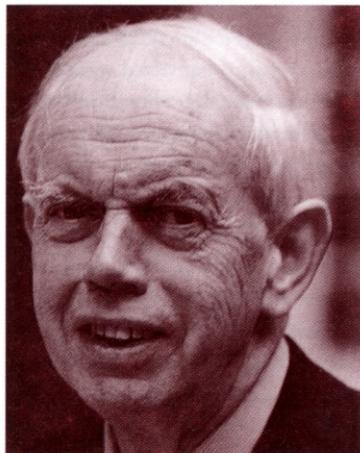


Corruption's vice

by Lord Neill of Bladen QC



Lord Neill of Bladen, QC Chairman of the Committee on Standards in Public Life since November 1997

The audience at the Sixteenth Symposium on Economic Crime was addressed by Lord Neill of Bladen QC, who examined the link between the work of the Committee on Standards in Public Life (which he now chairs) and much of the subject matter of the remainder of the symposium programme.

It is a well-known fact that there is a greater critical mass of experts on all aspects of economic crime gathered in Cambridge annually than can be found anywhere else in the world. Particularly impressive to me is the international dimension. More than eighty countries are represented and there are some 800 delegates. Professor Rider's letter of invitation to me included the following:

'The Symposium will focus on two themes – the prevention and control of abuse in the public sector and also in the financial markets.'

I accepted his invitation because it seemed to me that those themes had a strong resonance for the work of the Committee on Standards in Public Life. I have the honour to be the chairman of that committee, having succeeded Lord Nolan, its first chairman, about a year ago. My impression of the linkage between [the studies underlying the symposium] and my committee's work was confirmed by the detailed programme for the symposium which includes such themes as:

- (a) The impact of economic crime on economic and *political stability* (I stress the last words).
- (b) Fraud and economic crime in the public sector.
- (c) Corruption in the public sector.
- (d) Corruption in the international context.
- (e) Procurement frauds.
- (f) Corrupting the political system.
- (g) Ethics in government.

Obviously I am making a selection, but I pick those which are close to my committee's work.

As I thought about these topics it occurred to me that the point at which economic crime and abuse of public office converge is where there is corruption of a public official or a public agency for economic gain. That is why the anti-corruption efforts of international organisations over the last few

years are so significant and so much to be welcomed. To illustrate this I refer to the work of the Organisation of Economic Co-operation and Development (OECD). I pick out as its great achievement in this field the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

That convention was signed in Paris some nine months ago. All the OECD nations signed, together with five others, including Argentina. Only recently a workshop was held in Buenos Aires on combating bribery in international business transactions. That workshop was sponsored by the OECD, the OAS (Organisation of American States) and the Government of Argentina, in co-operation with the US Agency for International Development (USAID).

THE OECD CONVENTION

As you know, under art. 1.1 of the convention each signatory state undertakes to take the necessary measures to establish that it is a criminal offence:

'for a person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official for that official or for a third party in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.'

Of course, the thrust of this is that it must be made a crime – if it is not one already – to bribe a *foreign* public official (it is implicit that the law of each signatory state already makes it a crime to bribe officials in the home state in order to gain economic advantage).

'Foreign public official' is very broadly defined to mean:

'any person holding a legislative, administrative, or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation.'

So buying and selling agencies, import and export agencies, ministries charged with placing arms contracts or construction contracts are all within the net.

You may say: 'And high time too'. The fact is that for many a long year states have adopted a relaxed attitude to foreign bribes: 'Oh, that is a matter for the foreign state concerned. It is not for us to export our standards (assuming we have any) across the globe.' This attitude went hand in hand with the tax treatment of money expended on bribes. Even where the purpose was quite explicit, the tax authorities of many countries took the view that, provided that it was customary to pay a bribe to win a contract in the foreign country under consideration, then such expenditure should be allowed as a normal business expense. Clearly such an attitude is guaranteed to perpetuate – and indeed to encourage – foreign bribery.

WHY IS CORRUPTION WRONG? WHAT HARM DOES IT DO?

That brings me to a theme which I believe to be important and which lies at the heart of many of the debates here this week. The answer is – of course – that corruption causes a great deal of harm and its pernicious influence is felt in many directions. I want to consider with you two or three statements about the effect of corruption.

