

**THE DOCTRINE OF INDIVIDUAL MINISTERIAL RESPONSIBILITY
IN BRITISH GOVERNMENT:**

**Theory and Practice in a New Regime
of Parliamentary Accountability.**

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ABSTRACT

THE DOCTRINE OF INDIVIDUAL MINISTERIAL RESPONSIBILITY IN BRITISH GOVERNMENT: Theory and Practice in a New Regime of Parliamentary Accountability.

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By 1966 it had become clear that the doctrine of individual ministerial responsibility, which lay at the heart of the British constitution, had failed to evolve in order to meet the requirements of modern government. This thesis puts forward a review of the doctrine's operation and theoretical basis over a seventeen year period, starting with the advent of new organs of parliamentary scrutiny under the second Wilson Government.

It is argued that individual ministerial responsibility can best be understood with reference to four distinct, yet interlocking elements. One of these, accountability, was the focus of significant change between 1966 and 1983. During these years, it was possible to discern the emergence of a new regime of parliamentary accountability. Within this, the traditional methods of scrutiny continued to operate, but they were joined by new Select Committees and the Parliamentary Commissioner for Administration. These new organs had the effect of increasing the quantity and enhancing the quality of scrutiny which could be brought to bear on ministers and civil servants. In a real sense, ministers became more accountable to Parliament for their role responsibilities, while the civil servants' accountability to their superiors in the administrative hierarchy, to their ministerial masters, and most importantly, to Parliament, was enhanced. In particular, the operation of the new Select Committees created a situation where the de jure statement of civil service non-accountability to Parliament came into obvious conflict with the emerging de facto accountability to this source.

Individual ministerial responsibility remains a useful description of how British government is organised and operates. The doctrine should not be viewed as a constitutional myth, although one of its elements, sanctions, is nearer to myth than reality. The period 1966-83 witnessed no "revival" of this element, only a few false starts.

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PREFACE

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Finally, I would like to record my appreciation for the tolerance, understanding and good spirits shown by my wife Elinor while I have been working on the thesis. For most of our married life so far she has sustained me through extended periods of "solitary confinement".

____ Robert Pyper,

July 1987.

responsibility serves to establish the framework for the complex relationships between government ministers and Parliament, and between ministers and their own departmental civil servants. It defines the scope and nature of the powers vested in these ministers. In a state which remains, even in the face of the onslaught of pluralism, fundamentally unitary and centralised, this doctrine has an abiding importance.

It is a strange blindness, partly attributable to the separation between the study of law and that of politics, which persuades many students of British government to ignore its importance and to underestimate its formidable influence on the way in which matters of public concern are dealt with in this country.[1]

Individual ministerial responsibility lies at the very heart of the British constitution: without a clear understanding of the doctrine's working, one cannot hope to comprehend the rest of the political anatomy. Given its importance, regular reviews of the doctrine's operation, and of the theory which underpins it, would be justified.

A clear understanding of what individual ministerial responsibility means in modern government could broaden the parameters of virtually all debate concerning constitutional change. Whether or not the proponents and opponents of change choose to recognise it, the doctrine touches upon such debate. One of the things which the people who advocate reform of the House of Commons are implicitly trying to do is to make the practical operation of the doctrine correspond to their interpretation and understanding of the theory. Those seeking to "open up" the processes and structures of government find themselves grappling with aspects of the doctrine, as the governing

1. Nevil Johnson: In Search of the Constitution (Methuen, London, 1977), p.85.

factor in the minister-civil servant relationship. Those who seek to reform the machinery of government tend either to treat the doctrine as an untouchable bulwark, and model their recommendations accordingly (as did a line of commissions and committees from Haldane to Fulton, and beyond) or to ignore its centrality, thereby exposing their schemes to instant repudiation (for example, Sir John Hoskyns' proposal for an influx of substantial numbers of businessmen as new model ministers, without parliamentary roots¹).

This thesis puts forward a review of the doctrine's operation and theoretical basis over a seventeen year period. It will be argued that individual ministerial responsibility can best be understood with reference to four elements, one of which, accountability, was the focus of significant change between 1966 and 1983. During these years, it was possible to discern the emergence of a new regime of parliamentary accountability. We shall seek to discover what effect this had on the doctrine, as it applied to both ministers and civil servants. In addition, we shall offer an analysis of the doctrine's other elements in this period. Did any clear "rules" emerge about the apportioning of sanctions against ministers and officials in cases of irresponsibility? Did the experience of these years produce any clarification of the respective role responsibilities of ministers and their civil servants?

A more general question also hangs over all of this. Should the evidence lead us to conclude that the doctrine which lies at the very core of our system of government has

1. For a discussion of the Hoskyns thesis, see Robert Pyper: "Whitehall in the 1980s: Prescriptions and Prospects", Teaching Politics, Vol.13, No.3, September 1984.

degenerated into myth and legend, or that it continues to function as a sound constitutional precept?

The thesis will be divided into two broad sections. Part B will examine the practical operation of the doctrine in the period 1966-83. Part A will offer a definition of the doctrine in its modern form. However, to begin, as a prerequisite to understanding the modern doctrine, we shall attempt to trace the major developments in the history of individual ministerial responsibility.

PART A

A COMPLEX DOCTRINE

CHAPTER ONE: Major Developments in the History of the Doctrine

Constitutional change in Britain rarely occurs in response to any clearly defined political theory or ideology of government. Instead, the mechanisms, conventions and doctrines which determine the manner in which the constitution will function at any given time, tend to develop in an unstructured, ad hoc fashion. The concepts which lie at the heart of the British constitution are, by their very nature, enigmatic. Two American academic observers have described them in the following fashion:

British government is an idiom; the usages, manners and deportment of British government are much more than a summed set of rules or powers. Contextual knowledge shades into each particular feature and, if stared at long enough, each specific activity merges into its background. The unfortunate observer is likely to be left facing only the grin of the Cheshire cat, or its British government equivalent - abstract concepts of ministerial responsibility, Cabinet government, civil service anonymity and so on.[1]

When examining the doctrine of individual ministerial responsibility one encounters the difficulty of trying to focus on what is a much lauded but curiously imponderable constitutional device. The function of this chapter is to set the scene for our attempt to understand what the doctrine means in modern British government. There will be no attempt to present a comprehensive history of "responsible government": what is required is an outline of the major milestones in the history of individual ministerial responsibility, as a prerequisite to understanding.

1. Hugh Heclo and Aaron Wildavsky: The Private Government of Public Money (Macmillan, London, 1974), pp.1-2.

ONE: Early Developments - The Emergence of Responsible Ministers

Although it is usually claimed that many of the important characteristics of our system of government have their roots firmly embedded in early modern history, the idea of responsible and accountable government meant little in real terms until the absolute authority of the monarch was no longer seen as the lynchpin of the constitution. Notwithstanding this, it is possible to trace the early manifestations of the strong feelings aroused by the concept of ministerial responsibility to 16th century England.

One aspect of the quarrel between Charles I and the Commons involved the latter's distrust of Buckingham, chief minister to the King, on the specific issue of his management of foreign and military policy. Parliament's desire to subject Buckingham to closer scrutiny was sharply rebuffed by the King, who refused to

... allow any of my servants to be questioned amongst you, much less such as are of eminent place, and near unto me.[1]

Later, of course, the desire of Parliament to make ministers more accountable would be taken to its logical conclusion, with Parliament seeking to call the King himself to account, and to dictate the policies adopted in his Council. Ultimately, ministers would be made accountable to a Parliament in which the majority sanctioned their policies.

It is interesting to note that the restoration of the monarchy after the Protectorate brought what some commentators would describe as the beginnings of a Cabinet. Charles II came

1. Cited by S. R. Gardiner: History of England, Volume VI, 1625-29 (Longmans, London, 1884), p.79.

to rely on the advice of a small group of confidants as a means of overcoming the limitations imposed on him by the larger Privy Council. One observer has commented,

Charles' Cabinet had its origins in attempts to evade any responsibility to Parliament, political or constitutional, and in no sense developed as a means of establishing parliamentary control of the executive.[1]

The violent instability engendered by the Civil War, the drawing-up and collapse of constitutions, the republican experiment, the Restoration, and the continuing struggle between Crown and Parliament, subsided with the Glorious Revolution. The legislative aspect of this did limit the Crown in some particulars, but the real restrictions emerged out of the spirit of the Revolution Settlement and out of the way the constitution evolved between 1689 and 1714. Annual sessions of Parliament became essential due to the practical necessity of voting taxes, at first to finance the wars against Louis XIV, then to service the national debt which became a fixture at this time. Monarchical independence was severely eroded by the emergence of a new form of parliamentary supply, the Civil List.

In theory, the royal prerogatives of declaring war, making peace, and choosing ministers, survived the Revolution. In fact, approval was required for supplies for military objectives, and the convention of laying treaties of peace and alliance before Parliament for approval developed at this time. Additionally, the King's choice of ministers became restricted to those politicians who could command sufficient support in Parliament to get his business through both Houses. By 1714, although the Crown was far from subservient to Parliament,

1. Michael Rush: Parliamentary Government in Britain (Pitman, London, 1981), p.30.

... the king in parliament had finally triumphed over the prerogative.[1]

Crown patronage remained a vital feature of the political scene. In the aftermath of the Restoration it was possible to discern among the factions and cleavages in the Commons a "Court Party" and a "Country Party". These loose groupings reflected the effect of patronage; office holders and members who could be depended upon to give general support to ministers of the Crown, could be contrasted with the independent country gentlemen, who were often critical of ministerial policy. Allied to the latter group were ambitious but disappointed politicians who sought office by stirring up anti-ministerial revolts among the country gentlemen.

The growth in administration necessitated by the host of new taxes imposed to finance foreign wars after the Revolution was accelerated with the accession of Anne. Furthermore, the expansion of the Treasury, the military, and the Customs and Excise greatly increased the patronage at the disposal of the Crown. Posts in these, and other, areas of government became lures which the Crown could use to bind men to the executive. Despite this, there could never be enough distributable favours to secure anything more than a solid core of support in the Commons. For their majorities ministers had to rely on winning the support of the independent members. Although most men might be willing to give general support to ministers who had the confidence of the Crown, this could never be taken for granted, and ministers found themselves not only managing and buying off the placemen and their friends, but also having to persuade, convince and justify their actions to the independent

1. W. A. Speck: Stability and Strife. England 1714-1760 (Arnold, London, 1977), p.14.

members.

Was this a rudimentary form of individual ministerial responsibility? Perhaps, but we should not stretch the point. At this stage, ministerial responsibility was clearly recognisable only in its collective form. Ministers were concerned with the broad sweep of policy and had little scope for individual initiatives. They were prepared to close ranks behind any of their numbers who came under attack. Thus, in December 1778, the Prime Minister, Lord North, defended the Secretary of State for the American Colonies, Lord George Germain, in the Commons on the grounds that criticisms of the minister concerned,

... measures of state, originating in the King's counsels, and were of course no more the noble lord's measures than they were of any other member of the cabinet: the crimes or faults or errors committed there, were imputable to the whole body, and not to a single individual who composed it.[1]

As far as the minutiae of government was concerned, the appetite of the Commons for information could apparently be satisfied by the occasional appearance of officials (at the bar of the House) to present statistics and other returns.²

At the end of the 18th century,

... the constitutional and administrative arrangements had proceeded much less far in the direction of individual than of collective responsibility.[3]

The quest for working majorities produced power struggles conducted on political and personal terms. The complex events of 1784-84 were instructive. George III was initially obliged

1. - Cited by Sir Norman Chester: The English Administrative System 1780-1870 (Clarendon, Oxford, 1981), p.40.

2. Ibid., pp.120-21.

3. Ibid., p.39.

to accept the Fox-North coalition against his own wishes. Then he intrigued to bring about both the fall of the coalition and, by skilful manipulation of events, the creation of a working majority for Pitt.¹ The conventions established by the Revolution Settlement were still in evidence. The monarch's right to choose his own ministers unfettered by party or connection and restricted only by the need for a parliamentary majority, had been reaffirmed. Fox had, however, fought at the highest level for a ministry dependent not on the Crown, but solely on a Commons majority.

Responsibility in government was in a transitional state. Ministers and ministries existed as entities distinct from, but not independent of, the Crown. Nonetheless, Parliament had asserted its right to a greater say in the making and unmaking of ministries. The polity constituted of King, Lords and Commons was being maintained in an uneasy balance.

The dependence of ministers on a Commons majority in the first instance, rather than on the will of the monarch, for their continuance in office became clear as the 19th century progressed. The relative weakness and low standing of the monarchy between the final onset of George III's madness and Victoria's marriage, combined with the increasing responsibilities imposed on governments by the rapidly changing social and economic environment to provide the impetus for the final shift away from quasi-monarchical government towards a more rigidly delimited constitutional monarchy. Bagehot, in 1867, could acknowledge as an established fact the consolidated

1. For a brief account of this episode, see Dorothy Marshall: Eighteenth Century England (Longman, London, 1974) pp. 528-30.

position of the Prime Minister and his Cabinet, as the executive which had clearly become responsible to the legislature, and the entrenchment of ministerial responsibility in both its individual and collective forms.¹

The industrial revolution, with all that it implied for the social balance, combined with the constitutional, economic, and social reforms of the 19th century to transform the role of British government. There were new offices and departments to administer, and old ones to expand. As the century progressed, ministers came to be seen increasingly as departmental heads as well as prominent counsellors. Ministers came to be responsible to the people, via Parliament, for something more specific and tangible than the efficient conduct of the King's business. The doctrine of individual ministerial responsibility came to represent something which was vital to the whole idea of government in industrial Britain.

The tentacles of the doctrine would come to affect almost every aspect of the constitution. However, at its inception in the modern sense, during the period of increasing interaction between government and society in the 19th century, individual ministerial responsibility served the simple purpose of ensuring that the Commons (which still had considerable direct power over the government) could achieve control over officials by forcing ministers to watch over everything which might cause trouble, and obliging civil servants to be punctilious about every major step they took.

The new accord between the executive and the Commons majority which was reached by means of direct individual ministerial

1. Walter Bagehot: The English Constitution (Fontana edition, Glasgow, 1963), *passim*.

responsibility to Parliament, allowed the government to lead the Commons in its legislative activity as it had not done for centuries. Members steadily lost control over their own time in the face of rising legislative output and the increasingly disciplined parties. What they received in return was the consolidation of the doctrine which had steadily been assuming constitutional form.

Increasingly ... the working life of the Commons was based on the principle that Members could hold a particular Minister answerable for every act or failure to act in that section of the total powers of government for which he had a recognised authority ... The House grew increasingly intolerant of administrative arrangements which obscured who was answerable for what, for example, in the management of the armed forces. Members wished to know who was responsible, meaning which single Minister. If, as in the case of the Poor Law Amendment Act, 1834, no Minister was responsible for a controversial area of public activity this could lead to annoyance and frustration.[1]

TWO: The Doctrine Under Strain - Growth of Government and Administration

The growth in the scale and activity of government radically altered the working lives of the officials who served ministers. Their traditional job had been to help ministers with their parliamentary business, to draft letters and speeches, conduct interviews and issue instructions on behalf of their political masters. Fundamentally, this was the function of a secretariat, as titles like Permanent Secretary, Under Secretary and Assistant Secretary suggest. The civil service was to develop in tandem with the growing responsibilities of government, amid controversy and debate.

Institutions and methods inherited from previous generations were perceived to be of decreasing utility as the 19th

century progressed, and in almost every field in which government could justify an interest, adjustments were made and reforms implemented. Administration was a sphere in which Britain had been less well served than some of her continental rivals, even before the onset of industrialisation. The well-trained, high calibre public service which existed in Prussia could be sharply contrasted with the corrupt, patronage-ridden administration in Britain. In the typically British fashion, reform was to come about in a circuitous way.

The East India Company established its own administrative training college at Haileybury in 1813. Although the college maintained a high educational standard and strict discipline, patronage and nepotism were still dominant characteristics until 1853, when Macaulay introduced a system of recruitment by competitive examination for the Indian Civil Service.

One of the products of the Haileybury training, and of the Indian Civil Service, was Sir Charles Trevelyan, who turned his attention to the extent to which patronage still characterised recruitment to the home civil service. A number of factors coalesced to bring about what appeared to be a major reform in the administration of government. One of these factors was essentially external in source:

The revolutionary period of 1848 gave us a shake, and one of the consequences was a remarkable series of investigations into public offices, which lasted for five years, culminating in the Organisation Report.[1]

This confession was made by Trevelyan to the Playfair Committee in 1875. The events of 1848 so affected him that he embarked on a period of in-depth investigations into standards of administration which, he believed, were contributing a great

1. Sir Charles Trevelyan, quoted by Max Nicolson: The System

deal to the climate of revolt. Initially, Trevelyan, and like-minded people such as Edwin Chadwick, met with some resistance. Chadwick, the founding secretary of the Poor Law Commission, pushed for the passage of the first Public Health Act in 1848, but he made so many enemies due to his zeal for reform that he was forcibly retired in 1854.

However, the combination of the scandalous revelations from the Crimea, the emergence of the vigorous Administrative Reform Association, and the decision to reform the internal affairs of the University of Oxford, brought together a powerful group of men who were impressed by the arguments in favour of reform. Trevelyan was greatly influenced by Macaulay's reorganisation of the Indian Civil Service, while educational reformers, including Jowett (later Master of Balliol), Vaughan (Headmaster of Harrow), and Gladstone, saw that civil service reform could, inter alia, provide new openings for Oxford graduates. The link between the civil service reformer Trevelyan, and the educational reformers, was cemented by the personality of Sir Stafford Northcote. If the educational reformers could see the opening of a new career path for graduates in a reformed civil service, Trevelyan, influenced by Northcote, came to see the virtue of a system of academic competition for entry to a new civil service.

The Northcote/Trevelyan Report of January 1854¹ recommended the selection of future civil servants by open competitive examination, the separation of "mechanical" from "intellectual" work, and promotion by merit. Although other factors such as age, health and character could be considered, the competition for entry would be by literary examination. In retrospect, it is easy to see that the results of the report did not live up to

1. Report on the Organisation of the Permanent Civil Service, Parliamentary Paper 1713, 1854.

expectations. The theory behind the Northcote/Trevelyan proposals was to remain very much at odds with the practice. At the first competitive examination under the new regulations no university candidate was able to qualify for entry into the upper ranks of the service. This defect was soon made good, however, and before long the system was providing opportunities for many of the products of the public school - Oxbridge line.

The service into which these people passed was not homogeneous. The very concept of a "civil service" ignored the reality of wide variations and the existence of limited contacts between departments of state. Each department had its own proud history, image, and forms of organisation, as well as its own ways of tackling the tasks imposed upon it.

Furthermore, even on the eve of the First World War, the MacDonnell Royal Commission could reflect the firmly held reservations which permanent heads of departments still felt about the competitive entry scheme. At this stage only about one third of all civil service appointments were filled in this way: unlimited competition was seen as unsuitable for most technical and professional positions. It was to be almost seventy years before the reform programme could be said to have been implemented. Nonetheless, the decision to base the reformed civil service on an administrative elite, recruited in large part from the classical education system of Arnoldian public schools and Jowett's Oxford, reflected the high esteem in which the "amateur gentleman" was held. It struck a mortal blow at the efforts of Prince Albert and others to foster a higher education in the arts, sciences and technology which could be linked to management in government, industry and commerce. The ideal of the gifted amateur still permeated the civil service more than a century after the first recruits of the competitive system took their places in the departments.

The Victorian period of administrative reform was not wholly successful. In particular, the civil service reforms failed to tackle the overall structure of the system, concentrating instead on creating a recruitment scheme which did nothing to give British government the kind of administrative backing which it clearly required as the already burgeoning responsibilities of the state multiplied in the 20th century.

During the thirty years preceding the First World War changes within government departments reflected the shift in the nature of government itself. Of course, by the standards of the post 1914 period, to say nothing of the post-1945 period, the amount of work and the degree of organisation involved was modest. Nonetheless, the latter part of the 19th century saw the practice of utilising the Privy Council or the Home Office as repositories for every kind of supervisory duty over public services wane: new specialised Boards and Departments emerged. Initially, giants like Palmerston, Gladstone and Salisbury could totally dominate these departments, supervising every detail of business. However, as the pressure of work built up, and especially as the legislative output of the great Liberal governments of Campbell-Bannerman and Asquith swelled, the departmental minister came to have a carefully defined part to play.

... the overall qualitative change and effect of a transformation from a situation of 'routine administration' to 'policy administration' was immense. It marked the transformation from what has been called the 'regulatory state' to one that was increasingly 'interventionist' ... It was important that the department as a whole worked smoothly as a unit.[1]

Autonomous commissions or boards were, by the turn of the

1. — Richard A. Chapman and J. R. Greenaway: The Dynamics of Administrative Reform (Croom Helm, London, 1980), p.59.

century, strictly subordinate bodies, since the bulk of government business was conducted in departments of state headed by ministers accountable to Parliament. These ministers and departments began to amass considerable powers. From 1870 onwards the habit grew of relieving the congestion of parliamentary business by providing that the details of certain Bills should be filled in departmentally. This "delegated legislation" was a natural outcrop of social legislation, or legislation which involved detailed scientific or technical knowledge. Parliament could not lay down the precise details of every new provision, and this came to be left to the discretionary power of accountable ministers and their ever-growing staffs. Later, disquiet about this led to the appointment of the Donoughmore Committee in the 1930s, to inquire into the whole question of delegated legislation. The Committee's report, published in 1932,¹ declared that the growth of delegated powers was necessary and was not getting out of control. For a time the disquiet was assuaged, and during the emergencies of 1939-45 the public became accustomed to the delegation of wide legislative powers to the executive.

The point has already been made that the departmental staffs maintained strict allegiances long after the attempt by Northcote and Trevelyan to instil a measure of flexibility into the new model civil service. The departments clung with determination to their autonomy. The appointment of Sir Warren Fisher as Permanent Secretary to the Treasury in 1919 was the real starting point for the creation of a less heterogeneous service. Immediately after the First World War the standard

1. Report from the Committee on Ministers' Powers, Cmnd 4060, 1932.

three tier administrative/executive/clerical staff structure was introduced across departmental boundaries. The Permanent Secretary to the Treasury became Head of the Civil Service, and the formal channel of advice to the Prime Minister on all senior civil service appointments. During and after the Second World War this trend towards a unified administration continued, and the responsibilities of the Treasury expanded into all aspects of personnel management.

Although Fisher's period (1919-39) marked the consolidation of the Treasury's leading role in civil service matters, that leadership was far from being consistently intelligent. In the face of the vastly increased size of departments, differentiation of function and mounting volume of work, the hierarchical method of organisation within the departments was allowed to persist. The logic of the doctrine of individual ministerial responsibility had come to so dominate the working methods of the departments that no change could be considered in their structure if it involved tinkering with the doctrine. The theory became entrenched that the departmental pyramids topped by the Permanent Secretaries who would distil advice and present it to the minister, were as suited to mid-20th century government as to that of a century before, despite the quite different character and quantity of work involved. Furthermore, although it was clearly beneficial to impose some sort of order on the rogue departments, it might be argued that the zealous implementation of this procedure masked very genuine differences between some departments, with dire consequences for later would-be reformers (like Fulton) who would tend to ignore both the difficulties and the opportunities thrown up by departmental differences.

The problem of maintaining a semblance of true accountability

for the work of the expanding departments was exacerbated by their tendency to shuffle off some functions which were seen as being administratively bothersome. Of course, what came to be known as quangos and quagos, or ad hoc bodies with varying degrees of independence, emerged from the arbitrary whims of politicians and the demands of reformers as well as from departmental disenchantment with the administration of unglamorous services. The end result was, nonetheless, the same: essential services such as naval defence, carrying the mail, maintaining public buildings, and publishing official reports, which had gone through the stages of being fields of jobbery and patronage, and being staffed and controlled by the reformed civil service, were joined by other services and bodies to become part of an amorphous mass which was an expanding and important sector of the public service. Nominally, responsibility for each of these bodies was assumed by a minister, but the reality of the matter was that he would have even less chance of knowing what was going on than those in his department, with the result that the precise allocation of responsibility in each case was different, and often blurred.

All too rapidly, therefore, the doctrine of individual ministerial responsibility for a clearly defined set of functions within a department came face to face with a complex world of expanding government. The doctrine had seeped through the whole constitution. In the textbooks it was presented as one of the hallowed conventions without which the British way of life would collapse. In fact, individual ministerial responsibility, in its simplest form, had like almost everything else in the British constitution been the logical answer to a problem at one time. That time was the mid-19th century.

It is not difficult to understand the emergence of the belief that the brave new world of the embryonic welfare state

had thrown up as many problems as it had solved, at least as far as the system of government was concerned. Cabinet ministers appeared to be scaling new heights of power.

Buttressed on the one hand by expanding departments, and on the other by increasingly powerful party organisations, they seemed to be moving free from the control of a House of Commons pre-occupied with its legislative burden and subservient to party discipline to the extent where MPs needed to possess an excess of dedication in order to perform all the tasks imposed on them. Publication of material like Lord Hewart's The New Despotism in 1929 reflected the growing unease.¹ Hewart claimed that the "Old Despotism" of royal domination of Parliament had been replaced by the "New Despotism" of executive domination, which was proving to be just as big a threat to the authority of the legislature and to public liberties, with Parliament being used as a cloak for executive despotism.

THREE: Inadequate Scrutiny

Some methods of parliamentary scrutiny had developed in conjunction with the doctrine of individual ministerial responsibility. If ministers were to be accountable to Parliament for the conduct of their statutory duties and the work of their departments, the ordinary MP had to be given the opportunity of exercising his right to bring the minister to account. In part, this could be done through the medium of general debate, but detailed questioning of ministers seemed to provide the prospect of sharper scrutiny.

The right of Members to ask questions of ministers or other Members had become clearly recognised by the 1830s.

1. Lord Hewart of Bury: The New Despotism (Ernest Benn, London, 1929). Hewart was the Lord Chief Justice.

However, it was not until the weight of business in the Commons began to increase dramatically that it was felt necessary to introduce rules of procedure to govern the form and content of questions. This was necessary simply because of the great increase in the number of questions being asked. Where in 1850 between two and three hundred questions would be asked annually, by the 1890s the numbers were four or five thousand.¹ The increasing use of supplementaries or subsidiaries complicated matters. Naturally, these developments created problems, since the pressure of public business meant that governments could not tolerate the erosion of their precious time.

Ironically, this meant that the change from an unlimited to a limited period for questions, introduced in the early years of the 20th century (as part of the "Balfour Reforms") came at a time when the work of the departments was increasing. The opportunity to question was circumscribed in inverse proportion to the need for scrutiny. After 1902 further restrictions were placed on the use of "starred" questions (to be answered orally), and it was not until the 1960s and 1970s that governments undertook to try to answer special unstarred questions within a reasonable time.

The ever increasing range of departmental duties and powers seemed to coincide with an increasing desire on the part of Members to discuss things which interested them, as opposed to things which referred directly to the responsibilities of the minister. Question Time became increasingly (though not exclusively) an adversarial tussle in which adequate

1. Figures from Sir Norman Chester: "Question in the House" in S. A. Walkland and Michael Ryle (eds.): The Commons Today (Fontana, Glasgow, 1981).

opportunities would arise for scoring points against the government. In general terms, (though again not as a rule) the Member interested in finding out about some detailed aspect of departmental policy would request a written answer.

Parliamentary committees offered another, perhaps sharper, means of bringing ministers to account for their responsibilities. By the end of the 19th century some clarification of the respective roles of Standing and Select Committees had emerged,¹ although the precise functions of the latter were far from being settled and agreed. While it was clear that the minister's legislative responsibilities would come under scrutiny within Standing Committees, the powers and jurisdiction of the Select Committees remained blurred.

Structural and procedural changes took place in the 18th century at a time when the Select Committee enjoyed a great deal of independence. In the absence of a fully fledged political executive or professional civil service, Select Committees dealt with major political matters and conducted fact-finding with reference to public policy. For example, in 1848 Select Committees on Army Expenditure, Navy Expenditure and (perhaps less of a central political issue) the Expenditure and Management of Woods and Forests, were set up. During the next two years Select Committees on Army Ordnance Expenditure were set up. However, the independence of the Committees came under threat as the control exerted by governments over the parliamentary time-table increased.

With the growth of government came a corresponding growth

1. See S. A. Walkland: "Committees in the British House of Commons" in J. D. Lees and M. Shaw (eds.): Committees in Legislatures: A Comparative Analysis (Duke Univ. Press, Durham, North Carolina, 1979).

in public spending, and the emergence, in 1861, of the first Select Committee devoted exclusively to matters of finance across the range of government responsibilities, the Public Accounts Committee. The establishment of the PAC was indicative of the dialectical tension which existed then, and would continue to exist, between the liberal-democratic theory which underpins the constitution, and the traditional power model which describes the working reality.¹ Ostensibly, the PAC would provide for more accountable government. It would supervise an independent audit of public expenditure on principles laid down by statute. While this was a strictly accurate portrait of the role of the PAC, the fact of executive power soon became apparent. The details of the audit were defined by Treasury regulations. Gladstone's motivation as the Chancellor of the Exchequer who set up the PAC had less to do with enhancing ministerial accountability than with helping the Treasury to discipline the other departments of state. Furthermore, while the Committee was predominantly composed of backbench Members, provision was made for ministerial representation in order to safeguard the Treasury's interests.²

This is not to say that the PAC was imposed on an unwilling House of Commons by the government. It would be more accurate to say that, in the light of considerable uncertainty among MPs about exactly what uses they saw as most suitable for Select Committees, the government was able to play the dominant role.

The "Gladstonian" circle of control over expenditure would only become complete in 1912 with the addition of the Estimates

1. For more on this, see Chapter Two.

2. S. A. Walkland, op.cit., pp. 245, 283.

Committee. This had the potential, contained within its terms of reference, to develop into a body which might approximate to a positive mechanism of control over expenditure (as opposed to the ex post facto discipline imposed by the PAC). However, during its early years the Estimates Committee tended to interpret its remit without any real imagination. Furthermore, during the period 1927-39, "still following a primitive conception of its role",¹ the Committee had a Treasury official as permanent adviser, a fact which seemed to point to an unhealthy dependence on the executive. During the Second World War the Estimates Committee was replaced by the Committee on National Expenditure.

The period between 1945 and 1966 witnessed the re-emergence of the Estimates Committee with a new self-confidence. It developed a tendency to examine the policies behind the estimates and came to be viewed by some reformers as the body which could best accommodate an expanding role for the Commons in expenditure planning and management.

The PAC had been allotted an aura of permanency at a fairly early stage, by being embodied in the Standing Orders of the House. It was not until 1960, nearly fifty years after its inception, that the Estimates Committee was granted the same status, and could rely on being set up automatically at the beginning of each session. Meanwhile, the PAC had outgrown its early status as something akin to a Treasury tool. In conjunction with the office of the Comptroller and Auditor General it had acquired a reputation for genuine, objective scrutiny.

The financial Committees aside, the dilemma of inadequate

1. Ibid., p.268.

scrutiny remained. On one side there was the fact of an ever-expending state machine and on the other an increasingly over-worked Parliament with only the most rudimentary methods at its disposal to bring ministers to account. Concern grew about the lack of parliamentary control over non-departmental areas of government too. There was an early attempt, in 1933, to set up a Select Committee to review the work of the BBC, but this was defeated.¹ The emergence of the big public corporations in the post 1945 period brought demands for a Select Committee on the Nationalised Industries. This was eventually to come into being in the mid 1950s.²

The underlying theme of the development of Select Committees is the pre-eminence of the values of the executive. After the middle of the 19th century the major "permanent" Select Committees were set up to carry out functions which were defined in detail by the executive. The PAC and the Estimates Committee were each established only with the blessing of the executive. One might argue that there is nothing particularly notable about that, since no parliamentary organ can come into being without the active assistance of a government. What was notable was the fact that the thinking behind these Committees was executive thinking. As Walkland noted:

The older forms of discipline, such as those exerted by the Public Accounts Committee, were originally sought by, and in a much fuller form have now been completely accepted by, the executive.[3]

The governments which set up Select Committees did so for their own reasons, rather than out of altruistic flights of

1. See R. S. Arora: "Parliamentary Scrutiny: The Select Committee Device", Public Law, 1967, p.35.

2. See Chapter Three.

3. S. A. Walkland, op.cit., p.252.

fancy or a commitment to the realisation of ministerial responsibility. Thus, the Gladstonian concept of scrutiny was, a double-edged sword in executive hands. One edge was utilised as a Treasury monitoring device over the increasing expenditure of the departments, while the other was blunted by restrictive terms of reference which confined the Committees to rather anodyne matters of financial rectitude and prevented any real political damage being inflicted on the executive. When the Estimates Committee finally awoke from its long slumber to venture some criticisms outwith the confines of the dry estimates, the reaction of government departments was revealing - this had not been supposed to happen!¹ By this time, however, attitudes on the backbenches were changing. The attempt by the government to restrict the Select Committee on Nationalised Industries to "reports and accounts" failed.

Why did the executive version of Select Committees so dominate developments between the mid-19th and mid-20th century?

The first reason is one already touched upon. The position of governments vis-à-vis the House of Commons became increasingly strong as pressure of work led to greater control of timetables.

The second reason had to do with the fact that many (perhaps most) parliamentarians were traditionalists in the sense that they perceived their own role in rather limited terms. Their task was to force government ministers to justify their activities in the politically charged atmosphere of the Commons in plenary session. Traditionalists tended to view the Select

1. See Nevil Johnson: Parliament and Administration: The Estimates Committee 1945-65 (Allen and Unwin, London, 1966) Chapter 2.

Committee device as necessary only for the technical, supposedly neutral, functions of guarding against administrative inefficiency and financial mismanagement. One major factor in the establishment of the component parts of a new regime of parliamentary accountability would be the relative decline in the numbers of these people.

The final reason was that those people both inside and outside Parliament who did see the need for Select Committees to be utilised as positive organs of scrutiny were divided amongst themselves on the issue of the precise form the Committees should take. In the political and academic worlds, thinking about the possible roles and purposes of Select Committees was stimulated by, and to some extent developed around, the ideas of Fred Jowett, ILP MP for Bradford (and a minister in the first Labour Government).

Jowett expanded on his ideas when giving evidence before the Procedure Committee of 1913-14, while participating in ILP Conference debates, and in a number of articles.¹ The true value of his long campaign to enable Parliament to exercise greater control over the executive lay in its catalytic nature. It opened up the debate about the role of Select Committees.

Briefly stated, Jowett's plan was for the allocation of each MP to a Committee attached to one of the departments of state. Each Committee would be chaired by the minister and would have executive as well as investigatory and advisory responsibilities. The minister would be in the position of having to win the consent of the departmental committee for

1. The core of Jowett's ideas is contained in his articles, "What Is The Use of Parliament?" (1909) and "Parliament or Palaver?" (1926) which are discussed in R. S. Arora, op. cit. and A. H. Hanson and H. V. Wiseman: "The Use of Committees By the House of Commons", Public Law, 1959, pp. 277-92.

any action which he proposed to take, and might have to defend in the Commons those Committee policies which he did not necessarily approve of. All departmental documents and information would be available to the committees.¹

The combined effect of this would, of course, have amounted to an onslaught on the extant parliamentary party system, the primacy of the floor of the House, and the twin doctrines of collective Cabinet and individual ministerial responsibility. As such, Jowett's scheme was unlikely to be accepted. Some prominent politicians and academics did, however, perceive some merit in Jowett's suggestions. Numbered among these were David Lloyd George, Sir Stafford Cripps, Ramsay Muir, Herman Finer and (despite his strong objections to the precise form of Jowett's proposals) Harold Laski. Cripps perhaps remained most faithful to the original concept, while the others tended to use it as the basis for their own ideas about committees.² Lloyd George and Muir, for instance, envisaged something much closer to the modern departmental Select Committees. They did not wish to see the minister as chairman of an all-party committee for his department, nor did they require executive powers for the committee, but they did recommend strong powers of scrutiny (the committees being allowed to examine ministers, officials and documents) and the right to draw up, though not initiate, legislation.³

Laski's view was less radical than that of Lloyd George and Muir. He agreed with them that the committees should be

1. See Lord Morrison: Government and Parliament (Oxford Univ. Press, London, 3rd Edition 1967), p.168, and A. H. Hanson and H. V. Wiseman, op.cit., p.280.

2. As noted in Harold J. Laski: Reflections on the Constitution (Manchester Univ. Press, Manchester, 1951), p.50.

3. See Morrison, op.cit., pp.169-70.

organised on a departmental basis, without executive power, and that they should have powers to initiate inquiries, summon civil servants, and have access to all but the most confidential papers. Where he seemed less committed to the theory behind these committees was in the realm of the relationship between committee and minister. Laski seemed to move towards the executive view, the traditional power concept, when describing the committees in terms of their potential value to ministers.

There would, of course, have to be ... an invariable right in the Minister to control its agenda.[1]

Despite the participation of such respected politicians and academics in the debate about the reform of the parliamentary committee structure, and the quite detailed nature of the debate, the values of the executive held sway, and dominated the existing committee structure. In part, it must be concluded that this was because of the failure on the part of those who favoured reform to arrange their ideas in a clearly worked out plan for change. The spectre of "municipalisation" which the very mention of committee reform conjured up in some minds must also have been a factor.

If the decades during which Jowett and others had campaigned for reform of the committees had been characterised by academic theorising which had no effect on the actual procedure of the House of Commons, and the post-Jowett debate appeared to be of only marginal interest, then the 1960s would herald a new closeness in the relationship between academic prescription and procedural change. The "problem" of the declining status of Parliament and the weakness of the traditional doctrine of individual ministerial responsibility, which so preoccupied many

1. Harold J. Laski, op.cit., pp.52-53.

writers in the early 1960s¹ brought a new interest in procedural change, and with it a revitalisation of the debate about the proper role and purposes of Select Committees.

FOUR: Crichton Down and After

That the concept of individual ministerial responsibility was in a state of disrepair by the middle of the 20th century was undeniable. In the absence of any major breakdown in the system, however, there seemed to be no pressing incentive to change. This is not to say that there had been no debate inside and outside Parliament about the problem. There had even been some high-powered committees set up to examine various aspects of the new era of "big government". Some of these debates and inquiries dealt with specific issues, others preferred the wider canvas. One example came when Lloyd George's Ministry of Reconstruction spawned the Haldane Committee on the "Machinery of Government" in 1917. Containing, as it did, such charismatic figures as Sir Robert Morant, a civil servant in the mould of Chadwick and Trevelyan, and Beatrice Webb, this Committee interpreted its remit in a wide sense: to produce a set of recommendations covering, inter alia, the optimum size of the Cabinet, the rationalisation of the division of work among departments, and the relationship between the Premier and his colleagues.

However, given the fact that the majority on the Haldane Committee were not unsympathetic to the Fabian concept of a political role for "administration", their decision, during the second meeting, not to consider:

1. See Chapter Two.

... matters which raise the question of changes in the system of Ministerial responsibility or other questions commonly known as political questions ...[1]

seemed strange. This reluctance to even consider tampering with the doctrine would assert itself repeatedly in the work of future committees with more specialised remits than Haldane, and during debates about almost every type of constitutional change.

The deficiencies of the doctrine of individual ministerial responsibility were, by the mid-20th century, well entrenched. The organs of scrutiny were ill-suited for their mammoth task; they were supposed to carry out a baffling array of duties including investigating the policies and strategies of governments, poring over the details of public expenditure, and securing adequate redress of grievances for the ever expanding band of citizens who were affected by the actions of the government machine. Question Time, which had degenerated into a ritualised extension of the adversarial badinage between the parties, was still fondly viewed as the principal means of ensuring ministerial accountability.

The further expansion in the numbers of government personnel and the complexity of the functions they were expected to fulfil, following the Second World War, exacerbated the situation. Ministers had little hope of understanding all the details of their departments' internal procedures, much less of controlling them. Few politicians were prepared to concede that the hope of maintaining a clear organisation of responsibilities and producing a chain of command which would permit a minister to identify where and how individual decisions were taken, belonged to the age of the minimal state, and was quite

1. Minutes of the meeting on 14 July 1917, cited in Richard A. Chapman and J. R. Greenaway, op.cit., p.82.

unrealistic in the circumstances of modern government. The a-political, anonymous higher civil service (anonymity had been an almost incidental effect of the decision to end recruitment by patronage - the civil servants came to have no personal allegiance to the minister, and gradually became less "visible"), recruited in a manner which was admirably suited to the requirements of the 19th century but brooked no concessions towards anything resembling an administrative science, was far more important than either the mandarins or the ministers would admit.

The British capacity to "muddle through", combined with the fact that a substantial number of able people manned the higher reaches of government on both the political and administrative sides, served to keep the system ticking over with few major mishaps. Nonetheless, those who believed that true ministerial accountability was a fact of constitutional life in Britain were seriously misleading themselves.

Accountability implies the use of sanctions when things go wrong.¹ A whole line of constitutional lawyers and historians had based their assertion that individual ministerial responsibility was meaningful on the claim that, in the last resort, ministers alone had to defend and explain to Parliament their own actions and those taken on their behalf in any given case. With the threat of impeachment falling into disuse as a constitutional remedy for mismanagement, the loss of office was deemed sufficient punishment for errors which could not be classified as outright corruption. Bagehot, Low, Dicey, Keith and Jennings would all testify in their constitutional tomes to the existence of the ultimate sanction which could and would be applied against a culpable minister. They believed that the

1. See Chapter Two.

doctrine of individual ministerial responsibility involved a convention of resignation.¹

In 1956, S. E. Finer argued that by definition the existence of a "convention" of resignation meant that this sanction would be invoked for each, or at least most, of the proven cases of ministerial incompetence.² In fact, he found that there had been only twenty ministerial resignations in the period 1855-1955 initiated by the censure of the Commons. If the "convention" had operated as described in the textbooks, and as it existed in the minds of political commentators, many more resignations would have been necessary during these years. The relatively small number was explained with reference to a few vital facts. A minister could be shielded in the event of even a major blunder by the collective responsibility of the Cabinet. If the delinquent minister was on good terms with his colleagues and the Prime Minister, their support could help him to weather the storm. A Cabinet re-shuffle could prevent an outright dismissal. Indeed,

... only when there is a minority Government or in the infrequent cases where the Minister seriously alienates his own backbenchers, does the issue of the individual culpability of the Minister even arise. Even then it is subject to hazards.[3]

That the "resignation clause" of the sanctions element of the doctrine was a sham did not, ipso facto, prove that the

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1. See A. V. Dicey: Introduction to the Study of the Law of the Constitution (Macmillan, London, 10th edition 1964); Sir Ivor Jennings: The British Constitution (Cambridge Univ. Press, London, 4th edition 1961); Walter Bagehot: The English Constitution (Fontana edition, Glasgow, 1963); Sir Sidney James Mark Low: The Governance of England (Fisher Unwin, London, 1919); Arthur Berriedale Keith: The Law and Custom of the Constitution (Oxford Univ. Press, Oxford, 1935).
 2. S. E. Finer: "The Individual Responsibility of Ministers", Public Administration, Vol.34, No.4, 1956.
 3. Ibid., p.393. For more on this, see Chapter Six.

doctrine was meaningless. However, to those who viewed the doctrine exclusively in terms of its propensity to draw ministerial blood, Finer's revelations about the paucity of resignations must have come as a severe jolt.

Finer had been spurred into writing his article by the wide circulation of a great deal of "constitutional folk-lore" on the idea of individual ministerial responsibility in the aftermath of the Crichton Down affair. The controversy which surrounded the resignation of Sir Thomas Dugdale marked what might be termed the beginning of the end of innocence regarding the ideals of individual ministerial responsibility in an era of assertive government. Crichton Down focused attention on a whole range of issues which lay at the heart of British government. It helped publicise the flaws in orthodox constitutional assumptions about relations between Parliament and public, ministers and officials. This case brought about a long delayed examination of the reality behind some of the terms and usages of the modern constitution.

The details of the Crichton Down case have been meticulously documented.¹ The concern here is not so much with these details as with placing the affair in its perspective as a catalyst for serious debate about accountable government.

Several interpretations of the circumstances which led up to Dugdale's resignation in July 1954, and indeed of the motivations behind that resignation, are available. However,

1. See, for example, R. Douglas Brown: The Battle of Crichton Down (Bodley Head, London, 1955); D. N. Chester: "The Crichton Down Case", Public Administration, Vol.32, 1954; John Griffith: "Crichton Down: The Most Famous Farm in British Constitutional History", Contemporary Record, Vol.1, No.1, Spring 1987; I. F. Nicolson: The Mystery of Crichton Down (Clarendon, Oxford, 1986). See also the Commons Debates of 15 June 1954, HC Deb 5s 528 1953-54 c 1745-47, and 20 July 1954, HC Deb 5s 530 1953-54 c 1178-1298.

it now seems clear that the resignation did not stem from his rigid adherence to the niceties of the doctrine of individual ministerial responsibility. The conventional view of this episode, which became entrenched in the textbooks of British government, was that the minister nobly took upon himself the blame for the misdeeds of the civil servants criticised in the Clark Report¹ (and, incidentally, those of the junior ministers, Carrington and Nugent, whose resignations had been proffered). This view does not stand up to close analysis. As John Griffith has pointed out:

The most important reason for dismissing the conventional answer is that the minister made no mention of it when he announced his resignation on 20 July 1954. Both on that occasion and during the previous debate on 15 June 1954, while admitting that mistakes had been made, he defended his civil servants.[2]

The truth of the matter seems to lie in the prescription for ministerial resignations set out by Finer. Dugdale's problem was not that he had presided over a department in which maladministration was rife and incorrect procedures were followed,³ but that his policy on the land at Crichel Down was offensive to vested interests in his own party, and this lost him vital support among colleagues.

At the deepest level there was a revolt of those Conservative backbenchers who wanted to reassert the pre-eminence of private property over State power. At the next level there was an emotional response to what was seen as bureaucratic high-handedness. At a further level there was a rejection of the Government's acceptance that nothing much could be done to reassert Conservative principles in this particular case. And at the most superficial level there was the need for a sacrifice.[4]

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1. Public Inquiry ordered by the Minister of Agriculture into the disposal of land at Crichel Down, Cmnd 9176, 1953-54.
 2. John Griffith, op.cit., p.39.
 3. Indeed, there is now some debate about the nature and extent of blame which should fairly be attached to the department. See I. F. Nicolson, op.cit.
 4. John Griffith, op.cit., p.40.

Ultimately, Dugdale did not jump; he was pushed by,

... the rising howl of the pack of hounds behind him and failure of his Cabinet colleagues to give him cover.[1]

Not all of this was absolutely clear in the murky aftermath of the affair. Dugdale's resignation did, however, have the effect of stimulating thought about responsibility. The Home Secretary, Sir David Maxwell Fyfe, immediately put forward a definition of individual ministerial responsibility which sought to delineate the respective positions of ministers and civil servants.² This was not entirely successful. Sir Ian Gilmour later criticised Maxwell Fyfe's assertion that the minister should inform Parliament of any mistakes in his department, while not necessarily being culpable for these.

In this context the phrase 'constitutionally responsible to Parliament' evidently means that the minister is the man who tells Parliament that he was not responsible for the mistake. Ministerial responsibility thus protects the Civil Service from Parliament without endangering the minister.[3]

Crichel Down also had the effect of highlighting the inadequacies of the system for redressing grievances. Leaving aside the merits and demerits of Lieutenant Commander Marten's case, the obvious question being asked was: how many citizens were there whose complaints against government departments had not been given due consideration because they lacked the persistence and resources of the complainant at Crichel Down?

