

廉政理论与实践丛书 黄先耀 郑德涛 主编
廉政研究学术系列 倪星 主编



行政道德文选

第2卷

Gerald Caiden on Administrative Ethics Vol. II

(美) 杰拉尔德·凯登 (Gerald · Caiden) 著

(美) 马国泉 编

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编者的话

凯登博士于1936年6月生于英国伦敦。1954年至1959年就读于伦敦经济和政治学院，主修经济学，获该校的科学学士学位。之后，他转往伦敦大学深造，获该校的博士学位。他先后任教于英国伦敦大学（1957—1959年），加拿大卡尔登大学（1959—1960年），澳洲的澳大利亚国立大学（1961—1966年），以色列希伯来大学（1966—1968年），美国伯克利加利福尼亚州大学（1968—1971年），以色列海法大学（1971—1975年）。之后，他受聘前往位于美国洛杉矶的南加利福尼亚州大学，在该校的公共行政学院任教至今。

除了在各高等院校从事教学之外，凯登博士还曾担任许多学术刊物的编辑委员会成员，他也应邀为一些学术刊物及图书审稿或撰写书评；他还受聘为不少政府部门、学术机构以及包括联合国在内的许多世界组织的顾问。

自1960年发表了长达400多页的论著《加拿大的联邦公务员制》以来，凯登博士共出版了20多部著作，并发表了200多篇学术论文。其中有相当一部分论文是以行政道德为主题，对美国以及其他国家的行政文化、政府官员的组织行为、行政腐败的表现以及反腐倡廉的措施等进行了认真分析，提出了颇有见地的看法，对世界各国的政界、学界在如何认识、改进行政道德上都起到了重要影响。

2003年，复旦大学出版社出版了《行政道德文选》。该书收集了杰拉尔德·凯登博士于1977年到2001年间发表的20篇关于行政道德的论文。

随着近年来中国廉政建设的步子越迈越快、越迈越大，中国的学、政两界对西方反腐倡廉方面的努力及其经验教训更为关注，要求进一步了解国外廉政建设的愿望更加迫切。为适应这一形势的发展，本书收集了凯登博士于2002年到2012年间发表的关于行政道德的12篇论文。凯登博士特意为本书撰写了前言，并对每一篇文章都作了不同程度的修改，使之重点更加突出，主题更加鲜明。

这些论文提出了不少发人深省的问题。例如，为什么不能对腐败眼开眼闭，熟视无睹？如何正视私有领域中的腐败？廉政建设的努力怎样才能不走过

场，不徒见形式，乃至收效甚微？世界各国的反腐努力有哪些不足之处？人民的公仆肩负着什么样的促进人类文明的使命？西方民主体制在反腐过程中面临着哪些挑战？什么样的反腐措施才是从长远目光出发，有长期疗效的治本策略？在反腐倡廉方面比较成功的新加坡政府有些什么特点？亚洲的一些国家在抑制腐败方面有什么经验和教训？等等。

值得一提的是，近年来，凯登教授十分关注廉政建设中的一个重要方面，即如何制约文化腐败的问题。他认为，一个社会的文化不但会左右个人的决定，组织的文化更会影响到对腐败行为的调查揭发。而制约文化腐败相当棘手，可以说是一块难啃的骨头。但是，这个困难并不是不可克服的。学术界针对文化腐败总结出来的五大对策应该对我们有所启发，有助于进一步开拓我们反腐倡廉的思路，把廉政建设的工作做得更深入，更扎实，更到位。

马国泉

2012年11月于美国洛杉矶加利福尼亚州立大学

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Introduction

These essays, related to the complex phenomenon of corruption and the conduct of public affairs, have been written over the past decade. Most have been published but several for which I have retained copyright have not because at the time they were written I had to keep confidential. All have been altered since for public release and revised, reworked and rewritten. They follow from almost a lifetime spent investigating various aspects of corrupt practices which I experienced directly and often were their victim. Besides my own research and observation, I have collected over the years a large volume of publications relating to corruption and malpractices that began long before public organizations, besides national archives much closed to outsiders, began to do so as a public service that much lightened my task. Early on, I joined what was then a small group of academic researchers around the globe that specialized on public corruption and believed that the topic was researchable despite much opposition. Our studies opened the way to what has now become an industry, growing by leaps and bounds as corruption emerged from the taboos surrounding it.

