Developing an Ethical Culture in Public Sector Governance: The Role of Integrity Agencies

Chris Aulich* and Roger Wettenhall**

*Visiting Professor, Institute for Governance and Policy Analysis, University of Canberra and Adjunct Professor, University of New South Wales, Canberra
**Emeritus Professor, Institute for Governance and Policy Analysis, University of Canberra

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Abstract
Integrity in government can be conceived as a system of laws, regulations, conventions, codes of conduct and established agencies which, taken together as a system, aim to address corruption, misconduct and maladministration. This article discusses the notion of a system of integrity and then focuses on integrity agencies as one contribution towards developing an ethical culture in public administration. Integrity agencies, for various reasons, require independence from the government in order to effectively fulfill their roles. The article raises a number of incidents where executive overreach, in particular, has challenged this independence and suggests a number of ways where independence can be protected and even fostered. The article focuses primarily on the Commonwealth government and is particularly relevant at a time when the Commonwealth Parliament is examining proposals to establish an anti-corruption body.

Introduction

Integrity in public administration typically relates to means of tackling corruption, misconduct and maladministration with a view to establishing a culture of ethical behaviour among all participants in the political-administrative system. What has become clear to many commentators is that a systems view is increasingly being seen as the most effective way of fostering this ethical culture. An integrity system is a series of institutions and practices that collectively aim to build integrity, transparency and accountability in the public sector. This typically involves a mix of institutions, laws, regulations, codes, policies and procedures, which together provide a framework of checks and balances. This framework works to foster an environment of high-quality decision-making and identify and address inappropriate behaviour including corruption.[1]

The use of the word 'integrity' in this context has meaning beyond ethical behaviour to include the notion of being whole or undiminished—a system intact. An effective integrity system requires a range of interlinked arrangements, processes and laws that in total help to generate an effective culture of integrity. A system is more than separately establishing special-purpose integrity agencies, calling commissions of inquiry when specific situations arise, adopting codes of conduct or establishing mechanisms for investigating breaches of ethical behaviour. It is the sum of these elements, or as Transparency International (TI) has recommended, it is a set or system of institutional pillars (see below).[2]

This article has been developed within this TI framework. It argues that specific-purpose integrity agencies are a necessary contribution to the establishment of an effective integrity system, but only as one part of a broader, integrated institutional approach to developing and sustaining good governance. The argument is developed in two main parts. The first

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[1] E. Proust, *Review of Victoria's Integrity and Anti-Corruption System*. Melbourne: State Services Authority, 2010.

[2] Jeremy Pope (ed.), *Confronting Corruption: The Elements of a National Integrity System*. Berlin: Transparency International, second edition, 2000.

focuses on some of the issues relating to the establishment and assessment of an integrity system. The second deals with the establishment, development and enculturation of specialised integrity agencies as one of the critical pillars of a total integrity system. We regard integrity agencies as state institutions with specific responsibility for monitoring, reviewing and fostering integrity as an integral element of good governance and countering any abuses detected. The article raises two crucial elements that are endemic to the establishment and development of such agencies: firstly, the changing roles of these agencies with their constant search for legitimacy over time; and secondly, the continuing need to balance agency autonomy and government control over their activities.

Developing an Effective Integrity System

Antipodean experience was significant in developing the notion of a 'national integrity system' built on a network of interrelated 'pillars' that sustain and promote integrity and enable anti-corruption reforms to be addressed.[3] TI had been established in the early 1990s as a small international organisation designed to confront what was seen as the 'curse of corruption', and, over the next few years, the foundation managing director, New Zealand Human Rights Commissioner Jeremy Pope, produced what became the much-publicised TI source book: *Confronting Corruption: The Elements of a National Security System*.[4] By 2008, this book had been translated into over 25 languages, and the experience of the Australian State of Queensland had been particularly influential in its preparation. In that state in the 1980s, the Fitzgerald Royal Commission had investigated a variety of corrupt practices, and its widely studied report argued that piecemeal solutions to the problems of corruption were self-defeating because they concealed so much.[5] The Commission Report, and the TI system which followed, urged the institutionalisation of integrity through a number of agencies, laws, practices and ethical codes. The model system was based on the metaphor of an ancient Greek temple where the various structural components were mutually reinforcing, with integrity agencies as an essential component (see Figure 1).[6]

Figure 1: Transparency International's 'Institutional Pillars of a Model National Integrity System'[7]

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[3] Brian Head, 'The Contributions of Integrity Agencies to Good Governance'. *Policy Studies*, 33(1), 2012, pp. 7–20.

