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Cultivating Ethical Conduct in the Personal, Private, and Public Sectors: Moving from Anti-Corruption Structural Reforms to Individual Accountability

Abstract: Finding an effective path toward greater ethical conduct, less corruption, and greater personal integrity has been elusive. This is not because of lack of attention. The last 25 years have seen dramatic growth in global consensus and action on reducing corrupt behavior and promoting ethical conduct. Major initiatives by the Organization for Economic Co-operation and Development, the United Nations, and the World Bank, led to major changes in global tolerance for corruption and corresponding emphasis on promoting ethical conduct. This article will discuss the global move toward structural reforms to reduce corruption, and demonstrate how a corresponding effort toward promoting ethical conduct through individual accountability is emerging and is necessary for these reforms to be effective.

Keywords: ethics, corruption, prevention, accountability

1. Introduction

Finding an effective path toward greater ethical conduct, less corruption, and more personal integrity has been elusive. But international efforts over the last 25 years have created a way forward that shows promise in reducing corrupt behavior and promoting ethical conduct.

Morals are equated with good conduct; they inform what constitutes acceptable behavior. The study and analysis of morality is ethics. Ethics was founded by Socrates and systematized by Aristotle in the western tradition. Aristotelian ethics (384-322 B.C.) continues to be influential 25 centuries later. Other major ethical perspectives, such as deontological ethics (18th century) and utilitarianism (19th century), also

remain at the center of ethical thinking, illustrating that the principles of ethical decision-making have not changed a great deal over the centuries¹.

In the Western tradition, ethical conduct is learned by example, through teaching, training and practice. Consequently, it is possible that corruption, centered on self-seeking and selfish behavior, must also be learned. To illustrate: a study of altruism was conducted to answer the question “Why did ordinary people risk their lives to protect Jews hiding from the Nazis during World War II?” The author found that “heroes evolve, they aren’t born”² discovering that people took early steps toward altruistic behavior and then began to view themselves differently in a series of small steps.

This research suggests that ethical conduct probably ensues in the same way, from smaller acts to more consistent courses of conduct. In an analogous study, students who knew they were wearing counterfeit glasses were found to be more than twice as likely to cheat on a simple test, leading the researchers to conclude that a seemingly innocuous activity (like wearing fake clothing or sunglasses) has an impact on moral behavior³. Therefore, small steps can form the path toward ethical or unethical conduct.

Of course, exposure to, and studying of, ethics does not guarantee ethical conduct. Character education is not a panacea, and does not address structural problems, but “it can be an important part of efforts to invest in our children’s development and well-being”⁴. In a similar manner, people who take language or math classes may or may not become avid readers or use their mathematical knowledge, but that doesn’t make those courses any less worthwhile. Ethics provides the way to see that there is a greater purpose in life than self-interest. Familiarity with the principles of ethical conduct can “leave students with the understanding that they are moral agents, that they have moral responsibilities, that there are methods for evaluating and defending their own positions” on moral questions⁵.

What has changed is the global application of ethics. Until recent times, ethical conduct was widely seen as the province of individuals and a domestic concern. For example, corporate bribery in business was seen as acceptable for many years as a “business expense”. In many countries, bribes that were paid to buy

1 J. S. Albanese, *Professional Ethics in Criminal Justice: Being Ethical When No One is Looking*, 4th ed. Prentice Hall, New Jersey 2016.

2 E. Staub, *The Psychology of Good and Evil: Why Children, Adults, and Groups Help and Harm Others*, Cambridge University Press, London 2003, p. 55.

3 F. Gino, M. I. Norton, and D. Ariely, *The Counterfeit Self: The Deceptive Costs of Faking It*. “Psychological Science” 2010, vol. 21, pp. 712–720.

4 E. Kiss, *In Praise of Eccentricity*, (in:) M. Josephson and W. Hanson (eds.), *The Power of Character*. Jossey-Bass, San Francisco 1998, p. 355.

5 G. Vartan, *Our Moral DNA*, (in:) M. Josephson and W. Hanson (eds.), *The Power of Character*. Jossey-Bass, San Francisco 1998, p. 115.

and sell merchandise were simply seen as a cost associated with doing business⁶. But international consensus began to change in the 1990s, leading to a series of unprecedented, binding international agreements.

2. World Bank

The World Bank was established in 1944 to reduce poverty by funding development projects around the world. This is done by promoting foreign investment in the developing world and by providing grants to promote development. Since then, the World Bank has funded 12,000 projects totaling nearly \$46 billion USD⁷. The vast majority of nations are members of the World Bank (189 members).

It was during the 1990s that the new World Bank president, James Wolfensohn, called on the World Bank to intervene in the “cancer of corruption”. This was an explicit recognition that corruption is as much an economic as a political issue, which was maintained by subsequent World Bank leadership. This entered the World Bank into a new era in which compliance and administrative sanctions became as important as the development work itself to ensure that funds were not misspent. Sanctions for corruption include debarment of individuals or corporations from future participation in World Bank loans or projects⁸.

