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Give us laws that the City will respect and fear

Mug some one in the street and you go to prison, but mug their savings and you can buy a yacht. It's a disgrace to justice

Ken Macdonald

Our system for regulating markets and for prosecuting market crime is completely broken. If you mug someone in the street and you are caught, the chances are that you will go to prison. In recent years mugging someone out of their savings or their pension would probably earn you a yacht.

How did we get here? Well, financial deregulation undoubtedly released great energy and wealth into the markets and did so in part by giving bankers and financiers more space. But this space had another effect. It created a growing distance between wealthy and powerful individuals and the agencies designed to police their behaviour.

Not sensing the danger in this, our two main political parties supported looser regulation over many years. Now, apparently tainted by past misjudgments, they are deeply compromised in trying to find solutions. Yet put simply the scale of failure is laid bare by one inevitable consequence clear for all to see: too many people and too many institutions function as though they are beyond the reach of the criminal law.

In Britain we had an additional burden: legislators who preferred criminal justice to be an auction of fake toughness, so long as the toughness was not too tough to design. So no one likes terrorists? Let's bring in lots of terror laws, the tougher the better. Let's lock up nasty people longer, and for longer before they are charged. Let's stop medieval clerics winding up the tabloids. Let's stop off-colour comedians outraging homophobic preachers. Let's pretend that outlawing offensiveness makes the world less offensive.

This frequently made useful headlines. But it didn't make our country or any other country a better or safer place to live. It didn't respect our way of life. It brought us the War on Terror and it didn't make it any easier for us to progress into the future with comfort and security.

Our legislators faltered because they seemed to ignore the fact that what makes good politics doesn't always make good policy. And they didn't want to tackle the more complex issues that really affect safety in people's lives. It was easier to throw increasingly illiberal sound bites at a shadowy and fearsome enemy.

In Britain, no one has any confidence that fraud in the banks will be prosecuted as crime. But it is absolutely critical to public confidence that it should be. If there was fraud in RBS or in any of the other failed banking institutions, if there was fraudulent misselling or corruption or any other criminal activity, it needs to be uncovered and dealt with. The alternative is the worst possible lesson for our national life.

Do people believe this will happen? No, they don't - and that is a damning and corrosive conclusion, encouraging deep cynicism towards our national institutions. For all the fashionable talk of rebalancing criminal justice in favour of victims, for all the talk of community engagement and targeting offenders, this is the acid test.

Forget the paranoid paraphernalia of national databases, identity cards and all the other liberty-sapping addictions of the Home Office. Forget the rhetoric and do something useful. If the Government really wants to protect people beyond armoured-vest posturing, here is the opportunity.

We need a new financial regulatory and law enforcement authority that inspires respect and, when it's needed, fear. Financiers will say that this would inhibit entrepreneurship. But regulation and law enforcement exist for a reason beyond the fear that they might inspire, and they are not inconsistent with free markets.

On the contrary, as an important aspect of the rule of law, they support enterprise. They exist to create an environment in which people can make decisions, go about their lives and do business confident in the knowledge that what they legally hold will not be stolen from them. This is the basis of all law and it is shockingly absent from our financial markets.

So we need a single powerful authority to take the place of the failed Financial Services Authority and the embattled Serious Fraud Office. Independent and strong, it should have responsibility for both regulation and prosecution. It should take an informed, expert view of what activity to regulate - and what to prosecute through the criminal courts. And when it prosecutes it must do the job properly. It needs a reputation that says regulation must be respected and that, with the right evidence and scrupulously fair trials, prosecution means long years in prison. It is an absolute failure of public policy that we have no means of reassuring the public that this is at present the case for finance crime.

And that's where legislators come back in. How seriously do they really take financial wrongdoing?

Do they understand the wreckage it brings? How much money will they put into uncovering it? How long do they think the sentences should be?

Do they really believe that an illiterate mother-of-five drug mule from a village in The Gambia should be serving five times the sentence of a millionaire City fraudster?

Let's have fewer terrorism acts, fewer laws attacking our right to speak frankly and freely. Let's stop filling our prisons with junkies, inadequates and the mentally damaged. How apposite in 2009 to have, instead, a few more laws to confront the clever people who have done their best to steal our economy.

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