THE FOURTH BRANCH OF GOVERNMENT: THE EVOLUTION OF INTEGRITY AGENCIES AND ENHANCED GOVERNMENT ACCOUNTABILITY

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Introduction

Within the concept of an integrity branch of government reside a wide range of particularly interesting legal and policy issues, many of which challenge our traditional understanding of constitutional and administrative law and approaches to good public administration. In this paper I will explore these issues through a focus on the evolution of integrity agencies and their role in enhanced accountability of government.

I have drawn as my starting point the important speech on the integrity branch of government in the first lecture in the 2004 national lecture series for the Australian Institute of Administrative Law by His Honour, Justice Spigelman.[1] I have, however, also drawn on writing that influenced this speech and subsequent writing on the topic, with considerable reflection on the actual practice of integrity agencies.

The concept of integrity

An initial question that obviously arises is whether we are referring to personal integrity or institutional integrity (or, perhaps, both). It seems clear that when we consider branches of government, our focus is on institutional integrity rather than personal integrity, although the latter, as Justice Spigelman observes 'as a characteristic required of occupants of public office, has implications for the former'.[2]

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 be able to be realised successfully if it lacks occupants without the latter. 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 administrators 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 the detection, investigation and reportage of corruption, 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. Professor Ackerman, in one of the first major articles to posit an integrity branch of government,[3] in his words a 'modest proposal'[4], said of it, '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'.[5] Further to this, Justice Spigelman has suggested,

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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'.[6]

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'.[7] Following this observation, Justice Spigelman used the word integrity to mean 'its connotation of an unimpaired or uncorrupted state of affairs'[8] and flowing from this, that 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.[9]

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 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'.[10]

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 administrators 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, they 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. As administrative lawyers, we would probably characterise this as a broad category of maladministration. 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 are 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 are all agencies that might otherwise be conceptualised, quite properly, as being within an integrity branch of government, but will nonetheless sometimes deal with matters not properly cast as lacking in integrity.

The success of the integrity concept

It is important to consider the reason why we place an emphasis, indeed a significantly increasing emphasis over the last few decades, on the importance of integrity, including its recognition in our system of government and its importance to proper administration of the laws of Parliament.

There is no doubt that the idea of an integrity branch of government interests administrative and constitutional scholars, and might excite the 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 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 A J 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'.[11]

Linked to this explanation, and one as familiar to Aristotle as to modern day writers, is the idea that 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'.[12] To paraphrase Hayek, we must demonstrate that integrity is a source value and that we cannot fully appreciate what government characterised by integrity means unless we know how that differs from one which is characterised by a lack of integrity.[13]

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'.[14] 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.

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 and hallmarked by integrity. 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. In my view, however, and to paraphrase Winston Churchill, democratic governments that enshrine integrity within their framework are the worst form of government, apart from every other form of government that has ever been tried.

The integrity branch - its conception and agencies

In his AIAL national lecture, Justice Spigelman proposed:

> 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.[15]

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'.[16] 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.[17]

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. Equally, it is trite, but true, to observe that a range of integrity functions exist within the wider mandate of the Executive, alongside the integrity functions of the Legislature and the Judiciary. What is less immediately evident is the significant level of overlap of integrity functions among the existing branches of government. 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; internal review mechanisms within government departments will cover very similar ground, and often with similar investigatory methodologies, as external review by integrity agencies. Corruption identification and prevention is clearly a pursuit of the Legislative, Judicial and Executive branches, 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.[18]

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'.[19] 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.[20]

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'[21] and that this new branch 'should be armed with powers and incentives to engage in ongoing oversight',[22] there is no need for any constitutional contortions to identify, and critically analyse, an integrity framework of government.

Integrity agencies and functions of government have increased both in number and in scope. 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.

The development of the integrity branch of government is ultimately a reflection of the fact that as we take stock of these developments we can see a large growth over recent decades that has added significant institutional bulk to agencies that existed prior to our more recent interest. It also reflects, however, the change in the nature of individual institutions.

Issues for the integrity framework of government

I consider that there are three key challenges for the integrity framework.