The broad sphere of accountability came under examination

1. Ibid.

2. HC Deb 5s 530 1953-54 c 1285-87. See Chapter Six for more on this.

3. Ian Gilmour: The Body Politic (Hutchinson, London, revised edition 1971), p.166.

during the years following Crichton Down. Ironically, the only move from the government, the setting up of the Franks Committee on Administrative Tribunals and Enquiries, in 1954, did not directly address the problems which had been revealed by the cause célèbre. The terms of reference for the Franks Committee restricted its investigations to formal tribunals and inquiries, thus excluding the type of discretionary decisions which had aroused so much criticism in the first place over Crichton Down. This hinted at an apparent determination to avoid confronting the real issues. Nonetheless, restricted as it was, the Committee still stimulated further discussion of the wider issue of accountability and redress.¹

The attempt to improve matters in areas where statutory machinery existed was something government appeared to be willing to put some effort into, but in other areas the need for action was more evident. A number of cases had arisen during the decade and a half following the Second World War, in which misguided policies or administrative blunders had occurred on a large scale. The fuel crisis of 1947, Crichton Down in 1954, the deaths at the Hola Camp in Kenya in 1959, can be numbered among these cases. Of course, in each case there were different factors at work, but the tendency for policy mistakes and maladministration to go unchecked and reinforce each other was evident.

The failure of the Kenyan groundnuts scheme in 1949 was a not untypical example of what might be termed the arrogant pursuit of a dubious policy. When the scheme was being conceived, it so happened that Lord Boyd Orr, author of the influential

1. Report of the Committee on Administrative Tribunals and Enquiries, Cmnd 218, 1957.

"Food, Health and Income" survey in the 1930s, eminent scientist and first Director-General of the UN Food and Agriculture Organisation, was in London trying to obtain the support of the government for international cooperation in a Middle East agricultural policy. Boyd Orr went along to the Colonial Office,

... but when I saw the Under-Secretary for the Colonies, a very decent fellow but with little knowledge of agriculture, I found that he was engrossed with the British groundnuts scheme in Kenya ... He spoke for nearly twenty minutes about the ... scheme which he regarded as of far greater importance to Britain than any collaboration in the Middle East. Unfortunately, I at last lost my temper and said to him, 'Mr. Minister, there is no need to tell me about the groundnuts scheme. I have spent my life in agricultural research and am a farmer. I once controlled 4,000 acres in the East African area doing experimental work in agriculture, and I can tell you here and now that the groundnuts scheme is ill-advised and will end in disaster!'[1]

The scheme went ahead, with precisely the consequences predicted by Boyd Orr.

In all of these cases, and many others, there were obvious inadequacies in the system. More comprehensive and efficient scrutiny, perhaps by Commons committees, could have helped raise serious doubts about the chances of success in the groundnuts case. A procedure for the redress of grievances at some stage between the series of decisions relating to the land and the minister's resignation, would have been to the advantage of all concerned in the Crichton Down case. An improvement in parliamentary scrutiny of executive activity was clearly required. However, the fact that the energies of government were diverted into the establishment of something like the Franks Committee rather than reforming the parliamentary organs of scrutiny revealed much about the ambivalent attitude which existed towards

1. Lord Boyd Orr: As I Recall (Maggibbon and Kee, London, 1966), p.200.

anything which resembled tampering with the status quo.

Much of the real impetus for reform was being generated outside the Whitehall village. The British lecture tour of the Danish Ombudsman, Professor Hurwitz, in 1958, generated publicity for the campaign which had been launched the previous year by Justice, the British section of the International Commission of Jurists. In 1961, a committee of Justice, chaired by Sir John Whyatt, published a report which put forward a set of proposals for a British ombudsman.¹ The Whyatt Report was relatively cautious; it allowed a ministerial veto on any proposed investigations, and offered no guaranteed access to internal departmental minutes. Nonetheless, considerable support for the proposals was forthcoming from a number of sources, including the Conservative Solicitor-General, Sir Jocelyn Simon. However, in a short ministerial statement the Macmillan government dismissed the Whyatt proposals.

The Government consider that there are serious objections in principle to (the) proposals and that it would not be possible to reconcile them with the principle of Ministerial responsibility to Parliament ... In the Government's view there is already adequate provision under our constitutional and Parliamentary practice for the redress of any genuine complaint of maladministration, in particular by means of the citizen's right of access to Members of Parliament.[2]

In retrospect, it can be seen that this view was fairly accurate in important respects. As G. K. Fry observed,

One suspects that the Macmillan Government thought that however modest the Ombudsman's powers were to start with, they would then prove to be merely the base line for more agitation for further powers. Experience tended to bear this out. Even though Labour's legislation was not as restrictive as the

1. Justice: The Citizen and the Administration. The Redress of Grievances (Stevens, London, 1961).

2. HC Deb 5s 666 c 1125-26.

Whyatt Report, it was still criticised by reformers for not going far enough. Indeed, as a result, from its inception, the innovation was written down by many observers. Yet, from the first major case that was dealt with, it was clear that ... the office of Parliamentary Commissioner was an important constitutional innovation.[1]

In spite of all that had happened to weaken the traditional concept of individual ministerial responsibility, there were still those who believed that there was too much at stake to risk destroying it. During the period leading up to the passing of the legislation and the coming to office of the first Parliamentary Commissioner for Administration, Edmund Compton, the views of these people, as well as those of the people who feared that the new device would be a "toothless tiger" or an "Ombudsmouse" were given much publicity. On the whole, though, it was a measure of the effect which the original proposals had that the majority of the critics belonged to the latter category. One of many leading articles in The Times on this subject referred (at the time of the Bill's publication) to "Half an Ombudsman". The restrictions were evidence of "Crown privilege again creeping in through the back door."²

Some of the restrictive elements included in the White Paper were removed by the time the Bill came before the House. Even so, Richard Crossman would confide to his diary on the day he moved the Second Reading:

... the more I learned the less impressed I was by the powers we had given the so-called Parliamentary Commissioner.[3]

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1. G. K. Fry: The Administrative 'Revolution' in Whitehall (Croom Helm, London, 1981), p.37.
 2. The Times, 15 February 1966.
 3. R.H.S. Crossman: The Diaries of A Cabinet Minister, Volume Two (Hamilton and Cape, London, 1976), p.76.

The list of exclusions from the remit of the PCA was fairly long, and confining the investigations to instances of "mal-administration" seemed restrictive. However, within a relatively short time it was realised that the PCA need not feel unduly restricted by terminology.¹

The chain of events which had started with the Crichton case was to reach a conclusion of sorts in the mid-1960s. The realisation that there were real deficiencies in the system of accountability and that the doctrine of individual ministerial responsibility in its purest form was ill-suited to the reality of 20th century government, had sparked a period of debate which covered various aspects of the constitution. Some components of the constitutional reform movement of the 1960s were controversial. Academics were critical of the motivations of other academics, as it appeared that some were concerned only to draw up blueprints for a strengthened executive. Divisions appeared, and they would widen in later years, between politicians and academics who either opposed or favoured the implications of the adversarial atmosphere in the Commons.²

Nonetheless, it is clear that the second term of the Wilson government signalled the beginning of a new chapter in British constitutional history.

The Parliamentary Commissioner for Administration, in operation by 1967, plus a range of new experimental Commons Select Committees (starting in 1966) represented a potentially significant supplement to the existing forms of parliamentary

1. See Chapter Five.

2. For more on these themes, see Chapter Two.

scrutiny. In addition to the traditional methods of scrutiny, Questions, motions, debates, and the extant Standing and Select Committees, there were now new devices designed to enhance the accountability of ministers to Parliament for the work being done in the departments of state.

This thesis is concerned with the operation of the new regime of parliamentary accountability, and with the broad development of the doctrine of individual ministerial responsibility in the period 1966-83.

Before proceeding any further, however, it is clearly necessary for us to put forward a precise definition of the terms which will be applied when discussing the doctrine in its modern form.

CHAPTER TWO: The Modern Doctrine Defined

The historical development of individual ministerial responsibility was a tale of the emergence of a complex doctrine which lent itself to misunderstanding and the occasional obsession with one facet of responsibility: the imposition of sanctions. A prerequisite of any attempt to understand how the doctrine operates in modern British government would clearly be the setting out of a definition of individual ministerial responsibility. Therefore, for much of this chapter we shall be concerned to define the doctrine, with reference to its constituent parts, the elements of individual ministerial responsibility. Thereafter, an attempt will be made to locate the doctrine within the framework of modern constitutional debate.

ONE: The Elements of Individual Ministerial Responsibility

Taking into consideration the interpretations placed by political thinkers on the term "responsibility", and bearing in mind the complication introduced by the relationship between ministers and civil servants, it will be argued here that the doctrine of individual ministerial responsibility can best be understood with reference to four elements. These are:

- (a) Personal (or legal and moral) Responsibility.
- (b) Role Responsibility.
- (c) Accountability.
- (d) Sanctions.

This chapter seeks to outline what might be termed the constant factors within each of the elements. Consideration of the precise nature of the changes undergone by each element during the period 1966-83 will come in Part B of the thesis. A

summary of the standing of each element in 1983 will be given in the Conclusion.

Before examining these elements specifically in connection with the minister and the civil servant, it would seem sensible to outline the general reasoning behind them.

A list of publications which have as their theme various interpretations of the term "responsibility" would be lengthy.¹ Here, an attempt will be made to subject the study of the term to a process of distillation, in order to provide a set of conceptual tools which can reasonably be applied to British government.

When using the term 'responsible' in a political sense, what we mean, fundamentally, is that the executive power is responsible for something, to someone or some body. Let us look first of all at the idea of responsibility for.

1. A shortened version, containing some of the most useful writing on this theme, would be:
 Carl Joachim Friedrich: "Public Policy and the Nature of Administrative Responsibility", Public Policy (Harvard Univ. Press, Cambridge, Mass., 1940)
 Herman Finer: "Administrative Responsibility in Democratic Government", Public Administration Review, Vol.I, No.4, 1941.
 Herbert J. Spiro: "Responsibility in Citizenship, Government, and Administration", Public Policy (Harvard Univ. Press, Cambridge, Mass., 1953).
 Herbert J. Spiro: Responsibility in Government: Theory and Practice (Van Nostrand Reinhold, New York, 1969).
 H.L.A. Hart: Punishment and Responsibility (Clarendon Press, Oxford, 1968)
 O. H. Von Der Gablentz: "Responsibility" in D. L. Skills (ed.): International Encyclopedia of the Social Sciences Vol.13 (Macmillan and the Free Press, 1968).
 Avery Leiserson: "Responsibility" in J. Gould and W. L. Kolb (eds.): A Dictionary of the Social Sciences (Tavistock, London, 1964).
 Kenneth Kernaghan: "Responsible Public Bureaucracy: A Rationale and a Framework for Analysis", Canadian Public Administration, Vol.16, 1973.
 R. S. Parker: "The Meaning of Responsible Government", Politics (Australia), Vol.11, No.2, 1976.
 Ian Thynne and John Goldring: "Government 'Responsibility' and Responsible Government", Politics (Australia), vol.16, No.2, 1981.

Writing in a general sense, H.L.A. Hart described "role responsibility" in the following way:

... whenever a person occupies a distinctive place or office in a social organisation to which specific duties are attached ... he is properly said to be responsible for the performance of these duties or for doing what is necessary to fulfil them. Such duties are a person's responsibilities.[1]

In the same vein, Thynne and Goldring described the responsibility of ministers and civil servants for

... doing certain things, or performing certain acts, which attach to the positions they occupy within the governmental system.[2]

It might be reasonably argued, of course, that people are responsible, not merely for the performance of certain functions which are connected with specific duties, but also for conducting themselves according to the laws of the land and with respect for the quasi-legal, or even moral, code of their peers.

Some overlap exists between this type of responsibility, which we might term "personal", and the "role" responsibility of Hart. In the sphere of government, the personal responsibilities of a minister as a private citizen and as a Member of Parliament can, on occasion, impinge on his effective functioning as a holder of specific role responsibilities in the department.³ The same argument could apply with reference to the position of a civil servant who must obey and law and abide by certain codified standards of conduct. Nonetheless, we would be justified in viewing the concept of personal responsibility, with its connotation of legally and morally appropriate standards of behaviour, as something which is reasonably distinct from the

1. Hart, op.cit., p.212.

2. Thynne and Goldring, op.cit., p.199.

3. For example, cases of ministerial implication in sex scandals or financial corruption.

idea of role responsibility.

To sum up: responsibility for can be subdivided into two elements - personal responsibility and role responsibility.

Now, what about responsibility to? Ministers and civil servants are responsible to other institutions and persons (at its most basic, to Parliament in the case of the minister and to a departmental superior and/or the minister in the case of the civil servant) for the effective performance of their roles. To say this, however, leaves us with only a very vague understanding of the idea of responsibility to. In order to take the concept a stage further perhaps we might start again with H.L.A. Hart. In his attempt to produce a comprehensive classification of responsibility, Hart sought a unifying feature which could explain the diverse applications of the word. He concluded:

Etymology suggests that the notion of an 'answer' may play the part: a person who is responsible for something may be required to answer questions and it has been often pointed out that traces of this survive in some of the senses of responsibility. To say that a minister is responsible for the conduct of his department implies that he is obliged to answer questions about it if things go wrong, and perhaps in all cases of responsibility there is an obligation to answer such questions.[1]

In some quarters a rather strict construction is placed upon this notion of answerability. It is taken to involve nothing more than a commitment to answer questions.² However, as both Hart and Leiserson³ recognised, the original meaning of the word "answer" was not that of answering questions, but of

1. Hart, op.cit., pp.264-65.

2. See, for example, David Butler: "Ministerial Responsibility in Australia and Britain", Parliamentary Affairs, Vol.26, No.4, 1973.

3. Leiserson, op.cit.

"answering" or rebutting accusations which, if established in fact, carried liability to sanctions. This original meaning corresponds with what is usually meant by "accountable" in discussions of government. Indeed, dictionary definitions utilise the term "accountable" in relation to the word "answerable".¹ To insist on making a clear distinction between the concepts of answerability and accountability would not seem to be particularly useful at this stage, and it would be justifiable for us to use the term "accountability" to convey the appropriate sense of responsibility to.

The notion of accountability implies the existence of a controlling agent; a person or a body which, potentially at least, holds sanctions of blame or punishment over the office holder. It is at this point that the distinction between answerability and accountability, discarded above as being inappropriate, might be raised again. Those who seek to draw the distinction tend to see answerability as involving a commitment by an office holder to answer questions in connection with his duties, without admitting to any liability for matters which might have gone wrong. Accountability, on the other hand, is seen by these people as introducing that sense of liability to blame or punishment. While it was argued above that answerability and accountability are, in effect, interchangeable terms, it should be recognised that there are some cases where the enforcement of sanctions would be more appropriate than in others. Thus, technically it means nothing to say that a government minister is answerable for, but not accountable for, the actions of a junior clerk in one of the regional outposts

1. See, for example, The New Collins English Dictionary (1982)

of his department. It would be more accurate to say that the minister is accountable for the actions of the clerk, but unlikely to be subject to punishment should the clerk commit an error.

To sum up: responsibility to connotes the element of accountability which, in its turn, involves the element of sanctions.

Having taken as our point of departure the fundamental concepts of responsibility to and responsibility for, we have sketched out four elements of responsibility. Now some flesh must be put on the bare bones of these elements, in order to bring us closer to an understanding of the doctrine. To start with, the position of the minister himself will be examined.

1. The Minister

(a) Personal Responsibility:

When a member of the general public becomes a Member of Parliament, two things happen with regard to personal responsibilities: his responsibility as a private citizen to obey the law comes under greater scrutiny due to his new public persona (in the sense that any misdemeanour will be sure to attract considerable publicity) and he assumes some new personal responsibilities. When a backbench M.P. becomes a minister, his personal responsibilities as a private citizen come under still greater scrutiny due to his higher public profile, as do his responsibilities as an M.P., and once again he assumes some new personal responsibilities.

In considering the position of a minister, therefore, one should be aware of three "layers" of personal responsibility. The minister shares certain legal and moral responsibilities, first with his fellow citizens, and second with other M.P.s.

Additionally, any minister has specific personal responsibilities in his own right. In any given case, one of these layers may become more important than the others. In this section our concern will be with the narrower, second and third layers of personal responsibility, simply because there are specific documents (as opposed to an entire body of law) which serve to describe these layers.

It is not without significance that Members of Parliament address each other as "honourable" friends, ladies and gentlemen. An unwritten code of honour underpins public life in Britain, and it only appears to be only with the utmost reluctance that acceptable standards of conduct come to be formally appended to the constitution.

As far as the internal workings of Parliament are concerned, the ground rules have come to be set out in Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament. The Speaker of the House of Commons is the guardian and chief interpreter of these laws and privileges. However, Erskine May is, for the most part, a vital handbook of procedure without which parliamentary activity would rapidly degenerate into anarchy. The specific rules which apply to the privileged position of M.Ps vis-à-vis other citizens, take up much less space than the procedural rules.

Possible conflict of interest between the private and parliamentary activities of M.P.s has been the subject of a small number of limited resolutions and conventions dating from the seventeenth century.¹ These laid down the responsibilities

1. For a summary of these, see the Report from the Select Committee on the Conduct of Members 1975-77, Appendix I (HC 490, 1976-77).

of Members with regard to the acceptance of bribes, the acceptance of fees for professional services connected with Parliament and the entering into contractual relationships for financial payment. Rules on the casting of votes on matters affected by "personal pecuniary interest" were set out by Speaker Abbot in 1811 and elaborated upon by subsequent Speakers.¹ In conjunction with this, a custom of declaration of interest developed.² However, Select Committees in 1956 and 1969³ considered this custom to be defective both in scope and clarity, and, after the damaging nature of the revelations surrounding the Poulson affair, the subject of declaration of interest was re-examined. Despite this re-examination, which will be considered at a later stage, one observer felt able to make the following comment:

Within the House there is little guidance on how MPs should conduct their private activities other than that they do not offend the criminal law, the Resolutions, and some ill-defined standards concerning individual integrity and the reputation of the House.[4]

Information on the precise nature of M.P.s personal responsibilities is sparse, but data on the personal responsibilities of ministers per se is even more difficult to come by. Obviously, ministers are bound by the requirements on declaration of interest which affects M.P.s. Indeed, it is clear that the nature of ministerial work - involving as it does contact with numerous people and bodies who are likely to seek some influence over government decisions - means that

1. Ibid., paras.7-10.

2. Ibid., paras.11-21.

3. Select Committee on the House of Commons Disqualification Bill HC 349, 1955-56, and Report from the Select Committee on Members' Interests (Declaration) HC 57, 1969-70.

4. Alan Doig: Corruption and Misconduct in Contemporary British Politics (Penguin, Harmondsworth, 1984), p.208.

declaration and registration of interest is of vital importance. Beyond this, however, we enter the sphere of classified advice, given to ministers through the medium of Questions of Procedure for Ministers. There is general awareness, nonetheless, of the expectations placed on ministers. They are required to divest themselves of all directorships and controlling shareholdings (including directorships in family trusts and charities), and of ordinary shareholdings if these are likely to create a conflict of interest.¹ In addition, ministers are expected to avoid speculative investments where accusations might be made about access to early or confidential information likely to have an effect on prices.

In brief, it might be said that as far as the personal responsibilities of ministers are concerned, much seems to have been left to individual interpretations of gentlemanly conduct and honourable courses of action.

(b) Role Responsibility:

The specific duties and functions which are attached to departments of state come in many forms. While it is difficult to generalise about these matters, since the history of each department differs and consequently so does the precise nature of the functions which are attached to them, it can be said

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1. The imprecise nature of the latter point has occasionally produced some confusion. When ministers have been criticised over the issue of conflict of interest, there has been a tendency for their colleagues to cite the selective quotations from Questions of Procedure for Ministers which Prime Ministers conventionally make at the outset of their periods in office. However, the tendency on the part of some PMs to supplement these rules, without allowing them to be published in full, does little to aid the cause of enlightenment. For more on these matters, see the cases of Lords Polwarth and Cockfield in Chapter Six, and the relevant section of Chapter Seven. The New Statesman published extracts from this document in February 1986.

that in most cases formal documents and statutes (Orders in Council, Signs Manual and Letters Patent) bestow technical responsibilities upon the minister.¹ This is, of course, only part of the story, as every department of state will be staffed by several junior ministers, usually at the ranks of Minister of State or Parliamentary Under-Secretary of State, in addition to the minister on whom the statutory responsibilities fall. The division of duties between any given Secretary of State and his junior ministers will vary according to the nature and extent of the department's work. To this extent, the precise role responsibilities of all ministers will assume different forms.

Nonetheless, while making allowances for these inevitable differences, some general remarks can be made about role responsibility. Any minister, in fulfilling his function as political head of a department or part of a department, will have role responsibility for policy leadership, the management/administration of the department, the performance of an ambassadorial function on behalf of the department, and legislative piloting.²

Most of these responsibilities are, ostensibly, straightforward. For instance, a departmental minister will be responsible for the development and effective implementation of specific and general policies. However, even in this case we are left with the problem of deciding upon the exact nature of a Secretary of State's responsibility for a policy which is

1. For example: Secretary of State for Social Services Order 1968, S.I. 1968/1699; Secretary of State for Trade and Industry Order 1970, S.I. 1970/1537; Secretary of State for the Environment Order 1970, S.I. 1970/1681.

2. See Bruce Headley: British Cabinet Ministers (Allen and Unwin, London, 1974), p.54, for a detailed classification of Cabinet ministers' roles and the emphasis placed on them by a sample of ministers.

within the remit of a largely autonomous section of the department, headed by a junior minister. At this stage, concerned as we are simply to set out the elements of individual ministerial responsibility, such problems will be stated, but not directly confronted.

A similar problem arises with respect to the responsibility of a minister for the management/administration of his department. Some ministers interpret this aspect of their role in its most general sense, as a responsibility to oversee the broad arrangement of the department's administrative functions.

Others, however, view management and administration as integral parts of policy, and see the formation of a policy in isolation from a concern with the details of how and by whom it is to be implemented, as a futile exercise. William Rodgers, a man with experience as a junior minister in five departments and as Secretary of State for Transport between 1976 and 1979, feels that the best ministers concern themselves with the management of their departments. "They should see the working arrangements within the department as part of their remit."¹ Michael Heseltine systematised this attitude in the departments under his control within the Thatcher governments.²

Whatever the view taken by individual ministers on this point, it is clear that at this stage a link emerges between ministerial responsibility and official responsibility. This second element of individual ministerial responsibility, role responsibility, encompasses at least certain actions taken by

1. William Rodgers, interviewed by the author, 8 February 1984.

2. See Andrew Likierman: "Management Information for Ministers: The MINIS System in the Department of the Environment", Public Administration, Vol.60, No.2, 1982. For more on the impact of "managerialism" in government, see Chapter Seven.

the departmental administrators, the civil servants. A grey area exists here, to be sure, and the question of the direct accountability of officials for their own role responsibilities is a thorny one, but the fact remains that actions taken by, and negligence on the part of, civil servants are to some degree within the role responsibility of their minister. It follows from this that any definition of individual ministerial responsibility in terms of four elements must involve, as a sub-section of the second element, consideration of official responsibility. For convenience sake, this consideration will follow our outline of the minister's position vis-à-vis the four elements.

Now, what about the minister's role responsibility as ambassador for his department? Simply stated, this involves the conduct of relationships with the department's "clients" (usually represented by pressure and interest groups), parliamentary and party interests, and other departments of state. With respect to the latter, the role of a department's political head, who will normally be pleading his case in Cabinet, is particularly important.

Piloting legislative measures through their various parliamentary stages is, naturally, connected with the policy leadership role, and normally involves most members of a department's ministerial team.

As with the first of our elements, documents provide some indication of a minister's role responsibility, but one has to look far beyond the statutes in order to gain any real understanding of this element.

(c) Accountability:

The element of accountability raises, as did that of personal responsibility, the idea of "layers". M.P.s are

accountable to their constituents and their party colleagues. Ministers carry this layer into office with them, but then enter into other relationships of accountability.

In brief, it can be said that ministers, per se, are accountable for their personal and role responsibilities to three main sources. The traditional accountability of ministers to the Crown is represented in modern government by accountability to "the government": that is, to ministerial colleagues in general and the Prime Minister in particular. By the mid-1950s it had become clear that this aspect loomed larger than any other.¹ Ministers are also accountable to the wider party both at Westminster and in the country. Finally, there is the liberal-democratic notion of ministerial accountability to "the people" via their parliamentary representatives. This is the most formal type of accountability and provides the system with the greatest variety of methods and organs of scrutiny.

The argument pursued in this thesis is that the period 1966-83 witnessed a concentrated, albeit uncoordinated, attempt to improve upon the existing status of ministerial accountability to Parliament. It is with this attempt that the next part of the thesis will largely be concerned.

(d) Sanctions:

Closely connected with the element of accountability is that of sanctions. If a minister is said to be accountable to Parliament, to the government as a whole and to the generality of his party, for the effective exercise of his role responsibilities and at least for the absence of personal

1. See S. E. Finer: "The Individual Responsibility of Ministers", Public Administration, Vol.34, 1956.

irresponsibility, we might feel justified in assuming that each agent of accountability holds sanctions over the minister.

Two comments should be made about this:

First, as was shown in our historical study of the doctrine, long before the period under consideration in this thesis, it had become clear that the effective holder of sanctions over an erring minister was the Prime Minister. This is not to deny the possibility of influence being exerted by Parliament as a whole (which should be viewed, in strict constitutional terms at least, as a potential sanctions-holder) or by a minister's party colleagues in and out of government. Indeed, some Conservative ministers interviewed by the author took pains to emphasise the importance of their "end of term" appearances before backbench party committees. Such committees, like the party at large, cannot be seen as sanctions-holders, but their displeasure may be communicated to the P.M. These points notwithstanding, the fact of the matter was that sanctions were predominantly in the hands of the P.M.

Secondly, the nature of these sanctions was quite unpredictable. The possibilities would be resignation, dismissal, demotion or displacement to a post of equivalent standing.¹ However, in the mid-1950s it was pointed out that the chances of a minister resigning or being dismissed were quite remote.

If each, or even very many charges of incompetence were habitually followed by the punishment (loss of office), the remedy would be a very real one: its deterrent effect would be extremely great. In fact, that sequence is not only exceedingly rare, but

1. It should be stressed that resignation and dismissal are different aspects of this element. There have been cases where ministers, feeling that they have failed in some area of personal or departmental responsibility, chose to resign although there was no evidence that any agents of accountability were about to enforce sanctions.

arbitrary and unpredictable. Most charges never reach the stage of individualisation at all: they are stifled under the blanket of party solidarity. Only where there is a minority Government, or in the infrequent cases where the Minister seriously alienates his own back benchers, does the issue of the individual culpability of the Minister even arise. Even there it is subject to hazards ... when some charges get through the now finely woven net, and are laid at the door of a Minister, much depends on his nicety, and much on the character of the Prime Minister.[1]

A major task to be undertaken at a later stage in this thesis will be to look again at both the agents of accountability, the potential sanctions-holders, and the nature of sanctions imposed on erring ministers, during the new regime of accountability.

2. The Civil Servant

An argument could be made for the case that any examination of individual ministerial responsibility should concentrate on the position of the minister himself. As was pointed out when discussing the role responsibility of ministers, however, a significant part of any minister's job is his relationship with the departmental civil servants. He is responsible for certain actions taken by officials, and indeed for the failure of officials to act in some circumstances. The extent of his responsibility for such matters is a moot point, which this thesis will address, but it is sufficient at this stage to state the fact that this responsibility exists.

What follows should, therefore, be considered as a subsection of the role responsibility of the minister. Still, this relationship, viewed in terms of our elements, has two sides to

1. S. E. Finer, op.cit., p.393.

it. The role responsibility of the minister might encompass his civil servants, but the latter are, in turn, accountable to their minister for the performance of certain duties and functions: officials also have role responsibilities for which they are accountable.

It seems clear that it would be better to adopt the same approach to the position of the civil servant as we did to that of the minister. The four elements of responsibility will be utilised again.

(a) Personal Responsibility:

As with the minister, the civil servant brings into office with him his personal responsibilities as a private citizen. However, unlike the minister, the civil servant finds that a summarised version of these, and the other personal responsibilities which fall on him in his official capacity, are actually set out in writing.

The formulation of these rules and regulations took place in 1928. During the period under examination in this thesis, the old Estacode was withdrawn from use and replaced by the Civil Service Pay and Conditions of Service Code. However, as far as the general standards of personal responsibility are concerned, this change was of no great importance. Section K of Estacode dealt with "Conduct and Discipline": the part on conduct was subsumed into the C.S.P.C.S. Code (paragraphs 9872-9999) while the part on discipline was still held in Estacode form (this will be alluded to under "sanctions").¹

Matters of personal responsibility dealt with under the aforementioned paragraphs of the code are: the reporting of

1. This information was confirmed for the author in a letter from the Civil Service Management and Personnel Office, 14 February 1984.

bankruptcy, insolvency, arrests or convictions (paras. 9872-73); caution on the acceptance of gifts, rewards, awards and prizes (paras. 9882-85, 9892-93, 9903); restrictions on political activities (paras. 9923-30, 9936-37, 9948-50) and on business activities (paras. 9874-79, 9961).

The general intention which underpins these "Principles of Conduct" is that of expanding the personal responsibilities which each civil servant has as a private citizens, to the point where there can (if the rules are adhered to) be no misuse of his privileged position by any official.

Hence, as far as business activities are concerned, there is no objection to civil servants holding private investments provided any shareholding does not raise the issue of conflict of interest with an official's department. No official may hold a directorship in a company which has a contract with his department, except in extraordinary circumstances (for example, if the official sits on the board of a company as the government's nominee). Civil servants are free to purchase surplus articles of government property, provided they do not obtain unfair commercial advantage over members of the public who may also be interested in purchasing the articles.

Finally,

All officers of the rank of Under Secretary (or, in the Diplomatic Service, Counsellors) and above ... are required to obtain the assent of the Government before accepting within 2 years of resignation or retirement offers of employment in business and other bodies ...[1]

In addition to the general principles of conduct set out in the Code, individual departments may lay down specific rules

1. Civil Service Pay and Conditions of Service Code para.9961
(Management and Personnel Office, 5 August 1980).

for their officials.¹

To state that civil servants have personal responsibilities, and that some of the implications of these have been codified, is, however, only part of the story.

The interpretation and application of the broad principles laid down in Estacode, together with 'written rules' which exist throughout the service, constitute what has been called a 'network of understandings and practices'. Even if well understood by civil servants, and that is far from certain, they are not easy to discern from the outside.[2]

(b) Role Responsibility:

Once again, just as the precise nature of any minister's role responsibilities will depend on the particular department in which he finds himself working, so too are the role responsibilities of civil servants subject to variation. All the same, as was the case with the minister, some general statements about the official's role can be made. Three broad areas of role responsibility can be discerned.

First, civil servants are responsible, in general terms, for giving policy advice to ministers. Normally, such advice will come from the Whitehall "open structure" (officials ranked Under Secretary or above). "Policy advice" may come in a multitude of shapes and forms, but, broadly speaking, any civil servant will seek to keep his minister cognisant of possible legal, administrative and even political difficulties which might arise as a result of any given policy being followed.

1. See, for example, the Staff Rules of the Department of the Environment, listed as Appendix 16 to the Report from the Royal Commission on Standards of Conduct in Public Life, 1974-76 (Cmd. 6524).

2. Maurice Wright: "The Responsibility of the Civil Servant in Great Britain", Administration (Journal of the Institute of Public Administration, Dublin) Vol.23, 1975, p.387.

There is, of course, the crucial question about whether, in certain circumstances, the contribution of such policy advice may amount to something approaching the creation of policy. Does the nature of the civil servant's position allow him effectively to define the agenda within which the minister's policy decision must be made? This complex and controversial issue will be raised on numerous occasions at later stages in the thesis. For the moment, mention will be made only of two broad views which were communicated to the author from both official and ministerial sources. One of these amounted to an admission that civil servants do make a major contribution to policy decisions, behind the department's closed doors. They "fight for their corner" in the discussions which take place, but once a decision has been reached, whatever it may be, a sense of collective responsibility descends on all concerned, and when the doors of the department open ministers and officials present a united front to the world in defence of "the minister's policy". The other view held that the divide between matters of policy and administration is real, but strangely intangible. Hence the use of such phrases as: "policy is what the next chap up is doing and administration is what the next chap down is doing" (a Permanent Secretary to the author), and "policy matters are like the elephant - difficult to describe, but you know one when you come across it!" (variations on this theme were put to the author by several ministers and officials).

The second broad area of role responsibility is for the administration of departmental policy. High ranking officials, usually in conjunction with ministers, will lay down the guidelines for policy implementation. These will be conveyed, via the Principals, to those charged with carrying out the detailed requirements of the policy at the point of contact with the

public: the Executive and Clerical Officers.

As was stated at an earlier stage, some ministers more than others prefer to become involved in the details of policy administration. The same can be said of the third broad area of civil service role responsibility, departmental management. Under this heading might be listed such things as the creation of efficient departmental structures and organisation charts, personnel management, and the introduction of new systems and technology. An entire body of literature has sprung up around this aspect of role responsibility, with journals such as Management in Government providing insiders and outsiders alike with useful summaries of new developments. To certain ministers, these matters are intrinsic to the effective operation of the department as a policy machine, and must in consequence be closely attended to. Even these ministers, however, find themselves all but excluded from an additional aspect of departmental management: financial accountancy.

This is the remit of the civil servant, in particular, the Permanent Secretary. On entering office, every Permanent Secretary is issued with a Memorandum which describes his responsibilities as Accounting Officer for the department.¹ Paragraph 5 of this summarises the duties of an Accounting Officer:

(a) He must sign the Appropriation and other Accounts assigned to him. Although the underlying accounting work will have to be carried out by members of the department on his behalf, the Accounting Officer's signature implies personal responsibility for the correctness of the account ...

1. A copy of this Memorandum was supplied to the author by H.M. Treasury, December 1983. Only on rare occasions are one or more senior officials other than the permanent head of the department appointed as Accounting Officers.

(b) He must ensure that correct financial procedures are followed ...

(c) He must ensure that the public funds for which he is responsible ... are properly safeguarded ...

(d) He must ensure that, in the consideration of policy proposals relating to the expenditure or income for which he is Accounting Officer, all relevant financial considerations are taken into account, and where necessary brought to the attention of Ministers ...

(e) ... he must ensure that in the implementation of expenditure programmes ... proper regard is given to economy and the avoidance of waste.[1]

The Accounting Officer is the principal witness on behalf of the department who appears before the Public Accounts Committee to deal with any questions arising from the accounts. The only significant exception to the total responsibility of the Permanent Secretary for these matters comes if a minister should consider taking a course of action which the Permanent Secretary considers to be irregular or improper. In such circumstances, the Accounting Officer should set out his objections to the proposed expenditure in writing.

If the Minister decides nonetheless to proceed, the Accounting Officer should seek a written instruction to make the payment. Having received such an instruction, the Accounting Officer must comply with it, but should then inform the Treasury of what has occurred, and should also communicate the papers to the Comptroller and Auditor General. Provided that this procedure has been followed, the P.A.C. can be expected to recognise that the Accounting Officer bears no personal responsibility for the expenditure.[2]

For these role responsibilities - for giving policy advice, administering departmental policy and managing the department - civil servants are accountable: but to whom?

1. Memorandum on the Responsibilities of an Accounting Officer para.5.

2. Ibid., para.10.

(c) Accountability:

The starting point for any consideration of civil servants' accountability must be an awareness of the celebrated Friedrich-Finer debate which took place in the 1940s.¹

Each man was concerned with the development of the most effective method of guarding against the misuse of power by administrators. Finer espoused an argument for the political "responsibility" (in our terms, accountability) of the official, in which the "essence is the externality of the agency or persons to whom an account is rendered".² Friedrich, on the other hand, placed more faith on the need for public servants to develop an inward, personal sense of moral accountability to the standards set by "two dominant factors: technical knowledge and popular sentiment".³

Once it is understood that by referring to the accountability of officials in terms of "technical knowledge" Friedrich meant that they should show proper regard to existing knowledge of a technical nature concerning the issues they are dealing with, while being prepared to discuss these matters in the public arena,⁴ a reasonably clear distinction emerges between the two theories.

Finer's theory would be consistent with the idea of the civil servant's accountability to any or all of the following: ministers, Parliament and, indeed, the administrative hierarchy itself. Each is "external" to the individual civil servant.

1. See Carl Joachim Friedrich (1940) and Herbert Finer (1941), op.cit.

2. Herbert Finer, op.cit., p.336.

3. Carl Joachim Friedrich, op.cit., p.12.

4. Ibid., pp.22-23.

Friedrich's ideas quite definitely connote the concept of the civil servant's implicit accountability to "the people" through the internal mechanism of the individual official's conscience.

Now, while traditional interpretations of the doctrine of individual ministerial responsibility posit a line of accountability which runs from officials through ministers to Parliament, if we were to take all the possibilities from the Friedrich-Finer debate, we might have, in a given instance, a civil servant weighing up the relative importance of his accountability to his minister, to Parliament, to the service itself and to the general public. Of course, in the real world of British government matters are slightly more straightforward, but they are rarely as simple as the traditional interpreters of individual ministerial responsibility have assumed.

To start with, as far as his personal responsibilities are concerned, a civil servant is accountable to his immediate departmental superiors and the permanent head of his department. Much tends to be made of the "ethos" of the service by civil servants themselves: it is felt that there is some intangible sense of good conduct which is only partly contained in the Code. Accountability to the service itself for one's personal responsibilities is, therefore, an important factor for the official.

It is, however, the accountability of the civil servant to the Crown (through the political agency of government ministers) upon which the greatest stress is normally placed. Officials are accountable to ministers for their role responsibilities as formulators of policy advice, administrators of departmental policy and managers of the department. It would be wrong, nonetheless, to suggest that they are accountable solely to

ministers for these responsibilities. No less a body than the mandarins' "union" has stated:

The civil servant's primary duty is ... to his Minister. But since he is (de facto, not de jure) a permanent employee, not subject to appointment or dismissal by the individual Minister, his duty must also be to the ministerial office ... the civil servant, therefore, also has a de facto duty towards his official superiors.[1]

In addition, of course, we have to consider the unique position of the Permanent Secretary in relation to one aspect of his role responsibility as a departmental manager: his standing as financial accountant. In spite of the disclaimer in the aforementioned Memorandum which sets out the Accounting Officer's responsibilities;

... it is the Minister in charge of a department who is responsible to Parliament for all aspects of its policies, organisation and management ... officials derive their authority from the Minister ... and are accountable to him for their actions [2]

it is clear that the nature of the Permanent Secretary's role responsibility in this sphere creates a measure of direct accountability to Parliament through the medium of the P.A.C. The period 1966-83 saw the advent of more organs of parliamentary scrutiny and raised the question of an extension to this direct accountability.

If the civil servant is, or can be, held accountable for his personal and role responsibilities to his minister, to his colleagues in the administrative hierarchy and to Parliament (albeit in strictly defined circumstances) what of the possibility of accountability to the people or the "public interest"? It must be said that the British constitution makes

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1. Report by a sub-committee of the First Division Association: "Professional Standards in the Public Service", Public Administration, Vol.50, 1972, p.169.
 2. Para.1.

absolutely no allowances for such a possibility. Any open appeal by an official to the court of public opinion on the grounds that he is, in cases of supreme importance, ultimately accountable to his fellow citizens, is anathema to the system which attaches such weight to civil service anonymity, and might well bring down upon the "whistle-blower" the full weight of legal sanctions.¹ Such appeals which are made on these grounds tend, in consequence, to be furtive affairs involving "leaked" information or documents. One Permanent Secretary conveyed particularly strong views on this to the author. He saw the idea of leaking as part of some conception of an official's prior duty to the public as something which undermines the "ethos" of the civil service.

The civil service is structurally a part of our system: it is not in a direct relationship with the people - you serve them through serving the government of the day.[2]

Other views do exist on this, however, and it would seem unrealistic to deny that there can be circumstances in which officials may see themselves being directly accountable to the public at large. Important precedents do exist for the case that civil servants should be able to salve their consciences and meet the requirements of this accountability without necessarily infringing their anonymous status or resigning their posts (for example, the leaking of information by defence officials to Winston Churchill in the 1930s).

1. See Lord Franks: "Disclosure and the Law", Civil Service College Working Paper No.5 (S.C.S., Ascot, 1979), and Robert Pyper: "Sarah Tisdall, Ian Willmore, and the Civil Servant's 'Right to Leak'", The Political Quarterly, Vol.56, No.1, January-March 1985.

2. Permanent Secretary, interviewed by the author, 11 January 1984.

Nonetheless, in Britain there is no "charter" for leakers or whistleblowers and, rightly or wrongly, the constitutional position is that officials are accountable to the public only through the government elected by the latter.

To summarise: we have the possibility of civil service accountability to four sources and the reality of accountability to three. Of these, the most usual and significant are ministers and the service itself, with primary accountability to the former.

(d) Sanctions:

There are two important questions to be addressed regarding sanctions. First, are the agents of accountability also the sanctions-holders? Second, what are the sanctions available?

Parliament per se holds no real sanctions over erring officials. Ministers in general, and the Prime Minister in particular as political head of the civil service, do ultimately hold sanctions. However, except in the case of irresponsible conduct on the part of a departmental Permanent Secretary, politicians do not usually become intimately involved in the imposition of disciplinary sanctions against civil servants. Matters of discipline are part of the role responsibility of the Permanent Secretary. The "discipline" section of Estacode, which remains extant in the C.S.P.C.S. Code, is clear on this:

... heads of departments must have disciplinary powers over the agents employed under them, for unless they have the powers to admonish, reprimand, penalise, and in the last resort dismiss those agents, they cannot in any real sense be responsible for the conduct of business in their departments.[1]

1. Para.2 of Estacode extract contained in Civil Service Pay and Conditions of Service Code, op.cit.

We can summarise the nature of the available sanctions in the following terms.

Any misconduct exhibited by a civil servant in the sphere of his personal responsibilities which raises the possibility of criminal prosecution should be referred to the police or the Director of Public Prosecutions.¹ Rules on misconduct in the sphere of role responsibilities which raise the possibility of prosecution were the subject of changes and a general tidying-up procedure in the 1970s, and will be dealt with at a later stage.

Other misconduct in the sphere of personal and role responsibilities can be handled by the permanent head of the department (or his appointed agents) in one or a combination of the following ways:²

- i. formal reprimand
- ii. financial penalties (including repayment of monies, loss of pay or increments)
- iii. demotion/downgrading
- iv. dismissal/early retirement.

At a later stage we shall examine the agents of ministerial accountability and the sanctions imposed on ministers during the new regime. As part of this, we will consider official accountability and the imposition of sanctions on civil servants.

3. The Elements Summarised.

The table overleaf gives a breakdown of the salient points in our discussion so far. The important fact which cannot be overstated is that the minister and the civil servant do not operate in splendid isolation from each other. It is impossible to grasp the meaning of individual ministerial responsibility

1. Ibid., para.5.

2. Ibid., para.4(a)-(h).

Table 2.1 Summary Chart: The Elements of Individual Ministerial Responsibility

MINISTER

CIVIL SERVANT

Personal Responsibility

Personal Responsibility

Role Responsibility

Role Responsibility

(a) policy leadership

(a) policy advice

(b) management of department

(b) administration of policy

(c) ambassador for department

(c) management of department

(d) legislative pilot

Accountability

Accountability

(agents)

(agents)

(a) government

(a) civil service superiors

(b) Parliament

(b) ministers

(c) party

(c) Parliament

Sanctions

Sanctions

(a) Holders (potential)

(a) Holders (potential)

i. government (esp. P.M.)

i. civil service superiors

ii. Parliament

ii. ministers

(b) Options

(b) Options

i. displacement

i. reprimand

ii. demotion

ii. financial penalties

iii. dismissal/resignation

iii. demotion

iv. dismissal

without understanding the nature of the bond between minister and official.

This can be seen with reference to two factors.

First, part of the minister's role responsibility is for the effective running of his department. This encompasses all the role responsibilities of his officials, and provides a basic link in what we might see as a chain pulling in one direction.

Secondly, the civil servant is accountable for his role responsibilities, primarily to the minister. This provides a link in a chain which pulls in the other direction.

In the next part of the thesis we shall focus our attention on the new regime and attempt to discover exactly how it affected the accountability of both ministers and officials for their role responsibilities. How effective was the new regime of ministerial accountability to Parliament, and did it bring in its wake any significant changes in the accountability of civil servants to the same source? Later still, we shall examine the history of sanctions during the new regime of accountability, and trace changes which may have occurred in relation to the personal and role responsibilities of ministers and officials.

Before embarking on this task, however, it remains for us to locate the doctrine within the context of modern constitutional debate.

TWO: The Doctrine and Theoretical Models of the Constitution

Today there are a variety of theoretical models which might be utilised by a person seeking to understand British government and politics. Marxist, pluralist and corporatist models could certainly be applied with effect in some areas. However, when

discussing "the constitution" in general and the doctrine of individual ministerial responsibility in particular, the limitations of these rather broad models become clear, and one is obliged to look elsewhere for guidance.

While its origins lay in the early stages of British constitutional history, the doctrine began to assume its modern characteristics during the nineteenth century. As has been mentioned in the historical chapter, at this time two general theories of government came into conflict. Each tended to impose subtle differences on the interpretation of various constitutional maxims, conventions and doctrines of which individual ministerial responsibility was one. Adherents to the "traditional power" theoretical model of the constitution viewed the very idea of responsible government differently from those who favoured the "liberal-democratic" ideals.

To a significant extent, these general theories remained in conflict into the modern period, and any attempt to understand the doctrine should involve some consideration of the fundamental differences between them. It should be noted that as rudimentary models these are concerned with the broad generality of government and the constitution, and not in any specific sense with the doctrine of individual ministerial responsibility. However, as the doctrine lies at the heart of the constitution, the theoretical models will have implications of some kind for it.

Here it will be argued that within the framework of the models, the malcontents or reformers have been less satisfied with the doctrine as an effective part of the liberal-democratic creed than have the traditionalists and more "conservative" liberal-democrats. In particular, the element of accountability, especially accountability of ministers and

officials to Parliament, has been the focus of the reforming liberal-democrats' attention.

We will return to this point. First, the framework of the models shall be sketched out.

1. The Traditional Power Model.

A. H. Birch, writing about the fundamental division between the two perspectives on the constitution,¹ noted the difference between the normative theory of what is here termed the liberal-democratic model, and the working reality of the constitution which conforms in large measure to the expectations of those who will be viewed as adherents to the traditional power model.

As has been noted, the latter retained its value as a description of what really happens within the constitution, because the transfer of power from Crown to Parliament did not change the nature of executive government. The British tradition of strong monarchical government carried with it certain assumptions about the power of the executive, and these were passed on to the new parliamentary governors. The ability of a government to do its job depended on it being free from unnecessary restrictions. The duty of government was to govern. Of course, according to this interpretation Parliament has the right to report on and approve governmental acts, but only with the strict understanding that the government should be allowed to get on with its job until defeated by a vote of the Commons or the electorate.

Birch provides us with a useful account of the traditional

1. A. H. Birch: Representative and Responsible Government (Allen and Unwin, London, 1977).

power model:

It talks of the responsibility of Her Majesty's Government for the administration of the country, of the importance of protecting civil servants from political interference, of Parliament's function as a debating chamber in which public opinion is aired ... It is ... usual to employ ... concepts, such as that the Government has a mandate to put its policies into effect, and is ultimately answerable to the electorate (not Parliament) for their success.[1]

The role of Parliament is simply to provide a forum for the ventilation of grievances and the continuation of the party battle.

Birch's view that this interpretation of the constitution is held by those in power or with the prospect of coming to power, is only partially true. While most ministers, shadow ministers and ambitious backbenchers would appreciate the benefits which accrue from the traditional power model, some people in these positions are firm supporters of the liberal-democratic viewpoint. Similarly, there are backbenchers with no obvious ambition for, or prospect of, office, who take the traditionalist line. Neither are all journalists and academic commentators totally convinced that the traditional power model should be discarded (as Birch assumes that they are).

