

UC Berkeley

Working Papers

Title

Searching for the 'great ghost' : the palace, the premiership, the cabinet and the constitution in the post war period

Permalink

<https://escholarship.org/uc/item/0172k8xm>

Author

Hennessy, Peter

Publication Date

1995

A1458
no. 95-15

2/20/96

**Searching for the 'Great Ghost':
The Palace, the Premiership, the Cabinet and the Constitution
in the Post War Period**

**Dr. Peter Hennessy
Queen Mary and Westfield College
University of London**

INSTITUTE OF GOVERNMENTAL
STUDIES LIBRARY

FFR 1 1996

UNIVERSITY OF CALIFORNIA

Working Paper 95-15



UNIVERSITY OF CALIFORNIA AT BERKELEY

Searching for the 'Great Ghost':
The Palace, the Premiership, the Cabinet and the Constitution
in the Post War Period

Dr. Peter Hennessy
Queen Mary and Westfield College
University of London

Working Paper 95-15

Working Papers published by the Institute of Governmental Studies provide quick dissemination of draft reports and papers, preliminary analysis, and papers with a limited audience. The objective is to assist authors in refining their ideas by circulating research results and to stimulate discussion about public policy. Working Papers are reproduced unedited directly from the author's pages.

SEARCHING FOR THE 'GREAT GHOST': THE PALACE, THE
PREMIERSHIP, THE CABINET AND THE CONSTITUTION
IN THE POST-WAR PERIOD

AN INAUGURAL LECTURE BY DR PETER HENNESSY
PROFESSOR OF CONTEMPORARY HISTORY
QUEEN MARY AND WESTFIELD COLLEGE
UNIVERSITY OF LONDON
1 FEBRUARY 1994

Almost a third of a century ago, General Charles de Gaulle, towering over both Houses of Parliament in Westminster Hall, delivered a paen of praise to Britain's singular way of governing herself as fulsome as it was unexpected, not least to those like the Prime Minister, Harold Macmillan, who were ever mindful that, as he put it, the French Head of State was 'always remembering the insults which he conceives were put upon him by Churchill during the war'.¹

That day, however, de Gaulle lauded Britain's 'outstanding role in the midst of the storm' of World War II and linked it to 'the legitimacy and authority of the State'. 'Although since 1940', the General continued, 'you have undergone the hardest vicissitudes in your history, only four statesmen, my friends Sir Winston Churchill, Lord Attlee, Sir Anthony Eden and Mr Harold Macmillan, have guided your affairs over these extraordinary twenty years. Thus, lacking meticulously worked out constitutional texts, but by virtue of an unchallengable general consent [my italics], you find the means on each occasion, to ensure the efficient functioning of democracy without incurring the excessive criticism of the ambitious, or the punctilious blame of purists'.²

¹ 'Secret and Personal' memo to Edward Heath, December 26, 1962. Public Record Office, PREM 11/4412

² Jean Lacouture, De Gaulle. The Ruler: 1945-1970, Collins Harvill, 1991, p.352

How warmly those words must have fallen upon the ears of the British legislators in that ever chilly hall so narrowly saved from the Luftwaffe's bombs in the era to which de Gaulle initially referred. For his word-picture fitted perfectly their own mental image of Britain's constitutional arrangements - inexplicable, irrational but functionally stabilising in a fashion that was the envy of the world.

I'm sure de Gaulle meant it, for he used this analysis when he intended to disappoint as well as to soothe. For example, in the Elysee on 14 January 1963, during the famous press conference vetoing the British application for membership of the European Economic Community, he declared, by way of explanation, that Britain 'has, in all her work, very special, very original habits and traditions. In short, the nature, structure, circumstances, peculiar to England are different from those of the other continentals'.³

This evening I want to examine over the period since 1945 some of those 'very special, very original habits and traditions' in relation to that magically functioning British constitution over which de Gaulle purred that spring day in Westminster Hall. And when I have finished my magical mystery tour of those of its elements that relate to what modern political scientists inelegantly call the 'core executive'⁴, I shall challenge what de Gaulle called the 'unchallengable'. And, at risk of sounding like a 'punctilious purist', make a few suggestions for improvement by way of a conclusion.

I have, in fact, been searching for what George Dangerfield called the 'great ghost'⁵ of our constitution since the

³ Ibid., p.358

⁴ See the special edition of Public Administration, vol. 68, No.1, Spring 1990; Patrick Dunleavy, R.A.W. Rhodes and Brendan O'Leary (eds), on 'Prime Minister, Cabinet and Core Executive'.

⁵ George Dangerfield, The Strange Death of Liberal England, Paladin edition, 1983, p.44.

autumn of 1966 when I sat one evening in the library of St John's College, Cambridge and fell, for the first time, under, the spell of Walter Bagehot's The English Constitution.⁶ That search has turned out, so far, to be half-a-lifetime's work conducted under a variety of guises - as a journalist of the Whitehall correspondent variety; as a Visiting Professor of Government in a Political Science Department at Strathclyde; as a presenter of documentaries on the BBC Radio 4 Analysis programme; and now as a Professor of Contemporary History here at QMW. And, for reasons I'll come to later, I am increasingly convinced that it's the historical approach which will prove the most fruitful. Though, like all its rivals, it will be far from 'ghostbusting' in its capacity to pin-down and explain this most elusive of phenomena.

It is, in some ways a lonely, almost eccentric pursuit as the bulk of my fellow citizens, including those in the scholarly professions, remain far from riveted by the constitution as a topic for conversation or for research. Today's electorate, too, seems profoundly uncurious about the rules of the political game as it has been since the franchise was completed between 1918 and 1928 (though remember it was only a mere 44 years and 13 elections ago in 1950 that the British people finally chose their government on the basis of one person/one vote). The dreary line of so many contemporary politicians that 'if it ain't broke, don't fix it' seems to be a smugly insular and all too effective all-purpose discussion-stopper. Let other less fortunate nations turn to their written constitutions. We, the argument runs, have liberty built into our political bone structure - Question Time in the Commons, an independent judiciary, a non-political Civil Service, a Monarch above the party fray. It's what might be called the 'this-is-England' syndrome implying that we are as special and as fortunate as de Gaulle claimed.

