



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

TRANSPARENCY AND GOVERNMENT ACCOUNTABILITY: DEFINING PRINCIPLES FOR INSPECTORS GENERAL AND FOR AMERICANS

Remarks as delivered by Department of Defense Inspector General Joseph E. Schmitz to Department of State International Visitor Leadership Program, Arlington, VA, August 2, 2005.

Welcome to the Office of the Inspector General. This is one of the major components of the Department of Defense. We have about 1,300 professionals that work in this organization. We have 52 offices around the world. Our primary functions are auditing, inspecting and investigating the programs and operations of the Department of Defense, which as many of you know, spends about \$500 billion dollars a year around the world. Auditing, inspecting, investigating and providing oversight generally tends to be a very important part of the principle of transparent and accountable government, which I understand is the subject matter of this meeting this morning. So, I am delighted to talk to you about it.

The actual title that was passed to me by the State Department sponsors of this meeting was "U.S. Experience with Promoting Transparency and Government Accountability." Let me walk you through a little bit of a historical path to kind of how we got to where we are today. What I'll try to do is very briefly review some of the historical underpinnings of what we refer to as the principle of transparency and government accountability.

Let me start by a somewhat obscure, but I think, a good historical primer on U.S. Government. It is actually a primer written by a professor from Harvard in 1890, a gentleman by the name John Fiske. It is a little handbook on civil government in the United States. Professor Fiske starts by writing:

The most essential feature of a government, or at any rate, the feature with which it is important for us to become familiar at the start is the power of taxation. The government is that which taxes. If individuals take away some of your property for purposes of their own, it is robbery. You lose your money and you get nothing in return. But if the government takes away some of your property in the shape of taxes, it is supposed to render to you an equivalent in the shape of good government – something without which our lives and property would not be safe. Herein seems to lie the difference between taxation and robbery. When the highway man points his pistol at me, and I hand him over my purse and watch, I am robbed. But when I pay the tax collector, who can seize my watch or sell my house over my head if I refuse, I am simply paying what is fairly due from me towards supporting the government.¹

¹ John Fiske, CIVIL GOVERNMENT IN THE UNITED STATES CONSIDERED WITH SOME REFERENCE TO ITS ORIGINS, p. 8 (1890).

Even before our Declaration of Independence, we had a robust English common law, which forms the foundation of our system of government. How many of you come from countries that rely on the English common law as your foundation? A significant number of folks around the world rely on the English common law. When we founded our country, when we broke from the English in 1776 – which is somewhat of a misnomer – our forefathers were actually, when they wrote the Declaration, defending their rights as Englishmen to live under a free system of government based upon the rule of law.

About ten years before our Declaration, a gentleman by the name of William Blackstone wrote our definitive treatise on common law, which was used by our forefathers to establish the United States Constitution. You who come from the English common law tradition have probably heard of William Blackstone. He wrote in 1765 in his treatise that there are four essential attributes of all civil laws. Essentially, he was defining a system of transparent government, which forms the basis of our American system today. He mentions four essential attributes of all man-made laws:

- 1) A law must be a rule, as opposed to a judgment;
- 2) It must be of general applicability, as opposed to a bill of attainder, which would be directed at one person;
- 3) It must be prescribed; and
- 4) It must be prescribed by the sovereign, not by somebody without authority.²

These are the four essential elements of the Anglo-American tradition in transparent government.

One principle that I often repeat -- and you might hear about it from some of my experts in this organization because we implement this principle on a day-to-day basis -- is one of the foundational principles of transparent government, namely that the rules need to be prescribed in advance. William Blackstone, in describing this principle, wrote that it is important the government not only prescribe, but promulgate the laws in the most perspicuous manner available, “not like [Emperor] Caligula, who . . . wrote his laws in very small character, and hung them up upon high pillars, the more effectually to ensnare the people.”³

This principle, citing the historical despot as the antithesis of transparent government, has found its way into, among other things, the *ex post facto* clauses of the U.S. Constitution. There are two of them. One in Article 1, Section 9, which is a general

² William Blackstone, COMMENTARIES ON THE LAW OF ENGLAND, p. 44-46 (1765-1769), (“[M]unicipal or civil law [is] the rule by which particular districts, communities, and nations are governed; . . . Let us endeavour to explain it’s several properties, . . . first, it is a rule; not a transient sudden order from a superior to or concerning a particular person; but something permanent, uniform, and universal. . . . It is likewise ‘a rule prescribed.’ But farther: municipal law is ‘a rule of civil conduct prescribed by the supreme power in a state’. Wherefore it is requisite to the very essence of a law, that it be made by the supreme power. Sovereignty and legislature are indeed convertible terms; one cannot subsist without the other.”).