[4] Pope, *Confronting Corruption*.

[5] G.E. Fitzgerald, *Report of a Commission of Inquiry into Possible Illegal activities and Associated Misconduct*. Brisbane: Queensland Government, 1989.

[6] Pope, *Confronting Corruption*; Jeremy Pope, 'National Integrity Systems: The Key to Building Sustainable, Just and Honest Government', in Brian Head, A.J. Brown and Carmel Connors (eds.), *Promoting Integrity: Evaluating and Improving Public Institutions*. Aldershot: Ashgate, 2008.

[7] Pope, *Confronting Corruption*.
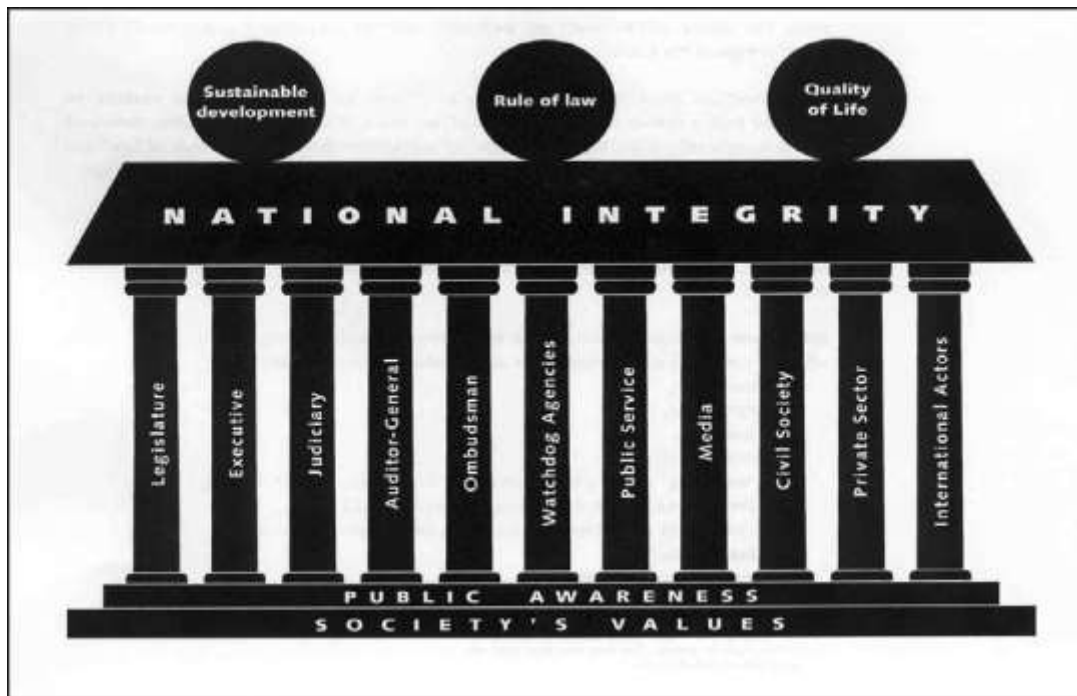
As the TI 'pillars of integrity' model makes clear, in a well-developed integrity system the factors that underpin good governance and promote the ethical and effective pursuit of public purposes would be diffused throughout the social, economic, cultural, legal and political institutions of a nation. According to Brian Head, however, in most jurisdictions it is common for these principles and practices to be unevenly distributed. This may relate to local circumstances and the variation in critical issues to be addressed; it may relate to issues of funding, as integrity functions are often inadequately and inconsistently funded; and it also may relate to patchy monitoring and oversight arrangements. Head suggests a special importance for political and institutional leadership in clarifying and enforcing standards and providing clear guidance as to how public officials and bodies should discharge their responsibilities and accountabilities in particular jurisdictions.[8]

Numerous locally-driven approaches have been developed worldwide. One widely-used strategy has been to establish codes of conduct that set out the requirements for probity in decision-making for various actors in government such as politicians, their advisers and public servants. Other measures involve the establishment of specific processes for the probity of key financial procedures (such as procurement, financial controls, budget 'honesty' and audit). An increasingly debated approach for integrity reform has been to establish specialist integrity bodies to independently define, promote and enforce standards and to investigate potential offenders for breaches of integrity regulations. However, the extent of these local variations has been such that broad questions of international comparability and best practice have been difficult to determine.

