

Restructuring, Renorming, Rethinking: Inferences from Canonical Thai Corruption Cases

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Abstract

Close study of two scandals offers powerful inferences both for remedial public policy and for improved analytic methods. The cases of Attorney General v Rakkiat Sukthana (2003) and the Constitutional Tribunal's 2007 decision dissolving the previously dominant Thai Rak Thai Party spotlight crucial factors allowing ministers to operate with impunity large criminal enterprises within the state. Structural properties of the two situations are compared to differentiate the initial factors in success of the criminal enterprises and the later factors in their collapse.

Factors in the success of the corrupt activities were secrecy of government processes, political control over the careers of those tasked to investigate impropriety, passivity of in-house control bodies, absence of any organ tasked to uncover corruption independently of complaints from an injured party, and participants' viewing their illegal activities as normal, expected and appropriate to their offices.

The downfall of the criminal enterprises resulted from active involvement of private citizens and public interest groups, from overconfidence and carelessness of corrupt state officials out of belief that corrupting the state was normal, expected, and riskless, and from happy accidents.

Effective remediation would entail a body whose career incentives are not controlled by state authorities actively to search out misconduct without prior complaint by an injured party or private citizen, and public access to documents regarding state procurements and concessions, such that evidence of wrong-doing could be routine rather than haphazard.

Structural infirmities as described above only facilitated in the Thai context, so structural changes would still fail without renorming, since the form and extent of corruption result from a vast public dissensus over the purpose of the state. Very many both at the top and within the state's bowels view it in patrimonial terms: the state exists to transfer resources from the public to their rulers. Renorming strategies are well understood in the literature, effective in practice every day in all kinds of organizations, and readily available to anyone interested in mitigating official corruption.

Work in corruption studies should henceforth employ a more comprehensive understanding of the public's view of the role of the state (recognizing the normative nature of the systems under study), should eschew pejorative in favor of scientific terminology, and should abandon an inapposite state-machine model of reality in favor of an intelligent-machine analog which alone can capture the subtleties of cooperative homeostatic systems motivated by social exchange to maintain a dominance hierarchy.

Keywords: Thailand, Corruption Cases

1. Introduction

Too seldom can scholars examine and learn from the detailed histories, structures and intentions of corruption cases, due to their inherently illegal nature. For this reason the happy availability of two bodies of data about notorious cases of misconduct in recent Thai history provides a welcome opportunity to draw important conclusions both for research

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For familiarity's sake this paper initially employs conventional terminology; its final section introduces alternative terms suggested by the preceding analysis.

and analytic methods and for public policy in Thailand and elsewhere.

First is the case of the Attorney General of Thailand versus Rakkiat Sukhthana, which reached legal finality on September 19, 2003 with Judgment 2/2546 of the Supreme Court's Criminal Division for Political Office Holders.¹ The Court's detailed analysis provides valuable insights into both the modus operandi of criminality within the Ministry of Public Health (MPH), the means used to protect it for so long, and the reasons for its final exposure and successful prosecution.

The second derives from the Constitutional Tribunal's Decision 3-5/2550 dated May 30, 2007 ordering dissolution of the Thai Rak Thai Party.² Its detailed analysis of the facts of the case likewise spotlights crucial structural properties of the state, which facilitated organized criminal activity within it on behalf of a political party.

This paper analyzes structural properties of the two situations and compares the initial factors in the success of the criminal activities with the later factors in their collapse, thus permitting inferences as to remedial measures. It finds from the examined cases that the criminal activities were quite predictable, following well-understood patterns of personal and organizational behavior. Just as there are no secrets to succeeding at corruption, so there are no secrets to diminishing it. However, the practicalities of doing so are obstructed by a hidden value dissensus in Thailand, an existential aspect of which this paper will spotlight near its conclusion.

¹ Judgment (Black Case) 1/2546 (Red Case) 2/2546 of the Supreme Court Criminal Division for Political Office Holders, Attorney General vs. Rakkiat Sukhthana, September 19, 2003, downloadable (only in Thai) from <<http://pws.prserve.net/studies/twocases.htm>>.

² Decision 3-5/2550 of the Constitutional Tribunal, May 30, 2007, Attorney General vs. Pattana Chart Thai Party; Attorney General vs. Phaendin Thai Party; Attorney General vs. Thai Rak Thai Party; downloadable (only in Thai) from <<http://pws.prserve.net/studies/twocases.htm>>.

Though specific to Thailand, these two cases also lead to a more inclusive understanding of the phenomenon of corruption and to a potentially much more fruitful practical approach to its mitigation.

2. Evidence Base, Methodology, Theoretical Base, and Analytic Template

Both cases of misconduct were well documented in the press and in legal proceedings. Both exhibited periods of success and then failure. This paper's methodology is a structural comparison to identify differentials and then to infer from them factors amenable to policy.

Theoretical domains employed are psychology (individual motivation), sociology (group processes), and organization theory (organizational behavior). This paper uses the following template for each case study:

- (a) Overview of the corrupt action;
- (b) Noteworthy structural features of the corrupt action;
- (c) Factors in the success of the corrupt action;
- (d) Important factors in the outcome.

3. Case One: Attorney General vs. Rakkiat Sukhthana, Minister of Public Health

3.1 Overview of the Corrupt Action

Rakkiat had assumed his position as Minister on November 14, 1997 and resigned on September 15, 1998. As the Judgment details, the scandal surrounding his tenure began with press reports in August 1998 of substantial purchasing irregularities, subsequently taken up by parliament.³ On November 27, 1998 the matter was sent for police investigation. In June 1999 the parliamentary investigative body

³ Attorney General vs. Rakkiat Sukhthana, p. 6.

confirmed purchasing irregularities for medicines and medical supplies in 34 provinces. Specifically, it determined the following:

There is reason to believe that there was an organized activity planned to order (medical supplies) and coordinated by political officials and high-ranking permanent officials and in reliance on doctors in many provincial hospitals and hospital directors to purchase drugs and medical supplies from firms picked by those officials.⁴

Upon investigation the Auditor General of Thailand found excessive purchase prices and excessive differences in purchase prices for purchases by community hospitals of same products on same dates in same localities compared with purchases by hospitals under the MPH.

