

**ETHICS CODES AND CODES OF CONDUCT AS TOOLS FOR  
PROMOTING AN ETHICAL AND PROFESSIONAL PUBLIC SERVICE:  
Comparative Successes and Lessons**

**By**

**Stuart C. Gilman, Ph.D.**

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<b>I Introduction:</b> .....	3
<i>Preface</i> .....	3
<i>Why Ethics Codes?</i> .....	3
<b>II. Characteristics of Codes:</b> .....	6
<i>The Purpose of Codes:</i> .....	6
<i>What are ethics codes for?</i> .....	8
<i>The Role of Principles and Values:</i> .....	10
<i>Ethics Codes:</i> .....	12
<i>Codes of Conduct:</i> .....	16
<i>The Context of Codes:</i> .....	19
<i>Public Administration:</i> .....	20
<i>The Legal Setting:</i> .....	23
<i>An Assessment Model:</i> .....	25
<b>III. The Organizational Environment and Effective Codes:</b> .....	28
<i>Integrating Codes into Existing Organizations:</i> .....	28
<i>Using Codes to Re-engineer or Reform Governments or Ministries:</i> .....	31
<i>Learning from the Private Sector:</i> .....	33
<b>IV. An Emerging Set of Good Practices:</b> .....	37
<i>What Goes into a Code?</i> .....	37
<i>The Professional Setting:</i> .....	37
<i>The Social and Cultural Setting:</i> .....	39
<i>Writing the Code:</i> .....	40
<i>Communicating the Code:</i> .....	42
<i>Education rather than training</i> .....	44
<i>Breadth vs. Specificity:</i> .....	46
<i>The Geography of the Code:</i> .....	49
<b>V. Under Girding the Ethics Code:</b> .....	51
<i>Important Systems:</i> .....	51
<i>Elements to Support the Code:</i> .....	54
<b>VI. Codes That Work and Codes That Don't</b> .....	55
<i>A Code Matrix: From State Capture to Full Differentiation</i> .....	55
<i>Codes that have Impact:</i> .....	60
<i>Codes and Contexts:</i> .....	62
<i>Why Codes Don't Work:</i> .....	63
<i>Lessons about Successes and Failures:</i> .....	68
<b>VII. Summary and Conclusion:</b> .....	70
<i>Major Findings:</i> .....	70
<b>A. The Complimentary Nature of Codes of Ethics and Codes of Conduct</b> .....	70
<b>B. There is an institutional fabric associated with successful ethics codes.</b> .....	71
<b>C. The Empirical Foundations of an ethics code:</b> .....	71
<b>D. Sustainability of Programs:</b> .....	72
<i>Pilots to test the results:</i> .....	74
<i>Conclusion:</i> .....	76

## **I Introduction:**

### ***Preface***

This paper is designed for use by the development practitioner. The analysis will focus on ethics codes and codes of behavior. It will provide both background and foreground for what codes are, how they are used internationally, what are the best uses and limitations of codes, how they are (and can be) used in international development and how to evaluate a code's effectiveness. Since this analysis is designed for those individuals working "on the ground" there will be a minimum of academic references and citations.<sup>1</sup> Our purpose is readability and usefulness. Nonetheless, this document is based on the best critical studies in the area and reflects a solid research consensus.

### ***Why Ethics Codes?***

Ethics codes are as old as antiquity. Religious traditions and civic cultures have codes as their foundations. The Mosaic Decalogue (Ten Commandments) is the keystone for Judaism, Islam and Christianity. Pericles made the Athenian code the underpinning of ancient Greek politics and culture. In each case codes carry general obligations and admonitions, but they are far more than that. They often capture a vision of excellence, of what individuals and societies should be striving for and what they can achieve. In this sense codes, which are often mistaken as part of law or general statements of mere aspiration, are some of the most important statements of civic expectation.

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<sup>1</sup> However, there will be an over abundance of URL addresses to enable development professionals to more easily access country or institutional examples. All of these URLs were accessible in December, 2004.

When applied to certain classes of people – public servants, doctors – codes are the ultimate terms of reference. They are the framework upon which professions are built. Often codes are what professionals use to make the claim that they are “professionals” and are often the founding document for a profession, e.g. the Hippocratic Oath.<sup>2</sup> While it is true that not all such oaths are codes, it is often the case that codes are built into oaths or other related ceremonies related to become a professional. They can be found in the ceremonies ordaining religious leaders in many faiths, and in swearing the oath of office for many political leaders around the world.

Because the term code is often used in different contexts its meaning can be confused. For our purposes code is not synonymous with law. Laws can have codes within them. But legal systems are not codes (e.g. Hammurabi’s Code<sup>3</sup>) in the way the term “code” is used in this document. Laws, often referred to as legal codes, are a series of detailed proscriptions dealing with the “crime or offense” and the punishment. An example would be a city code forbidding spitting on the sidewalk that provides a 30 day jail sentence for violations.<sup>4</sup> Ethics codes or codes of conduct seldom provide detailed, specific prohibitions. Rather, they are broader sets of principles that are designed to inform specific laws or government actions.

Therefore, in the rest of this paper the term code will refer to codes of ethics or codes of conduct.

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<sup>2</sup> Greek physician Hippocrates (400 B.C.) formulated the Hippocratic Oath, a statement of physicians' professional and moral duties, including patient confidentiality; "Into whatever houses I enter, I will go into them for the benefit of the sick, and will abstain from every voluntary act of mischief and corruption"

<sup>3</sup> This is a collection of laws and edicts of Hammurabi, King of Babylonia (18<sup>th</sup> Century B.C.). Hammurabi’s Code is the earliest complete known legal code; sets forth in cuneiform legal procedure and penalties for unjust accusations, false testimony, judicial injustice and other rules with the goals of "stable government and good rule," and that “the strong may not oppress the weak”

<sup>4</sup> Mike Houlihan, “Great expections on the streets of Edgewater,” Chicago Sun Times, October 5, 2003. URL: <http://suntimes.com/output/houlihan/cst-nws-houli05.html>

Why are ethics codes important to international development? As foundational documents they can provide the framework that public servants – political and civil service – use to carry out their public responsibilities. Codes can clearly articulate unacceptable behaviors as well as providing a vision for which the government official is striving. Therefore, inducing monetary reform, creating democratic institutions or funding economic improvement programs without a professional government workforce can be frustrating, if not counterproductive. A fundamental mechanism for ensuring professionalism is a code of ethics.

The use of codes of conduct or ethics has been broadly recognized in international anticorruption agreements. Among the first documents to recognize the value of codes was the Organization of American States InterAmerican Convention Against Corruption. In 2003 the U.N. Convention Against Corruption included a public service code as an essential element in corruption prevention:

Corruption can be prosecuted after the fact, but, first and foremost, it requires prevention. An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anti-corruption bodies, and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency, and recruitment based on merit. Once recruited, **public servants should be subject to codes of conduct** [emphasis added], requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement. Those, who use public services, must expect a high standard of conduct from their public servants.<sup>5</sup>

Effective codes operate at two levels: Institutional and symbolic. Within institutions codes articulate boundaries of behavior as well as expectations for behavior. That is they provide clear markers as to what behavior is prohibited (bribery) and what behavior is expected

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<sup>5</sup> <http://www.un.org/News/Press/docs/2003/soccp270.doc.htm>

(showing impartiality to all citizens). They are also highly symbolic. Subscribing to institutional codes is the way we define a model professional not only as we see ourselves but as we want to be seen by others. Adam Smith writes:

To be amiable and to be meritorious; that is, to deserve love and to deserve reward, are the great characters of virtue; and to be odious and punishable, of vice. But all these characters have an immediate reference to the sentiments of others. Virtue is not said to be amiable, or to be meritorious, because it is the object of its own love, or of its own gratitude; but because it excites those sentiments in other men.<sup>6</sup>

Therefore, successful codes provide a standard for public servants to strive for as well as articulating a special sense of responsibility because of the public servants professional standing in his or her community. The value of ethics codes comes from both cognitive (reasoning) demands in understanding such codes as well as its ability to appeal to the emotions.<sup>7</sup> Guilt, shame, conscience, pride in profession can be every bit as important as reason in motivating ethical behavior. As will be seen in the rest of this analysis, emotive elements are an important consideration in deciding how to create codes with impact.

## **II. Characteristics of Codes:**

### ***The Purpose of Codes:***

Codes of ethics are written to guide behavior. Any final analysis of the impact of a code must include how well it affects behavior. Scholarly researchers' debates about codes generally revolve around whether more general codes are mere platitudes, and whether more detailed codes require behavior about which reasonable people can disagree. They even debate whether

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<sup>6</sup> Adam Smith, *The Theory of Moral Sentiments*, Part III, Chapter 1. Smith who is often mistaken as an economist was actually a moral theologian. His *Wealth of Nations* is perhaps better understood as a treatise on ethical human behavior than modern capitalism.

<sup>7</sup> David Hume's writings form the foundation of the "emotive" approach of ethics. For an excellent discussion of combining reason and emotion see the discussion in Willard Gaylin and Bruce Jennings, *The Perversion of Autonomy*, N.Y.: The Free Press, 1996, pp. 127-149.

ethics codes are necessary at all because good people should know how to act ethically without any guidance.<sup>8</sup> These are worthy academic questions, but they are different than those a practitioner must ask. For those working with developing public service communities the more important questions are what blend of the general and specific are most likely to affect behaviors that a society needs from its civil servants and its political leaders. Contemporary social psychological research also strongly suggests that codes can guide or induce behaviors in developing countries that are critical to a functioning public service.<sup>9</sup>

Codes are not designed for “bad” people, but for the persons who want to act ethically. The bad person will seldom follow a code, while most people – especially public servants -- welcome ethical guidance in difficult or unclear situations. The average person is not grossly immoral but often tempted, and sometimes confused, by what appears to be a virtuous path. “When temptations are significant, when the price of adherence (in terms, for example, of the sacrifice to our interests) is high, when the social consequences of violation (harm to others) are relatively slight, when the costs of violation are low – under such circumstances it is easy to be led from doing what you ought to do . . .”<sup>10</sup>

No code, no matter how severely enforced will make truly bad<sup>11</sup> people good. As James Madison wrote: “If men were angels, no government would be necessary. If angels were to

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<sup>8</sup> This logic can deductively degenerate leading some scholars to argue that the very existence of a written code makes it ‘not’ ethics, but law. Ethics, in effect, can never be written about because by putting word to the page an ethicist reifies in inherently indefinable values. See John Ladd, “The Quest for a Code of Professional Ethics: An Intellectual and Moral Confusion,” in Deborah Rhode and David Luhan, *Legal Ethics*, St. Paul: Foundation Press, 1992, pp. 121-127.

<sup>9</sup> White, R. D., Jr. 1999. “Public ethics, moral development, and the enduring legacy of Lawrence Kohlberg: Implications for public officials.” *Public Integrity*, 1,2: 121–134.

<sup>10</sup> Judith Lichtenberg, “What Codes of Ethics Are For?” in Margaret Coady and Sidney Bloch (eds.), *Codes of Ethics and the Professions*, Melbourne: Melbourne University Press, 1996, p. 17. This section of the paper borrows heavily from Professor Lichtenberg’s essay.

<sup>11</sup> By “bad” in this sense, I mean a public servant who consciously welcomes being corrupted for either financial and/or power reasons, and who understands that they are clearly violating codes or laws.

govern men neither external nor internal controls on government would be necessary.”<sup>12</sup>

However, ethics codes can have a demonstrable impact on the *behavior* of bad people in organizations. When everyone clearly knows the ethical standards of an organization they are more likely to recognize wrongdoing; and do something about it. Second, miscreants are often hesitant to commit an unethical act if they believe that everyone else around them knows it is wrong. And, finally corrupt individuals believe that they are more likely to get caught in environments that emphasize ethical behavior.

### ***What are ethics codes for?***

For the purposes of this analysis the use of ethics codes in public service can have a positive impact in several ways.

First, codes of ethics increase the probability that people will behave in certain ways. They do this partially by focusing on the character of their actions and partly by focusing on sanctions for violations. In addition, reliance on codes can reduce the sacrifice involved in an ethical act. An example might be the case of a civil servant whose cousin has asked him to give him a government contract. Without a code it would be a moral choice on his or her part. With a code the civil servant is reminded that it violates expectations for civil servants, it could result in losing his or her job, and it moves the action from not helping a family member to doing the right thing.

Second, good ethics codes can focus public servants on actions that result in doing the right things for the right reasons. Ethical behavior should become a habit and effective codes allow both bureaucrats and elected officials to test their actions against expected standards. Repeated over time this kind of habit becomes inculcated in the individual and ingrained in the

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<sup>12</sup> James Madison, Federalist #51 in Hamilton, Madison and Jay, The Federalist Papers, various editions.

organization. An excellent example is in contracting or procurement. Government processes are often cumbersome to allow for fairness. If efficiency alone were the standard, contracting officials would be easily tempted to ignore the rules to expedite the process. However, if it is clear that the overriding principle is impartiality in carrying out your public duties it is very difficult to justify giving the contract to your wife's company on efficiency grounds.

Third, codes of ethics do not take away one's own moral autonomy or absolve the public servant from the obligation to reason. Codes of ethics provide at most a strong prima facie reason to act in a certain way. However, these can be overridden by strong, reasoned objection. The expectation is that the norm is not to violate the code and such violations can only be justified because of a higher ethical principle. The public servant who closes a coal mine before the owners have exhausted due process legal appeals can reasonably justify the action. Protecting the lives of the workers has a higher value than the obligation to objectively carry out procedures.

Fourth, codes of ethics can function as a professional statement. That is it expresses the public service's commitments to a specific set of moral standards. This has both cognitive and emotive value.<sup>13</sup> Cognitively it gives a person joining a profession, civil service, a clear set of value to which they are expected to subscribe. Not all individuals are comfortable working as civil servants and codes can clarify expectations. Codes can help provide the pride of belonging to a group or a profession. Pride is a critical emotion in motivating individuals to see themselves as professional.

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<sup>13</sup> James Q. Wilson, *The Moral Sense*, N.Y.: The Free Press, 1993

### ***The Role of Principles and Values:***

Effective ethics codes are not merely a text. Rather, they exemplify the fundamental principles and values of a public service. These can include more legalistic precepts, such as restrictions on conflicts of interest. Codes can also contain values. But the critical elements in a code are the clear articulation of principles that are derived from values. This distinction has its clearest conceptualization in the 18<sup>th</sup> century writings of Jeremy Bentham.<sup>14</sup> For him a principle was “a general law or rule that guides behaviour or decisions,” whereas values articulate “an aspiration of an ideal moral state.” A more recent explanation of this relationship in public service comes from Terry Cooper:

An ethical principle is a statement concerning the conduct or state of being that is required for the fulfillment of a value; it explicitly links a value with a general mode of action. For example, justice may be considered a significant value, but the term itself does not tell us what rule for conduct or state of society would follow if we include justice in our value system. We would need a *principle* of justice to show us what pattern of action would reflect justice as a value. A common form of the justice principle is “Treat equals equally and unequals unequally.” We might interpret this principle as meaning that if all adult citizens are politically equal they should all have the same political rights and obligations. If one has the vote, all must have it.<sup>15</sup>

To summarize, values are general moral obligations while principles are the ethical conditions or behaviors we expect. Unfortunately, this can become confusing in everyday language. For instance, many times “core values” or “concrete values” are terms used instead of principles but they should be intended to inform principles.

