

The integrity branch of government

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Introduction

It is a great pleasure to be invited to present this public lecture as part of the 20th year celebrations of the La Trobe University Law School. Can I express my thanks to the Head of the La Trobe University Law School, Professor Paula Baron and the Law School generally for this invitation – as an alumnus it is a particular privilege to be asked to present this lecture. I reserve special thanks for Heather King who has organised a number of events in 2012 as part of the 20 year celebrations. Heather has been a stalwart of the law school since its inception as both an expert contracts lecturer and Director of Undergraduate Studies. It has been a pleasure working with her as we developed this lecture.

Can I also take this opportunity to express my sincere thanks to Hall and Wilcox Lawyers for their support of this event, including generously providing their Boardroom as a venue. Can I express my particular appreciation to Natalie Bannister, Hall and Wilcox Partner, but also one of La Trobe Law School's most successful alumni.

The fact that this year we celebrate 20 years of law at La Trobe University is first and foremost a great testament to the academics and administrators who had the vision to take La Trobe's rich history of contextual legal studies and develop it into a law program. This original vision, and the very considerable amount of work that was required to bring it to realisation, has been built upon by successive staff and students over the past two decades. It is, without doubt, a tremendous achievement.

In considering a suitable topic for this lecture, I considered another matter that has grown in importance over the past 20 years – the evolution of integrity agencies and their role in enhanced government accountability. As the holder of a self-described integrity office, I properly have a strong interest in this topic, but also, more generally, it is a topic that I think presents a challenging and very interesting interplay of constitutional and administrative law, as well as policy implications for good public administration.

Accordingly, in this lecture I will consider the development of, and current thinking on, the concept of a fourth arm of government - the so-called Integrity branch - which is said to sit alongside the legislature, executive and judiciary.

To do so, I will begin with an exploration of what we mean by the word integrity, before turning to consider why integrity matters. I will then go on to consider the concept of the integrity branch of government and its agencies such as Ombudsmen, Auditors General and Corruption Commissions. Next, I will discuss how integrity agencies protect and promote human rights and responsibilities, before turning to explore three challenges for integrity agencies. I will then consider the role of integrity agencies in the maintenance and promotion of the rule of law before making my concluding remarks.

¹ This is the speaking version of the paper with footnotes omitted.

What do we mean by integrity?

I want to start with an exploration of what we mean by the word integrity. An initial question that obviously arises is whether we are referring to personal integrity or institutional integrity (or, perhaps, both). It seems clear enough that when we are considering branches of government, our focus is on institutional integrity rather than personal integrity, although the latter, in the words of former Chief Justice Spigelman, “as a characteristic required of occupants of public office, has implications for the former”.

There is clearly very strong interplay between institutional integrity and personal integrity. The former can be established in principle, legislative remit, structure and practice, but not able to be realised successfully if it lacks occupants without the latter.

But what do we mean by the word integrity? There is some uncertainty evinced from the relevant literature as to the correct boundaries of integrity. There is reasonably clear agreement that if public officials act in a way that is corrupt, for example, planning officials accepting bribes or other favours, to give planning permission inappropriately, we can say that they have acted without integrity. Similarly, the agencies tasked with their detection, investigation and reportage, most typically anti-corruption commissions, can be described as integrity agencies. Indeed, the identification, prosecution and limitation of corrupt activities has been the starting point of most thinking about an integrity branch of government.

Distinguished American constitutional scholar Professor Bruce Ackerman, in one of the first major articles to posit an integrity branch of government, in his words a “modest proposal”, commenced with, again in his words, “a proposition so obvious that it almost rises to the dignity of a truism: Bureaucracy cannot work if bureaucratic decisions are up for sale to the highest bidder”. Further to this thinking, Justice Spigelman has suggested, correctly I think, that the “clearest example of the distinctiveness of an integrity function over recent decades is the salience that has come to be given to the prevention of corruption.” The institutionalising of tackling corruption has been the most visible, and sometimes controversial, aspect of the move by the state to fortifying integrity in government.

