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CORRUPTION CONTROL AND MONSTERING
GOVERNMENT AGENDAS, COMMUNITY EXPECTATIONS AND THE ICAC SOLUTION[1]

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INTRODUCTION

In 1818, the Governor of the Chinese province of Shansi reported the case of Chan Lin who, while gatekeeper for the district magistrate, maintained "external criminal connections". Using his position he endeavoured to get a money changer to accept for exchange more than 300 ounces of sub-standard silver. Upon being rebuffed he took steps to have the moneychanger locked up.

The Board of Punishments (which was a senior court of appeal in China during that period) held that because the act differed in no way from extortion as practised by rapacious government underlings, it would be improper to show leniency to the accused simply because he did not succeed in gaining an unfair pecuniary advantage. In this regard personal servants of an official would be punished on the same scale as minor government functionaries. [2]

This example of what might be termed public corruption raises several interesting issues which will be developed in this paper. Initially there is the composition of corruption, centred as it is on financial advantage, and a property rights perspective. The broad criminal offence based categories which determine the illegality of such behaviour include bribery, extortion, intimidation, pecuniary malfeasance, and malpractice.

An essential factor in the criminalisation of corruption is the application of sanctions. Of particular significance in this process are the relationships of special privilege, and fiduciary responsibility. And in any consideration of appropriate responses to corruption will arise strategies for its investigation and control.

What determines that the impact and perception of corruption will be unique is what I will describe as "making monsters". Quite simply this refers to the interpretation and translation of certain advantage centred relationships into a focus for community apprehension and concern. The omnipresent threat represented by public corruption needs to be understood not only in terms of its social reality, but also through the political processes which manage it.

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1 Paper delivered at a public seminar entitled "ICAC: Lessons From the First Twelve Months", convened by the Institute of Criminology at Sydney University Law School, 29 August 1990.

2 See Bodde, D. and Morris, C., *Law in Imperial China* (1967) pp 423-424.

Finally, the orchestration of community expectations about corruption and its control, as well as the institutional satisfaction of these, merit examination in order that the definition, sanction, representation, and reaction issues might be viewed in a community context.

Throughout this paper I will draw on experiences from several different community settings. This should not be viewed as any attempt at cross cultural analysis. I have emphasised previously for example, that "the acceptability appropriateness and potency of any institutional response to corruption depends on a recognition that such a response will be bound to reflect the community out of which it emerged".[3] While some general motivations behind monster making and corruption are universal, one needs to be cautious in drawing general conclusions about even the public perception of corruption[4] from the experience of individual cultures and communities.

CRIMINALISING CORRUPTION

The relationship between individualised criminal liability, and incidents of corruption is often taken as given. Manifestations of corruption are seen in terms of behaviour which might otherwise stand as elements of a criminal offence. This is not to say that corruption is synonymous with criminality, but rather that they are represented as being inextricably linked. And the pre-conditions for state initiated responses flow from this. The consequences of such an association are obviously those attendant on the process of criminalisation more generally.[5] Corruption is at the same time criminal, more than crime, and major crime. It is unique, meriting purpose designed investigation and control options, but its perpetrators are no more than criminals and should be treated as such.

In his second reading address on the Independent Commission Against Corruption Bill, the Premier of New South Wales echoed such a contrary position on the nature of corruption; ". . . corruption is by its nature secretive and difficult to elicit. It is a crime of the powerful. It is a consensual crime, with no obvious victim willing to complain".[6]

A somewhat free ranging approach to the conceptualisation of corruption as a crime is clearly facilitated by the reluctance of law makers to profer tight definitions of what is corruption. They prefer instead to put forward behaviour or offence typologies which will constitute corruption in certain circumstances, rather than have a crack at a comprehensive delineation. In Hong Kong for example, the principal statutory weapon of

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3 Findlay, M., "Institutional Responses to Corruption: Some Critical Reflections on the ICAC" (1988) 12 *Criminal Law Journal* 271.

4 See Grabosky, P., "Citizen Co-Production and Corruption Control: Community Ideas and Roles in Combatting Corruption", paper presented to the Fourth International Anti-Corruption Conference, Sydney, 1989.

