings to corrupt behavior.⁵⁰ The agencies' structures are similar. The difference is that in Singapore, citizens, public officials, and business people "exhibit a viscerally negative reaction to corruption," whereas in Malaysia the reaction is "thoughtful negativity" and not "automatic," deprecating language, but not actions.⁵¹ In other words, Singapore the attitudes are "internalized." It was found the "psychic costs" of corrupt acts are greater in Singapore.⁵² Also, consistent with the authors' studies, it was found with Malaysia that the government and head of government are weak, that test subjects reported, as a result he concluded, the perceived high level of corruption in Malaysia.⁵³ Esteem for leaders and the civil servants was deeply influenced. It was also observed that a whole population can be sensitized to react viscerally, or "internalize" negative emotions respecting corruption.⁵⁴ These studies, and many failed anti-corruption efforts the authors studied, lend support to the importance of visceral internal social controls in combating corruption.

Like Singapore, Hong Kong experienced considerable success against corruption. It brought together four of the needed components, [#1 of the 8 components] visible support of the head of government, [#3] a public component and education, [#4] civil servant career security, and [#5] laws and formal structures. Over forty years ago corruption was deep and widespread in Hong Kong, "pathological and prevalent."⁵⁵ On February 15, 1974, Governor Sir Murray MacLehose established the Independent Commission against Corruption (ICAC) in response to mass street demonstrations and the flight of a

³⁹ "There were no reports of government corruption during the year," 2009-23 Country Reports Section 4, 2 2009 Human Rights Reports-East Asia and the Pacific, at Lexis accessed last on 11/25/2016;

⁴⁰ P.M. Nichols, *Id.*, page 172-176.

⁴¹ Jon S.T. Quah, "Combating Corruption in Singapore: What Can Be Learned?" 9 *Journal of Contingencies and Crisis Management* 1, page 35 (March 2001).

⁴² Jon S. T. Quah, "Combating Corruption In Singapore-Style: Lessons for Other Asian Countries," 2 *Maryland Series in Contemporary Asian Studies* 189, *Un. Of Maryland School of Law*, pages 17-18 (2007).

⁴³ Jon S.T. Quah, "Combating Corruption in Singapore: What Can Be Learned?" 9 *Journal of Contingencies and Crisis Management* 1, page 32 (March 2001); Koh Teck Hin, "Corruption Control in Singapore," UNAFEI, pages 122-124, at www.unafei.org/jp/english/pdf/RS_No83/17VE_Koh1.pdf, last accessed on 11/09/2016.

⁴⁴ Discussed below. Legal counsel and persons in charge of corporate programs universally stressed the importance of the visible support of the C.E.O. One said, "Try to get the C.E.O. to

sit through at least the first half day of the first group session – and not look at a Blackberry."

⁴⁵ Empirically based study: P.M. Nichols, *Id.*, pages 149 150-156, 171-201.

⁴⁶ P.M. Nichols, *Id.*, pages 182-210; *Innovations in Civic Participation*, *Id.*, pages 2-3; public education B.J. Lough, *Id.*, page 539.

⁴⁷ P.M. Nichols, *Id.*, pages 172-195.

⁴⁸ *Id.*

⁴⁹ *Id.*, pages 172-210.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Jon S.T. Quah, "Combating Corruption in Singapore: What Can Be Learned?" *Id.*, page 32.

⁵⁴ P.M. Nichols, *Id.*, pages 181-194.

⁵⁵ P.M. Nichols, "The Psychic Costs of Violating Corruption Laws," *Id.*, pages 208-209.

corruption suspect, a police superintendent.⁵⁶ Hong Kong has been remarkably successful.⁵⁷ Today, it ranks seventy-seventh, or “very clean,” in the Transparency International scale of corruption perception.⁵⁸ Its anti-corruption program could be strengthened in three ways: 1. legislative incentives for businesses [#5], and 2. Strengthen the ICAC School and public program with behavior modification [#2], and 3. Professionalism, mission, fiduciary duty, and peer responsibility training [#8].

The legislative incentives for businesses include positive consequences flowing from business compliance programs. A company and an accused receive some benefit in charging and penalties in the event of a corrupt act by an employee, as a consequence of an effective compliance program, code of conduct, board and audit committee taking proactive responsibility for being informed and exercising oversight, accounting and audit standards, internal audit, and whistleblower protections, such as found in the U.S. Foreign Corrupt Practices Act and federal sentencing Guidelines.⁵⁹ Our study of business programs found a very high success rate, employee acceptance, and widespread voluntary compliance.⁶⁰

Hong Kong’s program centers in laws prohibiting corruption and the Independent Commission against Corruption. Its program is three-pronged: deterrence, prevention and education.⁶¹ This includes asset disclosure, transparency and accountability.⁶² The education component has a broad sweep from public education to programs in the schools from kindergarten through university, a club, exhibits, television programs, and business partnerships.⁶³ The picture is that of a society effectively dealing with corruption. However, it appears

that some enhancements could be made. One criticism that has been made in the press and journals is the limitation arising from the emphasis on laws and enforcement.⁶⁴ The press has claimed the emphasis on laws and enforcement results in overzealous police tactics.⁶⁵ The Department of State Human Rights Country Reports have in the past echoed this, claiming this model used elsewhere in China resulted in enforcement that was not consistently or transparently effected but Hong Kong presents a picture of competent and serious anti-corruption enforcement, the Department of State noting most recently, “There were no reports of impunity involving the security forces during the year.”⁶⁶

It could be said that Hong Kong has denied itself the advantages that come from a fuller array of legislative incentives, such as the sentencing guidelines and the OECD model,⁶⁷ and behavior modification, fiduciary responsibility, peer responsibility, mission, and professionalism training for its civil servants.

Pay and Career Security

As soon as it was able, Singapore increased the pay of civil servants and ministers with an annual bonus equal to one month’s pay.⁶⁸ This included cabinet officers.⁶⁹ Ideally, there should be both competitive pay and a degree of career security for civil servants. To do otherwise is a false saving. The authors’ studies revealed the leveraged costs of corruption, which the immediate harm is several times the amount of the corrupt payment paid. Career security is nearly impossible with cabinet level officials. The model program posits for heads of government, ministers, and

⁵⁶ C. Raj Kumar, “Human Rights Approaches of Corruption Control Mechanisms – Enhancing the Hong Kong Experience of Corruption Prevention Strategies,” 5 San Diego Int’l L. J. 323 (2004), , pages 325-331; Diego Laje, “What China Can Learn from Hong Kong in Its Fight Against Corruption,” CNN, at <http://www.cnn.com/2013/10/15/world/asia/china-hong-kong-corruption>, last accessed on 12-15-2016.

⁵⁷ C. Raj Kumar, *Id.*, pages 323-329.

⁵⁸ Transparency International, ; Diego Laje, “What China Can Learn from Hong kong in its Fight Against Corruption,” CNN (Oct. 15, 2013) at <http://www.cnn.com/2013/10/15/world/asia/china-hong-kong-corruption>, last accessed 12/15/2016.

⁵⁹ 15 USC Sec. 78dd-1; U.S. Sentencing Guidelines Sec. 8B2.1 mitigating effect of effective compliance program. See component number 5, above.

⁶⁰ See below.

⁶¹ ICAC, “Comprehensive & Effective approach to Anti-Corruption,” pages 1-8, at <http://www.jwjj-manwai.com> articles Comprehensive_Effective.html.

⁶² *Id.*, pages 1-8.

⁶³ *Id.*, page 3.