What though of other conduct that can be seen as less than outright corruption? What of conflicts of interest, pecuniary or other benefits that do not appear on their face to be outright corruption or simply a broad category of public administration sins that can be considered improper conduct?

Professor Ackerman observes that “once this branch is established, it may be plausible to define its concerns more broadly to include other pathologies beyond outright corruption”. Following on from this observation, Justice Spigelman used the word integrity in, his words, to mean “its connotation of an unimpaired or uncorrupted state of affairs” and flowing from this, that, again in his words, the:

role of the integrity branch is to ensure that that concept is realised, so that the performance of government functions is not corrupt, not merely in the narrow sense that officials do not take bribes, but in the broader sense of observing proper practice.

The conceptualisation of integrity as meaning the absence of corruption appears to be axiomatic. The call to a wider concept of integrity, one that includes pathologies not just of corruption but other forms of misconduct and improper action seems similarly to be entirely unremarkable – to act with either or both improper motive or conduct is surely to act without integrity. This is not to say that to act improperly is not to act less egregiously than to act corruptly, but simply that integrity recognises a band of behaviour, and within that band, a range of acts might properly be characterised as actions lacking in integrity. Indeed, the Western Australian Integrity Coordinating Group, an informal collaboration of the Corruption and Crime Commission, Public Sector Commissioner, Auditor General, Ombudsman and Information Commissioner, defines integrity as: “earning and sustaining public trust by

serving the public interest; using powers responsibly; acting with honesty and transparency; and preventing and addressing improper conduct.”

Beyond my membership of the Integrity Coordinating Group, I personally favour this wider definition of the word integrity – one that incorporates outright corruption, misconduct and a range of improper practices. I do so particularly when considering that the assessment we are making is of public officers acting in a public domain, not private citizens acting in a private domain. Public officials are entrusted by the public to act solely in their interest, to be seen to be, and actually be, proper, honest and transparent in their dealings and, importantly, are paid by those members of the public, through taxation, to so do.

Beyond this wider definition, there will be matters that might be considered not matters of integrity, but still matters of poor administration. The failure to give reasons, honest mistakes, otherwise honest, but simply inadequate administrative practice or even well intentioned, but ultimately misconceived practices of the executive that all might be characterised as undesirable, but not matters that necessarily lack integrity. This is not to say that these matters are not ones that may require investigation and remedy, nor that there should not be institutionalised agencies dedicated to improving known errors of administration – Ombudsmen, Public Sector Commissioners and Auditors General would all be agencies that might otherwise be conceptualised, quite properly, within an integrity branch of government, but will nonetheless sometimes deal with matters not properly cast as lacking in integrity.

Why integrity matters

Before embarking on an examination of the integrity branch and its agencies, I think it is important to consider the reason why we place an emphasis, indeed a significantly increasing emphasis over the last two decades, on the importance of integrity, including its recognition in our system of government and its importance to the proper administration of the laws of Parliament. I do not propose to spend a significant amount of time on this issue. This is principally because the issue of the importance of integrity in government is not, I think, a topic crying out for a significant defence, although whether it is recognised as a new branch of government is certainly a contestable issue.

Nonetheless, if we are going to consider a topic, and devote time to its consideration, it is worthwhile considering its importance. There is no doubt that the idea of an integrity branch of government interests administrative and constitutional scholars, and might excite interest of progressive and conservative commentators alike as to the relative merits and demerits of considering whether we ought to recognise a new branch of government, but why, in practice, does integrity matter in government?

One explanation for the focus on the importance of integrity in government must lie with the expanding functions of government, including functions that involve covert or coercive powers or the deprivation of liberty. These sorts of powers will necessarily (and, I think, properly) attract interest in the assurance of integrity in the exercise of these powers. Alongside of this, and possibly in part because of this expansion of the role of government, citizens have come to expect more of government, and perhaps place greater reliance on government, and in turn, integrity agencies.

