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Cultural Factors and Ethical Integrity

BY JESSICA VAPNEK*

The UC Hastings Ethical Integrity Symposium (*Professional Ethical Integrity: Cornerstone for Rule of Law Reform Around the Globe*) was designed around the assumption that a lack of ethical integrity undermines the rule of law in various countries. Informed by my travels and work in more than eighty-five countries, my remarks at the symposium offered some perspectives on why ethical behavior is so elusive in many environments.

Having lived in Africa (in the Democratic Republic of Congo and Ghana) for a total of three years, having worked in or travelled to almost thirty African countries, and currently managing several projects in Africa, I am particularly familiar with the challenges facing these cultures, although I suspect the issues raised will be familiar to those who have lived and worked in other parts of the developing world. The intention of my remarks is not to use poverty to justify unethical behavior or corruption, but rather to explain the cultural context so as to better understand what may be motivating people to act in ways that we in the developed world would call unethical.

To address the issue of ethical integrity, these remarks outline links between law and economic development, list cultural factors that may contribute to ethical lapses in some developing countries, and highlight solutions that have been implemented in various parts of the world.

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I. Law and Economic Development

Extensive research has established a direct causal link between improvement in the rule of law and economic growth. A strong system governed by the rule of law reduces risk to investors by protecting individual property rights and enforcing contracts. Investors are understandably reluctant to invest in countries with weak legal institutions, where their assets will not be protected¹ or where business disputes may not be resolved fairly. That is why countries seeking to attract capital investment and grow economically must first take measures to strengthen the rule of law. For example, to attract foreign investment, the Government of Benin aimed to streamline the business registration process and shift foreign investors' perceptions of doing business in the country. What formerly took eighteen days and required multiple visits to multiple agencies now takes one or two days and involves one location, clear documentary requirements, and standardized fees. Benin's creation of a one-stop shop for business registration decreased the regulatory burden, increased transparency, and reduced corruption.²

Economic development also requires a well-functioning judicial system. Adam Smith observed that a factor that "greatly retarded commerce was the imperfection of the law and the uncertainty in its application."³ Following this logic, Macedonia, hoping to join the European Union (EU) and NATO, reformed its justice sector to comply with the Copenhagen EU accession criteria of "stable and well-functioning state institutions as a guarantor for democracy, rule of law, and the protection of human rights and minority rights."

The absence of a well-functioning judicial system facilitates chronic corruption, which has a severe impact on economic growth, foreign and domestic investment, private savings, and political

1. Urkaly Isayev, Director, Kyrg. Rep. Foreign Inv. Agency, Foreign Investment During the Transition: How to Attract It, and How to Make the Best Use of It, Address Before International Conference on Problems of Managing Economies in Transition and Prospects for Economic Growth (May 27, 1998) *available at* <https://www.imf.org/external/np/eu2/kyrgyz/pdf/isayev.pdf>.

2. The World Bank's 2015 Doing Business Report gives Benin a ranking of 117 in the "Starting a Business" category, a significant improvement over its ranking of 139 in 2014 and 157 in 2011.

3. ADAM SMITH, LECTURES ON JURISPRUDENCE 528 (R. L. Meek et al. eds. 1978).

stability.⁴ Because an effective judicial system requires ethical behavior by justice sector actors, judicial integrity is thus essential to economic development.⁵ Proper functioning of the judiciary means citizens can expect the law to be followed by government officials, which in turn creates predictability, foreseeability, and stability. All are preconditions for investment and, ultimately, economic growth.

Judicial integrity serves the equally important social goal of maintaining “public confidence in the impartiality of the judiciary, which is essential to the effectiveness of the court system.”⁶ Ethical behavior by the judiciary contributes to citizens’ perceptions that justice is being served in general and in individual cases. By contrast, and not surprisingly, corruption within the judiciary has strong, negative effects on citizens’ perceptions of justice and social equality.

In short, when “all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated,”⁷ investors will feel safe to invest their capital, which fuels economic growth. A more accountable judiciary leads to more transparency, more predictability, and less opportunity for corruption, which in turn promotes economic development and stability. Citizens gain greater confidence in the legal system and in the government in general.