I began as a youngster growing up in wartime London and postwar austerity in the United Kingdom. I had become used to scarcity and deprivation which I took for granted along with everybody else. There was talk of wartime profiteering and the black market but I never knew much about them. Indeed, I was educated in the local school system to be above corruption, that is, to be honest, truthful, scrupulous, law-abiding, and a model of virtue. I would not associate with anyone who was not. Furthermore, we schoolchildren were taught to denounce cheating, dishonesty, stealing, cruelty, and any other kind of activity that was frowned upon by the community and hotly resisted by our families, although seemingly tolerated by others who we suspected of indulging.

This innocence did not last long once I entered the London School of Economics and Political Science where to my surprise things were quite different. Some fellow

students lied, cheated, stole library books, copied other people's work, misrepresented what they had pretended to study, falsified or distorted facts, and generally misbehaved. This was my welcome to the real world to which I had to rapidly adjust. More importantly, my professors disclosed what they knew about how human relations were actually conducted, how immoral people could be, how badly public affairs were in their opinion administered, and warned us not to believe everything we read or to be taken in by convincing arguments. We should think for ourselves and question everything. Yet, rarely did the word "corruption" appear except in regard to the occasional scandal that in those days were quite rare (or rarely known) in the United Kingdom. Even when we came across academic wrongdoing, we were asked to keep it confidential unless we had fool-proof evidence. As there was little known corruption in the countries in which I lived until after I obtained my first academic appointment, I thought no more about corruption in high places.

Things changed when I became a full-time researcher in political science, government, and public administration. I had access to privileged documents. I attended international conferences and conversed with colleagues who had stories to tell. I interviewed public officials and politicians. I quickly became skeptical of the public record and what the mass media put out for public consumption. Soon enough, I witnessed academic corruption and double dealing by faculty and students alike. When I travelled on research, I discovered gross misgovernment, self-serving administrations, disappearance of public funds, misappropriation, fraud, waste, gross incompetence, and brazen corrupt practices. Yet, very little of this was generally known except by insiders sworn to secrecy. Those who revealed the facts without official permission could fear for their jobs, career, and even life. The sage advice was to look away, close one's eyes, and keep silent. No wonder so little was mentioned in text books and lectures and not much more in professional gatherings.

To me, who had been taught by my parents, teachers, and patrons, to be honest to all and myself, how could I hide the truth when the outcomes of corrupt conduct were so dysfunctional? In this, I was not alone as I came across colleagues who felt the same way. As a small in-group, we began to write papers to share with one another. Then, when one of us organized a conference or became editor of a journal, we chanced publication in the proceedings or in an academic journal to test the reaction. Some of the consequences were indeed unpleasant. But we persisted and slowly but surely we were joined by other researchers and we had a gratifying

reception from many insiders who praised our efforts to reveal what was being done in the public's name. Indeed, under cover, insiders sent us information they possessed about what they knew even when they were forbidden to do so. Within a generation or so, we could no longer be suppressed and found a ready audience and public figures willing to support us and take what action they could to combat corrupt practices. Such is the progress that has been made that a whole industry of research and alleviation has emerged incorporating international organizations, governments, political parties, pressure groups, citizen action committees, and brave individuals. The phenomena of corruption and related matters have become respectable subjects of scientific inquiry.

Consequently, there is little need to repeat what has been said in the past. After all, one can uncover wise pronouncements about corruption and misconduct going back at least 3,000 years. But in writing about corruption, one cannot avoid referring to past authorities and going over old ground. This is probably inevitable. So, in advance, I apologize for any duplication and repetition that readers may find in these latest writings of mine. Much more knowledge has come to hand and conditions have much changed in the last few decades. During that time, a number of our original small band of pioneers has been killed by unknowns for daring to write or speak out. Their sacrifice must be remembered. Others have died or since passed on to other interests, frustrated that they achieved so little in their fight against corruption.

