Integrity Agencies as One Pillar of Integrity and Good Governance

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Abstract. *This article argues the case that integrity in public agencies is best served through the development of a system of arrangements involving laws, policies, protocols and institutional design that, in total, operate in harmony to generate a culture of integrity. A critical element in this system of integrity is the formation and operation of specialised integrity agencies, which work with parliaments and civil services to create a means through which public concerns about integrity can be independently examined and reported. The article recognises the balancing that is required between agency autonomy and parliamentary control and warns that arrangements must be capable of dealing with the complexities that follow from these specialised integrity agencies operating in a dynamic environment.*

Keywords: *integrity, integrity, agencies, parliamentary control.*

Raktažodžiai: *dorovinis principingumas (sąžiningumas), etiką prižiūrinčios įstaigos, parlamentinė kontrolė.*

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. The system is a mix of institutions, laws, regulations, codes, policies and procedures that provide a framework of checks and balances, to foster an environment of high quality decision making, and to identify and address inappropriate behaviour including corruption [21].

It is an interesting use of the word 'integrity' in this context as it 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 enquiry when specific situations arise, adopting codes of conduct or establishing mechanisms for

investigating breaches of ethical behaviour. It is the sum of these, or as Transparency International has recommended, a set or system of institutional pillars [24].

This article provides a meta-analysis of the role of specialised integrity agencies within a system of integrity. The argument is developed in two main parts. The first focuses on some of the issues relating to the establishment and assessment of integrity systems arguing that an effective system is an integral part of good governance. The second part deals with the establishment, development and enculturation of specialised integrity agencies as one of the critical pillars of a total integrity system. For this article, we have regarded 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 specialised integrity agencies: the changing roles of integrity agencies with their constant search for legitimacy over time; and the continuing need to balance agency autonomy and government control over their activities.

Developing an effective integrity system

A 'national integrity system' [20] refers to the network of interrelated 'pillars' that sustain and promote public integrity and enable anti-corruption reforms to be addressed. These pillars involve a complex of institutions, processes, people and attitudes relevant to ensuring integrity. Establishing a system is based on the idea that the answer to corruption does not lie in a single institution or a single law, but rather in the institutionalisation or enculturation of integrity through a number of agencies, laws, practices and ethical codes. This systems thinking has been adopted by Transparency International in developing the metaphor of an integrity system as an ancient Greek temple where the various structural components were mutually interdependent. Each of the pillars was to be mutually reinforcing.

Importantly, the media, the business sector, and public opinion have also been seen as critical to the successful reform of public institutions. In Australia, following an extensive enquiry into corruption in the state of Queensland, the enquiry commissioner demonstrated the connections between corruption and the quality of public accountability and democratic discussion across the spheres of police, parliament, the public service and the mass media. In his final report, he concluded that 'there is no purpose in *piecemeal* solutions, which only serve to conceal rather than cure the defects in the existing system. Sooner or later there must be a major overhaul' [8].

It is this notion of *system* that leads us to the conclusion that integrity becomes more embedded when it has become infused as part of the broader system of governance. As discussed in more detail below, several international organisations concerned with improving the quality of political and corporate governance have in the past two decades developed new frameworks for assessing public integrity. These frameworks typically involve a mix of governance elements such as legislative, administrative, management and educative arrangements, which recognise the multi-level and multi-layered nature of integrity-related values and processes [11; 12]. While the frameworks are intended to provide ways of better understanding the dynamics of integrity systems, they are not intended as recipes for establishing or implementing a functioning integrity system given that they typically advance differing arrangements and elements.

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 (see Table 1). 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 the issues of funding as integrity functions are often inadequately and inconsistently funded, and it also may relate to patchy monitoring and oversight arrangements [12]. Hence, the importance of 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.