Another explanation, is the appeal of the new domain of accountability agencies - acting to ensure integrity, as opposed to the old domain - acting to ensure procedural compliance. As Professor AJ Brown has noted “public accountability is all about compliance ... the concept of integrity is all about substance, inextricably linked with ideas of truth, honesty and trustworthiness, whether applied to individuals or institutions”.

Linked to this explanation, and one as familiar to Aristotle as it would be to modern day writers, integrity has a clear intrinsic value – it is inseparable from the idea that it is better in

any walk of life, including life serving others, to act reliably and with virtue, with fidelity and honesty, responsibly and appropriately, with a clear sense of proper, legitimate purpose and unaffected by the corruptive and perverse.

Integrity in government also matters for its instrumental value – the practical consequences that can be observed from its protection and promotion in civil society. To adapt the words of the great Austrian economist Friedrich Hayek (Hayek was referring to the concept of liberty, rather than integrity), even if integrity is an “indisputable ethical presupposition ...if we want to convince those who do not already share our moral suppositions, we must not simply take them for granted.” To paraphrase Hayek, we must demonstrate that integrity is a source value and that we cannot fully appreciate what government characterized by integrity means unless we know how that differs from one which is characterized by a lack of integrity.

In its most recent 2011 Prosperity Index, the Legatum Institute assessed 110 countries, representing approximately 90% of the world’s population, in terms of a series of measures, such as whether a country possesses “an honest and effective government that preserves order and encourages productive citizenship” or whether it features “transparent and accountable governing institutions”. In the 2011 Prosperity Index, Australia finished third and only a marginal amount separated us from Finland and Denmark. What becomes quickly apparent about those countries at the top of the Prosperity Index is that they are countries that have fundamental adherence to the rule of law, a significant absence of institutionalised corruption and high levels of integrity in governance. The exact opposite correlation is observed at the bottom of the Prosperity Index.

Of course, there could be some genuine debate about causation here. Does prosperity precede integrity and systems of accountability and become something that prosperous countries can afford, or do prosperous countries become so in part because of their commitment to the integrity mechanisms of its government and governance institutions? Using Australia as an example, on one hand, we regularly appear at, or very near, the head of every international table that measures national prosperity, and on the other hand, at, or very near, the head of every international table that measures national integrity, accountability, transparency and good governance in the public sector. It seems to me that the correlation and co-dependency of the two are irresistible.

I do not wish to be overly triumphalist about the success of modern democratic government characterised by a separation of powers, respect for the rule of law, hallmarked by integrity and with well established, sophisticated accountability frameworks. This form of government has faults. Furthermore, even a passing acquaintance with comparative constitutionalism suggests that there are variations on how to constitute the accretion and exercise of state powers in a way that is characterised as being done with integrity. The Westminster system, with its strong adherence to distinctive branches of government is, of course, different to the federalist constitution of the United State of America as it is different again to the modern Chinese system of five branches of government, including a distinct control or integrity branch - readily on display, for example, in the Control Yuan in Taiwan. Suffice to say, however, and to paraphrase Winston Churchill, that government systems that enshrine integrity within its framework are the worst form of government, apart from every other form of government that have ever been tried.

The integrity branch - its conception and agencies

Having considered the importance of integrity, I now want to turn to the idea of the integrity branch of government – its conception and its agencies. In his seminal 2004 Australian Institute of Administrative Law National Lecture, Justice Spigelman suggested:

that the integrity branch or function of government is concerned to ensure that each governmental institution exercises the powers conferred on it in the manner in which it is

expected and/or required to do so and for the purposes for which those powers were conferred, and for no other purpose.

As His Honour notes, this is a definition with a strong resonance in administrative law. The scope of the integrity activities of government certainly has been seen in practice to include at least this definition, but as I indicated earlier, a wider scope has been established including “earning and sustaining public trust by serving the public interest; acting with honesty and transparency; and preventing and addressing improper conduct.” Putting the concept of integrity into the day to day practice of public administrators, the Western Australian Integrity Coordinating Group suggest that integrity is demonstrated by:

public sector employees who serve the public interest with integrity by avoiding actual or perceived conflicts of interest and not allowing decisions or actions to be influenced by personal or private interests; use their powers for the purpose, and in the manner, for which they were intended; act without bias, make decisions by following fair and objective decision-making processes and give reasons for decisions where required; and behave honestly and transparently, disclosing facts, and not hiding or distorting them. This includes preventing, addressing and reporting corruption, fraud and other forms of misconduct.

