

CORRUPTION IN JAPAN AND THE US

*Anthony Didrick Castberg**

I. INTRODUCTION

Comparing corruption in countries is always difficult, and this is no less true when the two countries are Japan and the United States. While both countries are advanced industrial democracies, the similarities generally end there. Japan's legal system is based on French and German models, and is therefore a civil law system, while the legal system of the US is based on the English system, making it a common law system. Japan has a multi-party parliamentary political system, while the US has a two-party, republican federalist system. The list can continue almost indefinitely, but let us remember that not only are the systems of government quite different, so too are the cultures. Thus, one would expect the types of corruption, if not the amount, to vary as well.

This paper will not attempt to determine the relative amounts of official corruption in each country, but rather the nature of such corruption and the measures used to counter it. Measuring corruption is particularly difficult in this case because "corruption" is not a crime, but a general classification for a variety of criminal acts, including bribery, abuse of authority, breach of trust, and misappropriation of public funds. The definitions of these criminal acts differ between Japan and the US, and more importantly, all of Japan is subject to one penal code, and therefore a single definition, while the US has 50 different penal codes (one per state) as well as a national (federal) code, resulting in

numerous definitions. Finally, while Japan keeps detailed statistics on corrupt acts, the US has no centralized record keeping for corrupt acts. This paper will, therefore, discuss differences in types, causes, and efforts to reduce, rather than amounts.

II. CORRUPTION IN JAPAN

Corruption in Japan generally takes the form of bribery of high officials in the various ministries or prefectural governors, or those of lesser rank. This bribery can take the form of direct payments of cash for favorable consideration, of entertainment ("wining and dining") of officials by those currying their favor, of gift memberships in expensive golf clubs, or it may take the form of unlisted stocks whose value will rise once they are offered to the public as a whole. In recent years there have been cases of corruption involving the Ministries of Labor, Education, Finance, International Trade and Industry, and Health and Social Welfare, as well as politicians in a number of prefectures in Japan.

Corruption in the US tends to take place at lower levels than in Japan. There are very few recent corruption cases involving high officials, although several cabinet officials during the Clinton administration were investigated but not charged. Corruption among law enforcement officers, at both the local/state and federal levels, occurs with some regularity, just as it does in Japan. In neither nation is such corruption extensive. From time to time a state public official is convicted of committing a corrupt act, but it is rare for anybody at the secretarial level (equivalent to ministerial level in Japan) to be

* Professor of Political Science, University of Hawaii at Hilo, United States of America.

convicted of a corrupt act. Henry Cisneros, former Secretary of Housing and Urban Development, pleaded guilty earlier this year to a misdemeanor charge of lying to the F.B.I about payments he made to a former lover. The payment was not from public funds and the case had nothing to do with his official duties. The investigation took 4 years, cost \$10 million, and was seen by many as motivated by partisan political concerns. Former Secretary of Agriculture, Mike Espy, was charged with bribery and acceptance of favors, but was found not guilty.

Corruption in the US is most prevalent in political campaign financing, where laws are violated with regard to individual and corporate campaign contributions, but where the candidate rarely personally benefits financially. What is sought is election or re-election rather than cash, although election or re-election may have clear financial implications. As noted in an earlier paper, those who contribute to political campaigns, legally or illegally, expect something in return, so one could argue that politicians who accept such contributions are in effect accepting bribes. It would, however, be extremely difficult to connect such acceptance to subsequent specific acts of favoritism by the politician. So the corruption that is seen in such situations is a generalized corruption of the political process, rather than specific corrupt acts by specific public officials. Problems of the corruptive influence of campaign contributions also are prevalent in Japan. As the *Asahi Evening News* noted in a recent (September 12) editorial, "*The heavy dependence of parties and politicians on corporate donations has been a breeding ground for corruption.*"

What explains the differences in the nature of corruption in the two countries? As we have seen, campaign financing corruption is common in both nations, but

the relative lack of corruption of high officials in the US, and relative prevalence in Japan, requires some discussion. High-ranking officials, secretaries of cabinet agencies in the US and ministers of agencies in Japan, are appointed by the chief executive in each country. In Japan this is the Prime Minister, and in the US it is the President. In Japan, a Prime Minister may remain in that post for as long as his party, or a party coalition, is in power. Over the past ten or 15 years, the longevity of Japanese prime ministers has not been great, with some administrations lasting less than one year. In contrast, presidents in the US enjoy a minimum of four years in office, and frequently eight. High-ranking appointed officials generally remain in their positions for at least the first term of the president who appointed them, and it is not unusual for them to stay longer if the president is re-elected. In Japan, however, short administrations mean short terms in office for political appointees. With little job security, the temptation of bribes must be strong, especially when the bribe includes promises of future employment in the sector overseen by the minister. In the US, as in Japan, political appointees lose their positions when the administration changes, but many of these high-ranking officials obtain jobs in private industry, universities, or run for elective office. Because they know when their term will end, they can plan their futures. When one never knows when one's term will end, it is difficult to plan a future and there may be, therefore, the temptation to obtain as much money as possible while in office, as well as set one's self up for a lucrative position in private industry as soon as possible, perhaps through favours given to private industry.