5 See Findlay, M., "Organised Resistance, Terrorism and Criminality in Ireland: The State's Construction of the Control Equation" (1984) 21-22 *Crime and Social Justice* 95-115; Ditton, J., *Controlology: Beyond the New Criminology* (1967).

6 New South Wales Legislative Assembly, *Hansard* 26 May 1988 p 678.

"corruption busters" is the Prevention of Bribery Ordinance. No where in this instrument is there any direct reference to corruption however, although it does detail a wide range of practices which may constitute an "advantage".[7]

The legislation which established an ICAC in New South Wales takes a very broad sweep at the meaning of corruption. Section 8 talks of "adverse effects on the honest and impartial exercise of official functions", "the dishonest or partial exercise of any . . . official functions", "breaches of public trust" and the "misuse of information or material . . . acquired in the course of an official function". These are further reduced down to offence designations such as bribery, obtaining or offering secret commissions or perverting the course of justice. While corrupt conduct may be constituted by any of the twenty-five offence typologies listed in s8(2), s9 indicates that the statute's concept of corruption is not fundamentally tied to the criminality of the behaviour in question and may be satisfied by what might otherwise by considered a disciplinary offence.

The use of such a grab-bag of offences, and the partial identification of corruption in a generic sense, will obviously allow the anti-corruption agencies considerable leeway in their efforts to criminalise the corrupt. One definitional theme which is consistant in various representations, is that corruption relates to the criminal abuse of public trust, for gain.

It is essential for the monster making process that the social reality of corruption remain unspecified. It is also useful that reactions to the criminalisation of corruption, particularly the application of legal sanctions, should range from virtual scapegoating, to what Morris and Hawkins refer to as "overreach".[8] This will mean that in future, when it comes to political answers, almost anything goes.

THE AVOIDANCE OF THEORY

What enables this open-ended approach to corruption, so susceptable to, and ripe for political manouvring, to develop? A review of the critical analysis of public sector corruption (sparse as it is) reveals one telling explanation: the absence of any theoretical explanation of the dynamics of corruption. In stark contrast to this is the useful paper by Benson and Baden, "The Political Economy of Governmental Corruption: The Logic of Underground Government".[9] Essentially, they try to locate public sector corruption within the consequences of certain government strategies. Their arguments are a refinement of opportunity theory, which has a keen relevence for instances of corruption. Bersten and Hogg highlight dangers of ignoring opportunity when attempting to control corruption:

> There are many factors which influence the incidence and patterns of criminal activity beyond the predispositions of individuals. One is simply the opportunity structure that exists in relation to particular criminal activities. The point is of particular relevance in

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7 See Findlay, *op cit supra* n 3 at 273.

8 Morris, N. and Hawkins, G., *The Honest Politician's Guide to Crime Control* (1969) Chapter 1.

9 Benson, B. and Baden, J., "The Political Economy of Governmental Corruption: The Logic of Underground Government" (1985) 14 *Journal of Legal Studies* 391-410.

> relation to public corruption, for opportunities and temptations are shaped in crucial respects by the nature of the public office in question and specific organisational structures, modes of supervision, etc, attending it. The types of institutional conditions which provide opportunities and temptations to dishonest and corrupt practices and which might be the focus of inquiry and reform include the following: areas of low visibility decision making and unsupervised discretion; areas of decision making involving sizeable monetary transactions; public agencies and decision making entailing substancial interference into potentially lucrative private activities . . . or the regulation/licensing of lucrative private activities.[10]

Benson and Baden see the public official's control over private rights and benefits, which is endemic throughout developing bureaucracies, as the source of opportunity for both legitimate and illegitimate transaction. Opportunities for corrupt transactions are translated into reality due to certain incentives, via the exercise of discretion on the part of the corruptor and the corruptee. The simple identification of opportunity, it is their view, is only the first step in understanding the dynamics of corruption. Further it is essential to examine the relative strengths of incentives to participate in corrupt activities. Unfortunately the interrelationship between opportunity and incentive is not fully deconstructed before they embark on this second stage. But they do set the scene through an imaginative analogy with government, based on an analysis of property rights and market forces. They observe at the outset that governments operate by "assigning, reassigning, modifying, or attenuating property rights".[11] Regulation, which is essential for the creation of opportunity and incentive, can be described from a property rights perspective. Without this, I would suggest, the development of incentive, and its possible control, will be passed over in the more pressing rush to organise unique anti-corruption strategies which are incorrectly focussed on individuals or typologies.