For this reason it is not uncommon for codes to begin with a value (integrity) and then make the value real in principle (Do not use your public office for private gain). Many modern

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<sup>14</sup> Jeremy Bentham, *An Introduction to The Principles of Morals and Legislation* (NY: Hafner Press, 1948), p. 2. [Original publication date is 1780].

<sup>15</sup> Terry L. Cooper, *The Responsible Administrator: An Approach to Ethics in the Administrative Role*, 4<sup>th</sup> edition (San Francisco, Jossey-Bass Publishers, 1998), p. 12.

public services initiate their code development through input from public servants. This creates an environment for participation as well as developing a sense of authenticity for a body of primary obligations and a context for those obligations.

The power of people in public service compared to those they serve is behind the idea that "public service is a public trust" and explains why so many governmental and professional codes impose special obligations public servants who, as *temporary stewards*, exercise public power and authority. Their position is neither theirs to own, nor is it theirs to keep.<sup>16</sup>

This assumes that the public servant's government is developing toward a democracy. In autocratic states or "kleptocracies", these relationships are all reversed. That is, public servants are permanent stewards who exercise authority on behalf of the rulers.

Democracy is not a state of being, it is an organic process. As part of this process countries developing toward democracy develop more and more sophisticated notions of values and principles. In even highly developed countries, these principles can suddenly become more expansive as a society is confronted with a corruption scandal.<sup>17</sup> Behavior that was previously considered acceptable is condemned as it is viewed through the lens of principle. This lens refocuses the action often as unacceptable behavior from one who is a temporary steward of the public interest. This is often viewed as a "state" problem, but in fact it happens in any public organization including multi-laterals. As an example, Secretary General Kofi Annan was recently broadly criticized because of his son's involvement in the United Nation's Iraqi "food for oil" program. Even though his son is an adult, working in the private sector, the appearance – if not the reality of using his father's name for influence – can be devastating to any public servant.

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<sup>16</sup> Carol W. Lewis, "Ethical Norms in Public Service," paper prepared for the World Bank, 2004, p. 6.

<sup>17</sup> An excellent discussion of this phenomenon can be found in Dennis Thompson, "Mediated Political Reality: The Case of the Keating Five," *American Political Science Review*, 87 (June, 1993): 369-381.

There are a broad series of moral values that must be inherent in a public service within a democracy. These include values that go beyond individual behavior and address issues of the ethical culture within organizations. Although codes are important they must be grounded in organizations that both respect and support ethical behavior. One example is the argument in some organizations that a public servant must do bad things sometimes to achieve good ends.<sup>18</sup> This attitude of “dirty hands” has pernicious consequences in an organization. Principles become malleable and public servants feel free to violate norms of behavior if they can justify it. For example, lying to a legislative committee about the success of a program often sets an example for a culture of lying in that ministry.

A second example is the excuse of “many hands”; that is, how can I be morally responsible if so many other people are part of the process.<sup>19</sup> These organizational issues must be addressed simultaneously as ethics codes or conduct codes are developed. They often are imbedded in the codes but are targeting the organizational culture rather than individual behavior.

### ***Ethics Codes:***

Principles and values are imbedded in all ethics codes and codes of conduct, either implicitly or explicitly. They are the elements that usually call the public servant to a greater purpose. This is not a new phenomenon, and can be found throughout antiquity in the vast majority of cultures.<sup>20</sup> Perhaps the most famous is the Athenian Oath written by Pericles 5<sup>th</sup> century B.C. (See Exhibit 1). The notion of public service, so pervasive in the Athenian code,

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<sup>18</sup> Stuart C. Gilman, AMany Hands, Dirty Hands and No Hands: Bringing Applied Ethics to Public Management, @ *The Practising Manager [Australia]*, Vol. 9, No. 2, Autumn, 1989.

<sup>19</sup> Dennis Thompson. "Moral Responsibility of Public Officials: The Problem of Many Hands." *American Political Science Review* 74 (1980): 905-16.

<sup>20</sup> See Lewis, 2004, op.cit.

also led to institutional changes. Pericles created the first public service – that is persons must have merit to be appointed – and along with this Athens became the first government to actually pay public servants.

Public codes of ethics, especially in developing democracies, can play a crucial role in articulating the mission of the public service. The foundation of all successful bureaucracies is integrity, objectivity and effectiveness. Most public service codes emphasize these standards

### **Exhibit 1 The Athenian Oath**

We will never bring disgrace on this our City by an act of dishonesty or cowardice.

We will fight for the ideals and Sacred Things of the City both alone and with many.

We will revere and obey the City's laws, and will do our best to incite a like reverence and respect in those above us who are prone to annul them or set them at naught.

We will strive increasingly to quicken the public's sense of civic duty.

Thus in all these ways we will transmit this City, not only not less, but greater and more beautiful than it was transmitted to us.

through principle based statements such as not using your public office for private gain (integrity), showing impartiality in carrying out your public duties (objectivity), or the implied obligation in public service being a public trust (effectiveness). Together these can articulate a common mission for public servants, who are otherwise separated by their bureaus, professions and expertise. The preamble of the Canadian Public Service Code (Exhibit 2) actually articulates public service ethics as its mission.

When principles and values are the primary focus of public service they act to provide a guide for unanticipated events. As will be discussed below, Standards of Conduct (or Codes of Conduct) try to account for the majority of circumstances that might confront public

## Exhibit 2: Statement of Public Service Values and Ethics The Role of the Public Service of Canada

The Public Service of Canada is an important national institution, part of the essential framework of Canadian parliamentary democracy. Through the support they provide to the duly constituted government, public servants contribute in a fundamental way to good government, to democracy and to Canadian society.

The role of the Public Service is to assist the Government of Canada to provide for peace, order and good government. The *Constitution of Canada* and the principles of responsible government provide the foundation for Public Service roles, responsibilities and values. The democratic mission of the Public Service is to assist Ministers, under law, to serve the public interest.

administrators. Ethics Codes try to articulate the values and principles expected of public servants when confronting unclear or ambiguous ethical circumstances.

A primary example of an Ethics Code is the *Seven Principles of Public Life* developed by the Committee on Standards in Public Life in Great Britain. When Prime Minister John Major created the committee in 1994 the terms of reference were sweeping: “To examine current concerns about standards of conduct of all office holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.” The definition of office holders was also sweeping including all elected officials and civil servants at the national and local levels.

### Exhibit 3.

#### SEVEN PRINCIPLES OF PUBLIC LIFE

The Committee has set out '**Seven Principles of Public Life**' which it believes should apply to all in the public service. These are:

**Selflessness**

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

**Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

**Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership**

Holders of public office should promote and support these principles by leadership and example.

The primary critique of ethics codes is that they are too abstract and because of that they are difficult to enforce. Although there is some truth to both of these critiques, usually the problem lies with the institutionalization of the civil service and the ability to enforce behavior in

only the most narrow of areas. Any code without an effective institutional implementation strategy is just words. The Philippines also has a code of ethics that is a remarkably positive statement of public service values.<sup>21</sup> The Philippine government has created a number of institutions, but these have been criticized as having very little power to enforce the code. Provocatively, some research suggests that just have a code without an institutional fabric can actually lead to greater pressure to commit misconduct than *having no code at all*.<sup>22</sup>

### ***Codes of Conduct:***

Codes of Conduct or Codes of Behavior are designed to anticipate and prevent certain specific types of behavior; e.g. conflict of interest, self-dealing, bribery, and inappropriate actions. Although conduct codes can be brief, most often they are fairly lengthy and detailed. The rationale for the detailed scope of this kind of code is that it is necessary to both protect the employee while at the same time protecting the reputation of the government. Most codes of conduct focus on the “do nots” rather than on affirmative obligations. That is, they detail specific actions in which employees are not to engage.

Standards of Conduct do change over time but it is sometimes useful to look at historical standards in order to recognize that the behavioral problems are often similar over time but technology or social circumstances can have a profound impact on actions that are prohibited. As an example, Amos Kendall, Post Master General of the United States, issued “Duties of Public Officials” in 1829 in the wake of major scandals in his department. (Exhibit 4.)

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<sup>21</sup> <http://www.tag.org.ph/phillaw/law4-RA6713.htm> (accessed 12/20/04)

<sup>22</sup> The Ethics Resource Center, The National Business Ethics Survey, 2003, Washington, DC.

#### Exhibit 4.

##### Duties of Public Officials<sup>23</sup>

Issued by Amos Kendall, Postmaster General of the United States, 1829

- I. Every clerk will be in his room, ready to commence business, at nine o'clock A.M., and will apply himself with diligence to the public service until Three o'clock P.M.
- II. Every clerk will hold himself in readiness to discharge any duty which may be required of him in office hours or out, in no case where by laboring a short time after office hours an account can be closed or a citizen released from attendance at this city, must he refrain from continuing his labors after three o'clock.
- III. Newspapers or books must not be read in the office unless connected directly with the business in hand, nor must conversation be held with visitors or loungers except upon business which they may have with the office.
- IV. Gambling, drunkenness, and irregular and immoral habits will subject any clerk to instant removal.
- V. The acceptance of any present or gratuity by any clerk from any person who has business with the office, or suffering such acceptance by any member of his family, will subject any clerk to instant removal.
- VI. The disclosure to any person out of the office of any investigation going on, or any facts ascertained in the office, affecting the reputation of any citizen, is strictly prohibited without leave of the Auditor.
- VII. No person will be employed as a clerk in this office who is engaged in other business. Except the attention which the families of clerks require, it is expected that all their time, thoughts, and energies will be devoted to the public service.
- VIII. Strict economy will be required in the use of the public stationery or other property. No clerk will take paper, quills, or anything else belonging to the government from the office for use of himself, family, or friends.

Although Standards of Conduct can, and often do, stand alone it is not uncommon for them to be supplemented with a Code of Ethics. For example, the government of Nigeria does have an ethics code<sup>24</sup> but supplements it with an exhaustive set of Standards of Conduct with

<sup>23</sup> SOURCE: In Leonard D. White, *The Jacksonians: A Study in Administrative History, 1829-1861*, N.Y., The Macmillan Company, 1954, pp. 434-435.

<sup>24</sup> <http://nigerianembassy-argentina.org/government/policies/xcode-conduct.shtml>

over forty pages of regulations under the category discipline. This contains detailed definitions of unacceptable behavior that might “prejudice of discipline and proper administration of the Government e.g. dishonesty, drunkenness, false claims against Government, insubordination, negligence, falsification or suppression of record, attempt to illegally keep records, sleeping on duty, loitering, unruly behaviour, dereliction of duty . . .”<sup>25</sup>

At the federal level in the United States there is little emphasis on having an ethics code for the executive branch. In fact the only document labeled an “ethics code” was created, and its distribution was paid for, by a non-profit entity.<sup>26</sup> The U.S. Congress passed a bill requiring that it be posted in every federal building but it has neither administrative nor legal force.

What does have legal force in the executive branch are the criminal conflicts of interest statutes<sup>27</sup> and a Presidential Executive Order entitled Principles of Ethical Conduct for Government Officers and Employees.<sup>28</sup> At first blush, the executive order looks like it is articulating ethical values, but more than half of the principles are “do nots” and it is left to the U.S. Office of Government Ethics (OGE) to write Standards of Conduct that will have the force of regulation. The subsequent Standards of Ethical Conduct are lengthy (over seventy pages) and primarily expand the prohibitions in the executive order. Additionally, the standards and statutes are supplemented by informal advisory opinions. These opinions are a very few selected opinions from the hundreds issued by the OGE each year to individuals and government agencies. The number of informal advisory opinions over the past 25 years is more than thirteen hundred.

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<sup>25</sup> Nigerian Disciplinary Code

<sup>26</sup> The Ethics Resource Center, 1980.

<sup>27</sup> 18 USC 203,205, 207,208 and 209

<sup>28</sup> Executive Order 12674, as revised. For all of these laws, regulations and executive order for the U.S. executive branch see: [www.usoge.gov](http://www.usoge.gov)

The scope and complexity of such a system leads critics to argue that it is a negative form of casuistry.<sup>29</sup> The potential problem with casuistry is not only the danger of false analogies from cases. Because of the detailed interweaving between these opinions, and exhaustive attempts at refining technical terms<sup>30</sup>, only a hand full of people have full knowledge of what the right answer ought to be. This has led to the charge that the OGE has created itself as a priesthood of anointed lawyers who are the only ones capable of handing down detailed interpretations. As one example of how specific these can be one of the first OGE opinions after the issuance of the Standards of Conduct dealt with whether a waiter's gratuity was included in the twenty dollar gift limitation (it was).

This also points to the other major critique of codes of conduct. They generally are designed to address only minimal forms of ethical behavior. By almost exclusively emphasizing what *one should not do*, there is little emphasis on what public officials should do. As an example, the OGE Standards of Conduct Regulations only address seven of the fourteen principles of ethics in the executive order. All but one of these is focused on negative behaviors and emphasizes the minimally acceptable behavior of employees.<sup>31</sup>

### ***The Context of Codes:***

Having explored the positive and negative aspects of ethics codes and codes of conduct, it is important to note that there are no "pure" models. Most governments are on a

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<sup>29</sup> **Casuistry** (argument by cases) is an attempt to determine the correct response to a moral problem, often a moral dilemma, by drawing conclusions based on parallels with agreed responses to pure cases, also called paradigms. Casuistry is a method of ethical case analysis. Another common everyday connotation is "complex reasoning to justify moral laxity or to forward unspoken agendas."

<sup>30</sup> For example, the term "particular matter" is defined in detailed in several places in the regulations and is "refined" in 33 opinions between 1990 and 2003. This does not include opinions from the previous decade.

<sup>31</sup> The one interesting exception here is what is referred to as "Impartiality" (5 CFR 2535.501-503). In reality it is an appearance of conflict of interest test. Although it is a prohibition in one sense, it does raise a series of ideal standards of employee behavior against which employees can measure their actions.

continuum between ethics codes and codes of conduct. The public management context is critically important. A 1997 study showed the relationship between managerial systems in several countries and the use of ethic codes (integrity based) and codes of conduct (compliance based). As Figure 1. demonstrates that although more developed countries lean toward ethics codes, rather than codes of conduct, the stage of development is not determining. Other variables such as the population of a country or its public service regime might be more likely to explain their success.

***Public Administration:***

Both ethics codes and standards of conduct must have a context. One of the most important elements is an effective system of public administration. This does not mean that a sophisticated public administration system must exist before these codes can be effective. In some cases, the codes have been used as a catalyst to build a modern public administration system. Slovakia, for example, focused on ethics standards as a way to reengineer their entire public service system.<sup>32</sup> There is no one right way to do this, but it is clear that codes rely on solid public administration systems to be effective.