³ *Ibid.* at p. 46.

prohibition against passing laws after the fact, which William Blackstone said was even more unreasonable than the law methodology of Emperor Caligula.⁴ There is a second *ex post facto* clause in Article 1, Section 10, which applies to the States. It wasn't enough for our forefathers to say there shall be no *ex post facto* laws. They had to reemphasize that prohibition one section later, in Article 1, Section 10, to say that States shall pass no *ex post facto* laws. That principle, and you'll hear this directly from our Director of Investigations of Senior Officials, is one of the principles that we in this organizations apply. And I'll just tell you the way I tell my folks: if it takes our lawyers more than a week to tell me what the legal standard is, we will not hold anybody else accountable to that standard -- because that would be a Caligula-esque method of enforcing laws. We're just not going to do that. It's not part of the American system of transparent and accountable government.

There is another provision of our U.S. Constitution which is called the Accountability Clause. It is also Article 1, Section 9, which reads, "a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." How many of you come from a country where you have a constitutional right as a taxpayer to have a published account of how your tax dollars -- or whatever your currency is -- were spent by your government? Does anybody come from a country where you have a constitutional right to a public accounting of how your tax dollars were spent?

We in America, since the 1700's, have had a constitutional right to that public accounting, and that's part of the underpinnings of what ultimately led to in 1978, the Inspector General Act⁵ -- that's where this office comes in. The Inspector General Act of 1978, just in terms of historical context, was passed in the immediate aftermath of a scandal known as Watergate. Watergate was an unfortunate chapter of American history, which led to the resignation of our President, our Commander-in-Chief. That was a very serious and unfortunate chapter of our history. The way our government dealt with that was to enact a specific law that didn't originally create this office here, but ultimately in a 1982 amendment created this Office of Inspector General.⁶

The design and purpose of the Inspector General Act was to create independent and objective units in each of the government departments in the Executive Branch that would be able to, in effect, to carry out that constitutional duty of public accountability. Each of the offices, each of the cabinet-level departments in the U.S. Government, has a Senate-confirmed, presidentially-appointed inspector general. We meet once a month in the White House as part of what we call the President's Council on Integrity and Efficiency. I believe it's the second Tuesday of each month.

⁴ *Ibid.* ("yet, whatever way is made use of [to notify the people], it is incumbent on the promulgation to do it in the most public and perspicuous manner; not like Caligula, who (according to *Dio Cassius*) wrote his laws in very small characters, and hung them up upon high pillars, the more effectually to ensure the people. There is still a more unreasonable method that this which is called making of laws *ex post facto*.").

⁵ Inspector General Act of 1978, Public Law 95-452, October 12, 1978.

⁶ National Defense Authorization Act for Fiscal Year 1983, Public Law 97-252, Section 1117, September 8, 1982.

I am the Department of Defense representative on this Council. I have about 30 colleagues from all the cabinet-level departments, as well as sub-cabinet level departments. We all meet once a month and we get guidance from the Chairman, who is the Deputy Director of the Office of Management and Budget for Management, a gentleman by the name of Clay Johnson. It is essentially a trade association of what I like to call the "Champions of Integrity" throughout the federal government. We meet for a couple of hours on Tuesday as I said. It's pretty much a give and take. We talk about common issues of government transparency and accountability – audits, inspections and investigative type of issues. We develop professional standards through this Council. We, in effect, police ourselves. For instance, if there is an allegation of serious wrongdoing against me, as a Senate-confirmed inspector general, the question is, to whom am I accountable? The answer is it gets referred to the Integrity Committee of the President's Council on Integrity and Efficiency, and it gets referred to an independent investigator to fully investigate the allegations against me, and either to substantiate them or exonerate me, and that happens.

Because I am the only representative of the Department of Defense on the President's Council and because the Defense Department is so large, we have established in the Department of Defense the Defense Council on Integrity and Efficiency, which meets two days later in this building. We have all the component heads throughout the Department of Defense who are involved in auditing, inspecting and investigating come to this office. I pass onto them, in an abbreviated form, the most important messages from the White House and then I listen to them to find out what's happening throughout the Department of Defense, so that I can better serve my statutory duty as the principal advisor to Secretary Rumsfeld.

The only other thing I will add before I introduce my team that will essentially walk you through the nuts and bolts of how we do business here is that, in October 2003, the President invited those of us that serve on his council to come to the White House to celebrate the 25th anniversary of the Inspector General Act of 1978. The President thanked us all for our service and he explained to us his perspective of government transparency and accountability. He said, "Every time an inspector general roots out fraud, waste or abuse in the government, the inspector general increases the confidence of the American people in our government." That's a very, very important principle if you think about it – the notion of it being *our* government. If you think about the U.S. Constitution, the first three words are "We the People."

"We the People" – the principle of popular sovereignty – is also one of those foundational principles that define who we are as Americans. I would submit to you that the principles of transparency and government accountability, along with integrity and popular sovereignty, are so foundational to us that they literally define who we as Americans are. I would even submit that those principles are shared by most of our allies today in the Global War on Terrorism and by many others of our friendly nations that rely upon this notion of the rule of law, which is so foundational to who we are and what we as Americans do!