According to the indictment⁵ on December 15, 1997 Minister Rakkiat revoked the reference price list which had established ceiling prices on the procurement of drugs and medical supplies by hospitals under the Ministry, thus creating a loophole for colluding firms to vend the same to the MPH at excessive prices. Rakkiat was alleged to have ordered or induced his subordinates to purchase from two colluding firms with a corrupt intention. Two weeks later sums totalling Bht 33.4 million appeared in bank accounts of his wife, and in August 1998 (just before leaving office) Minister Rakkiat himself obtained Bht 5 million by cashier's check from the managing director of one colluding firm in compensation for his acts.⁶

The National Anti-Corruption Commission (NACC) ruled that Rakkiat was "unusually wealthy" and the Attorney General petitioned to seize his property, including Bht 233 million in banked cash, on October 24, 2002.

The NACC also investigated and found negligence by officials leaving a loophole for more than one year, creating an opening for opportunists to act corruptly;⁷ the government then dismissed many doctors and officials of provincial hospitals involved in the corrupt procurements.

The Attorney General indicted Minister Rakkiat's secretary, Mr. Chirayu Charat-sathien, who entered a plea of innocence and contested the accusation on factual grounds, specifically denying that the cashier's check was a bribe on behalf of the minister. He was convicted and imprisoned.

After he was imprisoned Chirayu volunteered to give new evidence, stating that he no longer had reason to conceal the truth. On October 11, 2002 he affirmed to investigators that the Bht 5 million check given by the director of a colluding firm to Rakkiat on August 10, 1998 was consideration for assisting in purchases from the said firm. From this the NACC concluded that it had sufficient evidence to indict Rakkiat, who pled innocent and contested the proceedings on procedural grounds.⁸

The Court found unpersuasive all of Defendant Rakkiat's procedural objections, which asserted a lack of authority to prosecute him. It concluded from Chirayu's confession and detailed analysis of the trail of funds (including extensive efforts to manufacture evidence) that the Bht 5 million was indeed consideration for revoking the ceiling price and making purchases from a colluding firm which sourced the said Bht 5 million. The Court stated:

Thailand now faces the problem of deeply rooted corruption, so the present Constitution established independent bodies for efficient and effective investigations... The evidence shows without doubt that the

⁴ Ibid., p. 8

⁵ Ibid., pp. 1-2.

⁶ Ibid., pp. 4 and 2, respectively.

⁷ Ibid., p. 9.

⁸ Ibid., p. 14.

Defendant revoked the reference price to create an opportunity for a company conspiring with him to benefit... then received Bht 5 million... in consideration ... In view of the fact that the Defendant was five times Minister... and was practiced in the profession of law... it is appropriate to mete him heavy punishment. ... The Defendant is sentenced to 15 years' imprisonment.⁹

The Judgment made no mention of the earlier payment of Bht 33.4 million, which should have figured prominently in adjudicating criminal liability had there been evidence to support such a conclusion. Accordingly, the only proven fact in the fall of Minister Rakkiat was his receipt of the Bht 5 million cashier's check, and that was proven only by the voluntary confession of "bagman" Chirayu, a critical fact to which we shall return shortly.

3.2 Noteworthy Structural Features of the Corrupt Action

The Judgment and supporting investigations clarify that hundreds of individuals cooperated in a complex scheme known by its participants to be criminal, from the minister through collaborators in numerous provincial hospitals, including purchasing officials, doctors and businessmen. Ample evidence was scattered about, easily obtained by investigators or by almost anyone with inside contacts – which is in fact how the criminal activity came to light, as discussed below.

3.3 Factors in the Success of the Corrupt Activity

(1) Government procurement processes were secretive.

(2) Political authorities possessed extensive control over the careers of those positioned or empowered to investigate impropriety.

(3) In-house control bodies were passive; the criminal activity had protection from the top and political parties.

(4) No body existed with the duty to uncover corruption independently of complaints from an injured party; official bodies were only reactive to complaints of damaged parties or news reports; contemporary press accounts describe official bodies as passive or even obstructive.¹⁰

(5) Participants in criminal activity put forth little effort to conceal their acts, implying that they expected never to have a case to answer. That is, they considered it normal to organize criminal activity within the state apparatus.

3.4 Important Factors in the Outcome

The protagonist in this case was the Rural Doctors' Society, which launched a public campaign to expose the organized criminal activity. Two elements are noteworthy with regard to the Society. First, the 1997 Constitution adopted the innovation of an impeachment petition mechanism allowing the Society to raise suspect activity to official notice. It should

¹⁰ Consider the account of activist Rosana Tositrakul: "The 1997 Constitution had just been promulgated at that time, which allowed 50,000 concerned citizens to petition the National Counter-Corruption Committee (sic) to investigate corrupt politicians. The drug procurement scam was the first time this mechanism was used. The pressure was enormous. After five days – we hadn't yet gathered 50,000 names – the then health minister Rakkiat Sukthana quit. Ten days after that his deputy minister quit. Everyone thought it was over. I said, not yet, I hadn't got up to 50,000 names. I wanted to know how the mechanism worked. I managed to gather them, but the senate chairman refused to forward the list to the NACC. We fought on by filing an "unusually rich" charge against the minister with the NACC, which did an investigation and found that there was 233.8 million baht in his account that Rakkiat could not convincingly explain, of which 5 million was alleged bribery. ... There were calls threatening me and harassing me every day during the drug scam campaign. I was sued six times, four [times] by former minister Rakkiat, [once] by the [Ministry of Health]'s permanent secretary and the other [time] by the deputy minister."