III. MEASURES AGAINST CORRUPTION

Both Japan and the US have numerous laws against corrupt acts. In Japan, these laws may be found in the Penal Code, the National Public Service Law, the Local Public Service Law, and in the Unfair Competition Prevention Law. In the US, the penal codes of all fifty states contain provisions against such corrupt acts as bribery, abuse of power, and embezzlement, and the federal codes contain numerous provisions against corrupt acts by both federal and state/local officials. A significant portion of the federal laws against corrupt acts in the US is of recent origin, the result of the "Watergate" scandals in the Nixon administration. In addition to state and federal penal codes, US law contains codes of ethical conduct, administrative regulations, and presidential orders. Under many of these laws, regulations, codes, and orders, administrative, civil, and criminal sanctions may be imposed. The US also has the Foreign Corrupt Practices Act, which makes the paying of bribes to foreign officials (private or public) a crime; it is the only nation with such a law. There is, then, no shortage of laws against corrupt acts in Japan or the US.

It is doubtful that either nation needs additional legislation to deal with corruption of public servants, although Japan might consider a law similar to the Foreign Corrupt Practices Act. More severe sanctions in Japan for corrupt acts may serve as a deterrent, but the widespread publicity given to past and current scandals, and the resulting sanctions imposed on former high-ranking politicians, would seem to serve that purpose. If one examines the sanctions given to these former officials carefully, however, one finds that they are not that severe. Imprisonment is often suspended,

as judges feel that public exposure may be enough punishment. So rather than increased penalties in the Penal Code and other relevant legislation, perhaps judges should treat such corruption more seriously by imprisoning corrupt officials.

In the US, by contrast, the penalties for corrupt officials are usually quite severe, especially if the case was tried as a federal crime. Federal US judges have little discretion in sentencing, so those who are convicted normally serve a prison term. There is not as much consistency in state cases, as state sanctions vary, as does judicial behavior, but it is still safe to say that the vast majority of public officials convicted in state courts of felonies involving corruption will serve some time in prison.

IV. PROSECUTION AND ADJUDICATION

One finds major differences between prosecution and adjudication in Japan and the US. This is due to differences in the nature of those offices, differences that are reflected in the manner in which cases are prosecuted and adjudicated. In Japan, both prosecutors and judges are career public officials. Both have been trained in the elite Legal Training and Research Institute (Shihoo Kenshousho), the only law school in Japan, to which only about 3% of its applicants are admitted. In the US, however, the only requirement to become a judge or a prosecutor is to have graduated from an accredited law school, of which there are hundreds with significant differences in quality, and to have passed the bar exam of the state in which the person is to serve. Many states require that those who aspire to a judgeship be a member of the bar for a minimum period—usually five years— but no special training is required. State judges may be either appointed or elected, while federal judges

are appointed by the president with the consent of the Senate. State judges have terms of office ranging from 4 to 10 or 12 years, while federal judges serve "during good behavior," meaning for life.

Judges in the US, therefore, must be concerned about politics. If they want to be re-elected or re-appointed, they must make certain that their decisions will not work against them when the time comes for re-election or re-appointment. Even where terms of office are lengthy-10years, for example- decisions can be held against a judge or a prosecutor by those who are politically powerful. Federal judges do not have such concerns, as they can be removed from office only by impeachment. But political considerations play a major role in their initial appointment, so the result may be the same. Many of President Clinton's judicial appointments have not been approved by the Senate because of ideological differences between conservative Republican members of the Senate Judiciary Committee and the President. In order to make sure an appointee is confirmed then, a president must select candidates whose political ideology will pass muster in the Senate. Thus, the federal judiciary is shaped by partisan politics.

Chief or head prosecutors in the US are either appointed or elected at the state level, while US attorneys at the federal level are appointed by the President. Lower ranking prosecutors may also be appointed by the chief prosecutor, or may be hired through a civil service system. Only a small percentage of prosecutors in the US make prosecution a career, however, and turnover is frequent. Good prosecutors can almost always make more money in private practice, and their status in the legal community is generally lower than those in private practice, especially private practice in large firms.

Those prosecutors who choose to make a career in public office tend to be either highly dedicated to law enforcement or incapable of getting a better position elsewhere. This is quite different than the status of prosecutors in Japan, whose status ranks with that of judge, and is overall quite high. More importantly, however, is the fact that prosecutors in the US are politicized, while in Japan they are not. That is not to say that there are no politics in prosecutor's offices in Japan, but that the office itself is not political and prosecutors do not have to run for re-election or worry about re-appointment. Prosecutors in Japan are also more cohesive than those in the US - they tend to have the same values, use the same methods and approaches, and have a collegiality that is not found in most offices in the US.

What this means is that there may be clear political considerations in the decision-making of many prosecutors and judges in the US, as their careers may depend upon making the correct decisions, whereas such is not the case in Japan. This is not to say that most prosecutorial decisions in the US are political decisions, as most criminal cases are routine, but rather that in major corruption cases involving prominent suspects, political considerations are more likely to play a role than in Japan.

V. CONCLUSION

Volumes could be written on the differences in official corruption between Japan and the US. This paper has only scratched the surface, but I hope that the essential differences between the corrupt acts themselves and the manner in which they are dealt with by the respective criminal justice systems is apparent. It is not likely that the corruption experienced in Japan will become common in the US,

113TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

although the reverse may happen. Nor is it likely that the successful structural aspects of the Japanese criminal justice system will be adopted by US prosecutors. But there is no reason why the US cannot insist that its prosecutors and judges be better qualified and better trained, nor that the role of politics in prosecutorial and judicial decision-making be reduced significantly. I hope that by comparing the two systems both will benefit, and as a result, official corruption will be minimized and the citizens of both countries will have more confidence in and respect for their political leaders.