Since readers will make up their own opinions about what I have written for this volume, I will not attempt to summarize what they can read for themselves. Instead, I will give a brief guide how the pieces came to be written as they were in the order in which they were written and appear here. In 1. "No More Heads in the Sand?", three academic studies published at the opening of the century combined to give an overview of public corruption as it then was intended to show how far the prevailing taboo surrounding and protecting had been broken. I had known the editors and authors for some years and was well acquainted with their research. This familiarity helped us to continue to end the taboo altogether on the whole phenomenon of corruption (public and private) and public maladministration. These studies were also seen as a challenge to other academics in the field of public administration who preferred to safely concentrate on emphasizing how public policy and management should be conducted not how it really was. Many of the major popular textbooks described more the ideal than the reality. Many texts still do by dwelling on the

techniques and skills required to be successful senior public managers than the political and ethical environment in which public business is conducted and the context in which budding public officials are likely to find themselves.

This attempt to make public administration an impartial science belies the personal art it is. There are few if any general universal laws that determine how things are run. What is done is largely circumstantial and what can be achieved is determined by what is possible. Occasionally, wonderful things can be accomplished by determination, sacrifice, charisma, adequate resources, and improvisation, and also the genius of innovation, but not very often. Most public administration is a hard slog involving tedious routine and clienteles that are reluctant to change and depart from what they have long become to expect and do. I once had much belief in the efficacy of public service reform and overhauling administrative systems in a way that optimistically should reduce or minimize corrupt practices. But, first, before anything could be done, corruption had to be openly admitted and confronted. I praised the three books for their emphasis on tackling public maladministration. While I still believe that corruption can and should be reduced, I now recognize that change and reform can be too slow, subject to too much sabotage, and behind the times in today's fast changing world. The emphasis should switch to innovation, that is completely new ways at looking at how public business could be conducted and how public services could (and should) be delivered more effectively, perhaps eliminating the possibility of corruption altogether. We have to get away from perpetuating the old and embrace the ideas of younger, more energetic, and committed generations of not just public servants on the inside but also of all caring stakeholders.

In the review of these three studies, not one word was written about corruption in the private sector which is probably even older than public corruption. Even today, most studies of corruption concentrate on the public sector, that is, corrupt practices within public organizations meaning governmental organizations. Indeed, the word "corruption" is largely confined to corrupt practices carried out by public officials and agents employed by governments to execute their policies, orders, directions, and commands. But there is a distinction between political corruption committed by public leaders and career politicians and official/public corruption committed by their servants and agents in the public sector. This way, corrupt activities carried out by private organizations and their employees are either excluded altogether or included only when conducted with the knowledge, acquiescence, and connivance of the

public sector. If corruption does occur, it is supposed to be failure of public officials who are required to monitor and regulate private activities affecting the public and safeguard the public from any harm or mischief that might result. In short, should corruption occur, it is the fault of public officials who are remiss of their duties and obligations should corruption occur anywhere.

This simplistic approach is unrealistic: it ignores the nature of much private sector corruption. From a very early age, children have to learn whom they can trust other than their immediate parents and siblings, not all of whom are trustworthy or other members of the extended family and neighbors who may step in to take over from them with gestures of concern, friendship, charity, sharing, and hospitality. Beyond this circle, strangers have to earn their trust for they may have already experienced pain, deceit, theft, and all manner of meanness. As they grow up, they learn to do more things for themselves and more independent by developing their own skills and abilities, thereby becoming less dependent on others less deceived. But in many respects they remain dependent on the community to work together, cooperate, share, and discover the benefits of the division of labor, much of which does not involve government at all but only private relationships. If one is let down, there is no public authority that is going to intervene on one's behalf. All are much on their own and have to be on their guard throughout life in their private transactions. All have to deal with unavoidable private wrongdoing committed by the unscrupulous and uncaring acting in their own selfish interest. Indeed, all are warned not to be taken in by sweet promises, meaningless assurances, and friendly handshakes, and certainly not by unenforceable agreements and unreliable codes of ethics, not even by worthless written contracts. Few can avoid being fooled at one time or another however careful.