⁶⁴ Te-Ping Chen, “China’s Corruption Trap,” Wall Street Journal, pages A1, A10 (December 21, 2016); Bryane Michael and Indira Carr, “How Can the ICAC Help Foster the Widespread Adoption of Company Anticorruption Programs in Hong Kong?” 40 N.C.J. Int’l L. & Com. Reg. 355, 356-359 (Winter, 2015).

⁶⁵ Te-Ping Chen, *Id.*

⁶⁶ Some muting of press criticism alleged in U.S. Department of State, “China (Hong Kong) 2014 Human rights Report,” Sec. 2, part a. Freedom of Speech and Press; positive enforcement reported a year later in U.S. Department of State, “China (Hong Kong) 2015 Human Rights Reports, Sec. 1, part d. Role of the Police and Security Apparatus, In discussing mechanisms for investigating and punishing corruption it stated the quoted sentence: “There were no reports of impunity involving the security forces during the year.”

⁶⁷ U.S. Sentencing Guidelines Sec. 8B2.1 encouraging effective business compliance programs; and the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance (Feb 18, 2010), OECD Recommendations of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions; see note 6.

⁶⁸ Quah, *Id.*, pages 33, 35.

⁶⁹ Quah, *Id.*, page 33.

direct reports a modest vested pension prepaid for each year of service.⁷⁰

SUCCESSFUL PROGRAMS OF MULTINATIONALS AND U.S. GOVERNMENT

The multinational corporations' legal compliance programs and federal government programs employed degrees of the eight components of successful programs. They were described by corporate and government personnel as successful, assessments that in most cases were based on data and longitudinal data.⁷¹ Their foundations were the law, the organizations' ethics codes, training, feedback, adaptation. The training resulted in, what informants described as, a process of buy-in, or acceptance by employees, assimilation, and taking ownership of the programs by employees. They reported satisfaction with the level of resulting performance. Behavior modification and various exercises are employed, as process skills cannot be learned easily in the abstract. The business training was not mere abstract learning, or cognition. The techniques used included procedural memory, or muscle memory, behavior modification, enhancement of peer group values and sense of mutual responsibility, role-playing, and sensitivity training.⁷² These are discussed in more details related to the authors' studies of the dynamics of corruption, below. Informants reported the importance of the continuous evaluation and adaptation to feedback. The companies' personnel reported that employees in the U.S. and abroad were mostly well motivated and felt a degree of job security and social status. This took the place of the public component in government programs and reduced the time needed for behavior modification, sensitization, fiduciary duty, mission, professionalism, and peer responsibility. The presence of motivation and security seemed important distinguishing characteristics, and contrasted with that of civil servants in high corruption states studied and found in published research. By contrast, in the African civil servants studied virtually no job security or economic security existed.

One of the factors making anti-corruption efforts more difficult in Third World states, our studies found, was the

force exerted by the informal social controls that stressed the primacy to duty to family, village and clan. The trainers and executives reported the company programs were successful in overcoming traditional social controls in foreign states fairly effortlessly as part of the "taking ownership" phase of training. Companies reported employees were motivated to follow their ethical policies. This supports the idea that new informal social controls can be developed by training that ties behavior to law and the ethics code.

In case after case, informants described the techniques leading to employee "buy in," assimilation and taking ownership of the ethics policy. In effect, the bond to legal and ethical compliance was strengthened. Quite similarly, the U.S. Government (USG) purchasing organizations have developed a successful ethics program. It includes a values-based ethics code since the 1990s, a compliance program, ethics training⁷³, regular communication which was found to build trust, and use of surveys to determine the state of its ethical culture.⁷⁴ Inspectors general add a further layer of accountability.⁷⁵ The USG estimates corruption at about 5%, although the one of the author's firsthand experience with enforcement of the program would lead to a lower figure.⁷⁶ A number of obviously corrupt USG contracts were reviewed by the author and found the system had worked and these were identified and action taken against the perpetrators and the contracts were voided. The perpetrators were persons operating in relative isolation and the majority of the actors' contracts were sound.⁷⁷

The Aerospace Industries Association of America, the Aerospace and Defense Industries Association (AIA-ASD), in cooperation with the International Forum on Business Ethical Conduct, has reached agreement on the AIA-ASD general principles, such as zero tolerance, vetting advisers, of broadly defining "adviser," limiting advisers' roles strictly to legitimate services, of minimum due diligence including ongoing assessments, and no solicitation or acceptance of proprietary information about third parties. In business, when the programs are under the general

⁷⁰ See Rasmusson, "Model Program for Heads of Government and Direct Reports," at Ethics and Development.com.

⁷¹ Thirty-two informants in interviews and discussions with corporate officers, training personnel, corporate directors, general counsel, training consultants, and accountants, at New York City, January 2003; American Institute of Certified Public Accountants, New York City, February 2003; interviews with executives, directors and counsel at the Conference Board governance program and review of training materials, New York City, January 2004; interviews with executives, trainers and counsel at the Conference Board governance program and review of training materials, New York, February 2005; and discussions with executives, trainers and counsel at the Conference Board program on legal compliance training at San Diego, March 13-15, 2007; and review of federal training materials and discussions with training officers, at Lansing, Michigan, February 2011, August 2011, March 2012.

⁷² Laura Montocchio, "Repetitive Skill Practice: Blending Experiential Learning & Technology," Training Topics (Mar 4, 2010), at <http://www.trainingindustry.com/sales-training/articles/repetitive-skill-practice-blending-experiential-learning-technology.aspx>; D. R. Shanks, M.F. St. John, M.F., Characteristics of Dissociable Human Learning Systems, Behavioral and Brain Sciences, vol. 17, issue 3, pp. 367-395 (1994), at <http://discovery.ucl.ac.uk/142639/1/download2.pdf>.

⁷³ Materials were reviewed by one of the authors (Rasmusson) in Africa and in the U.S.

⁷⁴ Note 71.

⁷⁵ One of the author's (Rasmusson) work with Inspector's General reports and reviews of files; also Note 71.

⁷⁶ Note 75.

⁷⁷ Note 75.

counsel, the emphasis can be on confidentiality, which aids full reporting, troubleshooting and corrective action.

The corporate and government employees enjoy a degree of economic and career security lacking for civil servants in most high corruption states. Further, they are self-selected for the work at hand, having usually many employment opportunities. This, again, is usually not the case with such civil servants. The techniques employed described below create a degree of employees taking ownership of the compliance program, code and objectives. The result is some level of self-regulation.

Other Low Corruption States

The U.S. Government's fairly high degree of success with its compliance programs, inspectors general, transparency, legislative oversight, effective laws and other formal structures, and a supportive public consensus is mirrored in more than four dozen states with moderate to high success combatting corruption. Our visits to many low corruption states, discussions there with judges, police, government officials, business executives, diplomats, and others supported this idea. If they were to employ all eight components, the results could be remarkable.

Model Anti-Corruption Program Developed and Tested

Two model anti-corruption programs were developed by one of the authors, based on these studies and using the eight components. One of the programs is reported here.⁷⁸ The results were encouraging. All participants reached an initial operational level. After an initial level is attained, the program protocol provides various forms of periodic reinforcement, refresher training and adaptation to be employed, along with metrics. The successful business and U.S. Government programs did likewise. No included here are the findings and program for ministers and agency heads.

Unfortunately, most Third World governments' anti-corruption programs have lacked all the key components and have failed. The model program, and every successful program studied, places responsibility on the head of government, or C.E.O. in the instance of business, to provide

visible support during the period of modifying behaviors and instituting the other measures. If the will is there, the prognosis is good. If the will is lacking at the top, or as often seen, there are conflicting currents of reform and corruption, without the head of government, the prognosis is guarded.