Henry Fairlie² has argued that the domination of Parliament by the executive is not only real, but actually desirable. He perceived the role of the Commons as important, but distinctly limited. Furthermore, he felt that it would be unrealistic to expect any government to initiate fundamental change in the balance of power between executive and legislature. In any case, the ultimate responsibility of a government to the electorate provides, according to Fairlie, the best

1. Ibid., p.165.

2. Henry Fairlie: The Life of Politics (Methuen, London, 1968)

check on its activities.

When applied directly to the doctrine of individual ministerial responsibility, the traditional power model posits a fairly simple relationship between ministers and the legislature. By answering Questions at the despatch box ministers are fulfilling the major part of their accountability to Parliament. The accountability of ministers to their colleagues in government, and in particular to the Prime Minister, is paramount.

Founded as it is on the concept of the party struggle, the traditional power model provides a straightforward answer to the question of sanctions. A minister will normally resign only if the government stands to lose more from his remaining in office than from his departure. Again, the important issue is the effect on the government's ability to get on with the job of governing. As far as civil servants are concerned, the traditional power model stresses two factors: they must remain essentially anonymous, and their accountability to ministers should be complete.

2. The Liberal-Democratic Model.

Birch encapsulated the idealistic nature of this theory, based as it is on a certain nostalgia for the supposed heyday of parliamentary control in the mid nineteenth century.

... it talks of Parliamentary sovereignty, of the responsibility of ministers to Parliament for the work of their departments, of the defence of the people's rights through the vigilance of 'the Parliamentary watchdog', of the democratic advantages of a system in which there is no separation of powers between legislature and executive.[1]

1. A. H. Birch, op.cit., p.165.

He made the general point that while the constitutional theory which is here termed the traditional power model provides the more accurate description of how the constitution works, it is the language, and in some senses the mythology of the liberal-democratic model which pervades our system of government.¹

The factor which binds the adherents to this model together, and differentiates them from those who favour the traditional power theory, is their belief in the existing or potential power of Parliament to effectively monitor, influence and control the actions of government.

This is not to say that the divisions between liberal-democrats and traditionalists are absolute, or indeed that the divisions among liberal-democrats themselves, to which we are about to refer, are rigid. We are dealing here with relative terms in an attempt to tease out some general points of reference.

Bearing this in mind, it can be said that liberal-democrats can be divided into two broad groupings, conservatives and malcontents.

The fact that common ground exists between some liberal-democrats and traditionalists can be illustrated with reference to Enoch Powell. He is in no doubt about the reason why the traditional power model provides the more accurate description of how the constitution works:

... The English have a profound conviction that the Queen's Government must be carried on. In the end they are on the side of government, in the end they are on the side of authority, in the end they believe that somehow somebody has to do the governing...[2]

1. Ibid., pp.165-66, p.237.

2. From the text of an address given to the Politics Association Conference, Manchester, April 1981. Published as "Parliament and the Question of Reform", Teaching Politics, Vol.II, 1982, p.173.

Even so, Powell, Michael Foot and others could reasonably be described as liberal-democrats of the conservative variety, because they believe that the working constitution does more than pay lip-service to the maxims of parliamentary influence and control: they believe it actually operates in such a fashion as to make these maxims real. Ronald Butt's view of The Power of Parliament¹ epitomises this approach, which attributes the House of Commons with an essentially negative, checking role, which is nonetheless far from insignificant.

These people take a similar, generally satisfied, view of the doctrine of individual ministerial responsibility to that held by the traditionalists. The normal methods of parliamentary scrutiny (Questions, Motions and Debates) are seen as being powerful and effective weapons for the task of enforcing ministerial accountability to the House of Commons, although the failure of ministers to abide by the interpretation placed by these liberal-democrats on the sanctions element causes some concern.

For reasons which were traced in the previous chapter, by the 1950s and 60s the views of the other liberal-democrats, the malcontents, were in the ascendancy. These people were less satisfied with the existing relationship between legislature and executive, and aimed at the introduction of structural reforms in order to redress the balance in favour of the Commons. Their reformist schemes gained impetus, and were at least partially realised with the advent of new organs of scrutiny in the 1960s. We should allow for the fact that the malcontents were not a coherently organised group of people, and that their views on the objectives of any reforms ranged from the extremely

1. Ronald Butt: The Power of Parliament (Constable, London, 2nd edition 1969).

vague and general (achieve a fundamental alteration in the balance of power between the executive and the legislature) to the specific (allow M.P.s more opportunities and time to question ministers in detail). Nonetheless it can be said that one aim which they shared (albeit implicitly rather than explicitly) was to enhance the element of accountability in the doctrine of individual ministerial responsibility.

It must be said that the experience of the 1960s and 70s resulted in the disillusionment of some liberal-democratic malcontents with the idea of structural reform. Thus, today we have people who no longer place their faith in adding to the existing powers of the Commons, but still feel that there is much to be done before the liberal-democratic maxims can be realised.

Some of them, like Philip Norton, see progress coming from the revitalisation of the Commons' dormant powers.

... the answer lies with M.P.s themselves. The means by which the House can achieve a greater degree of scrutiny and influence of (sic) that part of it which forms the government exist already, but those means can be employed only if Members themselves are willing to employ them. The two elements of this approach - the powers available to the House and the willingness of Members to employ them - have been ignored ... by ... reformers.[1]

Norton places great stress on the need for attitudinal change, and he points to the example of independent minded M.P.s such as George Cunningham, in support of the potential effectiveness of the assiduous backbencher.

1. Philip Norton: The Commons in Perspective (Martin Robertson Oxford, 1981), p.225. For additional accounts of this view see Philip Norton: The Constitution in Flux (Martin Robertson, Oxford, 1982), pp.110-13, and "The Norton View" in D. Judge (ed.), The Politics of Parliamentary Reform (Heinemann, London, 1983).

Nevil Johnson, S. A. Walkland and others would agree with Philip Norton that the liberal-democratic creed cannot be fulfilled until attitudes change. These people, however, now argue that this can best be achieved by means of a fundamental constitutional upheaval which would loosen the stranglehold of the two party system. The most important prerequisite for this is seen as being electoral reform along the lines of one of the varieties of proportional representation.¹ This type of change is "external" to the parliamentary scene insofar as it places stress on the importance of reforming, not Parliament per se, but, at least in the first instance, the broad political environment.

Now the detailed reasons which underpinned the disenchantment of these liberal-democrats with schemes for internal reform, are outwith the scope of this thesis. We are, however, concerned with the partial victories of the structural reformers in the 1960s and 70s, and with the specific effect which these may have had on the accountability element of the doctrine of individual ministerial responsibility.

Our attention can now be focussed on the new regime of accountability.

1. See particularly Nevil Johnson: "Select Committees as Tools of Parliamentary Reform", in Hanson and Crick (eds.) The Commons in Transition; "Select Committees as Tools of Parliamentary Reform: Some Further Reflections" in Walkland and Ryle (eds.) The Commons Today (Fontana, Glasgow, 1981).
S. A. Walkland: "Whither the Commons" in Walkland and Ryle, op.cit.; "The Politics of Parliamentary Reform" in parliamentary Affairs, Vol.29, 1976; "Parliamentary Reform, Party Realignment and Electoral Reform" in D. Judge (ed.) The Politics of Parliamentary Reform (Heinemann, London, 1983).

PART B

THE DOCTRINE IN PRACTICE 1966-1983

CHAPTER THREE: Traditional Methods of Scrutiny in a New Regime

The evolution of the House of Commons Select Committee system after 1966 and the advent of the Parliamentary Commissioner for Administration in 1967 represented, de facto, the creation of a new regime of parliamentary accountability.

The old regime, comprised of the traditional methods of scrutiny, would of course continue to function against this backcloth of structural reform. Indeed, parliamentary Questions, motions, debates and the other components of the pre-1966 system of scrutiny continued after that date to epitomise, for casual observers at least, the essential concept of parliamentary "control" of government. This, in spite of the old regime's apparent failure to cope with the marked expansion of executive power in the post-war era.

In this chapter, the aim will be to identify the specific aspects of individual ministerial responsibility with which the traditional methods were concerned, and to offer some comments on both the quantity and the quality of scrutiny achieved.

To start with, perhaps it would be best to delineate the "traditional methods of scrutiny". These are taken to be the full range of formal and informal devices (excluding the new Select Committees and the PCA) through which parliamentarians can bring government ministers to account for their policies and actions. In the period under consideration, this range included: private communications between MPs and ministers; oral and written Questions; various types of parliamentary debates; Standing Committees; the Select Committee on Nationalised Industries; the Estimates Committee; and the Public Accounts Committee.

ONE: Informal Contacts Between MPs and Ministers

Until fairly recently, those studying the techniques of parliamentary scrutiny tended to concentrate on formal mechanisms and devices, to the exclusion of the widely used informal (in terms of strict parliamentary procedure) contacts between MPs and ministers. However, the general trend towards increased professionalism among MPs, coupled with mounting pressure on Members to secure redress of an ever-expanding range of constituents' grievances, ensured that this aspect of the old regime developed quite significantly in the period 1966-83.

The research undertaken in this field to date has been rudimentary, and there are obvious difficulties in attempting to quantify this type of scrutiny. Nonetheless, the evidence which is available shows that the post 1945 increase in personal correspondence between MPs and departmental ministers accelerated in the 1960s and 70s.¹ By the early 1980s, five ministers in a single department of state were receiving over two thousand letters every month from MPs.²

Sheer quantity of scrutiny is one thing: what about its nature?

It is quite clear that personal letters addressed by MPs to ministers are treated very seriously indeed within government departments. Bearing this in mind, one could say that informal contacts between MPs and ministers produce parliamentary scrutiny of a high calibre.

1. On this point, see James W. Marsh: "Representational Changes. The Constituency MP", in Philip Norton (ed.): Parliament in the 1980s (Blackwell, Oxford, 1985).

2. These ministers were in the DHSS. Example cited in Philip Norton: The Commons in Perspective (Martin Robertson, Oxford, 1981), p.114.

An MP's letter will elicit much more specific, detailed information than would be the case if the matter had been raised on the floor of the House. Such a letter is immediately afforded preferential treatment within a department. On any given subject, a letter addressed to a minister by a member of the public will normally be handled by an Executive Officer, who will merely issue a stock reply setting out existing rules and regulations as they apply in the particular case. An MP's letter will go straight to an Assistant Secretary before being placed on the minister's desk. One former minister has encapsulated the aura of importance which surrounds such missives:

"... letters come in from MPs and you look at them and you say, 'That dum-dum has written a letter about so-and-so'. And to your astonishment, because he's an MP, his letter is given a green folder, it's flagged Urgent - it's got a signal on it saying 'For God's sake, answer this tomorrow'.^[1]

The reply which is produced may not be what the MP's constituent wishes to hear, but it is at least likely to convince the complainant that the matter had been fully investigated. The same ministers who received a total of over two thousand MPs letters each month testified to the detailed nature of the replies given. In some cases, these amounted to three or four pages of A4 paper.²

The underlying objective of correspondence between MPs and ministers is the enhancement of ministerial accountability to Parliament (via individual parliamentarians) for their role responsibilities. It is clear that almost all of the letters sent by MPs to ministers have the aim of clearing up constituents' problems.

1. An anonymous MP quoted in Anthony King: British Members of Parliament: A Self-Portrait (Macmillan, London, 1974), pp.30-31.

2. Philip Norton: The Commons in Perspective, p.114.

Members do not write letters now when they previously asked questions: the great increase in the demands for constituency services has been answered by the use of correspondence with ministers. Now such correspondence is the most popular and effective means of seeking redress of grievances ... [1]

Certain aspects of ministerial role responsibility are more likely than others to be affected by this kind of scrutiny.

The minister's role as policy leader could, conceivably, come under examination as a consequence of an MP's letter of inquiry. A detail of departmental policy could be in need of amendment in order to alleviate the type of problem encountered by the MP's constituent. The amendment, initiated by the minister as policy leader, could be said to have resulted from the scrutiny and influence brought to bear by the MP. It should be stressed, however, that major policy issues would be much more likely to be raised by means of Questions and debates.

The main aspects of ministerial role responsibility which would be affected by this kind of informal scrutiny are related to the managerial and ambassadorial functions.

It has been shown that different ministers adopt different attitudes towards their role as departmental manager. Nonetheless, it is this aspect of the ministerial role which links him into the work of his civil servants. In his capacity as manager, the minister has role responsibility for the work of departmental officials. Most of the complaints raised by MPs in letters to ministers relate to the way in which departmental policy has been administered: a specific role responsibility of the civil servant. MPs are especially keen to use the medium of the personal letter in cases where the administration of

1. James W. Marsh, op.cit., p.87.

policy as opposed to the policy itself, has been the source of difficulty.

If some action is required, the simplest and most effective course is to write to the appropriate Minister, particularly where the problem is one which arises within the context of existing law and policy and what is required is a more accurate, speedy or flexible application of the rules or policy to the individual case.[1]

When responding to the typical letter, the minister is, in effect, answering for the actions of his officials. He does so in his capacity as departmental manager.

The minister answers in his ambassadorial capacity if the query originates with a client of the department, or a pressure group which has a particular interest in the working of the department. Ministers in the DHSS would, therefore, respond to a great number of queries and complaints in this role.

In brief, it can be said that informal contacts between MPs and ministers increased in the period under consideration, and would seem to have produced an improvement in ministerial accountability to Parliament, particularly for their role responsibilities as departmental managers and ambassadors, and to a lesser extent, as policy leaders.

TWO: Parliamentary Questions

The Parliamentary Question is still the thing - you have, as a minister, two minutes to get it right. Mistakes made there will be much more difficult to make up for than mistakes made elsewhere.[2]

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1. Bryan Gould, "The MP and Constituency Cases", in John P. Mackintosh (ed.): People and Parliament (Saxon House, Westmead, 1979), pp.86-87.
 2. Alex Fletcher, Parliamentary Under Secretary of State, Department of Trade and Industry. Interviewed by the author, 23 January 1984.

Question Time may be awkward for a minister on one or two points, but it isn't a serious attempt at scrutiny. It is too infrequent and shallow for that.[1]

The efficaciousness of the Parliamentary Question as a means of enhancing scrutiny of the executive has long been a matter of dispute. The limitations of the Question, as the centrepiece of the old regime, had become apparent long before the advent of the new organs of scrutiny. Equally, however, the idea of government ministers standing at the despatch box, answering for their policies and actions, still seemed to epitomise the concept of individual ministerial responsibility, even after the appearance of the new select committees and the Parliamentary Commissioner for Administration.

It is easy to comprehend the continuing attraction of the system of Parliamentary Questions. All government ministers can be questioned in a number of different ways, about almost any aspect of their departmental responsibilities. In the oral form, Questions can be put to ministers on a rota system which facilitates more frequent appearances by ministers from those departments which attract greatest parliamentary interest. On average, ministers from each department would normally, in the 1980s, answer approximately 10 to 20 Questions during a period of 40 to 55 minutes one day a month.²

Those oral, or starred, Questions not reached in the course of a given Question Time are automatically answered in writing unless those who tabled them request their deferment to a later sitting. Over the years, limitations have been placed on the

1. A Minister of State, Home Office. Interviewed by the author, 9 January 1984.

2. Andrew Kennon: "Special Parliamentary Report", Social Studies Review, Vol.2, No.3, January 1987.

number of starred Questions which may be asked by one MP, and on the period of notice required.¹ During the 1960s and 70s, initial Questions attracted more, and longer, supplementary Questions, to the extent where it seemed to one observer that "Question Time has become supplementary time."²

The differentiation between starred Questions, to be answered orally, and unstarred Questions, which receive written answers, was established by procedural reforms in 1902.³ In 1972-73, a further reform had the effect of allowing for two sorts of unstarred Questions. As well as the traditional type, which departments endeavoured to answer within three working days, a new type of unstarred Question, accompanied on the order paper by the letter "W", would be answered on the day they were tabled. From 1972-73 onwards, unstarred Questions taken as a whole, formed the majority of Questions put to ministers.⁴

In relation to the starred and unstarred forms, Private Notice Questions relating to matters of an urgent character may be put orally to ministers at the end of Question Time. Acceptance of these is at the discretion of the Speaker (who must be given notice by 12 noon on the day the Question is to be put). On average, about forty Private Notice Questions are asked each year.⁵

1. For details, see Robert Borthwick, "Questions and Debates", in S. A. Walkland (ed.), The House of Commons in the Twentieth Century (Clarendon, Oxford, 1979).

2. Ibid., p.488.

3. For more on these reforms, see Robert Borthwick, op.cit., and D. N. Chester and Nona Bowring: Questions in Parliament (Clarendon, Oxford, 1962).

4. Robert Borthwick, op.cit., p.491.

5. Ibid., p.492.

Against the superficial attractiveness of Parliamentary Questions as a bulwark of ministerial accountability, one must set the deficiencies of this method of scrutiny. While it is true that ministers are, in theory, open to question on any aspect of their departmental responsibilities, they can, and occasionally do, plead that the information requested is not available or could be obtained only at disproportionate cost. Furthermore, there is a recognised list of subjects on which ministers of successive governments have refused to be questioned.¹

Nonetheless, ministers are likely to be called upon to answer Questions relating to virtually any aspect of their department's work. This can be viewed in either a negative or a positive light. Because potential targets for Questions are so numerous, they can be a rather inefficient and ineffective means of holding ministers to account. William Waldegrave, who had worked as a minister in both the DES and the Department of the Environment by 1983, has commented:

Parliamentary Questions are really a scatter-gun approach to scrutiny: most Questions are fairly harmless and easily dealt with ...[2]

However, the "scatter-gun approach" does at least ensure that all aspects of ministerial role responsibility will be touched upon by Parliamentary Questions. What is more, this approach does sometimes result in a direct hit. William Waldegrave continued,

... occasionally a questioner has done some good background work and can, through asking a series of Questions, reveal something important. Perhaps only one Question in ten is a "good" Question, but these tend to be very good. Tam Dalyell is excellent at researching such Questions - I have

1. See Brian Sedgemore: The Secret Constitution (Hodder, London, 1980), pp.184-87.

2. William Waldegrave, Parliamentary Under Secretary of State, Department of the Environment. Interviewed by the author, 1 December 1983.

learned from him on various technical matters. Similarly, George Cunningham - on a very technical part of the education grants issue, his mastery of detail was extremely impressive when I was at the DES, and I had to admit that he knew more about the matter than anyone in the Department.[1]

A former minister, William Rodgers, supported this general point when he noted that:

As a backbencher, I often felt deflated when my well thought-out Questions elicited only a bland reply from the minister. As a minister, I learned that the bland reply is often given when the back-bench questioner has come very near the mark! I recall on some occasions giving just such a reply, then going back to the department and saying to my officials, 'Well, we got away with it this time, but only just.'[2]

Whether Questions are viewed as "good" or "weak", they do have an impact on the work of every government department.

The task of overseeing the process of preparing answers to Parliamentary Questions normally falls to a Principal working either in the private office of the Secretary of State or, more usually, in a special parliamentary section of the department. When compiling the information needed to answer a Question, the Principal will, of course, consult a number of colleagues working in various parts of the department. In all cases, the "PQ" work will take priority over all other business. The draft answer, along with supporting information, is passed up the departmental hierarchy. Normally, the minister concerned, along with his Private Secretary and the Permanent Secretary of the department, will consider the draft and notes which, in the case of a starred Question, will provide information on points which might arise in supplementaries. With a starred Question, the minister will, of course, answer orally in the Commons. He

1. Ibid.

2. William Rodgers, interviewed by the author, 8 February 1984.

will be watched by his Private Secretary, sitting in the official box at the side of the Chamber, who will make a note of any last minute adjustments made by the minister, as well as the supplementaries.

... however much preparatory work there may have been done in the Department, the answer in the House, whether to the main Question or to any supplementary, is that of the Minister, personally and in full hearing of a well-attended Chamber. It is his responsibility, therefore, to decide the final form of the answer ...[1]

The Parliamentary Question, starred or unstarred, is, therefore, designed to bring about the accountability of ministers for their role responsibilities as policy leaders, departmental managers, departmental ambassadors and legislative pilots. However, officials also find themselves under scrutiny, albeit not from Parliament directly. Each Question attracts ministerial attention to the work being done by his civil servants. In our terms, what happens is that the minister, in his capacity as departmental manager, brings his own internal form of accountability to bear on the officials. The latter are effectively answering to their minister for the conduct of their own role responsibilities as policy advisers, departmental managers and departmental administrators: the minister, in turn, answers to Parliament. One Permanent Secretary, in a department which attracts a large share of Questions, summarised this concept of civil service accountability to Parliament via ministers.

The primary function of departmental civil servants is to support the Secretary of State in meeting his responsibilities. The accountability of officials themselves, in support of their ministers, is total. At its lowest level, this total accountability is reflected in the processing of around 30,000 MPs'

1. D. N. Chester and Nona Bowring, op.cit., pp.235-36.

letters per annum in this department, and about 5,000 Parliamentary Questions.[1]

We are left with the impression that in the period 1966-83 Questions, in the hands of shrewd MPs, continued to be useful weapons of parliamentary scrutiny. This was particularly true when Questions were used as one weapon in the formidable armoury of a Tam Dalyell. However, with the full range of a department's work to aim at, with no time to expose a minister to lengthy and frequent interrogation, with no opportunities to question civil servants in person about their own role responsibilities, the Parliamentary Question's limitations as a regular instrument of detailed scrutiny were as obvious as they had always been.

THREE: Debates

In Chapter Two, when examining some basic theories of the constitution, we mentioned the "conservative" school of liberal-democrats. These people, of whom Enoch Powell and Michael Foot can be taken as leading representatives, adhered to the view that the traditional methods of parliamentary scrutiny were sufficiently powerful and effective weapons for the task of enforcing ministerial accountability to the House of Commons. For them, unlike the liberal-democratic "malcontents", there was no need for the introduction of structural reforms along the lines of the new select committees or the PCA. Powell, Foot and their supporters placed great faith in the effectiveness of the "floor of the House" in general, and the parliamentary debate in particular, as means of making the doctrine of individual ministerial responsibility meaningful.

1. Interviewed by the author, 9 December 1983.

During the period 1966-83, some procedural changes apart,¹ the parliamentary debate continued to be utilised in much the same way as it had been under the old regime. An especially interesting phase came during the 1974-79 Parliament, when the importance of debate loomed larger than ever, as the Labour Government struggled to survive with a tiny majority. Presumably, the "conservative" liberal-democrats viewed the events of this period as a justification for their abiding belief in the power of the Commons (although Michael Foot, as a minister in this government, could scarcely have been expected to appreciate this). Equally, however, those liberal-democratic "malcontents" whose faith in structural reform had been shaken somewhat by the mid 1970s, saw this period as indicative of the dormant power of the backbenchers. This school of thought held to the view that backbench power could be maximised in the long term only by an "attitudinal change" on the part of MPs, which would free them from the shackles of the whipping system.

The rights and wrongs of this difference in interpretation need not concern us here. Our main task must be to set out the connection between parliamentary debate and the doctrine of individual ministerial responsibility.

To speak of "parliamentary debate" as a method of scrutiny is, of course, something of a misnomer. Such "debate" comes in a variety of forms. At the risk of over-generalising, two broad categories of debate could be mentioned: general and legislative.²

1. For details, see R. L. Borthwick, "The Floor of the House", in S. A. Walkland and Michael Ryle (eds): The Commons Today (Fontana, Glasgow, 1981), and Philip Norton: The Commons in Perspective, Chapters 5 and 6. A useful source of regularly updated information on procedural changes in this, and other, areas are Factsheets (Public Information Office, House of Commons).

2. See R. L. Borthwick, op.cit., and Philip Norton, op.cit., for information on the various types of parliamentary debate.

General debates come in a variety of forms. They may take place on substantive motions tabled by individual MPs, the opposition or the government. During two typical sessions in the 1970s, between 25 and 33 per cent of time available on the floor of the Commons was occupied by debates of this type.¹ General debates may also take place on one of four types of adjournment motion (general adjournment, daily half hour adjournment, emergency debate, recess adjournment).

Legislative debates are largely the preserve of the executive, in the sense that government Bills are allocated far more time than either Private Member or Private Bills. Indeed, between 32 and 38 per cent of all time available on the floor of the House in the two sessions referred to above was taken up by government legislation.²

Debates have a number of purposes, but they will, even in their most anaemic form (defined as a half hour adjournment debate, which might take place in a House occupied by five or six people), bring a minister to the despatch box, to answer for his departmental role responsibility. During general debates, any aspect of this might be the focus of attention, while legislative debates obviously relate specifically to the minister's role as legislative pilot.

As with Parliamentary Questions, the real target in a debate might be the departmental civil servants. While clearly viewing the debate as a vicarious form of scrutiny, and by no means an adequate substitute for face to face contact, some MPs do believe that officials can be reached via the medium of parliamentary debate. This point can be supported with

1. R. L. Borthwick, op.cit., p.66.

2. Ibid.

reference to the comments of three former ministers, who spoke in 1974 about their aims as backbench MPs when contributing to general and legislative debates:

It's no good talking to the minister on the front bench. He ignores it, even if he understands it. What one is trying to do is put the fear of God into the civil servants.

One despairs of influencing ministers ... When I speak, I speak to the civil servants who have so much of the power.

The senior civil servants, they're the chaps I'm after. The thing is getting senior civil servants to come to the minister three days after the debate saying 'Minister, we ought to point out to you: Mr _____ had a point in that speech he made. The permanent secretary was meaning to have a word with you before the debate, but unfortunately ... the bill is defective and we shall have to make an amendment in committee.' Now you've achieved something.[1]

The ministerial experience of these MPs clearly led them to believe that civil servants could be influenced by what took place on the floor of the House. This is a moot point, though, and there is little reliable evidence upon which one could venture a judgement. What also comes across from these comments, however, is an underlying cynicism. The prospect of influencing ministers was seen to be remote. Expanding on this point, we can say that, notwithstanding the faith of the "conservative" liberal-democrats, and even after making allowance for the extraordinary parliamentary circumstances of 1974-79, debates are not a particularly effective means of achieving ministerial accountability to Parliament for their role responsibilities. This is not to say that ministers (and their officials) cannot be influenced by debates. Nor is it to deny the usefulness of debates as devices which oblige ministers to defend and justify their actions (or lack of action).

1. Three MPs, all former ministers, quoted by Anthony King, op.cit., p.81.

However, the atmosphere which prevails during most debates is not conducive to a sustained and detailed interrogation of a minister. Backbenchers and ministers alike tend to deliver prepared speeches rather than participate in genuine "debate". Party-political point scoring is the name of the game during debates on major issues of policy, and the power of the Whips ensures that, exceptional circumstances apart, governments can depend on securing a majority in the division.

In conclusion, although the issue of sanctions will be covered later in this thesis, we ought to take this early opportunity to puncture one of the myths of the doctrine of individual ministerial responsibility. The widespread assumption that a minister who loses the confidence of the Commons in the course of a debate will also lose his job, was shown to be inaccurate long before 1966. However, what was arguably the most notable case of a minister surviving after clearly losing the confidence of both sides of the House in major debates, occurred towards the end of our period of interest. John Nott's proffered resignation in April 1982, after the first of his disastrous parliamentary performances, was not accepted by the Prime Minister. The support of the PM, rather than sound performance in parliamentary debate, is the decisive factor as far as the possible use of sanctions against ministers is concerned.

FOUR: Standing Committees

With the exception of Bills which involve major constitutional change, the annual Consolidated Fund and Appropriation Bills, the less technical clauses of the annual Finance Bill, and occasional Bills of an extremely contentious nature, all government legislation is sent "upstairs" between

Second Reading and the Report stage, to be considered in Standing Committees.¹

These Committees are comprised of not less than sixteen, not more than fifty members, reflecting the party composition of the Commons. Membership is for the duration of the particular Bill under consideration. Thus, Standing Committee A might consider eight Bills in the course of a session. In effect, this means that eight different groups of MPs sat as "Standing Committee A". Only in the case of the two Scottish Standing Committees can membership be described as permanent or specialised (that is, lasting for a complete parliamentary session).

Members of Standing Committees are technically nominated by the Committee of Selection. A chairman is appointed by the Speaker. The opposition front bench will be represented, and MPs from each side of the House with particular knowledge or experience of a Bill's subject-matter will normally find themselves on the Committee dealing with that Bill.

From the government itself, the minister in charge of the Bill, along with one or more of his junior ministers, his Parliamentary Private Secretary and a government Whip, will be members of a Standing Committee. In some cases, ministers from other departments whose interests might be affected by a Bill, could be members of a Committee.

Standing Committees carry out their task of scrutinising Bills by discussing each clause, and suggesting possible amendments. Witnesses are not called, and there is no cross-

1. The measures not sent "upstairs" have their Committee stage on the floor of the House, where Ministers are subject to the same kind of scrutiny which is to be found in the Standing Committees.

examination of either ministers or civil servants. Instead, the work of the Committees resembles that of the Commons as a whole. Debate within Standing Committees tends to be slightly less formal than that which takes place on the floor of the House, but the atmosphere in each arena is broadly similar.

In his role as legislative pilot, the minister is undoubtedly exposed to a considerable amount of scrutiny through the medium of the Standing Committee. His task is to bring the Bill through its Committee stage with all its fundamental principles intact, and as many of its detailed provisions as possible free from amendment. He is aided by the Whip, who will endeavour to secure the cooperation and votes of government Members. Of course, there will be occasions when the minister will be prepared, or obliged, to accept amendments,

But more important than the making of amendments is the scrutiny to which Ministers and their policies are subjected ... For hour after hour and for week after week a Minister may be required to defend his bill against attack from others who may be only slightly less knowledgeable than himself. His departmental brief may be full and his grasp of the subject considerable but even so he needs to be constantly on the alert and any defects he or his policy reveals will be very quickly exploited by his political opponents.[1]

This point notwithstanding, the type of scrutiny which results from the work of Standing Committees is, in important respects, rather similar to that which ministers encounter on the floor of the Commons. Thus, while a Committee may be likely to spend more time on detailed discussion of technicalities, it is ultimately a forum where the party battle can be continued. This is not always compatible with in-depth scrutiny.

1. J.A.G. Griffith, "Standing Committees in the House of Commons", in S. A. Walkland and Michael Ryle, op.cit., pp.130-131.

Furthermore, because ministers have access to a wealth of detailed information and to the expertise of their officials, even the best informed Committee member is unlikely to be able to match the resources which the minister will have at his disposal.

In conclusion, it should be emphasised that Standing Committees do not bring any direct pressure to bear on civil servants.

... the Member in committee who wishes to elucidate a question of fact from the administrator (in charge of steering a Bill through) ... has to ask, and receive an answer to his question through the Minister ...[1]

For the MP eager to take to task a knowledgeable official sitting only a few feet away, it is a case of "so near, yet so far".

Throughout our period of interest, critics of the existing Standing Committee system argued in favour of fundamental reforms which would facilitate a sharper form of scrutiny. The most widely canvassed of these was the suggestion that the Committees should be given power to question witnesses. In 1978, the Commons Procedure Committee supported this proposal,² and in 1980 the Leader of the House, Norman St John-Stevas agreed that an experiment could take place. This started in the 1980-81 session, with the appointment of a small number of Special Standing Committees which could act as Select Committees and examine witnesses before reverting to the normal Standing Committee format to examine the Bill. By 1983, only

1. H. Victor Wiseman, "Standing Committees", in A. H. Hanson and Bernard Crick (eds.): The Commons in Transition (Collins, London, 1970), p.181.

2. First Report from the Procedure Committee 1977-78 HC 588.

five Bills, largely of an uncontroversial nature, had been sent to Spécial Standing Committees.¹

FIVE: The Select Committee on Nationalised Industries

The demise of this Committee is without doubt the major irony which strikes one when looking at the functioning of traditional methods of scrutiny during the period which saw the emergence of the new regime. The Select Committee on Nationalised Industries was part of the old regime, in the sense that it existed before 1966, but the work it carried out certainly contributed to the advent of one aspect of the new regime. In many respects, it served as a trail-blazer for the new Commons Select Committees, but it did not survive the reforms of 1979.

The emergence of a number of large public corporations during the life of the 1945-51 Labour Governments brought demands for a Select Committee to monitor their activities. Initially, these came from the Conservative opposition, but a number of Labour MPs began to support the demands because of the limitations placed on Members wishing to question ministers about nationalised industries, and because of the deliberate exclusion of the existing financial committees from this area of public administration.

Backbenchers of both parties succeeded in getting an ad hoc committee of inquiry set up in 1951 to look into the problem, and in 1953 it recommended the establishment of a Committee on Nationalised Industries. This was finally set up in 1955.

1. See Philip Norton: Parliament in the 1980s, p.164. This provision was incorporated in Standing Orders, February 1986. See Factsheet No.36 (Public Information Office, House of Commons).

The Committee obtained an early review of its rather restrictive original terms of reference. These had attempted to draw strict dividing lines between those matters of policy which were the preserve of ministers and could not be subject to scrutiny by the Committee, matters of day to day administration which were the preserve of the Boards and could not be subject to scrutiny by the Committee, and matters pertaining to reports and accounts which were seen as the sole legitimate sphere of concern for the Committee.¹

What interested members of the Committee was not, in fact, the restriction about day-to-day matters, but that regarding ministerial responsibility.[2]

When the new Select Committee on Nationalised Industries was set up in 1956, it had no restrictions within its terms of reference, either regarding ministerial responsibility or day to day matters. It was, in effect, trusted

... to behave with propriety where matters of policy were concerned.[3]

The ground covered by this Committee during its struggle over the terms of reference would be retrodden by some of the experimental specialist Select Committees which were set up during the 1966-70 period. The new Committees of the 1970s, and those set up by the 1979 reforms, would find that the basic argument about whether Select Committees should be permitted to look at matters of "policy" as well as "administration" had been settled in their favour.

1. See David Coombes: The Member of Parliament and the Administration. The Case of the Select Committee on Nationalised Industries (Allen and Unwin, London, 1966), pp.55-57.

2. Ibid., p.59.

3. Ibid., p.61.

During the period 1966-79 the Select Committee on Nationalised Industries continued to work away in the sphere it had carved out for itself after 1956. Although understaffed and starved of facilities, the Committee won the right to appoint sub-committees in order to enable two or more inquiries to be carried out simultaneously, and had its terms of reference extended to allow it to investigate the Independent Television Authority, Cable and Wireless, and the Bank of England.¹ A major focus of attention for the Committee throughout this period was the nature of the relationship between sponsoring ministers and the boards of nationalised industries.

The great merit of the Committee, in addition to its "trail-blazing" function, was its preparedness to question ministers and civil servants from a number of sponsoring departments, about all aspects of their role responsibilities.

In 1979, despite the protestations of past and present members of the Committee, it was abolished. In order to fill the gap, allowance was made for a sub-committee, drawn from the membership of two or more of the Energy, Environment, Industry and Trade, Scottish Affairs, Transport, and Treasury and Civil Service Select Committees, to consider any matter affecting two or more nationalised industries.² This proved to be an ineffective measure, since the sub-committee had not been convened once by 1983. To some extent, the gap in scrutiny had been filled by the work undertaken in the new

1. See Peter Richards: The Backbenchers (Faber, London, 1972) p.124.

2. Standing Orders of the House of Commons, Public Business, 1979. HC 266 1979-80 paragraph 86A (5).

Committees,¹ but a number of doubts remained concerning the effectiveness of this.²

SIX: The Estimates Committee

This stalwart organ of the old regime lasted for only four years of the new.

Between its creation in 1912 and the end of the first phase of its existence in 1939, the Estimates Committee had failed to carve out a positive role for itself, and had come to be seen as something of a Treasury tool, content to examine the departmental estimates in a purely mechanical fashion. After its re-emergence in 1945, the Committee developed a more aggressive posture, and showed a willingness to question ministers and officials about the political and administrative assumptions which underpinned departmental estimates.³

As will be made clear when we come to look at the emergence of the new Select Committees in the 1960s, the future of the Estimates Committee never seemed very secure once serious thought began to be given to the improvement of parliamentary scrutiny of government expenditure. As early as 1964-65, the Select Committee on Procedure had recommended the establishment

1. See, for example, the 8th Report from the Treasury and Civil Service Committee 1980-81 "Financing of the Nationalised Industries" HC 348; and the 3rd Report from the Transport Committee 1981-82 "The Form of the Nationalised Industries' Reports and Accounts" HC 390; as well as other reports on individual industries.

2. These doubts were given expression in the First Report from the Liaison Committee 1982-83 HC 92.

3. For a brief historical background on the Estimates Committee, see Chapter One. For a detailed account of the work of the Committee until 1965, see Nevil Johnson: Parliament and Administration: The Estimates Committee 1945-65 (Allen and Unwin, London, 1966).

of specialist Select Committees as a development upon the outdated Estimates Committee.¹

The Procedure Committee returned to the theme of the inadequacy of existing methods of ensuring the accountability of ministers for the financial aspects of their role responsibilities in its First Report for the 1968-69 session.²

The range and the terms of reference of the Estimates Committee are not wide enough: the recommendations of the ... 1964-65 Procedure Committee were never implemented. The manner in which specialist select committees has developed has given rise to problems ... Your Committee recommend that the Estimates Committee should be changed to a Select Committee on Expenditure.[3]

The Expenditure Committee and its sub-committees started work in 1970. This represented an important development in the creation of the new regime.

SEVEN: The Public Accounts Committee

This greatly respected and most potent aspect of the old regime of parliamentary scrutiny survived unscathed as the new regime began to take shape.

Traditionally chaired by a senior opposition MP with ministerial experience, the PAC annually examines senior figures from government departments on matters arising from the departmental accounts, which have been audited by the Comptroller and Auditor General (C & AG). The Committee aims to ensure that correct financial procedures have been followed,

1. Fourth Report from the Select Committee on Procedure 1964-65, HC 303.

2. First Report from the Select Committee on Procedure 1968-69, HC 410.

3. Ibid., paragraphs 30 and 32.

that funds have been properly safeguarded, and that proper regard has been given to the need for economy and the avoidance of waste.

As will be seen when the issue of sanctions is examined in Chapter Six, the major weakness of the PAC is that most of its work tends to be retrospective. Thus, although it may be possible for departments and individuals to learn lessons from past financial failings, publication of a PAC report is often akin to locking the stable door after the horse has bolted.

Nonetheless, it cannot be denied that the largely bi-partisan approach of the PAC, combined with the expert guidance which the Committee receives from the Exchequer and Audit Department, provides a high calibre of scrutiny.

For a minister, there is the knowledge that he might be called before the PAC to account for the conduct of his role responsibility as departmental manager.

As has been shown in Chapter Two, however, the uniqueness of this organ of scrutiny is that it can not only question ministers and senior civil servants, but it is the sole medium through which officials can be held directly accountable to Parliament in a legal and constitutional sense. The Accounting Officer of a government department (in almost every case, the Permanent Secretary) is the principal witness who appears on behalf of the department. Financial accountancy is seen as a specific aspect of the Permanent Secretary's role responsibility for departmental management.

Permanent Secretaries clearly feel the weight of this responsibility. One has described the "sharply interrogative" atmosphere which prevails at meetings of the PAC.¹ Another

1. Permanent Secretary, interviewed by the author, 9 December 1983.

placed the Exchequer and Audit Department top of a list of concerns which lingered at the back of his mind as he went about his daily work.¹ Every Permanent Secretary will prepare in great detail for an appearance before the PAC.

The Permanent Secretary ... will spend about three weeks concentrating solely on PAC work ... Such a concentrated dose of information relating to particular aspects of his Department's work can do no harm to any Permanent Secretary. Indeed, most of them believe that as a result they are better informed ... Occasionally such preparatory work takes the Permanent Secretary to sites of projects he would not otherwise visit, to meet members of his Department he would not otherwise have met.[2]

At the very end of our period of interest, in the last days of the 1982-83 session, the National Audit Act replaced the old Exchequer and Audit Department with a new National Audit Office. The Comptroller and Auditor General retained his title, became head of the new Office, and was recognised as an officer of the Commons. He was to be responsible to a new Public Accounts Commission, on which the chairman of the PAC would sit, ex officio.

We can now turn our attention to the operation of the new regime of parliamentary accountability.

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1. Sir Antony Part, former Permanent Secretary at the Department of Trade and Industry. Interviewed by the author, 12 April 1983.
 2. Vilma Flegman: Called to Account. The Public Accounts Committee of the House of Commons 1965-66 to 1977-78 (Gower, Westmead, 1980), pp.64-65.

CHAPTER FOUR: The New Regime of Parliamentary Accountability:
New Select Committees

During the period 1966-83 there were three distinct chronological phases in the development of the new Select Committees. Between 1966 and 1970 there was an experiment with "specialist" subject and departmental Committees. The years 1970 to 1979 saw the surviving Committees from the first phase working alongside the new Expenditure Committee. The last phase, 1979-83, witnessed the emergence of a rationalised "system" of fourteen, departmentally based Select Committees. Table 4.1 presents a complete list of the new Select Committees which operated within these three phases.

Examining the work of these Committees over a seventeen year period is an awesome task. This Chapter draws on the plethora of written comment and interpretation which has appeared on the Committees in recent years, on the major debates and procedural reports pertaining to the Committees, on Committee reports, and on the impressions of a number of Committee chairmen, ministers, civil servants, backbenchers and journalists as conveyed in interviews. Although the period 1966-79 has not been ignored, and many of the comments relating to the newest Committees apply equally to the pre-1979 bodies, most attention has been devoted to the post 1979 phase because of the clearer relationship which existed between the Select Committees and the work of particular departmental ministers and officials in these years.

Before focussing on the specific question of the effect which the Committees could be said to have had on the doctrine of individual ministerial responsibility, some general comments on their evolution would be appropriate.

TABLE 4.1

Select Committees of the New Regime, 1966-1983

1. 1966-70

1966-67
Agriculture
Science and Technology

1967-68
Agriculture
Science and Technology
Education and Science

1968-69
Agriculture
Science and Technology
Education and Science
Scottish Affairs
Overseas Aid and Development
Race Relations

1969-70
Science and Technology
Education and Science
Scottish Affairs
Overseas Aid and Development
Race Relations

2. 1970-79

Expenditure Committee
(Sub Committees: Defence and External Affairs; Environment;
Trade and Industry; Education, the Arts and the Home
Office; Social Services and Employment; General Sub
Committee)

Science and Technology

Overseas Development

Race Relations and Immigration

Education and Science (until 1971)

Scottish Affairs (until 1972)

3. 1979-83

Agriculture

Defence

Education, Science, and Arts

Employment

Energy

Environment

Foreign Affairs

Home Affairs

Industry and Trade

Scottish Affairs

Social Services

Transport

Treasury and Civil Service

Welsh Affairs

ONE: Evolution of the Modern System, 1966-79

At a glance, Table 4.1 conveys the impression of an un-coordinated, incomplete, Select Committee system in the early phases of the new regime. Indeed, "system" would seem to be something of a misnomer for the collection of committees which operated before 1979. The lack of coherence can be explained in part by the fact that the governments which introduced piecemeal reforms invariably adopted an ambivalent attitude towards the Select Committee genus.

... if there is a detectable pattern in the development of the select committee system up to 1979, it is of limited government initiatives, inspired by a variety of motives and often resembling pre-emptive strikes or trade-offs to secure net gains for ministers, followed by a more or less rapid loss of enthusiasm. [1]

These points notwithstanding, it is possible to discern some definite evolutionary trends during the 1966-79 period. These had clear implications for the committees' impact on the doctrine of individual ministerial responsibility. In broad terms, the evolution of the Select Committees before 1979 was characterised by:

- the early predominance, then waning, of the view that Select Committees should be concerned mainly with financial scrutiny;
- a gradual acceptance, in the light of the working of the committees, that they should be concerned in large measure with political/administrative scrutiny;
- continuing uncertainty about the proper role for the Select Committees with regard to legislation. By the

1. Priscilla Baines: "History and Rationale of the 1979 Reforms" in Gavin Drewry (ed): The New Select Committees. A Study of the 1979 Reforms (Clarendon, Oxford, 1985) p.33.

latter stages of this period, a preference had emerged for the view that the committees should have an indirect rather than a direct role in this sphere.

Let us examine these evolutionary trends in turn.

1. Bias Towards a Financial Role

The commitment of Harold Wilson's Labour Government to the cause of those we have described as the "liberal-democratic malcontents" (those who aimed at the introduction of structural reforms in order to enhance the Commons' power of scrutiny) was vague. Wilson's Stowmarket speech of July 1964 had argued the case for a Select Committee system, but no definite timetable for reform had been mentioned.

However, a growing concern had emerged among parliamentarians and academics alike about the ever-widening gap between the burgeoning state machine and the Commons' atrophying powers of scrutiny. The Fourth Report of the Procedure Committee in 1964-65 reflected this concern.¹ This Committee considered the need for an improvement in the provision of information to the House of Commons, for the purpose of allowing it to carry out its duty of examining government expenditure and administration. To this end, it recommended the establishment of specialist Select Committees as sub-committees of a new body developed from the Estimates Committee. The emphasis was quite firmly on financial scrutiny; the terms of reference would limit the committees primarily to examination of estimates and reports, and, in a more limited fashion, to the execution of departmental policy.

1. Fourth Report from the Select Committee on Procedure, HC 303 1964-65.

The debate on this report took place on 27 October 1965, and revealed quite deep differences among MPs about what were acceptable roles for Select Committees. The main recommendations of the Procedure Committee were not accepted by the House.¹

The setting up of the experimental specialist Select Committees from 1966 was hardly the result of a clearly conceived approach to the problem of scrutiny. The new Leader of the House, Richard Crossman, was personally sympathetic towards the concept of structural reform, but the committees which emerged were idiosyncratic. Some owed their existence to ministerial paternalism (for example, Race Relations and Immigration; Agriculture. Such paternalism did not save the latter when it attempted to travel abroad against the wishes of the minister!), some to the general political climate (the Scottish Affairs Committee) and some to a genuine concern for enhancing scrutiny of important areas of government work (Science and Technology; Overseas Aid and Development). All of the Committees needed to have their lives extended at the start of each new parliamentary session. While the Committees could use the precedent established by the Estimates Committee and the Nationalised Industries Committee, to hold public sessions, call ministers and civil servants as witnesses, and request departmental papers, they raised ministerial hackles when inquiring into the creation of policy, or stepping outside their vague terms of reference.

Government attitudes towards some of the new committees became distinctly and increasingly ambivalent, probably not helped by continuing and largely irrelevant arguments about the

1. HC Deb 5s 718 1964-65 c 172-296.

distinction between 'subject' and 'departmental' committees and about the extent to which committees should be allowed to consider 'policy'. [1]

By being required to focus primarily on financial scrutiny, the Select Committees were, in our terms, bringing ministers to account for their role responsibilities as policy leaders (insofar as this involved determination of spending priorities) and departmental managers. Civil servants were being brought to account for their role responsibilities as policy advisers, administrators of policy, and departmental managers. However, this scrutiny was extremely patchy. The volume of Select Committee activity increased during the period 1966-70, but the quality of scrutiny achieved was variable. There was, as yet, nothing resembling a rational attempt to bring about enhanced ministerial and civil service accountability to Parliament on a grand scale. Instead, as a contemporary commentator observed:

... the House finds itself saddled with an odd patchwork of committees of scrutiny. At least in the case of the three older committees (i.e. the PAC, Estimates Committee, Nationalised Industries Committee) there were certain unifying themes in their orders of reference and in the manner in which they interpreted these in practice... But there is no such coherence under the new dispensation, with a pattern of committees determined largely by political expediency and with the terms of reference so vague as to exclude in some cases any possibility of defining the committees with tolerable precision. [2]

The desire for a clearly defined role for Select Committees was strong, and the role which seemed most acceptable was that of financial scrutiny. In its First Report for

1. Priscilla Baines, op.cit., p.21.

2. Nevil Johnson: "Select Committees as Tools of Parliamentary Reform" in A. H. Hanson and Bernard Crick (eds): The Commons in Transition (Fontana, Glasgow, 1970), p.243.

the 1968-69 session, the Select Committee on Procedure returned to this theme.¹ The Committee saw the best system of expenditure scrutiny in terms of three elements: discussion of the government's expenditure strategy, examination of the means adopted to implement this strategy, and retrospective scrutiny of the results achieved, the value for money obtained.² The first element was felt to be fulfilled by means of the debate on the annual Expenditure White Paper, the third element by means of the work done by the PAC. The Committee felt, however, that a gap existed as far as the second element was concerned.