II. Corruption

Corruption, defined as “the abuse of public position for private gain,” is widely acknowledged as a significant and extensive problem with multiple harmful effects. In many countries, corruption exists in all forms, from small payoffs to high-level corruption. Petty corruption might consist of an inspector accepting a gift of the products or produce being inspected in return for not finding code

4. Paolo Mauro, *Corruption and Growth*, 110 Q.J. Econ. 681 (1995).

5. E.S.C. Res. 2006/23, U.N. Doc. E/RES/2006/23 (July 27, 2006) (stating that state members are convinced that integrity, independence, and impartiality of the judiciary are essential prerequisites for the effective protection of human rights and economic development).

6. Provincial Court Judges Ass’n v. Manitoba, [1997] S.C.R. 3 (Can.).

7. U.N. Secretary-General, *The Rule of Law and Traditional Justice in Conflict and Post-Conflict Societies*, U.N. Doc. S/2004/616 (Aug. 23, 2004).

violations, or a police officer soliciting a cash payment in return for not issuing a traffic ticket. Government officials might demand or extort payments from citizens to provide basic services like electricity or to process documents and forms, even for services that are supposed to be free. Large-scale corruption might consist of large payoffs that alter government policies to funnel resources into illicit industries, such as the drug trade.

A variety of conditions enable both petty and large-scale corruption. Petty corruption, sometimes called administrative corruption, is facilitated by excessively complicated procedures for the delivery of government services, insufficiently trained and underpaid government workers, and inadequate oversight and audit mechanisms. Large-scale corruption can, paradoxically, be facilitated by large amounts of licit development money entering a country as well as by illicit industries such as the drug trade. Both can lead public officials to abuse their power and demand improper payments from private citizens, corporations, or both.

III. Cultural Factors

Although extensive research shows corruption is detrimental to economic growth, it is widespread in much of the developing world. The following discussion of cultural factors is based on my observations gathered over years of working and traveling in Africa and elsewhere.

A. Poverty

In a wealthy country like the United States, people take many of their advantages for granted. Residents of developed countries can hardly imagine the kind of poverty people experience elsewhere in the world. Over 14% of the world's population makes only \$1.25 per day; in sub-Saharan Africa, the situation is even more dire, with more than 46% of the population making that amount. Other factors, such as lack of education, perpetuate the poverty cycle. According to UNESCO,⁸ only 36% of youth aged fifteen to twenty-four in Niger are literate, and only 49% in Burkina Faso. Not surprisingly, 41% of

8. United Nations Educational, Scientific, and Cultural Organization.

Nigerians and 44% of Burkinabés make \$1.25 or less per day.

These numbers obscure what living on \$1.25 per day really means. People living in sub-Saharan Africa may have plastic shoes or no shoes at all; they may not have access to clean drinking water or sanitation; they probably have to walk and work in the hot sun; they may have one change of clothes that they wash by hand in a bucket or a stream. Children likely work alongside their mother in the field or, if they are daughters, stay home to care for their younger siblings, foregoing school because their parents need help in the home or in the fields or cannot afford school fees. Girls' burden to care for younger siblings, carry water, and prepare food is particularly great,⁹ despite a clear link between higher educational levels for females and economic growth.

Even members of the middle class in poor countries, although not living in extreme poverty, simply do not have the resources enjoyed by people in developed countries. They have trouble making ends meet, which can increase the temptation to push ethical boundaries. For example, law professors in the United States may occasionally engage in outside consulting to gain experience, make contacts, stay busy, contribute to knowledge, or earn a little more money. Law professors in a poor country earning \$800 per month have to do a lot more than occasional consulting to stay afloat, like taking on many clients and multiple consultancies. They may have to cut corners because of the need to juggle many projects at once. Perhaps they spend less time preparing for lectures, or they recycle a consultancy report paid for by one donor and use it again for a different donor. They might even hire a student to write the first draft of a consultancy report because they cannot afford – literally – to turn down paid work. It becomes a slippery ethical slope.

B. Tight-Knit Society

In many developing countries, social contacts are paramount. There are very few elder care homes and almost no orphanages because people care for their immediate and distant family members. In fact, in many African languages there is no word for “uncle,” “aunt,” or “cousin”; one simply addresses these relatives as “mother,”

9. WORLD BANK, *Girls' Education*, (Dec. 3, 2014), <http://www.worldbank.org/en/topic/education/brief/girls-education>.

“father,” “brother,” “sister.” In sub-Saharan Africa, the family system continues to be the central social welfare mechanism.¹⁰ Less well-off parents may send one or more of their children to live with, be raised by, and be educated by wealthier relatives. An adult with little income may live in his or her sibling’s house, bringing along spouse and children. Because a law professor earning \$800 per month is doing far better than many of his relatives in the village, she/he will probably have half a dozen or a dozen people to support, or more. Thus, the \$800 monthly salary does not just support professor and nuclear family; it must stretch to support relatives living back home in the village as well as all the people living in the professor’s household.¹¹

Familial obligations do not end with one’s immediate family; they extend to one’s clan and ethnic group. In a context where family and ethnicity come first, the societal rules are such that one powerful individual – a judge for instance – may feel obligated to hire a relative for a vacant staff position and will be expected to favor any familial or ethnic relation in a litigation.