Nevertheless, some attempts have been made by international organisations to assess and rank countries in terms of their performance in establishing and maintaining integrity, for example, the World Bank, the United Nations and the OECD, as well as several international advocacy bodies and various major NGO bodies involved in delivering foreign aid. In relation to foreign aid, the leverage connected with large aid recipients and emerging markets has been utilised by many international bodies to 'encourage' stronger efforts in establishing and developing more robust integrity systems in recipient countries. Global

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[8] Head, 'Contributions of Integrity Agencies'.

integrity surveys have noted a policy trend for wealthy donor countries to insist on greater action to curb corruption in exchange for increased investment and foreign aid.[9]

The first global integrity study examined corruption, accountability and openness in 25 countries and compiled a list of indicators across six main governance categories.[10] This index was used to 'score' the national frameworks and safeguards designed to promote public integrity and accountability and prevent corruption or abuses of power. The index assessed three dimensions of these governance categories: first, the existence of mechanisms, including laws and institutions, which promote public accountability and limit corruption; second, the effectiveness of these mechanisms; and third, the access that citizens have to public information to hold their government accountable.[11] The studies found that all countries were susceptible to abuses of power, whether from a lack of transparency, a lack of accountability from an independent agency overseeing the electoral process, or having no disclosure requirements or limits on money from individuals and corporations flowing into the political system.[12] Secretive political party finances were shown to be a major contributor to corrupt practice in ten of the 25 countries surveyed, the implication being that strong and independent electoral commissions should be included in the list of watchdog integrity agencies.[13]

In underlining the importance of a systems approach, studies such as those noted above lead to conclusions that accountability of governments requires not just an effective and just electoral process, but also independent media, strong civil society organisations, institutional checks and balances and internal anti-corruption mechanisms. Poor regulation of political financing has often been seen as the most significant issue for integrity and accountability, with the risk that the 'nexus' between money and power would be normalised in many countries. Attention has been drawn to the lack of will and capacity of some legislatures to establish robust regulatory and accountability regimes, including those for freedom of information and protection of whistleblowers.[14]

Other international bodies and international agreements have contributed importantly to an understanding of these issues and sought to improve the foundations for good governance and reduced corruption within and across countries. There are also more general surveys and assessments of democratic robustness through avenues such as The Economist Intelligence Unit's index of democracy.[15] The World Bank Institute also has been particularly active in promoting numerous enhancements to integrity systems, such as:

- disclosure of assets and incomes by officials and political candidates;
- disclosure of political campaign contributions;
- publication of draft legislation and details of legislative voting;
- strong regulation to prevent conflict of interest;

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[9] Global Integrity, *Global Integrity Report*, 2006. http://www.globalintegrity.org; Global Integrity, *Global Integrity Report*, 2009. http://www.globalintegrity.org.

[10] M. Camerer, *Global Integrity: An Investigative Report Tracking Corruption, Accountability and Openness in 25 Countries*. Washington: Centre for Public Integrity, 2004.

[11] Head, 'Contributions of Integrity Agencies'.

[12] Camerer, *Global Integrity*.

[13] Camerer, *Global Integrity*; M.E. Warren, 'What Does Corruption Mean in a Democracy?', *American Journal of Political Science*, 48(2), 2004, pp. 328–343.

[14] Head, 'Contributions of Integrity Agencies'.

[15] The Economist Intelligence Unit, *Democracy Index 2014*.
https://www.eiu.com/public/topical_report.aspx?campaignid=Democracy0115

- black-banning further contracts with firms involved in bribery;
- freedom of media and freedom of official information legislation;
- high standards for public financial reporting;
- transparent procurement systems; and,
- support for integrity surveys.[16]

International agreements that encourage signatories to adopt certain integrity principles in their jurisdictions include the Paris Principles adopted by the UN General Assembly in 1993, aimed particularly at the governance of human rights institutions,[17] and the Latimer House Principles agreed to by Commonwealth countries in 2002 to assist in providing an effective framework for the implementation by their governments, parliaments and judiciaries of good governance, the rule of law and human rights. These principles include a number of approaches for developing good governance, such as the establishment of specific purpose entities with clear guidelines for appointment of office-holders based on merit and proven integrity, and with specific arrangements to guarantee appropriate security of tenure and protection of levels of remuneration. The Latimer House Principles also suggest that adequate resources should be provided to enable agencies to operate effectively without any undue constraints that may hamper the independence sought.[18] This raises the important issue of independent funding for integrity agencies, as situations have arisen in some jurisdictions whereby governments of the day have reduced operational budgets with the intention of constraining integrity agencies, particularly in relation to their exercise of investigative powers.[19]

There is no single recipe for institutional improvement, and for every country attention needs to be paid to the complementarities among the various tools and indicators, aggregate and disaggregate, subjective and objective.[20] It should be noted that existing cultural and behavioural patterns significantly constrain future pathways, and successful institutionalisation of new patterns always takes a considerable time to achieve.[21] The experiences summarised above demonstrate that the existence of legal and quasi-legal arrangements creating specific integrity bodies may be a necessary but not sufficient condition to ensure integrity in public sector conduct. A key question is whether these institutional arrangements have the necessary capacities and resources of powers, finances and expertise to achieve their desired outcomes.