The existing system of select committees ... is at present inadequate... The range and the terms of reference of the Estimates Committee are not wide enough: the recommendations of the Fourth Report of the 1964-65 Procedure Committee were never implemented. The manner in which specialist select committees have developed has given rise to problems... Your Committee recommend that the Estimates Committee should be changed to a Select Committee on Expenditure. The Order of Reference of the Committee should be: 'To consider public expenditure and to examine the form of the papers relating to public expenditure presented to this House'.^[3]

A clearer statement of the primacy of the function of financial scrutiny at this time would be difficult to find. In outlining the tasks for the sub-committees of the new Expenditure Committee further credence was given to the view that the true role of the modern Select Committee was the oversight of expenditure projections, and the relation of

1. First Report from the Select Committee on Procedure HC.410 1968-69.

2. Ibid., paragraph 12.

3. Ibid., paragraphs 30 and 32.

ministerial objectives to actual results.¹

2. Move Towards a Role in Political/Administrative Scrutiny

The practical operation of the new Expenditure Committee was a severe disappointment. It had been intended that this body, and its constituent sub-committees, would undertake a detailed examination of expenditure programmes, and assess their objectives and results. Instead, the new arrangement tended to produce consideration of issues of national policy raised by the activities of the departments.² While this might be seen as a perfectly legitimate objective, it was not the one which had been laid down for the Expenditure Committee. In part, this drift towards issues of broad policy can be explained by the fact that the Expenditure Committee's "ideal" role was predicated upon a series of developments which did not work out as anticipated.

When the Procedure Committee reported it appeared that very rapid development was about to take place, both in the management processes of departments and in the availability of information about departmental policies and management. Fulton's accountable units would have produced a stream of new information about the effectiveness of departmental policies. Unfortunately, change was slow and patchy and most of the information never appeared. The Expenditure Committee could not fully carry out its terms of reference without these new forms of information.[3]

Instead, with the exception of the General Sub-Committee, the Expenditure Committee tended to focus on issues such as urban transport, police recruitment, accident and emergency services, and milk production. Within a relatively short

1. Ibid., paragraph 35.

2. See John Garnett's Memorandum to the Select Committee on Procedure, "Public Accountability, the Expenditure and Public Accounts Committees" Appendix 44, First Report from the Select Committee on Procedure HC 588 1977-78.

3. Ibid., paragraphs 8 and 9.

period it had become clear that,

... the Expenditure Committee has fallen considerably short of the role originally adumbrated for it in the reform argument.[1]

At the same time, some of the surviving Committees from the 1960s "experiment", such as the Select Committee on Science and Technology, were carving a definite niche for themselves as policy scrutineers.

By the time of the investigations and report of the 1977-78 Procedure Committee, the old emphasis on the need to concentrate mainly on financial scrutiny was on the wane. Indeed, a quite different trend was apparent in the words of the Report's introduction:

Although we have not sought to define the role of Parliament in the Constitution in rigid terms, there appear to us to be certain major tasks which the electorate expect their representatives to perform. These tasks overlap at many points, but fall into four main categories: legislation, the scrutiny of the activities of the Executive, the control of finance, and the redress of grievance. This Report is particularly concerned with the first two tasks, and with the changes in procedure and practice necessary to achieve their more effective performance...[2]

This seemed to indicate an acceptance of what had been happening over recent years: the increasing involvement of Select Committees in matters which touched upon the ministerial role responsibility for policy leadership per se and the civil service role responsibility for policy advice and the administration of policy.

Of course, this Report recommended the establishment of

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1. Paul Byrne: "The Expenditure Committee: A Preliminary Assessment", Parliamentary Affairs, Volume 27, Number 3, 1974, p.273.
 2. First Report from the Select Committee on Procedure HC 588 1977-78, paragraph 1.7.

the new Select Committees which came into operation in 1979. The Leader of the House of Commons, Norman St John-Stevvas, and a whole procession of MPs, hailed the introduction of these Committees as a significant step forward. Others were more circumspect, perhaps interpreting the shift in emphasis away from financial scrutiny as signifying failure to get to grips with the real issues.¹

The move away from emphasising the role of Select Committees as financial scrutineers, towards recognition of the possible value of a more general, political and administrative scrutiny, had its dangers. As the working of a few of the early experimental Committees had shown, broad terms of reference could lead to weak Committees. However, the shift in emphasis did hold out a tantalising promise; the Committees would be able to sort out their own priorities. The best of them would soon come to recognise something which the Study of Parliament Group had stressed in its evidence to the 1977-78 Procedure Committee - financial, political and administrative scrutiny are in fact interdependent.²

3. Uncertainty about a Legislative Role

Although there was never any attempt to bestow a definite legislative role on the new Select Committees which emerged between 1966 and 1979, there was a certain amount of debate

1. The contributions of people like Tony Benn and William Hamilton, in particular, emphasised the dangers of too much self-congratulation on the establishment of the new Committees. HC Deb 5s 969 1979-80.

2. Memorandum by the Academic Members of the Study of Parliament Group. First Report from the Select Committee on Procedure HC 588 1977-78, Appendix 1, Part III, paragraph 20.

about the possibility of doing so.¹ Some of the proposals referred to a system of legislative scrutiny which recalled the period in which the divide between Standing and Select Committees had been far less rigid than it was in the modern Parliament. The matter came to a head during the investigations conducted by the 1977-78 Procedure Committee. Three possible courses of action presented themselves for consideration in this context.

The first was the amalgamation of existing Standing and Select Committees into new permanent specialised legislative committees.

The second was the replacement of Standing Committees by Public Bill Committees which would be allowed to spend a limited amount of time in Select Committee form, taking evidence.

The third was to leave things as they were, maintaining the extant Select/Standing Committee divide.

In the end, the Procedure Committee chose to recommend the second option.² The new Conservative Government, while implementing most of the Committee's recommendations, took no immediate action in this area.

The thinking behind the Committee's rejection of the first option served, in effect, to dispel any lingering uncertainty about the role of Select Committees in the scrutiny of legislation. The minister's role responsibility as legislative pilot was not, therefore, of concern to the Select

1. See, in particular, the First Report from the Select Committee on Procedure HC 588 1977-78 Ch.2, and H. V. Wiseman: "Standing Committees" in Hanson and Crick (eds), op.cit.

2. First Report 1977-78 op.cit., paragraph 2.

Committees. This is not to say that the Committees would have no interest in legislation: legislative concerns could and would enter the picture when Committees were holding ministers to account for their role responsibility as policy leaders.

The period between 1966 and 1979 witnessed a definite shift in emphasis within what we might term Select Committee theory. There was a move away from an almost exclusive emphasis on the first role, financial scrutiny, towards a more balanced approach in which the Committees would be expected largely to settle on what they saw as the most equitable combination of financial and political/administrative scrutiny. As far as the third role, legislative scrutiny, was concerned, there had been a period of uncertainty about the proper place of Select Committees, before the conclusions of the 1977-78 Procedure Committee appeared to shut the door on any lingering hopes that they would be allocated direct participation in the legislative process.

What this meant was that as the 1979 reforms were introduced, Select Committees had developed a tantalizing array of roles and objectives. Committee members could, in theory at least, choose their order of priorities from the following:

- examination of estimates
- efficiency audits
- detailed studies of matters of current concern ('trouble-shooting')
- detailed studies of aspects of departmental work
- general oversight of the whole range of departmental work
- indirect participation in the legislative process.

When deciding on possible combinations of these roles, the Committee members would have in mind several general objectives, to which another order of priorities might be

attached:

- to air issues which might otherwise be neglected
- to make for a better informed and more effective House of Commons
- to have a direct impact on departmental thinking and action
- to stimulate and inform public opinion.

By 1979 these factors had helped to define the parameters of individual ministerial responsibility within the new regime of Select Committee scrutiny. The first three aspects of ministerial role responsibility (i.e. excluding the legislative pilot role) and all three aspects of civil service role responsibility came within the ambit of the Committees.

TWO: The 1979 Reforms

After years of discussion and debate, we are embarking upon a series of changes that could constitute the most important parliamentary reforms of the century... The proposals that the Government are placing before the House are intended to redress the balance of power to enable the House of Commons to do more effectively the job it has been elected to do... The objective of the new Committee structure will be to strengthen the accountability of Ministers to the House for the discharge of their responsibilities.[1]

Norman St John Stevas might have been lifting phrases directly from a dictionary of liberal-democratic constitutional hyperbole when he introduced the debate on the new Conservative Government's proposals for a system of Select Committees in June 1979. Strengthening the accountability of ministers to the House and redressing the constitutional balance of power by means of the most important parliamentary reforms of the twentieth century were tasks which could be tackled with alacrity by liberal-democrats.

1. HC Deb 5s 969 1979-80 c 35-44.

At last, it seemed that the long drift away from the constitutional idealism of the nineteenth century, towards the realpolitik of majoritarian government, was to be arrested. Or was it? Some doubts remained about the details and the broad thrust of the reforms.

As at the time of the 1970 reorganisation of the Select Committees, the government came in for some criticism for its failure to implement the recommendations of the Procedure Committee's report in toto.¹ No new powers were delegated to the Committees, no Commons time was formally allocated to debates on reports, no undertakings were given about the speed of government replies to reports, and only general promises were offered from the government benches regarding the attendance of ministerial witnesses and provision of information. Notwithstanding this, the atmosphere in 1979 was different in certain respects from that of 1970. In 1970 the machinations of the traditional power model could clearly be discerned (the executive succeeded in simultaneously limiting the size of the Expenditure Committee and reducing the number of specialist Committees). However, in 1979 a combination of factors served to confound the predictions of those sceptics who refused to believe that such a reform would ever be introduced. These included, inter alia; the timing of the Procedure Report's publication, the personal commitment of the new Leader of the House to the cause of reform, the existence of an all-party consensus on the need for structural reform of some description, and the ideological stance of the new

1. See David Judge: Backbench Specialisation in the House of Commons (Heinemann, London, 1981) pp.163-64 and Anne Davies: Reformed Select Committees, The First Year (Outer Circle Policy Unit, London, 1981), pp.6-11.

administration vis-à-vis the need to impose greater control over the state bureaucracy.

It seemed that the constitutional traditionalists had at last been routed. Michael Foot (in our terms, a liberal-democrat of the conservative variety)¹ as Leader of the House had been forced in the last stages of the previous Parliament to offer the concession of further discussions based on the 1977-78 Procedure Committee report.² One member of that Committee who had come to support the proposed reforms, albeit with strong reservations, was none other than Enoch Powell. He felt that the Expenditure Committee was carrying out investigations into the work of departments, under the guise of examining estimates and expenditure.

It seemed to me that the line of development had to be acknowledged. The establishment of departmental Select Committees was such a recognition.[3]

Recognising the inevitability of these developments was one thing, but Powell's views on the advent of the modern Select Committees in the 1960s remained clear:

It was wrong, but it was too difficult to explain that it was wrong.[4]

The expectations engendered in June 1979 stood in stark contrast to the views of the Walkland/Johnson school (that is, those liberal-democrats who had lost faith in internal structural reform, and now favoured external constitutional reforms).⁵ Walkland condemned what he saw as the attempt to

1. See Chapter Two.

2. See the debate of 19 and 20 February 1979, HC Deb 5s 963 1978-79.

3. Enoch Powell, interviewed by the author, 3 May 1983.

4. Ibid.

5. See Chapter Two.

prescribe

... more of the 1960s medicine instead of seeking a fresh diagnosis.[1]

He viewed the fact that the Committees had been established by a Conservative Government as ominous, and indicative of their probable weakness in the context of a polarised parliamentary environment. Nevil Johnson did at least give some recognition to the "sweeping" nature of the reorganisation which had taken place, and chose to reserve his judgement to some extent:

Only the experience of the years to come will tell us whether 1979 was a turning-point or just one more episode in a now familiar story.[2]

He was, nonetheless, inclined to believe that the experience of the years to come would show the reorganisation of the Select Committees to have been a largely cosmetic exercise.³

In the next part of this chapter it will be argued that the 1979 reforms were far from cosmetic, and did have important implications for the doctrine of individual ministerial responsibility.

THREE: The Committees and Individual Ministerial Responsibility

In order to reach some conclusions about the impact which the post 1979 system of Select Committees had on the doctrine of individual ministerial responsibility, we can look in turn

1. S. A. Walkland: "Whither the Commons?" in S. A. Walkland and Michael Ryle (eds): The Commons Today (Fontana, Glasgow, 1981), pp.300-301.

2. Nevil Johnson: "Select Committees as Tools of Parliamentary Reform: Some Further Reflections" in Walkland and Ryle, op.cit., p.233.

3. Ibid., pp.235-36.

at the quantity/breadth and quality/type of scrutiny offered by the Committees.

1. Quantity/Breadth of Scrutiny.

(a) Jurisdiction and powers.

The fourteen new Select Committees which were set up in 1979 established a broader range of scrutiny of government activities than had existed heretofore. Fourteen was the highest number of Committees which had operated concurrently since the inception of the new regime, as a glance at Table 4.1 will show. Furthermore, the post 1979 Committees, taken as a whole, were more clearly based on departments of state than their predecessors, some of which had been explicitly departmentally-related, while others were subject-related.

The description of the new organs as "departmental" Select Committees is not meant to convey the impression of a one-to-one ratio between Committees and departments of state. This could hardly be said to be the case when, for example, responsibility for scrutinising arts policy came within the jurisdiction of the Education Committee, while technical responsibility for "the arts" has for some time been located in an adjunct of the Home Office. Instead, what is meant by the description is that the emphasis of the new structure was towards departments rather than subject areas, with Committees monitoring anything from a single department to a group of departments. The public bodies associated with government departments were also to be subject to scrutiny by the Committees. This becomes particularly important when one considers the extremely wide range of interests within the Scottish Office and the Welsh Office. However, quite apart from the quangos and other organisations linked with these two Offices, a total of 228 public bodies were associated with

the departments to be monitored by the remaining twelve Committees.¹

Naturally, the most prominent members of the four Committees which had survived the reorganisation of 1970 but which were abolished in 1979 - the Nationalised Industries, Science and Technology, Overseas Development, and Race Relations Committees - were concerned lest the scrutiny function exercised in these areas be allowed to lapse and ministerial accountability be diluted. Some of these members sought assurances or announced their disappointments during the debate of 25 June.² However, there was to be no dilution of accountability.

Responsibility for scrutinising race relations issues was passed on to the new Home Affairs Committee, which was allowed to set up a sub-committee for this purpose.³ Overseas development matters were to be dealt with by a sub-committee of the Foreign Affairs Committee,⁴ while issues pertaining to science and technology could be scrutinised by the range of Committees in theory, but by the Energy and Education Committees in normal practice. The thorniest problem was presented by the nationalised industries. In an attempt to avoid allowing this huge policy area to go unmonitored, and to pacify the supporters of the long-standing Nationalised Industries Committee, an extraordinary step was taken. Allowance was made for a sub-committee, drawn from the membership of two or more of the

1. First Report from the Liaison Committee HC 92 1982-83 paragraph 26.

2. HC Deb 5s 1979-80. See especially c 100, c 142, c 159-60.

3. Standing Orders of the House of Commons, Public Business 1979. HC 266 1979-80 paragraph 86 A.

4. Ibid.

Energy, Environment, Industry and Trade, Scottish Affairs, Transport, and Treasury and Civil Service Committees to consider any matter affecting two or more nationalised industries.¹ This sub-committee was not convened in the period 1979-83, but the resulting gap in accountability was filled, in large measure, by the extant Committees.

The remit of the fourteen Committees was deliberately vague:

... to examine the expenditure, administration and policy of the principal government departments ... and associated public bodies ...[2]

Few could object to this implicit invitation to the Committees to define their own roles and objectives. However, objections were voiced at the time, and afterwards, to the failure on the part of the government to go beyond the traditional formulation of the powers of Select Committees to send for persons, papers and records.³ This is a matter to which we shall return.

In the most general terms, the expanded jurisdiction of the Committees from 1979 meant that the accountability of the executive to the House of Commons had been enhanced. More Committees covering more ground produced a quantitative increase in accountability. The breadth of scrutiny provided by the Committees was not, however, all-encompassing.

1. Ibid.

2. Ibid.

3. See, for example, the First Special Report from the Education, Science and Arts Committee, "The Provision of Information by Government Departments to Select Committees" HC 606 1979-80, and the Commons Debate on Select Committees (Powers) 16 January 1981 HC Deb 5s 996 1980-81.

(b) Exclusions and limitations.

While the hopes and expectations of liberal-democrats were raised in the early weeks of the first Thatcher administration by the changes in the Select Committee structure, the fact that the traditional power model still permeated the relationship between Commons and executive became apparent to those who chose to recognise the symptoms. Certain very important areas of government were not to be subject to scrutiny by the new Committees. Certain powers were withheld from the Committees.

To those liberal-democrats who adhered to the belief that structural change could bring about a real alteration in the balance of power between the Commons and the executive, these exclusions and limitations were unwelcome but not insurmountable obstacles. Edward du Cann's attitude was typical of that held by many of those who were going to work on the Committees:

What he [St John-Stevas] proposes is a first stage only, a beginning of the process of reform - no more and no less.[1]

The structuralists were looking to the medium to long term. On the other hand, as has already been indicated, those who eschewed the concept of structural change as a realistic means for altering the basis of the Commons-executive relationship, those who adhered to the Walkland/Johnson view saw the exclusions and limitations as confirmation of the accuracy of their interpretation.

The most significant areas of government which were not to be subject to scrutiny by the Committees were: the Lord Chancellor's Department, the Law Officers' Department, the Cabinet Office, the Public Records Office, the intelligence

1. HC Deb 5s 1979-80 c 58.

community, and Cabinet committees. The importance of these exclusions can be measured with reference to just one broad area. It has been estimated that the exclusion of the legal departments from the jurisdiction of the Home Affairs Committee (on the grounds that the independence of the judiciary might otherwise be jeopardised) meant, *inter alia*, that an annual sum of £360 million of public expenditure would go unexamined (except retrospectively by the PAC).¹ Ministerial accountability in this, and similar, spheres would continue to be serviced by the traditional forms of parliamentary scrutiny.

Major powers withheld from the Committees included: the right to compel ministers to attend and give evidence before them, the right to order the production of papers and records by ministers, the right to have a regular slot in the parliamentary timetable set aside for debating Select Committee reports (all of these had been specifically recommended by the Procedure Committee) and the right to examine the basis of unpublished advice given to ministers by such bodies as the Central Policy Review Staff.

(c) Ministers and civil servants questioned.

Despite these exclusions and limitations, there can be no doubt that, in terms of sheer quantity and breadth of scrutiny, the post 1979 Committees brought about an improvement in accountability. This statement can be justified not merely with reference to the numbers of departments and areas of government covered by the Committees, but also by looking at the numbers of ministers and civil servants who appeared before

1. First Report from the Liaison Committee, op.cit., paragraph 24.

the Committees to be questioned about aspects of their role responsibilities.

Table 4.2 presents a breakdown of ministerial and civil service witnesses who appeared before the Committees between 1979 and 1983.

TABLE 4.2

Number of Departmental Witnesses, 1979-83

<u>Committee</u>	<u>Ministers</u>	<u>Civil Servants</u>
Agriculture	2	64
Defence	6	310
Education, Science, Arts	25	103
Employment	15	33
Energy	8	55
Environment	7	36
Foreign Affairs	18	136
Home Affairs	15	133
Scottish Affairs	13	61
Social Services	13	56
Trade and Industry	14	51
Transport	6	58
Treasury and Civil Service	12	153
Welsh Affairs	7	63
	<hr/>	<hr/>
TOTAL	161	1312

Source: Figures compiled from information given by John Biffen Leader of the House of Commons, in a written answer, HC Deb 6s 46 1983-84 c 637-643.

These figures do not account for repeated appearances by ministers and civil servants before the same Committee during the same parliamentary session. If such appearances are taken into consideration, the total for ministers reads 230, and that for civil servants 1779.

The record of the post 1979 Committees in this respect was undoubtedly better than that of their predecessors. One example should suffice in order to establish the general point that scrutiny was enhanced quantitatively. Between 1967 and 1979 (a total of thirteen parliamentary sessions) the various Education Committees brought 4 ministers and 82 civil servants to account for their role responsibilities. Between 1979 and

1983 (four parliamentary sessions) the Education, Science and Arts Committee examined 25 ministerial and 103 civil service witnesses.¹

2. Quality/Type of Scrutiny.

(a) Some determinants of Select Committee effectiveness.

An examination of the performance of the post 1979 Select Committee system taken as a whole, and the performance of individual Committees, reveals a certain patchiness. Some Committees were clearly more efficient and effective than others in bringing ministers and civil servants to account for their role responsibilities. Departmental witnesses were less likely to be called by, for example, the Environment Committee than the Education Committee (and more likely to be given a "comfortable ride" when they were called!) More than this, some Committees performed more efficiently and effectively over certain periods of time than over others.

The major determinants of Committee effectiveness can be divided into two general categories. The first includes those factors which were internal, in the sense that the Committees had some control over them. The other category includes those which were external, and over which the Committees had less control.

Under the first general category, a significant factor which helped determine the quality of scrutiny provided was the calibre of chairmen. This was a vital, but variable aspect of Select Committee work. Christopher Price can be cited as an example of a highly motivated, energetic chairman of the Education, Science and Arts Committee. One observer of

1. Figures for the 1967-79 period derived from a study of Committee reports over that time.

the Committees has commented on the vital importance of a good chairman:

He is required to put in far more time than the other members and takes a major role in the selection of advisors, appointment of staff, liaison with the clerk to the committee and the drafting of reports. During the Select Committee meeting he must organise proceedings so that a maximum amount of information can be obtained from witnesses in relatively short spaces of time... In some committees there are tendencies for chairmen to lose direction, to be too tolerant of undisciplined questioning from members, or to make long speeches from the chair rather than to get on with the questioning.[1]

An indication of the inherently unstable nature of even the most effective chairmanship came when Price lost his seat at the June 1983 General Election!

A second internal factor was the attendance by members, and membership turnover. It seems obvious that those Committees with good attendance levels and low membership turnovers would fare better in terms of their work as a coherent team than those in which the obverse was true. With respect to turnover, it can surely be no coincidence that a Committee with one of the least favourable reputations, the Environment Committee, had the second highest membership turnover, 1979-83 (66%).²

The nature of the members themselves leads us to the third internal factor. In some cases they were able to avoid displays of destructive partisanship, in others the temptation became too great. Frank Hooley, chairman of the Overseas Development sub-committee of the Foreign Affairs Committee, has commented that the effect of working for six

1. Anne Davies, op.cit., p.30.

2. Dermot Englefield (ed): Commons Select Committees. Catalysts for Progress? (Longman, London, 1984)
Appendix 5.

months or so on a specialised topic was generally to produce a situation in which the vast majority of Committee members agreed on the basic issues.¹ Some critics argued that this could only happen when the Committees avoided politically contentious issues, but Renee Short, chairman of the Social Services Committee, denied this, arguing that "political sex appeal" was vital in any inquiry.² Political divisions need not be destructive, but their precise manifestations could affect both the type and effectiveness of scrutiny imposed by the Committees. Failure on the part of a Committee to achieve a reasonable measure of agreement among its members about the motivation behind a particular inquiry could be disastrous. For example, during an evidence session of the Welsh Affairs Committee, Sir Anthony Meyer, a Conservative, protested about the "sterile" questioning of the Secretary of State, thus undermining the authority of the Committee and its inquiry.³

If the control and channelling of partisanship can be seen as a determinant of Committee effectiveness, so too can the ability of Committee members to build suitable working relationships with their departments.

Those Committees which managed to do this did reap benefits, which served to differentiate them from other, less effective, Committees. One chairman spoke about the advantages of a good relationship between Committee and department:

1. Frank Hooley, interviewed by the author, 14 March 1983.

2. Renee Short, interviewed by the author, 3 February 1983.

3. Example cited by Anne Davies, op.cit., p.32.

I can 'phone up the department and speak to an official and get information. Sometimes 'off the record', but still he does it, because of his experiences with the Committee. This would not have happened in the past.[1]

Richard Norton-Taylor, of The Guardian, compared the relationship between Committees and departments with that between getting too close, and "going native" on the one hand, and retaining too much distance with consequent loss of understanding on the other.²

The second general category encompasses those factors external to the Committees. Within this, the size and nature of the department monitored by a given Committee could be an important determinant of effectiveness. The performance of those Committees covering huge departments of state, or departments with an extremely diverse range of activities, was affected by certain limitations which did not apply to other Committees. The difficulties which confronted any body trying to monitor the work of the sprawling Department of the Environment, or even the multifarious Scottish Office, were of a different order from those facing, for example, another body monitoring the MAFF or Department of Transport.

Another factor which lay outwith the control of the Committees was the relative importance of a minister and his department to the overall strategy of the government. Part of the explanation for Michael Heseltine's almost cavalier treatment of the Environment Committee, particularly over the issue of council house sales, might have been connected with this. The importance of ministers and departments may, of course,

1. Renee Short, interview, op.cit.

2. Richard Norton-Taylor, interviewed by the author, 24 April 1983.

vary from time to time in the course of a government's term. Reshuffles, sackings, resignations, and shifts in policy emphasis are likely to affect the work of Committees to a greater or lesser extent. Heseltine himself was moved from Environment to Defence towards the end of the first Thatcher administration. Part of the reason for this was without doubt the effective completion of the government's strategy on council housing and the emergence of new challenges at the MoD.

A third factor in this category was staffing. Despite an increase in the size of the Committee Office permanent staff in accordance with the proposals of the Liaison Committee,¹ this remained a bone of contention between the Committees and the government. At the outset of the 1979-83 Parliament, staffing levels were at the minimum recommended by the 1977-78 Procedure Committee, and the increase left staffing at a "modest" level.² While Committee members may have been satisfied with general access to temporary specialist advice,³ there were complaints about the unfair burden imposed on the relatively small number (83) of clerks, assistants, and secretaries. This could have had an effect on the amount, type, and effectiveness of the work done by the Committees.

The final, and most important, external factor related to the constitutional powers of the Committees. Ministerial and civil service accountability ultimately hinged on the ability of Select Committees to guarantee personal appearances by departmental witnesses and the submission of important departmental documents.

1. First Report from the Liaison Committee, op.cit., paragraph 66.

2. Ibid., paragraph 68.

3. The evidence of the Liaison Committee Report, op.cit., and the views of a small number of Select Committee members interviewed suggested that this was the case.

As far as the power to send for persons was concerned, the Committees got off to a very bad start. Norman St John-Stevás had given a pledge that ministers would do all in their power to cooperate with the Committees by appearing before them, and providing them with all the information they needed.¹ However, the memory of Harold Wilson and Harold Lever defying the old Trade and Industry sub-committee of the Expenditure Committee remained vivid. Wilson had been playing a game of constitutional bluff when he refused to allow Lever, the Chancellor of the Duchy of Lancaster, to be questioned about aspects of the Chrysler rescue operation in 1975. The odds were, nonetheless, stacked against the Committee. Technically, it could have demanded to see Lever, but if he had continually refused to appear, the only recourse left to the Committee would have been for it to refer the matter to the House as a whole, where after a lengthy procedure of investigation, a vote would have been taken. This would, in all likelihood, have been won by a government determined enough to have its own way. The lasting memory of the Lever case was that of a Select Committee being forced to back down by a government. When, therefore, in the first session during which the new Select Committees operated, the Home Affairs sub-committee invited a Law Officer to appear before it to discuss the proposed new immigration rules, and he refused, it seemed as if the precedent set in the Lever case was being followed.² When the Committee decided against pressing the matter, this impression was compounded.

However, the operation of the Committees thereafter gave

1. HC Deb 5s 969 1979-80 c 45-46.

2. Case cited by Anne Davies, op.cit., p.11.

no indication that this was a problem. It is interesting to note that the Commons debate on Select Committee powers in January 1981 focussed on the need to allow time on the floor of the House for debates on ministerial refusals to produce papers rather than on the refusal of ministers to appear before Committees.¹ Refusals to attend caused fewer problems for the Committees than might have been anticipated, and did not adversely affect their operation.

Sir Robert Armstrong, the Cabinet Secretary, did refuse to appear before the Education Committee, causing Christopher Price and his colleagues to prepare themselves for

... a gentle skirmish around the edges of the delicate constitutional relationship between parliamentary committees and the executive.[2]

The Committee eventually settled for a compromise whereby two junior officials from the Cabinet Office were allowed to attend to give evidence. The Education Committee had pushed the constitutional parameters to their outer limits and established how far the Select Committees could go in their attempts to overcome limitations on their powers.

Information is the life-blood of Select Committees. Without being able to see papers, or at least to demand pertinent facts from ministers and officials, they become isolated from the realities of the Whitehall village, and even with the aid of specialist advice may be unable to bring about genuine and meaningful accountability of ministers and civil

1. HC Deb 5s 996 1980-81 c 1262-1324.

2. Christopher Price: "Diary", New Statesman, Volume 105, Number 2719, 29 April 1983, p.18. Sir Robert Armstrong did appear before the Treasury and Civil Service Committee in January 1980, becoming only the second Cabinet Secretary ever to appear before a Commons Select Committee.

servants for their role responsibilities. The limitations which were placed on the power of Committees to obtain such information had the effect of leaving them dependent on departmental good will. Just as assurances and pledges were given to the effect that departmental witnesses would appear when requested to do so, promises of cooperation with respect to the production of papers and documents were forthcoming from Norman St John-Stevs in 1979.¹

Numerous examples could be selected to show how departmental good will did not always survive the course of a Committee investigation. During its inquiry into the government's monetary strategy,² the Treasury and Civil Service Committee met with refusals from the Chancellor, Sir Geoffrey Howe, to provide information about the assumptions which underpinned the policy on inflation. The Secretary of State for the Environment, Michael Heseltine, refused to supply the Environment Committee with the figures relating to, or the reasoning behind, the breakdown of future housing expenditure.³

These instances were indicative of a general problem. Nonetheless, on occasions a Committee's perseverance would be rewarded. In the course of its investigation into the corporate plan of the Manpower Services Commission,⁴ the Employment Committee naturally asked the MSC chairman for

1. HC Deb 5s 969 1979-80.

2. Published as the Third Report from the Treasury and Civil Service Committee HC 163 1980-81.

3. See the Third Report from the Environment Committee HC 383 1980-81.

4. Published as the Third Report from the Employment Committee HC 195 1981-82.

details of the plan. When he refused to do this, on the grounds of confidentiality, the Committee threatened to take the matter before the House of Commons. A copy of the plan was then supplied to the Committee.¹

The cumulative effect of the cases where Committees were either totally stonewalled or had to push very hard in order to gain access to information, was the revelation of a major weakness in the standing of the Committees. Whether or not they actually received the necessary information was due in large measure to the relative strength of determination of ministers and Committee members. There were few clear rules about the types of information which were "out of bounds"; departmental discretion was the key.

When the government announced that it proposed to increase the fees paid by overseas students at UK universities, two Select Committees showed an interest, for different reasons. The Foreign Affairs Overseas Development sub-committee and the Education Committee launched separate investigations. Each was, however, concerned about whether there had been much inter-departmental discussion on the new proposals between the DES and the Foreign Office. The cold hand of constitutional traditionalism made itself felt in the form of a closing of ministerial ranks against the Committees. Education Under Secretary of State Rhodes Boyson refused to answer questions put to him by the Foreign Affairs sub-committee about inter-departmental consultations.² The Secretary of State for Education, Mark Carlisle, replied to a question put to him by the Education Committee chairman on the same matter in this

1. See The Guardian, 29 and 30 January 1980, and James Michael: The Politics of Secrecy (Penguin, Harmondsworth, 1982), p.67.

2. Third Report from the Foreign Affairs Committee HC 553 1979-80 paragraphs 371-374.

way:

I think there is very little I can say on this, except to say that our relationships with the Foreign Office are good. We are in contact with them and decisions of these matter (sic) are, as I tried to indicate, cabinet and governmental decisions in which the Secretaries of State of both departments are concerned ... the Government takes the view that just as Select Committees are not able to know what advice officials give to individual ministers, but ministers must be responsible for what actions they take, equally, we would be wrong to give evidence as to inter-departmental advice.[1]

These ministers were, in effect, refusing to account for their role responsibilities as policy leaders and departmental ambassadors. Both Committees responded to the attempt to prevent them from gaining access to what they regarded as important information. The Foreign Affairs Committee criticised the government in its report.² The Education Committee issued a special report on "The Provision Of Information By Government Departments To Select Committees".³ The government's reply to the latter totally rejected the arguments of the Education Committee.⁴

This experience led Christopher Price to table a motion which aimed at amending Standing Orders in order to allow Committee chairmen to ask the Commons to compel ministers to produce information, papers or records which had been requested.⁵

1. First Report from the Education, Science and Arts Committee HC 363 1979-80.

2. Third Report from the Foreign Affairs Committee, op.cit.

3. First Special Report from the Education, Science and Arts Committee HC 606 1979-80.

4. Cmnd 7982.

5. HC Deb 5s 996 1980-81 c 1262-1324.

Why do we need this measure?... Select Committees are eunuchs without this sanction. There is no point in having a power without a sanction.[1]

The sanction was not to be forthcoming, however, and that debate ended with another assurance of cooperation from another Leader of the House.² Christopher Price noticed no change in the provision of basic factual appendices and raw materials to Committees after the debate.

Although we have had more material from our department, it is not the stuff we want.[3]

In their quest for access to information, the Select Committees also embarked upon a long-running attempt to secure a right to see the unpublished work of the Central Policy Review Staff. This would have opened up a further area of the ministerial role as policy leader to Committee scrutiny. The Liaison Committee recommended that the CPRS should inform the relevant Committees of the conclusions reached in the course of investigations, and should be allowed to make evidence available to the Committees.⁴ The government rejected these recommendations. John Biffen, Leader of the House, stated that CPRS reports were

... in the nature of confidential advice to ministers.[5]

One of the first acts of the Conservative government following its re-election in June 1983 was the abolition of the CPRS. Thereafter, the propensity of the Prime Minister

1. Ibid., c 1266-67.

2. Ibid., c 1312-14

3. Christopher Price, interviewed by the author, 3 May 1983.

4. First Report from the Liaison Committee, op.cit., paragraph 50.

5. Quoted in The Guardian, 17 May 1983.

and her colleagues towards reliance on a small band of policy advisers, already in evidence, became more marked. The advice given by these people, and ministerial reactions to such advice, would remain beyond the reach of the Select Committees.

(b) Impact on ministers and civil servants.

It has been shown that the quality of scrutiny provided by the Select Committees, en bloc and individually, was determined by the calibre of chairmen, membership attendance and turnover, partisanship, size, nature and relative political importance of departments monitored, staffing, and access to personnel and documents. Bearing these variables in mind, what impact did the Committees have on ministers and civil servants?

i. Ministers

One Way of judging the effectiveness of Select Committee scrutiny on ministers would be to examine the extent to which ministerial thoughts and actions were influenced by the Committees. If a minister changed his policy or departmental procedures as a result of Committee scrutiny, we could say that, in one sense, ministerial accountability for the role responsibilities as policy leader and departmental manager, had been enhanced. By responding to Committee recommendations, the minister would, in a very real sense, be demonstrating his accountability to Parliament. In pursuing this line of thought, we are, of course, entering the grey area of the indefinable, although one important (but not infallible) test can be brought to bear.

This involves examining the numbers of recommendations made by Committees in their substantive reports, which were subsequently taken up by ministers.

Two good examples of Committee work which was successful in this respect were the report of the Education, Science and Arts Committee on "The Funding And Organisation of Courses in Higher Education"¹ and that of the Social Services Committee on "Perinatal and Neonatal Mortality".²

The former contained 46 recommendations. The response of the DES was comprehensive;³ an immediate verdict was given on all recommendations which could be treated separately from those which focussed on or derived from the recommendations for the establishment of a Committee for colleges and polytechnics. The latter group of recommendations were to be given further consideration. The responses to the individual recommendations can be broken down into categories as follows: those which were accepted (7); those for which plans existed for implementation or which were already being implemented (7); and those which were "noted" or on which judgement was reserved (24); and those which were rejected (8).

Clearly, a substantial number of recommendations were to be given further consideration, but it must be taken as a measure of the success of this report that only eight, or 17.4% of the total, recommendations were rejected.

The massive report from the Social Services Committee into the relatively high rates of perinatal and neonatal mortality in England and Wales made 152 recommendations. Again, the ministerial response was considered and comprehensive.⁴ While the minister saw the great majority of the

1. Fifth Report from the Education, Science and Arts Committee HC 787 1979-80.

2. Second Report from the Social Services Committee HC 663 1979-80.

3. See "Initial Government Observations on the Fifth Report from the Education, Science and Arts Committee" Cmnd 8139.

4. Contained in "DHSS Reply to the Second Report from the Social Services Committee" Cmnd 8084.

recommendations as falling to health authorities and professional bodies, he undertook to send a Health Circular to the authorities and to write to the professionals, drawing particular attention to recommendations which concerned them.¹ Of the "more than forty"² recommendations which the DHSS did see as falling to it, over two-thirds were either accepted or given further consideration.

Renee Short, chairman of the Social Services Committee, was certain that this report had a definite impact on the Health minister. Norman Fowler could "... no longer get away with waffling" when questioned about these death rates and the reasons for them.³

Other examples of Committee work can be cited to show how reports have totally failed to make any impression on departmental thinking and action.

The Social Services Committee may have been successful with regards to this objective in the example given above, but, as with other Committees, it encountered ministerial obstinacy on occasions. The First Special Report from the Committee in the 1980-81 session⁴ contained a letter from the Secretary of State in response to the Committee's report on the proposed redistribution of maternity benefits.⁵ Patrick Jenkin expressed "sympathy" with the recommendations of the Committee, but conceded nothing.

The Home Affairs Committee issued a report in order to

1. Ibid., p.2.

2. Ibid.

3. Renee Short, interview, op.cit.

4. First Special Report from the Social Services Committee HC 172 1980-81.

5. First Report from the Social Services Committee, HC 85 1980-81.

stress the fact that the government's proposed new immigration rules would infringe the European Convention on Human Rights,¹ but the government went ahead with the rules because this was a matter of political principle.

Few ministerial responses to Committee reports can have been as scathing as that issued by the Environment Secretary to the Second Report from the Environment Committee for the 1980-81 session. The subject of the report was council house sales.² The reply not only rejected all the major recommendations made by the Committee, it also sought to undermine the very basis of the report, and attacked the methods employed by the Committee.³ The dismissive manner of the reply was as striking as the fact of the rejection of the recommendations.

Another piece of Committee work which challenged not simply one of the central planks of government policy, but the pivot around which all other policy revolved, was the Third Report from the Treasury and Civil Service Committee in the 1980-81 session. This was an investigation of monetary policy.⁴ This was officially ignored; no Treasury reply was published. The failure to respond to such an authoritative collection of evidence (the report came to be viewed almost as a text on the subject of monetarism) might be seen as indicative of the limitations of Select Committee scrutiny.

1. First Report from the Home Affairs Committee HC 434 1979-80.

2. Second Report from the Environment Committee HC 366 1980-81.

3. "Government Response to the Second Report from the Environment Committee" Cmnd 8377.

4. Third Report from the Treasury and Civil Service Committee HC 163 1980-81.

While most reports after 1979 stimulated speedy and considered replies¹ and in so doing engendered something of a give and take relationship between ministers and Committees, some reports were rejected either overtly or by implication.

It would be wrong, however, to judge the effectiveness of the Committees as scrutineers of ministers solely in terms of ministerial reactions to reports. Obvious qualifications must be attached to the use of such reactions as criteria for judging the quality of Committee scrutiny. First, even when recommendations were apparently accepted or acted upon, it may be very difficult to ascertain whether this was because the minister had accepted the advice of the Committee, or because a decision had already been taken in isolation from anything the Committee had done. Secondly, when recommendations were rejected, this need not have been the end of the story. A minister may have had cause to rethink the issue at a later date, when the views of the Committee may have been seen in a different light. For example, as the Liaison Committee was quick to point out,² the initial report from the Industry and Trade Committee on Concord³ received a cold response from the minister, but within eighteen months departmental policy had changed in accordance with the Committee's proposals. Thirdly, Committees may have had an influence on ministerial thinking and action other than through the process of forcing responses

1. See First Report from the Liaison Committee, op.cit., paragraph 9.

2. Ibid., paragraph 13.

3. Second Report from the Industry and Trade Committee HC 265 1980-81.

to recommendations. Indeed, it might be argued that true accountability of ministers for their role responsibilities can best be judged with reference to the discipline which the Committees imposed. John Biffen, the Leader of the House of Commons, gave expression to this.

... the effect of the committees is not confined to the enquiries which they actually undertake. Every minister ... now knows that there exists a constitutional machinery whereby he may at any time be required to give oral and written evidence in depth and on the public record, on any matter within his public responsibility.[1]

John Golding, the chairman of the Employment Committee, made a similar point, when castigating the over-concentration on Committee reports.

I hope that the Select Committees will not be judged by their reports. The report is often the least significant part of a Select Committee's work, given the divergence of political opinion, because sometimes one does not have sufficient evidence on which to make firm policy judgements. The report cannot be as substantial as the most important element of the work, which is the examination of witnesses.[2]

Regular appearances by ministers before Select Committee (there were, it will be recalled, a cumulative total of 230 such appearances between 1979 and 1983) provided unrivalled opportunities for close scrutiny of ministers. After 1979, scrutiny by Committee became, to a greater extent than ever before, a fact of ministerial life. For some ministers, these appearances were simply another parliamentary duty, to be taken in their stride. Alex Fletcher, who appeared before the Scottish Affairs Committee in his capacity as Parliamentary

1. John Biffen: "The Government's View" in Dermot Englefield op.cit., p.6.

2. HC Deb 5s 996 1980-81 c 1300.

Under Secretary of State in the Scottish Office, has commented that,

I wasn't in fear of the Committee. I rather enjoyed the sessions, with the cut and thrust of debate.[1]

A much more serious view was taken by another Scottish Office minister, Malcolm Rifkind (Parliamentary Under Secretary of State, 1979-82, then Foreign Office PUSS). He felt that the Select Committee

... concentrated the mind wonderfully. Committee scrutiny is detailed. Ministers are obliged to go back to first principles, to examine the reasoning behind a policy. This is done from time to time anyway, but if the Committee is investigating a certain policy, then another 'prod' exists.[2]

A Committee hearing was seen as a unique event:

It is the only occasion when ministers will be questioned in detail: this intimidates and stimulates.[3]

An indication of the sort of pressure which could be brought to bear on ministers appearing before Select Committees comes from the comments of John Golding. As chairman of the Employment Committee, he did not supply advance notice of questions to ministers. Then, in the course of the hearing:

Members continue their questioning to the bitter end. It remains my practice not to chop off questioning until each member has asked all the questions that he wants... I believe full questioning of witnesses to be very important, because as a minister I found question time in the Commons so easy to deal with... I decided that as a select committee Chairman it was very important that questioning should be very

1. Alex Fletcher, interviewed by the author, 23 January 1983.

2. Malcolm Rifkind, interviewed by the author, 24 August 1983.

3. Ibid.

different from questionning in the House. One should not go round a table asking members to ask a single question; one should make certain that the individual members are able to thoroughly cross-examine the ministers ...[1]

Given this sort of approach, it is not surprising that most ministers should view the prospect of a Committee appearance with some concern. Lynda Chalker, Parliamentary Under Secretary of State at both the DHSS and the Department of Transport during the 1979-83 parliament, described the effect Select Committees had on her in terms of the enforced exhaustive preparatory work involved. Hours of preparation went into every appearance before Committee simply because,

... everyone on the Committee is an embryo minister certain that things could and should be done differently.[2]

According to Mrs Chalker, one of the consequences of this was to make for increased ministerial assiduousness in relation to the departmental manager role. The minister has an opportunity to find out things about departmental routines and procedures which might otherwise have been missed.

One disappointing aspect of the work of the Select Committees after 1979 was the fact that they tended to operate in relative isolation from the other, traditional methods of parliamentary scrutiny. Ministers were, without doubt, more accountable for the conduct of their role responsibilities as a result of the operation of the Committees. However, one might have expected this accountability to have been further enhanced through the emergence of a better-informed and more effective House of Commons, consequential upon Select Committee work.

1. John Golding: "The Chairman's View - 2" in Dermot Englefield, op.cit., pp.30-31.

2. Lynda Chalker, interviewed by the author, 26 April 1983.

The Procedure Committee of 1977-78 had recommended that eight Mondays in every session should be reserved for debates on Select Committee reports. As Leader of the House, Norman St John-Stevas felt unable to accept this, but did agree that such debates should be given "increased priority".¹ In practice, during the period 1979-83 only six of the reports which were produced by the fourteen Committees were the subject of substantive debate.² This amounted to only 3% of the total number of reports produced, and was a considerably lower number and percentage than that for equivalent periods in previous parliaments.³

The use made of reports by MPs in the course of ordinary debates is less easily measured. Edward du Cann, chairman of the Treasury and Civil Service Committee (and of the Liaison Committee) has claimed that the impact of the Committees in this respect was quite significant.

Some argue that it is a pity that there should have been so few debates specifically on select committee reports... However, to a greater or less (sic) extent some 30 recent select committee

1. HC Deb 5s 969 1979-80 c 222.

2. These were:

- a Second Report from the Home Affairs Committee 1979-80 (Race Relations and the 'Sus' Law).
- b Second Report from the Social Services Committee 1979-80 (Perinatal and Neonatal Mortality).
- c Fourth Report from the Social Services Committee 1980-81 (Medical Education).
- d First Report from the Welsh Affairs Committee 1979-80 (Developing Employment Opportunities in Wales).
- e First Report from the Energy Committee 1980-81 (Nuclear Power Programme).
- f First Report from the Agriculture Committee 1980-81 (Animal Welfare).

Source: Dermot Englefield, op.cit., Appendix 5.

3. First Report from the Liaison Committee, op.cit., paragraph 64.

reports have been relevant to debates in the House; in particular, every Treasury Committee report has had copious references in subsequent debates... I believe that the record I give of general influence is far more important than the allocation of specific days.[1]

It is certainly true that some reports provided useful ammunition for MPs wishing to call ministers to account for their role responsibilities, especially as policy leader.

Frank Hooley, a prominent member of the Foreign Affairs Committee (and chairman of its Overseas Development sub-committee) placed the Committee's work on the Canadian constitution ("British North America Acts: the Role of Parliament")² at the top of a list of reports which he felt had been effective in one way or another.³ He was not alone in claiming that these reports (whose very title suggested that their main objective was to make for a better informed Commons) were instrumental in affecting MPs attitudes during the long-running saga of the constitution's "repatriation"; this was widely acknowledged.⁴

In another case, however, where again the work of the Committee had as a prime objective the task of informing the House of Commons, and by implication making it more effective as an agent of accountability, the result was disappointing. In the course of a broad, long-term inquiry into the consequences of the Soviet invasion of Afghanistan for British policy (published as the Fifth Report for 1979-80),⁵ the

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1. Edward du Cann: "The Chairman's View -3" in Demot Englefield, op.cit., p.38.
 2. First Report from the Foreign Affairs Committee HC 42 1980-81, and First Report Report HC 128 1981-82.
 3. Frank Hooley, interview, op.cit.
 4. See, for example, the First Report from the Liaison Committee, op.cit., paragraph 11.
 5. Fifth Report from the Foreign Affairs Committee HC 745 1979-80.