Table 1: **The 'pillars' of integrity [18]**

- Ethical principles as a basic guideline
- Clear laws, rules and standards that are openly enunciated
- Education about the rules and principles for public servants and elected officials
- Advice mechanisms on ethical issues as a proactive measure
- Protection of whistleblowers to ensure problems are identified
- Transparency both interests, decisions and processes
- Enforcement as a deterrent by agencies with adequate powers and penalties
- Strong institutions of government including an independent judiciary, a public service not politicised and a parliament not totally subordinated to executive government
- Leadership that sets an example for all in both personal behaviour and day to day running of government
- Political culture that supports integrity, ethical behaviour and democratic practices

A widespread integrity strategy has been to establish codes of conduct that set out the requirements for probity in decision-making for politicians, their advisers, and public servants. Another essential strategy, without which many other measures are ineffective, has been to establish specific processes for the probity of key financial procedures. In some OECD countries 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 local variations has been such that broad questions of international comparability, and best practice, have been difficult to determine.

Despite this, some attempts have been made by international organizations to assess and rank countries in a table of comparative performance, 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. Clearly 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. The Global Integrity surveys [9; 10] 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.

These Global Integrity studies have examined corruption, accountability and openness in 25 countries and compiled a list of indicators across six main governance categories. 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, that 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 [12]. 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 [3].

Political party finances were secret in ten of the 25 countries surveyed. Following from this, changes in disclosure rules for political donations that make donations less transparent should be seen as a form of corruption, perhaps equal to fraudulent collusion with a private contractor to secure a government tender [27]. One implication of this is that strong and independent electoral commissions should be included in the list of watchdog integrity agencies.

These studies show that approaches to integrity were highly varied locally. For example, in the 2004 listings the U.S. was ranked highest overall but it had low scores in some areas including the absence of robust independent oversight mechanisms (a national ombudsman role), and the perceived widespread 'buying' of political favours. This situation had not greatly changed in the 2009 survey, which concluded that despite its robust and independent media and civil society organizations that serve as effective anti-corruption watchdogs, the United States continues to struggle with controlling the corrupting influence of money in politics. The new Obama administration has begun to take small steps towards other important accountability and transparency reforms – including a commitment to better enforcement of the U.S. Freedom of Information Act and improved citizen access to government data – but until improved controls over private money in politics are enacted, the U.S. has likely hit a 'glass ceiling' in the context of governance and accountability reforms [10].

In underlining the importance of a systems approach, studies such as those noted above lead us to conclude 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 a 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 freedom of information and protection of whistleblowers [12].

The World Bank Institute has argued that, rather than specifying particular oversight bodies, a greater emphasis on improvements in voice (participation) and in the flow of information required for accountability (transparency) would go a long way towards improving the foundations for good governance and reduced corruption. Information and transparency reforms recommended by the World Bank Institute included: 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; 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 [32].

There are several international agreements that encourage the signatories to adopt certain integrity principles in their jurisdictions. For example, the Paris Principles adopted by the UN General Assembly in 1993, promote the following specifically in relation to governance of human rights institutions:

- independence from government and private sector business/industry stakeholders;
- autonomy;
- adequate investigation of complaints powers, including own motion cases and inquiries; and, significantly,
- sufficient resources to enable them to operate effectively [25].

Similarly, the Commonwealth Latimer House Principles were agreed in 2002 to assist in providing an effective framework for the implementation by Commonwealth 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 included to guarantee appropriate security of tenure and protection of levels of remuneration. The 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 [7].

International experience in undertaking country assessments points to the need for flexibility and multiple levels of analysis [11]. There is no single instrument suitable for every country, and no single recipe for institutional improvement. Hence, attention needs to be paid to 'the complementarities among the various tools and indicators – aggregate and disaggregate, subjective and objective' [14]. However, some donors and international organisations have yet to learn the lesson of how difficult it can be to impose specific solutions on the political, administrative and business leadership of developing countries. Existing cultural and behavioural patterns significantly constrain future pathways, and 'successful' institutionalisation of new patterns always takes a considerable time to achieve [17].