It is easy to see how American cultural expectations for ethical behavior may run counter to those of other cultures. In our society, a public official who hires a cousin outside of a meritocratic selection process has violated ethical rules; in many societies around the world, a public official who does not hire a cousin when the opportunity arises has violated the unwritten, accepted ethical rules that hold the society together.¹²

C. Lack of Stability

Because many countries lack a tradition of stable politics, even employed people never know how long they will keep their positions. This can lead them to feel the need to maximize every possible advantage. At its most extreme, this phenomenon explains

10. *Africa’s Orphaned Generations*, UNICEF (Nov., 2003), http://www.unicef.org/sowc06/pdfs/africas_orphans.pdf.

11. When I was in the Peace Corps in the former Zaire from 1985 to 1987, the one doctor in the next town had 18 adults living in his house.

12. And lest we think this is solely an issue in developing countries, readers may remember California under Governor George Deukmejian when the appointments of Armenian Americans increased: at one point there were two Armenian Americans on California’s seven-justice Supreme Court.

“kleptocratic” governments like that of Mobutu Sese Seko in the former Zaire. But even on a smaller scale, research shows that perceived job insecurity and a perceived lack of stability significantly affect employees’ temptation to engage in fraud.¹³ The desire for undue gain through unethical behavior may not be as extreme for these low-level employees, but the same motivations persist. Where there is the ever-present possibility that an employee may lose his or her position and start living hand-to-mouth, there is a significant temptation to gain as much benefit as possible during what may be a transient period of employment.

D. Scarce Resources Lead to Hoarding

Where there is not enough power or resources to go around, “turf-defending” behavior results. In such circumstances, it is hard to call people to a higher motivation – like ethics or the importance of the rule of law – when they are simply thinking of feeding themselves. For example, in countries with low levels of economic and social development, most inhabitants are extremely poor and lack basic information about their legal rights and how to exercise them. Some court staff exploit the population’s ignorance of court processes and fees by charging litigants ‘fees’ that are substantially different from what is mandated. The government clerks’ salaries may be only \$100 or \$200 per month, so they feel they must generate additional income for survival by charging unauthorized fees. These practices can generate resistance to measures that would otherwise be regarded as improvements. For instance, when my company’s¹⁴ USAID-funded project in the Democratic Republic of Congo (DRC) helped courthouses install glass-encased bulletin boards listing legally mandated fees, some court staff resisted because they perceived the bulletins as a threat to their livelihood, and the glass cases were vandalized more than once – we assumed by the court staff.

Defensive behavior can occur in other contexts. In one example I witnessed, a donor was supporting a country’s attempt to rationalize

13. Owolabi A. Benjamin & Babalola S. Samson, *Effect of Perceived Inequality and Perceived Job Insecurity on Fraudulent Intent of Bank Employees in Nigeria*, 7 EUR. J. PSYCHOL. 99 (2011) (Nigeria, where this study was conducted, ranked 136 out of 175 countries on Transparency International’s Corruption Perceptions Index).

14. I.e. implemented by Tetra Tech DPK.

its regulatory system for packaged water to reduce the burden on packaged water producers. Producers faced three different inspection regimes involving different ministries and agencies, each with its own forms, inspections, and fees. In addition to streamlining the system of overlapping and burdensome inspections that were impeding economic development, another of the government's objectives was to reduce opportunities for corruption.

I observed that the various entities regulating aspects of packaged water production were actively or passively resisting the call to improve the system, despite the clear benefits to human health, the environment, and exports that would result. Their opposition and resistance were explicable only if they were thinking of the income (fees and bribes) they were collecting from inspections. They may also have anticipated that if their unit's mandate were reduced due to the streamlining of the regulatory and inspection regime, then they would have less power, and then their unit might be eliminated, and then they might be out of a job. In an environment where government employees may be supporting 18 adults and as many or more children's school fees, they cannot be expected to think of the "greater good" of reducing corruption, advancing public health, or reducing environmental waste. Rather, they are likely thinking about how to make ends meet.

