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INTEGRITY IN GOVERNMENT

GOVERNMENTAL AND ACADEMIC INTEGRITY AT HOME AND ABROAD

*Sara Sun Beale**

INTRODUCTION

I am delighted to join the many people who have saluted Dean Feerick's career and the values that it reflects.

When I first agreed to attend this conference, I planned to talk about federal criminal law enforcement. But I learned that Commissioner Hearn and Mr. Fiske would be participating, and I knew they could speak authoritatively about the practice of investigating and prosecuting corruption. Accordingly, I will address the broader themes of the symposium rather than focusing exclusively on prosecution as a means to curb corruption.

I want to use this essay to discuss two ideas. First, I want to describe some recent research on integrity in the academic area and suggest that it has implications for integrity in other contexts, including government integrity. Second, I want to describe some international developments in the 1990s, particularly the founding and rapid rise of the NGO Transparency International and the explosion of international activity concerned with corruption.

While I was preparing for this conference, I had a conversation with one of our graduate students from Mexico. He shared with me a paper on corruption and he quoted a popular Mexican phrase that he translated as "he who does not cheat does not progress."¹

There are places where there is no expectation of integrity, and no sense that corruption and lack of integrity are exceptional. Rather, in those places—and maybe plumbing in New York might have been one

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1. Alejandro Posadas, *Corruption: Its Treatment Under International Law* (2003) (unpublished S.J.D. thesis, Duke University School of Law) (on file with the Law Library, Duke University School of Law).

of those areas²—the expectation and norms are that you need to cheat in order to progress, in order to stay even with your competition. Those examples raise the issues that I'd like to focus on, particularly in connection with academic integrity.

I. INTEGRITY IN ACADEMIA

A. *An Overview of Research Findings*

What do we know about the extent of cheating and corruption on college campuses and in high schools? The available research paints an alarming picture.

Recent national studies of both high school and college students have found that approximately seventy-five percent admit to some significant cheating. Moreover, the surveys show that the rates of self-reported cheating have been increasing significantly for at least a decade. I don't know how far that trend goes back because the surveys that I have found before that period aren't fully comparable.

Donald McCabe's research, reported by the Center for Academic Integrity (now located at Duke University), found that in 2000-2001, seventy-four percent of high school students admitted to serious cheating on tests, seventy-two percent admitted to serious cheating at least once in the year on written work, and more than thirty percent said that they engaged in serious repetitive cheating on tests and exams.³

I think we can have some confidence that those numbers are pretty reliable because, during the same period, the Josephson Institute of Ethics did a national study of 12,000 students, and they compared the results to earlier surveys, beginning in 1992. In 1992, sixty-one percent of the students admitted cheating at least once during the past year on an exam. By 2002, the number was up to seventy-four percent.⁴

The Josephson studies are interesting because they point to other aspects of integrity, too. In 1992, thirty-three percent of the students

2. See Rose Gill Hearn, *Integrity and the Department of Investigation*, 72 *Fordham L. Rev.* 415, 419 (2003).

3. The survey is summarized on the Center for Academic Integrity's web site, http://www.academicintegrity.org/cai_research.asp. (last visited Sept. 24, 2003). It is also discussed in Donald McCabe, *Cheating: Why Students Do It and How We Can Help Them Stop*, *Am. Educator*, Winter 2001, at 38, available at http://www.aft.org/american_educator/winter2001/Cheating.html. (last visited Sept. 24, 2003). An overview of the research findings is also available at http://ethics.acusd.edu/video/cai/2001/McCabe/index_files/frame.html, under the subheading "Cheating Is Widespread" (last visited Sept. 24, 2003).

4. The survey findings are summarized on the Josephson Institute's web site, which also contains a link to all of the data. See <http://www.josephsoninstitute.org/Survey2002/survey2002-pressrelease.htm> (last visited Sept. 24, 2003).

admitted that they had stolen something from a store. It's usually shoplifting. It could be something else, but I think that's what that figure captures. By 2002, it was up to thirty-eight percent.

There were also increases in the number that admitted lying to their parents, lying to their teachers, and stealing from their parents.

A very interesting question debuted on the Josephson survey in 2000, so we only have more recent data. In 2000, thirty-four percent of students agreed with the statement "a person has to lie or cheat sometimes to succeed." By 2002, forty-three percent agreed with that statement. It went up nine percent just in those two years.