> Individuals and groups have strong incentives to influence the definition of property rights . . . First they can accept the given structure of rights as defined by the public sector and thereafter acquire and dispose of resources through voluntary transfers under a rule of willing consent . . . Second, investments can be made in lobbying in an effort to influence government to alter the rights assignment through its regulatory or taxing powers. A third but more risky alternative is to resort to theft.[12]

Having set the parameters for their conceptualisation of incentive, they develop the market perspective, as it operates underground. Such illegal underground markets arise when the institutional structure precludes private owners from allocating their resources in a competitive or unregulated market. With such regulation comes descretion and the opportunity for corruption.

In his work on economic models for crime and punishment, Gary Becker tried to demonstrate that individuals are more likely to commit a crime (participate in an underground market) when the potential payoff from the illegal act is high relative to the individual's other opportunities, when the probability of being caught is relatively low, or

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10 Bersten, M. and Hogg, R., "NSW Anti-Corruption Commission: Has it Been Worth the Wait?" (1988) 13/4 *Legal Service Bulletin* 146-149 at 147.

11 Benson and Baden, *op cit supra* n 9 at 392.

12 *Ibid* at 392-393.

when the potential punishment is relatively light.[13] The market operates therefore from a perceived need of a service, an institutionalised inequity in its legitimate allocation, and the ability to neutralise the possible effects of a corrupt resolution.

Focussing on the generation of opportunity, Bensen and Baden state that corruption is a consequence of discretionary political authority. The background conditions for the corrupt exercise of that discretion are the restrictions which create the illegal market. It might not only be the transaction of property rights in a monopolistic market which is the incentive for corruption, but also the guarantee of those rights allocations against third parties.

> Exploiting a monopoly position requires entry restrictions, typically arising from governmental policy. In the case of underground markets, all entry is illegal; but if enforcement is easy, corrupt public officials can sell the right to produce to selected illegal firms. In this instance an underground market for governmentally controlled property rights may be required for a private sector underground market to operate . . . The rights are valuable (that someone is willing to pay for the exclusive right implies that the expected returns must be at least high enough to cover the bribe and compensate the buyer for the risk incured), and governmental officials have power to allocate them. Opportunities for underground transactions involving purchases of those rights from government officials are a consequence.[14]

Once opportunity, then incentive. The exercise of the official's discretion, if rational, is based on information and incentives. These incentives are delineated usefully in economic terms, as did Becker.

MAKING MONSTERS

It is usually those institutions which are eminently corruptable which construct corruption priorities. Remaining with the exercise of public discretions, it is goverments, and their political wings, which take the moral highground on corruption. Why? Passing over the obvious reasons of self interest and smokescreening, there are market based imperatives as to why a government needs to establish that it is neither institutionally corrupt, nor individually corruptable.

1) In order to exist as a legitimate regulator of property relations, a government must seek compliance in the market place. Such compliance is achieved through policies which range across a continuum from consensus to force based. Certain ideologies of government require operation towards the consensus based end of the policy range. Apparent levels of corruption within government militate against the generation of consensus based compliance.

2) The maintainance of respect for government regulations which limit competition within the market relies on the understanding that the authorised management within government has the monopoly over the creation of such regulations.

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13 Becker, G., "Crime and Punishment: An Economic Approach" (1968) 76 *Journal of Political Economy* 169.

14 Benson and Baden, *op cit supra* n 9 at 396.

3) Government functionaries to whom power is delegated for the negotiation and enforcement of these regulations must operate within, and be normally accountable to the authorised management of government.

If corruption and corruptability enter the market play then the position of government as a monopolistic regulator is weakened. The legitimate procedures for influencing the transaction of government regulations become viewed as negotiable.