<<http://www.thefreelibrary.com/The+fight+for+what's+right-a0149461454>>; accessed on May 10, 2009.

⁹ Ibid., pp. 35-37.

be noted that the Society did not succeed by using established procedures, such as a complaint to the police or to an inspector-general function. This confirms the inference above that there was a pervasive lack of faith in effectiveness of state bodies to cleanse themselves; many considered it normal for top state officials to organize criminal activity within the state apparatus.

A second element is that action may have been possible in this particular ministry due to professional ethics which some doctors may have felt obliged to observe and because doctors may have been less easily pressured than officials in other ministries.

A third noteworthy fact is that Rakkiat's conviction depended crucially on the confession of his bagman subsequent to his imprisonment. That is to say, even with all the evidence lying about, his conviction was still a chance occurrence. Structural change – adoption of the petition mechanism – still did not suffice reliably to diminish organized criminal activity within the state.

4. Case Two: Dissolution of the Thai Rak Thai Party

4.1 Overview of the Corrupt Action

This case grew out of the controversial April 2006 parliamentary election victory of the Thai Rak Thai Party, viewed by many as having been secured through a level of electoral fraud extraordinary in Thailand in modern times in both scope and brazenness.

On March 20, 2006, even before the election, Secretary General of the Democrat Party, Mr. Suthep Thuagsuban, lodged a complaint with the Election Commission alleging that the Thai Rak Thai Party had conspired with two smaller parties to falsify the official electoral database by backdating party memberships, so that legally unqualified persons could run against Thai Rak Thai candidates. (It should be mentioned that the Democrat Party had abstained from the election on the ground of

fraud.) The complaint reasoned that dummy “candidates for hire” were required so that the Thai Rak Thai winners could take office even if securing less than 20 per cent of the vote; should an uncontested candidate gain less than that, he or she could not be certified.

On July 6, 2006 the Attorney General petitioned the Constitutional Court to disband the Thai Rak Thai Party and two smaller parties for electoral fraud; the Court accepted the petition on July 13, 2006. A coup d'état during the pendency of the proceedings resulted on September 19, 2006 in the suspension of the 1997 Constitution. However the coup maker decreed the continuity of independent bodies and so a bench of the Court (known in English as the Constitutional Tribunal) carried forward.

During the period September through November 2006 the three accused parties submitted their pleadings, defending themselves factually by simply denying the evidence, claiming their enemies had fabricated incriminating bank records, video images and oral statements. The parties also proclaimed that, since they themselves had authorized no crimes in writing, any proven criminality would have been the action of individuals.

The accused parties also raised multiple procedural objections to the litigation, most importantly that the alleged acts, even if proven, were “trivial,”¹¹ not meriting the requested penalty of party dissolution.

The Constitutional Tribunal read its Decision on publicly broadcast television on May 30, 2007 and released the lengthy (105-page) text simultaneously on the Internet. It concluded from detailed examination of filmed images, bank transfers, computer files and oral statements that the three accused parties had indeed conspired to seize and retain state power illegitimately, by falsifying official electoral records, bribery,

¹¹ Attorney General vs. Pattana Chart Thai Party, p. 27; in the Thai language *lek noi*.

suborning perjured testimony, and illegally running more than one candidate in the same constituency. It ruled that the opposition Democrat Party did not falsify evidence; such Thai Rak Thai accusations were instead false, made with intent to deceive the Tribunal.

The Tribunal ruled that such offenses, far from being trivial pranks, threatened the security of the state itself, as shown by subsequent turmoil; it ordered dissolution of the three accused political parties. (Although the acts underlying the order were crimes, the Tribunal imposed only the civil penalties of party dissolution and revocation of the political rights of those involved.)¹²

4.2 Noteworthy Structural Features of the Corrupt Action

An important element of the defense of the three accused political parties was their assertion that any crimes were private acts of rogue individuals. The Tribunal's extremely detailed adjudication clarified that the criminal activities were part of a coordinated enterprise involving scores or hundreds of persons, many state officials, from a low-ranking data-entry operator right up to cabinet members using state property to commit their crimes (specifically, Lieutenant General Thammarak Issarangkura na Ayudhya, then Minister of Defense, and Pongsak Raktapongpaisarn, Minister of Communications; security camera images produced in evidence showed General Thammarak acting in furtherance of the criminal scheme right at his ministry).¹³

A clear inference from the Tribunal's explication of the evidence is that the plotters acted with impunity, never imagining that they would be called to account; this inference follows from their openly falsifying electoral records in official computers, using fully archived banking channels to transmit illegal payments rather than untraceable cash, and arranging payoffs right under the cameras at the Ministry of Defense.

¹² See also <http://en.wikipedia.org/wiki/2006_Thai_political_party_dissolution_charges>.

¹³ Attorney General vs. Pattana Chart Thai Party, p. 65.

Further evidence for this (ultimately excessive) confidence comes from the removal from office and imprisonment in July 2006 of the entire Election Commission on the basis of their illegitimate aid to the ruling Thai Rak Thai Party.¹⁴

4.3 Factors in the Success of the Corrupt Activity

Weakly checked control of state power enabled the accused to gather financial resources by such well-understood mechanisms as state procurement and concession grants and then to use this mix of money and control over career incentives to motivate misconduct even among the indifferent or the unwilling. We may reasonably infer that this same mix gave the accused confidence that if worse came to worst they could save themselves by intimidating the judiciary as had previously proven effective.¹⁵

¹⁴ "In an historic judgment the Criminal Court of Thailand held yesterday (July 25, 2006) that the Election Commission was guilty of malfeasance and illegal assistance to the Thai Rak Thai Party in the April 2 Election and Repeat Vote. The Court sentenced the three members of the Commission to four years in gaol, revoked their voting rights for ten years and denied them bail before sending them to remand prison. The Court of Appeal confirmed the Criminal Court's decision on the denial of bail. The Court ruled that the commissioners had failed to protect the election rights of the plaintiff and to ensure that the elections were free and fair. The Court further held that Sections 24 and 42 of the 1998 Organic Law regarding the Election Commission (EC) and Section 83 of the Penal Code had been violated. The Court held in favour of the plaintiff who stated that the Election Commissioners had unlawfully allowed candidates to switch constituencies, change application dates and use old identity numbers for the benefit of the Thai Rak Thai Party, which is the party headed by the Prime Minister, Thaksin Shinawatra." <<http://www.ahrchk.net/statements/mainfile.php/2006statements/657/?print=yes>> accessed on May 8, 2009.