Most often development experts interpret the word “effective” as meaning a merit system. As I have previously argued, merit systems can be important but are often not as significant as other critical elements.<sup>33</sup> Public administrators must believe that they are part of a profession with professional standards. In some cases professionalism is found in the public service, such as in France. The French public servant is trained and socialized from their university education

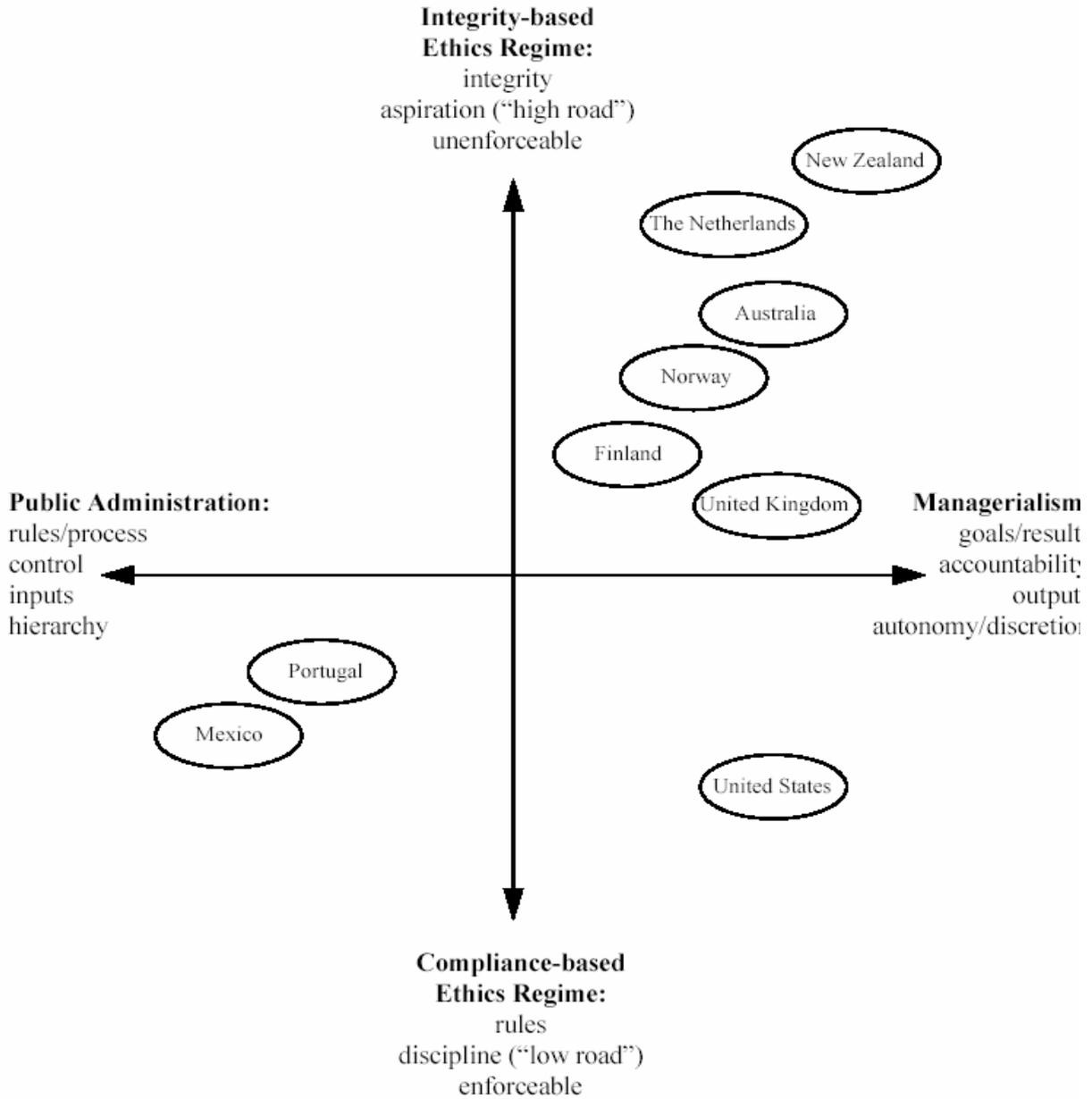
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<sup>32</sup> See [http://www.oalis.oecd.org/oalis/2003doc.nsf/LinkTo/GOV-PUMA\(2003\)23](http://www.oalis.oecd.org/oalis/2003doc.nsf/LinkTo/GOV-PUMA(2003)23)

<sup>33</sup> Stuart C. Gilman, “Contemporary Institutional Arrangements for Managing Political Appointments and the Historical Processes of Depoliticization: The Experience of the United States at the Federal Level and in Some States,” PREM Note, The World Bank, 2004.

**Figure 1: Countries by Overall Management and Ethics Regime<sup>34</sup>**

**CHART: COUNTRIES BY OVERALL MANAGEMENT AND ETHICS REGIME**



<sup>34</sup> "Ethics in Public Service: Current Issues and Practices", 1996; <http://www.oecd.org/dataoecd/59/24/1898992.pdf>

(Ecole d'Administration Publique<sup>35</sup>) to their placement in ministries as “public administrators”. It is viewed as a legitimate profession.

Australia and the United States are generally viewed as technocracies rather than bureaucracies. Public servants view themselves through their own professional standing: accountants, engineers, procurement specialists. Only when they rise to a senior level are they exposed to their “second profession” of public administrator in training centers like the Executive Education College or the Federal Executive Institute<sup>36</sup>.

Within successful public administration regimes there is a dynamic focus on socialization and communication to reinforce the notion of public service. This can include the swearing of a special oath when entering public office to regular training classes on what is expected of public servants. It can also include special recognition (awards and ceremonies) as well as “special” salary schemes, job security, benefits and even status. Socialization and rewards of public servants has been a concern of theorists for thousands of years.<sup>37</sup> In the end, much of the socialization is left to managers who must both model and articulate the expectations within the organization.<sup>38</sup>

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<sup>35</sup> <http://www.ena.fr/tele/lettredri/dossier.pdf>

<sup>36</sup> <http://www.mteliza.edu.au/sitemap.cfm> and <http://www.leadership.opm.gov>.

<sup>37</sup> This concern for the special status of public administrators and their ethical standards was special concern in many of the most famous political studies in antiquity. For instance Plato in Book III of The Republic goes on at length on how to train the Guardians – his public servants. They are to be told a “noble lie” that they were distinguished by being made of silver metal rather than the average citizen who was of bronze. They were to be forbidden to own property and their children would be raised by the state. They were to be educated to be “gentle to their own people and dangerous only to enemies, not unlike well bred dogs.”

<sup>38</sup> There is a vast literature in this area and a broad discussion would divert us from the main subject of this essay.

### ***The Legal Setting:***

Law, regulation and parliamentary or executive orders can be a critical part of an ethics regime. However, it cannot be the only part. Statutory and regulatory devices will sometimes add “weight” to a code in the sense that it will be taken seriously. However, that weight has less to do with the law as much as it is related to the implementation of the code. Institutions that both interpret and enforce the code are essential ingredients. A good legal foundation is important if it is clear, concise and enforceable. Missing any of these ingredients can actually make the code less effective, as in the case of the Philippines.<sup>39</sup> Philippine law provides capital punishment for “public plundering.” However, no one has ever been convicted, much less executed under the law. The impact is that it has lessened respect for any ethics rules or laws.

Law is often seen as the basis of ethics or standards code. In fact codes embodied only as law, and seen only as a law enforcement problem, tend to be the least effective. Former U.S. Supreme Court Justice Earl Warren wrote that “law floats on a sea of ethics.” It is the ethical foundations – in terms of culture and socialization -- that cannot be codified that makes law effective. A strictly legalistic framework can cause many institutional problems. For example, because such an approach deals with the minutia of a public servant's life it also tends to deal with trivial problems. Too much of a focus on the trivial can make practitioners feel that the rules are irrelevant.

This problem is made more difficult because most codes are drafted by attorneys, interpreted by attorneys and enforced by attorneys. A single minded legal approach can dilute ethical behavior because it seems to have less to do with personal responsibility than a detailed knowledge of the law. Lawyers are taught to view problems through a paradigm; that is specific

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<sup>39</sup> [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2001/09/07/000094946\\_01090705104026/Rendered/INDEX/multi0page.txt](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2001/09/07/000094946_01090705104026/Rendered/INDEX/multi0page.txt)

lens. That lens can be very useful in a legal context where detailed and complex rule making is important.

But, law is designed to prevent certain behaviors by public servants and is detailed to prevent discretionary abuse by prosecutors. The saying “if the only tool you own is a hammer, every problem looks like a nail” fits perfectly here. Many lawyers are beginning to understand this problem. As William Widen recently wrote: “In crafting rules governing conduct...employ general principles rather than to draft rules of technical and complex nature. Compliance with...rules has a...tendency to replace more general notions of right and wrong...Principles constantly challenge those seeking to comply to look to themselves for guidance when making difficult decisions rather than finding refuge in a technical safe harbor.”<sup>40</sup> Widen, as a professor of law, makes a strong case for the argument that traditionally trained lawyers have the wrong “tools” to create effective ethics codes.

Having argued this, it is nonetheless true that a solid legal foundation is very important in implementing effective codes. But codes cannot simply be legalistic formulations. Successful codes integrate law, institutions, organizational culture and socialization to maintain high standards for public employees.

To further complicate the issue there continues to be a debate between those who argue for simplicity – the British Committee for Standards in Public Life – and complexity – the U.S. Office of Government Ethics. In the former case the system relies heavily on professionalism and aspirational values to guide behavior. In the latter, there is a reliance on detailed examples to refine and guide a public official’s behavior. There is no one right way. However the

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<sup>40</sup> William Widen, “Enron at the Margin,” *The Business Lawyer*, Col. 58, May 2003, page 1002.

absolutely wrong way is to produce a code of conduct with no institutional fabric. Codes as mere pieces of paper posted on a wall can actually do more mischief than having no code at all.

***An Assessment Model:***

Codes are not self implementing.

Printing a code of conduct and placing it on a wall, is not implementation. There must be an institutional fabric for developing the code, communicating it, interpreting it, training or education on the code, enforcing it and assessing it. A recent global study of ethics systems identified eight discrete elements of these programs that are used by governments around the world (See Exhibit 5.). Each of these elements can be expressed differently in organizations. But together they form a whole cloth of prevention and make the code operational as part of the organizational culture.

In designing codes attention must be paid to the text of the code and transparency systems being developed. For example, elements within effective asset declaration forms are always tied to a value or principle in the code. Simplifying administrative procedures and opening government processes through “freedom of information” laws and rules can also be based on a robust ethics code.

Training, communications, counseling and control should all be tied to the codes text. This is important both cognitively and emotively because, however discrete these elements are, they will look like a single piece from the point of view of those using it. When done effectively this establishes trust in the public service, reduces rumors and builds confidence in the public. Hotlines (telephone or web-based systems to report misconduct) have gained a great deal of popularity. However, from an effectiveness and efficiency point of view they have minimal

## Exhibit 5.

<b>Discrete Elements of Ethics Systems<sup>41</sup></b>	
a) Codes of Conduct	
b) Transparency systems	
	<ol style="list-style-type: none"><li>1. Simplification of administrative procedures</li><li>2. Elimination of secrecy</li><li>3. Financial or interest disclosure / asset declaration</li></ol>
c) Training Systems	
d) Communication Strategies	
e) Counselling	
f) Whistleblower hotlines & Help lines	
g) Control/Enforcement	
	<ol style="list-style-type: none"><li>1. Criminal code</li><li>2. Conflict of interest code</li><li>3. Post-employment code</li><li>4. Ombudsmen</li><li>5. Audit agencies</li><li>6. NGOs</li><li>7. Media</li></ol>
h) Independence	

impact.<sup>42</sup> Experience in a number of countries, and large multinational corporations<sup>43</sup>, suggests that the technology is much better used as a “helpline”. The idea of a helpline is to answer

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<sup>41</sup> Stuart C. Gilman and Jeffrey Stout, “Assessment Strategies and Practices for Integrity and Anti-corruption Measures In the Public Service,” to be published in “How to Assess Measures for Promoting Integrity and Preventing Corruption in the Public Service,” OECD, Paris, forthcoming, 2005.

<sup>42</sup> See Maurice Moody and Beth Serepca, “IG Hotlines: Have they been good? At what Cost? What has been lost?” in *The Journal of Public Inquiry: A Publication of the Inspectors General*, Spring, 1998, p. 9-12 available via URL: <http://www.ignet.gov/randp/jpisp98.pdf>.

questions about issues involving the application of the code or laws. In the vast majority of cases there is simply a misunderstanding about what the rules cover or what the act entails. This process does two things: it gives government employees and the public “real time” feedback and allows the government to target problem areas.

Supporting systems also play an important role. It is not necessarily the case that all of these must be in place. Rather, an effective system must have both a legal framework and institutions that support it. Ombudsman and audit agencies seem obvious. Less obvious are the role of the NGOs and the media. The non-government sector has a vested interest in being a watchdog for integrity, as does the media. The ability for governments to use information derived from both of these sectors can make integrity processes both more effective and less expensive. For example, publicly available asset declarations allow the NGO community and the media to do the search for assets not declared on the form. And, subsequently, government officials who know these forms will be made public are far more careful about filling them out accurately.

Finally, attention must be paid to the independence of the commission or agency in charge of implementing the code. Independence is a tricky concept. On the one hand the office must be independent enough to objectively and fairly interpret and enforce the code. On the other hand, the notion of complete independence is a chimera. It is of value that the entity with this responsibility is effectively connected to the political and administrative structure so that it does not lose the political will supporting its programs. The question of balancing independence

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<sup>43</sup> Carrie Penman, Everything You Wanted to Know About Helpline Best Practices: Results of the 2004 Survey of EOA Sponsoring Partners, paper presented at the Ethics Officers Association Meeting, Scottsdale, AZ, October, 2004.

with political effectiveness, and the assessment of the reality of that balance, is important to answer on a regular basis.

In sum, each of these elements can be assessed individually. This is important because the idea of evaluating a codes' effectiveness seems both abstract and daunting. The parts that make up the code, and its support structure, are far easier to evaluate. Ultimately, the ability to assess effectiveness will have an impact on political will and long term political support. Therefore, assessment strategies should be built into the design of the program and not developed as an afterthought. Assessment strategy must be a critical part of how we think about successful ethics codes and codes of conduct.

### **III. The Organizational Environment and Effective Codes:**

The discussion in Section II focused on the critical elements in a code and some of the elements that lead to success. The perspective will now change to look at the organizational environment and the behavioral issues raised by social psychologists.

#### ***Integrating Codes into Existing Organizations:***

Whether one is adding a new code or refreshing an old code it is important to have an understanding of the culture in organizations. There have been a variety of devices used to understand the ethical of the governmental culture used by Korea, New Zealand, South Africa and Puerto Rico. There are dozens of examples of cultural evaluations accomplished by departments or ministries. These can be used in a variety of ways. But they are primarily focused on how well codes of conduct or ethics codes are working, and how well the institutions supporting the code are functioning.