It is trite, but true, to observe that integrity agencies, such as the Auditor General and Ombudsman, exist within government, although their exact constitutional categorisation will vary – some may be recognised formally in their state’s Constitution as they are in Victoria or be formally designated officers of the Parliament as they are, for example, in Western Australia. What is less immediately evident is the significant level of overlap of integrity functions among the existing branches of government. Here a few examples will assist. In Western Australia my office, a Parliamentary Commissioner and an officer of the Parliament, reviews certain child deaths with a view to making recommendations to prevent or reduce child deaths. The Coroners Court also inquires into these deaths, for the purpose of determining cause of death, but quite properly may also recommend changes to public administration to prevent future deaths arising from similar circumstances. The work of parliamentary standing or select committees on public administration may necessarily traverse areas of administration examined by agencies of the Executive as will internal review mechanisms within government departments cover very similar ground, and often with similar investigatory methodologies, as external review by integrity agencies. Corruption identification and prevention covers the gamut – it is clearly a pursuit of the legislative, judicial and executive branch, including integrity agencies specifically established as anti-corruption bodies.

The idea of the integrity branch is, in fact, a recognition that within the three traditional branches of government there are a range of integrity functions that are undertaken, and in part the growth of these functions, and integrity agencies, now warrants consideration of whether we ought to consider the formal recognition of a fourth branch of government, the integrity branch. As Justice Spigelman observes:

[m]any of the existing institutions of the three recognised branches of government including the Parliament, the head of state, various executive agencies and the superior courts, collectively constitute the integrity branch of government.

The recognition of a new branch of government is, as I alluded to earlier, a matter of considerable contest. The question becomes not that integrity institutions exist, as they plainly do, but whether the undertaking of integrity functions should be, in Professor Ackerman’s words “endowed with constitutional dignity”. According to Professor Ackerman:

endowing this effort with constitutional dignity is more than a symbolic gesture. If there is ever a moment when a country can get institutionally serious about corruption it is at a constitutional convention where long run structural conventions may win a rare moment of public attention.

What is less contestable is that we can identify a very mature, and continually expanding, framework of agencies, functions and activities in our system of government that has at its heart the protection and promotion of institutional and personal integrity. While, Professor Ackerman has suggested that the “credible construction of a separate ‘integrity branch’ should be a top priority for drafters of modern constitutions” and that this new branch “should be armed with powers and incentives to engage in ongoing oversight”, there is no need for any constitutional contortions to identify, and critically analyse, an integrity framework of government.

So what is the framework that seeks to ensure, and keep to account, that the laws of parliament, and all subsidiary regulatory, procedural and policy instruments, are administered by government departments in a way that is lawful, fair and with integrity?

I think it is fair to say that there is not one accepted version of the accountability framework – this framework is reasonably recent in its inception and evolving at a fast pace. Using my state of Western Australia as an example, since the creation of the office of the Western Australia Ombudsman forty years ago, successive Western Australian governments have created a range of offices that include the Office of the Public Sector Standards Commissioner, now the Public Sector Commissioner, the Corruption and Crime Commission and an office of the Parliamentary Inspector of the Corruption and Crime Commission, an office of Inspector of Custodial Services and an office of Information Commissioner. At the same time as this growth of integrity agencies, we see further change to existing institutions. Here, I offer up as an example, the office of the Western Australian Ombudsman. When I commenced in the role a little over five years ago, we had a staffing establishment of 28 FTEs and a budget of a little under three million dollars. Five years later we have a budget of over eleven million dollars and concomitant increase in staff.