¹⁵ "Thaksin Trial: 'My Wife Had To Pay'" The Nation, October 21, 2002, "Issara Nitithanprapas, the recently retired Constitutional Court president, has implied that he was 'unsuccessfully lobbied' during last year's trial of Prime Minister Thaksin Shinawatra, and suggested that his wife's civil service career suffered as a result of his decision to vote 'guilty'. ... Issara said the immense pressure on the judges and maybe some mistrust among them kept them all from expressing their opinions during their deliberations of the case. 'And for big cases like this there were often attempts

In this case also nobody had the *duty* to unearth misconduct independently of the complaint of an injured party. Initial action thus depended, in this case, as in that of the MPH, on private individuals bringing to light through personal connections otherwise hidden evidence.

4.4 Important Factors in the Outcome

Retrospectively, it is clear that the Thai Rak Thai Party's reversal of fortune developed partly from the bad decisions of its leaders, grasping beyond their means based on overconfidence inflated by the success of earlier illegal schemes.

However, if we look for structural changes the key factor tipping the precarious balance in favor of legality was the 2006 coup d'état which withdrew the perpetrators' control over the career incentives of those who might discipline them, so rescinding immunity to legal process which they had formerly enjoyed.

Another factor is likely to have been the (unusually) televised statement of His Majesty King Bhumiphol Adulyadej to a group of Supreme Administrative Court judges on the occasion of their oath-taking on April 25, 2006 that he would not intervene to resolve unilaterally the then bitter political conflict; instead he was depending on the judiciary to resolve this problem. Historically, the Thai judiciary has quite abstemiously applied its powers to the executive; the King's address was a clear invitation to judges to assume an untraditional activist role.¹⁶

to lobby the judges in order to help the accused...’ “ <<http://www.nationmultimedia.com/search/read.php?newsid=67822&keyword=issara+nitithanprapas>>. See also <<http://www.asiamedia.ucla.edu/article-southeastasia.asp?parentid=15989>>.

¹⁶ Royal Address to the Judges of the Supreme Administrative Court, April 25, 2006, downloadable (only in Thai) from <http://pws.prserve.net/studies/two_cases.htm>; accessed on May 10, 2009.

5. Structural Comparison and Commonalities

(1) Investigative work once initiated was performed very effectively. The police displayed a high level of forensic skill in technical matters and of persistence in following leads back to their sources.

(2) The plentiful availability of incriminating evidence reveals that malefactors took few precautions to cover their tracks, from which we may infer that they never expected to have a case to answer; that is, they considered it normal to run a criminal network within the state. For example, only after the MPH case broke into the news were efforts put into manufacturing “evidence” to conceal the trail of corrupt payments to the minister.¹⁷

(3) An important empirical finding of this paper is that the offensive activities were not misconduct by a few out-of-control bureaucrats for their personal benefit but instead behavior expected by cabinet ministers and supported by extensive networks of officials. The activities were complex, carefully planned and coordinated, and completely documented as would be any official program. They were enduring programs, not quick grabs against fleeting targets of opportunity. The word “rogue” suggests “vicious and solitary” or “operating outside normal or desirable controls,” as in the following sentence: “How could a single rogue trader bring down an otherwise profitable and well-regarded institution?”¹⁸ In distinction the phrase “a criminal enterprise” refers to “a group of individuals with an identified hierarchy, or comparable structure, engaged in significant criminal activity.”¹⁹ The Thai Rak Thai Party's defense that the misconduct was not a criminal enterprise organized from the top but the private actions of rogue individuals was specifically repudiated by the Constitutional Tribunal. This

¹⁷ Attorney General vs. Rakkiat Sukhthana, p. 27.

¹⁸ See <<http://www.thefreedictionary.com/rogue>>.

¹⁹ See <<http://www.fbi.gov/hq/cid/orgcrime/glossary.htm>>.

fact has important consequences for remedial measures. In both cases the initial efforts to bring down the malefactors were those of individuals, in essence fighting as private citizens against a criminal enterprise supported by the power of the state. Seen in this way it is unsurprising that corrupt activities persist so broadly. An effective program to mitigate corruption of the form it often takes in Thailand (converting a part of the state itself into a criminal enterprise) would necessitate a rebalancing, by enabling a state body itself to take up the role played in these two cases by private citizens.

(4) State organs not only did not actively search out misconduct but were passive or sometimes obstructive. This leads to an important inference about the values and motivations of significant numbers of actors. No solution can be effective without addressing this fact.

(5) Despite the apparent triumph of the cause of justice in these two cases, in reality the “happy endings” resulted only from “happy accidents,” namely bagman Chirayu’s voluntary confession in the first case, and the coup d’état withdrawing power over the state from the malefactors in the second.²⁰ This fact has overwhelmingly important implications for any project aimed at mitigating the corruption of the Thai state and of those with similar structural properties.