THE CORE PROBLEM OF HYSTERESIS

From our studies of corruption and anti-corruption programs, it was clear the core problem for high corruption states was what could be described as "hysteresis." That is, established cultures of corruption can become "powerful forces tending to keep corruption."⁷⁹ This is a homology and process also identified by behavioral economists and by other scholars. It is also seen in the physical sciences.⁸⁰ It is identified where an initial condition can doom efforts to create a new equilibrium, and additional force must be applied to overcome the established culture.⁸¹ Hysteresis with respect to corruption describes the persistence and "influence of past corrupt bureaucracies."⁸² The model anti-corruption program incorporates the additional force several ways, as did the successful programs in Singapore, Hong Kong and the business compliance programs. Techniques to overcome hysteresis are the core of a successful anti-corruption program. Therefore, behavior modification is vital, where there a culture of corruption has taken root. State programs are weaker than they need to be, that lack behavior modification (component #2) and its two supports, exercises to operationalize its ways (#6) and training in mission, professionalism, fiduciary duty, and peer responsibility (#8).

OPERATIONALIZING KNOWLEDGE OF THE LAW, ETHICS CODE AND NEW BEHAVIORS.

Buy-In, Assimilation, Taking Ownership

Absent from failed programs have been the training exercises and follow through training in civil servants taking ownership of the program and making responses to temptation almost automatic. Our studies found the most

⁷⁸ The program described here is for mid- and upper-level civil servants, the other is for heads of government and their direct reports. T. Rasmusson, "Anti-Corruption Program for Head of Government and Direct Reports," at <http://www.ethics&development.edu>.

⁷⁹ Lionce Ndikumana, "making the State Relevant in Burundi," Chapt. 4 in George Klay Kieh, ed., *Beyond State Failure and Collapse: Making the State Relevant in Africa*, Lexington (2007), pages 51-78 at <https://books.google.com/books?id=s1MtpwbymdgC&pg=PA67&lp> last accessed on 12/29/2016; Shawn Ni, Pham Hoang Van, "High Corruption Income in Ming and Qing China," pages 21-23 (Feb 2005); Jean Tirole, "A theory of Collective Reputations (with Applications to the Persistence of Corruption and to Firm Quality," 63 *The Rev of Economic Studies*, No. 1, Pages 1-22 (Jan 1996) at www.kellogg.northwestern.edu/faculty/baliga/html/papers/tirole.pdf, last accessed on 12/29/2016.

⁸⁰ E.R. Hancock, J. Kittler, "Adaptive Estimation of Hysteresis Thresholds," *Computer Vision and Pattern Recognition*, Proceedings CVPR '91, IEEE Computer Society Conference (1991).

⁸¹ Fran Quigley, "Growing Political Will From the Grassroots: How Social Movement Principles Can Reverse the Dismal Legacy of Rule of Law Interventions," *advocating drawing on lessons from behavioral science*, 41 *Colum. Human Rights L. Rev.* 13 (Fall, 2009). In science, a typical example of hysteresis, or the impact of a prior condition, is "when a [ferromagnetic](#) material is magnetized in one direction, it will not relax back to zero magnetization when the imposed magnetizing field is removed. It must be driven back to zero by a field in the opposite direction. If an alternating magnetic field is applied to the material, its magnetization will trace out a loop called a [hysteresis loop](#)." "Hysteresis," Georgia State University at hyperphysics.phy-astr.gsu.edu/hbase/solids/hyst.html; Tirole, *Id.*, pages 13-18.

⁸² Quigley, *Id.*

successful programs do this and include developing peer group responsibility as part of the new sensitivities.

The objective is to motivate the participants to apply their government's ethics code in daily practice. The alternative in failed programs, if any, is a sanction-based deterrent strategy. Most high corruption states rely on sanctions, exhortation, assumed loyalty and motivation sufficient to overcome other demands and temptations in the employees' lives. The "sanction-based deterrent strategies are consistently found to have, at best, a minor influence on rule-breaking behavior" of employees in studies.⁸³ Whereas, the "self-regulatory approaches that are linked to activating employee's ethical judgments" have "a stronger influence."⁸⁴ The processes used in the successful programs speak to the efficacy "of work cultures to motivate employees to act based upon their feelings of responsibility and obligation to both company codes of conduct and to their own personal feelings of morality."⁸⁵ Thus, the recommended program as tested used a number of exercises to heighten empathy and the sense of responsibility.

The program begins with value orientation, based on the body of empirical research that supports the effectiveness of tying employee values to the organization's ethics code norms.⁸⁶ Major ethical systems are presented more in the concrete than abstract, and meanings and operation of each is discussed. Participants are asked to note confidentially their value preferences. Then hypothetical situations are discussed with reference to the values. Studies by researchers support this "appeal to values as a viable strategy for minimizing misconduct."⁸⁷ To this are added techniques from sensitivity training to bring the reality of the human suffering and destructiveness of corruption real.

The next step, repeatedly observed in these programs, was to make the ethics code clearly and concretely applicable to the tasks, decisions and temptations of each unit's work activities. The multinationals' programs examined began with techniques of buy-in, ownership and assimilation. All of the companies undertook a process of education for personnel on every level of operations. Each had to comply with a number of U.S. and local laws, including Sarbanes-Oxley Act, Foreign Corrupt Practices Act, Anti-Trust laws, generally accepted accounting standards and Public Corporation Accounting Oversight Board rules, Securities and Exchange Commission rules, and Federal Sentencing Guidelines (used defensively). After considering the various legal objectives and company needs, each company established an understandable ethical standard or standards to be met. This was not overly abstract,

⁸³ Tom R. Tyler, sponsored by the Sloan Program for the Study of Business in Society, "Corporate Misbehavior by Elite Decision-Makers Symposium: Perspectives from Law and Social Psychology: Promoting Employee Policy Adherence and Rule Following in Work Settings: The Value of Self-Regulatory Approaches," 70 Brooklyn L. Rev. 1287, 1303-1312 (2005).

⁸⁴ *Id.*

⁸⁵ *Id.*

such as classical Utilitarianism or the Categorical Imperative, but a presentation to a group of employees of simple, clear objectives set by the company. In a Third World state, the objectives should include compliance with fiduciary duty, in understandable language, and the local laws' underlying ethics such as fairness and the work objectives. In business, the groups consisted of the employees in the same department or role. The groups then worked out the ways the objective, or objectives, would be applied in their groups' work, the objectives balanced, and problems and conflicts handled. These were distilled into a page or two of guides, or a code of conduct, by a group process led by an instructor. This involved much discussion, a process of drawing everyone into the exercise, getting the group to picture and discuss the circumstances that will be encountered in practice, and working out strategies for handling them. This later leads to working out practice scripts and role playing exercises. The "simple clear objectives" reached in the process became a distillation of the code of conduct for the work of that office.

In a corporate setting the training and monitoring are usually under the general counsel's office, human resources or risk management. For legal reasons the legal counsel's office was preferred by most companies.⁸⁸ In a Third World state, the preference would be an outside party working directly under the head of government, with close relations to the justice ministry and independent corruption commission. Although the program could report directly to an independent anticorruption commission, the experience of companies with successful programs suggests that proper functioning requires this be part of the chief executive officer's, or head of government's, domain to become incorporated fully into routine operation.

For obvious reasons monitoring and feedback are important to assure success. All company and U.S. Government programs examined collected data. Data then suggests problems, refinements and changed conditions and behavior. Issues to consider include active support at the top, getting compliance down the line, litigation hazards, honest reporting, control and dealing with problems. Early, there was preliminary thinking about the metrics that would be needed. The equivalent should accompany the process in a state.