Promoting integrity is partly about minimising fraud and misconduct, but ultimately it is about the quality of democratic accountability.[22] Warren has suggested that in a democracy the real damage inflicted by corruption is in its undermining of public trust in the norms of inclusive democratic decision-making, which underpin the public sphere itself.[23] It is this

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[16] World Bank Institute, *Global Competitiveness Report, 2005–2006*. Washington: The World Bank Institute, 2005.

[17] United Nations High Commissioner for Human Rights, Principles Relating to the Status of National Institutions (Paris Principles), 1993. http://www2.ohchr.org/english/law/parisprinciples.htm

[18] Commonwealth Secretariat, Commonwealth (Latimer House) Principles on the Three Branches of Government. London: Commonwealth Secretariat, the Commonwealth Parliamentary Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates' and Judges Association and the Commonwealth Lawyers' Association, 2004.

[19] Chris Aulich, 'Autonomy and Control in Three Australian Capital Territory-Based Integrity Agencies', *Policy Studies*, 33(1), 2012, pp. 49–63; T. Smith, D. Harper and S. Charles, 'Abbott Government Shirts Parliament and Muzzles the FOI Watchdog', *The Canberra Times*, 26 May 2015.

[20] D. Kaufmann and A. Kraay, On Measuring Governance: Framing Issues for Debate. Issues paper for roundtable on measuring governance. Washington, DC: World Bank Institute, 2007.

[21] Brian Head, A.J. Brown and Carmel Connors (eds.), *Promoting Integrity: Evaluating and Improving Public Institutions*. Aldershot: Ashgate, 2008; Peter Larmour, *Foreign Flowers: Institutional Transfer and Good Governance in the Pacific Islands*. Honolulu: University of Hawaii Press, 2005.

[22] Head, 'Contributions of Integrity Agencies'.

[23] Warren, 'What Does Corruption Mean?'.

that suggests a role for specialised integrity agencies that are accessible to the public and have included investigative capability to respond to public concerns.

Integrity Agencies

This section considers how specialised integrity agencies fit into the broader spectrum of integrity assessment and integrity promotion within the public sector. The word 'agency' is used widely and often indiscriminately in machinery-of-government discussions,[24] as the creation of agencies can vary hugely between jurisdictions. We identify four overlapping types of agency that make their respective contributions to a system of integrity.

The first agencies are those bodies with checking and vetting responsibilities over other parts of the administrative system, such as the offices of auditor-general, ombudsman, privacy commission and human rights commission. These are typically referred to as 'watchdog' bodies because they are often required to check on government operations and therefore need to operate at arm's length from it. Second, are those agencies that must be at arm's length from the government to enable them to undertake their regular administrative responsibilities, such as electoral commissions or information and data protection bodies. Third, are the anti-corruption bodies that are established specifically to investigate matters of corruption in the public sector and its stakeholder organisations. These, too, are watchdog agencies, nowadays typically established with an additional preventive role in providing advice and education in anti-corruption matters to public sector bodies and stakeholder organisations. Fourth, in some jurisdictions, a group of integrity agencies might be gathered directly under the auspices of the parliament and, according to some commentators, warrant recognition as a 'fourth branch' of government alongside the legislature, executive and judiciary. As 'officers of parliament' they are accountable directly to the parliament and its committees rather than to a minister or member of the executive branch.

The independent role of integrity agencies in managing corruption investigations, conducting audits and enhancing public sector ethics has increasingly been promoted as essential for good governance. However, typically they do not provide a monopoly in oversight as their work is often complemented by other oversight functions within the established branches of government, such as parliamentary committees or judicial oversight of all unlawful actions and administrative law disputation.

Specialised integrity agencies with a degree of independence from the executive have developed at various stages in the institutional evolution of particular countries. Thus, independent audit offices have had a lengthy history in the oversight of public finances and checking financial probity, their development representing an important milestone in the construction of the Westminster system of parliamentary government.[25] Similarly, ombudsman-style bodies for the investigation of citizens' complaints against administrative action flow from important Swedish machinery-of-government innovations, and have a long history in some countries: such independent offices became more common through the 1970s and 1980s and are now very widespread.[26] Also, in some jurisdictions, independent police integrity agencies have been established specifically to handle integrity issues involving police.[27] Anti-corruption commissions, with strong and wide-ranging powers to

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[24] Roger Wettenhall, 'Agencies and Non-Departmental Public Bodies: The Hard and Soft Lenses of Agencification Theory'. *Public Management Review*, 7(4), 2005, pp. 615–635.