Committee had been taking evidence on the subject of the proposed boycott of the 1980 Moscow Olympics by British athletes. In view of the intention of the Commons to debate this matter, the Committee changed its plans, and published the evidence, together with its own conclusions and recommendations, as a separate report.¹ This was done at fairly short notice, and was clearly intended to provide MPs taking part in the debate with information which would aid them in bringing ministers to account. The Committee chairman, Sir Anthony Kershaw, praised "the clerks, the advisers and the printers" for working "like Trojans" to get the report out in time for the debate.²

The debate took place on 17 March 1980, and lasted over six hours. The report was mentioned (only briefly in each case) by five speakers, two of whom were front benchers scoring party political points off each other based on the divisions within the Committee (Sir Ian Gilmour and Peter Shore), two of whom were Committee members (Kershaw and Kevin McNamara). The other speaker was Denis Howell. Of course, the fact that the Committee was divided on the subject might have been taken by some MPs as an indication of the report's intrinsic lack of merit. However, it might reasonably be asked why more use was not made of the evidence, taken in isolation from the Committee's conclusions and recommendations. Another possible explanation would be that, in spite of the efforts of the Committee and its staff, the report was not ready in time for a significant number of MPs to have read it. Presumably, the Committee members would have denied this, but even if such an explanation is accepted, it does not account for the fact that

1. First Report from the Foreign Affairs Committee HC 490 1979-80.

2. HC Deb 5s 981 1979-80 c 136.

the report was referred to by no MPs at all during two subsequent debates which took place on the same subject within a short period of time. These were the Adjournment Debates of 27 March and 21 April, before each of which there should have been ample time for the report to be considered and digested. Naturally, there is no way of measuring the extent to which MPs contributions in each of these debates were informed by the report, although the latter was not directly referred to. However, the evidence on direct references is conclusive.

There is no reason to suppose that the experience of the Foreign Affairs Committee in respect of these two investigations was not replicated across the range of Committees. Occasionally, a report would provide a significant source of information which could be utilised by MPs seeking to call ministers to account for their role responsibilities in a debate or series of debates, as the reports on the Canadian constitution did. At other times, even when a great effort had been made to ensure that a report was available for consultation before a debate, the results would be disappointing. One way of improving the chances of reports being used during debates was, according to the Liaison Committee, reasonably successful, although it occasionally came up against the inexorable operation of the traditional power model:

The practice we have encouraged of placing 'tags' on the Order Paper - an italicised reminder to Members that a particular committee report is relevant to an item on the day's business - has, we think, been a help ... On rare occasions the Whips have been unwilling to allow the 'tags' to appear.[1]

1. First Report from the Liaison Committee, op.cit., paragraphs 61-62.

An evaluation of the extent to which the work of the Committees was useful to MPs when questioning ministers would give another indication of the impact which these bodies have had. The sheer scale of the task of looking at all Parliamentary Questions put to ministers whose departments were monitored by Committees, even over one session, is prohibitive. Some impression might be gained, however, from looking at the departments or groups of departments monitored by three Committees over a limited period.

Two Committees with good records in terms of attendance, meetings held, and reports published (Defence, and Education, Science and Arts) and one with a bad record according to the same criteria (Environment) were selected. The period chosen for examination was the first six months of the 1980-81 session; to be more precise, the period between 20 November 1980 and May 1981. By this time, it was felt that the Committees would have had a fair opportunity to get a reasonable amount of work done, and MPs would have been able to familiarise themselves with the work. Oral and oral supplementary Questions to all ministers with responsibilities in the areas monitored by these Committees were examined for direct references to work done by the Committees.

Over the six month period, none of the oral Questions or supplementaries put to any of the Defence ministers referred directly to the work of the Select Committee on Defence.

One Question put to Environment ministers referred directly to the work of the Select Committee on the Environment. This was asked on 1 April 1981 by Bruce Douglas-Mann, a member of the Committee.¹

1. HC Deb 6s 2 1980-81 c 281.

Six Questions put to ministers with responsibilities for Education, Science and the Arts referred directly to the work of that Committee. These were asked by Christopher Price and Tim Brinton (25 November 1980),¹ Christopher Price (15 December 1980),² Patrick Cormack and Andrew Faulds (11 May 1981).³ Four of these Questions were asked by Committee members (two by Price, one each by Brinton and Faulds).

This, of course, does not take any account of written Questions put to ministers in these departments over the same period. These are much more numerous, and it would be fair to assume that a greater number (though not necessarily a greater proportion) of them referred directly to the Committees' work. Furthermore, as was the case with debates, there is no way of knowing the extent to which MPs made use of material produced by the Committees without necessarily referring directly to it. What is indicated, even by this limited survey, is the disappointingly low number of oral Questions which were obviously influenced and informed by the work of three Committees. A major problem could be the sheer volume of reading required of MPs in the course of their normal daily work (Select Committee reports are fairly voluminous, although brief summaries of conclusions are usually appended). The prevalence of the traditional power model does not help. This places great emphasis on the adversarial drama of the floor of the House, which tends to reduce the questioning of

1. HC Deb 5s 994 1980-81 c 308 (both Questions).

2. HC Deb 5s 996 1980-81 c 18.

3. HC Deb 6s 4 1980-81 c 480 (both Questions).

ministers to the bare (some would say banal) essentials of the cut and thrust duel, and militates against the mobilisation of complex data and arguments from Committee reports. An example of this problem could be seen when Bruce Douglas Mann, putting his Question to John Stanley, was upbraided by the Speaker for taking too long and for "Giving more information than he is seeking".¹

In spite of the relative failure of the Select Committees as far as the provision of supplementary material which was actually used by MPs when utilising the traditional methods of parliamentary scrutiny, they did, without doubt, enhance ministerial accountability in their own right.

ii. Civil Servants.

In this thesis, ministerial role responsibility has been defined with reference to policy leadership, departmental management, legislative piloting, and the ambassadorial function. As an aspect of his managerial role, the minister has a certain responsibility for his departmental officials.² In their turn, the civil servants have role responsibility for providing policy advice, managing the department and administering policy. It has been argued that, on balance, the advent of the modern Select Committees, and especially the introduction of the post 1979 system, resulted in enhanced ministerial accountability to Parliament for their role responsibilities as policy leaders, departmental managers and departmental ambassadors.

However, the greatest impact of the Select Committees was

1. HC Deb 6s 1980-81 c 281.

2. For more on this, see Chapters Two and Seven.

to be felt in the civil service. The work of the Committees improved the accountability of the civil servant for the full range of his role responsibilities to his official and ministerial superiors, and, most importantly, to Parliament.

Within government departments, the prospect and fact of Select Committee investigations served as a catalyst for enhanced internal accountability. The Committees imposed a significant workload on departmental officials. An exercise conducted by the Civil Service Department showed that, in the course of the year beginning February 1980, an estimated 12,039 man-days had been spent by officials on the preparation of written memoranda and providing briefings related to Committee inquiries.¹ This figure excluded the time needed for officials' appearances before the Committees.

Work of this nature was done by civil servants at every level of the departmental hierarchies, involving, by implication, a supervisory checking mechanism, which heightened the internal accountability of officials to their civil service superiors and to their ministerial masters.

The major innovation brought about by the Select Committees was, however, the advent of de facto civil service accountability to Parliament.

As has already been stated, a large number of officials (1312 individuals, making 1779 appearances) appeared before the Committees in the period 1979-83. Giving evidence

... was the business of officials about 6½ times as intensively as it was the business of ministers ...[2]

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1. Cited by Geoffrey Lock: "Resources and Operations of Select Committees: a Survey of the Statistics" in Gavin Drewry, op.cit., p.330.
 2. C. M. Regan: "Anonymity in the British Civil Service: Facelessness Diminished", Parliamentary Affairs, Volume 39, Number 4, October 1986, p.430.

A study conducted by the Management and Personnel Office showed that during the eighteen months between January 1980 and June 1981, appearances before Select Committees were made by a total of 312 officials ranked at Under Secretary and above, 203 ranked at Assistant Secretary, and 137 ranked at Principal or Senior Executive Officer.¹ In other words, the civil servants most in demand were clearly those in the middle and upper ranks.

These figures do not, of themselves, prove that civil service accountability to Parliament for role responsibilities was increased as a result of the work done by the Select Committees. Reduced "facelessness" does not equal increased accountability. Indeed, a cautionary note should be sounded before this argument is taken much further.

Early in the life of the post 1979 Select Committees an assertion of the prevailing influence of the traditional power model came in the form of a "Memorandum Of Guidance For Officials" appearing before Committees.² This document, which was compiled by Edward Osmotherly of the Civil Service Department, was actually a revised version of existing guidelines³ but its appearance at an early stage in the life of the new Committees served as a reminder for Committee members of the facts of Whitehall life.

The Osmotherly Memorandum precluded civil servants from giving evidence about matters which lay outside the jurisdiction of the Committees, such as Cabinet committees and the

1. Cited by C. M. Regan, op.cit., p.431.

2. Select Committees, Memorandum of Guidance for Officials, CSD General Notice, Gen 80/38, 16 May 1980.

3. General Notice Gen 76/78 and General Notice Gen 78/11.

legal departments. More than this, however, the Memorandum made it clear that while the Committees would, of course, be tolerated and even accorded some respect, they would not be allowed to upset the traditional way of doing things. Thus, while officials were advised to be

... as helpful as possible to Committees ... any withholding of information should be limited to reservations that are necessary in the interests of good government or to safeguard national security.[1]

Certain provisos were made which served to severely infringe the general rule. Cost had to be taken into account. The twin doctrines of collective and individual ministerial responsibility were to remain inviolate. Information about inter-departmental exchanges on policy issues was not to be disclosed lest it shed light on the manner in which a minister had consulted his colleagues. More importantly, in several closely linked passages the Memorandum offered guidance which, if fully adhered to, could have effectively short-circuited the operation of the Committees as genuine organs of scrutiny. Officials were not to give evidence on or discuss "the advice given to ministers by their departments"² or "questions in the field of political controversy".³ This attempt to preserve the traditional anonymity of the civil servant, by distancing him from the consideration of matters of policy (despite the fact that policy advice formed a major part of his role responsibility), while simultaneously acquiescing with the requirement for civil servants to appear before Select Committees, was effectively an attempt to preserve

1. Gen 80/38, paragraph 15.

2. Ibid., paragraph 25.

3. Ibid.

constitutional fiction. It has been argued in this thesis that one of the catalysts for the introduction of the new regime of parliamentary accountability was the existence of a constitutional blind spot in which ministerial control of all but the most important matters in increasingly large departments of state was waning, with no corresponding growth in the accountability of officials to Parliament.

As the role of government in so many areas of society and economy increased, and as departments became larger, so the gap between matters which could clearly be termed "policy" and those which could clearly be termed "administration" narrowed. Two things followed from these developments. The first was that the Commons had to add to the existing mechanisms for bringing ministers to account. The second was that civil servants would have to become increasingly accountable directly to Parliament through the organs of the new regime, as well as indirectly through their ministers.

In this light, the Osmotherly Memorandum took one step forward by recognising that advice which influences policy decisions is given to ministers by civil servants, but it took two steps back by maintaining that this advice should not be subject to scrutiny by the Select Committees.

Departmental witnesses, whether in closed or open session, should preserve ... the basis of confidence between Ministers and their advisers ... Officials should be ready to explain what the existing policies are and the objectives and justification as the Government sees them, for those policies, and to explain how administrative factors may have affected both the choice of policy measures and their implementation. It is open to officials to make comments which are not politically contentious but they should, as far as possible avoid being drawn ... into discussion of alternative policy. If official witnesses are pressed by the Committee to go beyond these limits,

they should suggest that the questioning be addressed, or referred, to Ministers.[1]

This encouragement to civil servants to stall before Committees was given in the clear knowledge of the existence of a grey area between "policy" and "administration"; an area which only the most intricate wordsmith would care to demarcate. What is the difference between advice, based on "administrative factors" which leads to a choice of policy options, and straightforward policy advice? Ostensibly there would seem to be some difference, but on closer examination it is obvious that the effect of each type of advice is the same, and is unavoidable; to define the agenda for decision-taking. As David Judge has noted, in

... many profound policy issues ... the advice of officials and the disagreements within departments crucially affect ministerial decision.[2]

Peter Kellner, political editor of the New Statesman and a close Whitehall watcher, claims that,

The cumulative effect of many minor, ad hoc, seemingly 'administrative' decisions, can be to create 'policy' which then becomes established - rather like case law.[3]

The net effect of the Osmotherly Memorandum was to leave the question of the accountability of civil servants hedged with uncertainty. Clearly, after the experience of the first stages of the new regime of Select Committee scrutiny, they were accountable (de facto) on a more regular basis, and at lower levels of the administrative hierarchy, directly to

1. Ibid., paragraphs 26 and 29.

2. David Judge: "Ministerial Responsibility and Select Committees", The House Magazine, 26 November 1982, pp.4-5.

3. Peter Kellner, interviewed by the author, 9 March 1983.

Parliament as well as indirectly via their ministers. The question of what they were to be accountable for remained clouded by the fact of the increasingly hazy divide between policy and administration, coupled with the intimation by Osmotherly that the civil servant's role responsibility as a policy adviser would remain out of bounds for the Select Committees.

Osmotherly was never revoked, but it can be argued that the operation of the post 1979 Committees did much to expose the inherent contradictions of the Memorandum. The de facto accountability of civil servants to Parliament was consolidated, in the face of Osmotherly's de jure statement of non-accountability in the realm of policy advice.

This process of consolidation was, nonetheless, problematic. Examples abound of civil servants hiding behind the skirts of Osmotherly and "ministerial responsibility". While conducting research for the BBC Radio series "No Minister", Hugo Young and Anne Sloman spoke to a variety of officials. They found some civil servants going

... into some remarkable intellectual contortions to make it clear that before a select committee it's not really they who are being examined - but someone who isn't even in the room.[1]

A Deputy Secretary at the DHSS, Tim Nodder, stated that his job when appearing before a Select Committee was simply to

... assist the minister to be accountable to Parliament.[2]

1. Hugo Young and Anne Sloman: No, Minister (BBC, London, 1982), p.65.

2. Ibid., p.66.

This was, of course, quite different from being accountable in his own right.

One Permanent Secretary told the author that,

When answering questions before a Committee officials must be careful to avoid giving their personal opinion. It would be true to say that officials are given considerable scope to give their advice to the minister behind the closed doors of the department, but once they leave the department a kind of collective responsibility applies, with officials defending the agreed policy whatever their personal views have been.[1]

Clearly, this sort of approach would be seen as sheer obfuscation by Committee members. Frank Hooley commented:

They will always duck behind a minister when it suits them, but if they duck too sharply they will be questioned further.[2]

Sir Kenneth Couzens, Permanent Secretary at the Department of Energy, had strong views about Committee members who chose to push civil servants to answer questions.

The Select Committees should avoid the tendency to become arrogant in their dealings with departments. They should be allowed to inform themselves, but not to play God. The pomposity of it sometimes passes all belief. They are not my employers! When they start browbeating civil servants, I regard that as intolerable.[3]

All of this led some Committee members to despair of civil servants as witnesses. John Golding commented that,

... the civil servant is so timid ... that I do not think it is worthwhile examining them at all in most cases.[4]

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1. Permanent Secretary, interviewed by the author, 9 December 1983.
 2. Frank Hooley, interview, op.cit.
 3. Sir Kenneth Couzens, interviewed by the author, 11 January 1984.
 4. John Golding, in Dermot Englefield, op.cit., p.33.

This was something of an extreme view, however. Other Committee chairmen were more optimistic. Renee Short felt that the effect of the Committees had been to keep officials "on their toes" not only through the initial questioning during an inquiry, but also by bringing them back at the end of the investigation to face questions about the problems which the Committee had identified within departmental systems and policies. While agreeing that civil servants could, on occasions, be "cagey", Mrs Short believed this could usually be overcome.¹

Many civil servants did not cling to the protective shield of Osmotherly as tightly as the more insecure denizens of the Whitehall departments. A Treasury official, Peter Kemp, who made numerous appearances before the Treasury and Civil Service Committee, was quite positive about his experiences.

Contrary to a popular view, civil servants often actually rather enjoy appearing in front of a select committee. I do myself. We want to try to be helpful to the committee ... we do have views and it would be quite wrong had we not. The committees must be interested in these views.[2]

This positive view of the impact of the Select Committees on civil service accountability was shared by no less a figure than the retiring Permanent Secretary at the Treasury and joint Head of the Civil Service, Sir Douglas Wass. He referred to the "inexorable logic" of the growing responsibilities of ministers and the concomitant desire on the part of Parliament to concern itself

1. Renee Short, interview, op.cit.

2. Peter Kemp: "A Civil Servant's View", in Dermot Englefield, op.cit., pp.56-57.

... directly with the point in the Minister's department where detailed responsibility lies. To the extent that this happens and a bypass comes to be built around the minister which creates a direct route between the serving official and Parliament, certain consequences seem to follow ... Although my generation of civil servants has been brought up to regard every act taken by an official as an act in the name of the Minister, our successors may therefore have to be prepared to defend in public and possibly without the shield of Ministerial protection, the acts they take.[1]

On the eve of his retirement, he could discern genuine signs of this taking place.

There have been several developments in recent years in this direction ... We now have standing machinery in the form of the Departmental Select Committees which are able to examine official witnesses in public on matters of public and parliamentary interest.[2]

For Sir Douglas, the new Select Committees had, inter alia, signalled the need for a decisive move away from precisely the type of minimalist interpretation of civil service accountability contained in the Osmotherly Memorandum.

If this kind of view could be found at the top of that bastion of official conservatism, the Treasury, it seems fair to assume that it had reached into other bureaucratic corners. Each time a Committee pressed a recalcitrant official into talking sensibly about his work instead of allowing him to hide behind a constitutional smokescreen, a certain amount of the credibility of Osmotherly was destroyed. There were countless examples of Committees doing just that during the 1979-83 Parliament. Whether these outnumbered the occasions on which officials declined to answer questions is difficult to assess.

1. Sir Douglas Wass: "The Public Service in Modern Society", Public Administration, Volume 61, Number 1, Spring 1983, p.12.

2. Ibid.

What can be said is that regular contact between civil servants and Committee members could and did engender a certain kind of trust. Donald Dewar, who chaired the Scottish Affairs Committee, was not alone in welcoming this:

One of the nice things about the Select Committee on Scottish Affairs was that it allowed me to get to know some of the civil servants.[1]

CONCLUSION

The introduction of the new Select Committees in 1979 was an important turning point rather than merely another episode in a familiar story. This is not to say that a change of near revolutionary proportions on the lines of that heralded by St John-Stevas and the more confident liberal-democrats, had taken place. Nor is it to minimise the evolutionary nature of the modern Select Committees, dating from 1966. Nonetheless, four years' operation of the new system created a core of evidence which suggested that ministers and civil servants were now subject to detailed scrutiny, which had been fairly effective, and could, given a steady development of the Committee system, become even more effective.

There were flaws in the system. Notwithstanding this, the experience of 1979-83 was a modest victory for the aspirations of the structuralists. The pessimism of the Walkland/Johnson school had been shown to be without foundation in certain respects. True, the new system was less than radical in its effects on aspects of parliamentary life, as had been predicted. However, its effects were more marked than the pessimists had allowed for. A further, albeit tentative, step

1. Donald Dewar, interviewed by the author, 1 February 1983.

had been taken in the direction of enhancing the accountability of ministers and civil servants. Much confusion remained, and a great deal of faith was still placed in the applicability of nineteenth century rules to late twentieth century working relationships. However, civil servants from virtually every area of central government were at last being brought to account directly to Parliament for their role responsibilities. Many of them continued to claim, in accordance with a strict construction of constitutional convention, that they were mere ministerial mouthpieces, but such an idea came to be viewed with increasing scepticism, even at the top of the Treasury.

CHAPTER FIVE: The New Regime of Parliamentary Accountability:
Parliamentary Commissioner for Administration

It has been seen, in earlier chapters, that the office of Parliamentary Commissioner for Administration emerged from a belated realisation that the traditional forms of parliamentary scrutiny were far from infallible.

The establishment of the PCA, in 1967, represented a victory for the structural reformers, whose concern was to improve Parliament's effectiveness as an organ of scrutiny and agent of accountability. In our terms, the accountability element of individual ministerial responsibility was to be strengthened.

In this chapter, the aim will be to discover what effect the PCA, as a component of the new regime of parliamentary accountability, has had on the doctrine. The merits and demerits of the PCA per se, and the comparative effectiveness or otherwise of the British "Ombudsman", are issues which lie beyond the scope of this thesis, and will not be touched upon.

A few important jurisdictional, institutional and personnel changes took place in the office of Parliamentary Commissioner for Administration in the period under consideration.

Between 1967 and 1983 there were four Commissioners: Sir Edmund Compton (1967-71), Sir Alan Marre (1971-76), Sir Idwal Pugh (1976-79) and Sir Cecil Clothier (who held the post until January 1985).

Initially, the PCA had no power to investigate allegations of failings in the National Health Service, but in 1973 an additional office of Health Service Commissioner was created. Marre, Pugh and Clothier each held this post concurrently with

that of Parliamentary Commissioner for Administration.¹

Great stress was always placed on the fact that Britain had a Parliamentary Commissioner for Administration, rather than an Ombudsman on the original Scandinavian model. Hence the early (November 1967) establishment of the Select Committee on the PCA. This would, inter alia, be able to exert pressure on departmental ministers who might be reluctant to implement the Commissioner's recommendations.

In the same vein, the Commissioner's parliamentary roots² were emphasised by the fact that there was to be no direct access to the office by members of the public with grievances against government departments. Instead, complaints about mal-administration would be filtered through a Member of Parliament. The intention was to avoid overloading the system, and to facilitate the creation of a specialist, "Rolls Royce" service.³

1. Technically, three Health Service Commissioners were created, with power to investigate complaints against health authorities in England, Scotland and Wales. However, in practice, all the posts have been vested in the person of the Parliamentary Commissioner. The Health Service Commissioner could, unlike the PCA, receive "direct" complaints, and had a slightly different jurisdiction. It should be noted that a system of local "Ombudsmen" operates in parallel to the central government Commissioners. There are Local Commissioners for Administration in England, Scotland and Wales, as well as a Northern Ireland Commissioner for Complaints.
2. In constitutional, though not in personal terms. None of the Parliamentary Commissioners were MPs or former MPs.
3. The "Rolls Royce" analogy seems to have been drawn first by Frank Stacey in Ombudsmen Compared (Oxford Univ. Press, 1978). The MP filter was meant to weed out those cases which obviously fell outside the jurisdiction of the PCA. This process would be continued in the Commissioner's office itself. Part of the difficulty here lay in the fact that the term "maladministration" had never been properly defined. The "Crossman Catalogue" ("... bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness and so on". HC Deb 5s 734 1966-67 c 51), enunciated by the sponsoring minister during the Second Reading debate on the PCA Bill, was seen by successive Commissioners to be an inadequate definition. Ultimately, Commissioners found that there was room for the exercise of a fair measure of discretion regarding the acceptance or rejection of complaints.

In 1978 the rules on access were relaxed slightly, and Commissioners ended the practice of returning "direct" complaints to their source. Instead, a complainant who had written directly to the PCA would be offered the option of having his letter passed on to the relevant MP. The MP would then be asked by the Commissioner to decide whether or not to formally refer the letter for investigation. In spite of this change, it was clear that the traditional function of the constituency MP, that of obtaining redress of electors' grievances, was to remain sacrosanct.

From the outset, therefore, the Commissioner's role was to be a servant of the House of Commons. Backbench MPs were to have at their disposal a powerful organ of scrutiny, which would supplement their existing weaponry. As Richard Crossman put it, when commending the PCA idea to the Commons:

One must realise that for the first time a complaint to a back-bench Member of Parliament about mal-administration in any Department may precipitate a searching and detailed investigation, including the close examination of every-one concerned, from the top to the bottom of the Department and the examination of all the relevant secret Departmental files. This is a considerable change. What happened previously in a few rare cases now becomes a continuous possibility ...[1]

A considerable change indeed. What were its implications for individual ministerial responsibility?

ONE: An End To Individual Ministerial Responsibility?

In the course of the long campaign for the establishment of an "Ombudsman" the major defence put up by those who opposed the idea of transplanting this foreign organ into the British body politic was that it would undermine, or perhaps even

1. HC Deb 5s 734 1966-67 c 59.

destroy, the doctrine of individual ministerial responsibility.

In 1962, the report by Justice, the British section of the International Commission of Jurists (the "Whyatt Report") recommended the establishment of a Parliamentary Ombudsman, only to be met by a totally negative response from the Macmillan Government. The principle of ministerial responsibility to Parliament could not, it was argued, be reconciled with the existence of such an organ.¹ Despite assurances given in the Wilson Government's White Paper on the Parliamentary Commissioner for Administration² and in Richard Crossman's speech during the Second Reading debate³ to the effect that the PCA would add to, rather than detract from, the power of the backbench MP, opponents of the scheme returned to their main theme. Thus, Quintin Hogg attacked the PCA Bill at Second Reading on the grounds that it would dispense with the "genius" of the Commons which

... consists in the ability of hon. Members to bring Ministers here for criticism and to defend their conduct on the Floor of this House ... (and which) 1.. consists in the dramatisation on the Floor of the House of the questioning by a Member of a Minister.[4]

Both the proponents and the opponents of the PCA scheme were, therefore, agreed that the relationship between ministers and Parliament would certainly change as a result of the scheme's introduction.

1. HC Deb 5s 660 1962-63 c 1124-26.

2. "We do not want to create any new institution which would erode the functions of Members of Parliament in this respect, nor to replace remedies which the British Constitution already provides. Our proposal is to develop those remedies still further. We shall give Members of Parliament a better instrument which they can use to protect the citizen ..."
The Parliamentary Commissioner for Administration, Cmnd 2767, 1965.

3. HC Deb 5s 734 1966-67 c 59.

4. Ibid., c 68.

To the stoutest defenders of traditional parliamentarianism, the PCA was and would remain a threat to the authority of the House of Commons. Sixteen years after the introduction of the Parliamentary Commissioner, Enoch Powell remained adamant - the PCA

has weakened the Parliamentary process and has weakened responsibility by inserting machinery which is outside the constitution ... The Ombudsman aborts the (constitutional) mechanism and substitutes a quasi-judicial process carried out by an officer, and is anti-House of Commons.[1]

If a constituent asked Enoch Powell to forward a complaint to the PCA, his response would be,

All right, but if you do this, I wash my hands of the case. The Ombudsman is incompatible with my role as an MP.[2]

Even this staunch opponent of structural reform was prepared to admit that the PCA might have his uses. On one occasion, Powell "acted in collusion" with a minister at the Northern Ireland Office who had been unable to pinpoint a specific departmental problem. The minister and the MP agreed that this matter should be referred, on behalf of a constituent, to the Parliamentary Commissioner, who promptly got to the source of the problem. For Powell this was, however, "the exception which proves the rule".³

While a number of MPs never became reconciled to the PCA, and, like Powell, continued to view the existence of the device as inherently detrimental to the concept of individual ministerial responsibility, such people were in a minority within the Commons. A substantial majority of MPs in each of the

1. Enoch Powell, interviewed by the author, 3 May 1983.

2. Ibid.

3. Ibid.

Parliaments during the period under consideration made use of the services of the PCA.¹ This is not to say that all MPs viewed the PCA in the same light. As one Parliamentary Commissioner pointed out,

My experience, and the experience of other of our Parliamentary Commissioners has been that different Members had different views about the circumstances in which the Parliamentary Commissioner could be of help to them and so made very different use of his services.[2]

Generally, MPs did seem to view the PCA as a development upon, rather than a curtailment of, their power to bring ministers and departments to account. The very existence of the PCA did not mean that MPs would cease to utilise their traditional means of bringing ministers to account. Informal personal approaches, Parliamentary Questions and debates were all used as they had been in the past. After 1967 however, MPs in search of detailed explanations regarding departmental procedures in particular instances also had at their disposal the services of a specialised investigative team. This could only enhance individual ministerial responsibility.

TWO: "An Extremely Sharp and Piercing Instrument of Investigation"

The PCA and his team were to be equipped with very specific and significant powers in order to enforce the accountability of ministers and officials to Parliament. Richard Crossman's claim that the new scheme

1. See Annual Reports of the Parliamentary Commissioner for Administration for details.

2. Sir Alan Marre: The Ombudsman, an address given at a conference of Canadian Lawyers, held in Cambridge, 1979. Published as Chapter 12 of Butterworth's Cambridge Lectures.

... put at the disposal of the backbench Member an extremely sharp and piercing instrument of investigation.[1]

seemed to be justified. Under the terms of the 1967 Act, the Parliamentary Commissioner could require any minister or departmental official to produce all documents relating to the particular case under investigation and, if necessary, to answer questions informally or under oath.²

The only statutory checks on the PCA's investigative powers did not appear to inhibit successive Commissioners. Ministers and officials could not be required to produce documents or answer questions relating to the proceedings of the Cabinet or its committees.³ During the period 1967-83 one major case arose where a Commissioner requested access to Cabinet papers. While there seems to be no valid reason why the PCA, as a servant of Parliament, should be denied the right to see a Cabinet paper, in this particular case (Court Line, see below) the Commissioner, Sir Alan Marre, declared himself to be satisfied with the information he was offered:

... I was furnished by the Secretary to the Cabinet with a note of the outcome of the Cabinet discussion, and I had no hesitation in expressing the view that it would have made no difference to my findings even if I had seen the Cabinet papers.[4]

The Commissioner could not be denied access to any other documents, although it would be possible for ministers to certify that the information contained in certain papers should not be disclosed by the Commissioner, on the grounds that this

1. HC Deb 5s 734, 1966-67 c 60.

2. Parliamentary Commissioner Act, 1967 (1967 Acts, Chapter 13), Section 8, paragraphs 1 and 2.

3. Ibid., Section 8, paragraph 4.

4. Sir Alan Marre, op.cit., p.146.

would be prejudicial to the safety of the State or otherwise contrary to the public interest.[1]

In practice, it was extremely rare for a minister to use this power to formally prohibit the disclosure of official information.²

The procedure which the PCA would set in motion when presented with a complaint against a department was reasonably straightforward.

First, the substance of the complaint would be examined in order to ensure that it conformed with the Commissioner's understanding of "maladministration" (the definition of this term being the subject of a long-running debate, initiated by the enunciation of the "Crossman catalogue") and to check that the complainant had no form of legal or quasi-legal redress (that is, via a court or a tribunal) open to him.

Having satisfied himself on these grounds, the PCA would then approach the department concerned, armed with his formidable powers to search out material and summon witnesses.

His investigation is conducted without the glare of publicity. The Permanent Secretary is given notification of the complaint which has been made against his department. At this stage, two things happen. The departmental official with responsibility for PCA affairs, the "nominated officer", liaises between the Commissioner and the department. This officer

1. PCA Act, op.cit., Section 11, paragraph 3.

2. An example of the circumstances which might justify such prohibition came in 1971, when the Inland Revenue declared that the publication of certain documents would violate the guarantee of confidentiality given to people who had provided information contained in these documents (see Second Report of the PCA, 1971-72), HC 116, paragraphs 18-21).

... provides the point of entry for the Commissioner's staff into the department, and guides them to the 'afflicted spot', that is, to the relevant files and to the officials most closely connected with the case.
[1]

Departments which attract large numbers of PCA cases allocate to a junior minister the task of overseeing this liaison.²

In the meantime, while the PCA and his staff go about the business of investigation, the department conducts its own internal investigation, designed to provide the Commissioner with the official response to the complaint.

It is this internal investigation, as much as anything, which establishes the point that the advent of the PCA brought with it a substantive increase in the accountability of civil servants. Whereas a Parliamentary Question or an MP's letter to the minister would attract the attention of senior officials only if important policy issues were concerned, every PCA case would ultimately be handled by the Permanent Secretary.³ Senior officials questioned by the author testified to the fact that this duty is taken very seriously:

When he (the PCA) does conduct an investigation in the department, I write back to him. I don't sign blandly at the end of the letter. I only sign the reply after I have really looked at the case - so his investigation does mean something.[4]

1. Roy Gregory and Peter Hutchesson: The Parliamentary Ombudsman (Allen and Unwin, London, 1975), pp.150-51.

2. According to a Home Office minister who had previously been in charge of PCA cases at the Department of Employment. Interview with author, 23 January 1984.

3. See Roy Gregory and Peter Hutchesson, op.cit., p.152.

4. Permanent Secretary interviewed by the author, 26 January 1984.

His work is given serious consideration by the department. When a case reaches my desk, I read every document in the file. If one considers the possibility of some thirty Permanent Secretaries doing this across Whitehall, the impact of the Ombudsman must be seen as considerable. The highest ranking civil servant in a department will look at the case with a dispassionate eye and offer his carefully considered judgement.[1]

The PCA's staff would then continue their investigations by consulting the relevant case papers and conducting interviews with the civil servants involved. Occasionally, there is a need for ministers to be interviewed, usually by the Commissioner himself.

In general, successive Parliamentary Commissioners have viewed the quasi-judicial aspect of their authority (the power to administer oaths and compel the attendance of witnesses/production of documents²) as a last resort.³ Indeed, between 1967 and 1983 these powers were never used, and the Commissioners maintained a relatively informal style of investigation. This did not, however, detract from the importance which departmental officials attached to the work of the PCA. A number of civil servants made use of their statutory right, under the provisions of the 1967 Act, to request legal or other (normally trade union) representation in the course of a PCA investigation.⁴

The process of investigation complete, the Parliamentary Commissioner would have reached one of three conclusions. He may have found no evidence to support the claim that the

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1. Permanent Secretary interviewed by the author, 9 December 1983.
 2. PCA Act, op.cit., Section 8, paragraphs 1 and 2.
 3. See C. M. Clothier; The Ombudsman - Jurisdiction, Powers and Practice, a paper presented to the Manchester Statistical Society, 12 March 1980, and published by the Society.
 4. PCA Act, op.cit., Section 7, paragraph 2.

department concerned had been guilty of maladministration. He may have identified no maladministration per se, but invite the department to reexamine its rules and procedures, and perhaps to look with some sympathy at the position of the complainant. Finally, of course, he may have discovered clear evidence of maladministration on the part of the department, in which case (provided he was also convinced that this inflicted real injustice on the complainant) he would seek to ensure that the department takes acceptable remedial steps. Ultimately, in cases where a department failed to redress the complainant's grievance to the satisfaction of the Commissioner, he could expect his political arm, the Select Committee on the PCA, to take up the cudgels on his behalf.

The final stage of the investigation involves the compilation and publication of the PCA's report. A draft of the report would first be shown to the Permanent Secretary of the department involved, in order to allow for the identification of any basic factual errors. Thereafter, the final version of the report would be sent to the MP who referred the complaint, and to the Permanent Secretary. An anonymised version of the case would then be included in the PCA's quarterly report to Parliament.¹

1. Between 1967 and 1972 only a selection of cases investigated by the PCA would be appended to his Annual Report to Parliament. After 1972, Quarterly Reports were issued, containing all the cases investigated, with the Annual Report being delivered as before. Under Section 10, paragraph 3 of the 1967 Act, the PCA was also empowered to lay before Parliament "special" reports to draw attention to injustices which had not been remedied. See, for example, the PCA Sixth Report for 1977-78, HC 598, "Rochester Way, Bexley: Refusal to meet late claims for compensation". Under Section 10, paragraph 4 of the Act, the PCA was given authority to lay before Parliament "other reports ... as he thinks fit". See, for example, the Fourth Report for 1977-78, HC 312, "A War Pensions Injustice Remedied". This case was given special attention "because of possible wider interest".

THREE: Practical Effect on the Doctrine

It will be recalled that the doctrine of individual ministerial responsibility, as defined in this thesis, encompasses the elements of personal responsibility, role responsibility, accountability and sanctions. We can now turn our attention to the impact which the PCA had on these elements.

1. Personal Responsibility

It would be entirely true to say that the personal (legal and moral) responsibilities of both ministers and civil servants might, in theory, have concerned the PCA. Clearly, maladministration which resulted from bias or corruption on the part of a departmental official or minister would have been "fair game" for the Parliamentary Commissioner. This form of maladministration would have related specifically to matters of personal responsibility. In the event, however, the PCA did not become involved in any cases of this kind during the period 1967-83.¹

2. Role Responsibility

The elements of the doctrine which would, in practice, be most affected by the advent of the PCA were role responsibility and accountability. The fundamental aim which underpinned the new scheme was to improve and enhance the executive's accountability to Parliament for various responsibilities.

The role responsibility of a government minister has here been defined in terms of his position as policy leader, depart-

1. See Geoffrey Marshall: Constitutional Conventions (Clarendon, Oxford, 1984), p.84.

mental manager, ambassador for his department, and legislative pilot. As an aspect of his managerial role, the minister has a certain responsibility for his departmental officials.¹ In their turn, these civil servants have role responsibility for providing policy advice, managing the department and administering policy.

Which of these aspects of ministerial and civil service role responsibility concerned the PCA?

(a) Policy leadership/policy advice.

One might start with the assumption that the policy aspect of role responsibility - the minister's role as policy leader, the civil servant's as policy adviser - would be of no concern to the Parliamentary Commissioner in the course of his investigations. After all, the architects of the PCA scheme took great pains to demarcate the supposedly unbridgeable boundary between matters of administration, which would lie within the remit of the Commissioner, and matters of policy, which quite definitely would not.

Thus, the Labour Government's White Paper on the PCA:

The Commissioner will be concerned with faults in administration. It will not be for him to criticise policy, or to examine a decision on the exercise of discretionary powers ...[2]

This point was emphasised by Richard Crossman during the Second Reading debate on the PCA Bill:

What about the definition of maladministration?
In the first place I can define it to some extent negatively. It does not extend to policy.[3]

1. For more on this link, see Chapters Two and Seven.

2. The Parliamentary Commissioner for Administration, Cmd 2767, 1965, paragraph 11.

3. HC Deb 5s 734 1966-67 c 51.

Finally, the same message was relayed, in a slightly less direct fashion, by the 1967 Act itself:

... nothing in this Act authorises or requires the Commissioner to question the merits of a decision taken without maladministration by a government department or other authority ...[1]

In practice, however, the PCA was to find, on a number of notable occasions, that the divide between policy and administration had to be bridged if he was to conduct a proper investigation into genuine complaints. In these cases, while the incumbent of the office maintained that matters of administrative procedure were his major concern, he was effectively investigating the responsibilities of departmental ministers for policy leadership, and civil servants for policy advice.

A case of this type arose early in the life of the new organ of scrutiny. In 1967, the PCA accepted for investigation a complaint which concerned the rejection, by the Foreign Office, of compensation claims by several RAF officers.

The claims were for the payment of money from a scheme which had been set up in 1964 to compensate British victims of Nazi persecution. Claimants would be eligible if they had been detained in a concentration camp or comparable institution. The officers, believing that they had been interned in Sachsenhausen concentration camp, north of Berlin, were dismayed to receive letters which rejected their claims on the basis that they had actually been held in a special camp which lay outside the perimeter of the main Sachsenhausen camp. It was argued that they had never been subjected to the harsh treatment meted out to the inmates of the concentration camp proper. In brief, the Foreign Office case was that the men had

1. PCA Act, op.cit., Section 12, paragraph 3.

been prisoners of war, not victims of Nazi persecution. The men's case was that they had, at all times, been in parts of the Sachsenhausen concentration camp, which was controlled by the Gestapo and the SS, and that they were due compensation under the criteria of the Foreign Office's "Notes for Guidance" used by claimants and by officials administering the scheme.

The FO decision was originally taken by officials, but was supported by successive Ministers of State, and by the Foreign Secretary, George Brown. By implication, this decision had become the policy of the FO: a policy advised by civil servants and accepted by ministers in their capacity as policy leaders.

By early 1967, parliamentary pressure was building up for a change in the policy. Questions to ministers had no effect, and an all-party motion calling for an independent inquiry gained considerable support. In May, Airey Neave submitted the case to the PCA.

Having considered the evidence, the Parliamentary Commissioner concluded that there were

... defects in the administrative procedure by which the decisions on these claims were reached in the first place and defended when subsequently challenged.[1]

The Foreign Office was asked to review the case, and as a result of this, compensation was paid to the former inmates of Sachsenhausen.²

The MPs who had supported the claimants' case against the FO were quick to pay tribute to the PCA. Airey Neave acknowledged

1. Third Report of the PCA, 1967-68, HC 54, p.15.

2. For more on this case, see: First Report from the Select Committee on the PCA, 1967-68, HC 258; G. K. Fry: "The Sachsenhausen Case and the Convention of Ministerial Responsibility", Public Law, 1970; and Roy Gregory and Peter Hutchesson, op.cit., Chapter 11.

that,

... we would never have got the Government to change their mind without the assistance of Sir Edmund Compton ... I could not even with all the assistance that I had from so many honourable and right honourable Members on both sides of the House, have achieved the result of reversing a decision with regard to these claims without Sir Edmund.[1]

William Rodgers, who worked in the Foreign Office throughout the Sachsenhausen affair, has indicated that his experiences in 1967 had a definite effect on his subsequent ministerial work.

Yes, the possibility of an investigation by the Ombudsman was something I had in mind when I was a minister. This was mainly because of one of my earliest experiences as a junior minister - I was deeply involved in the Sachsenhausen case. I went into this in great detail ... My conclusion was that the original decision had been correct ... The Foreign Office judgement had been to me, right ... After that, I didn't find that I changed my judgement because there was the possibility of an Ombudsman investigation, but I did remain aware of such a possibility and in my experience some decisions were actually taken differently because of his existence. Civil servants, above all, don't want to be the subject of a bad report.[2]

Rodgers did not mean to imply that the very existence of the PCA led him, as a minister, to change his judgement on any specific policy issues. However, the possibility of future investigation did cause him, in conjunction with his officials, to frame departmental policies in ways which would be easiest to defend in the event of a PCA inquiry.

Seven years after the Sachsenhausen case, another celebrated PCA investigation ended with matters of departmental policy very much in the spotlight.

1. HC Deb 5s 758 1967-68, c 118, 141.

2. William Rodgers, MP 1962-83, holder of ministerial posts in the Department of Economic Affairs, Foreign Office, Board of Trade, Treasury, Ministry of Defence, Department of Transport. Interviewed by the author, 8 February 1984.

In 1974, the Parliamentary Commissioner took up an allegation that the Department of Health had refused to take seriously complaints about motorized three-wheeled invalid carriages. These carriages were manufactured and sold under the auspices of the Department. The complainants felt that a lack of concern had been shown for the safety of people using such vehicles. The PCA found that that Department had not been indifferent to matters of safety, but had been slow to commission independent tests on the vehicles, and had been wrong to initially refuse to publish the results of these tests. The defensive and evasive attitude adopted by ministers and officials alike was criticised in the Commissioner's report.¹ One observer noted:

It seems clear that ministerial policy judgements must have been involved in the formulation of the Department's attitude.[2]

Such "policy judgements" would of course have been based, at least in part, on advice given by civil servants.

The following year, in the "television licences case", the PCA found himself grappling with another supposedly "administrative" matter which in fact touched on policy.

In January 1975, the Home Secretary, Roy Jenkins, announced that, with effect from 1 April of that year, there would be an increase in television licence fees. When members of the public began to take out overlapping licences (that is, licences purchased at the old, lower rate before 1 April) in

1. Sixth Report of the PCA, 1974-75, HC 529. Supplement (Case no. C68/5) paragraphs 85-88.

2. Geoffrey Marshall: "Parliament and the Redress of Grievances: The Role of the Parliamentary Commissioner" in S. A. Walkland and Michael Ryle (eds.): The Commons Today (Fontana, Glasgow, 1979), p.272.

order to postpone the need to pay a higher fee for renewal, the Post Office (acting on behalf of the Home Office) became concerned. Soon, some 26,000 overlapping licences had been taken out. The Home Office identified the people involved, and initially asked them to pay the amount of money which had been saved, or face the prospect of having their new licences revoked. Later, the Home Secretary amended this decision, in order to provide those who were unwilling to pay the additional amount with a period of grace.

The PCA accepted for investigation a number of complaints about the "administrative actions taken in applying the increase". In his report on the affair, Sir Alan Marre was strongly critical of

... the thoroughly unsatisfactory way in which the Home Office, or the Post Office as their agents, have handled the administrative arrangements for implementing the increases in television licence fees.[1]

He went on:

... even though I find no ground for questioning the principle behind the arrangements announced ... nevertheless I must conclude that many members of the public have been caused needless distress and confusion through maladministration by the Home Office and their agents ... much of the distress and confusion arose because insufficient attention was paid to the need to make policy officially and openly clear to the public.[2]

The Commissioner was clearly attempting to avoid being critical of the merits of the policy decision, while berating the method of implementation. Several commentators were not convinced that in this case he had successfully established the difference between criticising the policy itself, and

1. Seventh Report of the PCA, 1974-75, HC 680, paragraph 45.

2. Ibid., paragraph 46.

criticising its implementation.¹ By implication, it seemed that the Commissioner was touching on the policy advice proffered by Home Office officials, and the policy leadership given by the Home Secretary himself.

In the same year as the television licences case, the PCA once again found himself, despite protestations to the contrary, investigating the policy aspects of ministerial and civil service role responsibility. The controversy surrounding the Court Line affair gave the office of the Parliamentary Commissioner its highest political profile since Sachsenhausen.

After the collapse of the Court Line group of companies in August 1974, the PCA received a number of complaints, through the usual channels, from members of the public who had paid for package holidays with Court Line subsidiaries (Clarksons and Horizon). The complainants alleged that they had been misled regarding the viability of Court Line by the Industry Secretary, Tony Benn's Commons statements made in June and July 1974. When the company collapsed, these people lost both their money and their holidays.

The minister's statements² were made as a result of a Cabinet discussion in which it had been agreed that government aid would be given in an attempt to save Court Line and that in the meantime the facts about the company's plight should be made as clear as possible (in the interests of employees and holiday makers alike) while minimising the risk of a catastrophic collapse in City confidence in the company.

Thus, the minister's policy on Court Line was one which had

1. See, for example, Geoffrey Marshall: Constitutional Conventions, pp.88-89.

2. Published together in the Appendix to the Fifth Report of the PCA, 1974-75, HC 498.

resulted not only from advice he had been receiving from his departmental officials, but also from discussion with his Cabinet colleagues.

Denied access to Cabinet papers (but presented with an official precis of the vital discussion), the Parliamentary Commissioner nonetheless conducted a detailed investigation into the Department of Industry's handling of the affair. In his 1975 report, he came down on the side of the complainants and concluded that,

... insufficient regard was paid in the (ministerial) statements to the principle that undue confidence should not be created or maintained.[1]

The question of whether or not the PCA had gone beyond his remit in this case was raised on a number of occasions during the Commons debate on the Court Line affair.²

Eight years later, a bitter Tony Benn remained convinced that the PCA had done "a shoddy job".³

Shoddy or admirable, Sir Alan Marre's investigation of the Court Line affair reaffirmed the point that the policy aspect of ministerial and civil service role responsibilities need not, in every instance, be considered beyond the reach of the PCA.⁴

(b) Management of the Department.

Both ministers and civil servants have role responsibility in this sphere. As has already been made clear⁵ ministers vary in the concern they show for the management of their departmental

1. Ibid., paragraph 91.

2. HC Deb 5s 897 1974-75 c 532-588.

3. Tony Benn, interviewed by the author, 17 March 1983.

4. For more on this case, see Roy Gregory: "Court Line, Mr Benn and the Ombudsman", Parliamentary Affairs, Vol.30 1977, pp.269-292.