Let me take three statements all promulgated within the last twelve months.

Lima

The 8th *International Conference Against Corruption* took place in Lima last September. Citizens of 93 countries were represented. The Conference published a declaration which stated:

'Corruption erodes the moral fabric of every society; violates the social and economic rights of the poor and vulnerable; undermines democracy; subverts the rule of law which is the basis of every civilised society; retards development; and denies societies, and particularly the poor, the benefits of free and open competition.'

Now clearly there is a certain political content to that way of stating the matter. The heavy emphasis on the position of the poor may tend to obscure the fact that corruption has a damaging effect on the whole community irrespective of financial status. But what I like about the Lima Declaration, viewing it from the perspective of my committee, is the language: 'Corruption erodes the moral fabric of every society, ... [corruption] ... undermines democracy.' I want to come back to the destruction of morality and the subversion of political freedom.

The Council of Europe

The Working Group on Criminal Law in November 1997 adopted the following text as a preamble to a draft Convention on Corruption:

'Corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development, and endangers the stability of democratic institutions and the moral foundations of society.'

Many lawyers present will seize on the threat to the rule of law and human rights. Economists will applaud the reference to the hindering of economic development and the distortion of

competition; but again, speaking for myself, I value the references to endangering 'the stability of democratic institutions and the moral foundations of society'.

The OECD Convention itself

The first recital to the Convention states:

'Considering that bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions'.

Here, the first attack on corruption is that 'it raises serious moral and political concerns'. The theme is the same as in the other two texts but perhaps expressed in more guarded language.

The Lima Declaration had no doubt that corruption 'erodes the moral fabric of every society and ... undermines democracy'. Its effects went beyond 'raising concerns'. Likewise the Council of Europe in its Draft Convention. But let us walk past the verbal differences. The two key elements of corruption on which I want to focus are the damage to the moral fabric of society and the threat to democracy and political institutions.

In connection with the last point it is interesting to note that, following on from the Negotiating Conference which led to the signature of the convention, the OECD Council agreed in December last to do further work on particular topics. These include: 'bribery acts in relation to foreign political parties'.

CORRUPTION AT WORK

Let us look at some examples of corruption at work. A local authority puts out to tender a contract to build a bridge. There is a favoured local contractor who is – as the phrase is – 'well in with' the local authority. A corrupt official informs that contractor of the rival bids. He puts in a lower tender and gets the job. Later he submits inflated claims for extras and he ends up receiving much more than any of the rival bidders would have been paid. An impossible scenario you are going to say? I think not.

What is the effect if the foregoing facts are known or suspected? First, what is the effect on the rival bidders? A feeling of despair. What is the point of putting in a bid to a local authority such as this? Then comes the thought *either* 'It is a useless exercise' *or* – worse still – 'The only way to win next time is to pay a bigger bribe'. That is the destruction of morality.

And what of the local electors? They feel embittered and powerless. Especially is that true where a council is for many years in the hands of the same political party. Certainly all those who did not vote for that party will feel that their democratic rights at a local level are valueless. If they complain, they are met with a conspiracy of silence. The law is no help. The evidence is circumstantial or anecdotal and, in any event, justice is too expensive.

Let me take another example (and here I hope that it is a very hypothetical example). Suppose that a significant contribution is made to the funds of a foreign political party in order to secure the election of that party so that, when in power, it will favour the business interests of the person, corporation or, maybe, government, providing the money. That is straightforward

corruption of the political process on a grand scale. The democratic rights of the voters are overborne. If the facts become known, or even suspected, public alienation and outright cynicism are the inevitable results.

My third example is specifically a UK example. It concerns the sale of honours. There were times – earlier this century – when there was something equivalent to a market in honours. For an appropriate payment to a political party, a knighthood, baronetcy, or peerage could be bought (the prices differed, of course, depending upon the nature of the commodity acquired). What was the result? Maximum public indignation and the devaluation of the entire honours system. Those awarded on merit were subject to the same suspicions as those awarded on demerit.

So I would argue that, quite apart from the effects which corruption has on economic development, the distortion of competition and as a brake on progress, we need to be very aware of its insidious effect in poisoning confidence in the integrity of the political process. It is also a destroyer of morality because its tendency is to make people say: ‘If I want to succeed, I too must pay my bribe’.

