

Financial Times FT.com



Britain needs a new agency to fight corruption

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Published: February 2 2007 02:00 | Last updated: February 2 2007 02:00

The waves of scandal in Britain show the need to press forward with constitutional redesign. In the past decade there has been the rise of an independent Bank of England and there are plans for a supreme court that would separate the judiciary from parliament. Now is the time to create an anti-corruption agency, distinct from the Serious Fraud Office - and grant it constitutional independence to insulate prosecutions from political interference.

The world is undergoing a revolution in the separation of powers. Before the second world war, there were two models: the Westminster system, concentrating power in a cabinet that ruled with support of the Commons; and the US system, separating power between president, Congress and Supreme Court. But since then there has been a broad embrace of a third model: "constrained parliamentarianism". This rejects the US separation between executive and legislature and grants broad powers to the governmental coalition that gains parliamentary support. It rejects Westminster by insulating sensitive functions from political control.

The "new separation of powers" got its start in the constitutions of the defeated Axis powers. Germany, Italy and Japan adopted parliamentary government but also established constitutional courts to protect fundamental rights. Their success has encouraged other countries to experiment further, creating independent banks and electoral commissions to prevent the politicisation of sensitive functions.

Viewed from a world perspective, the recent British shift has a larger meaning. It suggests that the weaknesses of the Westminster system are apparent even in the country that created it.

Yet the new model has its dangers. Proliferation of constitutionally independent agencies, if taken to extremes, threatens to hollow out democratic politics. It can also create administrative problems if the separate agencies work at cross purposes.

Nevertheless, recent events involving Tony Blair's government suggest the need for further reform. Over the past fortnight two close associates of Mr Blair have been arrested on suspicion of perverting the course of justice in the cash-for-peerages scandal (they deny any wrongdoing). Yet his attorney-general, Lord Goldsmith, has said he will not stand aside from advising the Crown Prosecution Service in spite of the case's sensitivity.

This is especially unfortunate in the light of Lord Goldsmith's earlier intervention to stop the BAE Systems corruption investigation. When challenged, he claimed authority "to balance the need to maintain the rule of law against the wider public interest". The Organisation for Economic Co-operation and Development expressed "serious concern" that Britain's decision violated its commitments under the anti-bribery treaty.

The OECD can put the government on the international hot seat for its scandalous BAE cave-in, but nothing similar would happen if the attorney-general intervened to stop prosecutions over cash for peerages. It is too easy for politicians to find a public interest in covering up political embarrassments. Only a constitutional separation of powers can guarantee the rule of law in serious anti-corruption cases.

In considering structural reform, Britain can learn from countries that have similar legal traditions. India's constitution creates an independent election commission and accords its chief executive the status of a supreme court justice. In spite of India's deserved reputation for corruption, the system has been effective. Whatever else can be bought and sold in India, the commission regularly delivers a relatively honest vote count.

The Hong Kong and Singapore governments' reputations for honesty are, in part, a product of reforms that insulate corruption-fighters from reprisals from corrupt officials and their private sector allies. Unfortunately, these agencies remain accountable to top political officials. But they have proved effective within their constraints.

These experiences suggest that constitutional reform can work in countries where corruption is far more pervasive than in Britain. There is no institutional design that can be imported ready-made. But in its better days, the Labour government has shown great constitutional ingenuity. In 1997, Gordon Brown, chancellor of the exchequer, created genuine independence for the Bank of England. Soon he will be in a perfect position, as the likely new prime minister, to launch a similar initiative for an anti-corruption agency.

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