5. See Chapter Two.

resources, the deployment of manpower and the drawing up of systems, routines and procedures. For all ministers, however, such matters are an aspect of their role responsibility. The managerial aspect of their role looms large for many civil servants at the top of the departmental hierarchies and in the various establishment, accounting, organisation and methods divisions.

Whereas the impact of the PCA on the policy aspect of ministerial and civil service role responsibilities was confined to a small number of very significant cases, his effect on the managerial aspect was to be seen in a vast number of routine cases.

As Roy Gregory and Peter Hutchesson noted when examining the changes in managerial systems and procedures which resulted from the PCA's activities:

There is nowhere on record a comprehensive list or catalogue of the modifications that have resulted from his inquiries ... it would require a great deal of work to trace and describe every small but useful improvement that can be attributed wholly or in part to his operations.[1]

In a very general sense, some ministers have indicated that the existence of the PCA can affect basic departmental procedures:

The PCA can affect what people in a department are prepared to put down on paper. There is an awareness in one's mind that papers might go to the PCA at a later stage.[2]

His effect on departments can perhaps best be gauged by the fact that more care is now taken by civil servants with documents. Every precaution is taken to ensure that cases are comprehensively documented in case of a PCA enquiry.[3]

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1. Roy Gregory and Peter Hutchesson, op.cit., p.398
 2. Home Office Minister interviewed by the author, 9 January 1984.
 3. Department of Energy Minister, interviewed by the author, 7 December 1983.

More specific instances of managerial change can be cited.

In 1970 the PCA criticised the Ministry of Housing and Local Government for taking an "unreasonably long" time to reach a decision on Colchester Borough Council's application to erect a multi-storey car park.¹ The case was raised in an adjournment debate in May 1970, during which the Minister of State from the department concerned declared:

With hindsight I believe that some of these delays could have been reduced, and to that extent I think the Parliamentary Commissioner's viewpoint ... helped to ensure that in future cases of this character the timetable will be watched very much more carefully by the Ministry ... [2]

In his Annual Report for 1975, the PCA drew attention to a number of managerial changes which had occurred in government departments as a result of his findings. Among these changes were: the introduction of daily checks to ensure that letters received by the Driver and Vehicle Licensing Centre were given prompt replies; and the revision of DHSS procedures to improve liaison between the different units of the Department dealing with war dependants' pensions and with supplementary benefit.³

In 1982 the Parliamentary Commissioner issued a report following his investigation of a complaint that the Department of Transport had been guilty of delay when handling a claim submitted to them for damage to a combine harvester.⁴ The Department undertook to improve its procedures in order to allow senior officials to be made aware of cases where there appeared to be inexplicable delays in settlement.⁵

1. First Report of the PCA, 1970-71, HC 261, Case no. C704/L, pp.87-88.

2. HC Deb 5s 801 1969-70 c 2036.

3. Second Report of the PCA, 1975-76 HC 141, paragraph 37.

4. First Report of the PCA, 1981-82, HC 132, Case no. C875/80.

5. Ibid., paragraphs 19 and 20.

There can be no doubt that successive Parliamentary Commissioners attached great importance to this aspect of their work. In the words of Sir Cecil Clothier:

If something goes wrong in a department, it is not of much use to reprimand the middle-ranking official who is simply carrying out the orders of his superiors - you must try to change the system which tolerates the maladministration ... [1]

(c) Administration of Policy.

This is the "bread and butter" aspect of civil service role responsibility. The task of implementing departmental policy in all its variety and detail falls to the vast army of officials at the middle and lower levels of the hierarchy.

It was, of course, to be this facet of role responsibility which would occupy the greatest proportion of the PCA's time. Here, maladministration could be seen in its purest form, or, to be more precise, forms. Various observers have attempted to categorise the commonest forms of maladministration² but by far the clearest and most logical classification was drawn up by Roy Gregory and Peter Hutchesson. They referred to cases in which departmental policy was incorrectly applied, or not applied at all, not because of failings in the managerial systems and procedures of the department concerned, but because of maladministration. Administrative shortcomings might fall within one of six self-explanatory categories:

1. Assorted mistakes, errors, and oversights;
2. Failing to impart information or provide adequate explanations;
3. Giving inaccurate information and misleading advice;
4. Misapplication of departmental rules and instructions;

1. Sir Cecil Clothier, Parliamentary Commissioner for Administration, interviewed by the author, 14 March 1983.

2. See, for example, Geoffrey Marshall, op.cit.

5. Peremptory or inconsiderate behaviour on the part of officials;
6. Unjustifiable delay. [1]

The vast majority of the cases handled by the PCA concerned maladministration along these lines.

(d) The Minister's Ambassadorial and Legislative Roles.

Conducting relationships with his department's "clients" variously defined, is an important part of a minister's role responsibility. While it is clear that in certain cases the PCA might become concerned with this aspect of the ministerial role (for instance, in the invalid carriages affair, an examination of the links between the Health Minister and the pressure groups representing disabled people formed part of the PCA's investigation) the Commissioner was statutorily prevented from becoming concerned with a major part of the work of the minister qua departmental ambassador. Under the 1967 Act, contractual or other commercial transactions between a government department and its "clients" did not fall within the remit of the PCA.²

This exclusion has come in for a certain amount of criticism:

... since the law of contract as it relates to dealings between the individual and public authorities is said to leave a great deal to be desired, it could ... be argued that this is an area in which it was particularly important to strengthen the techniques of parliamentary control. [3]

In 1978, the Select Committee on the PCA conducted a review of access and jurisdiction.⁴ It was noted that the exclusion of

1. Roy Gregory and Peter Hutchesson, op.cit., pp.281-82. For examples of cases which would fall within each category, see pp.282-302.

2. PCA Act, op.cit., Schedule 3, paragraph 9.

3. Roy Gregory and Peter Hutchesson, op.cit., p.627.

4. Fourth Report from the Select Committee on the PCA, 1977-78, HC 615.

contractual and commercial matters from the remit of the Parliamentary Commissioner had produced certain anomalies. The wording of the 1967 Act prevented the PCA from investigating complaints about the conduct of the Department of Industry in relation to the collapse of Upper Clyde Shipbuilders, but allowed for an investigation into the conduct of the same Department in relation to the collapse of Court Line. The Committee concluded that it had to

... reject as irrelevant the Government's claim that it should be treated in the same way as a large private firm. [1]

Nonetheless, much of the minister's role responsibility as departmental ambassador was to remain "out of bounds" for the PCA.

The minister's role as legislative pilot also lay beyond the PCA's remit. In effect, this meant that the drawing up of government White Papers and Bills, a major part of the minister's responsibility in this sphere, could not be the subject of investigation by the Parliamentary Commissioner. In the aforementioned report, the Select Committee recommended that the PCA should be given a very limited power to exert scrutiny in the legislative sphere. Where injustice resulted from the unintended consequences of an Act,

... the Parliamentary Commissioner should consider himself free to bring this to the notice of Parliament by suggesting changes in the legislation ... Your Committee would expect the Commissioner to do so sparingly and only when he considered that Members were unaware of the consequences of the legislation ... this would remove any danger that the Commissioner might act as a constitutional court attempting to override Parliament's decisions. [2]

1. Ibid., paragraph 24.

2. Ibid., paragraph 30.

Again, an attempt was being made to give the Commissioner as much lee-way as possible, while preserving the divide between "policy" and "administration". In the event, although the government expressed the view that the PCA already had that power with which the Committee sought to endow him, there were no recorded cases where the PCA availed himself of the right to scrutinise a minister's role as legislative pilot.

3. Accountability.

There can be no doubt that the advent of the PCA facilitated an improvement in the accountability of both ministers and civil servants.

As far as ministers were concerned, scrutiny by the Parliamentary Commissioner created the need for them to formulate responses to critical reports. They would have to ensure that complainants' grievances were redressed, and on occasions, to appear before the Select Committee on the PCA in order to explain in detail why remedies had not been forthcoming.

In the cases already mentioned, which had high "political" profiles, ministers would find that the PCA's reports had permeated the "old regime" of parliamentary scrutiny, becoming the focus of Questions and Debates. (The proponents of the PCA scheme were, however, to be disappointed by the relative failure of MPs to utilize more run-of-the-mill reports to sharpen the traditional methods of scrutiny.)

Some ministers were clearly affected to a greater extent than others by this extension of parliamentary scrutiny. Ministers at the DHSS, the Department of Employment, the Department of the Environment, and those with responsibility for Inland Revenue matters, inevitably found themselves handling a

far greater number of PCA investigations than colleagues in other departments.¹ However, for all departmental ministers, after 1967 there existed the possibility that they could be called to account by a new organ of parliamentary scrutiny for their role responsibilities (especially those relating to policy leadership and departmental management).

For civil servants, the work of the PCA improved their accountability to three agencies: to their superiors in the civil service hierarchy, to their ministerial masters, and the real innovation, to Parliament.

The work of middle and lower ranking officials in any department could attract the attention of their superiors in a way which would have scarcely been conceivable before the introduction of the PCA. The serious treatment which departments accorded to investigations served to emphasise the point that the work of the Parliamentary Commissioner had introduced an additional check on officials. In this way, the internal accountability of civil servants was improved. This point can be extended. Ministers would also learn more about the work being done by civil servants at various levels in their departments, as a result of the PCA's work. This could only have the effect of enhancing ministerial accountability.

However, with the arrival of the PCA, the direct accountability of civil servants to the third, external, agency came a step nearer. The PCA introduced a limited, but definite, movement in the direction of civil service accountability to Parliament. Limited, in the sense that the Commissioner and his staff were not parliamentarians as such, but servants of Parliament.

1. See statistical breakdown of complaints investigated by the PCA in the Annual Reports, 1967-1983.

Nonetheless, when officials answered questions before the PCA, they answered to Parliament. These were not simply senior civil servants answering the questions of the Public Accounts Committee in their very special capacity as departmental Accounting Officers. These were officials from every rank and standing answering questions relating to their role responsibilities for policy advice, departmental management, and the administration of policy.

Furthermore, in certain circumstances, there would be the possibility that civil servants might be called to account for their actions before the real parliamentarians sitting on the body which represented the Commissioner's political arm, the Select Committee on the PCA. This could be significant:

... in cases where (as the department sees it) there are arguments, but not absolutely conclusive arguments, for refusing the remedy sought by the Commissioner, the knowledge that a decision not to do as he wishes will certainly mean the appearance of the Permanent Secretary, fully briefed, before the Select Committee, is a consideration that must sometimes help to tip the balance in favour of the complainant. [1]

After 1967 officials at every level might find that their actions formed the subject of a report sent by the PCA to a Member of Parliament who had passed on a constituent's complaint and, subsequently, in the Commissioner's reports to Parliament collectively.

In sum, it could be argued, with justification, that the most significant consequence of the 1967 PCA Act was the clear improvement which occurred in the accountability of the civil servant, especially to Parliament.

1. Roy Gregory: "The Select Committee on the Parliamentary Commissioner for Administration 1967-1980", Public Law, Spring 1982, p.56.

4. Sanctions.

The intention which lay behind the introduction of the PCA scheme was, generally, to enhance the accountability of both ministers and civil servants for their role responsibilities, and, specifically, to secure the redress of complainants' grievances in cases of departmental maladministration. The identification and punishment of culpable ministers and officials by their respective sanctions-holders might have been expected to occur as an indirect consequence of this original intention.

In fact, during the period 1967-83, no ministers were displaced, demoted or forced to resign as a result of a PCA investigation. Few cases in which the PCA sided with the complainants resulted in ministers being blamed for the specific failings which had occurred. In the cases which had the highest political profile, both of the Secretaries of State involved, George Brown (Foreign Secretary at the time of Sachsenhausen) and Tony Benn (Industry Secretary at the time of Court Line) did subsequently leave the office they had occupied at the time of the controversy. In neither case, however, could this reasonably be directly or indirectly attributed to the PCA report.¹ Anyway, in each of these cases the minister concerned refused to accept that any departmental failure had occurred, despite the evidence of the PCA reports.

The Parliamentary Commissioner has no authority to impose

1. Brown, it will be recalled, resigned as Foreign Secretary and left the Labour Government in 1968, over a disagreement with the Prime Minister, while Benn was moved to the Department of Energy in 1975, largely for internal political reasons.

sanctions on an erring official, or even to request that the official's sanctions-holders initiate disciplinary proceedings.

In so far as a critical report from the Commissioner could be described as a form of punishment, visible as such to the outside world, complainants and the public in general may sometimes derive some satisfaction from seeing departments subjected to external criticism from an impartial and authoritative source. But, as far as retribution is concerned, this is as much as the Parliamentary Commissioner scheme can do ... [1]

The names of officials guilty of maladministration, in its various guises, are only occasionally included in the reports sent to the MPs who referred the complaints, and, with a solitary exception, have never been published in the Commissioner's reports to Parliament. In 1969, the naming and mild criticism of a Board of Trade official who had been involved in the "Duccio" case precipitated a storm of protest from civil service staff associations after a few unscrupulous newspapers had inflated the affair into a major "scandal".² Thereafter, officials were not "named and blamed" in published reports.

In cases where the PCA finds that a complainant has been badly treated, and the department concerned openly admits that mistakes have been made, the attention of senior civil servants is inevitably directed towards the failings of certain officials. It is likely that sanctions were imposed on such officials during the period 1967-83. Indeed, ministerial responses to MP's letters and questions in the aftermath of the publication of critical PCA reports confirmed that disciplinary steps were usually taken when necessary.³ However, in keeping

1. Roy Gregory and Peter Hutchesson, op.cit., p.640.

2. For more on Duccio, see the Third Report of the PCA, HC 316, 1968-69.

3. See Roy Gregory and Peter Hutchesson, op.cit., p.639.

with the reticence which usually envelops such matters, no information was given about the precise nature of the sanctions imposed.

It is therefore impossible to say how many civil servants were reprimanded, financially penalised, demoted or dismissed as a result of PCA investigations into their work.

It can be said that the PCA's impact on this element of the doctrine has been limited to a poorly defined, but probably minor effect on the usage of sanctions against civil servants.

This seems to confirm that the major effect which the PCA had on individual ministerial responsibility during the period under consideration was not to be seen in the realm of personal responsibility or of sanctions, but in that of ministerial and civil service accountability for their role responsibilities.

CHAPTER SIX: Selected Case Studies in the Usage of Sanctions

The names of S. E. Finer and Sir David Maxwell Fyfe (later Lord Kilmuir) have been mentioned at several junctures in this thesis, most notably in Chapter One, when their respective parts in the doctrine's historical development were outlined. Now we turn our attention to that element of individual ministerial responsibility which is most prone to political manipulation and general misunderstanding. In so doing, perhaps it would be useful, at the outset, to briefly sketch out what Finer and Maxwell Fyfe had to say about sanctions and culpability in the 1950s, by way of an introduction to our discussion of the period after 1966.

ONE: Sanctions and Culpability - The Theory c.1966

S. E. Finer's place in the history of individual ministerial responsibility is that of unofficial debunker. In the wake of Crichton Down, he placed the doctrine under a metaphorical microscope and, after subjecting it to several tests, concluded that, at least as far as the resignation clause was concerned, the constitutional pundits had been making false claims for the doctrine.¹ He described ministerial culpability in terms of lapses, first in the responsibility of the man himself ("a personal misadventure of the minister"), secondly, in the responsibility of the minister for "personal acts or policies", and thirdly, in his responsibility for "vicarious acts or policies".²

1. See S. E. Finer: "The Individual Responsibility of Ministers", Public Administration, Vol.34, No.4, 1956.

2. Ibid., pp.384-85.

It might be noted at this point that these categories can be viewed in the context of our "elements" of the doctrine. Finer's short definition of each type of responsibility allows us to say that his first type can be seen broadly in terms of our first element, personal responsibility, while his second and third types can be seen as aspects of our role responsibility (policy leadership and management of the department).

Finer produced evidence to show that failures by ministers in each of his categories of culpability had precipitated only twenty resignations during the preceeding century. Expanding on this point, he argued that the constitutional tomes which defined individual ministerial responsibility in terms of the possible forfeiture of office by a minister facing disapproval in the Commons, were wrong when they referred to a "convention" of resignation. In fact, Finer asserted, "special conditions" had to exist before a ministerial resignation could be precipitated by the action of the House. The government would have to be in a minority, or the minister's own backbenchers would have to desert him. In normal circumstances, the collective solidarity of the government and the personal backing of the Prime Minister could ensure that a culpable minister was shielded from the wrath of the Commons. The resignation clause of the doctrine was, therefore, a device whose usage was entirely unpredictable.

... which Ministers escape and which do not is decided neither by the circumstances of the offence nor its gravity.

... whether the Minister should resign is simply the (necessarily) haphazard consequence of a fortuitous concomitance of personal, party and political temper.[1]

1. Ibid., p.393.

Sir David Maxwell Fyfe's contribution had been to put forward a more detailed definition of the area of responsibility which Finer later categorised as responsibility for vicarious acts or policies, as well as proffering a coded statement on the "rules of the game" of resignation in this sphere. Speaking as Home Secretary in the House of Commons debate on Crichton Down,¹ he sought to differentiate between those actions taken by civil servants in accordance with explicit instructions from, or broad guidelines laid down by, Ministers, and those actions which ministers either could not have been expected to know about or which were taken without the requisite ministerial approval. In the former case, ministers would be expected to "protect and defend" the official or officials concerned. In the latter it would be sufficient for ministers to give an account of what had occurred in the department.

Although Maxwell Fyfe did not specifically refer to sanctions, his remarks were widely interpreted as laying upon ministers the duty of "protecting and defending" up to and including the point of resignation, officials who might find themselves in the situations delineated.

Approaching the time of the advent of a new regime of parliamentary accountability, therefore, the sanctions element of the doctrine seemed to be in a curious state. The Crichton Down affair had afforded both Finer and Maxwell Fyfe opportunities to outline some broad areas of ministerial and official culpability. This produced Finer's successful attempt at exploding the myth of the resignation "convention" and, rather confusingly, Maxwell Fyfe's subtle delineation of the circumstances in which ministerial resignations would be appropriate in relation to vicarious acts or policies.

1. HC Deb 5s 530 1953-54 cl285-87.

The general question to which this chapter addresses itself is: what became of the sanctions element of the doctrine during the new regime of parliamentary accountability? Finer⁴ had effectively shown that the link between the accountability of ministers to Parliament and the imposition of sanctions had been all but severed. While remaining in theory a sanctions holder, Parliament had in practice been superseded in this regard by the parliamentary party in government, and in particular by the Prime Minister.

As our examination of the new organs of parliamentary scrutiny has shown, in one sense the new regime of accountability did not represent an overt attempt by Parliament to reassert itself as an effective holder of sanctions. The new regime was really about enhancing ministerial (and civil service) accountability to Parliament for role responsibilities, and, as will be argued in this chapter, the sanctions element of the doctrine has only a limited application in that sphere. Nonetheless, we should not discount the possibility that the new regime of parliamentary accountability might have had an indirect effect on the usage of sanctions, through the creation of a more intense atmosphere of scrutiny.

None of this is to imply, however, that nothing remains to be said about sanctions during the period 1966-83.

Sanctions clearly were imposed during this period. Resignations and sackings occurred, ministers were demoted and displaced. Some obvious questions present themselves for consideration. Did the Prime Minister remain the all-important figure as far as ministerial sanctions were concerned? By making use of our wide definition of the doctrine of individual ministerial responsibility, which encompasses, within the role responsibilities of the minister, the management of his department and its civil servants, we want to know which sanctions

were imposed on officials, by whom and for what type of failing. Taking our clue from Maxwell Fyfe, we also want to attempt to discover whether informal rules about the relative culpability of ministers and officials, and the sanctions which ought to apply, can operate in practice.

In addition, of course, it is just as important to look at cases of obvious ministerial and/or official culpability where no sanctions were imposed, and ask why this should have been so.

In brief, the aim of this chapter will be to develop our understanding of this important, though no longer all-embracing, element of the doctrine, while hopefully casting some more light on the respective role responsibilities and accountability of ministers and officials.

TWO: A Classification of Cases 1966-83

For the purpose of exposition this, the major part of the chapter, will be sub-divided in order to allow us to examine first those cases which relate to ministers, and secondly those which have to do with civil servants. It is recognised that a certain amount of overlap may occur.

1. Ministers

It will be recalled that, in Chapter Three, the government (especially the Prime Minister) and Parliament were listed as potential sanctions holders with regard to ministers. As far as the actual sanctions themselves were concerned, the options were seen to be: displacement, demotion, and dismissal or resignation.

The obvious starting point when seeking to classify the usage of sanctions during the period 1966-83 is to look at the numbers of resignations, dismissals, demotions and displacements which occurred during these years. However, two general

problems immediately arise, and should be clearly stated at the outset. One of these has to do with the definitions of "demotion" and "displacement". In practical terms, it is often extremely difficult to ascertain whether the shifting of a minister from one post to another is a move sideways or downwards, and, even if this can be clearly established, there remains the problem of deciding whether the move amounts to an imposition of sanctions. The second general problem is of a similar nature. A great number of ministers have either resigned or been dismissed from governments during the period under consideration. Any attempt to discover the precise reasons behind these departures is fraught with difficulties: ministers leave governments for a wide variety of reasons, and it is no simple matter to decide which of them have been at the receiving end of sanctions resulting from failures in responsibility.

Perhaps the simplest course of action would be to eliminate from our discussion at this early stage the great majority of ministerial resignations and dismissals in this period: the ones which had nothing to do with the doctrine of individual ministerial responsibility. It can be said that ministerial departures in this sphere fall into the following categories (remembering that our definition of a "minister" excludes Whips and Parliamentary Private Secretaries, and that ministers who died in office are not accounted for):

- ministers who resigned or were dismissed on the grounds of their disagreement with the collective policy of the government¹

1. These were: Frank Cousins (1966), Peggy Herbison (1967), Lord Longford (1968), George Brown (1968), Ray Gunter (1968), Reg Prentice (1969), Jeremy Bray (1969), Edward Taylor (1971), Norman Buchan (1974), Eric Heffer (1975), Judith Hart (1975), Robert Hughes (1975), Joan Lestor (1976), Reg Prentice (1976), Robert Cryer (1978), Keith Speed (1981). Source: Kessings Contemporary Archives, Vols.15 (1965-66) - 29 (1983).

- ministers who resigned in order to pursue business/career interests, or on grounds of age/health¹
- ministers who were dismissed or were asked to tender their resignations as a result of changes in the structure and/or personnel of government.²

The last category is by far the largest, and presents us with an insoluble problem. There is a possibility that some of these departures resulting from government reshuffles shielded instances of ministerial culpability in relation to either personal or role responsibilities. However, in the absence of any positive evidence of a link between the departure of a minister in these circumstances, and a failure in responsibility, it would be impossible to make any definite statements in this realm. (Equally, of course, some of these departures probably masked instances of disagreement with the government's collective policy, where neither the Prime Minister nor the minister concerned wished to publicise the dissent.)

Having disposed of the most obvious cases of "non-individual ministerial responsibility", we can now turn our attention to those cases in which the doctrine played a part. We shall look in turn at cases which related to issues of personal responsibility and role responsibility. Within each

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1. These were: Herbert Bowden (1967), Sir Dingle Foot (1967), George Darling (1968), Niall MacDermott (1968), Anthony Greenwood (1970), Michael Noble (1972), David Brand (1972), Peter Kirk (1972), Viscount Eccles (1973), Lord Hughes (1975), Lord Balogh (1975), Lord Beswick (1975), Roy Jenkins (1976), Lord Shepherd (1976), Edmund Dell (1978), Lord Kirkhill (1978), Lord Mowbray (1980), Reg Prentice (1981), Sally Oppenheim (1982), John Nott (1983), Neil Marten (1983), Viscount Trenchard (1983). Source: Kessings, op.cit.
 2. These are far too numerous to list. To take but one example during the month of October 1969, government reshuffles saw the departure of no fewer than thirteen ministers.

category an attempt will be made to examine the application of, first, the sanctions of dismissal and resignation, and secondly, those of demotion and displacement. Finally, the reasons for the non-application of sanctions in certain cases of ministerial culpability will be examined.

(a) Personal Responsibility.

(i) Resignations/dismissals:

During the period 1966-83 there occurred four ministerial resignations which related to matters of personal responsibility. The first was that of Reginald Maudling, who resigned from his post as Home Secretary in July 1972.

The details of Maudling's involvement in what came to be known as the Poulson affair have been well documented, and need not be recounted here.¹ Our concern is with the immediate circumstances of Maudling's resignation. Rumbling disquiet about the business connections he had made during the years of Tory opposition in the 1960s² came to a head when, in June 1972, during John Poulson's bankruptcy hearings at Wakefield, information began to emerge concerning Maudling's past chairmanship of a Poulson company and the flow of monies from Poulson to the Maudling family.

In the days that followed, the names of several M.P.s, local councillors and civil servants were bandied about as the Poulson vortex inexorably sucked in more and more people. On the morning of 18 July The Times carried a story which intimated that the Government's Law Officers were about to

1. For the definitive account of this affair, see Raymond Fitzwalter and David Taylor: Web of Corruption. The Story of J.G.L. Poulson and T. Dan Smith (Granada, London, 1981), and Alan Doig: Corruption and Misconduct in Contemporary British Politics (Penguin, Harmondsworth, 1984), chs. 5 & 7.

2. In addition to the Poulson connection, Maudling had also been associated with Jerome Hoffman, who, it was later discovered, had been embezzling investors' cash.

finalise their interim report on the implications of the Poulson hearings. If this report informed the P.M. that there was some likelihood of the Director of Public Prosecutions becoming involved in the affair then the consequences for the Home Secretary could be serious. Although no evidence had emerged to show that Maudling had been involved in illegal activities, the very fact that his name had been mentioned in connection with a case which might be the subject of a detailed police investigation had implications for his position as Home Secretary with overall responsibility for the Metropolitan Police. In the words of The Times:

No minister, no politician at Westminster believes for a moment that Mr Maudling has anything to answer for ... Nevertheless, if the Law Officers' legal judgement led to the Metropolitan Police being involved in an investigation, Mr Maudling's position might be held to be politically untenable.[1]

That afternoon Edward Heath made a long-awaited statement in the Commons on "matters arising out of the public examination in bankruptcy of Mr John Poulson".² During this, the resignation of the Home Secretary was announced.

It is clear, in retrospect, that the reason which Maudling gave for his departure was, to say the least, rather contrived. Some clues were available even at the time, which pointed to this fact.

While it is true to say that there had been a certain amount of speculation about Maudling's future (the New Statesman front page headline the week before the resignation read: "Why Maudling Must Go") there was no real parliamentary pressure on him to resign. The Liberal M.P.s and Labour's William Hamilton

1. The Times, 18 July 1972.

2. HC Deb 5s 841 1971-72 c402-03.

had tabled motions requesting a government inquiry into corruption in public life, but these were not aimed specifically at the Home Secretary. In fact, when the resignation was announced, senior Opposition figures almost fell over each other in bewailing Maudling's departure. In the absence of Harold Wilson, Labour's Deputy Leader, Edward Short (who, ironically, would be under attack two years later because of his former connection with Poulson's crony, T. Dan Smith - see below) responded to the announcement with a fitting tribute,¹ while James Callaghan, himself a former Home Secretary, asked why Maudling had to leave the government at all.

Without prejudging the issue would it not have been preferable for the Home Secretary to retain his position, for the constitutional position regarding the Home Secretary and his relationship with the Metropolitan Police to have been explained, and for us all to have tried to avoid ... a witch-hunt until the facts are established, instead of going through this process, which I dare say may result in the Home Secretary returning to the Government?[2]

Thus, in our terms, one of the potential sanctions holders, Parliament itself, seemed to have no appetite for the imposition of sanctions in this case.

Furthermore, as Edward Heath's initial statement and his reply to James Callaghan's point showed, the second potential sanctions holder, the Prime Minister, had even less taste for such an imposition. Heath had accepted the resignation only with the utmost reluctance, after having offered Maudling an alternative job in the government. Unlike Callaghan, the P.M. recognised that it would have been constitutionally embarrassing, if not strictly speaking improper, for Maudling to remain Home Secretary while the police delved into the implications of Poulson's bankruptcy. The offer of another government post

1. Ibid., c403-04.

2. Ibid., c405-06.

would not have been tantamount to the use of an alternative sanction (demotion or displacement), but more of a technical switch which would allow the government to avail itself of Maudling's services while the rather unfortunate necessity of overseeing the police investigation was performed by someone else.

The bogus nature of Maudling's stated reason for going becomes clear when one considers the fact that he had shown no inclination to resign in 1970, when his position as Home Secretary placed him in precisely the same situation as that which he apparently found unacceptable in July 1972. In 1970, Jerome Hoffman's Real Estate Fund of America and John Poulson's Open System Building, in both of which Maudling had been a director, were the subjects of corruption investigations by the Metropolitan Police.¹ Indeed, only four days before he actually did resign, Maudling was informed that the Fraud Squad wished to interview him in connection with his role in the Hoffman company.²

With no real pressure on him from either of the potential sanctions holders, it would seem that Maudling resigned from his post as Home Secretary and refused to accept another government job, simply because he knew that it would only be a matter of time before further revelations about his business affairs began to turn Parliament and the Prime Minister against him.

In the event, it took another five years (a period which allowed the former Home Secretary to make an abortive comeback as a shadow minister) before allegations that Maudling had, in the 1960s, used his political position to help Poulson gain

1. See Fitzwalter and Taylor, op.cit., p.8.

2. Ibid., p.210.

unfair business advantages, came before a Commons select committee.¹ This body took another look at the resignation letter.

While the letter contains nothing that is untrue, Your Committee consider that had the House been aware both of the close business relationship between Mr Poulson and Mr Maudling and the nature of the financial arrangements between them, that it (sic) would have considered Mr Maudling's statement (that is, his resignation letter) to have been lacking in frankness. Your Committee consider that in this respect Mr Maudling's conduct was inconsistent with the standards which the House is entitled to expect from its members.[2]

During the Commons debate on the committee's report, in July 1977, Edward Heath rose to defend Maudling,³ and the House later refused to either expel or suspend him. Interestingly, however, the former P.M. failed to vote in only one of the series of divisions which took place at the end of the debate. This was when he abstained on the Conservative motion which asked the House simply to "take note" of the report, and effectively exonerate Maudling.⁴

The second and third ministerial resignations relating to matters of personal responsibility are usually viewed as a single case: the "Jellicoe/Lambton affair". In fact, the cases were separate in all important respects, although certain similarities and the fact that circumstances ensured that the resignations would occur within days of each other, served to guarantee Jellicoe and Lambton a single place in history as twins of aristocratic misadventure.

1. This committee was specially convened, albeit reluctantly, by the Callaghan government to investigate the Poulson connections of a number of M.P.s. See the Report from the Select Committee on Conduct of Members, Session 1976-77. HC 490 1976-77.

2. Ibid., para 33.

3. HC Deb 5s 936 1976-77 c538-63.

4. This motion was carried by 230 votes to 207.

Lord Lambton resigned as Under Secretary of State for Defence with responsibility for the R.A.F. on 21 May 1973. Initially there seemed to be no hint of scandal. Reporting the flamboyant Lambton's departure on 23 May, The Times quoted from a Downing Street statement to the effect that the resignation had occurred for "personal and health reasons". The paper gave some prominence to the long-running story of Lambton's fight for the right to use the title "Lord" while sitting in the House of Commons (he had renounced the earldom on his father's death in 1970). The assumption seemed to be that the resignation was associated in some way with Lambton pique at being forced into a corner on the issue of his title.

However, on the same front page a report from Bonn carried details of allegations which had appeared in Stern magazine about the involvement of an unnamed high-ranking British diplomat in a prostitution scandal. This seemed to be a development on a story which had appeared in the News of the World three weeks previously. The Times noted that James Wellbeloved, a Labour M.P., had tabled a motion for the Prime Minister regarding security arrangements at the Ministry of Defence. This was due to be answered on 19 June.

Before the 23 May editions of The Times had even reached the readers, however, Lambton had issued a second statement in which he gave the real reason for his resignation. Summonses had been issued against him in connection with the possession of drugs. Furthermore, he admitted having "a casual acquaintance with a call girl and one or two of her friends".¹

At this point, with rumours circulating to the effect that two other ministers were being blackmailed with compromising

1. Statement published in The Times, 24 May 1973.

photographs, Earl Jellicoe, former diplomat and now Lord Privy Seal and Leader of the House of Lords (with a seat in the Cabinet) found himself dragged into the case. For some months he had been having casual affairs with "call girls", none of whom were connected with any of the persons involved in the Lambton affair. He had always sought to keep his identity and the nature of his work a secret.

But, as was perhaps inevitable, his true identity leaked out and became the subject of gossip in that portion of the underworld associated with organised vice. It was sheer coincidence that this gossip came to the knowledge of police through two informants at a time when senior members of Cabinet were considering the implications of Lord Lambton's case.[1]

When Edward Heath informed Jellicoe about the allegations, he immediately resigned in order to spare the government embarrassment. The resignation was accepted with great regret, and was announced on 24 May.² The Security Commission was asked to mount an investigation in order to discover whether any breach of security had occurred, and the government gave an assurance that no other ministers were involved.

The Commission's report was published later that summer. It concluded that no security leak had taken place and no blackmail had been used against either minister, although some concern was expressed about the susceptibility of Lord Lambton to "commit indiscretions" while under the influence of drugs.³

The most interesting point about these resignations was that they happened before the "scandal" could become a subject for widespread public debate. Parliament remained blissfully

1. Report of the Security Commission, July 1973, Cmnd 5367.

2. For the full text of the resignation letter, see The Times, 25 May 1973.

3. Report of the Security Commission, op.cit., para 33.

unaware of the circumstances which had precipitated the resignations, until the ministers had gone. There was, in consequence, no question of Parliament being in a position to flex its collective muscle as a potential holder of sanctions. Similarly, the Prime Minister played a relatively minor part in the departures of Jellicoe and Lambton. The latter's resignation came entirely on his own initiative, while Jellicoe opted to leave after being informed by the P.M. about the potentially damaging rumours, although apparently being put under no pressure to resign.

These resignations came so swiftly simply because the Conservative Party in particular remained haunted by the memory of the devastating scandal which had arisen ten years earlier after revelations about an association between another minister and prostitutes. The Profumo experience had become so deeply engrained in the psyche of public personages that the merest hint of a re-run of the events of 1963 precipitated the immediate, unforced resignations of two ministers and the convening of the Security Commission. Ironically, Earl Jellicoe, who had been highly critical of the "witch-hunt" atmosphere at the time of the Profumo affair, was unfortunate enough to be drawn into the Lambton case. A similar irony saw Lambton, who had been one of the most vehement critics of Profumo and Macmillan, hoist by his own petard a decade later.

The final ministerial resignation which related to a matter of personal responsibility came in September 1974.

After the Labour Party's return to office in February of that year, Lord Brayley had been appointed Under Secretary of State for Defence with responsibility for the Army. Shortly thereafter he resigned as chairman and director of the Canning Town Glass Company. Early in September it was reported that accountants were being called in to investigate payments of

more than £200,000 made by Canning Town Glass. Speculation began about Brayley's former connection with the company, and he cancelled a ministerial visit to Mexico, apparently in order to brief his solicitors on the matter. On 15 September the Prime Minister stated that he had not called for a report on the affair, but only ten days later Brayley resigned after being told by the P.M. that the Department of Trade was about to investigate Canning Town Glass.

Unlike the other three cases we have examined in this category, the Brayley resignation can be attributed to pressure from one of the potential sanctions holders. The minister's business affairs had not become a subject for parliamentary comment before his resignation, and there were no calls from that quarter for him to go. However, the publication of Brayley's letter of resignation made it clear that Harold Wilson had, as Prime Minister, made use of his right to impose sanctions on an erring minister. In his letter Brayley stated that, in view of the impending Department of Trade investigation Wilson "suggested that I ought to consider my position as a minister."¹ Stripped of the terminology of code, the implication is clear: Brayley was required to resign.

Again, a minister left office in what appeared to have been some haste: no hard evidence of fraud or corruption of any kind had emerged, yet Brayley was out of the government only months after joining it. In retrospect the speed of his departure becomes easier to understand. The Labour government was about to go to the polls in an attempt to secure an overall majority in the Commons, and Harold Wilson could not afford to allow the (as yet minor) Brayley affair to become an electoral

1. For the full text of Brayley's letter and Wilson's reply, see The Times, 26 September 1974.

embarrassment. Furthermore, as the months passed and the story of Brayley's involvement with Canning Town Glass began to unfold, it became obvious that his tenure as a government minister could never have been long-term.

First, it emerged that a payment of over £16,000, shown in the company's balance sheet as being due from Brayley, was being investigated. Then, in February 1975, it was revealed that he had realised more than £1 million (double the market value) from the sale of his shareholding in the company. Investigations continued until, in July 1976 the former minister was charged with conspiring to defraud Canning Town Glass and its shareholders. Eight months later, while on bail awaiting his Old Bailey trial, Brayley died.

In summary, therefore, it can be said that the potential sanctions holders played a major part in only one of the four resignations which can be attributed to matters of personal responsibility. The P.M. played a part as sanctions holder in the Brayley case. The resignations of Maudling, Lambton and Jellicoe occurred without the introduction of pressure from Parliament or the Prime Minister, although it could be said that, at least in the cases of Maudling and Lambton, there was some probability that one or other of the potential sanctions holders would, in time, have attempted to force a resignation should the minister have been inclined to cling to office.¹

1. One interesting case of ministerial resignation which related to a matter of personal responsibility has occurred in the period which lies beyond the immediate scope of this thesis. Cecil Parkinson, Secretary of State for Trade and Industry, resigned in October 1983 after revelations about an affair he had been having with his former secretary. Once again, the potential sanctions holders had no part in the resignation: Parliament was not in session, and the P.M. publicly backed her minister. The revelations came on the eve of the Conservative Party's annual conference, so for once the feelings of the party rank and file could be gauged. With the P.M. backing her minister, (cont. over)

(ii) Demotion/displacement:

It was noted at the beginning of this section that the concepts of demotion and displacement present us with two general problems: when does the shifting of a minister become a "demotion" rather than a "displacement", and, in either case, how can we ascertain whether the shift has amounted to an imposition of sanctions?

Such problems become especially acute when we deal with issues of personal responsibility. By their very nature ministerial failings in the personal sphere are likely, if it is at all possible, to be masked in the interests of the minister himself and of the government as a whole. It seems highly probable that a Prime Minister who is content in all other respects with the work of a particular minister, will seek to shield him from any unnecessary disclosures, provided that there is no question of the law having been broken or of the matter becoming an embarrassment to the government as a whole. While shielding the minister from the glare of publicity, however, the P.M. may still wish to apply his own disciplinary measure, by moving the minister to another, perhaps less important, post in the course of a routine reshuffle.

All of this means that it could only be foolhardy for us to make any attempt to be more specific about the usage of the sanctions of demotion and displacement with reference to the personal responsibility of ministers in the period under consideration.

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however, the wider party showed no inclination to push the issue of resignation (this being perhaps the only kind of occasion during which a party, always an agent of accountability, could make a bid to assert itself as a potential sanctions holder). Perkinson eventually resigned on his own initiative after a statement by his former secretary indicated that she might be unwilling to allow the public "scandal" to subside.

(iii) Non-application of sanctions:

When attempting to gain an impression of the usage of sanctions it is of no small importance that we look not only at the clear-cut cases where sanctions were imposed, but also at those cases which raised the issue of ministerial culpability but did not result in the imposition of sanctions. With reference to ministerial role responsibility, as will be seen later, a sufficient number of these cases occurred in order to make possible some categorisation of the reasons for non-application of sanctions. In the sphere of personal responsibility, however, such cases were fairly rare.

It is certainly true that the personal responsibilities of ministers were frequently called into question (particularly in relation to financial matters) without sanctions being applied, but the reason for such an outcome was usually straightforward enough. For instance, in 1978 the Minister for Sport, Denis Howell, was named (without imputation of guilt) in the course of a corruption trial involving the directors of C. Bryant and Son Ltd. He subsequently felt obliged to issue a statement, in which he made it clear that his work for the company had ceased in 1964, and that he had at no time, either in his capacity as an M.P. or as a minister, been in a position to benefit the company in any way, or to influence its affairs.¹

In other words, when the charges of personal irresponsibility patently did not "stick" the question of sanctions did not arise. What about the rarer cases, where the charges did "stick" or at least caused sufficient concern to raise doubts about the minister's continuance in office, but no sanctions were applied?

1. Statement published in The Times, 18 May 1978.

The cases of Edward Short, Lord Polwarth and Lord Cockfield were typical, in that they raised questions of personal ministerial responsibility in relation to potential conflict of interest.

Edward Short was Lord President of the Council and Leader of the House of Commons when, on 26 April 1974, T. Dan Smith was sentenced to six years in prison after being found guilty of corruption.¹ On that evening, a B.B.C. television programme, "The World of T. Dan Smith", showed a pre-recorded interview, in the course of which Smith claimed that Short had been one of the M.P.s employed by him in the early 1960s. The minister promised to make a statement about his association with Smith, and, after much delay this was issued in the early hours of the morning of 30 April (Short was to be criticised for releasing his statement to the press before appearing in the Commons: eight years later another minister, Nicholas Fairbairn, forfeited his job, ostensibly for the same offence - see below).

Despite the fact that he had, over a period of months, been consistently denying that any business relationship had ever existed between himself and Smith, Short's statement,² conceded that he had received a payment of £250 (Smith's files recorded a payment to Short of £500) from Smith in 1963. Publication of the Short-Smith correspondence³ raised further questions concerning the motivation for such a payment. Short's obvious desire in 1963 to accept the money provided the transaction could be kept secret, contrasted sharply with his

1. For accounts of Short's relationship with T. Dan Smith, see Fitzwalter and Taylor, op.cit., and Doig, op.cit.

2. Published in The Times, 1 May 1974.

3. In The Daily Express. See Fitzwalter and Taylor, op.cit., p.235, for details.

bland explanation eleven years later that the cheque had in fact been an above-board repayment of "expenses".

Commenting on Short's position, The Times reached into the core of the issue:

... if he did not know that Mr T. Dan Smith was acting for Crudens (building contractors), he should have regarded the payment as something he should either refuse or declare: he accepted and kept silent.[1]

In the period immediately following his statement, Short came under attack from several angles. An added complication was the fact that the Committee of Privileges was preparing to investigate the issue of "M.P.'s for hire", which had emerged from the Poulson/Smith morass. As Leader of the Commons, Edward Short would be expected to chair this investigation!

Despite an announcement by the Prime Minister that Short's statement had his full approval,² several Labour M.P.s began to publicly criticise the minister. At a meeting of the P.L.P. on 2 May, Short dismissed suggestions that he ought to resign, and stated that he would, if elected according to convention, chair the Committee of Privileges' investigation. During the same meeting Harold Wilson said he would not accept a letter of resignation from Short, even if this was offered.³

Backbench murmurings continued, however, while the former Labour Solicitor-General, Sir Arthur Irvine stated that it was "unthinkable" that Short should remain in government⁴ and the New Statesman pondered whether he might not "for the time being at least, feel more at home on the back benches."⁵

1. The Times, 7 May 1974.

2. See The Times, 2 May 1974.

3. For an account of this meeting, see The Times, 3 May 1974.

4. Reported in The Times, 5 May 1974.

5. New Statesman, 3 May 1974.

There was to be no resignation. Edward Short continued to serve as Lord President of the Council and Leader of the House of Commons until he left the government along with Harold Wilson in 1976,

Edward Short's relation with T. Dan Smith was far from being as encompassing and complex as the relationship which existed between Reginald Maudling and John Poulson, yet the cases of Short and Maudling were similar in important respects. Each was a senior Cabinet minister who had in the past been involved in business dealings which raised serious questions concerning a conflict of interest in relation to their status as M.P.s. Furthermore, a second conflict of interest arose for each man when the details of these dealings became a subject for general concern: Maudling's role vis-à-vis the Metropolitan Police and Short's vis-à-vis the Committee of Privileges, raised awkward questions to say the least. Each minister did, however, have the full support of the Prime Minister. Nonetheless, in 1974 Short encountered far more criticism from the other potential sanctions holder, Parliament, than Maudling had in 1972. This can partly be explained by the fact that the steady drip of revelations about corruption in public life had eroded the amount of natural sympathy which any minister or M.P. could expect to receive if suspected of past misdemeanours.

Why, then, did Short survive? For one thing, there were no more skeletons in his cupboard: unlike Maudling he did not have to fear further revelations. For another, the aggressive backing which Short received from a Prime Minister who was already extremely sensitive about what he saw as vicious attacks on his government by the "Tory press" (Short's plight being viewed as the outcome of the latest manifestation of these) made it absolutely clear that any backbench revolt against the minister would be seen as an attack on the head of government himself.

With a second general election looming, this was always an improbable scenario.¹ Finer's dictum had been tested: some of the minister's own backbenchers deserted him, during a period of minority government, but they lacked the support and determination to force the issue to its conclusion.

A potential conflict of interest also lay at the heart of Lord Polwarth's dilemma in May 1973. He had been appointed to the post of Minister of State at the Scottish Office the previous year, and on 12 May 1973 he was given extra responsibility as chairman of an inter-departmental task force on North Sea Oil development. Within days it became known that Lord Polwarth and his family held 17,000 shares with a total value of almost £20,000 in three trusts which had certain connections with oil-related developments. The Scottish press focused its attention on the matter of the shares and on the fact that such an important area of ministerial responsibility was to be handled by a Lord.

Lord Polwarth's appointment was the subject of a Commons motion on 25 May, and in the course of the debate the Labour M.P. Robert Hughes referred to the reply which he had received after writing to the Prime Minister with "certain specific questions". The P.M. had acknowledged that any minister should relinquish in advance shareholdings which are likely to come into conflict with his duties, but noted that Lord Polwarth had satisfied himself that no risk of conflict existed in his case.² This did not satisfy Hughes.

1. Wilson's stout defence of Short added a touch of irony to his speedy dismissal of the more dispensable Lord Brayley a few months later.

2. For Hughes' quotation from the P.M.'s reply, see HC Deb 5s 857 1972-73 c853.

Anyone who believes that no conflict of interest can arise is incredibly naive. The Prime Minister is on record as saying that if a conflict of interest were to arise Lord Polwarth would take no part in Government discussions. If that is so, it negates the whole purpose of his appointment ...

I believe that Lord Polwarth should sell his shares or resign. It is clear that if no direct conflict of interest exists at the moment there is great danger that such a conflict will arise.[1]

At this point it should be remembered that, in Chapter Two we referred to the classified document Questions of Procedure for Ministers, which requires ministers entering office to divest themselves of all directorships and controlling shareholdings, as well as ordinary shareholdings if the latter are likely to create a conflict of interest. We shall be considering in some detail the changes which took place in the personal responsibilities of ministers during the period 1966-83 in the course of the next chapter, but at this stage it is necessary for us to touch on these changes insofar as they related to the case under consideration.

While Questions of Procedure ... remained classified, Prime Ministers and their senior colleagues occasionally exhibited a willingness to share the document's secrets with their fellow M.P.s. In 1952 Winston Churchill made a lengthy statement on these matters, and this was cited with approval eight years later by R. A. Butler.² As far as shareholdings were concerned, the Churchill/Butler rule was that

There may ... be exceptional cases where, even though no controlling interest is involved, the actual holding of particular shares in concerns closely associated with a Minister's own Department may create the danger of a conflict of interest. Where a Minister considers this to be the case, he should divest himself of the holding.[3]

1. Ibid., c855.

2. For Butler's quotation of the Churchill statement, see HC Deb 5s 616 1959-60 c372-73.

3. Ibid., c373.

On coming to power in 1970, Edward Heath appended a significant, but apparently unnoticed corollary to this rule. In answer to a parliamentary Question in November of that year, he said:

If at any time they (ministers) find that a matter arises in an industrial or economic sphere which will cause a conflict with their existing holdings, they must notify their colleagues and desist from taking part in a discussion on that subject.[1]

This was the line which the P.M. adhered to when the issue of Lord Polwarth's shares arose.