This discussion demonstrates that the existence of legal and quasi-legal arrangements and 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. American political scientist Mark Warren has suggested that in a democracy, the real damage inflicted by corruption is in undermining of public trust in the norms of inclusive democratic decision-making, which underpin the public sphere itself [27]. It is this that suggests a role for specialised integrity agencies that are accessible to the public and include investigative capability to enable agencies 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 [29], as the creation of agencies can be a hugely varying arrangement between jurisdictions. However, it is typically within the group of non-department public bodies that most integrity agencies are located, that is, those agencies with checking and vetting responsibilities over other parts of the administrative system. Specialised integrity agencies would include watchdog agencies such as Auditors-General, Ombudsmen, Anti-Corruption Commissions and independent police integrity agencies[4]. This group represent 'quintessential integrity agencies' but it is possible to also include others like information and data protection bodies, electoral com-missioners, senate committees and human rights-type organisations which can also play significant roles in ensuring an effective integrity system [30].

The independent work of integrity agencies in corruption investigation, audit review and public sector ethics has increasingly been commended as essential for good governance. Some have even suggested that they constitute recognition as a 'fourth branch' of government alongside the legislature, executive and judiciary [1; 23]. However, typically they do not provide a monopoly in oversight as their work is often complemented by other independent 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 independent of the executive have developed at various stages in the institutional evolution of particular countries: independent audit offices have had a lengthy history in the oversight of public finances and checking financial probity [6]; Ombudsman-style bodies for the investigation of citizens' complaints against administrative action, have a long history in some countries, but independent offices have became more common through the 1970s and 1980s and are now very widespread. Independent bodies to handle complaints against the actions of police have also emerged in recent decades, in a variety of formats. Anti-corruption commissions, typically with strong and wide-ranging powers to investigate and prosecute all classes of public officials, are still few in number and have largely emerged in the last two decades [12].

The case for supporting and strengthening these specialised integrity agencies is linked to the general argument that good governance requires sustained investment in institutional monitoring and reform, and corresponding political and financial commitments to such processes. This 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 [13], so we can conclude that specialised integrity agencies may be problematic for those countries that have weak results on corruption scorecards.

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[4] These bodies have been established as agencies specifically to independently handle integrity issues involving the police.

Serious discussion of the role of these agencies can never advance far without considering the parliamentary relationship. 'At the most general level, every decision to establish such a body is in some sense a decentralising decision, as it represents a move away from the centre, from the executive core of government' [30]. At least in theory, it follows that, in those parts of the public sector affected in this way, the executive's hold is more tenuous, so that accountability requirements will prescribe a more direct reporting line to the parliament. This is particularly in relation to statutory authorities usually established by an instrument of parliament, which prescribes its functions and operating system. Often parliaments establish integrity agencies as a response to particular crises, often requiring a 'purging and reconciliation role that followed political crisis and significant reaches of trust by public officials' [19]. In this setting, they prescribe the extent of autonomy and the arrangements to make it work.

Parliaments are also concerned to institute controls that protect communities from excessive actions of their integrity agencies, providing limits to their activities so that agencies themselves are also accountable. Typically, these limits are financial, and relate to the capacity of integrity agencies to have appropriated sufficient funds to enable them to function at an appropriate level, as recommended by both the Paris Principles and the Latimer House Principles. In this regard, integrity agencies are vulnerable to the government of the day especially where it may dominate decisions about appropriations of finance. Control mechanisms other than those imposed by reporting and appropriations could involve the imposition of legal and other limits to their activities, or, even the relationships established with other parts of the bureaucracy, especially mainstream departments.

While governments can sometimes *appear* to have institutions and processes in place to pursue integrity and control corruption, their actual *capacity* 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, lack of clear political mandate for change. Thus in practice, countries with *higher* integrity levels tend to be better able to utilise 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 [12].

Autonomy and control in integrity agencies

Like most agencies, integrity agencies seem always to be in a state of flux as governments wrestle with the autonomy-control decision. How much autonomy should they have and how much control should be exercised by central government? 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 [16]. This balance will wax and wane as governments change their preferences over time; for example, a survey of Australian agencies in 2007-08 reveals a steady shift towards devolution over the past decade or so, but a shift which has more recently been tempered by the exercise of stronger central control over both agencies and departments [2].