3. OECD Convention

With collapse of the Soviet Union, the rise of new emerging democracies, the growth in Internet communications and travel, it was logical that the 1990s ushered in a decade of change, which was closely related to the rise of globalization in both communication and trade. More countries than ever before were competing for goods, services, and economic and social stability.

It became clear that binding international agreements (conventions) would be needed to regulate the global marketplace. The Foreign Corrupt Practices Act was enacted in the US in 1977, prohibiting US business from paying bribes to obtain business overseas⁹. This was seen as putting American businesses at a competitive disadvantage; only in the 1990s did global agreements gain international consensus.

6 F. Heimann, M. Pieth, *Confronting Corruption: Past Concerns, Present Challenges, and Future Strategies*, Oxford University Press, Oxford 2018.

7 World Bank. *Our Mission*, <http://www.worldbank.org/en/who-we-are> (access 30.05.2018).

8 L. Boisson de Chazournes, E. Fromageau, *Balancing the Scales: The World Bank Sanctions Process and Access to Remedies*, “*European Journal of International Law*” 2012, vol. 23, pp. 963-989.

9 J. S. Albanese, *What Lockheed and La Cosa Nostra Have in Common: The Effect of Ideology on Criminal Justice Policy*, “*Crime & Delinquency*” 1982, vol. 28, pp. 55-82; L.D. Thompson, Larry D. *In-sourcing Corporate Responsibility for Enforcement of the Foreign Corrupt Practices Act*, “*American Criminal Law Review*” 2014, vol. 51, pp. 199-225.

The Organization for Economic Co-operation and Development (OECD) is an intergovernmental organization founded in 1948 (as the OEEC), later becoming the OECD in 1961 with 18 European countries, plus Canada and the US, designed to promote economic development and stability. Today, there are 35 member countries of the OECD, representing much of the developed world as well as nearly two-thirds of global gross domestic product.

The OECD was concerned about the tax deductibility of bribes in many countries, and it went beyond that to develop a convention to criminalize foreign bribery entirely¹⁰. The OECD Anti-bribery Convention entered into force in 1999. It is a powerful agreement because annual progress reports are required (and conducted by a third party, Transparency International) to assess the status of enforcement of the Convention's provisions. Therefore, the OECD is the first binding international convention criminalizing foreign bribery across a significant number of nations.

4. United Nations Convention against Corruption

Soon after the OECD Convention, there was a move to expand the scope of prohibited conduct beyond the membership of the OECD. The UN Convention against Corruption (2349 UNTS 41) entered into force in 2005, specifying multiple forms of corruption beyond just bribery, and providing a legal framework for criminalizing and countering it. The Convention against Corruption is the only legally binding universal anti-corruption instrument¹¹. As of 2018, there were 183 State parties to the Convention, representing 95% of the UN membership¹².

The UN Convention against Corruption approaches the problem from four different perspectives: prevention, criminalization, international cooperation and asset recovery¹³. The emphases are on prevention, law, enforcement, and seizure of any gains from corrupt conduct (asset recovery). The scope of the UN Convention is broader than that of the OECD Convention, both in scope and coverage of the world's nations. The UN Convention requires ratifying countries to:

- Criminalize bribery, embezzlement of public funds, trading in influence, and the concealment and laundering of the proceeds of corruption;
- Establish prevention efforts, including anti-corruption bodies, enhanced transparency in the public service and in financing of election campaigns and political parties;

10 F. Heimann, M. Pieth, *Confronting Corruption: Past Concerns, Present Challenges, and Future Strategies*, Oxford University Press, Oxford 2018.

11 A. Argandona, *The United Nations Convention Against Corruption and its Impact on International Companies*, "Journal of Business Ethics" 2007, vol. 74, p. 481.

12 United Nations Office on Drugs and Crime, *UN Convention against Corruption. Signature and Ratification Status*, <http://www.unodc.org/unodc/en/corruption/ratification-status.html>, 2018b.

13 *Ibidem*.

- Provide for recovery of assets diverted to others countries;
- International cooperation in enforcement;
- A Conference of Parties among ratifying nations meets every other year to assess implementation, assistance, and sanctions.

The Convention against Corruption requires State parties to introduce criminal offences which include acts committed in support of corruption (obstruction of justice, trading in influence, and the concealment or laundering of the proceeds of corruption). The Convention also addresses corruption in the private sector and provides for the protection of those reporting (whistle-blowers), witnesses, victims and experts. The section on international cooperation contains provisions for mutual legal assistance, extradition, and confiscation and seizure.