There is considerable evidence which reveals that in practice corruption is difficult to control or eradicate. This is more so when the market accepts its existance, or even prefers it to an environment of "good government". Rarely will it be considered possible for a government to admit that by regulating the market, and orchestrating property relations, it also creates opportunities for corruption. Nor is it conveniently communicable to expose the complex forces which act as incentives to corruption, many of which may also show up flaws in the management of government itself. This is where "monstering" comes in.

Corruption can be "monstered" in a variety of ways:

i) Through the selective exposure of instances of corruption in sensitive areas of government. The danger of this is that the government may not be able to control the process of exposure or its consequences (for example, the initial focus on police corruption following the establishment of the ICAC in Hong Kong).

ii) By the individualisation of corruption through scapegoating. This may have adverse consequences for the morale of players in the market, or will undermine confidence in the market itself (for example, the initial effect on confidence in Queensland following the revelations of the Fitzgerald inquiry, concerning the personalities of political corruption in that State).

iii) Through "what if" scaremongering; highlighting particular susceptability of certain areas of government and the serious effect of their corruption. The risk here is the revelation that anti-corruption initiatives may be ineffective (for example, the recurrent speculation about the corrupt processing of property development at local government level).

iv) The moral vigilance position; no admissions of the existance of corruption, but through analogy, emphasising the need to remain pure. This may open the government up to accusation of unreality or "cover-up" (for example, the position adopted by specialist units in the police force with regards to other units, or other forces).

Whatever method is adopted, the purpose is similar. By objectifying and externalising corruption it becomes a less problematic and more universally accepted object for government action. The government can reassert its market dominance by broadcasting a monopoly over corruption control. This is not to suggest that government anti-corruption initiatives will not work through a compliant media, a sensitised corporate sector, and an implicated community. Rather it means the state would have it that through the control of corruption control it should still be viewed as dominant over any

underground market regulation. This predominance has importance not only for consructing corruption priorities, but is vital for stylising anti-corruption strategies. And both these will be fundamentally constrained by prevailing ideologies of government. This would explain, for example, the commitment to formal hearings as an investigative technique of the ICAC in New South Wales, which is viewed as anachronistic by their counterparts in Hong Kong.

The implication which arises out of claims to regulate and control corruption, is that the government not only understands the problem, but eventually will have power over it. The path to power is delineated by the ways in which the threat posed by corruption is represented, and by the discourse and institutions of control.

It makes functional sense from the goverment's perspective not to expose the reality of corruption in a macro sense. Real debates about the nature and extent of corruption and its possible eradication may only lead to a greater diminution of the government's position, if it becomes apparent that its potency in this regard is limited. The tactical alternative is to develop the monster into a myriad of manageable images, and to create "independent" agencies, which are finally beholden to government, for the apparent purpose of control. In the short term, the battle has more significance than the result. If control in any sense proves illusive then the government only need alter the anti-corruption priorities.

DELIMITING THE RANGE

Part of the effort towards image creation on the government's behalf, is to constrain the perceptions of corruption, as well as the operations of the control agency. This is as much to ensure the presentation of a manageable political discourse about corruption, as it is to conceal its endemic institutional and operational origins and incentives. Making monsters is one thing, but they must be manageable. As recent enquiries into public corruption have revealed, this is not always so.

One popular limiting technique is to float the public, private division. In New South Wales, for instance, the legislation which established an Independent Commission Against Corruption, has limited its investigative interest to instances of public corruption, and to prevent breaches of public trust. In this respect it is necessary that the corruption transaction must involve a public official, organisation or duty.

If we return to our market analogy we will appreciate the non-existance of such a division outside political rhetoric. The necessary interrelationship between government and commerce in most financial operations is indivisible. To endeavour to see the opportunities and incentives for corruption simply in public sector terms is to miss the transactional nature of corruption. If the recipient of the bribe is a public official, where does the money so often come from?

If this division is so easily falsified then why is it relied upon as a limit? The answer lies in a subsidiary level of purpose for monstering. The language of corruption

discourse needs to be kept uncomplicated for government purposes, if it is to have an influence on community perceptions. Simple distinctions which allow for a unidimensional focus on the problem, sit well within such language.