1. Overreaching

Shortly after I commenced my role as Ombudsman, I was entering one of the main government buildings in Perth to attend a meeting of the Western Australian Integrity Coordinating Group. I happened to encounter a colleague and friend who asked where I was going and, following my response, quipped something along the lines of 'now that is a group setting itself up to fail'. This is less a case of, in the words of famous philosopher Groucho Marx, suggesting that he wouldn't want to join a club that would have him as a member and much more a case of the thoughts of the eminently less frivolous Adam Smith. Smith, the great Scottish moral philosopher and founder of modern economics, famously stated in his seminal work, *The Wealth of Nations*:

> The statesman who should attempt to direct private people in what manner they ought to employ their capitals would not only load himself with a most unnecessary attention, but assume an authority which could safely be trusted, not only to no single person, but to no council and senate whatever, and which

> would nowhere be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it.[23]

Many holders of senior statutory office, particularly in the anti-corruption sphere, could readily relate to being loaded with the unnecessary attention that undertaking their role invites. Similarly, most such officers will have at least paused to consider, if not dwelt for some extended period, on the almost sage like level of expertise required, combined with sustained humility, to ensure that one does not become that man or woman so dangerous in folly and presumption as Smith warned against.

Reflecting on the Chinese forebears 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.[24]

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 on its accountability function. We must, however, also consider its regulatory function.[25] 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.[26] 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'.[27] Indeed in each of the last five years, agencies have accepted 100% of my recommendations. Here, too then, we must guard against overreaching, 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 could 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 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 of implementing and undertaking the improvement is outweighed by its benefit.

Another form of overreaching is 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'.[28]

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 its enabling legislation. As an unelected official, the Ombudsman neither has the democratic mandate, nor can he/she 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. The Ombudsman, however, generally does have the capacity to consider whether Parliament's laws are fair and reasonable in their application and can make recommendations to the Parliament accordingly.

2. Accountability

The accountability of integrity agencies 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'.[29]

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 are 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 Commission, staffed as it has been by eminent members of the Western Australian bar, is one such example.

Simply put, that there is inevitably tension between the need for high levels of independence on one hand, and appropriate levels of accountability on the other, must be an ongoing consideration for the state and integrity institutions themselves.

3. Cost

The third issue 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 (perhaps with the exception of certain areas of regulation that might be considered integrity oversight) 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 which require the expenditure of public monies.

It is for this reason 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 integrity agencies might ensure that they are operating at least cost. One obvious way is that agencies will generally be subject to regular audit, particularly by 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.[30] The Western Australian Integrity Coordinating Group was formed in January 2005 'to promote policy coherence and operational coordination in the ongoing work of Western Australia's core public sector integrity institutions'.[31] The cooperation and consistency:

> is to be achieved through public awareness, workplace education, prevention, advice and investigation activities with respect to integrity themes identified by ICG members as suitable for collaboration.[32]

The terms of reference of the Integrity Coordinating Group are:

1. Fostering collaboration between public sector integrity bodies.
2. Encouraging and supporting research, evaluation and policy discussion to monitor the implementation of integrity and accountability mechanisms in Western Australia, and other jurisdictions, nationally and internationally.
3. Inspiring operational cooperation and consistency in communication, education and support in public sector organisations.[33]

An interesting recommendation of the National Integrity System Assessment was the establishment of Governance Review Councils to promote policy and operational coordination between integrity institutions and integrity functions. As Professor A J Brown has observed 'we rely on many key integrity institutions to collaborate and cooperate, and we can expect them to act coherently in the overall task of helping ensure the appropriate exercise of power'.[34]

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 should be spent 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[35]

A central component of the role of the integrity branch is to 'reduce the complexity, arbitrariness and uncertainty of the administrative application of law'.[36] 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 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 forsee 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.[37]

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'.[38] 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'.[39] It is a legal doctrine that, in my view, integrity agencies should unashamedly identify, promote and protect. This is so because, again quoting Hayek:

> while [the importance of procedural safeguards] is generally recognized, it is not understood that they presuppose for their effectiveness the acceptance of the rule of law … and without it, all procedural safeguards would be valueless.[40]

This does not diminish in any way the importance of a procedural role in ensuring administrative compliance of integrity agencies, a role whose 'value for the preservation of liberty can hardly be overstated',[41] but simply that the rule of law prefigures this role.