²⁰ In confirmation of this point, the Thai Rak Thai Party vociferously objected that the proceedings against it were irregular, having resulted from the September 2006 coup d’état. That was of course its exact point: modest cleansing of the state as it stood was impossible given its structure and the values of the incumbents. Worth noting in connection with the concept of “accidents” or “irregularities” is that the only other conviction of a minister for corruption in the history of the modern court system up to Rakkiat’s time occurred almost 40 years prior to his downfall: Supreme Court Case 948/2510, resulting in the imprisonment – also for 15 years – of Lieutenant General Surachit Charuserani, Minister of Agriculture, also famously “accidental;” when Surachit failed to deliver the forestry concession for which he had been bribed, businessman Somrerk Kittisuwan launched an action to recover the bribe; see <<http://board.sae-dang.com/OpenMessages.php?no=44939>>. Other ministers, such as Thanom Kittikachorn, Prapat Charusthien and Subin Pinkayan, lost unexplained assets to civil forfeiture but otherwise lived happily ever after.

6. The Small Picture: Structural Conclusions

These cases highlight the present haphazardness of two processes essential to mitigating corruption: (a) the initial complainant, in both of these cases aggrieved private citizens who had to fight uphill against the power of the state; and (b) sourcing evidence, in these cases fortuitously available only due to the leakiness of the corrupt state, careless overconfidence of the malefactors, and personal contacts of the aggrieved. Among appropriate structural reforms would be:

(1) To institutionalize the “accidents” which produced incriminating evidence by establishing bodies (for example in each ministry, or independently of the ministerial structures) charged with *seeking out* misconduct, whose career incentives would not be influenced by the targets of their investigations. In a loosely related sense, some foreign jurisdictions employ ad hoc special prosecutors to handle the difficulty of influence over career incentives. The same issue is faced by banks where it is described in the Basel II Accord as the “internal fraud” aspect of “operational risk,” which is defined as “direct or indirect loss resulting from inadequate or failed internal processes, people and systems or from external events.”²¹

²¹ Best practice under the Basel II Accord requires a dedicated, proactive, internal fraud-control function reporting directly to the bank’s board. Absent such a proactive body, many renowned financial institutions have recently come to grief in a way comparable to the catastrophic consequences of the type of corruption described here on affected states, both economic and political. The issue is thus not peculiar to governments but a structural property of systems which suffer from principal-agency conflict in managing resources. The Basel II model offers valuable insight into the kind of structural reform essential to political institutions; see http://www.bis.org/publ/bcbs12_8.htm, especially Part 2 Section II and Part 3 Sections II and III. However, it should be noted that many financial institutions have passed through recent troubles in robust health even without such structural appurtenances; they did this because their value systems did not facilitate the financial misconduct dooming their now injured and departed brothers (compare for example State Street Bank of Boston with Wachovia Bank). This supports the thrust of this paper that mitigating misconduct entails consideration of both structure and values. (The misconduct in point here was bank employees’ gaming of their bonus system despite likely ruin of their employers.)

(2) To open documents regarding state procurements and concessions to public inspection, so that evidence of wrong-doing would be routinely rather than haphazardly available. Greater transparency would diminish economic rents, and thus the payoff for rent-seeking behavior which is the goal of organized corruption.²²

(3) To improve the speed and ease of the freedom-of-information process.

(4) To adopt a suitably protective whistle-blower statute.

(5) To conduct research constructed around interviews with officials imprisoned for corruption in order to probe what could have been done in their view to prevent the behavior resulting in their own incarceration. Some should be willing to be candid; their responses could be highly valuable in crafting measures adapted to local circumstances which vary from country to country.

7. Big Picture One: Renorming

With these case studies in hand and the clear understanding they afford us of motivations and methods regarding the cases, we can now move rapidly through analytical and policy conclusions.

The Constitutional Tribunal ruled that corruption of the type concerned in this paper was not the work of rogue individuals but of criminal enterprises within the state and controlled at the

ministerial level. Once this fact is established then it follows that no purely structural cure exists, for the simple reason that such enterprises, like all social groups, depend on the voluntary cooperation of large numbers of persons consenting – even if not enthusiastically – to common values and sharing common goals. The common values define the behaviors acceptable in the group and the common goals define the purposes which those behaviors advance. *Such group activities are always voluntary, never coerced.*²³ Changing the behavior of such

²³ Motivation generates cooperative group behavior; its incentives derive from social exchange. The first formal statement of exchange theory in sociology was by George Homans. However, Chester Barnard's classic study of business organization employed exchange analysis implicitly, and assumptions about the primacy of exchange processes have an extremely long tradition (see following Gouldner reference). The most extensive and rigorous use of exchange analysis is now in economics, but some writers have begun to develop frameworks for its application to sociology (see following Blau reference) and political science. With exchange theory we can explain the development of one kind of social bond between individuals and thus the emergence of new group structures. Social bonds develop since each party exchanges something less valued (to him) for something more valued.

Respective references are: George C. Homans, *Human Behavior: Its Elementary Forms* (New York: Harcourt Brace World, 1961); Chester I. Barnard, *The Functions of the Executive* (Cambridge: Harvard University Press, 1938); Alvin W. Gouldner, "The norm of Reciprocity: A preliminary statement," *American Sociological Review*, 25:2 (April 1960); and Peter M. Blau, *Exchange and Power in Social Life* (New York: Wiley, 1964). For economics, the literature is summarized in Peter Newman, *The Theory of Exchange* (Englewood Cliffs, NJ: Prentice-Hall, 1965); for sociology, see Blau's *Exchange and Power in Social Life* and his entry under "Social Exchange" in the *International Encyclopedia of the Social Sciences*, as well as John W. Thibault and Harold H. Kelley, *The Social Psychology of Groups* (New York: Wiley, 1959); for political science, see Sol Levine and Paul E. White, "Exchange as a conceptual framework for the study of interorganizational relationships," *Administrative Science Quarterly*, 5 (1960); Robert H. Salisbury, "An exchange theory of interest groups," *Midwest Journal of Political Science*, 13:1 (February 1969); James C. Scott, "Patron-client politics and political change in Southeast Asia," *American Political Science Review*, 66:1 (March 1972); "The erosion of patron-client bonds and social change in rural Southeast Asia," *Journal of Asian Studies*, 32:1 (November 1972), pp. 5-27; Jeffrey Race, *War Comes to Long An: Revolutionary Conflict in a Vietnamese Province*, 2nd edition (Berkeley: University of California Press, 2010).