The large number of young people in the United States who admit to cheating and say that you have to be dishonest to succeed is alarming. There is, however, also some good news that bears on the kind of question that the panel was asked to think about, which is how you create and sustain integrity.

There is mounting evidence that campus environments and cultures have a very significant effect on levels of cheating, and that students in the United States are very much affected by the operational values and norms that they find on their campuses.⁵

To judge the institutional environment and culture, it's important to look at a series of questions like the following (and it has to be a whole range of such questions, not just one): Is academic honesty discussed early and often at orientation and at other points? Do instructors address it? Are students required to sign an honor code and honor statements on each exam? Does the school punish cheating harshly if it is detected? Does the school seem really concerned and committed to the discovery of academic dishonesty?

There are findings that cheating is reduced by about one-third to one-half on campuses with a serious honor code.⁶ I think that would be contrasted to what Mary Daly said they found in terms of a nice printed honor code or a printed mission integrity statement at Enron that was in someone's drawer somewhere and never utilized, enforced, or spoken about.⁷

What is the current institutional culture? In the McCabe findings from 2002, forty-seven percent of the high school students in that survey said their teachers sometimes or always ignored cheating.⁸ And then the students speculated on why—for example, that it was

5. See Mary C. Daly, *Teaching Integrity in the Professional Responsibility Curriculum: A Modest Proposal for Change*, 72 *Fordham L. Rev.* 261, 270-74 (2003); David Luban, *Integrity: Its Causes and Cures*, 72 *Fordham L. Rev.* 279, 294-98 (2003); Burnele V. Powell, *The Limits of Integrity or Why Cabinets Have Locks*, 72 *Fordham L. Rev.* 311, 326-28 (2003); Deborah L. Rhode, *If Integrity Is the Answer, What Is the Question?*, 72 *Fordham L. Rev.* 333, 334-35 (2003).

6. See McCabe, *supra* note 3, for a summary of the survey data.

7. See Daly, *supra* note 5, at 271.

8. See McCabe, *supra* note 3, at 40.

too much trouble for the teachers to deal with the problem or that the teachers did not want to take the time, and so forth. So about half of the students were reporting they thought that academic dishonesty wasn't treated as truly important.

The research on academic integrity suggests that you can basically divide students into three groups:

- One group of students are very law-abiding and aren't much affected by their institutional culture. They will fastidiously follow all the rules.
- Another group is intent upon pursuing loopholes, and where the loopholes aren't big enough, they just kind of evade the rules.
- The largest group is in the middle, and that group is greatly affected by the institutional culture. There are many, many parallels that you could think of in terms of how the enforcement and the cultural endorsement of rules really affect the behavior of most people who are in the middle.

B. *Implications for Integrity in Other Contexts*

Consider the example of speed limits and traffic activity. There are many places where the speed limits aren't really enforced or regarded as important, and most people will exceed the posted speed limits there. There are, however, always a few people in the right-hand lane who are just going the speed limit, regardless. In contrast, where the speed limit is treated as important and rigorously enforced, almost everybody obeys it, though you will probably still find a few idiots speeding and zooming in and out around everyone else. But most people recognize that there is a kind of culture in different localities, and they conform to it. They will speed when that's the culture, and abide by the speed limits when that's the culture.

We see the same thing with tax compliance. Different countries have different rates of tax compliance. Again, there are some people who will always cheat no matter what kind of a tax regime they are in, and some who will never cheat. But what we find if we look comparatively is that very many people are influenced by whether compliance is regarded as a very important norm, whether there is enforcement, and so forth.

This issue certainly harkens back to the first panel's emphasis on the importance of structures, the importance of incentives.⁹ But it also suggests some other concepts that perhaps were implied in those panelists' discussions, or perhaps need to be introduced at this point.

One is social influence,¹⁰ which is a term that social psychologists

9. See generally Daly, *supra* note 5; Luban, *supra* note 5; Powell, *supra* note 5; Rhode, *supra* note 5.

10. For a general discussion of social influence, see Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 Va. L. Rev. 349 (1997).

use to describe the propensity of individuals to conform to the behavior and expectations of others. This phenomenon is quite pervasive in social, economic, and political life, and there are many familiar examples.