[25] Ken Coghill, Auditing the Independence of the Auditor-General. Democratic Audit Occasional Paper. Canberra: Australian National University, Canberra, 2004. http://democratic.audit.anu.edu.au.; Head, 'Contributions of Integrity Agencies'.

[26] G. Caiden (ed.), *International Handbook of the Ombudsman*. Westport: Greenwood Press, 1983; D.C. Rowat, *The Ombudsman Plan*. Lanham: University Press of America, second edition, 1985.

[27] Colleen Lewis and Tim Prenzler, 'Australian Police Oversight Agencies: Measuring Effectiveness', in Brian Head, A.J. Brown and Carmel Connors (eds.), *Promoting Integrity: Evaluating and Improving Public Institutions*. Aldershot: Ashgate, 2008.

investigate and prosecute all classes of public officials, have largely emerged in the last two decades but they are still few in number.[28]

The argument for supporting and strengthening these specialised integrity agencies is linked to the argument that good governance requires sustained investment in institutional monitoring and reform, and corresponding political and financial commitments to such processes.[29] The link between integrity agencies and the broad system of integrity is significant: if the basic systems for financial and political accountability are seriously deficient, specialised integrity bodies are also likely to be less effective,[30] so we can conclude that specialised integrity agencies may be problematic for those countries that have weak results on general corruption scorecards. There are serious challenges, even in countries that rate well in these scorecards, with relationships between legislatures and executive governments figuring prominently in solutions attempted or compromises arrived at.

While governments can sometimes appear to have institutions and processes in place to pursue integrity and control corruption, the actual capacity of those institutions to do so may be very limited. This implementation gap may derive from a number of sources: cultural values, ethnic loyalties, legal inadequacies, administrative confusions, poor skills training or a lack of clear political mandate for change. Thus, in practice, countries with higher integrity levels tend to be better able to use dedicated agencies to maintain or improve their levels of integrity. In such countries, civic concern about perceived ongoing incidents of corrupt behaviour can become a force to drive and inspire further levels of reform.[31]

Autonomy and Control in Integrity Agencies

How much autonomy integrity agencies should have and how much control over them should be exercised by central government are major questions. They are of course questions that emerge with all arm's-length bodies, and they have generated much discussion in the theory and practice of public administration. While we are here concerned primarily with integrity agencies, it needs to be observed in relation to the whole population of such bodies that the balance between autonomy and control has waxed and waned as governments have changed their preferences over time. This is a critical decision for governments as they seek a stable balance between the need for central political control and accountability and pressures for agency autonomy and professional independence.[32] Evidence from many countries shows that relationships between government and agency are often in motion with centralising and decentralising pressures jockeying for supremacy; thus, a survey of Australian agencies in 2007–08 revealed a steady shift towards devolution over the previous decade or so, but a shift which had more recently been tempered by the exercise of stronger central control over agencies.[33]

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[28] Head, 'Contributions of Integrity Agencies'; A.J. Brown, A Federal Anti-Corruption Agency for Australia. Discussion Paper. Griffith University and Transparency International, 2017. https://www.accountabilityrt.org/wp-content/uploads/2017/03/Griffith-University-National-Integrity-2017-Discussion-Paper-A-Federal-Anti-Corrution-Agency-for-Australia-March-2017.pdf

[29] Head, 'Contributions of Integrity Agencies'.

[30] J.R. Heilbrunn, 'Anti-Corruption Commissions', in R. Stapleton, N. Johnston and R. Pellizo (eds.). *The Role of Parliament in Curbing Corruption*. Washington: The World Bank, 2006.

[31] Head, 'Contributions of Integrity Agencies'; Samuel Ankamah and S.M. Manzoor E. Khoda, 'Political Will and Government Anti-Corruption Efforts: What Does the Evidence Say?', *Public Administration and Development*, 38(1), 2018, pp. 1-14.

[32] P. Lægreid, P. Roness and K. Rubecksen, 'Autonomy and Control in the Norwegian Civil Service: Does Agency Form Matter?', in T. Christensen and P. Laegreid (eds.), *Autonomy and Regulation*. Cheltenham: Edward Elgar, 2006.