Like the World Bank anti-corruption initiative and the OECD Convention, the purpose of the UN Convention is to enable countries to improve their capacity to counteract these crimes, and to enhance their prosecution and international cooperation mechanisms. Corruption requires, of course, unethical behaviour, which undermines the rule of law, creates economic harm, violates human rights, and illicitly protects facilitators and accomplices¹⁴.

The work of the World Bank, the OECD, and the UN represents major global examples of focusing public, political, and economic efforts on corruption, which created a consensus between national laws, methods of cooperation in investigations and prosecutions, and confiscation of assets and repatriation of assets illicitly moved from one country to another. This level of international consensus was difficult to imagine 25 years ago¹⁵.

5. Structural reforms versus individual accountability

The reforms of the World Bank, the OECD, and the UN all focus on structural reforms: laws, policies, procedures, and technical assistance to reduce the opportunities for corrupt conduct, and enforce anti-corruption provisions. Of course, there are limits to structural reforms: they can reduce opportunities for misconduct, but they do not preclude motivated actors from seeking unethical advantage. Without

14 J. S. Albanese, *Transnational Crime and the 21st Century: Criminal Enterprise, Corruption, and Opportunity*, Oxford University Press, Oxford 2011; E. Buscaglia, *Controlling Organized Crime and Corruption in the Public Sector*, "Forum on Crime and Society" 2003, vol. 3, pp. 1-32; S. Rose-Ackerman, and B. J. Palifka, *Corruption and Government: Causes, Consequences, and Reform* (2nd ed.), Cambridge University Press, Cambridge 2016.

15 J. S. Albanese, *Countering Transnational Crime and Corruption: The Urge to Action versus the Patience to Evaluate*, "Justice Evaluation Journal" 2019, vol. 1, pp. 82-95.

changing the underlying conduct, law enforcement and judicial cooperation are, by themselves, not enough to contain unethical and corrupt behavior¹⁶.

Public corruption and commercial corruption focus on different aspects of the same problem: corruption in the government and the public sector versus corruption in business. There is a double standard often applied to public officials in that conduct we often accept from private citizens somehow becomes objectionable when displayed by public officials. Public officials represent others and, therefore, should be trustworthy. The same can be said of corporate officials who are entrusted with shareholder assets, private attorneys entrusted with their clients' funds, and so on for teachers, cooks, construction workers, and virtually all other professions.

The 21st century may be recognized for the move from purely structural reforms (exemplified by the World Bank, the OECD and the UN) towards the need for a corresponding focus on individual accountability. A great deal of resources have been placed on structural reforms to make corruption and unethical decision-making more difficult, but the need remains to focus on individual ethical decisions that must be made, regardless of the structures or opportunities that exist.

Figure 1. The need for structural reforms and individual accountability for ethical decision-making



16 J. S. Albanese, Report from the Rapporteur: International Law Enforcement Cooperation: Past Experience, Present Practices, and Future Directions, (in:) K. Aromaa and T. Viljanen (eds.) Enhancing International Law Enforcement Cooperation, including Extradition Measures. Helsinki: HEUNI European Institute for Crime Prevention and Control, Helsinki 2005; J. S. Albanese, Professional Ethics in Criminal Justice: Being Ethical When No One is Looking, 4th ed. Prentice Hall, Upper Saddle, NJ 2016; K. Aromaa, and T. Viljanen (eds.), Enhancing International Law Enforcement Cooperation, Including Extradition Measures, European Institute for Crime Prevention and Control (HEUNI), Helsinki 2005; C. Hartfield, The Organization of 'Organized Crime Policing' and Its International Context, "Criminology and Criminal Justice" 2008, vol. 8, pp. 483-507.

6. Discussion: an ethical approach

Figure 1, summarizes the need for both structural reforms and ethics training and education to achieve the desired outcome of more ethical decisions, which underlie all non-corrupt environments. A focus on individual accountability beyond structural reforms is already underway. Two examples illustrate the point: empirical research and the Education for Justice Initiative.

There is growing interest in civic and ethics education that promotes non-selfish views toward one's own profit, interest, or position in society. There have been a number of empirical studies that demonstrate the impacts of this kind of education at primary, secondary, and tertiary levels. Their results have been promising for promoting recognition of ethical dilemmas when they occur, and for approaching them in unselfish, principled ways¹⁷.

The Education for Justice initiative (E4J) evolved from the 13th United Nations Congress on Crime Prevention and Criminal Justice in 2015 in Doha, Qatar. The Doha Declaration highlights the importance of education in preventing crime and corruption and promoting a culture that supports the rule of law. The E4J initiative was developed to create and disseminate education materials in UNODC mandated areas of crime prevention and criminal justice across primary, secondary and tertiary education levels. The modules seek to enhance students' ethical awareness and commitment to acting with integrity, and to equip them with the necessary skills to apply and incorporate these principles in their life and professional decision making¹⁸.