Many moviegoers want to see whatever is the most popular movie of the day, and they will stand in line and wait to see it. Teenage girls, it has been found, are more likely to get pregnant when they see other teenage girls having babies. Citizens, it has been found, are more likely to vote for candidates when they learn that others support those candidates.

Social influence is a term that psychologists use to describe this propensity to conform our behavior to the behavior and the expectations of the others around us. In that sense, I think, it takes us back to the first panel's emphasis on the point that context counts a lot in whether people behave in a way that is consistent with the idea of integrity.¹¹

From the point of view of criminal law, the concept of social influence emphasizes that policymakers should focus not only on individual behavioral incentives (such as increasing criminal sentences, which has been such an important theme in recent years in criminal justice policy) but also on the public's perception of the extent of corruption, cheating, and criminality. The perception that such behaviors are rampant encourages corrupt behavior on the part of individuals who would otherwise behave properly. So, in addition to reducing the actual incidence of corruption, it is also important to reduce the perception that such behavior is common.

I would also like to draw attention to the idea of social meaning,¹² which refers to the interpretation people place on information about individual or community values. Individuals interpret both individual and institutional behavior against a background of social norms that tell them how people with certain values should behave. Adding social meaning, then, enriches our understanding of why people obey or break the law.

At the conference one of the participants raised the issue of the role of investigative reporting as a deterrent to official misconduct. Since the Watergate period, investigative reporting has become an important feature of our national life. Viewed through the lens of social influence and social meaning, investigative reporting may be a double-edged sword.

On the one hand, if investigative reporting reveals misconduct and brings about public rebukes and perhaps removal from office, those marks of the social meaning of that conduct ought to be quite significant and ought to work as a deterrent. On the other hand, we

11. See *supra* note 5.

12. For a general discussion of social meaning see Kahan, *supra* note 10.

may have gone so far with “gotcha!” journalism that it may be undermining efforts to promote integrity. So much misconduct has now been exposed in so many situations that the public has become very jaundiced and jaded. This contributes to the public having a lower expectation of the level of behavior of public officials, and it may also make it more difficult to persuade ethical people to undertake public responsibilities and public office.

Getting back to the lessons we can learn from the research on integrity in academia, we can see in the concept of academic integrity—which would carry over as well to governmental integrity—that the social meaning placed on whether people follow the rules varies significantly from institution to institution. Within an academic institution that has various rules about behavior on examinations, behavior on written projects (whether it’s plagiarism or consultation with others), how seriously those rules are taken would be reflected not only in the sanctions that are applied but in the structures that are set up and in the way that individuals in positions of authority treat those topics. For example, the Air Force Academy reportedly dismisses students whose only offense is failing to report cheating by someone else. So we do have some models of institutions that treat the failure to report misconduct as just as big a violation as the actual misconduct.

To sum up, we know that cheating or corruption can bring about more cheating and corruption through the effect of social influence and through a shift in social meaning. The parallels are clear: If we think that “everybody does it,” almost everybody *will* do it.

II. POLITICAL STRUCTURES AND INTEGRITY IN THE U.S. GOVERNMENT

An interesting study compared members of the U.S. Congress to legislators in Germany and members of Parliament in the U.K.¹³ It concludes that the U.S. has had what it called the “hyper-responsiveness” of politicians to the electorate.¹⁴ Legislators in the United States spend more time than their European counterparts trying to figure out what their constituents want and how to get reelected, and less time on the substance of the provisions being debated.¹⁵

This raises an intriguing question. Assume that the balance between campaigning and lawmaking varies. This study, for example, found quite a significant difference between the amount of time

13. See Anthony Stephen King, *Running Scared: Why America’s Politicians Campaign Too Much and Govern Too Little* 1-28 (1997).

14. *Id.* at 107 (quoting Alan Ehrenhalt, *The United States of Ambition: Politicians, Power, and the Pursuit of Office* 246 (1991)).

15. See King, *supra* note 13.

allocated by legislators in Germany and the U.K. towards thinking about the substance of the provisions—whether it be abortion or whatever else—as opposed to soliciting money from constituents, going out and giving talks, meeting with interest groups, and so forth. Assuming, then, that the balance between the two kinds of activities varies in different countries, the question would be what produces the situation we now have in the U.S.? After all, they have media in other countries.