These kinds of surveys can give an overarching perspective of ethical values and allow administrators to understand the pressures to commit misconduct and the rewards necessary to encourage right conduct in an organization. However, they seldom give a sense of the distribution of opinion in an organization. We know from a variety of studies that adults can approach ethical issues from a range of different perspectives. Perhaps the best known research was a thirty year longitudinal study of the moral development in children conducted by Lawrence Kohlberg at Harvard University.<sup>44</sup> Although there has been criticism of his work, none of the critiques deny that adults in a general population vary in their stages of moral development. (See Figure 2.) Researchers have found that there are statistical distributions of adults across all six of his developmental stages. Each stage presents discrete issues in code implementation. This work has been expanded to apply to public administration by Debra Stewart and Norman Sprinthall. They have developed the Stewart-Sprinthall test and applied it to understand the distribution of ethical development in Russia, Poland and the United States. The diagnostic suggested that each country required different elements within either an ethics code or a code of conduct.<sup>45</sup> The variance was based on differing hierarchies of values (not different values) and historical experiences.

## **Figure 2. Kohlberg's Stages of Development of Moral Values**

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<sup>44</sup> Lawrence Kohlberg, *The Philosophy of Moral Development, Moral Stages and the Idea of Justice*, Vol. 1., New York: Harper Collins and Lawrence Kohlberg, *The Psychology of Moral Development: The Nature and Validity of Moral Stages (Essays on Moral Development, Volume 2)*, N.Y.: Harper Collins, 1984.

<sup>45</sup> Stewart, D. W., Sprinthall, N. W., and Shafer, D. M. 2001. "Moral Development in Public Administration." In T. L. Cooper (ed.), *Handbook of Administrative Ethics*, 2nd ed. New York: Marcel Dekker, 457-480.

The importance of this work, as well as the social psychology research at the Center for the Study of Ethical Development at the University of Minnesota,<sup>46</sup> has contributed several key

<b>Level</b>	<b>Self Perception</b>	<b>Stage</b>	<b>Values</b>
<b>Preconventional</b>	<b>Outside Group</b>	<b>1. Obey or pay, punishment orientation.</b>	<b>1. Confused with physical objects.</b>
		<b>2. Self (and sometimes others') satisfaction.</b>	<b>2. Instrumental to needs of possessor; egoistic</b>
<b>Conventional</b>	<b>Inside group</b>	<b>3. Win others' approval by helping them.</b>	<b>3. Based on empathy of family or group.</b>
		<b>4. Law-and-order approach. Doing one's duty.</b>	<b>4. Authority and Social Order Maintaining</b>
<b>Postconventional</b>	<b>Above group</b>	<b>5. Respect individual rights. Accept critically examined values.</b>	<b>5. Contractual or Legalistic</b>
		<b>6. Act with logically developed and universally accepted principles.</b>	<b>6. Principle orientation</b>

elements to understanding what must go into an ethics code and why they work. First, because individuals approach ethics problems with “different” lenses a code must be able to address multiple levels of meaning.<sup>47</sup> Some individuals only want to know “what will happen to them” if they violate the code; others want to understand the rule; while still other want to know what principles underlie the rules. Good codes address all of these levels.

<sup>46</sup> Rest JR, Bebeau MJ, Volker J (1986): An overview of the psychology of morality. In (Rest JR, ed.): Moral Development: Advances in Research and Therapy. Prager Publishers, Boston, pp. 1-39.

<sup>47</sup> Nobel Laureate Amartya Sen characterizes this as an epistemological problem in development: “The connection between epistemology and ethics can be very powerful, and this is part of the interdependence of the world in which we live. Ignorance and incomprehension are enemies not only of science, but also of the practice of ethics.” (Speech, Ethics and Development Day, (InterAmerican Development Bank, Washington, DC, January 11, 2005.)

Secondly, empirical research at the University of Minnesota strongly supports the notion that ethics can be taught. Because of this codes must persuasively address the range of approaches public servants use to analyze ethical questions. A good code then becomes the foundation for good pedagogy. Ethics education (or training) programs become far more effective if they are based on codes that can be understood, and analyzed, at several different epistemic levels.

It is also important to weave the new code into the pre-existing fabric of the organization. That is, the new code must be accompanied by any necessary changes to institutions, conduct penalties, civil service rules or legal regimes. There must be special care to account for values that have been added or are now not part of the code, as well as behaviors newly added to be unacceptable or behaviors that are now acceptable. The most common mistake in launching a code is the assumption that the code stands on its own. Codes have a dynamic relationship in government and care must be taken to avoid confusion and ineffectiveness that could result from code revision.

***Using Codes to Re-engineer or Reform Governments or Ministries:***

For many organizations the process of revising a code is an excellent time to re-engineer or reform administrative structures and processes. Code revisions can also be used to refocus the vision or mission statement of the organization, because the values in the code often are a foundation for how people in the organization see their responsibilities. Singapore provides a clear model of this.<sup>48</sup> They can also be used to define what a professional civil servant is. In many transitional countries it has never been clear who public officials worked for and what their responsibilities are. In a recent study of Eastern European countries, one scholar found a

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<sup>48</sup> <http://www.cpib.gov.sg/aboutus.htm#CodeofConduct>

significant number of these countries used ethics code revisions as the backbone to civil service reforms.<sup>49</sup> Estonia, Hungary and the Czech Republic are examples. This is not to suggest that all of these efforts were successful, but rather to view this approach as a viable strategy.

Many scholars in public administration have previously argued that one must have a sophisticated legal system and a merit based civil service before you can even discuss the creation of ethics codes. The practical reality is that at times the code can be used to help create a legal system and a merit based civil service. In other words codes can be catalysts for reforms or the reforms can be a catalyst for creating codes. It is not a one way relationship, but significantly depends on the environment in the country.

Well-designed codes can also be used as a management tool. Often managers in transitional countries have difficulty directing public servants because they have not made the socio-psychological shift to a public service model. Codes can often be clear articulations of new professional standards. In India, Lithuania, Slovenia and Argentina codes include the obligation to obey the law over the orders of a manager, and to respect citizen's rights. Each of these can give leverage to managers who are trying to direct a public service in transition.

In a broader sense codes can also be used to help re-engineer organizations. By involving employees in the design of codes, institutional weaknesses also are revealed. Ethical values can be used as a public service lens in this redesign, focusing on the key values the government wants to promote and the behaviors it wants to prohibit. This has a highly symbolic value for both government employees and stakeholders (citizens, contractors, etc.) in the public system because it can clarify assumptions about the roles and activities of government. For example, in many transitional economies in Eastern and Central Europe there continue to be assumptions

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<sup>49</sup> Jolanta Palidauskaite, "Codes of Conduct for Public Servants in Eastern and Central European Countries: Comparative Perspective" <http://www.fernuni-hagen.de/POLALLG/EGPA/Papers/Paliskaudaite.pdf>

about the government ensuring full employment. By emphasizing what government does in a free market, codes can help clarify the new role of government.<sup>50</sup>

Codes that are used to re-engineer government often require legislative participation. This can be a very positive way to engage legislators. Most legislators oppose re-engineering or reorganizing government because it shifts power both within the legislature, and in some cases away from the legislator. However, very few legislators will condone corruption in public administration (they are usually less scrupulous about the actions of their own colleagues). Using a new code of conduct or ethics code as a vehicle to re-engineer government institutions is a far more palatable approach. Additionally, codes can be used as an organizational road map so that changes in the institutions address risk and vulnerability to corruption.

### ***Learning from the Private Sector:***

Although it might seem counter intuitive, there are strong parallels between ethics codes and regimes in the private and public sectors. Most notably publicly traded companies often times have to comport to specific ethics standards if they are to be traded on any of the country specific or international trading systems. In the United States the Sarbanes-Oxley Act (2002) requires all companies that are publicly traded to have an ethics regime, including an ethics code. This has had a clear impact not only on U.S. companies but on most multi-national corporations. Less well known are the Sentencing Guidelines for Organizations.<sup>51</sup> These are guidelines to judges who must take into account an effective ethics regime if companies are convicted of

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<sup>50</sup> As an anecdote to support this point, in the mid-1990s I participated in a anticorruption conference for prosecutors in Romania. Among other presenters, was Judge David Levy a distinguished U.S. federal jurist. One of the questions directed to him was what to do about a person who had bought a diesel engine plant from the government and went bankrupt. Wasn't that a form of corruption? Levy responded "No, that's capitalism. In my district in California, one out of every three business go bankrupt each year." The prosecutors generally seemed stunned by this response.

<sup>51</sup> The Commission proposals were made to Congress on 30 April 2004 and took effect automatically on 1 November 2004, when Congress did not pass legislation rejecting them. At the time of this writing, the Commission's description of its intent can be found at [http://www.ussc.gov/2004guid/RFMay04\\_Corp.pdf](http://www.ussc.gov/2004guid/RFMay04_Corp.pdf).

violations. This is a very innovative way of forcing companies to include ethics and corruption prevention as part of their risk management strategy.<sup>52</sup> These U.S. laws track remarkably well with the private to private corruption concerns in the United Nations Convention Against Corruption (2003)<sup>53</sup> as well as the U.N. Global Compact for corporations.<sup>54</sup>

The public is most familiar with corporate ethics failures: Enron, Boeing and Worldcom in the U.S., Parmilat and Global Crossing in Europe, as well as several others around the world. These failures were spectacular in that they involved billions of U.S. dollars in investors' money as well as the loss of hundreds of thousands of jobs. In many of these companies there were ethics programs, and it is beneficial for our purposes to understand why they failed.

Enron is a classic case in point. They were only concerned about the "rules" and not about the "values" in the organization.<sup>55</sup> They had a code of conduct but it was by and large ignored but senior executives always had a reason as to why they did not apply to them. The code was taken so lightly that the Board of Directors of Enron voted to waive the code of conduct for Jeffrey Fastow; a decision that led to the bankruptcy of the company. Enron had a whistle blower hotline directly to their CEO Ken Lay. The problem is only a handful of people used it. After all as a government employee, if you suspected your boss of doing something wrong, would you report it to the Prime Minister? Enron was a disaster waiting to happen.<sup>56</sup> Many of these organizations suffered from a common malady. They focused on very narrow conduct, exempted senior officials, had no legitimate way of enforcing the code, and operated in a culture that encouraged unethical behavior.

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<sup>52</sup> For a discussion of how this system works see Lynn Sharp Paine, "Managing for Organizational Integrity," *Harvard Business Review*, March-April, 1994, pp. 106-117.

<sup>53</sup> [http://untreaty.un.org/English/notpubl/Corruption\\_E.pdf](http://untreaty.un.org/English/notpubl/Corruption_E.pdf)

<sup>54</sup> <http://www.unglobalcompact.org/Portal/Default.asp>

<sup>55</sup> See Tom Donaldson's statement at <http://www.sia.com/publications/pdf/MarketShareMarch03.pdf>

<sup>56</sup> See Donaldson's editorial in the *Academy of Management Review*, <http://www.aom.pace.edu/amr/EdComJly03.pdf>

The good news is away from public scrutiny most large corporations are integrating vibrant and creative ethical codes in their organizational culture. In terms of ethical administration Royal Dutch Shell has one of the most sophisticated ethics systems in the world.<sup>57</sup> They require each country director to report annually in writing to the chair focusing on ethical problems and ethical success within their own country. These reports are the result of a series of ongoing analyses that cascade upward through the organization. Each country director has an ethics officer whose responsibility is to maintain an ethical culture within the organization.

Lockheed-Martin Corporation reacted to a scandal more than twenty years ago by creating a broad, sweeping ethics system throughout its organizational structure. The former CEO of Lockheed is Norman Augustine who has become an outspoken proponent for the value of ethics codes and ethics systems within companies. He not only created an ethics office that reported directly to the CEO, but committed to annual, dynamic ethics education for all employees. In addition, for the past decade Lockheed has conducted a biennial survey of its employees to understand the pressures they feel to commit misconduct.

As a final example, MCI has emerged like a Phoenix out of the ethical disaster at Worldcom. The foundation for that revival has been its ethics code referred to as its Guiding Principles. (See Exhibit 6.) The entire communications strategy, both internal and external has been built on these values. Michael Capellas, MCI's CEO has raised the role of ethics officer to be a member of the senior management team.<sup>58</sup>

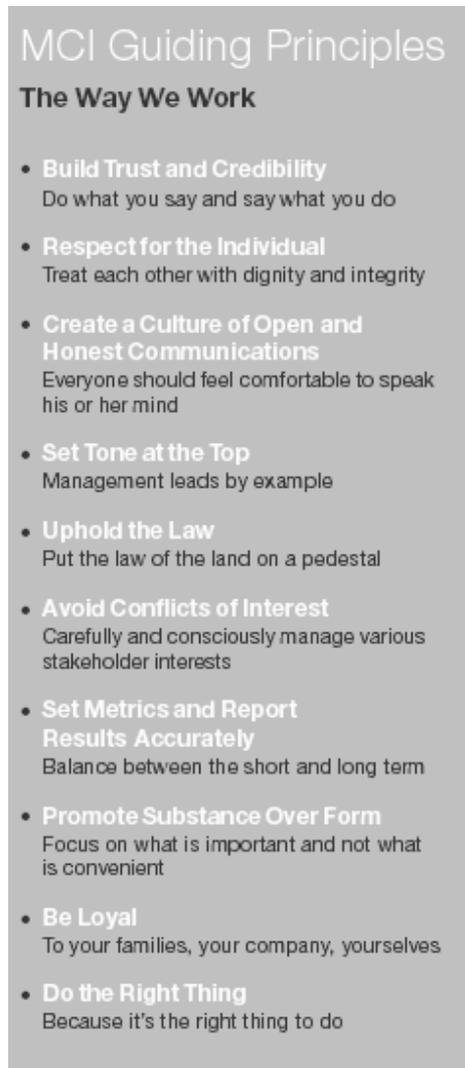
It is worthwhile mentioning the experience at the Boeing Corporation where they had (and have) a very sophisticated ethics system. In a company of over 100,000 employees it took only four of them to lose almost \$9 billion in contracts. Two of the employees received

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<sup>57</sup> <http://www.shell.com/html/investor-en/reports2003/st/g/g6.html>

<sup>58</sup> [http://global.mci.com/about/governance/values/Ethics\\_Tr\\_Br\\_Web.pdf](http://global.mci.com/about/governance/values/Ethics_Tr_Br_Web.pdf)

## Exhibit 6: MCI GUIDING PRINCIPLES



confidential information about a competitors bid on a procurement and handled the material inappropriately. And a senior vice president and the former head of procurement for the U.S. Air Force colluded in ensuring a lease agreement. Even when there are sophisticated ethics systems you cannot prevent all misconduct. Good ethics systems manage and minimize the impact of “bad actors,” but they cannot eliminate them.

There are lessons to be taken into the public sector. Good ethics systems must emphasize principles as well as rules. You can design ethics codes that make individual managers responsible and assess them in effective ways. You can recover from corruption scandals by real commitment to effective ethics programs. You can, as Boeing has done, make ethics counselors in the organization more independent by creating a career path for them to follow. This is not to suggest that these corporations will not have ethics problems in the future. Rather, it is valuable to take away the “good” practices from corporations that might fit into a public service setting. And, it is reasonable to suggest that some corporate models or elements might make a better fit in some organizations or governments than models taken from other public service entities.<sup>59</sup>

#### **IV. An Emerging Set of *Good Practices*:**

It is always tempting to argue that there are best practices in anticorruption and corruption prevention regimes. The development and use of codes has not reached that level of sophistication.<sup>60</sup> However, there are enough indicators of successful strategies to suggest worthwhile tools and approaches for practitioners.