⁶ It was the 1963 Fontana edition with the celebrated 'Introduction' by R.H.S. Crossman.

In some ways, it is a satisfying state of affairs all-round - a source of self-congratulation for the public at large and deeply convenient for the guardians of the British constitution in Whitehall, the Cabinet Room and Buckingham Palace. As one of them put it to me privately a few years ago, 'if you have an unwritten constitution, you make it up as you go along',⁷ corroborating thereby Philip Ziegler's highly apt depiction of the British system as depending upon 'instantly invented precedents'.⁸

The subject of our constitutional guardians brings me to my chairman this evening. I was delighted when Robin Butler accepted the Principal's invitation to preside for several reasons. We have been friends for a long time, ever since the days when we had Labour Governments and Robin was fresh from Harold Wilson's Private Office and trying, with our current QMW Financial Secretary, Dr Keith Aldred, to refine the Treasury's systems for controlling public expenditure. In the context of my theme tonight he has been described by a member of the Shadow Cabinet, Jack Straw, as one of two people who between them 'run the British Constitution' (the other being the Clerk of the House of Commons)⁹. Mr Straw's view reflects the assessment of that constitutional expert and sometime Independent MP for Cambridge University, Sir Kenneth Pickthorn, who believed that 'Procedure is all the Constitution the poor Briton has.'¹⁰ If you follow Pickthorn, as I do, you would have to add at least a third to Jack Straw's duo, the Queen's Private Secretary and, perhaps, a fourth in the person of the Prime Minister's Principal Private Secretary.

Last year Sir Robin seemed to acknowledge his special place in our constitutional firmament. Appearing in March before the all-party House of Commons Select Committee on the

⁷ Private information.

⁸ Quoted in Peter Hennessy and Simon Coates, The Back of the Envelope: Hung Parliaments, the Queen and the Constitution, Strathclyde Analysis Paper No.5, 1991,p.17.

⁹ Conversation with Jack Straw, 23 NOVEMBER 1993.

¹⁰ House of Commons Debates, 8 FEBRUARY 1960, Col. 70.

Treasury and the Civil Service, he answered a proposition from Giles Radice that, on matters covered by the Cabinet's and Whitehall's rulebooks, he was as Mr Radice put it, 'the supreme judge of whether or not constitutional conventions are being broken' 'Yes. That's right', Robin replied.¹¹ Though at his most recent appearance before the select committee last November, he clarified the position, explaining that he was not the 'arbiter' of this patch of the constitution. 'The Prime Minister is, in these matters, responsible to Parliament for them. I am no more than an adviser'. He explained later, however, that he 'would not expect that opinion and advice to be taken lightly' adding that he would resign if his advice was not heeded over a major breach of the rules.¹²

Nevertheless, I expect Robin this evening to do for me what he has done now for two prime ministers and to put me right, should I stray into an inaccurate interpretation of our constitutional conventions, by tugging discreetly on my gown. In this regard, he has already been of great service to my undergraduate course on the Cabinet and the Premiership here at QMW. Just over a year ago, one of my undergraduates, Matthew Sanders, preparing an essay on the constitutional significance of Questions of Procedure for Ministers (the do's and dont's document that has existed in something like its modern form as a standing Cabinet Paper since Mr Attlee's time, which John Major declassified shortly after the 1992 election¹³) - my student asked me if it amounted to a constitutional convention. I was sure it did, guided as I was by Dicey's classic definition of a convention as expressing 'the understandings which make up

¹¹ House of Commons Treasury and Civil Service Committee, The Role of the Civil Service: Interim Report, Vol.II, HC390-II, HMSO, 1993, p.25. Sir Robin gave his evidence on 10 MARCH 1993.

¹² House of Commons Treasury and Civil Service Committee, The Role of the Civil Service, Minutes of Evidence, 23 NOVEMBER 1993, 27-i, HMSO, 1994, pp. 66-70.

¹³ Questions of Procedure for Ministers, Cabinet Office, May 1992.

the constitutional morality of modern England'¹⁴ and by Le May's wonderfully practical definition of conventions as 'the general agreements of public men about the "rules of the game" to be borne in mind in the conduct of political affairs.'¹⁵

But, to be certain, I suggested to him that he delay writing his essay for a week until the course had had its briefing session with the Secretary of the Cabinet who was 'the oracle' (as Lady Thatcher used to call his predecessor, Lord Armstrong of Ilminster¹⁶) on such matters. To my surprise, Robin told Matt Sanders that Questions of Procedure was not a constitutional convention, that it was 'discretionary' and could be dispensed with tomorrow if a new, incoming Prime Minister so chose. Robin's actual words were:

'I don't regard it [QPM] as having a constitutional force at all.... It would be perfectly possible for an incoming Prime Minister to scrap the whole thing and to devise entirely new rules. The fact that it has now been published would, of course, lead to debate about that and he would, no doubt, be questioned about the reasons for the changes. But it is entirely at the discretion of the new Prime Minister to scrap this lot of rules and... deal with the Administration in the way that he chose'.

When I rang Robin a fortnight ago to seek his permission to quote his words in full from what was a private occasion, he gave it, adding that, on reflection, 90% of QPM was discretionary explaining: 'The document itself has a discretionary status though it deals with some things which

¹⁴ A.V. Dicey, Introduction to the Study of the Law of the Constitution, Macmillan (1948 edition), p.418.

¹⁵ G.H.L. Le May, The Victorian Constitution, Duckworth, 1979, p.1.