Nearly every company emphasized that employees should not be paid for successfully following the program, but giving the employee recognition and feedback was

⁸⁶ Tom R. Tyler, Patrick E. Callahan, Jeffrey Frost, "Armed and Dangerous: Motivating Rule Adherence among Agents of Social Control," 41 Law and Soc'y Rev 457, 461-466 (2007).

⁸⁷ *Id.*

⁸⁸ Several corporation attorneys advised a preference for keeping information learned protected by privilege. Some also mentioned the value of the counsel's office being directly involved in ethics training.

recommended. This could include awards, ceremonies, group recognition, and visibility.

Peer-made Guidelines

The companies' ethics codes, or program objectives, are simplified for reasons of learning purposes in the group training process. A great many people do not learn well in the abstract. The peer groups' work product amounts to supplemental guidelines for implementation by each office or function. The companies' codes or objectives tend to be in the vocabulary of the principle-based rule approach, also known as "objective-based" or "bright line" method. This reduces chances of cheating successfully. It leads to a "substance over form" implementation, with which legal scholars are familiar.

It was found that most businesses use a combination of focus groups, polling and supervisor input to sharpen the objectives. In Third World states, the anticorruption program trainer or executive should work these out under the head of government, or corruption commission, or the appropriate official in that state. They would likely be a form of legal compliance, fairness, equal protection and utilitarianism.

BEHAVIORS TO MODIFY, SENSITIVITIES TO DEVELOP

Findings: Law and Informal Social Controls

It would not be helpful to set the objective of behavior modification as stopping at, vaguely stated, "corrupt behavior." The question is what behaviors to change. Examination of how corrupt acts arise identifies the behaviors to change. For this we draw on the findings from our field studies of corruption and published research. The eight components of successful anti-corruption programs, including streamlining government, transparency, reducing opportunities for corrupt acts, laws and formal structures are essential. However, the field studies found that formal social controls (law and formal structures such as audit) had weak effect on the actual performance of officials, while informal social controls had the dominant influence. At the decision points leading to corrupt decisions, both informal social controls and immediate personal benefit were found strongly to influence decisions.

In West Africa, by the terms "law," and the "formal social controls," are meant (1) the statutes, and (2) regulations of the central government, (3) the unusual executive-made "policy rules," (4) constitutions, (4) case law, (5) judicial rulings, and (6) the rules and policies of auditors, the national banks, prosecutors and human rights commissions. The statutes included laws originating in legislative bodies and some promulgated by previous

military decrees.⁸⁹ The regulations, both published and unpublished, were promulgated by the head of government, agencies and ministries. The case law included: decisions of the highest courts, decisions of certain executive department tribunals, some United Kingdom high court decisions and some U.S. Supreme Court decisions. The third category of law, the so-called executive "policy rules," included certain zoning policies on location of vendor stalls and encroachments on public spaces, building code rules such as paint and appearance of exterior walls, Sunday closing of certain businesses, rules regarding interference with traffic flow, highway checkpoints (roadblocks), funded and unfunded executive scholarships to university, certain rewards, release of fiat currency without appropriation, authority in the budget, or a system of national banks' purchase of government securities in a securities market, rules regarding access to restricted areas, the custom of military interference with civilians and civil courts, and the "banning" of individuals, activities, political parties and associations. Usually in jurisprudence, rules have direct consequences that attach to their violation, whereas policies and principles usually do not. Policies and principles are guides to interpretation and application. Thus, a policy of encouraging education has no direct consequence, but ideally guides planning and budgeting. A principle that a wrongdoer not benefit from his/her wrong, has no direct consequence, but often assists a court in ruling in the appropriate case. Whereas, a rule has a direct consequence, as in the rule that a murderer is barred from inheriting from the victim's estate. However, these executive "policy rules" are enforced by police or soldiers, and thus have direct consequences. A few could claim some ambiguous tie to old law. No evidence could be found of notice, comment, hearing, formal promulgation or publication.

Informal social controls support law in a healthy society, and deviance occurs "when the individual's bond to society is weak or broken."⁹⁰ In West Africa, two categories of informal social controls were found, those of the indigenous cultures, and those of the "non-indigenous," that is, families long removed from the village and farm, or transplanted from abroad usually in the distant past. The term "traditional social controls" is used for those of the indigenous cultures. Both groups' informal social controls were found to impact corruption.

In West Africa the picture was that of states with seriously compromised capacities to utilize law. It was noted that the traditional social controls were often more influential in civil servants' decisions than the law, and consequently were a strong force in corruption. Studies, including the present ones, have observed the law of the central governments is

⁸⁹ In Liberia, we found the People's Redemption Council in the post 1980 period promulgated a number of decrees that occasionally were cited by officials as the basis for actions long after the 1980 coup.

⁹⁰ Travis Hirschi, *Causes of Delinquency* at 16, 3-32, 71 (Univ. of Cal. Press 1971).

less a motivator than the traditional social controls.⁹¹ The traditional social controls are internalized customs, mores, memes and values.⁹² They were observed to exercise an influence over behavior of government officials. All societies presumably have informal social controls.⁹³

A simple example of informal social controls would be the restraint that stops us from striking a blow, when antagonized in some daily situation. Scientists have described them as having evolved to help groups function and they are enforced informally by positive and negative consequences, sanctions and mechanisms that “seem to shed light on why individuals do not act in strict self-interest, but for the greater good of the group.”⁹⁴ Informal social controls describe “. . . how society induces us to behave in ways that serve not our own interest, but the common interest of society.”⁹⁵ The foundations of a healthy social environment have been described as a “shared set of motivations and expectations related to trust, fairness, and cooperation.”⁹⁶ It is noted: “This lowers transaction costs, raises the frequency of successful transactions, and increases long-term rewards.”⁹⁷ It can also be said that traditional social controls did not evolve to support formal laws and policies of the central governments. Their origin is much earlier than most of these states’ existence. Hence, it should not surprise that informal social controls in West Africa do not support the law. The roles of cultural evolution versus evolved psychology have been debated, but the message is still generally one of changeable behaviors and change in the direction of fairness.⁹⁸

In West Africa, we found interviewing scores raised in the villages of the various ethnic groups, that traditional social controls varied somewhat by ethnic group, but generally supported behaviors useful in a traditional setting of once isolated rural villages, where the principal occupations were farming, hunting, trapping, and useful crafts, such as iron mongering, seamstress, healer, orchard tending and

weaving. The “prosocial” behaviors⁹⁹ did not include conforming to and enforcing the statutes of the central government. Our study observed in Africa that prosocial behaviors traditionally included shared “brushing” responsibilities (farm preparation), cooperation in hunting, sharing good fortune as in fishing, respect for collective decision making in the village and family, care for the senile and less functional, deference to elders, mutual aid in various efforts, the importance of relationships in transactions, and a degree of collective teaching of useful skills to young persons.

Researchers view these social controls as arising in the bonds that people form to “prosocial values”, “prosocial people,” and “prosocial institutions” that end up controlling behavior, when people are tempted to engage in criminal, or deviant, acts.¹⁰⁰ This derived from the work of Edwin H. Sutherland, Travis Hirschi, R.L. Akers and others. Previously, deviance was thought to be the result of motivation, barriers to aspirations and exposure to deviant values.¹⁰¹ This work has been extensively tested and refined empirically for about forty years.¹⁰² It describes functional social control mechanisms as “social bonds” that originate in early childhood from an attachment bond to parents, persons and institutions, from a commitment bond that resists the risks to social relationships that deviance would cause, from an involvement bond for filling time with positive activities, and from a belief bond strong enough to cause adherence to values, and hope for the future.¹⁰³ The adherence from childhood is to the bonds, not to the law directly. Therein lies a problem in many states in transition, including Third World states. In West Africa, it appeared the strong indigenous culture, the lack of consensus behind the laws, the substantial internal migration, the newness of the political and economic order and other factors left adherence to law under stress, and weakened the capacity of the societies to utilize law. Some states have established social orders, many established for

⁹¹ Joel S. Migdale, *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World* 4-9, 24-26 (Princeton Univ. Press 1998).