##### ***What Goes into a Code?***

###### ***The Professional Setting:***

Good practice requires that effective codes must have an environment that nourishes them and allows them to develop. This environment is created by leadership. In the public sector there are two types of leadership required: political leadership and administrative

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<sup>59</sup> The Ethics Officers Association represents a group of ethics officers in businesses with offices throughout the world. See: <http://www.eoa.org/home.asp>

<sup>60</sup> A “Best Practice” is usually defined as a *detailed strategy* that has been *effectively implemented* over a long enough *period of time* to *assess its effectiveness*. Ethics codes and codes of conduct might include several, but not all of these elements.

leadership. Political leadership is important to the successful implementation of codes. Without support of the senior leadership within a country it is very difficult to get codes taken seriously. Obviously, this is a role for a prime minister, leader or president. And, they must give their support to the code for face validity. However, this is not enough. There must be senior political leadership with the task to champion the code within the government. They must have both the authority and public ties to the most senior levels of government.

In addition, there must be champions<sup>61</sup> within the public service who are responsible for ensuring the political will gets translated into administrative behavior. This can be done through a variety of methods. For example, it could be a standard by which senior ministers and administrators performance is evaluated annually.<sup>62</sup> This can also be accomplished by either a central authority appointing an official to be responsible for ethics in the ministry or making the ministry responsible for appointing a high level official. There is no one right way to accomplish this, however it is essential that at both the political and administrative levels there are senior officials who are champions of this process.

One model is the Korean Independent Commission Against Corruption (KICAC).<sup>63</sup> Since its formation three years ago it has been an aggressive champion of ethical behavior within both the public sector and private sector. KICAC's current Chairman, Mr. Soung-jin Chung, has been a very public champion of ethics in Korean society. Although there has been little time to evaluate the effectiveness of the Korean strategy, its very public leadership will be an interesting model to follow.

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<sup>61</sup> This is a term the Canadian government actually uses, and makes it a public functional responsibility. See [http://www.hrma-agrh.gc.ca/veo-bve/activity\\_sectors/bvesec\\_e.asp](http://www.hrma-agrh.gc.ca/veo-bve/activity_sectors/bvesec_e.asp)

<sup>62</sup> See Kirsi Aijala, "Values and Ethics in Finnish State Administration,"

<sup>63</sup> [http://www.kicac.go.kr/PORTAL/Eng/About/about\\_01.jsp](http://www.kicac.go.kr/PORTAL/Eng/About/about_01.jsp)

A word is necessary about what “makes” an ethical leader. A great deal of research has been done on what ethical leadership entails. Unfortunately, most of these studies are from the private sector. Professor Linda Trevino has completed broad ranging empirical research in this area.<sup>64</sup> These studies suggest that there is far more to being an ethical leader than just being a good person. It also requires more than obeying the law. Ethical leaders are advocates for integrity. They speak about ethics, keep their promises and seek feedback on the organization’s culture. They ensure that ethical behavior is rewarded and transgressions are dealt with appropriately. They see their role as the **Chief Ethics Officer** in the organization.

### ***The Social and Cultural Setting:***

An ethical public service requires both conducive social and cultural settings. A large part of this setting is having a professional, merit based public service. However, it also requires an environment where the public servant’s managers and peers act ethically. It is almost impossible to have an effective ethics code in which public servants believe that their peers are acting unethically. In addition, the organizational culture must encourage an environment where individuals feel it is acceptable to raise ethical issues. For example, is it necessary to inform the public before spraying insecticide in an urban to kill mosquitoes that may potentially cause disease? In ethical organizations employees who might believe the government has the right to do this, have the right to question the ethics of spraying without giving the public the right to have input. For example, both New Zealand<sup>65</sup> and Japan<sup>66</sup> have expended resources to focus on

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<sup>64</sup> Brown, M. E. & Treviño, L. K (2002). Conceptualizing and measuring ethical leadership: Development of an Instrument: *Academy of Management Proceedings, 2002*, pp. D1-D6.; Treviño, L. K., Hartman, L. P., & Brown, M. 1999. Executive Ethical Leadership: Ethics Officers' Perspectives. Presented at Annual Academy of Management Meeting, Chicago, IL.; Treviño, L. K., Hartman, L. P., & Brown, M. 2000. Moral person and moral manager: How executives develop a reputation for ethical leadership, *California Management Review*, 42(4): 128-142.; Treviño, L. K., Weaver, G. R., Gibson, D. G. & Toffler, B. L. 1999. Managing ethics and legal compliance: What works and what hurts. *California Management Review*, 41(2): 131-151.

<sup>65</sup> <http://www.e-government.govt.nz/docs/vendor-oct-understanding-gov/chapter5.html>

<sup>66</sup> <http://www.jinji.go.jp/rinri/eng/detail1/main.htm>

both the social and culture settings for ethics administration. Further, both governments have used the social setting and culture of the organization as a starting point for implementing their ethics codes.

***Writing the Code:***

Good practice suggests that when writing a code it is important to get information from throughout the organization and government, and sometimes the public as well. Writing a code is often viewed as a legal issue with the text issuing from the top of the government or the organization. For Codes of Conduct this can be a marginally successful strategy, especially if it is woven into an overall reform of the public service. It is marginal in the sense that Codes of Conduct will only be able to reflect behaviors that are unacceptable without reference to the public service environment. Many governments begin with this kind of code with the intention of expanding it to include a code of ethics at a later date. For example, the preamble of the recently revised Italian Code of Conduct states:

The principles and contents of the present code constitute exemplary specifications of the requirements of diligence, faithfulness and impartiality that characterize the correct performance of the employee's work obligations. Public employees – excluding military personnel, the state police and the prison police, magistrates and members of the State Legal Advisory Office – shall undertake to comply with them upon the act of their engagement for service.<sup>67</sup>

This statement makes reference to broad principles but the text is almost exclusively a list of prohibitions. Because it was part of a broad restructuring of the government personnel system it does work as a first step.

In many instances a survey of the ethical vulnerabilities in a government can serve well to inform what the content of a code should be. Ideally, information on the content of the code should come from the bottom up. Some organizations use employee surveys, stakeholder

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<sup>67</sup> <http://www1.oecd.org/puma/ethics/pubs/ItalianCodeofConduct.pdf>

surveys, focus groups and other mechanisms to get a sense of what values are inherent in the public service. The Ethics Resource Center has published one of the few guidebooks on how to write a code.<sup>68</sup> It emphasizes the importance of employee involvement and how to assess if you have successfully ascertained it.

The Czech Republic used a survey instrument to derive a hybrid code<sup>69</sup> that both exhort positive ethical action as well as clearly identifying prohibitions. At the federal level in the United States the Standards of Conduct – because of the Administrative Procedures Act – was published as a proposed rule requiring a commentary period. The Office of Government Ethics (OGE) received over a thousand comments. They had to publish responses to these comments as a preamble to the final regulation explaining why they accepted or rejected the suggestions. And, in fact, they left an entire section (on professional associations) as “reserved<sup>70</sup>” because so many negative comments had been received. In both cases, open commentary allowed the governments to adjust codes to more adequately reflect the culture in their respective departments and agencies.

There is no ideal mix between principle and detail in ethics codes or standards of conduct, other than one emphasizing the former and the other the latter. The mix is best determined by evaluating the social pressures and organizational culture. The biggest danger is in emulating what another government has done, and assuming that it will work by sampling translating it into a different language. Although a bit unfair in its criticism, the Nepalese Code for Elections and Officials<sup>71</sup> an NGO has suggested that it reflects many issues that are not

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<sup>68</sup> ERC. *Creating a Workable Company Code of Ethics*, Washington, DC 2003 (www.ethics.org)

<sup>69</sup> <http://www1.oecd.org/puma/ethics/pubs/Czechcode.pdf>

<sup>70</sup> It has been reserved for more than a decade. See 5 CFR 2635.806.

<sup>71</sup> <http://www.election-commission.org.np/8.html>

relevant to national circumstances. This results in mandates and prohibitions that are confusing to both candidates and citizens.

### ***Communicating the Code:***

Good practice suggests that codes be written in the context of a communications plan. Communications strategies are often an after thought when new ethics codes or codes of conduct are released. Without effective communication a code, no matter how good it is, can lead to great cynicism among government officials and the public. There are a number of very successful mechanisms that have been used to bring a code into effect; not only legally but in the public mind. Often government officials use a special event to launch an ethics code. This can serve several purposes. First, it sets in everyone's mind a date certain for the code to take effect. If done well, it shows leadership commitment to implementing the code. And finally, it sets markers or standards for public expectations.

Some might view a communications strategy as a cynical way to manipulate public opinion. But, ethics codes and the institutions created to implement them must begin to develop the public's trust. Part of developing this trust is providing concrete information to those who will use and those who will be impacted by the code. Effective communication is the only way to deal with what Gunnar Myrdal has characterized as the "folklore of corruption." This refers to "people's beliefs about corruption and the emotions attached to those beliefs, as disclosed in the public debate and gossip."<sup>72</sup> This perception of corruption, enlarged in some ways by the TI index and the reports coming from the World Bank BEEPS, must be directly confronted. Avoiding communications issues, no matter how effective the code and implementation, can

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<sup>72</sup> Gunnar Myrdal, "Corruption as a Hindrance to Modernization in South Asia," in A. Heidenheimer and M. Johnston (eds.), *Political Corruption: Concepts and Contexts* (3<sup>rd</sup> Edition), New Brunswick, NJ: Transaction Publishers, 2005), p. 267.

actually undermine their ultimate purpose: Giving the people confidence in the integrity of the governmental institutions.

The mechanisms can vary as widely as the programs. Some governments have used massive publicity campaigns, utilizing print, radio and television. Others use administrative announcements. A few governments have held large events wiring in key cities around the country. Still others remain silent.

Effective communication is also critical to keep ethics codes alive and vibrant. As an example, the Office of Government Ethics in Puerto Rico (OGEPR)<sup>73</sup> used a massive census of public employees to revitalize the public's interest in their code. They used the legislative requirement as a method of creating greater interest in the code as a series of expectations for government employees. The OGEPR uses a code that leans heavily toward the fundamental values of public service. The agency used both print and electronic media, additionally taking advertisements in both, to urge the completion of the survey by public servants. This also served to remind the public that there were ethical expectations for public servants. The responses from the public service was overwhelming, almost 65,000 employees filled out the instrument.

The public response was positive as well. A story in one of the most prominent Latin American business journal wrote:

The landmark survey on ethics included the confidential responses from 62,605 government employees -- a 25% response rate from the 250,000 questionnaires distributed to those working in central government, public corporations, and municipalities. The findings, strong in some areas, and showing need for improvement in others, included the following: Key Finding: Employees recognize the existence and the need for ethical standards and values. \* Nearly all survey respondents (98%) agree that the government must hold its employees to the highest standards of ethical conduct.<sup>74</sup>

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<sup>73</sup> <http://www.oegpr.net/newsite/main.htm>

<sup>74</sup> <http://www.hispanicbusiness.com/news/newsbyid.asp?id=13291>

Coverage for this survey was positive and widespread both in Puerto Rico and throughout Latin America. It also allowed the Office to revitalize the impact of its code by targeting weaknesses and strengths, shifting resources to meet needs.

Part of this strategy should include the business community as a separate communications target. The reason for this prominence is that businesses are most directly impacted by any new code regulating the behaviors of government officials. The most cynical view of the business community is that it is filled with greedy individuals waiting to corrupt politicians and civil servants. In reality, businesses are often victims – sometimes willing victims – in this rent-seeking process. The economic reality is that corrupt creates uncertainty, sometimes intolerable uncertainty. Additionally, those involved in business see the street level problems most clearly. Therefore, including the business community early in code development both gets them to have ownership of the process and ensures that the code takes into account the broadest range of behaviors.

Good Communications strategies are planned ahead of time and focus of measurable goals. They take advantage of the emotive element in ethics. If done well they can re-invigorate the public service with a sense of professionalism, pride, responsibility to the public, and value for their own public service work.

### ***Education rather than training***

Good practice suggests that in writing a code a decision has to be made as to whether it is designed for employees to be trained or educated on its content. For many governments the tendency, especially if they have codes of conduct, is to train on the rules. Those supporting this

approach would argue that familiarity with regulations would allow public employees to know what is expected of them, and where to look up the rules if they are unclear. In systems with a great deal of complexity, the emphasis might simply be on giving enough information to a government worker so they can ask a question of an ethics official. This can work for some employees, but many find such training presentations too detailed, repetitive and irrelevant for their work. Positive evaluations of these training programs depend on the personality of the trainer rather than the content of the training.

Some ethics programs have adopted a very different approach emphasizing education rather than training. This is not a mere semantic different. Rather, they don't start with specific rules – even if they have codes of conduct. They begin instead with general principles, using the rules as examples. The emphasis is that the rules are simply the beginning point, the behavior that no public employee should descend below. The notion of education emphasizes reasoning from principles. A prime example of this approach is the Canadian Office of Public Service Values and Ethics. Their education mission is quite clear:

Serves as a leader in research and development of training and information material on values and ethics in association with the Canadian Centre for Management Development and the Public Service Commission; serves as a catalyst in order to sensitise public service managers to the ethical considerations of management and leadership in connection with policy issues by playing an active role on regional, functional and departmental committees; and promotes the exchange of best practices between departments.<sup>75</sup>

The emphasis is on educating public servants as partners in creating an ethical culture. The behavioral objective is to encourage those in the civil service to ask ethics questions, and to have managers see this as a natural part of their day-to-day work.

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<sup>75</sup> [http://www.hrma-agrh.gc.ca/veo-bve/activity\\_sectors/bvesec\\_e.asp](http://www.hrma-agrh.gc.ca/veo-bve/activity_sectors/bvesec_e.asp)

In both approaches, training and education, the object is to effect behavior. Because of this successful training or education strategies will have evaluative components. There are a variety of instruments to test ethical knowledge and changes in organizational culture. The Finnish government uses an Ethics Barometer, the OECD has proposed a Tool Kit for Government Ethics, and South Africa has undertaken a regular survey of the ethics conditions of public service.

***Breadth vs. Specificity:***

Good practice requires those writing codes to clearly understand the tradeoffs between breadth and specificity. Codes can cover a variety of behaviors. They most often emphasize the values of impartiality, democracy and obligations to citizens. They deal with conflicts of interest and acceptance of gifts. They often refer to the disclosure of confidential information and the abuse of the public's trust. They can also include a broad array of other questionable behaviors from sexual bribery to abuse of the environment, from public plundering to the use of the color red.<sup>76</sup> Although there are some common ethical values and standards of behavior that cross cultures there are no universal set of code elements. The best codes are tailored to the government and organizational environment within each country.

In some instances there is a tendency to make codes too broad. If ethics is everything than it usually has an impact on almost nothing. Many NGOs push very hard to include policy ethics into the framework of administrative ethics. This distorts the purpose of ethics codes – guiding administrative behavior – into having civil servants monitor and change the policies of

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<sup>76</sup> In several far eastern cultures red is the symbol of death and it can be used to intimidate citizens or other political or administrative leaders. For example, see <http://www.election-commission.org.np/8.html>.

government. Advocates have urged that considerations for the poor, illegal immigrants, rain forests, tribal rights, circumcision of women, water quality, air quality and the right to sanitary facilities be put into codes for administrators. As important as these issues might be they distort the purpose of ethics codes to the point that they are confusing and put political leadership in the position of quietly undermining them.