Further, such a division is either misconceived or deceptive. Whether the mystification and obfuscation which results from reference to it is deliberate or otherwise, doesn't much matter for a consideration of effect. The real issues of corruption opportunity and incentive are displaced outside public expectations, which are directed away into unhelpful dichotomies.

The significance of the public/private designation is further transferred into operational strategies. In the case of the New South Wales ICAC, the commitment to public hearings as an investigative tool can not be grounded in parallels with "open government" alone. As the Hong Kong position argues, it certainly will not find support in models of effective policing practice. The overriding expectation for open hearings is that they should stand in stark public contrast with the private exercise of discretion by public authorities, which is the focus of their inquiries.

But the dangers inherent in the Royal Commission format have not been lost on the recent legislators. As the Australian High Court decisions of *Balog*, and *Stait v ICAC* conclude, the legislature in New South Wales, both directly and indirectly limited what appropriately could be drawn by the Commission from its findings:

> Since the broad function of the Commission under section 13(1)(c) [of the *ICAC Act*] is to communicate the results of its investigations concerning corrupt conduct to appropriate authorities, it is apparent that its primary role is not that of expressing, at all events in any formal way, any conclusions it might reach concerning criminal liability . . . the Commission is intended to be primarily an investigative body whose investigations are intended to facilitate the actions of others in combating corrupt conduct. It is not a law enforcement agency, and it exercises no judicial or quasi-judicial function. Its investigative powers carry with them no implication . . . that it should be able to make findings against individuals of corrupt or criminal behaviour.[15]

Section 79 of the *ICAC Act* (NSW) limits the Commission's opportunity to report conclusions of corrupt conduct to those investigations referred to it by Parliament.

The High Court appreciated the fine line in practice between making adverse findings, and merely reporting the results of an investigation. However, it took the view that it was a distinction which went beyond theory, and had practical relevance as a limitation on the conclusions to be drawn publicly by a commission of inquiry at a pre-trial stage, perhaps from evidence which might not be admissible in an eventual court proceeding, or elicited from a witness outside the usual due process protections.

The Commissioner Mr Ian Temby QC was quick to attack these limitations on his office, and called on some appropriate legislative clarification. His earlier observations on the Commission's general functions do not contradict the High Court's interpretation:

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15 High Court of Australia, matter no S29 of 1990.

> I see the primary role [of the ICAC] as being to minimise corruption by investigation and hearing, by corruption prevention, and by public education. All three of them are important in terms of the statute and in terms of our strategy. I see the securing of criminal convictions as being subsidiary and incidental to those primary aims and methods.[16]

The creation of novel anti-corruption strategies is effected in an atmosphere of political "give and take". The public hearing format, coupled with the powers to compel the presentation of evidence, create powerful control potentials over the reputations of suspects and witnesses. Add to this the opportunity to make adverse findings at the conclusion of such investigations, and the Commission can use its leverage over the public standing of individuals to extract more than might other traditional criminal justice agencies. Legislators have sought to limit these combined powers away from those enquiries initiated by the Commission itself, or outside the direct interests of Parliament. In so doing, they have not relied on the consequential oversight of the judiciary, but they have benefited from recent judicial interpretations.

ORCHESTRATION OF PUBLIC EXPECTATIONS

The community, within and outside the market, are an important audience for monstering. The lessons from community directed corruption programmes like that so successfully permeating Hong Kong[17] endorse this in a specific sense. Witch-hunting and media-feeding have their place in sensitising the public to corruption as an issue of self-interest. However, for any long term effect on perceptions it is necessary to implicate the community both in the dynamics of corruption, and responsibility for its control.

Receptive public expectations are vital for any politically centred initiatives. Corruption control is no different. The methods used will be culturally and community specific, and may be bound up in the monstering exercise. After all, fundamental issues of government legitimacy are measured in a community context, and I have endeavoured to represent corruption control (in a market sense at least), as just one of these.

In functional terms, public expectations have significance for the success potential of any control strategy. They will also promote or retard the self-perpetuation of any anti-corruption push.