IV. Solutions

So is the prognosis bleak, then, when we consider whether donor-funded rule-of-law projects can successfully tackle corruption and promote ethical integrity in poorer countries? Can a push to improve the rule of law overcome the countervailing cultural factors just reviewed? The next section outlines some solutions that my colleagues and I have helped implement – usually with United States tax dollars through the United States Agency for International Development (USAID) – to increase accountability and strengthen the rule of law.

A. Improving Access to Information and Education

The example above notwithstanding, educating the public about correct judicial fees is one effective way to tackle corruption; it eliminates petty extortion by court officials. Bulletin boards alone may not be sufficient, as the example in the DRC suggests. My

company's projects have installed information booths in courts staffed with volunteers (Côte d'Ivoire), produced and aired anti-corruption programs on radio and television (Afghanistan), implemented public awareness activities in poor neighborhoods (Haiti), improved court websites to disseminate information to the public (Jordan), used local non-profit organizations to implement children's art and drama contests with rule-of-law themes (West Bank), and engaged local organizations to run mobile clinics to provide free legal education and assistance to vulnerable populations such as widows, the disabled, and the internally displaced (Iraq). All of these improve access to information on the theory that an informed population is less likely to be faced with a demand for an improper payment and more likely to take a stand against it when it occurs. Especially where the cultural context calls for what we would call favoritism or nepotism, these types of public information activities are essential.

B. Increasing Transparency

A judicial decision is the end result after interventions by several judicial actors. Without proper information transparency, individual judicial actors who accept bribes can exercise undue control over an accused person's case or the amount of time spent in jail. Less overt but just as insidious, an accused person can languish in prison because judicial actors lack resources to track when, for example, the accused was supposed to see a magistrate or even be released from jail. Our Haiti project helped put in place a pilot electronic case management system to increase transparency and reduce opportunities for improper influence in judicial case files. Similarly, our project in Jordan helped automate all of the courts in the kingdom with the same objective. Where there are fewer paper files that can be intentionally "lost" by someone who has received a bribe, where court users have ready access to information about the progress of their case files, and where tickler systems remind judicial actors of deadlines, this reduces the ability of judicial actors to behave unethically or for improper reasons (e.g., family ties). It also makes the justice system more effective and improves the rule of law.

C. Improving Coordination Among Actors in the Criminal Chain

Even a well-functioning court with well-trained magistrates will still be hamstrung if the prosecutor's office does not operate well or if cases are insufficiently investigated and prepared by the police. Several of our projects have implemented joint training of police and prosecutors to improve coordination and to increase the numbers of eyes on each case. Even in a country with a paper-based case file system, the more people following a case the less ability any one person has to improperly act (or not act) with respect to that case when offered a bribe or because of a personal connection to a defendant or a detainee. Improved coordination provides better, more transparent, and more unbiased judicial service to the population and in turn improves public perceptions of the courts and the government.

D. Using Legislation to Control the Criminal Process

New or amended legislation can improve transparency and accountability. Benin enacted changes to its criminal procedure code, limiting the number of postponements in court cases and imposing strict limits on allowable time intervals between steps in the criminal process. Now, a richer litigant cannot indefinitely postpone a case by paying a judge to keep postponing the case. Guatemala shortened allowable times for pretrial detention for the same reason (as well as for human rights concerns). Macedonia and Jordan adopted a system of random case assignments to judges to reduce possibilities for corruption or undue influence/interference. Legal changes at the Parliamentary level can take time, but if the reforms are shepherded well, they can generate public consensus and effect real change. The new time limits in Benin, for example, because they are coupled with strong individual rights under the Constitution, have transformed criminal justice practices in the country, reduced opportunities for corruption, and improved public perceptions of the justice system.

E. Prosecuting High Profile Corruption Cases

A few strategic prosecutions of high-level government corruption cases can significantly affect public perceptions of the justice system and can have a chilling effect on corruption. Training

prosecutors to support investigation and prosecution of high-profile cases (Philippines) and implementing a certificate program in anticorruption (Peru) are two recent strategies implemented in our projects with the goal of not only going after corrupt public figures, but also raising public awareness of corruption issues and galvanizing interest in the government's anticorruption agenda.