On the opposite end of this spectrum there are governments that try to make their codes far too narrow focusing only on conflicts of interest, or worse very narrow legal definitions. The codes can also focus on just one aspect of government administration, e.g. elections. For example, Chinese Taipei's code focuses almost entirely on elections.<sup>77</sup> This is not to suggest that election codes are unimportant, but that there is a vast array of other administrative ethics elements that could be included. Narrow codes are often justified by suggesting that they are more easily enforceable. Actually, narrow codes can be as difficult to enforce as codes that are too broad depending on who interprets them and the institutional fabric supporting the code.

Finally, there is a continuing debate as to whether codes should focus on external or internal behaviors. External behaviors would be issues such as conflict of interest or treatment of citizens. Internal behaviors would be issues such as sexual harassment or inappropriate preferences in hiring. Some governments and organizations insist on separating these with different codes and sometimes even different organizations for enforcement. For example, the government of Pakistan has separate codes for a variety of different purposes.<sup>78</sup>

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<sup>77</sup> [http://www1.oecd.org/daf/asiacom/countries/index\\_CTP.htm](http://www1.oecd.org/daf/asiacom/countries/index_CTP.htm)

<sup>78</sup> <http://www.nab.gov.pk/Downloads/Doc/NAB%20ORD%202002.pdf>

Experience has shown that no matter how detailed the terms of reference are for the codes and the institutions supporting them in practice they usually bleed together. This artificial separation then leads to “turf wars” between those responsible for each element. This further leads to either lack of enforcement, or what can be referred to as “super enforcement.” In the latter case, agencies competing will enforce the most trivial of cases to demonstrate their competence. Therefore, although a logical case can be made for separating internal and external behaviors, in practice it both confuses public employees and makes it harder to enforce codes.

When writing codes “the devil is in the details”. Whether developing text for an ethics code or a code of conduct, there must be a balance between specificity and breadth. Good codes are manageable by the average government employee. Hong Kong’s Independent Commission Against Corruption is a model in this area.<sup>79</sup> It focuses on clarity and communication of standards rather than having complex and difficult legal elements to follow. On the other hand, the U.S. Office of Government Ethics focuses on intelligibility for a specific class of government employees: ethics officials, usually lawyers. Although the USOGE has tried to develop more public service friendly materials, the emphasis on legal specificity in the Standards of Conduct has limited the effectiveness of those efforts. Even pamphlets summarizing the code for the average government employee contains detailed legal analysis.<sup>80</sup>

There is always a difficult balance between technical sufficiency and clarity. The balance should take into account who the audience is and what is the purpose of the code. Is the code primarily designed for guidance or enforcement? What is the expected behavioral impact and how are you going to measure it? How will you change the code to account for changes in the

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<sup>79</sup> [http://www.csb.gov.hk/hkgcsb/showdisplay.jsp?lang\\_iso=en\\_uk&page\\_no=1616](http://www.csb.gov.hk/hkgcsb/showdisplay.jsp?lang_iso=en_uk&page_no=1616)

<sup>80</sup> <http://www.usoge.gov>

organizational or governmental environment? These are just a few questions that must be answered in the process of code development.

### ***The Geography of the Code:***

The final “good practice” requires deciding on the geography of the code. That is, code planners must decide whether there will be one uniform national code, will there be multiple codes by geographic region (states, provinces, lande), or whether there will be individual agency codes. This initial decision, whether planned or accidental, will have an impact on the implementation of the code.

The question of geographic region is usually the easiest to resolve because it is usually determined by whether the government is a federal or a unitary systems. In saying this it is important to recognize that the “title” federal can be sometimes deceiving. Germany is technically a federal system, but all of their sub-governments come under the jurisdiction of federal law. The U.S. and Canada have both strong national codes, as well as having widely varying codes for states and provinces. (The Council of Government Ethics Laws is an excellent resource in seeing the wide variety of different codes used and programs designed to support them in the U.S. and Canada.<sup>81</sup>) On the other hand Australia’s states have had a twenty year history of codes<sup>82</sup> and enforcement while the federal government has just proposed a law in late 2004.

There is an unresolved debate as to whether agency codes are more effective than government wide codes. The argument for government wide codes is that they are less

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<sup>81</sup> <http://www.cogel.org/>

<sup>82</sup> <http://www.icac.nsw.gov.au/>

confusing because they are consistent throughout all government agencies. Before 1992 the U.S. used a model code allowing agencies to modify it to their needs. This resulted in vast differences from agency to agency. For example, before 1992 the acceptance of a cup of coffee was a punishable offense in the Department of Defense where State Department employees could accept gifts up to \$220. The President's Commission on Ethics Law Reform recommended that a single, uniform set of standards of conduct be adopted by the government.<sup>83</sup> This standard put into regulation in 1992 ensured that a government employee moving from one agency to another, or being put on detail in another agency, knew exactly what behaviors were expected of them. Advocates argue that this is especially important with the overall environmental changes occurring in civil services around the world, such as re-engineering, privatizing and "contracting out."<sup>84</sup>

There are also strong advocates for agency or ministry specific codes. These individuals rightly point out that the varying missions and makeup of government subunits often create distinctive ethics problems. They point out that a ministry of health confronts a whole series of different ethical challenges than a ministry of customs. A generic, government wide code might be so general that no one could apply it to the kinds of questions street level bureaucrats have to confront. India is probably the best example of having codes and institutions broadly decentralized.<sup>85</sup> Utilizing the various anticorruption institutions they have a variety of ministry, and even sub-ministry, codes. Advocates for decentralized codes also point out that it is easier to

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<sup>83</sup> The President's Commission on Ethics Law Reform, "To Serve With Honor," U.S. Government Printing Office, Washington, DC: 1989.

<sup>84</sup> For an overview of this problem see: S.C. Gilman, "Public Sector Ethics and Reinvention: Realigning Systems to Meet Organizational Change, *Public Integrity*, Spring, 2000.

<sup>85</sup> [http://www1.oecd.org/daf/asiacom/countries/index\\_ID.htm](http://www1.oecd.org/daf/asiacom/countries/index_ID.htm). Look specifically at the number of agencies with anticorruption responsibilities and view the varying codes that are associated with each.

get input from line employees in a specific department and they subsequently feel that they have had a hand in developing the code. This sense of “buy in” can be very important in prevention because public servants will feel more obligated to pay attention to values and/or rules that they had responsibility for creating.

Taking these positions into account will allow governments to decide what would be most effective for their own country. Again, there is not a single right answer but rather only a well considered solution.

## **V. Under Girding the Ethics Code:**

### ***Important Systems:***

Effective codes require implementation. Some officials have been quoted as saying that ethics codes or codes of conduct ought to be self implementing. For anyone who has worked in public service this statement is at best naïve. Implementation requires systems. Codes that exist in an administrative vacuum are often used as weapons against enemies rather than as something that enhances the ethical culture. There are some excellent systemic designs globally.

Codes require an organization or organizations to write them, to interpret them, to educate employees about them, to enforce them and to assess them. These can take a number of different forms.

The Independent Commissions Against Corruption (Hong Kong, Korea, New South Wales) have the broadest institutional mandates. They act as a fourth branch of government having oversight responsibility for the executive, legislative and judicial. In addition, they play a critical role in ensuring that business, especially companies that do business with the government, have strong ethics codes.

A slightly different design is the new French Service Central de Prevention de la Corruption.<sup>86</sup> Its terms of reference are incredibly broad yet administratively it operates with only a very small number of administrators who are on detail from other agencies. Its mandate not only includes the public service, but trade activities from plumbing to electrical, sports and even pharmaceuticals.

A still different institution can be found in British Commonwealth Countries which tend to emphasize values over rules. Excellent examples of this are the Committee for Standards in Public Life (Great Britain), the Treasury Board (Canada) and the State Services Commission (New Zealand). There are differences between these offices, but they share more in common than they differ. One interesting variation in Canada is the addition of the Office of Ethics Commissioner (which used to be the Office of the Ethics Councillor until 2004).<sup>87</sup>

One final example is the U.S. Office of Government Ethics which has a number of distinct features including a distinct separation from the enforcement function, the ability to hold agency or department heads responsible for their ethics program, and – as has been mentioned before – the ability to issue informal advisor opinions.

Additional examples from Asia and the Pacific Rim are available on the joint Asian Development Bank and OECD website.<sup>88</sup> This site has both laws and institutions for more than 25 countries in the region.

The residual question for almost anyone trying to understand what makes ethics programs successful is what systems are really necessary? For example, in our discussion there has been hardly a mention of transparency, and transparency systems. Yet these are often viewed as vital.

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<sup>86</sup> For example, see its 1999 Report, <http://www.justice.gouv.fr/publicat/scpc9899.pdf>

<sup>87</sup> <http://strategis.ic.gc.ca/epic/internet/inoec-bce.nsf/en/oe01456e.html>

<sup>88</sup> [http://www1.oecd.org/daf/asiacom/countries/index\\_KR.htm](http://www1.oecd.org/daf/asiacom/countries/index_KR.htm)

Most practitioners in the ethics field believe that systems must be in place to support the code. Using transparency as an example, this could be solved by simply requiring the government to publish regulations or require a comment period before regulations can go into effect. In many cases implementation of a code appears to require declarations of financial assets. Most countries require disclosure, but this really begs the question. Because in implementation the questions of what is to be disclosed, who is to disclose (not only the individual but their family), how often should they disclose and what is actually done with the disclosures is more important than the commitment to disclose.

An example from a transitional country was that the ethics office required only the top two thousand senior government officials to fill out a declaration of assets form. When only a handful filled out the form by the deadline set by the office, the countries executive officer in order to avoid embarrassment issued a decree that all employees of the government had to file. The Office of Ethics was in such a Spartan environment that they could not bring the hundreds of thousands of forms inside because the floor would not support them.

In another transitional country disclosure of assets forms had to be filled out but they were never reviewed. They were locked away and the only way they could be released is if a three judge panel unanimously recommended their access to the president. And the president could then decide if there was enough concern to release the forms to a prosecutor or to the public. Yet in South Africa, the Registrar of Members Interests actually publishes the forms of the internet annually.<sup>89</sup>

Again the model for these systems must fit the culture and structure of the government. The key to their success is they must be legitimate and independent exercises.

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<sup>89</sup> <http://www.pmg.org.za/docs/2004/appendices/040824funding.htm>

### *Elements to Support the Code:*

There are some who will argue that a code, especially an ethics code, needs no interpretation. Its principles are self-evident. Much like self-implementing codes, the idea that an application of a principle is self-evident ignores reality. The social psychological literature including Piaget, Kohlberg and Foucault, supports a far more uneven interpretation of even the simplest principles. As an example, if Kohlberg, or his critics, are correct there is a significant body of individuals in any large organization who need authoritative interpretation of codes. Most governments with ethics codes try to offer some authoritative advice. For example the Office to Counter Corruption in Thailand<sup>90</sup> sees the advisory function as critical. Some governments provide the advice verbally, others provide it in writing. Some governments bind investigative and prosecutorial authorities to respect opinions given by the ethics office if the employee has fully disclosed his or her problem.

There is usually an authority to decide hard cases; that is cases that appear to have two or more principles or standards that conflict. Most often these are resolved by a senior judicial panel. However, in some countries – such as those with ICACs – such interpretations are left to those offices. Who is responsible for the ethics code in an agency? Some governments make the head of the agency the responsible official, while others appoint an official to oversee ethics in the agency. There are good arguments for either approach, again fitting the culture of the government and the society.

Ethics training or ethics education are not a “one time” inoculation. Experience suggests that ethics instruction is perishable. People forget. Circumstances change. Responsibilities increase. Laws and regulations are modified. For that reason, most rigorous ethics regimes

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<sup>90</sup> <http://www.nccc.thaigov.net/nccc/eng.php>

embark on a strategy that emphasizes regular ethics exposure. Almost all countries require new employees to undergo some sort of training. Some emphasize regular (annual or semi-annual) programs for senior officials, for those who must fill out asset declarations, or for officials in especially vulnerable positions (e.g., customs or tax).

Effective ethics systems have ways to modify or amend ethics codes or standards of conduct built into the system. This can be unilateral by the agency or by appeal to the executive or legislative. Codes are organic and organizations that do not have regular means of revision are often confronted with out of date and irrelevant standards.

Finally, even the most value laden ethic code need a means of enforcement. Again referring to the social psychology literature, there will always be a cadre of individuals in a large organization who are motivated to be ethical because they are afraid of being punished. Certainly, no government wants this to be the prime motivation for public servants. But clarity about who investigates, who punishes, what the punishments are, ensuring that what ever is decided occurs in a timely manner, is essential for effective implementation of a code.

## **VI. Codes That Work and Codes That Don't**

### ***A Code Matrix: From State Capture to Full Differentiation***

This monograph has discussed a variety of discrete elements that go into making a code successful. In addition, the discussion has focused on the development of particular processes or systems that appear to have an impact on code success and failure. Although simplistic, the Development Matrix (Figure 3.) does provide the official on the ground a quick picture of how elements of codes relate to one another. The matrix is a natural extension of the work by Gray,

Hellman and Ryterman on the relationship between state capture and administrative corruption.<sup>91</sup>

This is not to suggest that these are “ideal types” of administrative systems, but rather they are descriptive of elements that are generally found together. In the matrix the transition from state capture to public-private differentiation is the independent variable, or the element that explains variances in the nine different dependent variables.

It is also the case that many nation states, and sub-national governments, can be found in transition between elements in this taxonomy. A good example of this is the People’s Republic of China. It is moving away from state capture, but is at different stages within the various elements of the economy. Changes in the economy are also occurring at a high rate of speed. Because of this dynamic, the Ministry of Supervision<sup>92</sup> and the Procurator’s Offices<sup>93</sup> have had great difficulty in designing codes of conduct that seem to fit. Both have prevention responsibilities and have been trying to integrate their criminal laws with an effective administrative code. Many of their anticorruption mechanisms are not effective, and have only recently reached out to work with external organizations to find systems that work better.

Any generalization about what conditions are necessary for certain a type of code to develop is fraught with difficulties.<sup>94</sup> First, for every generalization it is easy to find an exception. Second, although a specific condition might be necessary, it might not be a sufficient condition. As an example, just because you have a moderately independent ethics commission

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<sup>91</sup> Cheryl Gray, Joel Hellman, Randi Ryterman, *Anticorruption in Transition 2: Corruption in Enterprise-State Interactions in Europe and Central Asia 1999-2002*, (Washington, The World Bank, 2002). See especially pp.31-32.