One possibility is that the periods of time in which elections are held in a parliamentary system might play a role in determining how much each person feels at risk of not being reelected. Of course other factors may be even more important. Comparative studies may help isolate factors that make it more or less likely that individual candidates or individual government officials will behave in a way that demonstrates integrity, whether it's legislative, judicial, or otherwise.

Research on the behavior of elected judges may also bear on these issues. For example, some research has found changes in judicial behavior in death penalty and other kinds of cases in the year before the judges' reelection campaigns, indicating that if you just chart out their decisions, they appear to be different in that year before the election.¹⁶

My point is that there are structures that may make it more or less likely that people will behave in ways that we would define as having integrity.

16. See Gregory A. Huber & Sanford C. Gordon, *Accountability and Coercion: Is Justice Blind When It Runs For Office?*, Am. J. Pol. Sci. (forthcoming, on file with Fordham Law Review) (finding sentence imposed by Pennsylvania judges with election imminent to be three to four and a half months longer than those of judges recently elected or retained, and finding judges are about 20-30% more punitive in sentencing in the period before they stand for retention); Melinda Gann Hall, *Justices as Representatives: Elections and Judicial Politics in America*, 23 Am. Pol. Q. 485, 495-97 (1995) (finding state court judges more likely to uphold death sentences in the last two years of their term); cf. Melinda Gann Hall, *Electoral Politics and Strategic Voting in State Supreme Courts*, 54 J. Pol. 427, 442 (1992) (finding liberal state judges in states with short terms less likely to dissent from decisions upholding the death penalty). Also, a significant and direct relationship has been shown between the amount of direct political pressure placed on judges in a given state and that state's relative rate of serious error in cases where capital punishment was imposed. See James S. Liebman et al., *A Broken System Part II: Why Is There So Much Error in Capital Cases and What Can Be Done About It*, at v-vi, 170, 187-88, 354-55, 412-13, available at <http://www2.law.columbia.edu/brokensystem2/> (last visited Sept. 24, 2003); see also *id.* at 412 & n.935 and text cited therein (finding a similar relationship between direct political pressure on state appellate judges and the rate at which those judges affirm "seriously flawed death verdicts"). For a general discussion of the effects of politics on judicial behavior in death penalty cases, see Stephen B. Bright & Patrick J. Keenan, *Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases*, 75 B.U. L. Rev. 759 (1995).

III. INTERNATIONAL DEVELOPMENTS IN THE 1990S

My final topic is international developments relating to corruption and integrity.¹⁷

I want to trace some developments that grew out of the Watergate investigation, which is best known for bringing about the resignation of President Richard Nixon. Less well known today is the fact that the Watergate Investigation also delved into the role of U.S. corporations in making campaign contributions to the 1972 presidential election. As the corporate side of the investigation developed, it brought to light secret contributions by U.S. corporations to foreign officials, such as \$2.5 million from United Brands to Honduran officials who were, it was hoped, going to repeal the banana tax;¹⁸ and \$3 million by Gulf Oil to the Republican Democratic Party of South Korea, which may well have been decisive in a close national election.¹⁹

These revelations led to the adoption of the Foreign Corrupt Practices Act, which prohibits payments to foreign government officials and political parties and candidates with the purpose of influencing official action or securing improper advantages.²⁰ After about fifteen years, the Act began to bear fruit on the international stage, for several reasons.

First, there was pressure by U.S. corporations that did not want to be in a disadvantageous position compared to their European and other counterparts. They wanted an equal playing field. If they couldn't pay bribes, they didn't want companies from other countries to be able to pay bribes. Another important factor was the State Department's endorsement and the Clinton Administration's adoption of the notion that bribery of foreign government officials was not only a trade issue, but also an issue of economic development and democratic accountability.

In the 1990s, with heavy pressure from the Clinton Administration, a series of similar provisions have been adopted. The Organization

17. For an excellent discussion of these international developments, see generally Posadas, *supra* note 1.

18. See *SEC v. United Brands Co.*, SEC Litigation Release No. 7251 (D.D.C. Jan. 27, 1976), 1976 WL 161366 (referencing a \$2.5 million payment to Honduran officials); see also John C. Coffee, Jr., *Beyond the Shut-Eyed Sentry: Toward a Theoretical View of Corporate Misconduct and an Effective Legal Response*, 63 Va. L. Rev. 1099, 1116 (1977) (discussing a \$1.25 million payment to the President of Honduras to avoid export duty on bananas).