It would seem that Heath interpreted the Churchill/Butler rule as applying to ministers about to take up their posts, hence his own corollary to cover the possibility of potential conflicts of interest arising while ministers were already in post. The critics of Heath and Polwarth clearly saw the Churchill/Butler rule as referring to all cases of potential conflict of interest.

Despite enjoying the complete support of the Prime Minister, Lord Polwarth reluctantly bowed to the parliamentary pressure. On 31 May 1973 he ordered that his shares in Atlantic Asset Trust, British Asset Trust and Second British Asset Trust be sold, because of the "continuing campaign of unfounded innuendoes".² It might be argued that a partial sanction had been imposed on the minister by Parliament. There is no doubt that, had Polwarth refused to divest himself of the shares, Robert Hughes and his colleagues would, through the use of traditional methods of parliamentary scrutiny, have pressed for his resignation. As the case of Lord Cockfield suggests, however, a minister in such a position has nothing to fear while he continues to be assured of the P.M.'s backing.

1. HC Deb 5s 806 1970-71 cl429.

2. See The Times, 1 June 1973.

As Secretary of State for Trade, Lord Cockfield found himself at the centre of a conflict of interest case in 1982. The detailed history of Charter Consolidated's growing interest in, and ultimate bid for, the Scottish mining equipment group, Anderson Strathclyde, need not concern us here. Let it suffice to say that political and business opinion in Scotland had long since come to associate indigenous industrial decline with non-Scottish ownership of vital concerns, and consequently viewed the proposed takeover of Anderson Strathclyde with unmasked antipathy. Thus, when it was revealed in December 1982 that the government had overruled the Monopolies and Mergers Commission's recommendation that Charter's takeover be blocked, a parliamentary row was guaranteed. However, once it became known that Lord Cockfield had delegated his responsibility for dealing with the Monopolies Commission's report because he held 2,500 shares valued at £5,600 in Charter, the anger of the opposition intensified.

At this point we should turn to Margaret Thatcher's interpretation of the procedural rules for ministers, as seen in her statement of March 1980.¹ At that time, she adhered, word for word, to the Churchill/Butler rule on the minority shareholdings of ministers, and she made no mention of the Heath corollary. However, when questioned on 21 December 1982 about Lord Cockfield's shares in Charter Consolidated, the Prime Minister argued that the Trade Secretary had "... correctly handed over his total responsibility" to his Minister of State, Peter Rees.² In adopting this stance she was, in effect, making use

1. HC Deb 5s 981 1979-80 c293.

2. HC Deb 6s 34 1982-83 c821-22. Interestingly, an attempt was made to test the issue of whether a Secretary of State could in fact hand over his role responsibility in such a fashion, during Anderson Strathclyde's appeal against the government's
(cont. over)

of the Heath corollary which she had previously chosen to ignore.

An attempt (by Tony Benn) to have a copy of Questions of Procedure for Ministers deposited in the House of Commons library failed,¹ as did all efforts to force Lord Cockfield to relinquish his shares or resign. There was to be no imposition of sanctions, partial or otherwise, in this instance.

In these three cases, when doubts were raised about the continuance of ministers in office, the backing of the Prime Minister (combined, in the case of Lord Polwarth, with a reluctant retreat by the minister himself) allowed them to survive fairly severe parliamentary criticism.

To summarise, therefore, it can be said that, although four ministers resigned and three others were subject to a certain amount of pressure on matters pertaining to personal responsibility during the period 1966-83, in only one case (that of Lord Brayley) could it reasonably be said that sanctions were imposed on the minister. The potential sanctions holder who made use of his power in that case was the Prime Minister. The other three resignations occurred without any significant attempt being made by either P.M. or Parliament to enforce sanctions (in the cases of Lords Lambton and Jellicoe no such attempts were necessary, in the case of

(cont. from over)

ruling. However, the court held that, since the only items of evidence which could prove that the Secretary of State had indeed handed over his statutory responsibility were parliamentary statements, no judgements could be made on this matter, because judicial citation of Hansard was incompatible with parliamentary privilege. See R v Secretary of State for Trade and others, ex parte Anderson Strathclyde plc, All England Law Reports, 27 May, 1983, also "Using Hansard", Public Law, Winter 1983, pp.520-22.

1. HC Deb 6s 34 1982-83 c965-66.

Reginald Maudling parliamentary criticism before his resignation was at best sporadic). In the other cases the Prime Minister threw his or her weight behind the minister, to oppose the claims of the other potential sanctions holder, Parliament.

(b) Role Responsibility

(i) Resignations/dismissals:

In the period 1966-83 there were no resignations or dismissals which could properly be said to have been prompted by failings in regard to the role responsibilities of individual ministers. This is not to say that certain ministerial departures have not been dubbed, by over-simplistic commentators and political scientists, as instances of "individual ministerial responsibility" (implying, in effect, that the resignations have arisen out of our second element of the doctrine).

Five ministerial resignations in this period exhibited certain characteristics which might conceivably induce one to over-simplify in such a fashion. In fact, four out of the five had nothing to do with individual ministerial responsibility, but were examples of ministers taking the collective failure of the government upon their own shoulders. The fifth was truly a unique case, which defies categorisation. Let us look briefly at these five cases.

In November 1967 the Chancellor of the Exchequer, James Callaghan, recommended to the Cabinet the policy which senior members of the Wilson government had hitherto refused to countenance: sterling devaluation. In so doing, he felt obliged to offer his resignation since,

I was going back on pledges that I had given in good faith to a number of overseas countries about the value of their sterling holdings.[1]

1. See letter of resignation, published in The Times, 30 November 1967.

The Prime Minister initially refused to accept the resignation:

... it was the policy of the Government, not of one minister, to fight to maintain the parity of the pound.

... He (Callaghan) had been an international symbol of our determination to fight for sterling, but so had I. There could be no question of a symbolic resignation.[1]

Nonetheless, the resignation was eventually accepted.

Callaghan did not, however, leave the government; he simply exchanged portfolios with the Home Secretary, Roy Jenkins.

This case cannot be viewed as an example of real individual ministerial responsibility. The P.M. was clearly correct when he pointed out that, however closely Callaghan had been associated with the policy of parity, the decision to devalue (which the Chancellor now positively recommended) amounted to such a major change in policy that it had to be seen in terms of the collective responsibility of the government as a whole. The immediate reappointment of Callaghan to one of the major offices of state meant that his apparent willingness to take the "sins" of the entire administration on his own shoulders could be accommodated without too much disruption. We now know that this willingness to assume the role of sacrificial lamb had as much to do with the political chess game which was being played in the higher reaches of the Wilson government as with the Chancellor's regrets about devaluation. Callaghan had long been hankering after a move away from the Treasury and his resignation at the time of devaluation can reasonably be interpreted as a shrewd political move which effectively forced the Prime Minister's hand.²

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1. Harold Wilson: The Labour Government 1964-70. A Personal Record (Weidenfeld and Nicolson, London, 1971), pp.451, 467.
 2. For an account of Callaghan's manoeuvrings at this time, see R.H.S. Crossman: The Diaries of a Cabinet Minister Volume 2 (Hamilton and Cape, London, 1976), pp.579-96.

The resignations of the Foreign Secretary, Lord Carrington, the Lord Privy Seal, Humphrey Atkins, and the Foreign Office Minister of State, Richard Luce, at the time of the Argentine invasion of the Falkland Islands in April 1982, were further examples of departmental ministers "carrying the can" for their government.

Commentators at the time were in no doubt that the Foreign Office resignations represented a reassertion of what they saw as the doctrine of individual ministerial responsibility's most potent element. In descriptions of the Foreign Secretary's departure, a variety of tones were adopted, ranging from the heroic - "taking his stand on the classic principle of ministerial accountability"¹ - to the sardonic:

Not since the blessed St Thomas Dugdale of Crichel Down had a senior minister taken his oath of office to the serious limits of giving up his public career and retiring to his farm because his department had blundered.[2]

The general impression conveyed was, however, the same: the mythical doctrine had been "revived". One new constitutional textbook was quick to state (and it will surely not be the last to do so) that the Carrington resignation

... provides a further clear precedent for the existence of a rule requiring a Minister who is personally culpable of misjudgement or negligence to offer his resignation.[3]

In fact, none of the evidence points to this being anything other than a repeat of the Callaghan case, albeit on a grander scale and without the additional ingredient of intra-Cabinet manoeuvring. In his letter of resignation, Lord Carrington

1. The Times, 6 April 1982

2. New Society, 13 May 1982

3. Geoffrey Marshall: Constitutional Conventions. The Rules and Conventions of Political Accountability (Clarendon Press, Oxford, 1984), p.65.

certainly indicated that the requirements of the doctrine had played a part in his decision.¹ However, the letter also indicated that he was resigning in order to restore confidence in the Foreign Office and the government at a moment of national crisis. When the findings of the Franks committee of investigation into the events surrounding the loss of the Falklands were published,² Carrington felt free to refer again to the circumstances of his resignation. He spoke quite graphically about there having been "the need to lance the boil" of criticism which was swelling dramatically around the government in the immediate aftermath of the Argentine invasion.³

Referring to this matter in conversations with the author, a few ministers did view the resignation as a "noble act" which "revived the doctrine". Another, while recognising the nobility of the act, admitted that there had been a need to "ease the path of the government at a difficult time",⁴ while one felt that "it was easier for the Prime Minister for someone to go".⁵

Carrington's description of the metaphorical boil which required lancing seems to be a convincing interpretation of the reasoning behind the F.O. resignations, and it sits rather uneasily with his other statements concerning his role responsibility for what amounted to a debacle. How could it be at all reasonable or realistic to attribute individual ministerial responsibility to three Foreign Office ministers for an

1. For the full text of Carrington's and the other two letters of resignation, see The Times, 6 April 1982.

2. Falkland Islands Review: Report of a Committee of Privy Counsellors chaired by Lord Franks, Cmnd 8787.

3. For Lord Carrington's comments at this time, see The Times, 19 January 1983.

4. Minister, interviewed by the author, 19 March 1984.

5. Minister, interviewed by the author, 23 January 1984.

event which, as the evidence contained in the Franks Report showed, was caused by a series of political blunders in the Ministry of Defence, the Foreign Office, and indeed the Cabinet itself.¹ Lest it be forgotten, another minister offered to resign at the same time as the Foreign Office team - John Nott, the Minister of Defence, who was not permitted to go. Why did the lancing of the boil stop at the acceptance of three resignations? Nott and the MoD could have been faulted for the general weakness of the Islands' defences and for the implicit dilution of the British commitment to the region signalled by the proposed withdrawal of HMS Endurance. Furthermore, the Defence Secretary lost the confidence of both sides of the House of Commons on several occasions during major debates in the aftermath of the invasion (this was particularly noticeable in the first, emergency debate²), but remained in office.

This would seem to confirm that the Foreign Office resignations did not represent a "reassertion" of individual ministerial responsibility, or even, to put it more accurately, a reinvigoration of the sanctions element. They were an exercise in minimising the damage to the government's credibility. True responsibility for the failures in policy, misinterpretation of intelligence reports, and the lack of military preparedness, was widespread and would seem to have engulfed even the Prime Minister. The resignations were confined to the Foreign Office, apparently because the loss of both

1. Franks pulled his punches by concluding that the government could neither have foreseen nor prevented the invasion, but the evidence which his report contained told another story. It showed that while civil servants and intelligence officers had performed adequately, politicians at various levels had managed, by a combination of neglect and blunder, to send two disastrous messages to Buenos Aires. The first of these, which was accurate, was that the British government no longer had a policy on the Falklands, and that the whole question of the Islands' future was being allowed to drift. The second, which was shown to be less accurate was that Britain would not defend the Islands against attack.

2. HC Deb 6s 21 1981-82 c633-68.

Carrington and Nott would have weakened the government to an intolerable extent, and the loss of Nott alone would scarcely have sated the Commons' desire for heads to roll.¹ The resignations were not, as the more simplistic interpretations would have it, the result of a logical apportionment of culpability. They were rather more like lancets hurridly plunged into a nasty boil.²

The final case of resignation which is susceptible to misinterpretation as a clear-cut instance of an imposition of sanctions following a failure in role responsibility, is that of Nicholas Fairbairn. He resigned as Solicitor-General for Scotland in January 1982, at the time of the furore over the Crown's decision not to prosecute the youths suspected of involvement in what became known as the Glasgow rape case.

Unlike the "rogue" cases which we have just been discussing, individual ministerial responsibility was not used as a cloak for collective responsibility in the Fairbairn case. However, it must be noted that the Fairbairn resignation cannot be considered solely with reference to a single aspect of individual ministerial responsibility: this was, in effect, a "composite" case. The Scottish Solicitor-General came under attack because of what were perceived to be failings in the spheres of both his role and personal responsibilities.

With regard to the former, public outrage at the decision to drop proceedings in what had been a particularly brutal

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1. It seems highly improbable that Nott could have departed alone, since Carrington was obviously determined to resign. It seems equally improbable that, during the first hectic weekend following the invasion the P.M. was unaware of the possible consequences for her government, in terms of an increase in the number of critics within the ranks of its own backbenchers, if it remained unexpurgated while the "boil" of criticism continued to swell.
 2. Parts of this section have been drawn from Robert Pyper: "The F.O. Resignations: Individual Ministerial Responsibility Revived?", Teaching Politics, Vol.12, No.2, May 1983.

case, brought attention to bear on the operation of the Crown Office in Edinburgh.¹ After making a statement in the House of Commons on the reasoning behind the legal decisions, Fairbairn came under severe criticism.² Nevertheless, it would be quite wrong to attribute his resignation to a failure in role responsibility. After all, in apportioning such responsibility we must remember that the ultimate authority for the rape case decision lay with Fairbairn's superior, the Lord Advocate, Lord Mackay, who showed no inclination to resign.

In this section we are dealing with role responsibility, but, notwithstanding the fact that it will forever be associated with the failure to prosecute, it is clear that the Fairbairn resignation could not reasonably be said to have occurred because of a failure in role responsibility. The Solicitor-General had, however, been guilty of certain other lapses.

By issuing a statement which appeared in the Scottish press in advance of his appearance in the Commons, Fairbairn left himself open to criticism for showing a lack of courtesy towards the House. Such criticism was forthcoming, and the Solicitor-General had to apologise to the House before beginning his formal statement. This provided the official reason for his resignation: in his letter to the Prime Minister, Fairbairn defended the legal decision, but intimated that he was stepping down because,

In my dealing with the Press, I may have made errors of judgement.[3]

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1. For a detailed account of the legal implications of the case, see Ross Harper and A. McWhinnie: The Glasgow Rape Case (Hutchinson, London, 1983). The woman involved was ultimately successful in bringing a private prosecution against the youths.
 2. For the statement and its aftermath, see HC Deb 6s 1981-82 16 c423-34.
 3. For the full text of the letter of resignation, see The Times, 23 January 1982.

While it is not absolutely clear whether precipitous ministerial statements of this kind should properly be regarded as matters of personal or role responsibility (an argument could be made for either description), it seems fair to say that Fairbairn could normally have expected to survive such an error. The opposition were concerned to attack him on the legal decision rather than on his discourtesy - "... that was not the most serious part of his offence".¹ It has already been pointed out that another government minister, Edward Short, survived heavy criticism at an earlier date after making a statement to the press before appearing in the House.²

What did contribute towards a weakening of Fairbairn's already precarious position was the inadequate nature of his response to M.P.s' questions on the details of his statement. Even his Conservative colleagues remained conspicuously silent while the criticisms became sharper and the tormented minister "twisted in the wind".³ This might lead us to attribute some part in the imposition of sanctions to Parliament.

This is not the end of the matter, however. There was an additional factor which undoubtedly contributed towards the Fairbairn resignation. Only a month before the controversy over the rape case, he had been embarrassed by reports of an

1. Bruce Millan, shadow Scottish Secretary, HC Deb 6s 16 1981-82 c424.

2. It is of course true that Hugh Dalton resigned as Chancellor of the Exchequer in November 1947 after making comments to the press immediately before delivering his Budget statement. The risk of financial impropriety, albeit unfounded in this particular case, brought about the resignation. The potential consequences of Fairbairn's statement could not be regarded as having been so severe: it might have had the effect of ruling out the possibility of a belated state prosecution in the rape case, but this was never likely to happen anyway.

3. Words of a journalist who observed Fairbairn's reception. Interviewed by the author, 11 January 1984.

incident which had occurred in October 1981. A young woman with whom Fairbairn had a close relationship had been resuscitated after attempting to hang herself from a lamp post outside his London flat. There was some speculation to the effect that he would resign in order to spare the government any embarrassment, but he was determined to stay.¹ As a result of this adverse publicity the Scottish Solicitor-General was already in some trouble regarding his personal responsibilities when the rape case arose. It was well known that, although the Prime Minister had refused to ask for his resignation in December, she was far from enamoured with his general conduct.

In summary, therefore, it seems fair to say that Nicholas Fairbairn was the victim of an accumulation of misfortune and blunders, all of which had to do with some aspect of individual ministerial responsibility, but none of which, had they occurred in isolation, would normally have precipitated a resignation under the doctrine. In the words of one of his former ministerial colleagues, "he had run out of insurance policies".²

If no ministerial resignations or dismissals took place because of failures in role responsibility, what of the other sanctions?³

1. For more on this, see The Times, 23, 24, 28, 29, 31 December 1981.

2. Minister, interviewed by the author, 23 January 1984.

3. Although there were no cases in which the sanction of resignation/dismissal was imposed on ministers for failures in role responsibility during the period covered by this thesis, an interesting case did arise at the beginning of the 1983-84 Parliament. Dr Gerard Vaughan, who had been Minister for Consumer Affairs in the latter part of the first Thatcher government, lost his job after the 1983 election. It could be (and has been) argued that this was due to his mishandling, only a few weeks before, of a controversy involving the Citizens Advice Bureaux. Dr Vaughan had threatened to withhold the C.A.B. grant because of reports that the organisation had put monies to improper uses. When the reports turned out to be hearsay, the minister was forced into an embarrassing retreat. However, it must be stressed that Vaughan was only one of more than a dozen ministers who were required to resign in the course of this post-election

(ii) Demotion/displacement:

The problems which were noted when we looked at the sanction of demotion/displacement in relation to the personal responsibilities of ministers, apply in almost equal measure when we attempt to relate this sanction to role responsibility. Ministers may be moved from one post to another for any number of reasons, and any attempt to tease out the precise cause of a particular move is fraught with difficulties. Hence, it is almost impossible to cite definite instances of demotion or displacement related to failures in role responsibilities.

Perhaps one case which can be mentioned is that of John Davies, who in November 1972 moved from his post as Secretary of State for Trade and Industry to become Chancellor of the Duchy of Lancaster. At the time, it was stressed that this move represented a move "sideways" rather than a demotion, but nothing could conceal the fact that Davies had never really mastered the complexities of his role at the DTI. Although he was not "disciplined" for his part in it, the disastrous Vehicle and General affair (of which more later) was but one example of his all too apparent failure to utilise his vast business experience within the ambit of a department of state. Commenting on the replacement of Davies by Peter Walker, The Times encapsulated the thinking which lay behind the move;

Mr Walker has shown in his control of the Department of the Environment that he is a highly capable administrator who can manage a large and diffuse department more successfully than Mr Davies.[1]

(cont. from over)

reshuffle, and, consequently, it would be wrong to place too much stress on the apparent link between the C.A.B. affair and Vaughan's departure.

1. The Times, 6 November 1972.

The dangers in attempting to produce an authoritative list of such cases can be seen with reference to Harold Wilson's decision to move Tony Benn from his post as Secretary of State for Industry to the Department of Energy, in June 1975. Ostensibly, this might provide another example of displacement (most commentators saw the move as a de facto demotion) because of relative failure with respect to role responsibilities. However, a close reading of the interpretation placed upon the move by some of the leading figures in the Wilson administration¹ makes it clear that Benn's move had less to do with his failure to meet his ministerial role responsibilities than with his inability to abide by Wilson's interpretation of collective responsibility. Benn's views on public ownership, which had come to differ quite markedly from those of the government as a whole, would, it was hoped, be less of an embarrassment in a department which did not have to have such close links with the City.

(iii) Non-application of sanctions:

It is by no means unusual for a minister to be attacked for having committed a blunder of major proportions. Of course, many of these attacks turn out, after some consideration, to have been examples of party political point-scoring rather than genuine attempts to show how the minister had failed to meet his role responsibilities, and in such cases we should not be surprised to see the minister survive unscathed. Here we are concerned with those cases where there have been substantive grounds for questioning the way in which ministers

1. See, for example, Marcia Falkender: Downing Street in Perspective (Weidenfeld and Nicolson, London, 1983), pp.169-70.

have carried out their role responsibilities, but where no sanctions have been applied. In the period under discussion, there would seem to have been four broad reasons for the non-application of sanctions in such cases.

Before listing these reasons and offering some brief examples under each heading, it should again be stated that, as was the case with personal responsibility, the support which a minister receives from the Prime Minister and his colleagues is a factor which minimises the risk of sanctions being applied.

i. No acknowledgement of failure: cases in which ministers refused to admit (in spite of strong evidence to the contrary) that mistakes had been made.

Examples in this category included the Sachsenhausen case of 1967¹ and the Court Line affair of 1975² in both of which ministers remained adamant that no departmental failure had occurred, despite the findings of the Parliamentary Commissioner for Administration.

ii. "Failure did not encompass ministers": cases where it is acknowledged that failure has occurred, but it is claimed that this was not the fault of ministers.

Within this category there were cases where the claim that ministers were not to blame for the failure seemed a reasonable one, and cases where it did not.

1. See G. K. Fry: "The Sachsenhausen Case and the Convention of Ministerial Responsibility", Public Law, 1970; the Third Report of the Parliamentary Commissioner for Administration, Session 1967-68 HC 54 1967-68; and the Commons debate on Sachsenhausen, HC Deb 5s 758 1967-68 c107-70.

2. See Roy Gregory: "Court Line, Mr Benn and the Ombudsman", Parliamentary Affairs, Vol.30, 1977; the Fifth Report of the Parliamentary Commissioner for Administration, Session 1974-75 (HC 498 1974-75); and Benn's contribution to the Commons debate on Court Line, HC Deb 5s 897 1974-75 c575-86 (by the time the P.C.A. had reported, Benn was in his new post as Energy Secretary).

An example of the former came during the furore, in July 1982, which followed the revelation that Michael Fagan had gained access to the Queen's bedroom in Buckingham Palace. William Whitelaw, the Home Secretary, was subjected to a great deal of criticism because of his ultimate role responsibility for Palace security, in spite of the fact that it was patently absurd to expect him to suffer an imposition of sanctions for what was obviously a failure on the part of low- to middle-ranking police officers. This case is of particular interest because it provides us with evidence of the way in which a mania for symbolic "heads" to "roll" can result in fevered brows even at the very top levels of government. Fearful lest the mounting public and political outcry over the Palace break-in should force the Home Secretary to make a symbolic gesture, the Permanent Secretary at the Home Office, Sir Brian Cubbon, asked the Commissioner of the Metropolitan Police, Sir David McNee, to consider resigning. This would have been almost equally symbolic. McNee refused to comply.¹

A case in which it seemed to be less appropriate to argue that ministers should escape sanctions because the failure did not encompass them, was the Vehicle and General affair of 1971. The serious questions which this case raised concerning the apportionment of culpability between ministers and officials, will be discussed below. For the moment, however, it should be pointed out that the findings of the James Tribunal,² which

1. See Sir David McNee: McNee's Law (Collins, London, 1983), pp.213-18.

2. Report of the Tribunal appointed to inquire into certain issues in relation to the circumstances leading up to the cessation of trading by the Vehicle and General Insurance Company Limited (the James Report) HC 133 1971-72, HL 80 1971-72.

inquired into the events surrounding the collapse of this vast insurance company, have been the subject of much criticism.¹ The Tribunal's implicit conclusion, that no blame for the government's failure to forestall the company's collapse could be attributed to any minister,² seemed to belittle the broad role responsibility of ministers for maintaining effective lines of communication within their departments, in order to enable them to be kept aware of gathering storms (the V & G collapse had been foreshadowed for some months before the actual event, and the shaky state of the company's finances had been a matter for concern over a period of years). Furthermore, the fact that the Secretary of State for Trade and Industry, John Davies - who was a man with a significant accumulation of business experience to his credit - failed to pick up from the City grapevine that which his departmental officials were unable to tell him, passed without comment in the Tribunal's report.

iii. "Sanctions are not required": cases where it is recognised that mistakes have been made and can be attributed to ministers, but are not grave enough to justify the imposition of sanctions.

Here, the experience of William Whitelaw in December 1982 can be cited. As Home Secretary, he suffered severe criticism because his attempts to compromise and offer concessions to the

1. See, for example, R.J.S. Baker: "The V and G Affair and Ministerial Responsibility", The Political Quarterly, Vol.43, 1972; Richard A. Chapman: "The Vehicle and General Affair: Some Reflections for Public Administration in Britain", Public Administration, Autumn 1973; Lewis A. Gunn: "Politicians and Officials: Who is Answerable?", The Political Quarterly, Volume 43, 1972.

2. James Report, op.cit., Chapter 8.

various opponents of the government's new immigration rules succeeded only in leaving all sides dissatisfied, and, consequently, the Commons rejected the government's proposals. However, the thinking of the effective sanctions holder, the Prime Minister, seemed to be summed up by The Times:

Mr Whitelaw's was a straightforward misjudgement ... It would be much better to accept that he has made a mistake, to recognise that he is not alone in public life in doing so, to resist the clamour of those who would seek a limb if they cannot have his head, and to keep him as Home Secretary.[1]

iv. Minister(s) concerned no longer in office.

In this category can be located cases such as the Rhodesian sanctions affair. The miasma which surrounds this convoluted tale will probably never be dispersed, since the Conservative government, on coming to power in 1979, refused to give clearance for an inquiry which could pursue the loose ends left after publication of the Bingham Report.² The latter had, however, clearly indicated that important questions remained to be answered concerning the way in which ministers in successive governments since the mid-sixties had met their role responsibilities in relation to the enforcement of oil sanctions against the Smith regime.³ The ministers concerned had long since departed the Whitehall corridors, and so the question of sanctions being used against them never arose.

Other important cases might be cited here.

When the De Lorean car enterprise in Belfast came to grief

1. The Times, 17 December 1982

2. Foreign and Commonwealth Office: Report on the Supply of Petroleum and Petroleum Products to Rhodesia (Bingham Report).

3. For a more comprehensive account of the Rhodesian sanctions affair, see Martin Bailey: Oilgate. The Sanctions Scandal (Coronet, London, 1979).

in October 1982, attempts to blame the Northern Ireland Office ministers who had, four years earlier, agreed to finance the scheme, seemed akin to retrospective wisdom. The publication of a report by the Public Accounts Committee in 1984, however, revealed that the former Northern Ireland Secretary, Roy Mason, had been warned about the risks involved in the development of the futuristic sports car only eight days before the government approved the £80 million project, and showed that ministers in both Labour and Conservative administrations had failed to perceive the fundamental weakness of the venture.¹

In a similar vein, it was not until the publication, in 1982, of the report of the Croom-Johnson Tribunal on the operation of the Crown Agents between 1967 and 1974, that the precise nature of the failings exhibited by Dame Judith Hart and Lord Holderness in their roles as Ministers for Overseas Development in this period, became clear.²

This brings to an end our long section on the usage of sanctions against ministers in relation to failings in their personal and role responsibilities. It is now time for us to turn our attention to the civil servants.

2. Civil Servants

Since the doctrine of individual ministerial responsibility has been widely defined in this thesis, in order to encompass,

1. 25th Report from the Public Accounts Committee, "Financial Assistance to De Lorean Motor Cars Ltd" HC 127 1983-84.

2. For more on this case, see Christopher Hood: "The Crown Agents Affair", Public Administration, Vol. 56, Autumn 1978; and the Report of the Tribunal appointed to inquire into certain issues arising out of the operations of the Crown Agents as financiers on own account in the years 1967-74 (Croom-Johnson Report) HC 364 1981-82.

within the role responsibilities of the minister, the management of his department and its officials, it is right that we should give some space to a discussion of the usage of sanctions vis-à-vis civil servants in the period with which we are concerned.

In Chapter Two, it will be remembered, the potential sanctions holders for civil servants were seen to be their civil service superiors and ministers. The sanctions which might be imposed in any given case were: a formal reprimand, financial penalties, demotion or downgrading, and of course, dismissal.

As was the case when attempting to discover something about the usage of sanctions with respect to ministers, one immediately encounters obstacles when seeking to classify civil service sanctions. Information on most disciplinary cases is held by individual government departments, and attempts to persuade the Whitehall fiefdoms to divulge data on these matters almost invariably meet with the response that "such information is not readily available and could only be obtained by diverting our limited staff resources from other duties."

However, some departments are slightly more cooperative than others, and the information which they provide, combined with the fruits of a careful study of a few cases of major importance, allows us to compose a general picture of the usage of civil service sanctions, 1966-83.

(a) Personal Responsibility.

It might reasonably be argued that we should not be concerned with sanctions insofar as they applied to civil servants for misdemeanours in the sphere of personal responsibility. After all, as far as the doctrine is concerned, civil servants are of interest only to the extent that they are tied up with ministerial role responsibility: by implication, therefore, it

is only the role responsibility of civil servants we should be concerned with.

However, the truth of the matter is that, as with ministers, in the majority of cases in which sanctions were used against officials, the catalyst was a failure in personal responsibility. The only cases in which senior, non-industrial civil servants were dismissed in this period, occurred because of such failings.

George Pottinger, by far the most senior civil servant to have been subject to sanctions during these years, was suspended from duty on the day of Reginald Maudling's resignation. The Permanent Secretary to the Department of Agriculture and Fisheries in the Scottish Office,

... drove a Poulson car, wore Poulson suits, went on Poulson holidays, travelled on Poulson, ate on Poulson, stayed at hotels on Poulson, visited the theatre on Poulson, received his Christmas cheer from Poulson, and eventually lived in a Poulson house.[1]

Pleading ignorance of Estacode's rules on conflict of interest, Pottinger was sentenced to five years imprisonment (reduced by a year on appeal) on corruption charges in November 1973, and he left the civil service in disgrace.²

Alfred ("Jack") Merritt suffered a similar fate after servicing Poulson's needs while working as the Ministry of Health's Principal Regional Officer. He was fined £2,000 and given a twelve-month suspended sentence in 1974.³

1. Fitzwalter and Taylor, op.cit., p.127.

2. For more on the Pottinger case, see Fitzwalter and Taylor, op.cit., pp.90-94, 125-28, 224-30, and A. Doig, op.cit., pp.19-20, 137-40.

3. See A. Doig, op.cit., p.143.

At lower levels of the service too, sanctions were imposed principally for failures in personal responsibility. When a junior official of the Department of the Environment's Property Services Agency was tried at the Old Bailey in March 1982 on charges of bribery, he alleged that such abuses were rife, and had been going on for a period of years. An inquiry was mounted, and the next year it was revealed that 61 PSA officials had been dismissed because of their parts in fraudulent and corrupt activities which cost £100,000 in the period 1976-82.¹

In the two full years of 1976 and 1977, a total of 177 civil servants from the administrative grade in all departments were dismissed for disciplinary offences.²

If we look in some detail at a single department of state, it becomes clear that matters relating to personal responsibility were much more likely to precipitate the imposition of sanctions than matters relating to role responsibility. The Ministry of Defence maintained records on disciplinary cases involving all civilian grades and classes, for the years which lie at the end of our period of interest. These are summarised in Table 6.1.

A precise breakdown of the nature of the offences committed is not available. However, the Ministry indicated that the vast majority of cases arose because of personal irresponsibility.

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1. Report on the Property Services Agency by Sir Geoffrey Wardale for the Secretary of State for the Environment. This was published as Appendix D of the 26th Report from the House of Commons Committee of Public Accounts ("Fraud in the PSA: The Wardale Report") HC 295 1983-84.
 2. Figure from written answers given by Charles Morris, 18 November 1977 and 2 February 1979.

Table 6.1 Civil Service Sanctions in the Ministry of Defence, 1980-83.

<u>Year</u>	<u>Total no. of cases</u>	<u>Dismissals</u>	<u>Financial Penalties(a)</u>	<u>Reprimands(b)</u>
1980	230	9	10	211
1981	200	24	15	161
1982	225	24	12	189
1983(c)	<u>150</u>	<u>9</u>	<u>14</u>	<u>127</u>
	805	66	51	688

(a) Note that MoD defines the sanction of demotion/downgrading as well as penalties such as loss of increments or temporary suspensions from duty as "penalties with financial implications".

(b) Reprimands are defined as "notations, admonitions, reprimands and severe reprimands".

(c) Figures until 30 September 1983.

Source: Civilian Management Office, Ministry of Defence.

Notations were awarded for "first-time private life convictions - which can be the breaking of any civil law." "Departmental offences" were defined as:

... theft, assault on colleagues, insubordination, fraudulent travel or overtime claims, abuse of the flexible working hours scheme, poor timekeeping, security breaches, absence without leave, negligence, drinking on duty or being on duty under the influence of drink.[1]

Only one of the "departmental offences" in this catalogue is indicative of failure in relation to role responsibility: "negligence".

In one sense, we should not be surprised by this. After all, the only formal guide on civil service conduct, the C.S.P.C.S. Code has as its overriding concern the personal

1. Letter to the author from the Civilian Management Officer of the Ministry of Defence, July 1984.

rather than the role responsibilities of officials. Although the sanctions permitted under the Code are intended to apply in cases of failure in relation to both types of responsibility, the Code itself represents an outline of the personal responsibilities of the civil servant.

(b) Role Responsibility.

Of course, failures do take place in the sphere of role responsibility, but because there is (or can be?) no written code which defines such responsibilities in detail, the interpretation of "failure" in this sphere can be problematic. Even when clear cases of failure do occur, when mistakes have obviously been made, it is all but impossible to discover which sanctions have been imposed on the official wrongdoers by the effective sanctions holders, their departmental superiors. The organ of parliamentary scrutiny which is most concerned with civil service role responsibility, the Parliamentary Commissioner for Administration,

... is not empowered to prosecute, or order the prosecution of delinquent officials, or begin disciplinary proceedings against them or even publicly to reprimand and official warn them about their conduct ... when the Commissioner criticises departments or individual officials in cases where faulty administration was not identified or acknowledged before his intervention, if the matter is serious enough, no doubt disciplinary action follows that would not have been taken but for his investigation. Parliament and the public, however, know nothing of this.[1]

Moreover, it might be added that ministers will almost certainly leave the disciplinary proceedings in the hands of their senior departmental officials.

Unlike the sphere of personal responsibility, civil service role responsibility is a grey area as far as sanctions are

1. Roy Gregory and Peter Hutchesson: The Parliamentary Ombudsman (Allen and Unwin, London, 1975), p.640.

concerned. We are left to make what we can of the few cases in which, after obvious failures had taken place, it seemed reasonable to raise the question of sanctions.

In 1967 a rather strange case did result in the resignation of a civil servant, ostensibly because of a failure in the sphere of his role responsibility. Colonel "Sammy" Lohan, Secretary of the Defence, Press and Broadcasting Committee (the D-Notice Committee), an employee of the MoD, resigned on his own initiative after failing to issue a D-notice to prevent the publication of an article which appeared in the Daily Express. The resignation had, in fact, as much to do with Lohan's belief that his character had been impugned during the political arguments which surrounded the affair, as with his failure to issue the Notice (he believed he had conveyed to the journalist the impression that the story should not be published, and he did not feel the need to hand over one of the Notices he was actually carrying).¹

The most striking case in the period under consideration was undoubtedly the Crown Agents affair. A host of senior civil servants in two departments of state, at the Bank of England and in the Exchequer and Audit Department, in addition to the Agents' officials themselves, were engulfed by this financial catastrophe. There is, however, no record of any sanctions having been imposed on any of the officials who were faulted by the Croom-Johnson Tribunal.²

1. For more on this, see the Report of the Committee of Privy Councillors appointed to inquire into 'D' Notice matters (Radcliffe Report) Cmnd 3309, and H. Wilson, op.cit., pp.415-18. Lohan was subsequently cleared of incompetence by a civil service inquiry - see The Times, 8 August 1967 for the text of its report.

2. See the Croom-Johnson Report, op.cit.

In part, this can be explained by the fact that, like their ministerial superiors, some of the senior civil servants whose failings precipitated and then exacerbated the plight of the Crown Agents (which required the injection of some £225 million of public funds to save it from insolvency in the mid-1970s) were no longer in office by the time the Tribunal's report was filed in 1982. Most notably, this included Sir Claude Hayes, the Senior Agent, and Alan Challis, the Director of Finance. Furthermore, a number of people were criticised for what were, admittedly, relatively minor mistakes: not a few of these men went on to occupy highly prestigious posts in Whitehall.¹

Nevertheless, even allowing for these mitigatory factors, it does seem remarkable that no sanctions should have been imposed after a financial disaster which precipitated criticism of three Permanent Secretaries and two Under Secretaries at the Ministry of Overseas Development,² a Second Permanent Secretary and two Deputy Secretaries at the Treasury,³ a Deputy Governor and a Chief Cashier at the Bank of England,⁴ a Chief Auditor and a Deputy Director of Audit at the Exchequer and Audit Department,⁵ and eleven senior officials at the Crown Agents.⁶

1. For example, Sir Douglas Henley, a Deputy Secretary at the Treasury who worked closely with the Crown Agents in the period before the crisis of 1974, and later criticised by Croom-Johnson, became Comptroller and Auditor General in 1976.

2. Permanent Secretaries Sir Richard King, Sir Michael Walker and Sir Geoffrey Wilson; Under Secretaries D. L. Pearson and M. G. Smith.

3. Second Permanent Secretary Sir Derek Mitchell; Deputy Secretaries F. R. Barratt and Sir Douglas Henley.

4. Deputy Governor Sir Jasper Hollom; Chief Cashier J. S. Fforde.

5. Chief Auditor G. H. Burch; Deputy Director of Audit H. R. Francis.

6. Senior Agent Sir Claude Hayes; Director of Finance Alan Challis; Director of Personnel K. W. Barley; Head of Banking D.W.F. Clark; Director of Finance N. Hewins; Managing Director R. S. Newman; Head of Banking E. Osgodby;

Only one official was suspected of having been lax in the sphere of his personal as well as his role responsibilities.¹ He had died in 1977. It was perhaps indicative of the relative importance attached to personal as opposed to role responsibilities that The Times could issue a perceptible sigh of relief on the morning following publication of the Croom-Johnson report; "Incompetence Not Corruption".²

The Vehicle and General collapse also resulted in criticism of civil servants by a Tribunal of Inquiry. Leaving aside for the moment the thorny issue of whether it was right that officials alone should have shouldered the blame for a failure of this magnitude, this case seems to typify the apparent unwillingness or inability of the civil service to impose sanctions on officials who have failed in their role responsibilities.

Three officials in the Department of Trade and Industry's Insurance and Companies division were reproached for their failure to act in order to forestall the collapse. Christopher Jardine, an Under Secretary, was found to have been negligent and incompetent,³ while two Assistant Secretaries, C. J. Homewood and D. Steel, were severely criticised.⁴ It seemed inevitable that the question of sanctions would arise. However, the two Assistant Secretaries retained their positions in the DTI and, while it is true that Mr Jardine was effectively

(cont from over)

Head of Investment J. S. Shuter; Assistant Crown Agent E. A. Morriss; Assistant Money Market Manager R. C. Dorrington; Sterling Money Market Manager B. R. Wheatley.

1. Bernard Wheatley, who was suspected of corruption. See the Croom-Johnson Report, op.cit., Chapter 9, para 81.
2. Leader heading, The Times, 27 May 1982.
3. See the James Report, op.cit., para 341.
4. Ibid., paras 338-40.

demoted, the sanction was introduced in such a convoluted fashion that it hardly appeared to be a sanction at all (he "retired" and was later re-employed in a more junior capacity in another part of the public service¹).

One clue to the reasoning behind the use (and non-use) of sanctions in this case comes from a former senior official in the DTI. He has said that the way in which the James Tribunal focussed on the three officials

... distressed us all ... where I feel the Tribunal was slack was in its failure to question the responsibility and role of the Deputy Secretary.[2]

Perhaps in this instance, the guilt complex of the senior civil servants was a factor in the usage of sanctions.

To conclude this section, it can be reiterated that civil servants would seem to be much more likely to be subject to sanctions for failures in the sphere of their personal responsibilities than for those in the sphere of their role responsibilities. It must be said that the latter do present genuine problems, since they tend to raise difficult questions of the kind with which Maxwell Fyfe grappled in the 1950s. Perhaps it is now time for us to turn our attention to the relative culpability of ministers and their officials.

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1. As confirmed by John Davies, HC Deb 5s 836 1971-72 c70-71. Interestingly, the only official who was dismissed in the wake of the V and G affair was Rose Norgan, a photocopying clerk who was sacked for leaking a copy of an internal DTI memo on the company to her son, who worked in the insurance business. Her failure was, of course, in the realm of her personal responsibilities, and it had nothing to do with the losses incurred by V and G policy holders.
 2. Sir Antony Part, former Permanent Secretary at the DTI interviewed by the author, 12 April 1983.

THREE: Relative Culpability of Ministers and Civil Servants -
Theory and Practice 1966-83

It will be recalled that Maxwell Fyfe proffered a general clarification of what Finer termed the minister's responsibility for "vicarious acts or policies", and what we have considered to be the departmental management aspect of ministerial role responsibility. Maxwell Fyfe spoke about the expectation that ministers would "protect and defend" officials who had acted in accordance with the explicit instructions of, or the broad guidelines laid down by, their political masters. Where officials had acted without clear ministerial approval, or in areas where ministers could not have been expected to hold much detailed knowledge, the latter would only be required to give an account of events.

One could sum it up by saying that it is part of a Minister's responsibility to Parliament to take necessary action to secure efficiency and the proper discharge of the duties of his Department[1]

How did these informal guidelines on how to go about apportioning the relative culpability of ministers and civil servants when things go wrong, actually operate in our period?

On several occasions of note, the guidelines seemed to operate effectively. At the time of the Sachsenhausen affair, in which Foreign Office officials had resolutely opposed the claims of a number of former prisoners of war for financial reparation, the Foreign Secretary, George Brown, did "protect and defend" his civil servants. He explained to the Commons that, having examined the files personally, he was satisfied that the officials had acted in accordance with the general policy of the department, and could not, in consequence, be faulted.² Of course, Brown paid no price in terms of sanctions,

1. HC Deb 5s 530 1953-54 c1286.

2. HC Deb 5s 758 1967-68 c107-12.

since his reluctant acceptance of the Parliamentary Commissioner's ruling on the Sachsenhausen case did not imply an admission that any mistakes had been made by the Foreign Office.

In other cases, ministers accounted to Parliament for the action or inaction of others in matters which they could not reasonably have been expected to know about or which involved acts taken without ministerial approval. Here, the examples of William Whitelaw at the time of the Buckingham Palace break-in,¹ and Northern Ireland Office ministers over the matter of interrogation techniques,² can be cited.

However, in one major case, Maxwell Fyfe's informal guidelines broke down.

In the wake of the Vehicle and General collapse, ministers pleaded that they were obliged only to give an account of what had occurred, but were not to be seen as having been culpable, because officials had failed to keep them informed. Thus John Davies, the Secretary of State:

I think it is one of the sadder aspects of this whole matter that his (Under Secretary Christopher Jardine's) perhaps over-scrupulous application of the system of delegation led him to deprive himself of the protection that a reference upwards would have afforded him.[3]

In fact, as has already been pointed out, Davies in particular might reasonably have been expected to know something about Vehicle and General without placing undue reliance upon

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1. For Whitelaw's statement on Buckingham Palace security, see HC Deb 6s 28 1981-82 c397-407.
 2. See the Report of the Committee of Privy Councillors appointed to consider authorised procedures for the interrogation of persons suspected of terrorism (Parker Report) Cmnd 4901: "It cannot be assumed that any U.K. Minister has ever had the full nature of these particular techniques (of interrogation) brought to his attention, and consequently that he has ever specifically authorised their use." (Para 12)
 3. HC Deb 5s 836 1971-72 c72.

the work of his department's Insurance and Companies Division. This episode saw ministers successfully escape a share of culpability on the shaky grounds that, in Maxwell Fyfe's terms, the pending demise of a company with one million policy holders towards which the government had statutory responsibilities, was not something they could have been expected to know about. Ministers could, and did, turn to the Report of the James Tribunal in support of this defence.

James placed an extremely narrow construction on his remit, and consequently failed to pay much attention to the role of ministers as opposed to that of officials. Ministerial files stretching back as far as 1961 were consulted, but no ministers were actually questioned by the Tribunal.¹

During the Commons debate on Vehicle and General, the Home Secretary, Reginald Maudling, put forward his own interpretation of how the doctrine of individual ministerial responsibility should operate with regards to the apportioning of culpability between ministers and officials:

Ministers are responsible to Parliament still for all the actions of their Departments. A Minister takes any praise for anything good that his Department does. He must take any blame for anything bad that it does. That is a simple principle. A Minister cannot say in this House 'I am sorry. We made a mess of it. It was not my fault. Mr So-and-So, the assistant secretary got it wrong that day.' One cannot do that. That has not been the principle, and it never can be.

Ministers are responsible not only for their personal decisions but also for seeing that there is a system in their Departments by which they are informed of important matters which arise.[2]

This almost echoes the speech of that other Home Secretary, Sir David Maxwell Fyfe. The only interpretation which could be

1. See R.J.S. Baker, op.cit., for a critique of the Tribunal's modus operandi.

2. HC Deb 5s 836 1971-72 c159.

placed on Maudling's words was that the ministers at the DTI should bear a share of the blame for Vehicle and General. However, he then veered spectacularly from the straight and narrow path which he had been striding along so purposefully, to point out that ministers could not be expected to supervise every aspect of their departments' work, and he attempted to draw a parallel between the million and a half personal letters he received annually as Home Secretary and the work of the DTI's Insurance and Companies Division.¹

By the end of his speech Maudling seemed to be seeking the best of both worlds: conceding that ministers might theoretically be culpable, but maintaining that they should not be blamed, since the James Report had exonerated them.

Maxwell Fyfe's guidelines could not be said to have survived the trauma of Vehicle and General intact. That major case created a significant element of doubt about whether informal rules concerning the apportioning of culpability between ministers and civil servants, could operate in practice. Pious ministerial statements in the Maxwell Fyfe mould have a very limited value if they suddenly become malleable when political careers are at risk.²

CONCLUSION: Sanctions - The Theory c.1983

The sanctions element of the doctrine of individual ministerial responsibility was in a rather curious, not to say confused,

1. Ibid.

2. It might be argued that the fallibility of such informal guidelines was further exposed by an episode which occurred outwith the scope of this thesis. The inquiry into security arrangements at the Maze Prison, which followed the mass I.R.A. escape of September 1983 (the Hennessy Report HC 203 1983-84) firmly located the blame for the security failure with the prison Governor, although the junior minister who had role responsibility for prison matters had been subjected to much public criticism.

state at the advent of the new regime of parliamentary accountability. Having examined the usage of this element between 1966 and 1983, it cannot be overstressed that it would be misleading to claim that there were definite trends from which we might extrapolate, to produce hard and fast "rules of operation". The comments of two ministers in the Thatcher government reflect something of the general problem:

... of course resignations, or the lack of them, can be used as political expedients. It might not be in the interest of a government for a certain minister to go, so he might be left where he is, demoted, moved sideways or even promoted! If you were to look at all the resignations which have taken place since 1945 (or even during the life of this government), it would be difficult to make any general statement. Crichton-Down had virtually no general significance, at least as far as ministers were concerned.[1]

No clear criteria and rules on resignations can be established. Whether or not a resignation is to occur cannot be laid down in advance: political factors must be considered.[2]

Has anything emerged from our study of the usage of sanctions which would allow us, if not to make statements of an authoritative or dogmatic nature, at least to offer some general clues about how this element is likely to be used?