<sup>92</sup> <http://www.mos.gov.cn/Template/home/index.html>

<sup>93</sup> [http://news.xinhuanet.com/english/2003-08/19/content\\_1033224.htm](http://news.xinhuanet.com/english/2003-08/19/content_1033224.htm)

<sup>94</sup> Michel Foucault wrote an entire volume on the invention of typologies, ordering and matrices. He emphasizes that the logic of such devices are both culture and time bound. As an example, he gives **a typology of animals** from an ancient Chinese Encyclopedia: “Animals are divided into: (a) belonging to the emperor, (b.) embalmed, (c) tame, (d) sucking pigs, (e) sirens, (f.) fabulous, (g.) stray dogs, (h.) included in the present classification, (i) frenzied, (j) enumerable, (k) drawn with a very fine camelhair brush, (l) *et cetera*, (m) having just broken the water pitcher, (n) that from a long way off look like flies.” (*The Order of Things: An Archeology of the Human Sciences (Les Mots et Les Choses)*, preface)

does not mean that you have an effective ethics code. It will take several more elements to reach an effective tipping point. Finally, the matrix leaves the impression that codes, and accompanying systems, naturally develop as countries move from state capture to differentiation. This might be the case. However, the matrix is more “backward” looking than forward “looking”. Therefore, the matrix is probably most helpful as a descriptive rather than a predictive device.

It is important to discuss a few elements of the matrix to understand some of its implications. First, no country is purely “state capture” or “differentiation.” All states exist on a continuum between these two extremes. Countries that have significant state capture can have codes, but the codes have little effect. They are designed as “window dressing” usually to convince outside entities to provide political support or loans. Often the state will simply copy a code from the entity it wants to impress ignoring its irrelevance or impracticality. This often leads to failure. However, it is worth noting that even a badly drawn institutionalized ethics code

<b>Figure 3. ETHICS CODES AND CODES OF CONDUCT: A DEVELOPMENT MATRIX</b>						
	<b>State Capture</b>					<b>Full Differentiation of the Public and Private Sectors</b>
<b>Professional Public Service Expectation</b>		<b>Serve the State</b>	<b>Serve the Elite</b>	<b>Bureaucracy</b>	<b>Technocracy</b>	<b>Client Service</b>
<b>Type of Code</b>		<b>Legalistic-unenforced</b>	<b>Legalistic-selectively enforced</b>	<b>Law/Regulation</b>	<b>Law/values</b>	<b>Law/principles</b>
<b>Political Will</b>		<b>outside pressure</b>	<b>elite interests</b>	<b>Control</b>	<b>Managerial</b>	<b>Leadership</b>
<b>Origin of the Code</b>		<b>off-the-shelf</b>	<b>top down</b>	<b>legal/institutional</b>	<b>Legal/professional</b>	<b>Bottom up</b>
<b>Geography of the Code</b>		<b>Centralized</b>	<b>Centralized</b>	<b>Decentralized by bureau</b>	<b>Single code with variance by profession or agency</b>	<b>Decentralized by mission</b>
<b>Breadth</b>		<b>Sweeping; general; quasi-religious</b>	<b>Narrow; exceptions made for elites or as favors to elites</b>	<b>Focus on economic interests; fixed standards</b>	<b>Focus on behavior &amp; perception; ever expanding standards</b>	<b>Right fit to the organization; organic changes to fit changes in environment</b>
<b>Integration into Organization</b>		<b>None</b>	<b>Purely external</b>	<b>Internal controls</b>	<b>Professional standards</b>	<b>Organizational reputation and personal self-esteem</b>
<b>Communications Strategy</b>		<b>External</b>	<b>none</b>	<b>Minimal</b>	<b>Internal</b>	<b>Internal &amp; External</b>
<b>Implementation Strategy</b>		<b>Commission or Office with no authority – high visibility</b>	<b>Commission or Office with little authority – low visibility</b>	<b>Legal or Human Resources depts. (might have commission or office reporting to them)</b>	<b>Commission or Office with moderate independence for interpretation and implementation</b>	<b>Commission or Office with significant independence and ability to unilaterally exercise authority</b>

SOURCE. Stuart C. Gilman, untitled paper, winter, 2005. Reprinted by permission.

might be used instrumentally as the country begins to move toward differentiation. The institutional foundations and the code can be built upon, albeit carefully, to create more robust and effective public administration systems.

With dispersion of authorities to elites the system becomes more particularized, but also works to keep the elites in control. Employees in the public service quickly view the code as biased and capable of broadly divergent interpretations when applied to the average employee and those who are more favored. Ironically, this often raises a psychological consciousness about what a “real” code would do and how it would operate.

Bureaucracies, Technocracies and Client systems tend to reflect some of the management biases presented in Figure 1. (OECD, Management and Ethics Regimes) The ethics development matrix provides more detail and allows a more robust understanding of the code and institution development process. The change in the origin of the code from bureaucracies to technocracies, from legal/institutional to legal/professional, is especially important. In bureaucracies the code originates only from the state. In technocracies state codes compete, and are often modified, by professional codes. This dynamic often creates a sense of ownership for the code, ultimately recognizing the importance of broad participation in code development in the client stage.

It is worthwhile noting that a key element for effective implementation is the increasing independence and authority of the offices in charge of interpreting and acting on the code. The importance of independence, and its meaning, has been discussed earlier.

The matrix is hardly complete. It identifies only a few of the more important elements in effective code implementation. The logic of the matrix leads to as many questions as answers. For example, where do the sub-national systems fit into all of this? What is the tipping point in

these elements where the systems become institutionalized? Should developing countries try to move toward client based systems, or is there a relationship between economic development and these systems that would make bureaucracy an appropriate end point?

And, there are critical elements that do not fit into the matrix. Yet they have a profound impact on an ethics code's success or failure. A discussion of those elements follows:

***Codes that have Impact:***

In writing an ethics code the focus is usually on inclusiveness of concepts, legal sufficiency and satisfying critics. These are also usually the wrong elements upon which to focus. Codes that have impact usually begin by asking what the behavioral objectives are, what the organizational objectives are, and what the political objectives are.

Behavioral objectives have to be clear. What behaviors do you want to encourage and which do you want to discourage? Many codes result in unintended consequences because there was no clear vision as to the behavioral impact. In one instance the code prohibited accepting a meal worth more than fifty dollars. A public official accepted 61 meals from the same source, but none cost more than fifty dollars. The agency in charge of enforcement had to fall back on the legal cliché that it violated the spirit of the rules. With sufficient planning, anticipating behaviors is far easier than explaining what the spirit was meant to say.

Organizational objectives are also critical. Codes are designed to protect the reputation of the organization. What kind of reputation does the organization want to maintain? Codes that maintain conciliation, "caring" and responsiveness to the public might be fine for a Ministry of Health. But how would this kind of code impact a tax authority? Codes that are broadly applicable must take into consideration the integrity of the various missions that will fall under it.

Tax collecting organizations should be respectful but they must also be firm, they must demand honesty from not only public servants but from the public as well.

The reality of codes is that they have political objectives. Most codes are not instituted without a crisis. They are developed in response to a corruption scandal or pressure from external stakeholders – companies, citizens or even international organizations. How does the code meet the political objectives of the executive or the legislature? Codes that succeed align the function of the code with the purpose of the political leadership. The obvious “down side” to this is if the leadership is corrupt.<sup>95</sup> In the past, it has been suggested that political leaders will create anticorruption regimes and ethics codes to cover their own corrupt acts. A very specific example is when Carlos Menem, the president of Argentina, created the first Argentine ethics office. It is easy to fall into cynicism when it comes to political motives. However, globally most political agendas do want codes to change behaviors, sometimes even behaviors in which the political leadership has engaged.

Finally, codes that have impact do not promise too much. In one instance a Minister of Justice in an African country publicly promised that the new code would end corruption in his country. Nothing will end corruption. Pragmatically, the ideal is to control it so there is only a minimal impact on the government and the economy. Codes that have impact target specific areas of vulnerability, and demonstrate their value through concrete change. That change has to be focused upon because it builds the credibility of the code and the reality, and perception, that it is making a difference. It is important to note that reality and perception are not the same. As valuable as the Transparency International Index has been in motivating countries to develop anticorruption regimes, the correlation between perception and reality is imperfect at best.

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<sup>95</sup> The problem of corruption at the top undermines the popular theoretical perspective of “Principal-Agent-Client” because it presupposes the principal as ethical actor.

### ***Codes and Contexts:***

Our discussion of codes and agencies has focused on macro systems and macro change. However, there are excellent examples where ethics regimes have originated at the bottom and risen to affect the top. One important example is targeting an agency or an area of the country to be a model integrity program. In several countries, Lithuania and Chile notably, they have experimented with creating model agencies from their tax and customs service. They used these as models to motivate other ministries. In the best cases, these departments then compete with each other to see which ministry can achieve the highest ethical standing. NGOs often complete these evaluations such as *Transparencia por Columbia*.<sup>96</sup>

Sub-national programs (at province, territory or state level) also can have a considerable impact. In a classic study of Brazil, Judith Tandler provides six different case studies of government that worked at a sub-national level in sectors such as health, employment and agriculture.<sup>97</sup> Although her work is not focused on ethics programs, each of the successes she explores utilized either codes or implied codes, and regimes to motivate individuals to behave with integrity.

Mexico used a national model, SECODAM: *Secretaría de la Contraloría y Desarrollo Administrativo*, recently re-named *Secretaría de la Función Pública*, to act as a catalyst for change in the public service.<sup>98</sup> Its initial focus was on senior officials at the national level. The Fox administration came into office committed to controlling corruption in Mexico. It appears that he has succeeded at the most senior levels, but Mexico appears to still have a continuing problem at the street level. Government officials in Hong Kong, as was previously mentioned,

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<sup>96</sup> <http://www.transparenciacolombia.org.co/src/client/scripts/index.php>

<sup>97</sup> Judith Tandler, *Good Government in the Tropics*, Baltimore: Johns Hopkins Press, 1997.

<sup>98</sup> <http://www.secodam.gob.mx/index1.html>

felt that corruption was so pervasive that it had to create an entity external to any of the arms of government.

Successful strategies also take advantage of publicizing their successes. There is a natural tendency to avoid publicity in government organizations. However, for most ethics programs the success of their programs depends heavily on the perception of the public and the civil service. Their primary focus is to instill the confidence of their people in the integrity of their government.

Ethics offices also must create incentives. Some of these are nominal. There can be awards to agencies or to individuals for outstanding ethical standards in a given year. There can be financial rewards or professional awards. Several of the Nordic countries use the ethical environment in an organization as one component in deciding on promotions or remuneration. In order to encourage whistle-blowing the Korea ICAC can reward successful whistle-blowers with up to \$170,000 U.S.. But they also have the ability to prosecute individuals who report misconduct, fraud and waste without foundation or for vindictive purpose. This system has not been in effect very long, but it is being carefully watched to see if it is successful.

Finally, successful codes are supported by feedback. That is, there is a regular assessment of the successes and failures. This depends on both aggregate and survey data. Aggregate data such as the number of administrative actions taken or successful prosecutions not only helps administrators understand the effect of their program, but it also provides insights as to changes or necessary resource reallocations that might be necessary.

***Why Codes Don't Work:***

Codes fail most often because they raise unrealistic expectations. Although it will sound paradoxical, codes succeed because of their successes. Those successes must be targeted and

reasonable. If failures outnumber successes, there tends to be a spiraling effect where more and more violations seem to occur. The Philippines has experienced this spiral at least twice in the last decade. Ultimately, the code and the systems designed to implement it are deserted as one more demonstration of a country's failures.

In some instances, codes will also fail because they try to control too much. In one very controversial study of the New York City police department, the ethics regime was criticized because it made it impossible for the police to do their work. There were so many forms to fill out, regulations to follow, questions that needed to be asked that the police, it was argued, could not address crime.<sup>99</sup> Other researchers have argued that one of the unanticipated consequences of creating an ethics code is increasing public cynicism. Donald Menzel has argued that disappointment in an ethics code is inevitable and must be taken into account when designing ethics programs.<sup>100</sup>

After our discussion above, it should be obvious that effective ethics codes must have institutional support systems. What is less obvious is that too many support systems can make ethics codes unworkable. Because anticorruption regimes are usually created piecemeal, as events or problems unfold, it is not uncommon to have multiple entities with competing authorities and responsibilities. In India there are over a dozen primary offices that have responsibility for their public service code. In addition there are Banking and Insurance Ombudsman, and over 300 Chief Vigilance Officers.<sup>101</sup> In one organization, the proliferation of offices and committees responsible for interpreting ethics codes led to venue shopping. Dozens

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<sup>99</sup> Frank Anechiarico, James B. Jacobs, *The Pursuit of Absolute Integrity : How Corruption Control Makes Government Ineffective*, Chicago: University of Chicago Press, 1996.

<sup>100</sup> Donald Menzel, "Ethics Complaint Making and Trustworthy Government," *Public Integrity Annual 1996*, Council of State Governments, Lexington, Kentucky, pp. 73-82.

<sup>101</sup> [http://www1.oecd.org/daf/asiacom/countries/index\\_ID.htm](http://www1.oecd.org/daf/asiacom/countries/index_ID.htm)

of entities gave ethics advice. Employees would go to different people until they got the answer they wanted. This led to the perception that there was favoritism in the organization, because certain individuals “got away with so much.” In fact, the system allowed anyone to get away with whatever they wanted.

Another variable to explain why codes do not work is the potential shift of political will. Political leadership changes in democratic societies and with that change can come shifting policy agendas. It is not uncommon for new political leaders to either de-emphasize ethics programs or to criticize them as being ineffective. In the latter instance it is not uncommon to do away with the office and fire all of the people involved. For a number of legal reasons this is far more prevalent in Napoleonic Code countries. An example of this is Argentina which had three presidents, and two new ethics offices, within a two year period.<sup>102</sup> The result is that those mid-level administrators who have been interpreting the code, managing the transparency system or instituting training are replaced. The new organization must begin with little, having few individuals with the skills to manage the office and no institutional memory. And it takes several years to get a new system up and running.<sup>103</sup>

There are a number of other requisite elements necessary to support a code. There must be a viable legal system. A viable legal system does not have to meet the standards expected in many developed countries. Rather, there must be laws that deal with corruption, ways of adjudicating administrative violations, investigators, prosecutors and a judiciary with some independence. Nigeria has recently revamped their legal system to address the issue of

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<sup>102</sup> The three presidents were Carlos Menem, Fernando De La Rúa; Eduardo Duhalde. Each created a new ethics office, and the latter two abolished the earlier offices in favor of new systems they created.

<sup>103</sup> See the new website for the Argentine Ethics Office (now a function of an Anticorruption Agency): <http://www.anticorruccion.jus.gov.ar/>

corruption.<sup>104</sup> Admittedly these will vary widely in transitional countries but code failure is often associated with a huge gap in one or more of these areas. A recent report highlighted these problems in sub-Saharan Africa focusing on Mozambique, Nigeria, South Africa, Uganda, Zambia, and Benin.<sup>105</sup> The study found that South Africa and Nigeria were much further along in coping with gaps in their legal systems than the rest of the countries in the study.

Codes also fail if there is no notion of a professional public service. Codes can be used to build that professionalism. However, if the public employee's motive is not to accomplish their work, to serve their country or to further the mission of their agency then it will be very difficult to make a code effective. For example, in an interview with a mid-level public servant in Jordan recently he was asked what his job was. After exploring with him all the typical reasons for taking a government position, he dismissed them as irrelevant. His final response was "the only reason I took this job was to get my relatives jobs in the government." Although nepotism in certain countries can be condoned, it can not be the only reason for going to work for a government.