¹⁶ Private information.

are not at the discretion of a Prime Minister to change for example, the description of accountability to Parliament in paragraph 27.¹⁷ And yet, if Dicey had appeared miraculously in the Old Treasury Board Room where we sat with my students that afternoon in December 1992, he would have reminded Robin that his (Dicey's) definition of a convention had allowed for that same notion of discretion describing, as it did, 'most' of the conventions of the British constitution as 'rules for determining the mode in which the discretionary powers of the Crown (or of the Ministers as servants of the Crown) ought to be exercised.'¹⁸

But my understanding of the constitution changed that afternoon as Robin spoke. I had not properly appreciated how fragile and transient such a document - a true convention in the Diceyan sense - could be. It was not, I think, a matter of my being over precious. The distinction between discretion and convention mattered, it transpired, to the Treasury and Civil Service Select Committee, too when I gave evidence to it last May.¹⁹

Another thought occurs. Where else in the world could a carefully crafted question from an undergraduate engineer such a shift of understanding about a central element in those 'rules of the game' to which Le May referred? Apart from anything else, there must be very few countries in the world where an undergraduate could interrogate the constitution in such a fashion. (See what I mean about the pursuit of the British one being a magical mystery tour?)

But should we be surprised about the apparent confusion and problems of definition? We should not. Sir Sidney Low, author of The Governance of England - anatomist supreme of

¹⁷ Department of History, Queen Mary and Westfield College, 'Cabinet and Premiership' course briefing with Sir Robin Butler, 4 DECEMBER 1992. Conversation with Sir Robin Butler, 18 JANUARY 1994.

¹⁸ Dicey, Law of the Constitution, pp.422-3

¹⁹ Treasury and Civil Service Committee, The Role of the Civil Service: Interim Report, Vol.II, see the question put to me by Mr. Quentin Davies, MP, on 4 May 1993, pp.84-5.

Edwardian Westminster and Whitehall (the Anthony Sampson of his day) - declared in 1904: 'We live under a system of tacit understandings. But the understandings themselves are not always understood.'²⁰

I owe Robin an even greater debt, however, than his allowing me and my students to check our 'tacit understandings' with him. Because it was he who stimulated not just the thought which is shaping my current research activity - my search for the 'great ghost' - but the method of its pursuit as well.

The occasion was a conversation in the Cabinet Office in July 1990 for the purpose of one of my 'Whitehall Watch' columns in The Independent. Looking ahead to the early 1990s, I asked him what he, Sir Robert Fellowes, the Queen's Private Secretary, and Andrew Turnbull, at that time the Prime Minister's Principal Private Secretary, (the trio, known as the 'golden triangle'²¹ who advise the Monarch on such contingencies - the continuity girls of the British system of government, if you like) - I asked what they would do if the next general election produced a hung parliament?

'You try to make sure you get the documents in hand', Robin replied. 'A lot of things have been done in the past in the three weeks before an election. The documents are always in the cupboards.'²² 'Always in the cupboards'. That phrase kept reoccurring to me. Finally, I made the connection. Robin's cupboards one day will follow those of his predecessors - Robert Armstrong, John Hunt, Burke Trend, Norman Brook and Edward Bridges (the great managers of the British state in the postwar period) - to the Public

²⁰ Sidney Low, The Governance of England, Fisher Unwin, 1904, p.12.

²¹ See Peter Hennessy and Simon Coates, The Back of the Envelope: Hung Parliaments, the Queen and the Constitution, Strathclyde Analysis Paper No.5, 1991, p.7.

²² Peter Hennessy, Unpublished Diary entry for 24 JULY 1990. The conversation took place the day before. I have Sir Robin's permission to attribute his remarks.

Record Office to whose cupboards, after a decent interval of thirty years, I, too, would have access.

If my hunch was correct, I had a greater chance of finding the 'great ghost' at Kew than anywhere else. For what else is the Public Record Office, in a country whose 'unwritten constitution... develops by custom and practice',²³ as Robin told the Select Committee last year, than the repository of the nation's and Whitehall's collective memory? In effect, the PRO is the spinal cord of the state.

And, there at Kew in a rare example of nature imitating art, you do find a set of files dealing with such crucial, central matters where you would expect it - in what appears to be the dustbin category of the Cabinet Office, the so-called CAB 21 series, wherein are placed items which are so strange and miscellaneous that they fit nowhere else: the plan for a World War III War Cabinet;²⁴ what to do (heaven forbid!) if the Queen should die²⁵, that sort of thing.

You find, too, true rarities such as attempts to define what a senior crown servant has recently described as the 'very special relationship.....between the Prime Minister and the Sovereign'²⁶. Also there, for the late 1940s and early 1950s at any rate, are the files covering the extension and updating of Questions of Procedure for Ministers which grew from 37 paragraphs when first compiled in its modern form for Mr Attlee in August 1945, to 71 paragraphs by the time Mr Macmillan stood down from the premiership, rising to 85 under Harold Wilson by 1966 and exploding in ten years to 132 paragraphs by the time Lord

²³ Treasury and Civil Service Committee, The Role of the Civil Service: Interim Report, Vol. II, p.25.

²⁴ PRO, CAB 21/1647, 'Structure of a War Cabinet', 1949-51.

²⁵ PRO, CAB 21/3728, 'Demise of the Crown', 1956-58.

²⁶ Private information.

Callaghan circulated his version.²⁷ It now stands at 134 paragraphs ranging from collective Cabinet responsibility through the acceptance of hospitality to the preparation of memoirs. I confidently expect it to rise to 135 soon with a section on what funds you can expect the Exchequer to provide, if, as a minister, you find your rented property occupied by an equivalent of 'Miss Whiplash'. It will be Norman Lamont's lasting contribution to British constitutional history.