⁹² Doris Layton MacKenzie, Spencer De Li, “The Impact of Formal and Informal Social controls on Criminal Activities of Probationers,” 39 *Journal of Research in Crime and Delinquency* 3, pages 243, 244, 248 (8-1-2002), at citeseer.ist.psu.edu/viewdoc/download?doi=10.1.1.563.2392&rep.

⁹³ *Id.*

⁹⁴ R.F. Meyer, *Perspectives on the Concept of Social Control*, 8 *Ann. Rev. Sociology* 35-55 (1982), citing C. Jencks, *The Social Basis of Unselfishness*, in *On the Making of Americans* 63-86 (H. Gans et al., eds 1979).

⁹⁵ *Id.* at 52.

⁹⁶ Compare J. Henrich et al., *Markets, Religion, Community Size and the Evolution of Fairness and Punishment*, 327 *Science*, 1480, 1480-1484 (2010) (academics debate the roles of cultural evolution

versus evolved psychology, but the message is still one of changeable behaviors) with N. Baumard, *Evolution of Fairness: Cultural Variability*, 329 *Science* 388, 388-89 (2010).

⁹⁷ Hirschi, *supra* note 90 at 1480.

⁹⁸ Nicolas Baumard et al., *Evolution of Fairness: Cultural Variability*, 329 *Science* 388, 388-89 (2010).

⁹⁹ “Prosocial” is a term adopted by Hirschi. Hirschi, *supra* note 90 at 103.

¹⁰⁰ T.C. Pratt et al., *Key Ideas in Criminology and Criminal Justice* 55-60, 65 (Thousand Oaks 2010) see also Hirschi, *supra*, note 37, at 16, 16-30.

¹⁰¹ Hirschi, *supra* note 37, at 3-26, 31-32.

¹⁰² Ronald L. Akers, *Criminological Theories: Introduction and Evaluation* 63-94 (1999) see also Pratt *supra* note 48, at 55, 65.

¹⁰³ Hirschi *supra* note 90, at 16, 16-30.

several generations, but corruption persists, as law and consensus law are not part of the informal social controls.

Through the use of equilibrium models, other research has led to similar observations about the importance of informal social controls.¹⁰⁴ Another described the traditional social control issue as a dissociation of social institutions from governing institutions in Latin America, sub-Saharan Africa, Egypt, and India. This was described as two paradoxes. First, the inability of leaders to get people to act in support of their programs, and secondly, actions of political leaders that undermined the law and governing institutions.¹⁰⁵ This was described as the effect of fragmented societies upon government, rather than the center affecting the fringe.¹⁰⁶ It was also noted the societies have been in a process of transition and re-ordering, as a result of extensive internal migration and economic and political changes.

The important point of the research of Hirschi, Gottfried, and others is that informal social controls and behavior can be changed positively in adults.¹⁰⁷

We were led by our field studies and aided by consultations with an anthropologist specializing in Africa and two clinical psychologists to observe another possible variable, an interesting association between language, culture and ethical conduct. Our studies and observations of experts noted that legal compliance was less likely among individuals raised in another language than the official language of the state. It was noted that in many Third World states, as in much of Africa, there has been a great migration from village to metropolis. The basic ethics of the traditional social controls, such as not stealing, cooperation and loyalty, were learned in early childhood at a time, when the officials and a large portion of the local population would have spoken a language other than English, while at the same time the bonds of informal social controls were tied to a locality and individuals. For example, English is the official language in each of the Anglophone states studied, but for many officials in these states, English was a second language. It appeared the traditional values may be tied more to the language and culture where the official grew up, and lost some force,

when the official acted in the official language and another culture.¹⁰⁸ Researchers have found in new settings “rules . . . differ, anonymity is increased, and interpersonal interactions . . . decreased,” and a “breakdown in relationships” occurred.¹⁰⁹

Older persons reported in the field studies many changes resulting from the availability of paid work, from marketing farm products, new roads, new schools and remittances from family members in the city or abroad. It appeared the culture was absorbing these changes. This could otherwise be taken as a hopeful sign.

This may be distinguished from the work of Yochelson and Samenow. Their studies were based upon extensive examination of chronic serious criminals. The chronic criminal was found to form a life pattern in the preschool years, to justify criminal acts, to lack remorse, to seek thrills, to be irritable, not to plan for the future, to avoid responsibility, lie as a way of life, exploit family, and to have been enabled by parents and schools. The result is described as “thinking errors.”¹¹⁰ This, as with Hirschi’s work, has decades of empirical research behind it that is generally supportive. However, the chronic criminal type rises to a pathology. With some of those exhibiting this pathology some success has been reported with a confrontational therapy to alter behavior in some subjects through a series of sessions with a skilled therapist.¹¹¹ This analysis appears consistent with antisocial personality disorders described in the DSM-II and DSM-III-R.¹¹² However, the research and therapy took place with institutionalized offenders, or persons under court supervision. Anticorruption programs would seldom exercise such control or encounter such types. For the “pathologies” (chronic criminal, mental illness, disruptive personality disorders, and serious emotional disturbance) it may be more practical to remove such persons from positions that exercise authority or that would expose peers. Isolation would reduce the risk of the “single selfish player” phenomenon, for importantly, such a player is enough “to unravel cooperation and destroy ethical behavior” in a group, which is described by some

¹⁰⁴ Amundsen, *supra* note 24, at 118-121.

¹⁰⁵ Migdale, *supra* note 42.

¹⁰⁶ *Id.*

¹⁰⁷ D.L. MacKenzie, *Id.*, pages 248-250, 273; Candace Kruttschnitt, Christopher Uggen, Kelly Selton, “Predictors of Disistance Among Sex Offenders” *The Interactions of Formal and Informal Social Controls*, 17 *Justice Quarterly* 1, pages 63-64 (March 2000), at https://www.researchgate.net/profile/Candace_Kruttschnitt/publication/248967423, last accessed on 1-25-17.

¹⁰⁸ Hirschi, *supra* note 90 at 16, 16-30.

¹⁰⁹ S. Jiang, J. Wang, E. Lambert, “Correlates of Informal Social Control in Guangzhou, Dhina, Neighborhoods,” *Journal of*

Criminal Justice, 38:460-469 at 463-468 (2010). Psychologists advising the authors reported observing a similar phenomenon clinically.

¹¹⁰ S. YOCHELSON & S.E. SAMENOW, *THE CRIMINAL PERSONALITY* 1-552 (Jason Aronson, Inc 1976).

¹¹¹ S.E. SAMENOW, *INSIDE THE CRIMINAL MIND* 209-12 (Random House 2004).