²² The seminal article is Anne Krueger's "The political economy of the rent-seeking society," *American Economic Review* 64 (3): 291-303; for an overview see <<http://en.wikipedia.org/wiki/Rent-seeking>>. For case studies in two other Southeast Asian countries, see Jeffrey Race, "The political economy of new order Indonesia in comparative regional perspective," *Seminar Series* (Research School of Pacific Studies, Canberra, Australian National University, November 1979); and Jeffrey Race, "Whither the Philippines?" Institute of Current World Affairs, November 30, 1975, downloadable from <http://pws.prserv.net/studies/publ_01.htm>.

bodies entails changing the values and goals of its members, necessarily a process of inducement.²⁴ Coercion – “legality” – alone cannot succeed.

Therefore, regardless of how interesting, or not, may be the conclusions about structural changes noted under the previous heading, such changes will never be more than marginally effective in situations such as Thailand’s which are in fact typical of corruption systems in other countries; no anti-corruption program can succeed unless it deals also with values and goals.

It is here that we come to the most interesting fact dramatized by the Thai Rak Thai case: deeply embedded value dissensus concerning the relationship between the state and those staffing it, which characterizes endemically corrupt states.

The very concept of “corruption” grows out of a legal-pluralist model of the state which distinguishes between person and office, which model informs the entire discussion of “corruption” and “abuse of power.” However, the preceding (patrimonial) tradition out of which this newer state model evolved makes no such distinction: one seeks power for one purpose and one purpose only: to harvest “benefits” from the state for oneself, one’s family, and one’s friends, as well as for others willing to pay for influence. In former times everyone understood this unflinchingly, but nowadays superficial respect is usually rendered to an ornamental legality.

Both the legal-pluralist and the patrimonial-extractive models have long traditions worldwide from centuries past up to this very day. Using the state to transfer economic surplus to oneself, to insiders and their friends is the world-wide pattern of rule going back to the dawn of societies any larger than a

closed corporate community. The Thai Rak Thai Party just systematized and updated an ancient pattern²⁵... and looting the state has a long tradition in Thailand.²⁶

²⁵ The definitive statement appears in Gerhard E. Lenski’s classic *Power and Privilege: A Theory of Social Stratification* (New York: McGraw-Hill, 1966); an overview of his work appears in <http://en.wikipedia.org/wiki/Gerhard_Lenski>. An illuminating snapshot of a transitional moment in a European context is provided by the 1746 Battle of Culloden, a historically decisive military engagement (the last battle on British soil), the exact purpose of which was to establish which social classes, clans and lineages would gain favored access to the wealth of the British Isles; see <http://en.wikipedia.org/wiki/Battle_of_culloden>. Peter Watkins’ dramatic recreation of this battle as a quasi-documentary (now available in DVD) personalizes, in unforgettable scenes of simulated interviews, the economic and military burdens borne by those at the bottom stratum of society to support those at the top. A similarly thrilling re-creation of such a transitional period in the Thai context is M.C. Chatrichalerm Yukol’s daring 1973 Thai-language film entitled *His Name is Karn* (*khao chue karn*) from Suwanee Sukhonta’s novel of the same name, based on her childhood experience as the daughter of a rural doctor. In one important scene the district police chief instructs the naively idealistic Dr. Karn that he must for his safety conform to the system of local corruption (the chief protects the district gambling business and delights in the pleasures of local maidens); in another the district chief complains to his gunman that, unless Dr. Karn is done away with, he will (reluctantly) have to continue making his pile in this remote area (*tong haa kin thi nii iik nan*). Dr. Karn is gunned down, the district chief is imprisoned (though not for Karn’s murder), and the system of organized corruption continues to the present. For an elaboration of these points in the Thai context, see <<http://www.camblab.com/nugget/extrao2.pdf>>.

²⁶ *Kin muang*, literally “eat the city,” refers to the historic practice of tax farming or more generally of local rulers supporting themselves ad libidem by exactions from the populace rather than by legally defined amounts appropriated from a central budget; it is the term used by the corrupt district chief in the film titled *His Name is Karn*. Some scholarly sources translate the term perhaps more elegantly as “eat the realm.” Though he does not use the expression, Quaritch-Wales describes the practice and its consequences: “At all times the officials were dependent for their living on the people committed to their charge, not on any direct rewards or salary from the king... [O]fficials mainly depended for their living on what they could make in the course of the exercise of their duties... [E]very conceivable species of corruption was in vogue among the army of officials who handled the king’s revenues...” H.G. Quaritch-Wales, *Ancient Siamese Government and Administration* (London: Barnard Quaritch Ltd., 1934), pp. 41-42 and 229. Quaritch-Wales stresses the importance of

²⁴ Refer to any standard reference on group processes, e.g. James G. March and Herbert A. Simon, *Organizations* (New York: John Wiley & Sons, 1958), especially chapter 4, “Motivational constraints: The decision to participate.”