In this article, we follow K. Verhoest [26] in viewing autonomy in two forms: first, as the extent of decision-making competency of an agency and second, as freedom from constraints on the use of those competencies. The former is typically scoped for agencies through the charters or statutes under which they are established; the latter might include issues such as the process of budget oversight by government or arrangements by which the agencies themselves are subject to external scrutiny.

There has also been a long-standing interest in questions relating to the effects of form and function on autonomy, the 'structural-instrumentalist perspective' [5]. This perspective is based on the view that formal structure – the distribution of roles and functions between levels in a hierarchy and among agencies – is an important determinant of the autonomy and behaviour of actors and agencies. Such perspectives often influence the establishment of specific oversight and scrutiny bodies and mechanisms designed to enhance public confidence in the integrity and accountability of government as a whole. The perspective typically utilizes laws, rules and processes to more clearly define the desired levels of autonomy for agencies, and establishes limits to the behaviours of both agencies and government.

The structural-instrumental perspective has been challenged from a number of quarters. Some argue that informal organisational factors, such as values, norms and identity, provide more significant understandings of autonomy and control than analysis of formal structures [15]. This view would include the work of Daniel Carpenter (2001) who argues that autonomy is based on bureaucrats building reputations for their agencies, erecting coalitions and securing the policies that they favour. Bureaucratic autonomy occurs when politicians and other organised interests defer to the bureaucrats as they 'establish political legitimacy - a reputation for expertise, efficiency or moral protection and a uniquely diverse complex of ties to organised interests and the media' even when these interests prefer otherwise. In concluding that 'autonomy lies less in *fiat* than in *leverage*' [4], Carpenter provides a polar difference with the structural-instrumentalist approach.

It is also clear that the process of establishing agencies is a dynamic condition: rarely do integrity agencies remain in a static state. It is thus much better to talk about *organising* than about *organisation* because, realistically, it implies process and continual change. This message has both theoretical and practical value. For the practitioner, it keeps administrators' eyes on what is most important. It is the very difficulty of comprehending processes that leads managers, in frustration, into spine-counting and other static pastimes. 'When they mistake these snapshots for the important realities in organizations, the probabilities increase that they will tinker with the wrong things, destroy natural controls that are in place, and basically meddle the organization into a mess' [28].

For the researcher, it helps us see that organisations are so often in motion, that studies at one point in time must be read with care, and that it will always be important to explore the forces at work that put so many organisations, public and private, into transitional states [31].

It is likely that integrity agencies may, too, transition through a number of stages as they search for balance between autonomy and control. First, there are concerns by governments that particular arrangements that are put in place will reflect outcomes of the circumstances that led to the establishment of the agency in the first place. Typically, these

circumstances might follow a public scandal or a build up of pressure on governments for change. Responses are likely to be concerned with establishing protocols, guidelines, rules, regulation or laws that aim to set out clearly the relationship between the government and the particular integrity agency. This represents a search for *legal* legitimacy, based largely around structural-instrumental approaches; however, arrangements need testing in the real world to be honed into something that is sustainable.

This testing is likely to follow the initial establishment phase, when agencies may have to survive the realities of the environment in which they and their governments operate and search to find workable arrangements to balance autonomy and control. In this situation, governments and integrity agencies grapple with the issue of finding *political* legitimacy with the operations of their integrity agencies.

Should integrity agencies develop or mature further, their search for legitimacy takes on a different set of imperatives – how to become enculturated in its society and become normalised as the 'way we do things around here' [22]. This may be represented as a search for *cultural* legitimacy.

By establishing agencies at 'arm's length' from government with clear operating procedures, defined jurisdictions and strong (legal) protections against undue political or bureaucratic interference, some governments argue that this is sufficient to ensure effective autonomy of these agencies. However, it is also clear that other factors may also be relevant to striking a balance between autonomy and control, including political activity by the very same governments that established autonomous agencies in the first instance. This activity might relate to governments not providing sufficient funding to enable integrity agencies to undertake all of their remits or the use of public criticism or threat of resource constraints to muzzle agencies which might be criticising government actions.