¹¹² J.S. Wulach, *The Criminal Personality as a DSM-III-R Antisocial, Narcissistic, Borderline, and Histrionic Personality Disorder*, 32 *J. OFFENDER THERAPY AND COMPARATIVE CRIMINOLOGY* 185, 185-199 available at <http://www.nytimes.com/2011/08/18/world/asia18idii.html>.

researchers as a “reciprocal altruism.”¹¹³ The “single selfish player” can corrupt an entire unit.¹¹⁴

The targets of the program are behaviors to modify. The field studies pointed to informal social controls and ten other characteristics described below, but selection of additional targets, behaviors to modify or channel, is done by a refining and supplementing process from consulting experts with experience in each the participating state’s culture, from anthropologists, NGOs, published work, representatives offered by the host government, and visiting each unit from which the civil-servant program participants come. Thus, it makes for efficiency and targeting to train in groups of civil servants from the same unit. Trainers are looking for the temptations faced by the unit as well as social demands in the culture. The program trainers spend time in each unit and with the unit supervisor before the trainees from that unit begin training. The trainers are looking at the unit’s activities and responsibilities, for workflow, opportunities for corruption, and the social demands peculiar to the civil servants there, as well as the language and geography associated with the period in which their informal controls were formed. The “language and geography” aid in crafting illustrations and hypothetical situations for training to raise sensitivities. This information not only leads to the hypothetical problems presented to the groups for discussions and exercises, but also helps with interactive lessons on the harmful effects from corruption on everyone.

TEN RELATED FINDINGS

Field studies found ten related characteristics of the corruption process: (1) detachment of traditional social controls from law, as discussed above, (2) the related stress of officials from conflicts between law and traditional obligations, (3) effects from change, that is, from large internal migration, new economic, social and political forces, (4) weak “prosocial bonds” in a segment of the “non-indigenous,” that is, those from longtime urban family backgrounds without ties to a village or ethnic group¹¹⁵, (5) negative externalities and “appropriability” problems, (6) lack of a sense of professionalism, (7) very little knowledge of basic civics and self-government, (8) weak peer subculture in units, (9) the relative isolation of officials, and (10) lack of knowledge of fiduciary duty and a sense of mission.

1. Detachment from Law

Informal social controls should support legal compliance. It would be difficult to envision democracies functioning well without that support. Deviance occurs “when the individual’s bond to society is weak or broken.”¹¹⁶ The studies found no

evidence of “prosocial bonds” to law in the traditional social controls. They found a motivation to avoid angering officials, especially a “big man.” This was managed chiefly by flattery and symbolic compliance. An anticorruption program would be strengthened by building “prosocial bonds” of civil servants, high officials, and the public to law by the behavior modification exercises, for example, incorporated in our model program.

2. Conflicting Duties

Most officials faced conflicting duties, being pulled by obligations of the traditional social controls, personal financial needs and the duties of office, or at least the need to maintain the appearance of performing in office. There was very little understanding of fiduciary duty. It is rude in the culture, and would make informants quite guarded about speaking, to question closely for precise details, but using oblique, gentle-seeming lines of inquiry that an experienced cross-examiner would recognize, it was possible to be fairly certain there had been no training in fiduciary duty, or its many contours and complications. For some, obedience was first to traditional expectations, but for a great many, the conflicts were not consciously confronted; decisions appeared to be ad hoc. For most, it appeared, law and government policy were not the highest priorities. Highest priorities and conflicts of duties arose from such situations such as family or favor-seekers’ demands for favorable official decisions, to act or not to act, for exemption from operation of the law, more favorable treatment, award of contracts, non-collection of taxes or penalties, priority for benefits or processing requests, and obligations on officials to entertain, honor, and even to support, individuals, often a child in the extended family. The deviance can also take the form of being self-serving, such as use of official position to obtain money and property, trade favors with other officials, embezzle, convert government property, sell government property for personal gain, seek kickbacks and bribes for favorable decisions, sale of favors, sale of access to an official and even bribes in exchange for an assurance that a contract would be followed or the law obeyed. Business persons reported paying as much as five figure sums in U.S. dollars for access or favors. Remarkably, some of the appropriations we followed were entirely consumed by corruption with none of the money going for the intended purpose.

Potential demands can be daunting. Extended families could include siblings, parents, half siblings, children of other wives of the father, aunts, uncles, cousins and half siblings, “outside” (illegitimate) children, others raised in the family, and extended networks from each of these. Another tier of “family” comes from the historic family village and ethnic group, with similar networks of individuals. They are all referred to as “family,” “brother” and “sister.” All are encompassed within a cloak of cordiality, trust, accommodation and mutual obligations.

¹¹³ P.J. Zak, *The Neurobiology of Trust*, 62 SCI. AM. (2008). *** see also E. Fehr & K.M. Schmidt, *Theory of Fairness, Competition, and Cooperation*, Q. J. ECON. 817, 817-868 available at <http://faculty.com.yale.edu/keithchen/negot.paper/FehrSchmidt-TheoryOfFairness99.pdf>. ***

¹¹⁴ *Id.*

¹¹⁵ Most informants were uncomfortable describing the various ethnic groups as “tribes,” as some have done in the past. Thus, we usually employ the term “ethnic group.”

¹¹⁶ Hirschi, *supra* note 37, at 16.

Traditionally, duty extends to all. Thus, the potential for claims on officials can be great.

3. Internal Migration and Social Change

The traditional culture appeared to value harmony, non-violence, mutual aid, courtesy and kindness. These “prosocial bonds” appeared to have been attenuated by a large internal migrations, and new economic, social and political forces. The result for some was a kind of license, being freed from traditional social controls and not restrained by the eyes of the village, yet the old ties could still call on a civil servant for a favor. The West African states in the recent past, had populations that lived in small, largely self-governing villages, many without connecting roads, fed by family farms, clothed by village cloth, often working with village-made tools, and mostly functioning without currency. In reconstructing the areas’ legal history, it appeared about ninety years ago circumstances arose that increased the need for cash money,¹¹⁷ that prompted various changes. The traditional societies highly valued harmony, family, relationships, duty and honor. The social institutions supported these values. Rapidly two phenomena occurred: (1) economic and political power shifted to forces outside the village, and (2) mass migration removed people from the village and family.¹¹⁸ The migrants from the countryside lived without social safety nets and economic security, compared to the mutual aid and family ties in the villages.

These observations are consistent with others’ research. Social scientists have found economic change, new forms of work and urbanization had profound effect on traditional social controls.¹¹⁹ Dalton found these changes affected “culture and society of which indigenous economy was an inextricable part.”¹²⁰ It was observed that “work,” traditional economic activity, consisted of “integrated ways of life wherein economic and social processes were mutually dependent and reinforcing.”¹²¹ The new ways of modern work were described as “devoid of social meaning . . . not part of social obligation to kin, friends or rulers.”¹²² Internal migration and urbanization marked the change. This was described as “urbanization substituting of secondary for primary contacts, the weakening of bonds of kinship, and the declining social significance of the . . . traditional basis of social solidarity.”¹²³

¹¹⁷ It was called the “hut tax” on each dwelling.

¹¹⁸ A.C. Kelley, *Economic Consequences of Population Change in the Third World*, 26 J. ECON. LITERATURE 1685, 1685-1728 (1988).

¹¹⁹ G. Dalton, *Traditional Production in Primitive African Economies*, 76 Q. J. Econ. At 374, 375 (1962).

¹²⁰ G. Dalton, *Id.*, at 360-378 (1962).

¹²¹ *Id.* at 375.

