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Government interference with prosecution policy

Your report (12 December 1995) that the Home Secretary asked the police and the Crown Prosecution Service to change prosecution policy in a certain area is disturbing. He told them they should treat any 'have a go' hero more sympathetically. Mr Howard has no right to tell these officials any such thing: it is not his business. His interference (even though some may like the idea behind it) is unconstitutional. The British constitution entrusts the Attorney General, not the Home Secretary, with the oversight of prosecution policy. This accords with the Attorney's function as the paramount non-party-political guardian of the public interest in matters concerned with law. That function was confirmed by the Appellate Committee of the House of Lords only last year in *Brookes v DPP of Jamaica* [1994] 1 AC 568 at 579. For very good reason, the exercise of the prosecutive power is constitutionally separate from the exercise of the executive, legislative, and judicial powers.

Some functionaries within the enforcement system, notably the police, are regarded as part of the executive. Others, namely the courts, exercise the judicial power of the state. In addition there are the independent wielders of the prosecutive power, or power to put persons on trial. Under the constitutional arrangements now prevailing in England, prosecution policy stands apart. That is a vital safeguard, which Mr Howard should respect. It means that governments cannot decide whom they wish to try. It also means that courts cannot decide who shall appear before them. Their sole function is to try whoever it is they find arraigned.

I see no sign that the present Attorney General is aware of his responsibilities in this connection. In his capacity as guardian of the prosecutive power, he is supposed to stand aloof from the executive. Why then has he not stood out against the presumptuousness recently displayed by the Home Secretary?¹

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¹ *The Times*, 28 December 1995. (Published in shortened form.)