The accountability framework in Western Australia, for example, would certainly include the Corruption and Crime Commission, Public Sector Commissioner, Auditor General, Ombudsman and Information Commissioner. But the framework of accountability and transparency agencies can be seen as much wider again and would include such agencies as the Office of the Inspector of Custodial Services, Health and Disability Services Complaints Office, Mental Health Commissioner, Office of the Public Advocate, Equal Opportunity Commissioner, Director of Public Prosecutions and Office of the Parliamentary Inspector of the Corruption and Crime Commission. Similar agencies operate in Victoria, including your new anti-corruption commission, and largely speaking, in every jurisdiction in Australia.

Indeed, the scope of an accountability framework can be considered to be very wide, including the parliament, the opposition and minor parties, the judicial and executive branches of government, independent regulators, watchdog agencies, whistleblowers, the media, academia and non-government organisations all have a role to play in keeping government, and government departments, to account.

How integrity agencies protect rights and responsibilities

I now turn to consider the role of integrity agencies in protecting human rights and responsibilities. In my view, at its very core, the integrity framework is comprised of human rights institutions. Former Commonwealth Ombudsman, Professor John McMillan, speaking about the role of the Ombudsman within this framework has observed that “the right to complain, when securely embedded in a legal system, is surely one of the most significant human rights achievements that we can strive for”. Ombudsmen, on a daily basis, arising from complaints to their offices, investigate how the state, through its instrumentalities, affects the rights that inherently reside in individuals to exercise their economic and personal

freedoms, be it in relation to policing, prisons, public housing, education, child protection and a range of other government services in which we recognise embedded human rights.

Indeed, the office of the Ombudsman has always possessed, and I think is increasingly exercising, a very significant proactive jurisdiction - particularly the undertaking of inspections regarding the exercise of coercive powers and the ability, of its own motion, to undertake investigations into matters that involve human rights issues. As one of many examples I could give, in the last few years my office has undertaken major own motion investigations into the collection, protection and use of personal information by government agencies – an investigation into a now well accepted individual right to privacy of personal information as well as ensuring proper planning for children in the care of the state. In Victoria, the Ombudsman has an important role in relation to compliance by government departments with the Victorian Human Rights Charter.

Writing on the relationship between the human right of liberty on one hand and responsibility on the other, Hayek said:

Liberty not only means that the individual has both the opportunity and burden of choice; it also means that he must bear the consequences of his actions and will receive praise or blame for them. Liberty and responsibility are inseparable.

More generally, in my view, rights and responsibilities are inseparable. The integrity branch of government has a fundamental role as a promoter and protector of human rights, but it also has an important role to identify and encourage personal responsibility among citizens – responsibilities, like rights, that exists before and beyond the state for their legitimacy.

Challenges for the integrity framework of government

What then are some of the challenges for the integrity framework? Among the overwhelmingly positive critique I think that could be offered about this framework, I will consider three challenges for the integrity framework.

1. Purpose

The first challenge I want to address is the problem of purpose, or more precisely, confusion as to purpose. Reflecting on the Chinese heritage of the fourth branch concept, Justice Spigelman observed that:

[O]f course, like any other branch of government the censorate was liable to develop institutional interests of its own. There is a natural tendency in any surveillance mechanism to come to believe that the administration of government exists for the purposes of being investigated.

Ultimately, public administration exists for the singular purpose of advancing the public good and integrity institutions only fulfil their mandate when, with great humility given their great powers, they ensure that administrators are not, in the widest sense of the word, corrupted in achieving that singular purpose.

Much consideration of our integrity framework focuses in, unsurprisingly, on its accountability function. We must, however, also consider its regulatory function. Integrity institutions, as Justice Spigelman correctly observes, do not just judge integrity, they seek to recommend, determine or implement new ways of undertaking administration that is seen as an improvement on that which they found. My experience completely accords with that of Professor John McMillan and Ian Carnell when they observed that “government agencies take the work of the review agencies seriously, in responding to their investigations and their reports and in implementing their recommendations”. Indeed in each of the last five years, agencies have accepted 100% of my recommendations. Here, too then, we must consider

the proper purpose of integrity agencies, including considering the regulatory burden of our recommendations for improvement.