¹²² *Id.*

¹²³ L. Wirth, *Urbanization as a Way of Life*, AM. J. SOCIOLOGY 190, 190-97 (1938). ***

¹²⁴ Examples of this thesis are found in the Michigan State University Libraries African Journal Project survey of scholarship, Munyae M. Mulinge and Gwen N. Lesetedi, “Colonization and Corruption in Sub-Saharan Africa,” 3 African J. of Political Science, 15, 17-20 (1998), at pdfproc.lib.msu.edu/?file=/DMC/pdfs/polliticalscience/vol3n2/aj

However, despite these social changes, we did not find support for the hypothesis that corruption is caused by colonialism.¹²⁴ One of the states studied had not been a colony. It could, perhaps, be argued that it a colony-like relationship with both the U.S. and Britain, but there was little interaction between the two governments or the businesses in each state during the first seventy-five years of independence. Nonetheless, reports from that era contain evidence suggestive of widespread corruption in courts, other branches, the granting of monopolies, administration of public corporations and even in the issuance of diplomatic passports for a fee to foreigners.¹²⁵ Elderly attorneys reported with respect to the mid-Twentieth Century that “there has always been corruption” both judicial and government and a retired military intelligence officer who worked in the state just before the period of economic expansion after World War II, reported corruption flourished on a greater scale than he had ever seen anywhere in the world.¹²⁶ The intelligence officer also reported local officials and institutions seemed not to do anything about it. The field studies found many instances of bribe solicitations with respect to contract decisions, but in every case involving large multinational foreign corporations, the companies walked away from a deal rather than becoming involved corrupt practices. These were U.S., Canadian and European firms. Employee of these companies complained to us that corporations from some other states were less circumspect and engaged in corrupt practices. The study found a very small number of small U.S. and European businesses whose employees admitted to bribery. This may reflect the systematized emphasis on legal compliance in larger firms. It should be noted that bribery was found at the village level in the earliest ethnographic studies usually in the form of social courtesies, such a present given to a person charged with settling a dispute.¹²⁷ The traditional expressions have been described by ethnographers as “gift giving, brokerage, solidarity networks” and as “interpersonal trust.”¹²⁸

4. Detachment of the Urbanized

Similarly to the informal social controls of those spending formative years in the rural villages, the civil servants and their

ps003002003.pdf, last accessed on March 19, 2017; R.B. Schlesinger, H.W. Baade, M.R. Damaska, P.E. Herzog, *Comparative Law*, Foundation Press (5th ed., 1988), 880-882; *King v. Morton*, 520 F.2d 1140 (DC 1975); comparison of legal orders in *Law v. Kiley*, 563 F.2d 543, 551 (CCA 1977).

¹²⁵ Discussions with Professor Konvitz described above.

¹²⁶ Note 125, and discussions with senior attorneys, business executives and a naval intelligence officer from the era at Monrovia and Freetown, 1986-1988, and Lansing, Michigan, August 1990.

¹²⁷ Davide Torsello, *The Ethnography of Corruption: Research Themes in Political Anthropology, Wuality of Government Institute, University of Gotheburg, Gotheburg, Sweden*, 7-13 (March 2011); George Schwab, *The Tribes of the Liberian Hinterland*, Peabody Museum, Cambridge, MA (1847).

¹²⁸ Torsello, *Id.*

bosses with lengthy urban backgrounds mostly exhibited informal social controls detached from the law. This segment of society consists of persons from families never connected to the indigenous society, or only lately related by marriage, or long separated from the village. This group generally manifests “prosocial bonds” more closely aligned with city life and law. Though the group is largely unconnected to indigenous traditional social controls, this group had its own prosocial informal social controls, and such values as non-violence, care of children, respect for parents, other people, property, law, and education. Law appeared more something to be negotiated to this segment. The description “non-indigenous” is not precise. Nearly all of these families have as much claim on nationality as the “indigenous” (village dwellers). Most have been citizens for as long as anyone knows and for many generations. Many who have some ties to ancient ethnic groups also have one or more university degrees, including from foreign universities. Unlike the citizens from the countryside, most speak English as a first language. Some came from families with many generations in urban areas, some are the progeny of returned former slaves from abroad, and some are the children of other former immigrants from nearly every continent. These individuals appeared comfortable with the skills needed for contemporary urban life. However, there has been much blending of family lines and it appeared a great many “non-indigenous” families had some connection to villages and rural families. Candid statements from many urbanized informants disclosed feeling “country” folks were “outsiders” and were lesser humans.

These persons frequently manifested some disregard for the harm caused by inconsistent legal outcomes and the harm caused by corruption. A good many also seemed to consider government property as something that could be appropriated by them. A number of times informants said, “It’s government property – its no one’s property.” They knew better but it illustrated an attitude. It was not uncommon to see many acting as though laws were not meant to apply to them. There may be a possible clue to the process involved here, in recent research in neuroscience. Social neuroscience studies of the medial prefrontal cortex of the human brain has noted that low status individuals, and groups of low status individuals, can be perceived as less human, and unlike the self.¹²⁹ The hypothesis is that this perception makes transgression of informal social controls less a restraint and less stigmatized for such an actor from this higher status group.¹³⁰ These scientists described the medial prefrontal cortex as involved in all social processing.¹³¹ Certain groups are shown in brain imagining studies to be

perceived as less typically human.¹³² This appears to be at least some objective evidence in support of the observations made in the present studies. However, there are also grounds for optimism. Cognition can change awareness, and trends toward more egalitarianism and social interaction were evident at the time of the present studies. These have been associated with increasing the perception of humanity in others.¹³³ Hence the behavior modification training in the model program.

5. Appropriability and Negative Externalities

Social controls and motivation appear to be closely tied to the problems of “appropriability” and negative externalities. These two phenomena make elimination of corruption more difficult. Appropriability is a concept from Schumpeter, which describes the phenomenon in the marketplace that the creator of value often does not personally receive the full benefit created.¹³⁴ An example would be the inventor of a patented innovation that increases productivity. The innovator usually receives only a portion of the new value created, the balance going to the public, labor and the suppliers of the capital for the enterprise. In the corruption context, it could be said the honest judge, or ethical individual, does social good, but almost none of value benefits such individual directly. The appropriability problem with corruption is that the official correctly perceives that the value created by ethical behavior benefits the good official and his/her family very little. The ethical conduct helps the legal and banking systems, tax collections, and customs inspections to function well, for example, but does little for the actor directly. The negative externalities concept, from behavioral economics, notes the wrongdoer, polluter, or corrupt official, likely gains directly, and often lavishly, from the harmful activity, with the adverse consequences falling externally to the offender, and upon society.¹³⁵ These phenomena were observed in African corruption. The multinationals’ programs examined employed techniques successfully to overcome these two problems, discussed above.

6. Professionalism

A profession at its best exhibits a sense of a duty to peers and the profession, sharing of new ideas and improved practices, a continuous improvement ethic, an emotional “investment” by members in the profession, and a similar high skill level among peers. A profession often has its own code of conduct or code of ethics. There was virtually no evidence of a sense of professionalism among civil servants and little shown by the higher ranks. Repeatedly, informants talked about others and

¹²⁹ L.T. Harris & S.T. Fisk, *Dehumanizing the Lowest of the Low: Neuro-imaging Responses to Extreme Outgroups*, 17 PSYCHOL. SCI. 847, 847-853 (2006).

¹³⁰ *Id.*

¹³¹ D.M. Amadio & C.D. Frith, *Meeting of Minds: The Medial Frontal Cortex and Social Cognition*, 7 NATURE REV. NEUROSCIENCE 268, 268-77 (2006).

¹³² *Id.* at 268 see also J.L. Tracy, *Emotions of Inequality*, 333 SCIENCE 289, 289-90 (2011).

¹³³ DAVID BAKAN, *THE DUALITY OF HUMAN EXISTENCE: AN ESSAY ON PSYCHOLOGY AND RELIGION* 1-242 (Rand McNally 1996) see

also A.J.C. Cuddy et al., *The BIAS Map Behaviors from Intergroup Affect and Stereotype*, 92 J. PERS. AND SOC. PSYCHOL. 631, 631-48 (2007).

¹³⁴ J.A. Schumpeter, *Economic Theory and Entrepreneurial History*, in CHANGE IN THE ENTREPRENEURIAL HISTORY 63-84 (A.H. Cole ed., 1949).