Throughout history, there have always been good and bad business good and bad business owners, directors, and staff, and good and bad business practices. There have always been appeals to public authorities to intervene on behalf of complainants to get rid of the bad altogether or at least restrict their operation and even compensate their unwitting victims. Bad businesses have been seized, their assets confiscated, and their operators punished. But those same public authorities have been guilty of being partners together in crime and abetting private corruption. Parochial business interests have ruled over the wider common public interest and no action has been taken to curb nefarious activities even when the private sector was relatively small.

Once business organizations began to grow, spread themselves globally, and increase their political power, it became increasingly difficult to curb and control their malpractices and their limited regard for any social responsibility. In the ongoing ideological battle between individualism and communalism, liberal capitalists seek to protect their preserves against collectivists who want to abolish unregulated markets and transform private property into public ownership in the ongoing ideological battle between individualism and communalism.

How difficult it has become to tackle private corruption is illustrated by the evidence being released by public prosecutors around the globe of corporate crime, especially of transnational businesses that trade and operate in many countries. They operate mostly in secret and outsiders have to rely on what they are prepared to reveal. 2. "Private Sector Corruption: The Case of Enron" was originally written at the height of a scandal where this private company in the United State had been making huge profits by defrauding public entities and the public purse. It had acted immorally in a gross fashion that had been hidden from public view. Its greed was exposed to public view and sent shock waves throughout the country. How could such a thing happen? How did Enron's exploitation occur? Who was at fault? What should be done to ensure that nothing on this scale could occur again? When Enron was eventually investigated, it was revealed through emails, taped recordings, and insiders who for a consideration told what they knew that Enron's executives had deliberately fooled the public, lied, rejoiced how much money they had been making from their mendacity, and self-congratulatory celebrating at being taken at face value. How much collusion it had received from crony organizations that should have known better had been startling. The company protested that it had done no wrong and had just been following typical business behavior. Some of the chief miscreants were prosecuted and punished for their deceit and Enron was disbanded along with its accounting firm. Thus, within just a few years, Enron was almost forgotten as far worse cases of business malpractice and corporate crime came to light.

But the system that caused the Enron scandal barely changed. New actors appeared in their place and even far worse scandals soon followed. The misconduct revealed in that case continued even worse, informally shielded and protected by different players including the public watchdogs that were supposed to guard the public purse and prevent such abuse of public trust. The regulatory agencies that had been sleeping on their watch have only recently begun to intervene and enforce the

law. Many of the new rules introduced have been ignored or bypassed. Entrepreneurs still exploit every loophole they can find. Professional associations remain lenient on deviants whom they protect. The public whom they are all supposed to serve are often kept completely in the dark. The damage has long been done without adequate amelioration. Everybody else has had to pick up the pieces as best they can and many of the miscreants have been clever enough to escape the blame and provide lessons for other miscreants. Instead of Enron, one can now substitute many other corrupt corporations, including Exxon, Shell, British Petroleum, General Motors, JPMorgan Chase, Bank of America, HSBC, Barclays, and other giants around the globe considered too big to let fail and disappear. Governments remain out of their depth, falling down on their job as guardians of the public interest and the underprivileged. It is the struggling taxpayers who have to bail out private companies whose private owners and executives are among the wealthiest of the wealthy. In this case, more effective government intervention is needed not less, more inspection of activities is required, and more transparency is essential to catch dreadful failings before they get out of hand.

The Enron case did point a finger at the profession of accountancy not just in the United States but around the globe and how a decade later little seems to have changed as countries and corporations defy attempts to impose universal standards of good practice. But then much the same could be said of other professions that wittingly or unwittingly have shielded corruption. Illegality and immorality pay and pay big both to the corrupt and all those they can influence and bribe to keep silent and those who share in their ill-gotten gains. Many of their victims suffer alone without recourse. Meantime, the offenders make deals to get off lightly or rather pay the penalties imposed out of their profits as long as the details of what they did are kept secret from the public kept ignorant and uncompensated. When the sinners pose as misunderstood and misperceived saints, public trust evaporates.