[33] Roger Wettenhall and Chris Aulich, 'The Public Sector's Use of Agencies: A Dynamic Rather Than Static Scene', *Public Organization Review*, 9(2), 2009, pp. 101–118; C. Aulich, H. Batainah and R. Wettenhall, 'Autonomy and Control in Australian Agencies: Data and Preliminary Findings from a Cross-National Empirical Study', *Australian Journal of Public Administration*, 69(2), 2010, pp. 214–228.

Turning particularly to integrity agencies, it is important to establish conditions which ensure that, when an appropriate measure of autonomy has been realised, there are protections to ensure that this autonomy is not easily eroded. The search for legitimacy involves measures to ensure that an organisation becomes enculturated in its society and normalised as 'the way we do things around here'.[34] For integrity agencies, this means becoming firmly embedded in both the encompassing system of governance and the national integrity system associated with it. It can often appear that the necessary conditions have been achieved, but such appearance can be very deceptive leading to too frequent recognition of the disease of tokenism.

A text for this discussion was provided by a 2006 study sponsored by the World Bank Institute, focusing on the role of parliaments in curbing corruption. It recognised that anti-corruption commissions were desperately needed;[35] however, it lamented that,

> Evidence of dysfunctional anti-corruption commissions is manifest in the numerous agencies that lack independence from the executive, receive inadequate budgetary support from the legislature, have no procedures for forwarding cases of corruption for prosecution by the relevant judicial authorities, and fail to submit regular reports to the legislature. Herein lies the dilemma: whereas it may be desirable to enact policies to reduce corruption, a weak commission leads to a reputation for token reforms, which undermines the political leadership's credibility. Indeed, it is easy to explain why anti-corruption commissions fail in so many places. It is far more difficult to explain why any succeed.[36]

A common-enough condition with ombudsman offices was reflected by Professor Dennis Pearce soon after he had retired from the office of Australian Commonwealth Ombudsman:

> To have an Ombudsman makes a government feel good. To underfund the office ensures that it is not too troublesome. After three years as Commonwealth Ombudsman I realised that no matter how strong a case for increased resources was put by the Ombudsman's Office, nothing would be coming from those who manage the Commonwealth's money. Why should the Executive fund a body that is going to call it to account as a result of complaints from members of the public affected by the Executive's decisions? Governments like to point to the fact that an independent person is available to review their decisions, but they do not wish the review body to be too powerful or too well-known, lest citizens be inclined to take frequent advantage of the office.[37]

None of this is surprising. As the first Commissioner of the Independent Commission Against Corruption in New South Wales (NSW), Ian Temby, pointed out, what we are now describing as integrity agencies were,

> bound to cause displeasure from time to time… There will...be awkwardness because an important function of government, whatever it may be, is disclosed as being inadequately performed. It is the need for that demonstration to occur which imposes the requirement for independence.

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[34] C.M. Bower, C.M., *The Will to Manage*. New York: McGraw Hill, 1966; E. Schein, *Organizational Culture and Leadership: A Dynamic View*. San Francisco: Jossey-Bass ,1992.

[35] F.A. Leautier, 'Foreword', in R. Stapleton, N. Johnston and R. Pellizo (eds.), *The Role of Parliament in Curbing Corruption*. Washington: The World Bank, 2006.

[36] Heilbrunn, 'Anti-Corruption Commissions', p. 135.

[37] D. Pearce, 'Minding the People's Minder', *AIAL Forum*, 1, 1994, p. 42.

> Only a non-partisan body can be authoritative and will enjoy public confidence. Periods of disharmony between government and independent offices are, accordingly, inevitable. If they were never encountered, the only available conclusion would be that the independent officer was not doing his or her job properly…
>
> The fact of that disharmony, the inevitability of it occurring from time to time, of course brings one to Parliament. It is Parliament that creates all of these bodies and it is Parliament that must look after them. When relations between a particular government and an independent officer, say an Ombudsman, become strained, the protection and support must be vouchsafed by Parliament. Why is this so? First, because parenthood brings responsibilities. Secondly, because those not directly affected can appreciate that the proper performance of functions, simply doing the job laid down by legislation, can involve the making of inconvenient decisions. Thirdly, because the Parliament directly distils and reflects the will of the people in a way that government and the bureaucracy never can and never will.[38]

Recent Australian Experience

Pearce's and Temby's cautionary notes above have proved highly relevant in recent times in Australia. The relationship between integrity agencies and the government of the day has continued to be problematic in both national and state or territory jurisdictions.[39] Antagonism between the Liberal and National parties, in particular, and human rights integrity agencies is not a new phenomenon, with migration policies often at the forefront of the battles between them. In 2006, John von Doussa, the then President of the Human Rights Commission, noted that on five occasions since 1997 the Commission had pointed out to government that its immigration detention regime breached standards set by the United Nations Human Rights Committee.[40] Prime Minister John Howard attempted to limit the Commission's remit but the bills to legalise this were defeated by the Senate in 1998 and 2003. In response, the Howard Government reduced the Commission's budget by 26 percent in 1999–2000, so that it was unable to properly fulfill its statutory obligations.