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'.[42] 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 it has come to suggest a new branch of government. According to Professor 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'.[43]

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 given to the purpose and work of integrity agencies and the proper construction, boundaries and operation of the integrity framework. That is a level of attention that will benefit us all.

Endnotes

1 A revised version subsequently published as J J *Spigelman*, '*The Integrity Branch of Government*' (2004) 78 ALJ 724.
2 Ibid 725.
3 Professor Bruce Ackerman, 'The New Separation of Powers', 113 *Harvard Law Review* 3, 642.
4 Ibid 691.

5 Ibid.
6 Spigelman, n 1 above, 728.
7 Ackerman, n 3 above, 693.
8 Spigelman, n 1 above, 725.
9 Ibid.
10 Integrity Coordinating Group at http://www.opssc.wa.gov.au/ICG/Integrity_in_the_WA_public_sector/ Integrity_and_conduct.php (viewed 2 August 2012).
11 Dr A J Brown, 'Putting Administrative Law Back into Integrity and Putting the Integrity Back into Administrative Law' (2007) 53 *AIAL Forum* 51.
12 Friedrich Hayek, *The Constitution of Liberty* (Routledge Classics, 1960) 5-6.
13 Ibid.
14 The 2011 Legatum Prosperity Index at http://www.prosperity.com/ (viewed 2 August 2012).
15 Spigelman, n 1 above, 726.
16 Integrity Coordinating Group at http://www.opssc.wa.gov.au/ICG/Integrity _in_the_WA_public_sector /Integrity and_conduct.php (viewed 2 August 2012).
17 Integrity Coordinating Group at http://www.opssc.wa.gov.au/ICG/Integrity_in_the_WA_public _sector /Integrity_and_conduct.php (viewed 2 August 2012).
18 Spigelman, n 1 above, 726.
19 Ackerman, n 3 above, at 691.
20 Ibid 692-3.
21 Ibid 691.
22 Ibid.
23 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, (Edwin Cannan, ed. 1904), Library of Economics and Liberty. Retrieved 3 August 2012 from http://www.econlib.org/library/ Smith /smWN.html.
24 Spigelman, n 1 above, at 725.
25 Professor Ackerman introduces the idea of a fifth branch of government to sit alongside the integrity branch and the three traditional branches: Ackerman, n 3 above, 693. This idea is interesting and worthy of further exploration, particularly in light of the development of financial, consumer, economic and other regulators operating in all Australian jurisdictions.
26 Spigelman, n 1 above, 726.
27 Professor John McMillan and Ian Carnell, 'Administrative Law Evolution: Independent Complaint and Review Agencies' (2010) 59 *Admin Review* 35.
28 Ackerman, n 3 above, 693.
29 Ibid 692.
30 Similar mechanisms exist in other Australian jurisdictions.
31 Integrity Coordinating Group at http://www.opssc.wa.gov.au/ICG/About_Us/ (viewed 2 August 2012).
32 Ibid
33 Ibid.
34 Brown, n 11 above, 35.
35 This section of the paper expands upon material set out in Chris Field, 'The Ombudsman and the Constitution of Liberty', Address to the 26th Australasian and Pacific Ombudsman Regional Conference, 25 March 2011, Taipei, Taiwan.
36 See the Rule of Law Institute of Australia, Objectives at http://www.ruleoflawaustralia.com.au/ objectives.aspx (viewed 2 August 2012).
37 Friedrich Hayek, *The Road to Serfdom* (Routledge Classics, 1944) 75-76.
38 Professor John McMillan, 'The Ombudsman and the Rule of Law, Address to the Public Law Weekend', Canberra, 5-6 November 2004 at http://www.ombudsman.gov.au/files/5-6_November_2004_ The_ Ombudsman_and_the_rule_of_law.pdf (viewed 2 August 2012).
39 Friedrich Hayek, n 12 above, 191.
40 Ibid.
41 Ibid.
42 McMillan and Carnell, n 27 above, 2.
43 Ackerman, n 3 above, 691.