RECENT HISTORY IN THE UK

We have no cause to be critical of others or self-satisfied with the record over the last century. I would like to share with you some of the chief events in that history which, in a way, provides a background to (though not the immediate context for) the creation of my committee.

I think perhaps the only virtue which we in this country can claim is that, when dark deeds become known, public debate ensues and action is generally (though not always) taken; the typical responses being the appointment of a Royal Commission and the enactment of legislation.

Corrupt elections

Let me start with election corruption some 120 years ago. In the 1880 general election there was massive expenditure in the constituencies. The candidates between them spent some £1.6m. It has been officially estimated that translated into May 1997 money that represents an expenditure of £106m, i.e. very nearly twice as much as the combined total spent by the Labour and Conservative parties centrally in the 1997 general election (in the 19th century elections very little was spent centrally).

The evidence is clear that much of the expenditure by candidates in the 1880 election (and no doubt at earlier elections too) was devoted to corrupt payments. By way of illustration, I cite the detailed account which has come down to us of the practices employed at the by-election in the Borough of Sandwich in May 1880 (*Report of the Commissioners appointed to inquire into the existence of Corrupt Practices in the Borough of Sandwich* (1881) C-2796 HC (1881) XLV (‘*Commissioners’ Report*’)). This followed shortly after the general election in March of that year. The unsuccessful Liberal candidate brought an election petition to unseat the Conservative winner. The election court found that corrupt practices had been employed. The subsequent inquiry by a Royal Commission found that out of a total electorate of some 2,000 persons, no less than 1,005 had been bribed by one party or the other, and 128 voters had taken bribes from both sides. The secret ballot, which had been introduced in 1872, did

not act as a deterrent to the bribers. Other corrupt practices involved excessive payment to voters for unnecessary services (such as the erection of flagpoles) and the hiring of rooms in public houses, ostensibly as ‘committee rooms’ for party meetings but in fact as ‘a colourable means of gaining the votes of the proprietors and of influencing the votes of their frequenters’ (*Commissioners’ Report*, p. vii). The Conservative candidate spent in total about £5600 on winning the election, the Liberal roughly half that sum (*Commissioners’ Report*, p. xi). None but the very wealthy could enter such a contest. This is apparent if one translates £5,600 of 1880 money into 1997 currency. The result is about £371,000.

A solution was found to prevent repetition of such vast expenditure. This was the *Corrupt and Illegal Practices Act* 1883. This Act imposed strict limits on what candidates could spend locally. It was very effective. However, since 1883 the pattern of electioneering has changed. Now huge *national* expenditure dwarfs what is spent locally.

Commercial corruption

In the 1880s, a series of scandals led to the *Public Bodies Corrupt Practices Act* 1889. This was aimed at bribery of public bodies. It was the domestic equivalent of the OECD Convention which focuses on foreign public officials. More cases involving agents came to light in the next twenty years and led to the *Prevention of Corruption Act* 1906. This Act was aimed at all corrupt transactions involving agents.

Insider dealing by ministers

Moving on to Ministers of the Crown, we have the rather remarkable *Marconi* scandal from the early years of this century. I cannot improve on the account given in my committee’s first report:

‘Between the turn of the century and the outbreak of the First World War the Marconi scandal of 1911–13 stands out. Two Government Ministers (one of them the Chancellor of the Exchequer, David Lloyd George) bought shares in the American Marconi company before they went on sale to the general public but after the British Government, as they knew, had signed a large and lucrative contract with the separate British Marconi company. The Government Chief Whip also bought shares on behalf of the Liberal party. The American Marconi shares, after going on sale, doubled in value.

The Ministers at first attempted to conceal what they had done, then, when they were found out, claimed that, despite appearances, they had not been guilty of any wrongdoing. They suffered no adverse political consequences (apart from embarrassment). One went on to become Prime Minister, the other Lord Chief Justice and Viceroy of India. The House of Commons select committee set up to investigate the affair divided along party lines in the Ministers’ favour, as did the House itself. Neither major newspapers nor (perhaps as a consequence) the general public took much interest in the affair’ (*Standards in Public Life: First Report of the Committee on Standards in Public Life* (1995) Cm 2850-I p.104).