The Abbott Government, reacting to a later adverse report on prolonged immigration detention of children, sought to reduce the future budgets of the Australian Human Rights Commission (AHRC) and the Office of the Australian Information Commissioner (OAIC). In the case of the AHRC, its President raised concerns that budget cuts would ensure that the agency would be unable to fulfil its statutory obligations. For the OAIC, the Privacy Commissioner sought to minimise the effects of the budget cuts by relocating his office to his home. This created a strong response from some quarters, in particular from three former justices of the Victorian Supreme Court, who denounced the government's actions in an open letter to Fairfax press:

> Having failed to pass the legislative amendments that would have affected its purpose, the government has achieved the same result by the power of the purse. It has ignored the law but won a tactical victory. Expedience has again trumped principle.
>
> Does [the government's] conduct involve both a denial that it, the executive

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[38] I. Temby, 'Safeguarding Integrity in Government', *Papers on* Parliament. Canberra: Australian Senate, 21, pp. 1–10.

[39] Aulich, 'Autonomy and Control'; Chris Aulich, 'Integrity and Public Sector Governance: A Democratic Deficit?', in Chris Aulich (ed), *From Abbott to Turnbull: A New Direction?*. West Geelong: Echo Books, 2016.

[40] John von Doussa, 'In Defence of Human Rights'.
https://www.humanrights.gov.au/news/speeches/defence-human-rights

> branch of government, is subject to the laws made by the Parliament and also a claim that it can act to alter the operation of the laws of the Parliament without its consent. If so, does that constitute a failure to honour and so maintain two fundamental principles that underpin our constitution and our democracy—the rule of law and the separation of powers?[41]

Recommitting his government to its original election promise to 'restore accountability and improve transparency measures to be more accountable', incoming Prime Minister Turnbull abandoned the plans to abolish or defund the OAIC and made provision in the next Budget to spend $34 million to keep the Office open over the following four years. While this news was well received by many transparency advocates, it was difficult to restore the Office to its pre-2014 position given that it had lost a number of its key staff, and already had closed several of its offices.[42] This use of budget cuts to limit the capacity of integrity agencies was highly problematic in light of the Parliament's clear unwillingness to close the office.[43]

Such threatened and actual budget cuts have not been confined to the Commonwealth. The Victorian Auditor-General's position was compromised following his criticisms of the Kennett Government's management of private prisons and its use of tax-payer funded credit cards. The government responded by reducing the operating budget of the Auditor-General's office and by outsourcing a number of the functions traditionally undertaken by that office.[44] Similarly, in the Australian Capital Territory (ACT), the Chief Minister threatened the Auditor-General's future budget allocations after she had made an unfavourable report on the ACT ambulance service.[45]

Executives have sought other ways to exercise control over integrity agencies when blocked from using Parliament as its instrument. At Commonwealth level, these have included partisan appointments to the AHRC, including appointment of an official who previously worked for an organisation that had publicly advocated the AHRC's closure. Public comment from Prime Minister Tony Abbott and senior government ministers calling for the resignation of the President of the AHRC did little to engender public confidence in the agency. In one case, Abbott suggested that the Commission should be 'ashamed' for performing a 'blatantly partisan politicised exercise'. Along with the Attorney-General, he called for the President to resign by claiming that 'the political impartiality of the commission had been fatally compromised,' and that 'the government has lost confidence in the President of the Human Rights Commission'.[46]

These examples illustrate attempts by the executive to exercise tighter control over integrity agencies. Many observers, including the Australian division of the International Commission of Jurists, have condemned this as executive overreach, objecting to government action in seeking to achieve executively what it could not achieve legislatively with the effect of emasculating a statutory body.[47] Executive control has been increased through legislation, budget cuts, appointments (and delays in appointments), and public accusations about partisanship when agencies have made criticisms of government. All of these diminish confidence in integrity agencies and impose constraints on their capacity to hold

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[41] Smith et al., 'Abbott Government Shirts Parliament', *The Canberra Times*, 26 May 2015.