¹³⁵ S.J.H. Graham et al., *High Technology Entrepreneurs and the Patent System: Results of the 2008 Berkeley Patent Survey*, <http://docs.google.com/viewer?a=v&q=cache:fB9ROCp0GwEJ:www.rmsclaw.com/resources/ssrn-id1429049%255B1%255D.pdf+graham+merges+samuelson+siche+man2009+appr> see also Schumpeter, *supra* note 71.

themselves keeping secret new ideas and improved practices. Cornell Professor Konvitz, who headed the Liberian Law Project for about 30 years, related similar resistance to sharing that he observed, but he said it was a behavior more prevalent early in his experience.¹³⁶ Thus, a sense of professionalism means work that requires a degree of skill and training, an awareness of a sense of duty to the profession and co-workers to see that best practices are shared as well as an evolving body of knowledge and improved methods, accountability to each other and the profession, and an ethics code.

7. Need for Basic Civics Training

Virtually all informants manifested little awareness of what used to be called basic civics: why people form governments, reasons for the rule of law, the integrity that is integral to the rule of law, that all persons are subject to the law and protected by it, the evolution of the role of civil servants, importance of the independent branches of government, and other basics. The model program tested included basic civics training.

8. Weak Subculture among Civil Servants, Ministers and Officials

The right subculture in a unit, office or department coupled with a fiduciary duty would be potent forces for ethical conduct. Unfortunately, subcultures appeared to be weak. This was surprising. The cause is not known. This would be a subject for future study. Possible causes may be the lack of security in government employment, an "overload" of cultural obligations, or a social distance from the residual effects of the ethnic groups from which most came.

9. Relative Isolation

It was noted officials seemed to work in relative isolation. This was unexpected because people exhibit high verbal skills generally, are friendly and polite. In commercial relationships, market sellers, clerks and customers refer to each other as "my friend," "my brother" or "my sister." It appears that the sense of community in the village is extended to these commercial situations. The impression gained was that a little channeling of social impulses, such as peer-group work activities, would decrease the isolation.

10. Sense of Mission and Sense of Fiduciary Duty

There was virtually no evidence of a sense of mission on behalf of middle and lower level civil servants and little shown by

the higher ranks. By a sense of mission is meant an awareness of mission together with a strong motivation to achieve the mission even when extra effort, innovation, attempts to modify constraints, and improvising are needed. The law imposes a fiduciary duty on civil servants and officeholders, yet like a sense of mission, nearly all informants manifested no consciousness of it. Training with respect to fiduciary duty should be a part of an anti-corruption program. Such training is incorporated into the model program tested.

FACTORS FOR INCORPORATION IN SUPERVISORS' PROGRAM

Several characteristics, or social dynamics, relevant to the anti-corruption program for of supervisors, ministers and their aides were seen in our studies. Research by others made similar findings. They include: the disruptive effect of a corrupt authority figure in an organization¹³⁷, the dehumanizing influence of social role, rules, a legitimizing ideology, and lack of institutional support¹³⁸, the impact of perceived group opinion and the importance of countering subjects' perceptions of being uninformed, feeling out of control, under time pressure, and the influence of group culture on ethical conduct¹³⁹, the effect of awareness of the enormous cumulative impact of minute preferences or biases on behavior, and the impact of feedback on awareness.¹⁴⁰ Our studies also observed the enormous cumulative impact of minute preferences, or biases, can have on outcomes over time. On the other hand, a positive affective relationships can reinforce motivation.¹⁴¹ Recently, research has shown how emotion impacts decision making and professionalism.¹⁴²

Corruption Is Not Invincible

Singapore, Hong Kong, all the multinationals studied by us, the U.S. Government, and dozens of low corruption states show corruption can be combated. Our studies and published studies find that applying the eight components over time will change behavior.¹⁴³ Corruption is not inevitable. However, follow-up and feedback metrics are necessary, because humans adapt. People are endlessly inventive and there will always be actors who will try to violate the rules.¹⁴⁴ The Singapore and Hong Kong programs

¹³⁶ See Note 9, above.

¹³⁷ S. MILGRIM, OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW 123-26 (Harper Collins 1974).

¹³⁸ P.G. Zimbardo et al., *Reflections on the Stanford Prison Experiment: Genesis, Transformations, Consequences*, in OBEDIENCE TO AUTHORITY: CURRENT PERSPECTIVES ON THE MILGRIM PARADIGM 193-237 (T. Bass ed., 1999).

¹³⁹ ANDREW HARGADON, HOW BREAKTHROUGHS HAPPEN: THE SURPRISING TRUTH ABOUT HOW COMPANIES INNOVATE at 106 (Harvard Business Press 2003).

¹⁴⁰ J. Collier & R. Esteban, *Governance in the Participative Organization: Freedom, Creativity, and Ethics*, 21 J. BUS. ETHICS at 173 (1999) see also S. L. Lowe, *In the Kingdom of the Blind, the One-Eyed Man is King*. 1 INT'L J. CROSS CULT. MGMT. 313 (2001).

¹⁴¹ A.C. Amason, *Distinguishing the Effects of Functional and Dysfunctional Conflict on Strategic Decision Making: Resolving a Paradox for Top Management*, 39 ACAD. MGMT. J. at 123 (1996).

¹⁴² K. Nelson, *Exploring Emotions During ERP Adoption: A Stakeholder Analysis*, 226c SYSTEM SCI. (2006). **

¹⁴³ Notes 83-87.

¹⁴⁴ Examples are the individuals described below under corruption dynamics as exhibiting "the pathologies," the narcissists, sociopaths, those resistant as a result of their hostile reaction to rapid change, and those suffering certain mental illnesses, as well as those whose informal social controls are so strongly tied to family, village, and clan that they fall prey to the temptations of corruption. See corruption dynamics, below.

required decades to overcome hysteresis. They had to evolve the successful components. Based on our studies and the testing of the model anti-corruption program, it appeared an operational stage could be reached in under two weeks of training. It is expected that specially trained local national could step into the feedback and adaptation process. Additional feedback could also come from Transparency International and other outside organizations.

Ethics

Ethics should be emphasized at the outset of a discussion of behavior modification. The civil servants in training programs should be told the objectives and the methodology in succinct and non-technical terms, the values taught should be honestly presented, the behavior taught should be consistent with the law and code of ethics promulgated by the head of government or other lawful authority in the state, and it should be clear that the duties they accept in their employment require they conform their behavior to these expectations. The point of an anti-corruption program is that behavior conform to the laws and the state's code of conduct.

CONCLUSION

There is reason for considerable optimism that corruption can be combated successfully. The techniques have over

forty years of experience behind them. Each challenge of building a sense of mission and fiduciary duty, professionalism, stronger peer group responsibility, basic civics, and building pro-social bonds can be met. The model program rejects cultural relativism and teaches corruption as immoral and harmful in numerous ways, and assumes the law should be followed. Each of these states has enacted laws prohibiting corrupt acts. The laws were made as the result of perceived needs, and, likely, to satisfy the public. Corruption represents a breakdown of law, a dysfunctional legal system, and is anti-democratic. The primary objective of anti-corruption programs should be to remedy corruption, not by severe or cruel penalties, or a police state, but to build voluntary compliance with the laws by newly motivated civil servants.

National Security

Much more than waste and the rule of law are at stake. The issue joined is whether these societies have the capacity for self-government and to avoid the evils flowing from corruption of poverty, political instability, regional conflict, and endangered national security.¹⁴⁵

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¹⁴⁵ Corruption was repeatedly identified by academic and government experts as a method used by certain states to destabilize and control other states and their officials. Hearing on

Russian Political Operations, U.S. Senate, Judiciary Committee (March 15, 2017).