Proof of this is the remarkable follow-on to the Constitutional Tribunal's decision, which revealed that the 111 Thai Rak Thai members deprived of their political rights in fact saw themselves not as cynics or thieves but as intrepid realists. Of these 111 executives banned from politics for five years due to irrefutable proof of their party's systematic electoral fraud, not one apologized to the public – even though faked repentance and a sham promise to reform might have lifted the chance for return of political rights. At the least a few of them might have been expected to feign contrition for their children's sake, but none did. They genuinely believed that lying, falsification of official documents, bribery, sham electoral contests, threatening witnesses and suborning false testimony were appropriate in gaining power to extract resources from the public. Further – and *just as important* – they knew that these actions were accepted by large numbers among the public, at all levels of society. Their committing these acts diminished not at all their reception in polite society: they were – and still are – invited to cut ribbons and to sponsor society weddings. Infamous scoundrels appear weekly in positions of honor on the front pages and in the society columns of Thailand's newspapers.²⁷

the historic weakness of the Siamese state, which continues through the present day. See also M.R. Akin Rabibhadana, *The Organization of Thai Society in the Early Bangkok Period, 1782-1873* (Ithaca, NY: Cornell University Press, 1969).

²⁷ My inferences about the mentality of corrupt politicians rest upon personal experience. In the 1980s a local attorney, scion of a prestigious family, assisted me in some litigation, but after a year he passed my case file to a colleague in his law office upon resigning to pursue a national electoral career. We remained friendly and at a later time he invited me to lunch during which he complained that he had been double-crossed. The party he had joined had agreed to field him in the next election if he would collect bribes for its members. My lunch host grouched that he was going to move to another party because this party's leaders were dishonest: he had collected the bribes as agreed but they had refused to execute their part of the bargain. Some time later he invited me to another lunch and complained that he had collected the bribes for the second party but had again been double-crossed. Recently, he represented a famously corrupt businessman who is now a nationally known politician.

Anti-corruption advocates thus face a much more daunting challenge than superficially appears in advocacy for “structural reform” and “better law enforcement.” The “problem” is not the evil of (some of) those at the top, nor faulty structures, nor a shortfall of investigators or investigative tools. The “problem” is the vast public dissensus over the proper purpose of the state itself. Very large numbers of people both at its top and within its bowels view the purpose of the state in historic terms: to extract resources from the public for the benefit of their rulers.

Thus, in this context anti-corruption is not about “effective law enforcement” or “efficient running of the state;” it is about ultimate values. In the short run it is always more beneficial for each person to use state power to divert resources to one's self and family and friends than to serve others unselfishly, so one cannot appeal to the self-interest of those large numbers in the patrimonial-extractive tradition to change their behavior. Corruption is perfectly rational, just as it is perfectly rational never to tip in a restaurant to which one has no intention to return, even though plenty of people do. This is the province of implanting social values regardless of, and indeed contrary to, private utility.

There are no secrets to changing a community's values and goals; historically, the process is regularly employed in reforming faith communities, private businesses, military units, governmental bodies, and public behavior at large – examples are anti-smoking and recycling campaigns. The process entails a combination of charismatic leadership, proclamation of new values, and a period of highly visible – zero tolerance – enforcement of sanctions (principally shame, not penal measures) for violations of the newly proclaimed values. In due course an “emergent structure” of coordinated expectations appears in which the new values “interlock” the behavior of all participants despite their individual preferences; this is the definition of institutionalization. With the passage of a generation, new values become unthinkingly accepted.

These peer-reference values compel behavior in ways that neither law nor coercion (each working through calculation) can accomplish. As every parent knows, peer pressure is compelling because it works via the most powerful factor in behavior: human emotion.

8. Big Picture Two: Rethinking

8.1 Rectification of Names

The very name of this domain of study obstructs scientific thinking. The word “corrupt” derives from the Latin root for “broken”; in fact, nothing is broken – the system works!

It is well known that the form in which an issue is posed affects the comprehension of it and the choices one makes concerning it.²⁸ The cases just discussed reveal this clearly. That is to say, referring to patrimonial extractive behavior as “corruption” and “abuse” impedes comprehension and remediation, because it conceals the fact that such behavior is normative in the affected communities. Research in the domain of “anti-corruption” studies is currently limited by this framing issue. Studies typically pose a hypothesis as to why some people are corrupt and what might be done about this, but this is backward precisely because the cases just reported illustrate that such behavior is not deviant but normative. Frame-shifting to ask “Why in the world would anyone do his duty unselfishly when it is clearly to his disadvantage to do so?” is, on the other hand, a realistic question, answers to which open up fruitful new policy perspectives.

The first step in advancing this domain of study and policy prescriptions is therefore to abandon perception-distorting pejorative language in favor of scientific terms of analysis: drop “corruption,” “looting” and “kleptocracy” in favor of “teamed surplus appropriation” (as one possibility).

²⁸ See <[http://en.wikipedia.org/wiki/Framing_\(social_sciences\)](http://en.wikipedia.org/wiki/Framing_(social_sciences))>.

The next step would be intellectual recognition that teamed surplus appropriation is a rational behavior for value maximizers, which most people (save the righteous) are, as these Thai studies prove from cases typical of corruption worldwide. Since such behavior generates material benefits it results in peer approval and so becomes normative, thus doubly reinforcing the behavior.

One then sees that rational-legal structures of rule institutionally limiting rulers’ appropriation of surplus are historically deviant, not normative; that is the reality that “the study of corruption and its cure” must now accept. This being so, the underlying comprehension of “anti-corruption” is faulty, for example the United Nations Development Programme’s definition of corruption as “abuse of public power for private benefit” or Transparency International’s definition of it as “the abuse of entrusted power for private gain.”²⁹ Policy prescriptions are flawed and less effective than they would be were they founded on a scientific rather than pejorative understanding of the world.

The same applies to scholarly analyses; for example:

*Corruption has become a common practice in many societies and in some countries like Thailand it has become a pervasive phenomenon. This indicates that something has gone wrong in the management of state affairs, in the bureaucracy, and in the political society.*³⁰

Since it is generally more beneficial to be corrupt, it is irrational not to act for one’s own selfish interest. Since teamed surplus appropriation is perfectly rational, logically

²⁹ See <http://www.transparency.org/about_us>.