Public expectations are often constructed in an atmosphere of necessity. For example, once the monster image of corruption is constructed, the community is told that there is no alternative but that which is on the government's agenda, for its control. All other options are inadequate. The power of this argument rests in the generalised representation of a unique threat:

> The classic form of corruption involves the giving and taking of a bribe, and there is strong tendency for neither side of the transaction to report it. When bribes are paid the

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16 Committe on the ICAC, 1990 p 18.

17 Findlay, M., "ICAC and the Community" (1990) Vol 2 No 1 *Current Issues in Criminal Justice* 119-126.

> debilitating effect upon the function of society — and particularly the public sector, if public officials are involved — is very great. The real question is, as I would urge, whether something should be done about it. It cannot be done by traditional investigative methods, and through the criminal justice system. You cannot get results except by setting up a specialist body and giving it specialist powers. Hence the *ICAC Act* . . . If you want to tackle corruption you have to do it through something like this way. You cannot do it through the criminal justice system because that is a proven failure. You cannot use traditional methods of investigation and prosecution and results. It has been tried and it just does not work.[18]

Failure theory is resorted to here with respect to traditional law enforcement options in a non-problematic and imperative tone. The justification for the new strategy rests in condemning the old. The dangers involved in this mode of expectation creation are obvious.

It is interesting to see where the Commissioner takes the progress of his justification, from establishing the relationship between the unique threat and the specialist response. He then presents a measure of success which might equally well be interpreted in terms of failure theory:

> If the *Act* were repealed then a judgment is made that the job has been substantially done and levels of corruption are down to a point which does not demand a specialist agency.[19]

Mr Temby invoked the wisdom of the legislature, and in so doing was sheeting home ultimate responsibility for success or failure in meeting anti-corruption expectations, back to its political base:

> The alternative that Parliament has opted for is to say 'We will set up a specialist body. It will have investigative powers and co-ercive powers and an obligation to report to Parliament' . . . If Parliament has made the wrong judgment, the remedy lies in Parliament's hands. But I say that it is not possible to go back to what some see as being 'the good old days' if you want to tackle the corruption problem.[20]

Finally, the community is implicated in the control process, in a personal way. It's your problem and you must want to tackle it!

CORRUPTION BUSTING

The creation by a government, of the next strategy for dealing with corruption will so often be based on what Stan Cohen (1985) refers to as "failure theory". Simply speaking, this is the notion that because all previous approaches seem to have been unsuccessful in any nominated sense, this is justification enough for launching new enforcement initiatives which may outstrip the powers and potential of any agency which may have gone before. The political significance of such institutional development is the appearance that with the

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18 Commissioner Temby giving evidence before the Committee on the ICAC, 1990 p 30.

19 *Id.*

20 *Id.*

creation of "new" organisational options arises evidence of the government's eventual control monopoly.

It is usually the case that state based responses to corruption utilise elements of the criminal justice process. It is not so however that these are always constructed within the traditional constraints of criminal justice administration, nor do they work exclusively towards the utilisation of the criminal sanction. For example, the ICAC in Hong Kong is invested, under the Prevention of Bribery Ordinance (Part III), with powers of investigation which would make police officers green with envy. The ICAC in New South Wales, through its public hearing format, concentrates on the accumulation of evidence which, in many instances may not be admissable in later criminal proceedings. Both agencies rely on their influence over the reputation and public standing of a suspect, as much as they might the threat of resultant criminal convictions.

Modern corruption control agencies seem willing to enlist the assistance of forces outside the normal institutions of criminal justice. This sometimes leads to alienation from traditional police agencies, in particular. The manipulation of media comment through public hearings, and the policy of selective secrecy when it comes to the disemination of their investigative intelligence, are powerful weapons which might not sit well with traditional policing practice.

As regards investigation practice, the adaptations which have arisen to cope generally with corporate deviance in a market situation find commonality with modern coruption control practice. For example, the Hong Kong and New South Wales ICACs assist in the establishment of internal audit regimes within organisations, for the purpose of identifying potential and extant corruption. Not only the nature of the corporate entity, but the complexity of the deviance which is generated within it has led to a rethink of control strategies, and the appropriateness of the individualised criminal sanction for situations of collective liability.[21]

In the area of state centred corruption, control agencies can anticipate a positive relationship between the growth of government, and the opportunities for corruption. With more government controls over property relations, there will arise a greater potential for the sale of privileges over resultant property rights.