I shall come back to the Monarch/Premier and Premier/Cabinet relationships in a moment and I shall return to criticise the casualness, the almost deliberate vagueness of the British approach to both. However, the first breath of criticism about our singular constitutional arrangements usually prompts a version of what I might call the 'de Gaulle defence', accompanied by a hymn of praise to the flexibility their lack of precision permits.

A classic and recent example of this came from one of the most respected of our elder statesmen, Lord Callaghan, the former Labour Prime Minister. Asked for a BBC Radio 4 Analysis programme about the remaining reserve powers of the Queen - only she can dissolve Parliament and appoint a premier - and whether or not the 'tacit understandings' about their operation should be formalised and made public rather than left in the cupboards of the Cabinet Office and Buckingham Palace, Lord Callaghan said: 'Well it works doesn't it... even if it is on the back of an envelope and doesn't have a written constitution with every comma and semi-colon in place, because sometimes they can make for difficulties that common sense can overcome'.²⁸

²⁷ The original Attlee version can be found in two sections: PRO, CAB 66/67, CP (45) 99 and CAB 66/78, CP (45) 100. For the files on its updating in the late 1940s and early 1950s see PRO, CAB 21/1264 and CAB 21/2778 both entitled 'Cabinet Procedure: Consolidated version of the Prime Minister's Directives'. For the Macmillan version see PRO, CAB 129/114, 'Questions of Procedure for Ministers'. I acquired the Wilson and Callaghan versions privately. They have still to reach the PRO.

²⁸ Hennessy and Coates, The Back of the Envelope, p.18.

In saying that Lord Callaghan was speaking for virtually all of that small, select class of ministers and officials who have, between them, comprised the guardians of the central British state since the war.

In one area, my trawl through the files has uncovered an activity where that case is vindicated in a way that might have continuing utility. It's proper that praise should precede blame, so I shall turn to it first. It's a neglected aspect of the powers that fall to the premiership. (Knowing what these amount to, of course, is almost a life's work in itself as the Queen's First Minister is largely a stranger to statute).²⁹

It's the power to decide what information shall be divulged when and how and to how many of Her Majesty's Loyal Opposition on a Privy Counsellor basis. The tradition began in the field of foreign and defence policy in 1908 when A.J. Balfour, the former Conservative Prime Minister, was invited back to give evidence to his own creation, the Committee of Imperial Defence, 'on the question of 'oversea attack on the United Kingdom'. Five years later, Asquith invited Balfour to join a standing committee of the CID created to consider the possibility further. Interestingly enough, it was Churchill, then First Lord of the Admiralty, who suggested this, explaining later that: 'I wished to be able to talk over with him every aspect of the German Peril with that freedom in secret matters which can only spring and ought only to spring, from a public, official connection'.³⁰

²⁹ See A.W. Bradley (ed), E.C.S. Wade and G. Godfrey Phillips, Constitutional and Administrative Law, ninth edition, Longman, 1977, pp. 244-5. The PM is mentioned in recent legislation dealing with the secret services such as the Security Service Act 1989 and in the Intelligence Services Bill currently before Parliament.

³⁰ PRO, CAB 21/3718 - 'Consultation with Leaders of the Parliamentary Opposition (Policy)'. For Churchill's revelation of his suggestion see his Great Contemporaries, Reader's Union and Thornton Butterworth, 1939, pp.255-6.

Such contacts, at a time of immense bitterness between the Liberal and Unionist parties over Ireland, Lords reform and tariffs, were made possible by that magically flexible constitution of ours because, as the former premier, Lord Rosebery, put it in his famous 1899 essay on Robert Peel, 'the Prime Minister ... is technically and practically the chairman of an Executive Committee of the Privy Council, or rather perhaps of Privy Councillors..'31

All serving and former Cabinet ministers, are privy counsellors and can, therefore, be brought in and out of what Churchill called 'the Cabinet circle'³² on the say-so of the Prime Minister-of-the-day - a practice as sensible as it is useful.

In modern times, such contacts normally take the form of the PM and the Leader of the Opposition engaging in a bilateral discussion with a Downing Street private secretary present. A poignant example came to light last year at the Public Record Office when the notes of Gaitskell's last meeting with Macmillan in the Cabinet Room on 20 November 1962 were declassified. Macmillan, sustaining the tradition of seeking bipartisanship on defence matters, is explaining his ideas for a united Ministry of Defence, telling Gaitskell 'that we should eventually have to come to one Armed Service. He thought Mr Gaitskell would live to do it'.³³ In less than two months Gaitskell was dead.

The surprising knowledge waiting to be discovered about such postwar contacts in the CAB 21 files, however, is the depth, the intimacy and the mechanics of the privy counsellor network during Mr Attlee's premiership. Once again it was the defence area where it was at its closest. In March 1949 Churchill sent Attlee a six page memo on the

31 Lord Rosebery, Sir Robert Peel, Cassell, 1899, p. 33.

32 PRO, T 273/74, 'Cabinet Office appointment of Mr E.E. Bridges as Permanent Secretary and transfer of Sir Norman Brook to H.M. Treasury'. Churchill to Bridges, OCTOBER 1951, (no day given).

33 PRO, PREM 11/3859.

condition of Britain's defences in view of what he called 'the hostility of Soviet Russia.'³⁴ Attlee took his wartime chiefs' concern sufficiently seriously not just to create a special Cabinet committee (known as GEN 293 in the Cabinet committee book³⁵) to consider them but he invited Churchill and no fewer than four colleagues to join that same Cabinet Committee to discuss them over three meetings in the summer and autumn of 1949, all this at the height of party strife over the nationalisation of iron and steel and the power of the House of Lords.³⁶ In other words Attlee did for Churchill what Churchill had done for Balfour 36 years earlier.