Let us consider the *Marconi* scandal. Here was insider dealing on a heroic scale (those in high places sometimes show a strange capacity for survival). Perhaps the strangest thing to us – and it damages my general theory – is the lack of public outcry. But public sensitivity today is of a wholly different order.

First World War

There were two sordid developments during the First World War. First, corruption was rife in the securing of arms procurement contracts and the like. This led to the hasty enactment of the *Prevention of Corruption Act 1916*. Section 2 of that Act created a presumption that the receipt of money etc., by a public official was received corruptly. The onus was put on the defendant to prove his innocence. Nobody at the time was too much troubled by this reversal of the standard burden of proof. But today, as the Law Commission has persuasively argued, there are very great doubts about the legality of the presumption of guilt in the light of the European Convention on Human Rights. Also, at the practical level, there are real doubts as to whether that presumption is actually necessary.

Trading in Honours

The second sordid development was that during wartime some trading in honours had started. In the autumn of 1917 the Government accepted a resolution in the House of Lords requiring the Prime Minister in future to satisfy himself that in the case of political honours no money had been paid to a political party to obtain the honour. The text of the resolution is quoted in *The Funding of Political Parties in the United Kingdom: Fifth Report of the Committee on Standards in Public Life (1998)* Cm 4057-1 p.184 para. 14.10.

By 1922 it was clear that the 1917 Resolution was wholly ineffective. In that year there was a Birthday Honours scandal. This involved a South African mine-owner who had a criminal record. In exchange for a considerable sum of money he was to have conferred on him a peerage. This was announced in the Birthday Honours list. There were huge protests against this honour in Parliament and in the press. The South African had to be persuaded to decline the honour. An emissary from the government visited him in the Savoy Hotel. He was deaf and it seems that at first he formed the view that he was being asked for more money. However, when the situation was finally explained to him, he reluctantly agreed to withdraw.

The King was furious about the whole episode and wrote an outraged letter to Lloyd George. He received a rather cool response! However, in September of the same year a Royal Commission with Lord Dunedin as its chairman was set up to look into the Honours System. That Commission found that certain persons, stigmatised by the Commission as touts, had held themselves out as being able to procure the conferment of honours in return for cash payments to a political party. The Commission recommended, first, that there should be created a Political Honours Scrutiny Committee and, secondly, that a statute should be enacted making it a crime to buy or sell honours or to offer to do so (*Report of the Royal Commission on Honours*, 22 December 1922, Cmd 1789). This became law in 1925 (the *Honours (Prevention of Abuses) Act 1925*).

At about the same time, there was a case which all lawyers recall (*Parkinson v College of Ambulance Ltd* [1925] 2KB 1) where a disappointed briber sought the return of a bribe paid to charity. That action failed on the basis that the law could not assist such a polluted claim. The 1925 Act had an effect, but one of the touts – perhaps the most famous – Mr Maundy Gregory, continued to operate for 8 further years until a conviction was secured (see generally, T Cullen, *Maundy Gregory: Purveyor of Honours* Bodley Head, 1974).

A relatively quiescent period followed (or perhaps we should say a period of undetected crime?). I pass over the Lynskey Tribunal and the junior Minister involved, Mr Belcher MP.

The Poulson case and the Salmon Report

The next major scandal was the *Poulson* case. Mr Poulson had a huge architectural practice; he also had well-placed backers in the ministries, local councils and public bodies. Undoubtedly a highly efficient system of public corruption was in place, which ran well for many years; that is, until Mr Poulson was sufficiently incautious to become bankrupt. Counsel retained by the trustee in bankruptcy, by his courageous and probing cross-examination of the bankrupt, exposed what had been going on. Numerous prosecutions and resignations followed (see ‘The Poulson Affair’ in Ch. 2 of the *Report of the Royal Commission on Standards of Conduct in Public Life* (Chairman: The Rt Hon Lord Salmon), July 1976. Cm 6524).

A further consequence was that in 1974 the Salmon Commission was appointed and in July 1976 recommended an overhaul of the corruption law. It also recommended that the whole issue of the bribery of MPs should be addressed. There followed a classic example of a report being allowed to gather dust. Most of the Salmon recommendations were not followed up. The Commission was disbanded after it had reported and nobody was in a position to call for an effective response from Government.

THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

Moving on to the 1990s, some Conservative Ministers were under sustained attack through the media. There were sex scandals. Then there were scandals about outgoing ministers rapidly taking City appointments and working with or for companies with whom they had dealt officially in the recent past. Finally, to cap it all, came the allegations of cash for questions, that is to say, MPs allegedly taking money to raise questions in the House of Commons (thereby highlighting again the whole issue of bribery of MPs to which Lord Salmon had drawn attention).

The then Prime Minister, the Rt Hon John Major MP, took action and on 25 October 1994, created the Committee on Standards in Public Life with the agreement of the other party leaders. The committee was given the following terms of reference:

‘To examine current concerns about standards of conduct of all 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 office.’

A broad definition was given to public life. The committee’s remit extends to ministers, civil servants, advisers, MPs, MEPs, and members of quangos (Hansard, HC 25 October 1994, col. 758).

It is interesting to note that the committee was created without legislation and without the establishment of a Royal Commission. We are independent of government. This is not because there is any statutory provision to that effect, but rather because the committee would probably all resign if there were any overt attempt to put political pressure on us. The committee

consists of three representatives of the major political parties, six people drawn from 'the great and good' and a chairman who, so far, has been a lawyer.

The committee's first report went straight to the moral issue and laid down seven principles of public life (the principles are set out in full at p.14 of the report). These are as follows:

- selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The House of Commons adopted these and they have been widely incorporated in other codes.

As regards the bribery of MPs, the report called for a reconsideration of the issue. It recommended the adoption of better procedures for 'trying' MPs accused of misconduct. The report looked at the corruption statutes and called for their reconsideration and consolidation. It also dealt with quangos and the issue of political bias in the selection of members of quangos.

Recommendations were included for the appointment of a Parliamentary Commissioner for Standards for the House of Commons and an independent Public Appointments Commissioner to regulate the public appointments process. Both recommendations were accepted. The holders of the respective offices are Sir Gordon Downey and Sir Leonard Peach.

The committee's third report looked at local government (*Standards of Conduct in Local Government in England, Scotland, and Wales: Third Report of the Committee on Standards in Public Life*, July 1997, Cm 3702-1). In that report the committee called for better codes of discipline. It criticised the system of surcharging

local councillors and proposed a new crime of abuse of public office.

During the last few months the committee has been looking at the funding of political parties (*Fifth Report* (1998)). This obviously includes issues which I have mentioned today, i.e. the sources of funding, the processing of honours and perceived fears as to the influences being brought to bear on party leaders in consequence of the 'arms race' to fight elections on a lavish scale.

The recommendations contained in the first three reports of the committee have had the effect of stimulating much further activity. In addition there is now a climate of opinion which favours the modernisation of the law in the ongoing crusade against corruption and malpractice. Examples are furnished by Lord Nicholls' Committee of both Houses which is looking at the issue of bribery of MPs and members of the House of Lords; the Law Commission's Report *Legislating the Criminal Code: Corruption* (Law Com No 248, HC 524, 2 March 1998); and a Home Office Working Party is currently looking at a new criminal offence of 'abuse' of public office. And there is much else besides in addition to the ongoing labours of the OECD and its fight against corruption.

I hope that I have said enough to arouse your interest in the work of the Committee on Standards in Public Life and to demonstrate its relevance to the moral and legal issues addressed in the course of the symposium. 

Patrick Neill QC

Prosecution white collar crime – what's going on?

by Rosalind Wright



Rosalind Wright

In her address to the Symposium on Economic Crime, the Director of the Serious Fraud Office posed the question 'What is wrong with the present system of trying serious and complex fraud cases?'

Lord Roskill, in his report on fraud trials 13 years ago, noted that:

'criticisms of the judicial process in the present context have stemmed largely from the increasing length and complexity of trials of commercial fraud cases, leading many people to call into question the appropriateness of trial by jury for this type of case.'

In that context, nothing has changed very significantly and in 1998, the problems of long and complex trials remains.

The Serious Fraud Office was set up in 1987 as a direct result of Roskill. It was given a specific and focused remit for the investigation and prosecution of serious and complex fraud. It investigates and prosecutes the very tip of the fraud iceberg – the most serious, the most complex cases – cases where there is