> Incentives for participation in private sector underground markets increase, so officials have opportunities to accept bribes in return for altering rights structures or for allowing some individuals or groups to operate in a private legal market without fear of punishment.[22]

With the associated increase in incentives to become corrupt, control agencies are faced with the challenge of counterbalancing such an incentive shift.

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21 See Braithwaite, J., "Self-Regulation: Internal Compliance Strategies to Prevent Crime by Public Organisations", in Grobosky, P., ed, *Government Illegality* (1986).

22 Benson and Baden, *op cit supra* n 9 at 407.

A common governmental approach to this challenge is to inject resources into the monitoring of corruption. If the potency of monitoring, and the nature of corruption were to remain fairly constant, then control will be maintained by increasing such resources proportional to the increase in government. But beyond the simplistic level of policy planning, things are not so straightforward.

Along with monitoring, goes the commitment to detection. The risk of detection is also sometimes seen as being concurrent with the risk of receiving bribes. State agencies endeavour to increase the later by making real the former. Yet this rests on classical notions of self-determination. These are easily denied by social determinants towards corruption which may make the sensitivity to risk rather less elastic.

Perhaps a more effective approach to corruption control is to look at market forces outside individual interest. Simply because governmental discretion increases should not ensure that rights allocation powers must not also become more widely dispersed. Co-ordinated or monopoly corruption is rendered less likely through a policy of diversifying discretion.

MONSTER BUSTING

We empathise with the lone knight riding out against the dragon. No matter how futile the odds, his quest is seen as both a noble and satisfactory response to a universalised and unpredictable danger. It is almost heresy to question the existence of the fire-breathing monster. The odessey is all the reality which is needed.

Perhaps the actuality of the monster is not so important. The cyclops, the minotaur, the dragon; as representations of impending evil they bring about a predictable response. In order to invest any such response with a success potential worthy of the effort, we must examine what's behind the monstering.

It is not a difficult task to debunk monsters. Even journalists can perform the magic. One merely needs to reveal the absence of its reflection in the analyst's mirror, and it will vanish. But not so the impetus behind its original creation, or the swift construction of another to take its place. This is why to search out and destroy each new dragon, even if consistantly possible, is a rather futile endeavour. One Watergate exposé did not make impossible the Iran contra scandal.

In order that anti-corruption initiatives are potent for the task it is essential to address those sensitive and sometimes embarrassing institutional questions which relate to incentive and opportunity.

In the specific context of police corruption I have asserted that: "To some extent it matters little what the motivations for corrupt policing practice might be".[23] To expose

23 Findlay, M., "Acting on Information Received: Mythmaking and Police Corruption" (1987) 1 *Journal of Studies in Justice* 19 at 30.

such behaviour for what it is, that is true. However it does not follow the development and implementation of control strategies.[24]

Manning and Redlinger show just how important is a consideration of why police cross the invitational edges of corruption:

> The organisational ambience of narcotics law enforcement is such that rather than providing inducement to conformity to the law, it is more likely to underscore the virtues of avoidance of the more obvious requirements of law enforcement. It encourages rather more excess in pursuit of the job and modification of procedural rules to maximise arrests and buys. In the course of so doing, one learns to view with only minimal concern somewhat less obvious consequences of the systematic destruction of justice.[25]

The dynamics of corruption invite an appreciation in terms of opportunity and incentive, from both sides of the bargain. Effective control strategies need to develop through an examination of;

i) the situational pressures presented from within the enterprises and property relations which the public official is charged with regulating, and

ii) the individual, organisational, and operational priorities of the bureaucratic framework within which the official exercises his discretion.

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24 See Braithwaite, *op cit supra* n 21.

25 Manning, P.K. and Redlinger, L.J., "Invitational Edges of Corruption: Some Consequences of Narcotics Law Enforcement", in Rock, P., ed, *Drugs and Politics* (1977) p 290.