

Introductory Note by Francis Bennion

The Bill criticised in the following 'In Parliament' comment was duly enacted as the Crown Prosecution Service Inspectorate Act 2000. As passed, the Bill removed some of the objections levelled in the comment by providing that the Chief Inspector is to be appointed by, and report to, the Attorney General. The Chief Inspector is required by the Act to submit an annual report to the Attorney General on the operation of the Crown Prosecution Service, and this must be laid before Parliament.

'In Parliament'

Inspecting the Crown Prosecution Service

There is a growing itch to set up, for each aspect of public activity, a separate Inspectorate. Each one is yet another taxpayer-financed Quango, staffed by self-important people out to make their mark. This development is worrying. It enfeebles the individual's pride in the job.

Until recently it was a matter of self-respect to do one's job properly. Now we think no one can be trusted to do their job properly, so we set up an Inspectorate to check on them. Snoopers squinting over a worker's shoulder undermine confidence and get in the way of the work. Latest to suffer are the staff of the Crown Prosecution Service (CPS).

We should be particularly worried about this one. Our prosecution system deploys what may be called the prosecutive power of the state, or ability to put persons on trial. This sensitive and important power is *sui generis*. Historically it has lodged with the Attorney General, who has always been able to start or end a prosecution.

In this aspect of his functions the Attorney is supposed to be independent both of the executive and the judiciary, though that constitutional principle is untaught, little known and often flouted. Overweening Governments have increasingly encroached on it, for example by starving the CPS of the funds and staff it needs and promoting legislation to constrict it. Another undermining factor is the expansive self-given powers of the courts, most recently manifested in the decision of the Lord Chief Justice (in *R v Director of Public Prosecutions, ex p Manning* (2000) *Times* May 19) that in certain cases the CPS must give reasons for a decision not to prosecute.

The latest intrusion is the Crown Prosecution Service Inspectorate Bill, which has passed the Lords and was given a second reading in the Commons on May 23. It turns out, as I shall shortly show, that another (unwitting) legislative encroachment was the Race Relations Act 1976, which set up the Commission for Racial Equality (CRE).

In the Commons on May 25 the Solicitor General, Mr Ross Cranston MP, announced that Sylvia Denman (another sort of Inspector) had presented her interim report on race discrimination in the CPS on May 10. The report (he said) recognises that some of the most glaring deficiencies in race equality in the CPS have been remedied recently, but concludes that race discrimination and institutional racism have nevertheless operated to the disadvantage of black and Asian CPS staff. The Denman report, he said, recommends various areas for future work, which will now be addressed by the CPS in consultation with Ms Denman and the CRE. At this point the Liberal Democrat spokesman on legal affairs, Mr John Burnett MP, thought fit to interject a comment on the "collapsing morale" of the CPS.

The Crown Prosecution Service Inspectorate Bill provides for the appointment of an official to be called by the grandiose title of Her Majesty's Chief Inspector of the Crown Prosecution Service. No further details about the functions of his new department are set out in the Bill, but in the second reading debate on May 23 the Solicitor General gave us some. His remarks, echoed by the Conservative spokesman Mr Edward Garnier QC, betrayed the usual incomprehension of the importance, or even existence, of the Attorney as the totally independent holder of the prosecutive power.

Interference by the Government in CPS functions is celebrated throughout the Commons speeches. Interference by the courts is again shown by the fact that the very idea of the Bill originated with the 1998 report of a committee headed by a retired Lord Justice of Appeal, Sir Iain Glidewell.

The new Quango itself is proudly set up in open competition with the CPS. It will, insisted Mr Cranston, be separated from the CPS. It will be financed separately and located in a separate building. As respect the wielders of the prosecutive power, it will thus be a rival, criticising, interfering, force. Its staff members will have a background and experience quite distinct from those of the CPS staff, said that very Solicitor General who by statute shares in deploying the independent prosecutive power supposedly wielded by the Attorney.

Far from jumping in to safeguard our constitutional liberties, the Conservative Party claim credit for this lamentable Bill. When Sir Nicholas Lyell was Attorney General, boasted Mr Garnier, the Conservative Government decided that an inspectorate of the CPS was needed. It was indeed set up informally by that Government. Once the Bill is enacted, enthused Mr Garnier, "the inspectorate will have a status equal to the other statutory inspectorates with which we are already familiar - such as those for prisons, the probation service, magistrates courts and the constabulary".

What then will be left of the independent prosecutive power of the state, with its built-in protection for the citizen?

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