Contributing to professionalism in public service is the provision of reasonable salaries. Civil servants should receive a living wage.<sup>106</sup> In some countries the attitude by the politicians – and sometimes the populace -- is that these salaries are supplemented by gratuities, either in the form of small bribes or facilitation payments. Unfortunately, the combined payments seldom meet the living wage standard and public servants are forced to be ever more creative to simply

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<sup>104</sup> Government of Nigeria, *Governance and Corruption Diagnostic Study* (Abuja, Nigeria: 2003).

<sup>105</sup> [http://www.dec.org/pdf\\_docs/PCAAB198.pdf](http://www.dec.org/pdf_docs/PCAAB198.pdf). U.S. Government Accountability Office, "U.S. Anticorruption Programs in Sub-Saharan Africa . . .", 2004.

<sup>106</sup> The concept of a "living wage" can be a vexatious issue. My reference is to a salary necessary to put a modest roof over your head and feed yourself and your family. A number of countries do not provide this.

survive. In this kind of situation, usually in societies with a high degree of state capture, public employees do not take codes seriously. Their priority is survival, not public service.<sup>107</sup>

Codes also fail because they exclude the business community from development and implementation. The business community is intimately tied to success or failure of standards for public service. They provide a critical perspective in helping ethics offices understand both vulnerabilities in public service and effective rewards to motivate ethical behavior. In addition, it is not uncommon for some governments to require ethical standards in businesses that reflect those standards in government.<sup>108</sup> Having these two “systems” tied together can have a profound impact, even on those countries just moving away from state capture.

Two final elements explain why codes do not work. The first is that some organizations and countries take a code “off the shelf.” They simply take a code, and sometimes identical systems, from a country or organization they admire and make it their own. The lack of fit becomes evident to almost everyone but like the emperor’s clothes everyone is fearful to say that it is not working. Finally, codes fail because they get old. Old codes become irrelevant because of the dynamics in governments and organizations. They die because they no longer fit into the administrative culture. They become dated because of reorganization, changes in technology, changes in the legal structure or changes in international relationships.

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<sup>107</sup> The causes of low salaries for public servants as society’s become more democratic have been examined since de Tocqueville made note of them more than 150 years ago. However, in modern societies, especially moving from socialist or dictatorial state capture systems to more differentiated systems there is one cause that is generally ignored. The public service in these countries is bloated because the ideology had in effect guaranteed no unemployment. As the systems become more market driven, employment in the bureaucracy is used to minimize unemployment statistics. A reasonable claim could be made, and empirically examined, that reducing the size of the bureaucracy to actual needs would produce enough resources to bring public servant salaries up to a living wage.

<sup>108</sup> The ICAC in Hong Kong has the most sophisticated integration of public and private sector codes. This can also happen by sector. The Australian Defense Department requires contractors to adopt a standard ethics code if they are to do business with them.

### ***Lessons about Successes and Failures:***

Corruption prevention initiatives develop because of the commitment of political will. Political will eventually fades. Codes and systems to support them survive because of institutional continuity. In complex government structures what counts after political will fades is that the organization is viable and has authority. Part of this viability is effective, independent leadership in the organization. If no one is responsible for continuity during transitions of political authority, it is very difficult for organizations to maintain their effectiveness. Some governments form commissions while others appoint independent officers.<sup>109</sup> The key is that the leadership must be perceived as independent by the public and the media.

It is the case that codes can be used as a backbone to create modern administrative systems. However, this is the rare exception. Successful codes rely on an environment ready to nurture them. The public service might not yet be professional, but do the major of leaders and public servants want it to be professional; i.e., objective, efficient and responsible. Codes also have to be part of a broader context in government and civil society. Civil society can, and probably should, have an impact on the content of the code. Civil society must also believe that the institutions and leaders supporting the code are legitimately independent to uphold the standards the code articulates.

One size does not fit all. This should be clear from our discussions so far. Tailoring codes to organizational or governmental reality is a critical component in making them work. This can be done by receiving input in various forms: citizen surveys, employee surveys, focus

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<sup>109</sup> Independence is an elusive concept. There are very few instances of absolute independence. Even independent commissions can be influenced by external forces. In some countries the head of an ethics office, or commission on an ethics commission, will be appointed by the executive for a fixed term. Some countries additionally require the legislature to approve of the appointment. Further, some countries require that an executive file a public report with the legislature if an officer or commissioner is to be removed before their term expires. Each of these adds elements of independence.

groups, stakeholder analysis. Additionally, an analysis of available aggregate data can be highly suggestive as to vulnerabilities. Codes of ethics and standards of conduct can be justified in their own right, but from some perspectives they are a form of risk management. In tailoring a code, and motivating political will, persuasively arguing a risk management strategy can be very effective.

Finally, regular assessment is a key component in the ongoing success of codes. Assessment strategies usually rely on perception indicators, and these can be important. In addition, there should be attempts to account for aggregate data both outputs and outcomes. Output data is simply what institutions have done. For example, outputs would be how many times have they been called for advice? How many training sessions and how many people have been trained? Output data can be supplemented with outcome data; that is what have you accomplished? Aggregate data such as: How many administrative actions have been taken based on the code? How many prosecutions? Ultimately, regular assessment of the code, benchmarking standards, can be invaluable in ensuring that the code is kept relevant and that the public sees an ongoing commitment to high ethical standards for public servants.

This section has provided a sketch of what makes a code successful focusing on institutions, leadership and the environment. It should be obvious that there is no one right way to develop a code and ensure that it is viable. Nonetheless we have described the conditions that will nurture codes and circumstances that will lead to an early death. These conditions are malleable, and professionals in the development arena can help by providing guidance that will encourage success.

## **VII. Summary and Conclusion:**

### ***Major Findings:***

#### **A. The Complimentary Nature of Codes of Ethics and Codes of Conduct**

Much of the public administration literature sees a contradiction between codes of ethics and codes of conduct.<sup>110</sup> The pragmatic reality is that they can, and often are, complementary. There is an ideal continuum with ethics codes on one extreme and standards of conduct on the other. Most government codes have both types of elements. And there are examples of governments that have both a code of ethics and a code of conduct. For example Korea has both a “Public Service Ethics Act”<sup>111</sup> and a “Code of Conduct for Public Officials.”<sup>112</sup> The important point here is that effective codes have values to which public servants aspire and behaviors which are inconsistent with public service.

Ethical values and principles in codes must have both cognitive and emotive elements. They must appeal to reason, as well as the emotional content of patriotism, loyalty or professionalism. Effective codes of conduct focus on a manageable list of inappropriate behaviors articulated in a clear and concise manner. Both of these should be written for the intended audience, not specialists in the area. They must also have penalties associated with them that are appropriate and timely. Most successful codes have both administrative and criminal penalties. In the vast majority of ethics cases administrative penalties (demotion, salary reduction, and dismissal) are the most appropriate penalties. However, certain acts warrant criminal or civil penalties.

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<sup>110</sup> Willa Bruce, “Codes of Ethics and Codes of Conduct,” in *Public Integrity Annual* - 1996, Vol. I, no. 1, Lexington, Kentucky: Council of State Governments.

<sup>111</sup> [http://www1.oecd.org/daf/asiacom/pdf/korea\\_public\\_service\\_ethics\\_act.pdf](http://www1.oecd.org/daf/asiacom/pdf/korea_public_service_ethics_act.pdf)

<sup>112</sup> <http://www1.kicac.go.kr/Portal>

## **B. There is an institutional fabric associated with successful ethics codes.**

Most effective codes build on a public administration foundation. Laws and rules on human capital management, procurement, contracts, administrative procedures and their implementation add to the likelihood of a codes success. These are most often associated with a culture of integrity in the government and organization, creating incentives for doing the right thing, and clear and timely penalties for doing the wrong thing. This does not mean that the government has integrity, but that the conditions in the country are such the public servants and the public *want* integrity.

This culture of integrity is usually associated with a professionalized public service. Merit is an important element but strong integrity systems can offset the lack of merit based appointments in a fairly large number of positions.<sup>113</sup> This culture is supplemented by a strong sense of personal integrity. Organizational integrity and personal integrity are symbiotic, that is they reinforce each other. Many studies in public administration have shown increased performance and effectiveness when personal values and organizational values are aligned.

## **C. The Empirical Foundations of an ethics code:**

Codes are most often associated with normative values. However, empirical elements are just as critical to make codes viable. Institutions with code responsibility need the right tools to ensure they have an impact. Those tools can come in the form of laws, authorities or requirements. Sometimes it requires technology.<sup>114</sup> But to make the ethics regime sensible to

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<sup>113</sup> Stuart C. Gilman, Contemporary Institutional Arrangements for Managing Political Appointments and the Historical Processes of Depoliticization: The Experience of the United States at the Federal Level and in Some States, PREM Note, The World Bank, 2004.

<sup>114</sup> Frederick Herrmann, ABricks Without Straw: The Plight of Government Ethics Agencies in the United States,@ *Public Integrity Annual-1997*, Lexington, Kentucky, The Council of State Governments.

public servants they need to be tied back to the code. Disclosure of assets is a concrete empirical tool that can be used to illustrate how these can connect.

In many codes there is a provision that states “public officials shall not use their public office for private gain.” Some asset disclosure systems collect forms and require actions that seem to come from the whim of those who administer the disclosure system. If the code element is linked to disclosure it provides a rationale for why asset information is collected. As important, this tool gives the ethics official a way to proactively ensure that officials are not using their public office for private gain. The linkage between codes and empirical tools is essential if both are to be effective.

Assessment is also a strong, empirical link to successful ethics codes. There are a number of robust assessment strategies and several major research papers have been presented at conferences outlining these;<sup>115</sup> and are due to be published in early 2005. Without effective assessment strategies it is very difficult to maintain the long term continuity of ethics codes. Inevitably, either executive or legislative leaders will ask the questions: “How do we know it is working” or “How do we know we are getting value for the resources we are providing?” Being able to produce empirical data in response is vital.

#### **D. Sustainability of Programs:**

Ethics codes become more effective over time. The longer they are in place the more natural they seem to the public service environment. They also become integrated into the overall management structure and are seen by the public as an effective tool. However, codes also create friction. If there is not political will and institutional vitality to nurture its organic development, the code will have less and less impact. In many models champions are appointed

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<sup>115</sup> [http://www.oecd.org/document/54/0,2340,en\\_2649\\_33735\\_33700790\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/54/0,2340,en_2649_33735_33700790_1_1_1_1,00.html)

to keep this from occurring. Effective codes have sustainability strategies. Part of this strategy must be developing and maintaining both actual and perceived independence. Secondly, the temptation for new political leaders to recreate ethics codes as if there were none before must be resisted. Many leaders have won elections in part because they promised to clean up the corruption from the previous regime. It is not uncommon that the new leadership is either unfamiliar with the codes or laws, or both. Effective leadership in the ethics regime can allow these successful candidates to save face by suggesting amendments or restructuring, avoiding the common disaster of having to start over completely.

It is important to also recognize that the technical skills and management of ethics programs is difficult to develop and maintain. Code interpretation must be consistent and fair. Those involved in the process must be both knowledgeable of the code and precedents, as well as sensitive to the fact that leaders and administrators have an obligation to do their jobs. These can sometimes conflict, and ethics administrators must constantly balance confrontation and conciliation. Codes often are enforced at the most senior leadership levels. For that reason many ethics officers in both the public and private sector emphasize developing skills for managing upward. The other aspects of code enforcement, from disclosure analysis to education, also require professionals with technical skills.

This is not a program for amateurs. Often leadership for ethics programs will be selected for the wrong reason. The name “ethics” suggests that a theologian, a lawyer or a philosophy professor would be an ideal choice. These professional backgrounds are not a guarantee of success and in some cases might be a detriment. Someone who has worked in corruption prevention and who has a pristine reputation for integrity would be a more effective choice.

***Pilots to test the results:***

So far our discussion of codes has been a sketch of a variety of effective strategies. There is a good understanding of the dynamics of success and failure. But at this point there are no ideal models. In fact there are as many questions as answers: Should codes be instituted nationwide or in regions, or even cities? Is the best way to move toward corruption prevention creating codes and programs in one model agency generating an example that can be used government wide? Are commissions or agencies the best model? Are there cultural or geographic determinants that impact success? How do you create independence? What are the best means for assessing the effectiveness of codes?

These are only a few of the questions that need to be answered. One of the ideal ways of addressing these is by creating carefully crafted pilots in several different countries. The ideal pilot should be manageable (as discussed above) and an assessment matrix should be designed before implementation. In this way behavioral, organizational and political goals can be articulated and data can be collected to both evaluate the pilot. Working with political leadership on the importance of risk management in this area is important to obtain political will as well as identifying champions for the program.

Multilateral organizations can also contribute to the success of these pilots by developing a coherent product line. The notion of “toolboxes” has become a cliché in international development circles. It implies a “plug and play” mentality and codes and their supporting systems simply do not work that way. Rather, it would be helpful to provide product in the sense of clear alternate designs. Rather than using the metaphor of “tool” it would be far better to think of what can be provided as “architecture.” The building must occur in country, but

multilaterals can provide the alternative project designs. This could include a list of codes that have worked, and those that have not; with an explanation for both. The same could be done for offices and commissions, reporting systems, assessment strategies, etc. The idea would be to suggest workable designs and the expectation would be that each state, department or sub-state government would create a variation on the theme.

Pilots should be selected to give the widest range of cultural, political and geographic diversity. They should also be selected because of the nurturing environment and the political will necessary to achieve the goals of the pilot. Some attention should be paid to creating one or several pilots at the sub-national level. These can include an entire state or a ministry in one of the provincial sub-units. The key is to provide the widest possible diversity in the environments for the pilots.

One pilot should specifically test the notion of a ministry or agency as an “island of integrity.” Although this concept is used most often in a different context, the notion of isolating one discrete government entity and providing it with the conditions for success is both intriguing and valuable. Looking at other programs in large organizations, the success of an “island of integrity” can breed a competitive spirit with other departments. The result is that governments can significantly raise the bar of integrity in the public service by having ministries compete with each other for having the highest standards. This can be both encouraged and assessed by developing “score cards” or grades using an outside entity to evaluate how each department is doing each year.

It is also obvious that these pilots will need key technical support from outside organizations. Much of the support can be done electronically via the internet (if available) but

in person support will probably be necessary to resolve major problems and maintain political champions and sponsors.

There should be a pre-test assessment model that links all of the pilots together. Ultimately this model should produce benchmarks for success from the various models. Gathering this information from these models will allow a great deal more confidence in predicting the success of regimes in a variety of different cultural, political and geographic circumstances. By gathering real-time information through this matrix, the pilots should also be able to minimize unintended consequences.

***Conclusion:***

Ethics codes and codes of conduct were considered esoteric luxuries for public service only a few decades ago. Today most international anticorruption agreements include them as an essential ingredient in corruption prevention measures. Effective codes and the ethics regimes that support them are now recognized as an essential part of a modern public administration. Codes and values are the glue that holds all of these systems together. Without integrity it is impossible for public programs to be effective, much less efficient and fair.

If the role of multi-national organizations is to help in the development of transitional societies, then effective code development must be one essential part of a long term strategy. This paper provides the concepts, tools and engines that are necessary to move this process forward. But the next step is to provide the engineering to see how all of these parts fit together. This is an opportunity to get at corruption at its roots and in the most efficient manner. Successful codes are one of the keys. As Victor Hugo wrote

***Mightier than the tread of great armies, is an idea whose time has come.***