One of the course subjects is integrity and ethics. Another is corruption. Course modules have been developed by experts from around the world to provide open access to instructors globally to teach courses on ethics, integrity and anti-corruption everywhere¹⁹. This work builds on the empirical research cited above regarding the effectiveness of creating principled, ethical decision makers from a young age.

Analysis of companies in Germany found that "an essential aspect is the need to demand that employees and managers at all levels know what the norms are and

17 S. K. Forsha, *Virtue and Moral Development: Changing Ethics Instruction in Business School Education*, "College Student Journal" 2017, vol. 51, no. 3, pp. 429-443; C. Klugman, and B. Stump, *The Effect of Ethics Training upon Individual Choice*, "Journal of Further & Higher Education" 2006, vol. 30, no. 2, pp. 181-192; S. Redo, *On the Importance of Preschool Civic Education for the Global Culture of Lawfulness*, (in:) H. Kury and S. Redo (eds.), *Refugees and Migrants in Law and Policy*, Springer, Heidelberg 2018, pp. 207-234.

18 Education for Justice, "Integrity and Ethics", <http://www.unodc.org/e4j/en/tertiary/integrity-ethics.html> 2018.

19 United Nations Office on Drugs and Crime. *Education for Justice*, <https://www.unodc.org/dohadeclaration/en/topics/education-for-justice.html> (2018a).

practice conformity with the rules and values that promote integrity”²⁰. It was found that a company culture that promotes individual integrity directly impacts on the willingness to report wrongdoing, accept a company’s anti-corruption efforts, and an effective compliance management system. Whether the misconduct is a business decision, a false testimony by the police, prosecutor’s misconduct resulting in wrongful convictions, asset seizure, or commercial bribery, the essence of corruption lies at the feet of individuals who make these decisions²¹.

7. Conclusion

The ethical bar will rise in the future because decisions will impact on more people. The reasons for this situation are advances in technology, increasing life span, and globalization, which allow decisions in one part of the world to affect others thousands of miles away. Therefore, consideration of ethical decisions will have greater consequences than ever before.

A concept sometimes lost in contemporary society is that ethical behavior is often in our own self-interest. There is happiness to be found in acts that benefit others, and respect is accorded to those who have high moral standards. Freedom can be found in not succumbing to our basest desires and in living openly and cooperatively with others rather than secretly and fraudulently. These are some of the many benefits of acting ethically. The benefits achieved by those who act unethically (e.g., taking unfair advantage, committing theft) are usually short-term gains that are either quickly exhausted, must remain secret, or are not easily shared, and they result in pain or penalty when the conduct becomes known²².

The E4J initiative and the implementation of the UN Convention against Corruption, reflect several areas of the 2030 UN Agenda, including Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels). In addition, many of the targets associated with different Goals address issues related to crime, justice and safety. Target 16.3 of the Goals, for example, calls for countries

20 K. D. Bussman, A. Miemeczek, and M. Vockrodt, *Company Culture and Prevention of Corruption in Germany, China and Russia*, “European Journal of Criminology” 2018, vol. 15, pp. 255-277.

21 J. M. Doyle, *Who’s Really to Blame for Police ‘Testilying’?* Thecrimereport.org, 29.03.2018; C. May, *Asset Seizure and Forfeiture: Ethical Issues*, “FBI Law Enforcement Bulletin” 9.05.2016; The Crime Report Staff. *Prosecutors and Wrongful Convictions: ‘Pay Now or Pay Later’*, Thecrimereport.org, 20.01.2018.

22 J. S. Albanese, *Professional Ethics in Criminal Justice: Being Ethical When No One is Looking*, 4th ed. Prentice Hall, Upper Saddle, NJ 2016.

to promote the rule of law at the national and international levels and ensure equal access to justice for all²³.

Research has shown that individuals often overestimate the ethicality of their own behavior, failing to recognize underlying, self-serving biases that promote misconduct. We often see ourselves as rational, ethical, competent and objective. But there is an ethical “blind spot” that often conceals conflicts of interest or unconscious biases in decision-making. The term “bounded ethicality” has been used to show that even otherwise ethical people can behave unethically²⁴. This ethical blind spot further demonstrates the need for ethical training and updates to that training to remind individuals, using current examples, of the boundaries of ethical conduct and their importance in both everyday life and for the global community.

8. Questions

- In what ways have international organizations contributed to reducing tolerance towards corruption?
- What is the difference between structural reforms and individual accountability in preventing corruption?
- How does ethical conduct move from smaller acts to more consistent courses of conduct?
- Unethical and corrupt behavior often involves selfish conduct, so how is ethical behavior often in our own self-interest?
- How are international moves against corruption reflective of the 2030 UN Agenda?

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24 M. H. Bazerman, A.E. Tenbrunsel, Blind Spots: Why We Fail to Do What’s Right and What to Do about It, Princeton University Press, 2011.

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