It cannot be overstated that, insofar as any integrity institution was to ever believe that public administration can necessarily be improved in every instance, without regard to cost, opportunity cost or unintended consequence would be to introduce a fatal level of hubris to the otherwise vital task of administrative oversight and improvement.

Simply put, designing the public good with perfectly good intentions is easier than implementing those intentions perfectly, as a range of public policies from American prohibition of the past right through to the pink batts scheme of today bear as a reminder. Integrity institutions must not just have good intentions when seeking to improve the work of public administrators, they must have a clear series of principles and mechanisms in place that seek to ensure that the investigations they choose, how the investigations are undertaken and the recommendations for improvements that the investigations make, are needed, evidence-based and ensure that the cost for public administrators of implementing and undertaking the improvement is outweighed by its benefit.

The last problem of purpose I want to touch upon is the interference in matters that are properly matters of democratically elected assemblies. As Professor Ackerman has observed of the integrity branch, “the broader its jurisdiction, the more it can disrupt the operations of the politically responsible authorities”.

Here I will use the office of the Ombudsman as an example. The Ombudsman is an officer of the Parliament and subordinate to the Parliament. The Ombudsman must show extreme care not to become a de-facto rule-maker, nor question the laws of the Parliament outside that which Parliament has empowered the Ombudsman to do in their enabling legislation. As an unelected official, the Ombudsman neither has the democratic mandate, nor can be held to account in the same way as elected members of Parliament. For those aggrieved about the integrity of laws made, and those who make them, there is, of course, a highly cleansing level of integrity protection held approximately every three to four years in each Australian jurisdiction.

2. Accountability

The second challenge I want to consider is the accountability of integrity agencies. This might be described, in short, as ‘who guards the guardians’, or as Professor Ackerman, describes it “once we have created our constitutional watchdogs, we must take steps to keep them under control”.

Those operating within the integrity framework do so with very high levels of independence and very high levels of investigatory powers. Typically, the independence of these officers will be such that they can, within an overall legislative framework and convention, exercise significant discretion in how they undertake their role of integrity oversight.

It is critical that agencies of the state, particularly ones that keep to account the integrity of others, act themselves with unimpeachable integrity. A necessary corollary of keeping others to account is a preparedness for oneself to be kept to account. This is required for confidence in the system of integrity oversight, both public confidence and the confidence of those that are subject to oversight.

This is not to suggest that these integrity institutions operate without accountability. Plainly, there is a range of accountability mechanisms in place, including their need to seek appropriations, self regulatory codes and policies, a variety of codes that apply to institutions in receipt of consolidated revenues, parliamentary oversight and oversight of other oversight agencies such as the Ombudsmen, Auditors General or anti-corruption commissions. Certain institutions hold such significant powers that the state has seen fit to create oversight agencies dedicated to these institutions alone. The office of the Parliamentary Inspector of

the Western Australian Corruption and Crime Commissioner, staffed as it has been by eminent members of the Western Australian bar, is one such example.

Simply put, there is inevitably tension between the need for high levels of independence on one hand, and appropriate levels of accountability on the other. Edward Gibbon famously observed that the decline and fall of the Roman Empire was the natural and inevitable effect of “immoderate greatness”. Accountability agencies have great power, power that must be exercised with appropriate moderation and subject to supervision.

3. Cost

The third challenge I want to consider is the cost of the integrity framework. There seems little doubt that the price of integrity in government is one which the public values and for which it is worth paying, but not, of course, at any cost. Almost all institutions and functions within the integrity framework are paid for by taxpayers. It follows, of course, that the cost of this framework is one that increases the taxation burden on taxpayers, or alternatively, is an opportunity cost to other things that the community values and require the expenditure of public monies.

It is for this reason, that it continues to be important that the integrity framework is delivered at least cost, and is prepared, in an ongoing way, to consider whether it can undertake what it does more efficiently, including considering whether the framework can realise economies of scale or scope. It seems to me that one obvious matter that needs to be kept under periodic review is whether the proliferation of multiple niche integrity agencies should be consolidated into overarching integrity bodies.