[42] 'Turnbull Stays Hand on OIC Chop, Keeps Reduced Functions', *The Mandarin*, 4 May 2016. http://www.themandarin

[43] Aulich, 'Autonomy and Control'; Aulich, 'Integrity and Public Sector Governance'.

[44] ABC Radio National, 'Victoria's Auditor-General Retires', July 29, 1999. http://www.abc.net.au/pm/stories/s40069.htm

[45] Aulich, 'Autonomy and Control'.

[46] Aulich, 'Integrity and Public Sector Governance'.

[47] Richard Mulgan, 'The Slow Death of the Office of the Australian Information Commissioner', *The Canberra Times*, 1 September 2015. Retrieved from http://www.canberratimes

governments to account. In short, they amount to a form of democratic deficit.

Recognition as Officers of Parliament

It is from cases such as those noted above that the notion has emerged that the major integrity agencies should be recognised as 'officers of parliament', typically formed into an integrity branch to stand alongside the legislature, executive, and judiciary branches. New Zealand, which innovated in establishing the first ombudsman position in the Anglo-Saxon world in 1962 and produced the foundation director for Transparency International, pioneered again with respect to the establishment of an Officers of Parliament provision in the late 1980s. The Finance and Expenditure Committee of its Parliament gained acceptance of a process for formally defining a small number of integrity-type positions as officers of parliament, with a special Officers of Parliament Committee in the legislature to monitor the system.[48]

There has been a growing interest in this idea of an 'integrity branch' (often conceived of as a 'fourth arm of government') in other Westminster-style parliamentary systems.[49] The relationship of such integrity branches to the legislature is likely to be crucial to their effectiveness. They would be formally accountable direct to the Parliament rather than to the government of the day enabling further independence and providing some limits on executive overreach. Functions would include budget approval and performance oversight of integrity bodies and involve more transparent and independent processes for appointments that have for too long been the province of the executive arm of government. The branch would be chaired by the Parliamentary Speaker or Presiding Officer who, for this purpose, would have the status of a minister acting for these parts of the administrative system under his or her supervision.[50]

Conclusion

For good governance we need strong integrity agencies with adequate resources to protect them in the performance of their duties. These resources must include the capacity to censure governments that seek to minimise agency effectiveness. But integrity agencies also need the support of other pillars of the integrity system, which includes executive government.

In the statutes that create agencies, executive governments and legislatures will together have laid down the necessary operating procedures, defined jurisdictions, and provided legal protections for the agency against political or bureaucratic interference, and no doubt also established some forms of accountability running back from the agency to themselves. They will frequently convince themselves that these are sufficient guarantees of effective autonomy. But other factors may well be present in the world of practical politics that counter these effects, including political activity by the very same governments and legislatures that established the agencies in the first place.

This activity might relate to governments not providing sufficient funding to enable integrity agencies to discharge all their remits, or to the use of public criticism or threat of resource constraints to muzzle agencies that might be criticising government actions. Furthermore, all this may well be compounded by a condition not so infrequently encountered in the world of

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[48] A. Beattie, 'Officers of Parliament: The New Zealand Model', *Australasian Parliamentary Review*, 21(1), 2006, pp. 143–156.

[49] Roger Wettenhall, 'Integrity Agencies: The Significance of the Parliamentary Relationship'. *Policy Studies*, 33(1), 2012, pp. 65–78.

[50] For a detailed discussion of the 'fourth arm of government', see A.J. Brown, 'The Integrity Branch: A "System", an "Industry", or a "Sensible" Emerging Fourth Arm of Government?', in M. Groves (ed.), *Modern Administrative Law in Australia: Concepts and Context*. Cambridge: Cambridge University Press, 2014.

practical politics: the legislature may, itself, be in a very weak position in relation to the executive government so that it is unable to offer any of the expected protections.

Since integrity agencies have a vitally important role to play in the moral defences of our communities, their legal position needs to be constantly watched to ensure all available formal protections are available to them. But, of course they are insufficient by themselves to clear away the curse of corruption, to set ethical standards and to monitor the course of national integrity.

Essential requirements include quality interactions and connections with other parts of the public sector, including 'client' bodies that have recourse to their services or who are subject to their oversight, producing an enculturation or acceptance that develops over time. Moreover, such enculturation or acceptance will be dependent on the level of integrity found elsewhere in the civil service, as public integrity will always rely heavily on good integrity practices within all public bodies. The ultimate challenge for integrity agencies and their creators is to recognise that new accountability issues are constantly arising, and that good governance with integrity comes only when the political and administrative leadership provides unequivocal support to the integrity system and all its pillars, among which the integrity agencies claim a major place.