It's quite plain from the files that common membership of the Privy Council was the key to this intriguing, partial resumption of wartime coalitionism (a fascinating but wholly neglected aspect of the wider debate about the nature and scope, sometimes even the existence of, the fabled 'postwar consensus'³⁷). Churchill proposed to bring Brigadier Anthony Head to the meetings as his note-taker. Attlee would have none of it. In a letter of 28 June 1949, he told Churchill the forthcoming 'talks are between Privy Counsellors who have special obligations'. 'Confidential information' would be shared. He had 'no doubt whatever as

³⁴ PRO, CAB 21/3719. 'Consultation with Leaders of the Parliamentary Opposition (Policy)', 'Memorandum on Defence by Mr Churchill', 10 MAY 1949.

³⁵ The minutes and memoranda of GEN 293 are preserved in PRO, CAB 130/47.

³⁶ Ibid. The meetings were held on 13 and 20 JULY and 20 OCTOBER 1949. The Privy Counsellors' Oath of Confidentiality, which Attlee saw as crucial to those 1949 discussions, dates from the thirteenth century. The Privy Council, in a recognisably 'modern' form, is normally traced to the sixteenth century. The emergence of a 'Cabinet Council' is usually assigned to the late seventeenth century. I am grateful to my colleague, Jim Bolton, for the carbon-dating of the important constitutional artefact. See W.L. Warren, The Governance of Norman and Angevin England, 1086-1272, Arnold, 1987, pp. 173-4, 190-1; A.L. Brown, The Governance of Later Medieval England, 1272-1461, Arnold, 1989, pp. 30-1, 35-6; and John P. Mackintosh, The British Cabinet, Stevens, 1962, Chapter 2.

³⁷ For a summary of the debate see Dennis Kavanagh and Peter Morris, Consensus Politics from Attlee to Thatcher, ICBH/Blackwell, 1989.

to the reliability of Head' but 'I must ask you to confine those accompanying you to members of the Privy Council.'³⁸

Constitutionally, Attlee was behaving impeccably. Then as now, all privy counsellors, of whatever party, are technically the Sovereign's advisers. Cabinet government is simply an adaptation of a seventeenth century phenomenon whereby it is usually, coalitions apart, privy counsellors from a single party who comprise the Privy Council committee which counts - (the Cabinet) and which to all intents and purposes, oversees the central direction of the State. In its way, it's a classic example of the continuing value of a monarchical system, a telling point for those who, like Lord Callaghan, support the flexibility argument.

And yet, of course, it is the Prime Minister, not the Monarch, who manages such arrangements. Indeed, the premier, in modern parlance, is the chief executive and the managing director of all but two items on the agenda of that very special Prime Minister/Sovereign relationship (the two exceptions being the crucial matters mentioned earlier of dissolving Parliament, thereby triggering a general election, and the appointment of a Prime Minister).

This area of residual crown power is probably the most elusive and delicate of all our central constitutional relationships and it has been the source of a sputtering debate that has punctuated the entire postwar period.³⁹ What do the 'cupboards' have to offer by way of clarification and illumination? In a word, a solitary, core file entitled 'Function of the Prime Minister and his staff'⁴⁰ which passed around Whitehall for two years between 1947 and 1949 before being placed by R.P. Fraser, Sir Norman Brook's private secretary, into the still-to-be-

³⁸ PRO, CAB 21/3719. Attlee to Churchill, 28 JUNE 1949.

³⁹ Bradley (ed), Constitutional and Administrative Law, pp. 223-9.

⁴⁰ PRO, CAB 21/1638. 'Function of the Prime Minister and his staff'.

declassified Precedent Book, becoming, thereby, part of the enduring warp and woof of the British constitution.

It's genesis is revealing. Might it, on examination of its period, be seen as a deliberate, very private rethink intended to modernise this highly sensitive working part of the constitution given the advent of the first Labour Government with a majority and the lingering bitterness within the Labour Movement about George V's energetic role in helping to engineer a National Government in 1931 thereby easing Ramsay MacDonald into his 'great betrayal'?⁴¹ Not at all. The file was created and developed, passing from seasoned hand to hand in the Treasury and the Cabinet Office, because what later became the Royal Institute of Public Administration asked for help with a paper on 'The Head of the Government and the Organisation of His Staff', that they had to deliver in Berne in July 1947 at an international conference.⁴²

By the time it entered the Precedent Book in January 1949, the document had acquired a five-point section on 'The Relationship between the King and the Prime Minister' which had not been divulged to the public administrators. It remains an artefact of considerable importance today for several reasons.

First, it is the last declassified internal working paper on the subject to have reached the public domain. Secondly, it is a kind of preserved conversation - a record of the guardians of the British constitution talking privately among themselves with no thought of publication (in 1949 there was not a Fifty let alone a Thirty Year Rule). And thirdly, it was, as Ronald Fraser told me when I showed him the file last summer, a matter of those who

⁴¹ For a left-wing critique of the 1931 crisis see Ralph Miliband, Parliamentary Socialism, Second edition, Merlin, 1973, pp. 172-96. Even Attlee was moved to tell the 1932 Labour Conference that they could not get 'Socialism without tears' and that they should expect 'another crisis at once' even if elected with a majority. Labour Party Annual Conference Report 1932, p. 205.

⁴² PRO, CAB 21/1638. William Armstrong to Stuart Murrice, 17 JUNE 1947.

compiled and updated the Precedent Book seeing their 'role as a gathering of the harvest over long years of experience. Our function was to explain the relevance of that for the modern age... on the general premiss that there would be a number of principles that governed the way the system operated'⁴³ - a near perfect summation of the way the British did and still do these things.

Mr Fraser's interpretation of the document was confirmed recently by Sir Robert Fellowes, the Queen's Private Secretary. I asked Sir Robert if the Royal Archives contained a counterpart to what I might call the Cabinet Office's royal 'harvest' file'⁴⁴ Sir Robert very kindly instituted a search and told me the result last December:

'I have found, in fact, that we do not have in the Royal Archive any Palace equivalent to that file. I understand that it was a paper drafted by the Treasury in 1947 on the Office of the Prime Minister with a section on the relationship between the Prime Minister and the King; and that it was prepared in connection with an international congress in Berne. There do not seem to be documents in the Royal Archives which refer to or discuss this paper. But I do not think this is necessarily surprising as the content may well have been drawn from views or positions agreed or used on previous occasions.'⁴⁵

Again, a perfect illustration of our constitutional system growing like coral; the gradual accretion of centuries.