Clearly, the one profession above all others that requires persons of the highest integrity embodying public ethics was that of public administration that employed qualified career public servants, public leaders, policy makers, managers, lawyers, accountants, planners, investigators, regulators, and all the other specialists who staffed public organizations, provided public goods and services, and represented public authority. Their incorruptibility is a guarantor of clean governance. 3. "An Anatomy of Official Corruption" was written for an academic textbook on public ethics

for an American audience. It went over old ground that might not be generally known and was much simplified and generalized. To some extent, it stands the test of time. When it was written I felt it tended to be superficial and gloss over too much. However, if I were asked to rewrite it, I would not change much but insist on enlarging it in the light of more recent knowledge, particularly to emphasize that corruption is an explicit strategy to exert power and is not committed by accident; it is quite deliberate and is done quite skillfully. The corrupt know exactly what they are about and can be quite revengeful on those who stand in their way. Bribery is a much more common than realized and rules against it are rarely effective, particularly in the international arena where little enforcement exists. The rewards are just too high to forego. What is needed are innovative incentives not to be corrupt by rewarding the honest and encouraging people not to stoop to corrupt practices by choice. The public sector is deficient in making integrity pay when wrongdoing can be so much more rewarding and profitable and the risks of being caught and punished relatively low and therefore worth taking.

4. "Ten Major Flaws in Combating Corruption" was more controversial at the time of its first publication although it has been substantiated and vindicated since then. In the previous decade, eminent public authorities such as the United Nations, the World Bank, and the Organization for Economic Co-operation and Development, had finally recognized corruption as a global problem. They had embarked on resolutions, programs, conferences, manuals, and technical assistance missions to encourage member states to tackle different forms of corruption that were handicapping development. They were proud of their efforts but their accomplishments fell well behind their expectations. While I did not criticize them by name, I pointed out why they were not being that successful and they themselves were hardly models of virtue in the way they conducted their business. Indeed, their behavior hardly improved after they ideologically switched from seeing the administrative state as the engine of development to enthroning private enterprise, thereby glossing over the systemic corruption of the private sector and undermining the notion of public service and with it the foundations of public ethics. Individualism and self-interest may have brought rewards but these have been maldistributed at the untold expense and misery of the many victims of corruption and corrupted political and economic systems. My argument is elaborated in 6. "The Civilizing Mission of Public Administration." Both essays should be read together as public administration,

the public sector, and public service are currently under pressure to downgrade and with their being demoted, their civilizing mission is being jeopardized.

5. “Ten Current Challenges in Combating Corruption in Western Style Democratic Polities” questions democracies that are convinced they are morally superior to other forms of government, that they are freer of corruption, and that their anti-corruption measures are more effective. They cannot afford to be so complacent. Frequent scandals in high places, inability to deal sufficiently with systematic corruption, and serious financial crises, reveal that all is far from well. By restricting their view, they obscure the wider implications of corruption on the world stage and within on stability, equity, and public confidence. The situation hardly improves and they are at odds with one another on what action to take. Their faith in private entrepreneurship and innovation belittles that which has always been evident in the public sector, downgrades their debt to public initiatives and public entrepreneurship, and undermines public values and community welfare. Worse still, all ten challenges grow tougher every year and technical solutions proposed by experts further distance the public from public policy and execution.

7. “Toward Cleaner Governance” emphasizes my argument by bringing together much of the evidence I had published previously and repetition is unavoidable. It is a global viewpoint not directed at Asia specifically and does not single out any particular country. As such, it is too generalized, too idealistic, and too optimistic. It draws on what was the state of the academic discipline before the 2008 global financial crisis when the extent of dirty hands of a systemic nature was revealed to be beyond most people’s knowledge and expectation. Nobody was untouched or would be untouched by how much corruption had been hidden from sight and glossed over, how much faith in public institutions had been misguided, and how difficult it would be to take corrective action. Many of the solutions known for ages had been ignored by public leaders who were still puzzled over what could and should be done. What came out was how deeply the international community was divided and how split many countries were on corrective action. The 2008 crisis was not just financial or economic in nature but involved wide and widening political, religious, social, ideological, and cultural divisions among regions of the world, between neighboring countries, and within different communities and localities within independent sovereign states, especially the largest of all continents that of Asia.

Nothing succeeds like success. Of all newly independent states, tiny Singapore,