³⁰ Suchit Bunbongkarn “Democracy, money politics and corruption: The case of Thailand,” a paper presented at the Conference on Evidence-Based Anti-Corruption Policy organized by Thailand’s National Anti-Corruption Commission in collaboration with the World Bank, June 5-6, 2009, Bangkok, Thailand.

one cannot devise a mechanism or structure of material incentives and sanctions to prevent it.

The model now dominating the “anti-corruption” field is faulty in its analytical capability and productive largely of a fool’s errand in terms of its policy recommendations (legal codes and procedures, audit mechanisms, enhanced enforcement mechanisms, and procurement regulations).

8.2 Choosing the Right Machine Model

Let us now move to the field’s defective model of the reality it purports to study, in engineering terms a “state machine” in which the outcome is uniquely determined by its initial conditions and subsequent inputs.³¹ If the machine is “corrupt” (literally “broken” straight from its Latin root) then students of the domain may legitimately render policy prescriptions to “repair” the broken machine. Their recommendations would cure the machine’s misoperation just as cowpox vaccination immunized people against smallpox. Smallpox has been eradicated, but corruption remains endemic despite the existence of so much research and so many clever analysts. Why is this so? Because they have chosen the wrong machine analog to the reality they aspire to change.

Human intelligence in the service of value-seeking will predictably overcome anti-corruption measures, because the social structure in which its members participate reconfigures itself in response to its members’ goal-seeking: an intelligent machine.³² Complex social structures are strongly homeostatic, having evolved adaptive and protective mechanisms,

³¹ “A current state is determined by past states of the system. ... The next state and output of an FSM [finite state machine] is a function of the input and of the current state.” http://en.wikipedia.org/wiki/Finite_state_machine > accessed February 25, 2010.

³² “[A] system that perceives its environment and takes actions that maximize its chances of success.” <http://en.wikipedia.org/wiki/Artificial_intelligence> accessed on February 25, 2010.

including in this case internal restructuring to defeat “anti-corruption” measures, to maintain within and between generations the distribution of salient social values, such as wealth, income, power and status.³³ Anti-corruption programs can fruitfully be visualized as planned assaults on homeostasis and so must utilize the plentiful literature on how this is done.

8.3 The Way Forward

“Counter corruption” as a field of analysis and prescription can achieve more substantial results only when:

(1) Its practitioners begin to act upon the fact that the field’s very name impedes results, so abandon pejorative “anti-corruption” and “good governance” analytic modes in favor of a scientific analysis of the phenomenon of self-interest as a lifestyle choice between legal-rationalist and extractive methods of maintaining the distribution of values.

(2) Intelligent-machine institutional models replace finite state machine analyses in research and policy formulation; analysis and prescription draw upon the extensive knowledge available from domains of study of intelligent machines (rational agents) and the study of cooperative homeostatic systems motivated by social exchange.

(3) Policy, personnel, budgets and analysis move from efforts to demotivate “corrupt” behavior, using threats or incentives rationally weighed by the target individuals, in favor of efforts altering behavior at the level of personal choices diminishing the individual’s desire to acquire the quotidian values of most people everywhere at all times, namely wealth, income, status, and power. Action plans must recognize the need to shift focus to willed self-abnegation from a value-accumulating calculus.

³³ See <<http://pespmc1.vub.ac.be/homeosta.html>>.

Should responsible agencies shift their efforts in these directions, the evidence from these case studies and from what we know of human behavior gives confidence that more substantial results would soon be realized.

9. Epilogue

As this paper was being edited in late 2009 for final publication, three news reports appeared, the import of which attentive readers will immediately perceive from the following excerpts:

*11 named in stimulus scam, Committee exposes 'budget irregularities'*³⁴

The public health minister and his deputy are among 11 people linked to alleged budget irregularities and flawed management involving the government's economic stimulus scheme.

The allegations were aired by a government-appointed committee looking into alleged graft involving the Public Health Ministry under the Thai Khem Kaen – Thailand: Investing from Strength to Strength – scheme.

More than 86 billion baht has been earmarked for allocation to the ministry over the next three years for the development of health-care facilities and medical professionals under the government's much-publicised scheme.

But just as the scheme was about to start, alleged irregularities in procuring medical equipment emerged.

Inquiry panel secretary Vichai Chokewiwat said the 11 people are: the minister, Witthaya Kaewparadai; his deputy, Manit Nopamornbodee; Siriwan Pratsachaksatru and Krissada Manoonwong, former advisers

³⁴ Bangkok Post, December 29, 2009.

to the health minister; health permanent secretary Pajit Warachit; Policy and Strategy Office director Supakij Sirilak; former public health permanent secretary Prat Boonyawongvirote; former deputy health permanent secretary Siriporn Kanchana; former director of the Regional Public Health Administration Bureau Kasin Wisetsith; retired official Suchart Laohaboripat; and Zone 6 health inspector Jakkrit Phumsawat.

*Reshuffle on the cards, 'Irregularities' rock Abhisit government*³⁵

Deputy Prime Minister Sanan Kachornprasart has been assigned to head the Public Health Ministry. [Author's note: this politician had previously been barred from political involvement for five years on grounds of documented financial dishonesty.]

*Thailand's former public health minister released on parole*³⁶

Former Thai Public Health Minister Rakkiat Sukthana was granted parole by the Corrections Department after conduct [sic] good behaviour and had served about five years of his 15-year jail term.

³⁵ Bangkok Post, December 30, 2009.

³⁶ See <http://<news.mcot.net/view.php?id=12536>> (October 29, 2009). Of the Bht 233 million proceeds of corruption ordered forfeit (equal to about US\$ 7 million), the government was able to seize Bht 34 million (<http://www.matichon.co.th/news_detail.php?newsid=1267358674&gpid=00&catid=no>). The balance of approximately \$6 million mysteriously disappeared before seizure and was not demanded as a condition of pardon after five years of imprisonment.