What does the file say that matters today in terms of what Her Majesty can and cannot do in her Audience Room at 6.30

⁴³ Conversation with R.P. Fraser, 26 AUGUST 1993.

⁴⁴ Letter from Peter Hennessy to Sir Robert Fellowes, 15 NOVEMBER 1993.

⁴⁵ Letter from Sir Robert Fellowes to Peter Hennessy, 6 DECEMBER 1993.

of a Tuesday evening when Mr Major comes to call?⁴⁶ Or what she might feel duty bound to do if a future general election produces a messily hung parliament and Sir Robin and Sir Robert raid the cupboards to knock-up a brief for her?

Take the weekly audience first. It's plain that by 1947, the shadow of Queen Victoria had long departed (though the debate still rumbles occasionally about George VI's influence upon Attlee's decision to send Bevin rather than Dalton to the Foreign Office in 1945⁴⁷). 'The King should not take sides in Party politics', the document declares, recognising that 'this was not observed even so late as the middle of the last century.' The Monarch must act on the advice of ministers 'although this does not in any way derogate from his right and indeed duty to make known to ministers his views about or objections to any course of action they propose.'⁴⁸

What about a hung parliament?

'The choice of a Prime Minister by the King is not made on formal advice or submission. In many cases the choice is clear but the King has an absolute right in all cases to consult anyone he pleases. This right may of course be of the greatest value in cases where there is doubt about the choice; such as in the event of the death of a Prime Minister in Office, the resignation of the Prime Minister for personal reasons, a complicated political situation and so forth. Nevertheless, as the King should not

⁴⁶ Antony Jay, Elizabeth R: The Role of the Monarchy Today, BBC, 1992, p.49.

⁴⁷ For George VI's version see John W. Wheeler-Bennett, King George VI. His Life and Reign, Macmillan, 1958, pp. 638-9. Attlee always denied that the King's advice was a crucial factor. See Daily Herald, 20 FEBRUARY 1952 and Kenneth Harris, Attlee, Weidenfeld, 1982, p.264. Despite Attlee's denials, the conventional wisdom in Palace circles for many years was that the King's counsel had been influential (private information).

⁴⁸ PRO, PREM 21/1638.

exercise, or appear to exercise, any political bias he would normally [my italics] choose as Prime Minister the leader of the Party having the largest number of seats in the House of Commons.⁴⁹

The document is silent on the Monarch's other remaining personal prerogative - the dissolution of Parliament. Though we know from the No. 10 files dealing with the 1959 election that Mr Macmillan took Her Majesty's prerogatives as the triggerer of a ballot wholly seriously in the late summer of 1959 even though the 1955 Parliament was almost four-and-a-half years old.⁵⁰

For the conditions under which a Monarch may refuse a PM's request for a dissolution, we have to rely on a truly bizarre artefact - a letter to The Times in May 1950 from Sir Alan Lascelles, George VI's Private Secretary, writing pseudonymously as 'Senex' (or 'wise man') in an attempt to quell speculation about a possible constitutional crisis with Mr Attlee's majority fallen from 146 to 6 as a result of the 1950 election.

No Monarch, said Lascelles, would refuse a premier's request for a dissolution 'unless he was satisfied that; (1) the existing Parliament was still vital, viable and capable of doing its job; (2) a General Election would be detrimental to the national economy; (3) he could rely on finding another Prime Minister who could carry out his Government, for a reasonable period, with a working majority in the House of Commons'.⁵¹

In the autumn of 1992, when the current PM's Office was threatening, non-attributably, that Mr Major would call an election if he didn't get his way on the so-called

⁴⁹ Ibid.

⁵⁰ PRO, PREM 11/2654, 'Arrangements for announcement of date of General Election', 1959.

⁵¹ The Times, 2 MAY 1950.

Maastricht Paving vote,⁵² all three of those conditions seemed to me to apply: an election six months before had given him a majority of 21 and, at that point, no by-election loss had occurred; the economy was still reeling from 'Black Wednesday' the month before; and, for all Mr Major's use of collective Cabinet responsibility there was, no doubt, the odd potential 'crown prince' concealing the worm of ambition from his Cabinet colleagues.

After the election threat was withdrawn, again non-attributably, I made private inquiries and discovered that all but one of the Lascelles criteria still stand; only the 'national economy' factor has been discreetly dropped since 1950.⁵³

But, ladies and gentlemen, such factors are too delicate, too central to our political and constitutional life to be left to a 1949 file, a 1950 letter and what I can glean privately on my Establishment net. Yet the Palace and the Cabinet Office refuse to publish material from their prerogative cupboards short of the Thirty Year Rule. Nor are there any plans to declassify the so-called 'audience notes' for the present Queen's reign despite the welcome reduction of the 100-Year Rule for royal-related material on Whitehall files to a 30-year rule announced in last summer's Open Government White Paper.⁵⁴ It's known that there were no fewer than 1200 audiences in the first 40 years of the Queen's reign.⁵⁵ It's just about the only governmental meeting that has never leaked. What transpired between Her Majesty and the men behind me has rarely been reflected in the CAB or the PREM files at Kew, though three of them - Lords Home and Callaghan and Sir Edward Heath - have given me a general idea of such occasions in interviews conducted for the BBC Radio 3

⁵² See 'Bagehot', 'A right royal affair'. The Economist, 31 OCTOBER 1992.

⁵³ Private information.

⁵⁴ Open Government, CM 2290, HMSO, 1993, p.68.