Given that the missions of integrity agencies involves checking on government activity, the agencies must be structured and equipped to relate well to the legislature, at some distance from their respective governments. It is this issue of distance that is at the heart of discussions about autonomy. Many agencies lament that they have difficulty asserting the appropriate degree of independence from government necessary for them to discharge their functions properly. Recognising that some of these integrity agencies 'were bound to cause displeasure from time to time' and that 'periods of disharmony between government and independent officers are, accordingly, inevitable', it suggests that a key role for parliaments is to ensure that appropriate protection is offered these agencies, especially during times of strained relations [30].

Several important issues arise here: protections of agency autonomy and independence are typically provided in legislation and in protocols which have been adopted to ensure that they are at arm's length from the government of the day. However, protection from the government of the day can be problematic, especially when parliaments are compliant to executive government, and where appropriations and resourcing are dependent on political decisions made primarily by government. The question arises as to what motivation governments might have to fully fund an agency that is likely to call it to account as a result of complaints from the community about the decisions and behaviours of the executive itself? At the same time, we need to be cognisant of the fact that so many specialised integrity agencies do not succeed.

As J. Heilbrunn from the World bank Institute suggests [13], 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. Heilbrunn argues that it is easy to explain why anti-corruption commissions fail in so many places. It is far more difficult to explain why they succeed.

Conclusions

In this article, it has been argued that the mere creation of special purpose integrity agencies is insufficient for tackling corruption, setting ethical standards and monitoring performance of integrity within jurisdictions. In rejecting the structural-instrumentalist approach to agency autonomy, we have advanced the idea that agency creation needs to be supplemented by other arrangements which better secures effective performance by specialised integrity agencies.

Firstly, specialist integrity bodies need to have the organisational capacities – levels of staffing, financial resources, legal powers and technical capacities – required to make a substantial difference [12]. Secondly, integrity agencies require quality interactions and connections with other parts of the public sector including 'client' bodies that have recourse to their services or are subject to their oversight. This is an issue of enculturation or acceptance of integrity agencies that develops over time with growing trust by the public sector in the expertise and fairness of integrity agencies. Thirdly, the success of integrity agencies is also 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 its public bodies. Fourthly, specialised integrity agencies and mainstream departments cannot produce good governance with integrity unless the political leadership at the highest levels supports their operations and directions.

Even in those countries considered internationally as having good integrity systems those responsible for improving and promoting integrity need to understand that integrity systems are dynamic. Institutions and their practices need to be continually refined to meet new pressures and integrity challenges that face public officials. The challenge for integrity agencies and their creating legislatures is to recognise that new accountability issues are constantly arising and their systems need some capacity to be able to respond to these, without eroding the overall performance of their integrity system.

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Etiką prižiūrinčios įstaigos kaip vienas iš dorovinio principingumo ir gero valdymo ramsčių

Anotacija

Straipsnyje pagrindžiama, kad viešųjų įstaigų etiškumas geriausiai įgyvendinamas plėtojant kompleksinę teisės, viešosios politikos ir institucinės struktūros sistemą, sudarančią prielaidas kurti harmoningą dorovinio principingumo kultūrą. Akcentuojama, kad svarbiausi tos sistemos elementai turėtų būti specializuotos etikos priežiūros įstaigos, kurios, dirbdamos su parlamentu ir viešąsias paslaugas teikiančiomis įstaigomis, kurtų priemones, kaip atlikti visuomenės rūpinimosi etiškumu nepriklausomą tyrimą ir jį vertinti. Pripažįstama, kad tų įstaigų veikloje būtina išlaikyti pusiausvyrą tarp jų autonomijos ir parlamentinės kontrolės, nurodoma, kad, veikiant dinamiškai kintančioje aplinkoje, būtina specializuotų etiką prižiūrinčių įstaigų veiklą lanksčiai priderinti prie kintančios aplinkos.

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