19. See *Multinational Corporations and United States Foreign Policy: Hearing on S. 381-6 Before the Senate Subcomm. on Multinat'l Corps.*, 94th Cong. 8-9 (1975) (statement of B.R. Dorsey, Chairman of the Board, Gulf Oil Corporation) (referencing a \$1 million payment in 1966 and a \$3 million payment in 1970).

20. See Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (codified as amended at 15 U.S.C. § 78dd-1, dd-2, dd-3 (1998 & Supp. 2003)).

for Economic Cooperation and Development (“OECD”),²¹ the Council of Europe (“CoE”),²² and the Organization of American States (“OAS”)²³ have all adopted major anti-bribery treaties, and the UN is working on an international convention.²⁴ These treaties vary in their scope and their enforcement mechanisms, and to some degree they reflect the different kinds of organizations that have been involved in founding them.

The OECD treaty reflects the fact that its member nations are capital exporters interested exclusively in preventing the bribery of foreign officials to level the playing field.²⁵ In contrast, the OAS and the Council of Europe view corruption in a broader context. The OAS sees corruption as relevant to its agenda of democracy and economic development in the Southern Hemisphere,²⁶ and the CoE focuses on the demand side as well as the supply side of bribery.²⁷

The Council of Europe agreement has its origins in the Agreement of Ministers of Justice from those European countries where corruption threatens human rights, democracy, and the rule of law.²⁸ This is very much related to social meaning, reflecting a different understanding of the social meaning of corruption, a different understanding of its importance, as well as an effort to use social influence on member countries and then having that trickle down through their enforcement mechanisms.

The Council of Europe has a holistic approach in its Criminal Law Convention on Corruption, Twenty Guiding Principles to fight against corruption, and a Model Code of Conduct for Public Officials.²⁹ There is an effort to focus on more than simply a “prosecute them after it happens” agenda, as well as a different understanding of the values that are threatened by corruption. And maybe in some senses it’s like what Professor Waldron spoke about: the underlying values, recognizing those underlying values, and then being able to get a broader buy-in from the constituency.³⁰

Finally, I want to note the important role played by Transparency

21. See Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 19, 1997, 37 I.L.M. 1 (entered into force Feb. 15, 1999).

22. See Criminal Law Convention on Corruption, Jan. 27, 1999, 38 I.L.M. 505 (entered into force Jan. 7, 2002).

23. See Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724 (entered into force Mar. 6, 1997).

24. See Posadas, *supra* note 1, at 155-58.

25. See *id.* at 126.

26. See *id.* at 123.

27. See *id.* at 132.

28. See *id.* at 125.

29. See *id.* (explaining that these provisions seek to cover “not only criminal, but also administrative and civil aspect[s] of the fight against corruption”).

30. See generally Jeremy Waldron, *Legislating With Integrity*, 72 Fordham L. Rev. 373 (2003).

International (“TI”).³¹ In 1993, nine people had a meeting, and they decided to form an entity and to try to do something about corruption. Just ten years later, there are Transparency International chapters in more than ninety countries. TI has promulgated two incredibly interesting indexes: the Bribery Perception Index and the Corruption Perception Index. These rank various countries, one versus another, in how much perceived corruption there is, and they hold individual countries up to public scrutiny. This exposure effectively requires countries with poor rankings to explain why they can’t do as well as other nations. It also increases the outside pressures, for example, in places like Mexico that I was speaking about in the context of my graduate student’s study.³²

TI’s rapid growth also reflects an interesting use of technology like the Internet, which serves as a tool not only to mobilize people who are unhappy about international trade policy, but also those who are very unhappy about corruption. People are using the Internet to distribute materials, to hold responsible previously relatively unaccountable governments. Transparency International and these international conventions are increasingly developing agendas that can be imported into any country, so that local people can ask “why can’t we have this type of program?” This is an interesting and important development.

CONCLUSION

It is a privilege to salute Dean John Feerick with these brief comments exploring the connection between governmental and academic integrity and describing international developments that may promote integrity.

31. For information about Transparency International, see <http://www.transparency.org/>.

32. See Posadas, *supra* note 1.