⁵⁵ Jay, Elizabeth R, p. 48.

Premiership series in 1989⁵⁶ and Her Majesty herself has described them publicly only once, as far as I know:

'They unburden themselves', she said of her nine premiers, 'or they tell me what's going on or if they've got any problems and sometimes one can help in that way too. They know that one can be impartial... I think it's rather nice to feel that one's a sort of sponge and everybody can come and tell one things. And some things stay there and some things go out of the other ear and some things never come out at all. One just knows about it... And occasionally you can be able to put one's point of view which, perhaps, they hadn't seen it from that angle'.⁵⁷

I can understand the continuing sensitivity of these 'audience notes' to the present reign and why the decision went as it did. Even if they were disclosed, we would not discover precisely what transpired between Her Majesty and her First Ministers for, as we know from a single rare release from the Attlee/George VI relationship,⁵⁸ they are briefing notes prepared beforehand. They are not minutes of actual conversations and no such records, to the best of my knowledge, are created, let alone preserved. But I am much less sympathetic to the continuing retention of the contingency plans for a hung parliament and the 'think pieces' on the general principles which govern the remaining royal prerogatives that have been compiled since the George VI/Attlee years.

For the Queen's advisers, on this patch of the constitutional terrain, are, in their ever courteous way, living proof of the vitality of Dangerfield's observation on their equivalents at the time of the House of Lords

⁵⁶ BBC Radio 3, Premiership: Lord Home, First broadcast on 4 OCTOBER 1989; Rt. Hon Edward Heath, first broadcast on 11 OCTOBER 1989; Lord Callaghan, first broadcast on 18 OCTOBER 1989.

⁵⁷ Elizabeth R, BBC Video, 1992. BBC V. 4710.

⁵⁸ PRO, CAB 21/2263, 'Prime Minister's Notes for Weekly Visits to the King'.

crisis in 1910-11 who refused 'to conjure a great ghost into the narrow and corruptible flesh of a code'.⁵⁹

The time has come for the 'great ghost' to be exorcised. With the 1990s threatening to be a potentially volatile decade in electoral terms (and remember, any form of proportional representation, if the UK adopted it, would almost certainly produce a hung result every time), and with the Monarchy discomfited by the personal problems of some members of the Royal Family, this is not the moment to risk any suggestion of politicisation or any trace of controversy in the areas covered by the remaining personal prerogatives.

The 'golden triangle' should consider the dangers very seriously and advise the Monarch and the PM accordingly. All-party agreement is necessary on what, to use Ronald Fraser's phrase, the 'harvest' of the past means for the present and the future. It is too important for the political parties, for Parliament, for the Monarch and for the public for such matters to be left to 'instantly invented precedents' - a kind of DIY constitution knitted together in private by a handful of unelected officials operating on the assumption that it will-be-all-right-on-the-night.

There is a serviceable mechanism which could serve as a key for opening the gate to this most secret garden of the constitution - the privy counsellor net. Why not create a Cabinet Committee of the GEN 293-type in plenty of time for the next election consisting of Mr Major, John Smith and Paddy Ashdown (privy counsellors all) plus Sir Robin and Sir Robert Fellowes as technical advisers and keepers of the cupboards? The result could be published - not as a detailed drill for every conceivable contingency, but as a general set of principles, like the 1949 file, for widely and publicly accepted use if Her Majesty in a future election has to decide to whom she will offer first the

⁵⁹ Dangerfield, The Strange Death of Liberal England, p. 44.

opportunity to try and form a government that can put a Queen's speech before the House of Commons and secure a majority for it. Any danger of the Monarchy seeming, rightly or wrongly, to take sides in party politics, as the 1949 paper put it, would be diminished enormously.

Such procedural matters are the business, I think, of a Privy Counsellors' Committee rather than a speakers' conference, a device (dating this time from 1916⁶⁰) which would, no doubt, be used for any consideration of changes in our electoral mechanics.

There is more business, too, which might fruitfully be handled by such a group this side of an election. They could, with benefit all round, take stock of Questions of Procedure for Ministers, its content and its status. Why? For several reasons; one recently historical; and two current.

QPM, as the document is known on the inside, is just about the only sanctuary where the niceties of traditional, collective Cabinet Government are enshrined. I have to admit it would have taken a colleague as naive as he was brave on one of those mornings when Lady Thatcher would open a Cabinet committee, as Malcolm Rifkind has recalled it, with the words 'I haven't much time today, only enough time to explode and have my way',⁶¹ to say 'wait a minute, Prime Minister, it says in paragraph 3(i) of QPM that Cabinet and Ministerial Committees should tackle 'Questions which significantly engage the collective responsibility of the Government because they raise major issues of policy or because they are of critical importance to the public.'⁶² Life is not like that, though I have long believed it takes the other 22 people around the Cabinet Table to make

⁶⁰ For the invention of this device to consider changes in the franchise see D.E. Butler, The Electoral System in Britain since 1918, second edition, 1963, p. 7.

⁶¹ The Kenneth Baker Memoirs, 'Maggie's Ministers', BBC 2, 11 SEPTEMBER 1993.

⁶² Questions of Procedure for Ministers, 1992 edition.

Cabinet government work if the Premier in the chair is prone to take short-cuts with genuine and full discussion of important issues.

Fears for the health of traditional Cabinet government have largely evaporated since the change of Prime Minister in 1990. But it worries me that QPM is underpinned by so little, given what Sir Robin calls its 'discretionary' nature, as, flimsy protection though they are, such procedures, to adapt Pickthorn, are all the constitution we have for Cabinet government.

If I were a Cabinet minister I would worry about the meagreness of my procedural defences against the risk of an overmighty premiership. And such matters belong not just to the party forming the government-of-the-day, but to all democratically elected aspirants to a place at the Cabinet Table - hence my emphasis on privy counsellors from all three parties.