There are a number of other ways that the agents of integrity might ensure that they are operating at least cost. One obvious way is that agencies will generally be subject to regular audit, particularly from the Auditor General. Another, is that agencies can seek to enhance efficiency through cooperation and comparative benchmarking, such as through models like the Western Australian Integrity Coordinating Group. Another is through periodic government efficiency dividends. Organisations, including integrity agencies, are not perpetually and immutably optimally efficient and these efficiency mechanisms may, depending on the circumstances, have a role to play.

One final observation is really a question posed for further thought. As noted, Australia sits at, or very near, the top of most international transparency and anti-corruption indices. This raises an interesting question of how much more to spend on integrity and accountability in government (beyond, of course, that which we currently spend). The cost of further improvement might be expensive for small gains, at least comparatively speaking. The trick, of course, is to spend such that we maintain our very high standards without incurring either inappropriate marginal cost, gold-plating our integrity framework such that it is inherently inefficient or increase the likelihood of downstream regulatory cost through excessive accountability mechanisms.

Rule of Law

Finally, I will briefly consider the role of the integrity framework in the maintenance and promotion of the rule of law. A central component of the integrity framework is to “reduce the complexity, arbitrariness and uncertainty of the administrative application of law.” The integrity branch does this in a variety of ways, including by investigating complaints from citizens, through investigations of their own motion, through regular or special audit and, increasingly, through a range of monitoring, inspectorate and supervisory roles, often related to the exercise of coercive or covert powers or the deprivation of liberty. Through the performance of these functions the integrity agencies have become an important procedural safeguard against the abuse of integrity in the modern State.

The integrity branch of government

The agencies within the integrity branch, however, have a role beyond, or perhaps more correctly, before, ensuring that the laws of Parliament are administered with integrity. This role is in relation to the rule of law. The rule of law is a complex notion, but, in the words of Hayek:

[s]tripped of all its technicalities [it] means that government in all its actions is bound by fixed rules and announced beforehand – rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one’s individual affairs on the basis of this knowledge.

The rule of law is also about control, or more precisely, in the words of Professor John McMillan, about “controlling the exercise of official power by the executive government”. The rule of law, as Hayek describes it, is not a “rule of the law, but a rule concerning what the law ought to be, a meta-legal doctrine or political ideal”. It is a legal doctrine that, in my view, that integrity agencies should unashamedly identify, promote and protect.

Conclusion

In conclusion, we have undoubtedly become familiar with the idea of integrity oversight. But, as Professor John McMillan and Ian Carnell have observed “the familiarity of this model of independent review should not detract from the profound nature of this change in government”. Indeed, so profound has this change been - to access to administrative justice and procedural remedy on one hand, to the creation of a range of accountability agencies dedicated to integrity protection and promotion on the other - that we have come to suggest a new branch of government. According to Professor Bruce Ackerman, “the mere fact that the integrity branch is not one of the traditional holy trinity should not be enough to deprive it of its place in the modern separation of powers”.

Whether we recognise the integrity branch of government as a separate branch or not will be a matter of ongoing debate. But even if we do not, the fact that we are debating and discussing this issue allows us to ensure that there is ongoing attention to the purpose and work of integrity agencies and the proper construction, boundaries and operation of the integrity framework.

As we celebrate the evolution of the La Trobe University law school over the past 20 years, we can also celebrate a parallel evolution – the development of a framework of accountability designed to ensure that our system of government operates to very high standards of integrity.

The importance of so doing cannot be underestimated. History has decisively demonstrated that societies that enshrine integrity in their public institutions are the ones that are the most stable and successful. They are the societies where, among other things, prosperity is the greatest, opportunities for advancement are their strongest, health and education outcomes are the highest and safety-nets the most generous.

In all of this, integrity officers such as myself are singularly privileged to serve the public - they give us their trust and it is to them that we owe our duty and integrity.