F. Adopting Merit-Based Selection Procedures for Judges

In many countries, appointment of judges is rife with nepotism and favoritism, which negatively affects the administration of justice and public perceptions of the justice system. It also perpetuates undue attention to family and clan ties. In some circumstances, the executive has an undue role in the appointments process (and one not balanced by inputs from the legislative branch, as in the U.S. federal system), undermining the independence of the judiciary. To improve the system, our projects in the DRC and Jordan helped implement more transparent career paths for magistrates. The first step was to collect information through surveys on the careers of all the magistrates in the country; the next was to develop and apply more transparent and merit-based selection criteria. In Jordan, the numbers of women and minorities in the judiciary increased dramatically with the new merit-based system. In the DRC, the High Judicial Council now has a clear picture of vacancies, promotions, transfers, and impending retirements, and the number of women in the judiciary has also increased. The expectation is that where there is less cronyism in appointments there is fairer adjudication and more respect for the judicial system and, by extension, the rule of law.

G. Improving Magistrates' Capacities, Performance, and Ethics

In some countries, magistrates and court staff do not know the applicable ethical rules and disciplinary procedures. According to the logic that even in poor countries the unethical behavior of some justice sector actors is due to ignorance and not to intentional malfeasance, our projects have supported the drafting of codes of ethics and professional conduct for magistrates (DRC, Macedonia, Côte d'Ivoire), established clear criteria for sanction and dismissal of magistrates (which also prevents arbitrary dismissals and interference by the executive) (DRC), and financially supported

judicial inspections of courts and detention centers (DRC, Haiti).

Even beyond the realm of ethics, in many countries magistrates receive little continuing training and may not have access to legal resources. To improve judicial performance, countries take a variety of steps. Our projects have strengthened central judicial training institutes (Jordan, Côte d'Ivoire), trained magistrates (Côte d'Ivoire, Haiti, DRC), and prepared and distributed compendia of criminal laws and civil codes (DRC). In Afghanistan, our project helped formulate guidance documents for anticorruption tribunal judges to help them select appropriate sentencing ranges for particular crimes. This both reduced their scope for discretion and improved how they were doing their jobs. The objectives of these interventions are not only to build judges' capacity to make better decisions and reduce opportunities for improper influence, but also to improve the overall functioning of courts and burnish the reputation of the judiciary.

V. Conclusion

Many questions remain unanswered. Once we understand the cultural factors that might induce civil servants in a justice system to behave unethically, what do we do with that insight? Do we excuse them? Do we construct systems to minimize the temptations or block opportunities for corruption? Do we introduce more checks and balances? Do we educate them about behaviors they may not realize are unethical? Does it instead depend on getting those seventeen other adults and twenty-six kids off their coattails, and is that a rule-of-law issue? The defaced posters are a telling case. In that instance, our project accepted we could not change the court staff's desire to obstruct change and continue to demand "fees" from court users, but instead made it impossible for the unethical people to succeed, through other means. I would urge readers interested in these issues to think back to the examples I gave of culturally conditioned unethical behavior, identify whether the solutions being implemented are effective, and if they are not, propose others.¹⁵

15. "From my home so close to the Silicon Valley, I can't resist saying that I wish some of the brilliance and resources currently being devoted to developing apps to help people find the nearest bar or sexual partner, or design the most realistic murderous game, could instead be channeled toward solving some of these sorts of problems – which are critical to our shared humanity and shared future."

To me, the most difficult cases are those where otherwise ethical people are forced by expectations or circumstances to push boundaries or cross lines that even they recognize. The answer may be as simple as economic development. If salaries were raised, I believe some corruption would lessen or disappear. Although there is certainly corruption in rich countries (see, e.g., Rod Blagojevich), I like to believe that the combination of higher standards of living and a stronger likelihood of getting caught and punished (because of a well-functioning justice system) keeps corruption levels lower. This solution can work even where temptations due to cultural factors or extreme poverty are high indeed.

Some readers may wish for more proof of the effectiveness of these solutions, and in that case they are in good company with the increasing numbers of donors and critics clamoring that everything be measured (as if improvements in the rule of law could be measured like vaccinations or agricultural exports). It is beyond the scope of these remarks to prove or disprove whether international development assistance works. Despite book-length arguments by the likes of Rachel Kleinfeld and Thomas Carothers, my own feeling is that when faced with fuzzy, complex subjects like the improvement of the rule of law, the reduction of corruption, and the improvement of ethical integrity, it comes down to a matter of faith. You either believe it works or you do not. From the vantage point of having worked in international development in some form for almost thirty years, my view is that the solutions presented here really do work – especially when they are carefully designed to take into account the particular cultural contexts and the real motivations and circumstances facing justice sector actors and the public at large.