Current reasons for serious consideration of such an inquiry have to do with crown servants, the human material which bonds the working parts of the constitution I'm examining this evening - the production engineers of the cabinet process, to adapt a phrase of the late Sir William Armstrong's.⁶³ There is a genuine, though I think largely misplaced fear that our traditionally politically neutral career Civil Service has been politicised to some degree since 1979. Though it certainly worries some members of the Shadow Cabinet.⁶⁴ There are a mere four paragraphs of QPM which deal with this⁶⁵. The most important of them, Number 55, is also central to the Scott Inquiry into Matrix-Churchill and related matters, though the barriers against impropriety here have amounted to but a pair of sentences:

⁶³ Sir William used to describe himself and his colleagues as 'the production engineers of the parliamentary process'. 'Another Turn of the Mangle', 'Times Diary', The Times, 15 JULY 1980.

⁶⁴ Private information.

⁶⁵ Paragraphs 55-58 in the 1992 edition.

'Ministers have... a duty to refrain from asking or instructing civil servants to do things which they should not do'.

And

'Civil servants should not be asked to engage in activities likely to call in question that political impartiality, or to give rise to criticism that people paid from public funds are being used for Party political purposes.'⁶⁶

A dozen Civil Service codes reflect these principles which are being gathered together for the first time in the public domain by the Commons Treasury and Civil Service Select Committee as part of its current inquiry into the role of the Civil Service.⁶⁷

The Select Committee and the top officials' union, the First Division Association, have shown the way on these matters.⁶⁸ It is now for those at the summit of public life to follow. No more than in the operation of the remaining personal prerogatives of the Monarch, can we rely any longer on 'tacit understandings' when it comes to the proper working of Cabinet government or the maintenance of the traditional proprieties of the Civil Service.

On such constitutional fundamentals, public confidence requires unprecedented openness, predictability where possible and all-party agreement. The age of the-back-of-the-envelope is past. At the very least an agreed version of Questions of Procedure could be given an enhanced status and a degree of permanence by being laid before Parliament

⁶⁶ Ibid. Paragraph 55.

⁶⁷ I am very grateful to Colin Lee, Clerk to the Treasury and Civil Service Select Committee, for sending them to me after his determined efforts to find and procure them.

⁶⁸ The FDA Executive is currently considering a Code of Ethics for civil servants, which, unlike the Armstrong Memorandum on 'The Duties and Responsibilities of Civil Servants in Relation to Ministers'. (Cabinet Office, 1987), would have senior figures outside the Whitehall loop to whom, as a last resort, troubled officials could take their concerns.

as an order in council (another immensely useful instrument bequeathed us by the 'state and ancients' of the Privy Council system, to borrow a Shakespearean phrase).⁶⁹

Over the quarter-of-a-century plus since the question of our unwritten constitution first began to intrigue me, I have become more and more aware of the profundity and the troubling accuracy of Mr Gladstone's remark that the British Constitution 'presumes more boldly than any other the good sense and the good faith of those who work it'.⁷⁰

For me that observation has resonated time and again as the Matrix-Churchill inquiry has proceeded, especially when ministers and officials seem to have been casual, almost contemptuous, about the need to sustain the scrupulous accuracy of undertakings given to Parliament. I commend Mr Gladstone's words to Lord Justice Scott for inclusion in his report.

Enough of prescription. May I end by returning to the 'great ghost'? Last summer, I thought I had found it. I caught a fleeting glimpse of it at the PRO - a file mentioned in three other dockets called 'British Constitutional System.' I searched the catalogues. It wasn't there.

So, ever hopeful thanks to the new climate created by the so-called 'Waldegrave Initiative' on public records,⁷¹ I wrote to Robin, asked him to find the file, it, review it and declassify it. He did, and his Records Officer, Pat Andrews, invited me in to look at it. As I walked down Marsham Street towards the Cabinet Office Historical Section, I felt like Jimmy Durante in-waiting; the guy about to 'find the lost chord'.

⁶⁹ 'Much Ado About Nothing', Act 2, Scene 1, line 75, The Complete Works of Shakespeare, OUP, 1938, p. 525.

⁷⁰ W.E. Gladstone, Gleanings of Past Years, Vol. I, John Murray, 1879, p. 245.

⁷¹ Named after William Waldegrave, Chancellor of the Duchy of Lancaster, and minister for open government.

What did I find? First what seems to be an incomplete version of the 1949 document upon which I've already dwelt (though the Monarchy section was not there); a useful 1944 organogram of the War Cabinet and its structures; correspondence with Sir Ivor Jennings about an updated edition of his book on Cabinet Government⁷²; a note on the types of business not normally taken by full Cabinet and - the pièce de résistance - 61 pages compiled in the Treasury by my old friend Sir Stuart Milner-Barry on which departments were created and when, starting with the 'Office of Lord Chancellor' in the eleventh century and finishing up on 1 APRIL 1956 with the administration of agricultural research grants shifting from the Ministry of Agriculture to the Agricultural Research Council.⁷³

There we have it - the British Constitution is what happens next (to adapt a phrase of John Griffith's⁷⁴). So much for Jimmy Durante. It was more a case of Noel Coward's 'Some Day I'll Find You'.⁷⁵

One day, ladies and gentlemen, find it I will - and you'll be the first to know!

⁷² W. Ivor Jennings, Cabinet Government, CUP, 1936.

⁷³ PRO, CAB 21/4548, 'British Constitutional System'.

⁷⁴ At the time of the Westland Affair, Professor Griffith said to me that he had come to the conclusion that: 'The Constitution is what happens', quoted in Peter Hennessy, Whitehall, Secker and Warburg, 1989, p. 306.

⁷⁵ 'Bittersweet', 1930. Noel Coward, Collected Sketches and Lyrics, Hutchinson, undated.

U.C. BERKELEY LIBRARIES



C114006479