A ministerial resignation or dismissal would seem to be likely to take place when a failure has occurred in the sphere of personal responsibilities and it might be damaging for the government as a whole if the minister was to remain in office. Resignations or dismissals are much less likely to occur when failures are in the realm of role responsibilities. During our period, out of the three instances of ministerial resignation which were ostensibly precipitated by the latter type of failure, two (Callaghan in 1967 and Carrington et al. in 1982)

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1. Cabinet Minister, interviewed by the author, 23 January 1984.
 2. Malcolm Rifkind, Parliamentary Under Secretary of State, Foreign Office, interviewed by the author, 24 August 1983.

should properly be viewed in terms of collective responsibility, and the other (Fairbairn in 1982) involved an unfortunate accumulation of failures in relation to both aspects of individual ministerial responsibility.

The support of the Prime Minister continues to be the decisive factor as far as the possible use of sanctions against ministerial miscreants is concerned. Nothing in the period 1966-83 would lead us to question Finer's assertion that the position of Parliament as an effective sanctions holder has been eroded to the point where it becomes operable only in extraordinary circumstances. The new organs of parliamentary accountability played a major part in relatively few cases in which the question of sanctions even remotely arose, and then (as with the Parliamentary Commissioner over Sachsenhausen and Court Line) ministers refused to acknowledge that departmental failures had occurred.

A variety of reasons can be forwarded in explanation of the non-use of sanctions after what seemed to be obvious cases of ministerial failure. Among these, the argument that errors were committed, not by ministers themselves, but by their officials, raises the difficult question of how the relative culpability of ministers and civil servants ought to be measured. The Vehicle and General affair dealt a heavy blow to the view that this question is amenable to resolution through the use of generally applicable guidelines which will not be ignored when it is politically expedient to do so.

Having made this point however, it must be said that the sanctions element of the doctrine was only marginally more likely to be used against senior civil servants for failures in relation to their role responsibilities than against their ministers for similar failings.

CHAPTER SEVEN: Personal and Role Responsibilities - A Survey of Important Developments

Having considered the changes which occurred in the usage of the sanctions element in the course of the new regime of accountability, we can now return to the remaining elements of the doctrine. The question which this chapter seeks to address is: to what extent were the elements of personal and role responsibility subject to change during the period 1966-83?

As far as civil servants were concerned, there were no real changes in the realm of their personal responsibilities. It has already been noted that the withdrawal of Estacode and the advent of the Civil Service Pay and Conditions of Service Code produced no substantive change in the required standards of personal responsibility. For this reason, we can begin with an account of the changes which occurred in the sphere of ministerial personal responsibility, before going on to look at the major factors which impinged on both ministerial and civil service role responsibilities.

ONE: Ministerial Personal Responsibility

Two identifiable changes occurred in ministerial personal responsibility during the period under consideration in this thesis. One of these affected ministers via that "layer" of their personal responsibility which they have in common with all Members of Parliament, while the other impinged on the ministerial office per se. The changes were, however, related, in that each had as its fundamental concern the thorny issue of declaration of interest.

It will be recalled from Chapter Two that possible conflict of interest between the private and parliamentary activities of M.P.s had been the subject of resolutions and

conventions dating from the seventeenth century, as well as Speakers' guidelines and a developing custom of declaration of interest dating from the early nineteenth century.¹ The weaknesses in the existing, informal, arrangements were exposed by two Select Committee reports,² and, more graphically, by the revelations surrounding the Poulson affair, which pointed to the need for a re-examination of the whole concept of declaration of interest.

The upshot of this re-examination came on 22 May 1974, when the House of Commons agreed to two Resolutions pertaining to the declaration of interest by M.P.s.³ It became a rule of the House, as opposed to a mere custom or convention, for an M.P. taking part in debates or other proceedings of the Commons and its committees, to declare:

... any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have.

Additionally, M.P.s were required to supply details of their interests for inclusion in a Register.

As well as passing these Resolutions, the Commons agreed to the appointment of a Select Committee charged with the task of further defining the concepts of interest and benefit, and arranging the compilation of the Register. The Committee reported in December 1974,⁴ and the Commons held a debate on

1. For a summary of the history of declaration of interest, see the Report from the Select Committee on Conduct of Members 1976-77, Appendix 1, HC 490, 1976-77.

2. Report from the Select Committee on the House of Commons Disqualification Bill, HC 349, 1955-56, and Report from the Select Committee on Members' Interests (Declaration), HC 57, 1969-70.

3. HC Deb 5s 874 1974 c391-544.

4. Select Committee on Members' Interests (Declaration), HC 102 1974-75.

the report on 12 June 1975.⁵ On this date a further Resolution was passed, which listed nine classes of pecuniary interest which should be registered. These included remunerated directorships, employments, trades or professions, and generally served to codify the various historical resolutions and conventions referred to above. Recording an interest in the Register was to be regarded as sufficient disclosure for the purpose of M.P.s voting in the House or in committee.

However, the concept of registration of interests is by no means infallible. Some M.P.s couch their entries in the vaguest terms, while others can openly flout the requirement to register without being subject to the ultimate sanction of "possible penal jurisdiction by the House" (Enoch Powell has persistently refused, on grounds of principle, to register an interest).

It would be reasonable to state that, in spite of the useful job of clarification performed by the Resolutions of May 1974 and June 1975, the personal responsibilities of M.P.s remain largely uncoded and open to subjective interpretations of "honourable" conduct.

The second change in the sphere of personal responsibility had a specific, ministerial, focus. This change has already been mentioned, in Chapter Six in the context of a discussion of the non-application of sanctions in the cases of Lord Polwarth (1973) and Lord Cockfield (1982).

It will be remembered that certain sections of the classified document Questions of Procedure for Ministers have, by convention, been revealed by incoming Prime Ministers. A

1. HC Deb 5s 893 1974-75 c735-804.

significant statement on ministerial shareholdings was made by Winston Churchill in 1952, and this was echoed by R. A. Butler, the Home Secretary, when deputising for his Prime Minister in 1960.¹ In summary, the Churchill-Butler rule was that a minister should, on entering office, divest himself of all directorships and controlling shareholdings. Additionally, a minister is required to divest himself of any ordinary shareholding which he may have in a concern closely associated with his own department, where there would be some danger of a conflict of interest arising.

The Churchill-Butler rule was the subject of a subtle, but important, amendment in 1970. Shortly after becoming Prime Minister, Edward Heath answered a Commons Question concerning minority ministerial shareholdings in terms which are worth quoting once again:

If at any time they (ministers) find that a matter arises in an industrial or economic sphere which will cause a conflict with their existing holdings, they must notify their colleagues and desist from taking part in a discussion on that subject.[2]

Thus, a clear distinction emerged between the Churchill-Butler rule that ministers ought to relinquish any shares likely to create a conflict of interest, and the Heath corollary which offered ministers the chance to opt out of discussions in which their shareholdings might be said to create such a conflict.

The confusion which resulted from the co-existence of two distinct, and equally authoritative, interpretations of the rules on ministerial shareholdings, provided ample scope for

1. For Butler's citation of the Churchill statement, see HC Deb 5s 616 1959-60 c372-73.

2. HC Deb 5s 806 1970-71 c1429.

political manoeuvring. Not surprisingly, Edward Heath abided by his amended version of the rule when defending Lord Polwarth in the face of severe criticism in 1973. Interestingly, Margaret Thatcher's initial statement on these matters adhered closely to the Churchill-Butler rule, and ignored the corollary.¹ Nonetheless, when Lord Cockfield's shareholdings caused problems in 1982, the Prime Minister chose to defend her minister on the grounds that he had acted in accordance with what we have termed the Heath corollary.²

In brief, it can be said that both of the changes which took place in the rules governing ministerial personal responsibility were problematical. Neither of them was of revolutionary proportions. The House of Commons Resolutions of May 1974 and June 1975 were useful measures inasmuch as they tidied up the existing plethora of guidelines and customs on Members' interests. However, the single innovation which resulted from the Resolutions, the establishment of a Register of Interests, has not been accorded much respect by M.P.s. The other change, Heath's corollary to the Butler-Churchill ruling on minority ministerial shareholdings, served (probably in spite of the original intention) to further muddy the already dark waters of ministerial personal responsibility.

1. HC Deb 5s 981 1979-80 c293.

2. HC Deb 6s 34 1982-83 c821-22. Further to this point, although outwith the scope of this thesis, it is interesting to note that Mrs Thatcher's personal conduct in respect of declaration of interest came in for heavy criticism early in 1984. Revelations to the effect that a company for which Mark Thatcher worked as a consultant had been awarded a £300m construction contract following a Prime Ministerial visit to Oman (which coincided with a visit by the PM's son) brought allegations concerning Mrs Thatcher's failure to disclose information about her son's business activities. The PM replied that members of her family were entitled to privacy in their personal lives. The row continued for several months, and one result of the general unease about the PM's behaviour was the decision by 20 Labour MPs to withdraw their entries in the Register of Interests.

One important attempt to shed some light on the whole area of ministerial personal conduct failed when, in 1982, Tony Benn's request that a copy of Questions of Procedure for Ministers be deposited in the Commons library was turned down.¹

TWO: Ministerial and Civil Service Role Responsibility

The role responsibility of government ministers has been defined in terms of their position as policy leaders, departmental managers, ambassadors for their departments and legislative pilots. Civil servants' roles have been broadly classified in terms of their responsibility for providing policy advice, administering policy and managing departments.

Here it will be argued that, during the period 1966-83, four general developments affected the nature of these role responsibilities. The catalysts for change were: "machinery of government" reforms, the use of special ministerial advisers, the growth of lobbies and pressure groups and the advent of managerialism in government. Each of these might provide a suitable topic for academic investigation, and indeed, detailed studies have been made of these aspects of the British polity. It should be firmly stated, therefore, that, in this chapter, these matters are touched upon solely within the context of the doctrine of individual ministerial responsibility.

To begin with, let us take a look at the development which impinged on ministerial and civil service role responsibilities in the most general sense.

1. The Changing Map of Whitehall

The capability to structure and restructure, form and

1. HC Deb 6s 34 1982-83 c965-66. The New Statesman published extracts from this document in February 1986.

reform, the basic organisational network of government is vital to its effective functioning in a changing environment. The enabling legislation which successive administrations in Britain turned to when attempting to fine-tune the machinery of government before the mid-1970s, was the Ministers of the Crown (Transfer of Functions) Act of 1946. This allowed for the distribution of functions between ministers, and to non-ministerial bodies. It also enabled statutory powers to be transferred between departments by Orders in Council (although this can be done more informally through the use of the residual powers of royal prerogative). The 1946 Act was updated by the Ministers of the Crown Act of 1975, which included authorisation for the transfer of property between departments and for changes in ministerial titles. This Act "was essentially consolidatory: it did not depart from the main principles and procedures of its 1946 predecessor".¹

Clearly, changes in the departmental map of Whitehall, whether through the abolition or creation of departments themselves, or through the transfer of functions and responsibilities between departments, can have, potentially, the most fundamental effect on ministerial and civil service role responsibilities. Changes of this nature can alter the very character of the job being done, can transform the particular nature of the role responsibilities. Of course, in some instances the abolition of one department and the creation of a new one, will have a fairly limited effect on the actual work being done by ministers and officials, but, in general

1. Christopher Pollitt: Manipulating the Machine. Changing the Pattern of Ministerial Departments 1960-83 (Allen and Unwin, London, 1984), p.14.

terms, every addition to and deletion from the Whitehall map will involve a certain amount of change in role responsibilities. Such change can be broadly gauged from the basic facts of what one writer has termed the "births and deaths of ministerial departments". Christopher Pollitt has calculated that a total of twenty-nine new departments were created between 1960 and 1983, while thirty-four departments disappeared. For the period 1966-83, the figures were:¹

Births: 18

Deaths: 25

Changes will also occur in role responsibilities when the basic functions of a department are supplemented or rationalised. This can be measured, at least in a formal sense, by looking at the number of Transfers of Functions orders issued. Between 1966 and 1983 there was a total of 53 "TFOs".²

Not surprisingly, the peak periods for the creation and dismantling of ministerial departments tend to be those immediately following general elections which result in a change in administration. The exception to this trend was the arrival of the Thatcher government in 1979, which resulted in relatively minor alterations to the Whitehall map (in the early stages of the government at any rate). The general tendency (insofar as one can be discerned) has been for a relative decline to take place in the total number of departments, with a corresponding increase in the importance of a few huge centres.

... Over the period as a whole, a few very large departments (in 1976, the Ministry of Defence, the Foreign and Commonwealth Office, the Department of the Environment, and the Department of

1. Figures compiled from table, Christopher Pollitt, op.cit., p.16.

2. Ibid. Calculated from table, p.17. This figure excludes TFOs pertaining to Northern Ireland.

Health and Social Security) have become noticeably more dominant in terms of numbers of staff than was the case for the 'top four' in 1960.[1]

Departmental 'giantism' had its modern origins in the Wilson government's creation of the FCO, the DHSS and Mintech in 1969, but the concept was enshrined in a White Paper issued by the new Conservative government in October 1970. The Reorganisation of Central Government (Cmnd 4506), which dealt with a whole range of structural and strategic issues, set the scene for the development of 'giantism' as an organisational principle in government. The White Paper identified a need

To improve the framework within which public policy is formulated by matching the field of responsibility of government departments to coherent fields of policy and administration.[2]

In the House of Commons debate on the White Paper,³ the theory and assumptions of the increased emphasis on the construction of super-departments were questioned. Anthony Crosland's criticisms from the Opposition front bench were, however, balanced by his acceptance of certain aspects of the document, and perhaps weakened by his known association with Labour's own plans for a development of giantism in the form of the DoE. William Rodgers had fewer scruples, and fiercely attacked the "intellectual flatulence" of Cmnd 4506. He argued against the tendency towards the creation of fewer, conglomerate departments because, in our terms, this could lead to greater importance being attached to the managerial as opposed to the policy aspects of the role responsibility of those

1. Ibid., p.17.

2. "The Reorganisation of Central Government", Cmnd 4506 (1970), para 3(ii).

3. HC Deb 5s 805 1970-71 c871-986.

ministers who would be working under a Secretary of State. Furthermore, the role responsibility of senior officials for policy advice would be given added weight.

I am against the tendency because it will either diminish the role of Ministers in decision-making or else decisions will take longer to reach. In either case there will be less dialogue at Ministerial level. Where previously three or four Ministers argued out a decision, the man at the top of these huge Departments will be in receipt of a single recommendation ... Of course, he will have Ministers to advise him but in practice, as time goes by, he will be making up his own mind with his chief official advisers reporting directly to him ... A junior Minister is a junior Minister whatever his salary and however he is drewwed up. The habit of the Civil Service, the ambitions of politicians and, as we shall see, the requirements of the House of Commons, make it so.[1]

Rodgers' critique arose from his mistrust of the White Paper's plans for "supporting Ministers". The document made it clear that the status, although not the legal position, of these ministers was to be equivalent to that enjoyed by ministers who might be in charge of a separate department not enjoyed by ministers who might be in charge of a separate department not represented in Cabinet.² This idea was reiterated by William Whitelaw, the Leader of the House of Commons, when putting the case for Cmnd 4506 in the Commons debate. Taking the DoE as an example, Whitelaw said,

Within this Department the Minister for Local Government and Development, the Minister for Housing and Construction and the Minister for Transport Industries are intended to have, and must be seen to have, real responsibility within their fields ...[3]

It has to be said that the creation of giant departments seemed to have a less dramatic effect on the role responsibilities of senior civil servants than the critics had feared. Instead

1. Ibid., c938.

2. Cmnd 4506, paras 22, 32, 34.

3. HC Deb 5s 805 1970-71 c873.

of becoming more involved in their role as policy advisers, to the detriment of medium and lower ranking ministers, senior officials, at least according to the testimonies of two former Permanent Secretaries, found themselves becoming marginally more involved with departmental management than they had in the past.

Sir Richard Clark, the first Permanent Secretary of the Ministry of Technology, noted that,

The tasks of Permanent Secretaries change, with more emphasis on management and less on the details of policy ...[1]

Sir Patrick Nairne, who was Permanent Secretary at the Department of Health and Social Security between 1975 and 1981, attempted to quantify this increased emphasis on management:

... I was always conscious of a tension within the Department between, on the one hand, the need to do better in pursuing policy objectives ... and on the other hand, the current and exacting demand for better management supervision and greater managerial skills ... While I could never risk taking my eye off the ball of policy, I could never devote less than a third of my time to the tasks of management.[2]

As far as ministerial role responsibilities were concerned, two general points can be made.

The first is that events which were often well outwith the sphere of "machinery of government" resulted in a gradual dilution of the pure doctrine of giantism, as epitomised by Cmnd 4506. This led to the creation (occasionally recreation) of some autonomous ministerial departments, from the bowels of the giants. Consequently, the perceived danger of middle ranking ministers (who might, in other circumstances, have been

1. Sir Richard Clarke: "The number and size of government departments", The Political Quarterly, Vol.43, No.2, 1972, p.180.

2. Sir Patrick Nairne: "Managing the DHSS Elephant: Reflections on a Giant Department", The Political Quarterly, Vol.43, No.3, 1983, pp.251-52.

allowed to head departments of their own) becoming more concerned with the managerial as opposed to the policy aspect of their role responsibility, was somewhat reduced. The DTI suffered two "blows" against its giant structure before the end of the Heath administration. In August 1972, an additional Cabinet minister was allocated to the department, and in January 1974, as a response to the oil crisis, a new department and Secretary of State for Energy emerged. The break-up of the DTI continued over the next few years, with a Department of Prices and Consumer Affairs, and then separate Departments of Trade and of Industry being floated off. Meanwhile, over at the DoE, the Department of Transport reemerged under a new Secretary of State: none other than William Rodgers MP! The Ministry of Overseas Development also resurfaced from the FCO.

Of course, the trend was not totally in one direction. In the constant redrawing of the Whitehall map some smaller departments returned to the folds of the giants (for example, the return of the Conservatives in 1979 saw the absorption of the Department of Prices and Consumer Protection into the Department of Trade, and of the Ministry of Overseas Development into the FCO). However, as has already been noted, the general tendency over the period as a whole was for a relative decline in the total number of departments and an increase in the importance of a few giants.

The second general point to be made is that the fate of those ministers who continued to operate under a Secretary of State in one of the giant departments (or, indeed, in another, smaller, department) proved to be less worrying than had once been feared. William Rodgers, the arch-critic of Cmd 4506, felt, from the perspective of the 1980s, that the erosion of giantism which has just been related, had proved his point.

However, he was by now less worried about the possibility of departmental ministers below the top ranks becoming tied up with the managerial side of their role responsibility:

Few Parliamentary Secretaries suffer such a fate today and many have named responsibilities - for the disabled, for sport, for the arts, for tourism. A Cabinet Minister cannot abrogate his powers, but the House of Commons has accepted a wide measure of practical delegation. This is even more the case with a Minister of State ... whose right to deputize for the head of a Department in making Statements in the House and answering Private Notice Questions is rarely questioned. The policy a Minister of State defends is often seen as his policy not primarily that of the Secretary of State for whom he acts. This is a welcome development and is a relaxed way of recognizing the inevitable spread of responsibility in a busy Department. It also gives Members of Parliament readier access to whoever matters most in the policy-making process.[1]

Before leaving the changing map of Whitehall, mention should be made of an important concomitance of departmental giantism, something which was also a theme of Cmnd 4506.

If role responsibility is responsibility for certain functions, then the increasing use made of departmental agencies from the early 1970s can be said to have impinged upon this responsibility. Of course, the existence of agencies did not mean that ministers and civil servants ceased to be responsible for the things we have mentioned, but their use affected the way in which policy advice (civil service role responsibility) and departmental management (ministerial and civil service role responsibility) were organised.

The comings and goings of departmental agencies have been meticulously charted by Christopher Pollitt.² The changing fashions in this field have been reflected in documents from

1. William Rodgers: The Politics of Change (Secker and Warburg, London, 1982), p.162.

2. Op.cit., especially pp.104, 112-13, 121-22.

the early seventies which lauded the principle of decentralisation (Cmnd 4506 and "The Dispersal of Government Work from London", Cmnd 5322), to those of a decade later when quango-hunting had become the craze (for instance, the Report on Non-Departmental Bodies (Pliatzky Report), Cmnd 7797).

This is certainly not the place for a regurgitation of the perceived differences and similarities between quangos and quagos, or between hiving off per se and the retention of firm links between an agency and its parent department. What can be said is that the dual, advisory and executive, nature of bodies such as the Manpower Services Commission, the Property Services Agency and the Defence Procurement Executive, touched upon certain aspects of the role responsibilities of ministers and civil servants. The precise character of the effect which departmental agencies had on ministerial and civil service role responsibilities would differ according to, among other things, the particular department involved, and whether the agency happened to be headed by a career civil servant or a political appointee.

2. The Use of Special Political Advisers

The second development which might, potentially at least, have had an effect on ministerial and civil service role responsibilities, was the tendency for departmental ministers to make use of the services of special political advisers.

It is true to say that in the historical context, small numbers of senior ministers (normally only the Prime Minister) made use of special political advice, to supplement or counter-balance the advice they received from the civil service. However, the modern manifestation of this phenomenon, dating from the period of the first Wilson governments, was different. It

involved an attempt to move away from the old informal system and towards the institutionalisation of the political adviser.

The use of such advisers by ministers in the Labour Governments of the 1960s remained limited, but the experiences of those like Richard Crossman (who, as Secretary of State at the DHSS, brought Brian Abel-Smith from the London School of Economics to be his special political adviser) clearly reflected a changing approach to the question of the departmental "irregulars". In its evidence to the Fulton Committee in December 1966, the Labour Party recommended a significant increase in the numbers of political appointments, and the development of a continental-style cabinet system for departmental ministers.¹

Fulton reacted cautiously to these suggestions. As far as personal appointments by ministers were concerned:

We consider that this practice should be put on to a regular and clearly understood basis.. But it should be made clear that such appointments are temporary and that the person concerned has no expectation of remaining when there is a change of Minister.[2]

Additionally, Fulton felt that ministers might wish to appoint a "Senior Policy Adviser". However,

... we see no need for ministerial cabinet or for political appointments on a large scale.[3]

1. Evidence submitted to the Committee under the Chairmanship of Lord Fulton, 1966-68, Volume 5 (HMSO, London, 1968). Memorandum No.97, submitted by the Labour Party; paras 60-62 "Political Appointments", paras 63-69 "A Ministerial 'Cabinet'". See also Memoranda submitted by the Fabian Society (No.78), the Liberal Party (No.98), the Trades Union Congress (No.115) and the Institute of Professional Civil Servants (No.38).

2. The Civil Service. Report of the Committee, 1966-68 (Chairman, Lord Fulton), Volume 1, Cmnd 3638, para 129.

3. Ibid., para 285.

The introduction of a cabinet system would undoubtedly have had a dramatic effect on the traditional relationship between ministers and their officials, particularly in the area of their respective role responsibilities for policy leadership and policy advice. There are various manifestations of the system. Even in the European countries where cabinets are common-place, no prescribed format exists: in some cases the cabinet contains only party political aides of the minister, while in others it consists solely of officials, hand-picked by the minister. "In practice the cabinet is most likely to be composed of a mixture of people ... drawn from the department for their policy expertise and from the party for their understanding of its attitudes and priorities."¹ The respective numbers of officials and political aides varies, as does the size of the cabinet. It might be headed by the senior departmental figure or by the most important political adviser. Whatever the precise version, the advent of ministerial cabinets would probably have involved politicising the upper reaches of the civil service (albeit in a slightly different form from that inherent in a "spoils" system)².

The cabinet idea was also being considered in Conservative circles in the late 1960s. The year before his election victory, Edward Heath set up a "Businessmen's Team" headed by Richard Meyjes from Shell, and including Derek Rayner from

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1. Pauline Neville-Jones: "The Continental Cabinet System: The effects of transferring it to the United Kingdom", The Political Quarterly, Vol.54, No.3, 1983, p.234.
 2. For a short discussion of the issues raised in 1983 by the former head of the Downing Street Policy Unit, Sir John Hoskyns, when he argued in favour of the advent of a spoils system of sorts, see Robert Pyper: "Whitehall in the 1980s: Prescriptions and Prospects", Teaching Politics, Vol.13, No.3, 1984, pp.376-91.

Marks and Spencer. Many of the suggestions which emanated from this team would find their way into Cmnd 4506. In the aftermath of the 1970 election victory, with members of the team looking forward to a two-year sabbatical in government (courtesy of their employers), they suggested a full-scale review of the organisation of ministerial private offices, with a view to introducing a cabinet system. This proposal was resisted by the civil service, and the Prime Minister could not be convinced that it was desirable.¹

Thus, by the end of the Heath government, the trend towards using special political advisers (mainly, but not exclusively, the businessmen who were based in the Civil Service Department) had become further entrenched, although the idea of ministerial cabinets seemed to have been discarded.

The return of the Labour government in 1974 brought a quite remarkable increase in the numbers of special advisers used by ministers. No fewer than 38 of them were appointed within months of the 1974 election victories, partly in response to the emerging view that senior mandarins had sabotaged much of the reforming zeal of the 1964-70 governments. Harold Wilson issued guidelines which governed the appointment of advisers.² Although some senior ministers (including Roy Mason and Fred Peart) did not make use of the scheme, most departments had a couple of political advisers working closely with the Secretary of State.

The number of special advisers in Whitehall started to decline even before Wilson's retirement in 1976, partly because

1. See Christopher Pollitt, op.cit., p.93.

2. See Tessa Blackstone: "Helping Ministers do a Better Job", New Society, vol.49, 19 July 1979, p.132.

many of the appointments had been temporary, but after James Callaghan became Prime Minister the whole experiment came under fire. Like Wilson, the new Prime Minister valued his own Downing Street team of advisers, but Callaghan was less than happy about the possibility of leaks springing from the ranks of the departmental advisers. Their conditions of service were tightened up, and their access to Cabinet documents restricted.¹ During this period the cabinet idea received another airing in certain circles (Tony Benn became attracted to the concept), but it remained on the drawing board while the more limited experiment with ministerial advisers waxed and waned.

Mrs Thatcher's arrival at Downing Street in 1979 brought a dramatic strengthening of the PM's personal system of advice. As far as departmental ministers were concerned, however, it became more difficult to make use of special political advisers. Some ministers did, it is true, take the opportunity to appoint advisers, usually bringing them over from the Conservative Research Department. However, it soon became clear that the Prime Minister was prepared to monitor very closely the number and type of advisers chosen by her ministers. Indeed, she is said to have vetoed the choices made by some of her less favoured colleagues.²

What effect did the use of special political advisers have on ministerial and civil service role responsibilities? Before attempting an answer, it ought to be emphasised that certain aspects of the political advisers' work would not impinge on individual ministerial responsibility.

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1. See Hugo Young: "How Whitehall's Mandarins Tamed Labour's 38 Special Advisers", The Sunday Times, 19 September 1976.
 2. The Economist, Vol.288, 27 August 1983, pp.16-17.

The "job description" of a special political adviser was generally wide-ranging, and could include such functions as maintaining contacts between the minister and the party, and advising the minister on matters outwith his own department's sphere of concern. Indeed, some ministers would prefer to utilise their political advisers in these areas. Here, the effect on ministerial or civil service role responsibilities would be minimal.

Ministers would, however, be much more likely to make use of the services of the advisers in ways which could, potentially at least, affect both ministerial and civil service role responsibility. Two aspects of the minister's role responsibility might be affected in a direct sense by the work of a special political adviser.

Clearly, the minister's role as policy leader in his department would be affected, or, rather, supplemented, by the work of an adviser concerned to a significant extent with the formulation of policy advice. Correspondingly, the civil servant's role as policy adviser would be affected by the arrival of one or more "outsiders".

The ministers could also find his role as departmental ambassador, particularly in relation to the department's contacts with its "client" pressure groups, changed by the coming of an adviser.

... some of the special political advisers have been themselves pressure group organizers or have worked closely with them. Such advisers can make a channel more satisfactory to both sides between ministers and such groups.[1]

1. Joan E. Mitchell: "Special Advisers: A Personal View", Public Administration, Vol.56, 1978, p.90.

In addition to this direct effect on a minister's role responsibility as policy leader (hence, by implication on civil service role responsibility for policy advice) and departmental ambassador, the advent of special policy advisers could also have had an indirect effect on the other aspects of ministerial role responsibility. In receipt of additional aid in the "policy" and "ambassadorial" spheres, a minister might discover that he could, if he so desired, devote more time and energy to his role responsibility as departmental manager and legislative pilot.

The potential effect of the special political advisers "experiment" on ministerial and civil service role responsibility was, therefore, significant. In practice, however, the effect seems to have been negligible, at least as far as the policy sphere was concerned.

Notable exceptions can be mentioned. Roy Jenkins discovered that his role responsibility for policy leadership at the Home Office was supplemented to a considerable extent by the work of his special political adviser, Anthony Lester. A barrister and a Q.C., Lester has been credited with the authorship of the laws on race relations and sex equality which Jenkins pioneered as Home Secretary.¹ Lester's impact on the role responsibility of Home Office officials for policy advice was understandably great, but civil service resentment seems to have been minimised by his willingness to "work with the grain" and avoid antagonising the officials.

At the Departments of Industry and Energy (in turn) Tony Benn also found that his role responsibility for policy leader-

1. Hugo Young, op.cit.

ship was supplemented by the use of special political advisers. Frances Morrell and Francis Cripps have, like Lester, been praised for making significant policy contributions. They wrote important White Papers in both departments, as well as providing the research which opened up the whole question of future nuclear energy policy. Unlike Lester, however, Morrell and Cripps found that their impact on the traditional civil service role responsibility for policy advice was resented, to the extent that the internal affairs of the Department of Energy came to resemble "trench warfare".¹

Outwith the rather isolated instances of genuine impact, epitomised by the cases of Lester, Morrell and Cripps, and leaving aside the undoubted impact which those special advisers with pressure group expertise had on their ministers' role responsibility as departmental ambassadors, the effect of the new political advisers on ministerial and civil service role responsibilities was not as great as might have been expected. It seems clear that the explanation for this is to be found in the wider reasons for the failure of the modern "experiment" with advisers. Opposition to a full-blooded cabinet system, wavering political commitment to the "experiment", the desire of particular Prime Ministers to exert maximum control over their colleagues, civil service obstructionism, a paucity of heavy-weight advisers, lack of a clear definition of what the job should involve: all of these factors combined to undermine the "experiment", and, incidentally, to minimise its effect on ministerial and civil service role responsibilities.

1. Ibid.

3. The Growth of Lobbies and Pressure Groups

... over the past twenty years or so the growth in the number of pressure groups has been little short of spectacular. The Directory of Pressure Groups and Representative Associations lists well over 600 ... of those groups for which a date of foundation is given, more than half were formed in the 1960s and 1970s.[1]

This explosion in the numbers of organised lobbies and pressure groups since the 1960s had an effect on both ministerial and civil service role responsibilities. The effect could be discerned in the areas of policy formation (i.e. ministerial role responsibility for policy leadership, civil service role responsibility for policy advice) and policy execution (i.e. civil service role responsibility for the administration of policy). Additionally, ministers who found that their department's clients were being represented by growing numbers of groups and associations, discovered that their ambassadorial role was assuming ever greater importance. Thus, in the spring of 1978, with the government becoming concerned about the lack of public support for the introduction of metric units, the Minister of State for Prices and Consumer Protection contacted over one hundred organisations representing the retail trade, wholesalers, industry and consumers, asking if they supported the government's timetable for the introduction of metrication.²

Let us try to give an indication of how lobbies and pressure groups can have an effect in the realm of policy formation. Broadly speaking, this can be achieved in three ways: through informal consultations, through formal or statutory

1. Geoffrey Alderman: Pressure Groups and Government in Great Britain (Longman, London, 1984), p.16.

2. J. J. Richardson and A. G. Jordan: Governing Under Pressure (Martin Robertson, London, 1979), p.97.

consultations, or through delegating to groups the power of drafting legislation. In each case, the role responsibility of the minister for policy leadership in his department, and that of the civil servants for policy advice, will be affected to a greater or lesser extent.

Informal consultations between departments of state and certain lobbies and pressure groups have become a fact of life in modern government. In the course of their daily work, senior civil servants are obliged to take certain groups and interests into their confidence. Without doing this, their ability to act competently as policy advisers to ministers would be compromised. As for the minister's role as policy leader:

It is unthinkable that a Minister of the Crown would deliberately proceed to make rules without consulting at least the most important of the interests involved: the Law Society in relation to the regulation of solicitors; the British Medical Association in relation to general practitioners; the local government associations in relation to local authorities; and so on.[1]

In certain cases the process of consultation is more formal, and ministers are required by statute to, at the very least, seek the views of specified interests. Thus, ministers considering making any changes in the regulations relating to the national insurance scheme are required by the 1965 National Insurance Act to submit their proposals to the National Insurance Advisory Committee. Similarly, the 1956 Food and Drugs Act requires ministers to consult with representative organisations before drawing up any new regulations under this Act.²

1. Geoffrey Alderman, op.cit., p.82.

2. For further examples, see Geoffrey Alderman, op.cit.

Beyond this, there can be, in admittedly extraordinary cases,

... the delegation, by statute, of the power to draft a statutory instrument to a representative group: the Minister is relegated to the role of a confirming or approving authority. Under the Cereals Marketing Act of 1965 the Home-Grown Cereals Authority was given power to prepare and submit schemes to the appropriate Ministers for their approval. It is true that the power to approve still rests with the Crown and - ultimately - with Parliament. Nonetheless the practical effect is to endow the groups represented on the Authority with real legislative ability.[1]

If the growth of lobbies and pressure groups has had an effect on ministerial and civil service role responsibilities in the realm of policy formation (and, for ministers, also in relation to their roles as departmental ambassadors) what of policy execution? Here, it is primarily the civil servants' role responsibility for the administration of policy which is likely to be affected.

Government officials have come to accept, sometimes grudgingly, sometimes thankfully, that certain administrative functions which were traditionally the responsibility of their departments ought to be "farmed out" or "hived off" to representative groups. Some new administrative functions were immediately recognised as suitable for such treatment, and never really became part of the departments' normal work. Examples of administrative devolution to pressure groups of one sort or another abound. To cite but one: successive governments have utilised the services of the Law Society to administer a whole range of schemes, most notably the day to day operation of Legal Aid.

Precisely what effect do pressure groups have on the daily

1. Geoffrey Alderman, op.cit., p.83.

job done by ministers and their officials? How much power do groups actually wield in the policy-making process? Why are some groups trusted with the administration of government policy while others are not? What differentiates the trusted, "insider" groups from the others? These questions are important, but they lead us into the realms of the pluralist, corporatist, elite/ruling class debate, and are beyond the scope of this thesis.

However, we can cite the example of the extremely close relationship which exists between the officials and ministers at the Ministry of Agriculture, Fisheries and Food, and the farm lobby, embodied in the form of the National Farmers' Union, as evidence of one extremely powerful pressure group's ability to impinge upon ministerial and civil service role responsibilities. It is true to say that the NF/MAFF relationship was not a direct product of the growth in pressure groups in the 1960s. Equally, however, it can be said that this relationship, in which the pressure group is afforded a significant measure of power, might well be taken as the ultimate goal towards which other, newer groups aspire.

It is no exaggeration to say that, without the willing co-operation of the National Farmers' Union, the implementation, and, most probably, the formulation, of agricultural policy in Britain would simply not be possible.[1]

In the area of policy formation, ministerial responsibility for policy leadership is effectively shared to a considerable extent with the NFU. The Agriculture Act of 1947 placed an obligation on governments to consult with the representatives of the agricultural producers. This consultation is seen at its most intense in the course of the annual price review, which

1. Ibid., pp.81-82.

determines the levels of guaranteed prices and subsidies to agriculture. The NFU occasionally disassociates itself from the final settlement of a review, but this is normally to be explained, not in terms of a breakdown in the NFU/MAFF policy-making machinery, but in terms of the Treasury's reluctance to go along with the joint lobby/department policy line.¹

Just as Agriculture ministers find that their role responsibility for policy leadership is touched to some extent by the NFU, civil servants in the MAFF are confronted with the necessity of sharing their role responsibility for policy advice. Union representatives sit on a wide range of agricultural advisory bodies, such as the Hill Farming Advisory Committee, the Agricultural Improvement Council and the Agricultural Wages Board.² The views of these representatives are taken very seriously: in 1984 a confidential note leaked from the MAFF revealed that the Secretary of State for Agriculture had refused to renew the appointment of the independent chairman of the Agricultural Wages Board after pressure had been exerted by the NFU members of the Board.³

In the area of policy execution, civil service role responsibility for the administration of policy is affected by the powerful position occupied by the farm lobby. Clearly, as with policy formation, significant benefits will accrue to both sides from arrangements which allow for a sharing of administrative responsibilities between department and pressure group. Nonetheless, the fact is that a civil servant's nominal

1. See Richardson and Jordan, op.cit., p.114.

2. See Peter Self and Herbert Storing: "The Farmers and the State" in Richard Kimber and J. J. Richardson (eds.): Pressure Groups in Britain (Dent, London, 1974), p.63.

3. The Guardian, 19 April 1985.

responsibility for policy administration has to be set in a context in which the administration of various types of agricultural policy is entrusted to the NFU bureaucracy. One example amongst so many should suffice to illustrate this point. In 1978 the Scottish National Farmers' Union undertook to administer a compensation scheme, financed by the British government, and the European Community, for farmers who had lost livestock in winter blizzards.¹

In summary, therefore, it can be said that the effect of the growth in the numbers of organised lobbies and pressure groups, during the period under consideration in this thesis, has been significant. Ministers in every department of state were sure to find themselves coming into contact with an expanding range of groups representing the departments' clients. While making allowance for the fact that some departments were more likely to develop serious working relationships with groups than others, and for the fact that some groups are more powerful than others, it seems clear that both ministerial and civil service role responsibilities have been affected by this development. The "policy leader" and "departmental ambassador" aspects of ministerial role responsibility, and the "policy adviser" and "policy administrator" aspects of civil service role responsibility: all have been touched by the pressure groups.

Perhaps one further point ought to be made before leaving this section. Ministers are accountable to their government and party colleagues and to Parliament for their role responsibilities. Civil servants are accountable to their

1. Geoffrey Alderman, op.cit., p.90.

official superiors, ministers and Parliament. Lobbies and pressure groups have impinged upon aspects of ministerial and civil service responsibility to a greater or lesser extent, but the question of their accountability seems to be far from being satisfactorily answered.

4. The Advent of Managerialism in Government

It would be entirely wrong to suggest that the actual management of departments of state, as opposed to the formation of policy within them and the administration of policy by them, only came to be taken seriously in the period 1966-83. Indeed, some observers and practitioners of government found it difficult to hide their irritation with the suggestion that the world of British public administration was at last being dragged, kicking and screaming, into the age of MbO and scientific management. One civil servant wrote in 1971 of "The Great Management Hoax":

The characteristic of the last few years is a growth of the mythology of management. There has been a deliberate and persistent propagation of the idea that management is a new conception in the Civil Service, and an attempt to persuade people, in and outside the service, that analytical procedures of a kind which have always held an important place at middle executive levels have now been introduced as a startling novelty from the top, and that this is about to produce a new golden age of efficiency.[1]

However, if management was not "a new conception" for the civil service, the respect afforded to it and the emphasis placed upon it by the occupants of Whitehall's upper echelons from the early 1960s, certainly was new. The Plowden Report in 1961 ushered in a new era in which governments would come to

1. C. H. Sisson: "The Civil Service After Fulton" in W. J. Stankiewicz (ed.): British Government in an Era of Reform (Collier Macmillan, London, 1976), pp.255-56.

attach increasing importance to the coordinated application of modern management techniques.¹ The road from Plowden to Rayner and MINIS via Fulton was long and winding, and progress far from steady, but the themes and concepts of "managerialism" were being inculcated all the while. Management in government came to present a much higher profile than it had hitherto.

The theme of this section is that within the sphere of civil service role responsibilities (policy advice, administration of policy, management of department), the star of "management" has been on the rise during our period of concern. It might further be argued that, particularly towards the end of our period, this was true also of ministerial responsibilities, with the managerial role coming to assume a degree of importance which it would have been difficult to envisage or predict in 1966.

What is this management function to which we refer? In very general terms, we can identify two aspects of the function. Financial management, incorporating, inter alia, resource allocation, budgetary control systems and "efficiency" drives, can be differentiated from personnel management. A subsidiary theme here is that an overriding importance came to be attached to the financial as opposed to the personnel aspect of management in government.

Perhaps it would be best to start with a brief outline of the course of events in this period which witnessed the advent of managerialism in government.

While it cannot be denied that the civil service had managers before the 1960s, it was only with the Plowden and

1. "Control of Public Expenditure", Cmnd 1432, 1961.

Fulton reports that the ethos of "managerialism" came to permeate the debate about the role and future of the service. In truth, Plowden did little more than set the agenda, in the broadest sense, for future discussion of some complex aspects of management, both financial and personnel. This agenda would include:

... the cost-consciousness of staff at all levels; the provision of special skills and services (scientific, statistical, accountancy, O and M, etc.) for handling particular problems, and the awareness and effectiveness with which these are used; the training and selection of men and women for posts at each level of responsibility.[1]

Of course, with the assistance of a management consultancy group, Fulton would examine the theory and practice of management in government in much greater detail. The recommendations which emerged dealt both with the central management of the civil service (this was to become the responsibility of the new Civil Service Department, which would absorb the functions of the Pay and Management side of the Treasury) and with the internal workings of departments (management services units were to be established and the principles of accountable management applied). Thus, once again the financial and the personnel aspects of management were given equal consideration.

The fortunes of Fulton have been well charted, and the reasons for the application and non-application of the wide-ranging recommendations have been examined in great detail.² As far as management in government was concerned, the post-Fulton years saw a definite switch in emphasis away from personnel matters and towards issues of financial management.

1. Ibid., para 44.

2. See, for example, John Garrett: Managing the Civil Service (Heinemann, London, 1980), Chapter 2, and Sir James Dunnett: "The Civil Service: Seven Years After Fulton", Public Administration, Vol.54, No.4, 1976.

Edward Heath's businessmen's team, led by Richard Meyjes, largely ignored the balanced approach recommended by Fulton, in favour of the pursuit of financial management concepts lifted directly from business practice.¹ One of the Meyjes team, Derek Rayner from Marks and Spencer, had no doubts, either about the idea of Whitehall departments as business enterprises writ large, or about the relative importance of management within the civil servant's role responsibilities.

Within Whitehall lies the responsibility for the management of businesses of a scale and of a diversity which are comparable to the largest in the private sector ... The Civil Service must ... ensure that the best of its intake with management potential are encouraged to follow careers which fit them for top management jobs. They will be encouraged to do so if it can be clearly seen that the leader in management areas is considered as important in Whitehall as the good all-round administrator or policy maker.[2]

The period of the Labour Government 1974-79 saw a continuation of the work being done in developing financial management, but the progress of personnel management was seriously curtailed by a combination of labour relations problems and public expenditure cuts.

With the return of the Conservatives in 1979, management in government, and financial management in particular, reached its apogee. The emphasis on the managerial aspect of civil service role responsibilities, which had been increasing since the mid 1960s, was now intensified. Furthermore, for the first time ministers found that the managerial side of their own role responsibilities was becoming a focus of attention. The Thatcher Government's approach to management in the departments of state manifested itself in the form of three interrelated developments: the Rayner scrutinies, the introduction of a

1. See John Garrett, op.cit., p.25.

2. Sir Derek Rayner: "Making Room for Managers in Whitehall", Management Services in Government, Vol.28, No.2, 1973, pp.61-62.

management information system for ministers (MINIS) and the Financial Management Initiative (FMI).

In 1979 Sir Derek Rayner, veteran of Heath's businessmen's team, returned to Whitehall as the new Prime Minister's special adviser on "efficiency". It soon became clear that "efficiency" was to be defined in terms of tight financial management. The Rayner scrutinies were launched: detailed examinations of particular departmental activities, intended to allow ministers to identify waste in their own fiefdoms. Potential annual savings were set at £274m, but the House of Commons Treasury and Civil Service Select Committee, as well as the civil service unions, cast doubt on the true value of Raynerism, which was perceived as pursuing a rather blinkdered approach to "efficiency".¹ Rayner's scrutinies seemed to involve a toleration of lower administrative standards provided financial savings could be guaranteed. Rayner was also doing some more general work on "lasting reforms" which aimed to strengthen the "managerial culture" of the civil service at the expense of the "administrative traditions".

With the abolition of the Civil Service Department in 1981 came the reassertion of Treasury control over civil service finance and manpower and the establishment of a new Management and Personnel Office to operate in conjunction with the Rayner unit in the Cabinet Office.²

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1. See particularly the Third Report from the Treasury and Civil Service Select Committee, Session 1981-82, HC 236.
 2. For more on this, see C. Painter: "The Thatcher Government and the Civil Service: Economy, Reform and Conflict", The Political Quarterly, Vol. 54, No. 3, 1983, pp. 292-98, and Rosamund M. Thomas: "The Politics of Efficiency", The Times Higher Education Supplement, 1 March 1985. Note that the Rayner unit survived the departure of its mentor, and in 1983 Sir Robin Ibbs, executive director of ICI, replaced the newly ennobled Rayner.

The rather sporadic Rayner scrutinies were intended to sharpen the managerial instincts of officials at all levels, and bring even the most reluctant ministers into touch with some aspects of their department's management (at least for the duration of the scrutiny), but MINIS and the FMI were to require a deeper commitment on the part of both officials and ministers.

MINIS had its origins in a study of the Department of the Environment undertaken by Rayner at the instigation of the Secretary of State, Michael Heseltine. Personally interested in the application of private sector management techniques to government, Heseltine

... was keen to ensure that Ministers had the information they needed to make decisions on the whole range of the Department's work, not just on matters of particular political interest or the major decisions submitted in the normal way by officials.[1]

As MINIS developed in the DoE its implications for the role responsibilities of ministers and civil servants became clear. The existing management systems in departments of state (staff inspections, organisation and methods study, internal audit, and so on) required no personal ministerial involvement, and minimal participation by senior officials. The Rayner scrutinies brought short term involvement for both ministers and their Permanent Secretaries. MINIS, however, necessitated the establishment of departmental directorates headed by Under Secretaries whose work would be coordinated by a Deputy Secretary, and top level briefings with Permanent Secretaries and ministers. As the system became established in the DoE, the

1. A. Thomas, "Department of the Environment Management Information System for Ministers (MINIS)", unpublished paper presented by DoE official to the 14th Annual Conference of the J.U.C. Public Administration Committee (University of York, September 1984).

involvement of ministers and senior civil servants increased.

The most important organizational change has probably been the increased role of the Permanent Secretary and other senior management in the DoE. For MINIS 1 and 2, the Permanent Secretary and other senior officials just took part in the Secretary of State's meetings with directorates, but in MINIS 3, a preliminary set of meetings was taken by the senior management of the Department, headed by the Permanent Secretary to enable more ground to be covered and so that the Secretary of State knew the views of senior management. It was then up to the Secretary of State to decide whether he would see the directorate, and in practice for MINIS 3 he has mostly decided to do so.^[1]

On becoming Secretary of State for Defence in 1983, Heseltine set up a MINIS in the MoD. The previous year, the government had recommended that all departments of state and public bodies implement their own equivalents of MINIS, and this had been set in motion by the launching of the Financial Management Initiative.² The FMI involved the universalization of MINIS, combined with a new computerised back up facility (the DoE's "Joubert" or MAXIS system³).

How should we sum up the effect of all of this, the advent of managerialism in government, on ministerial and civil service role responsibilities?

Some commentators, for a variety of reasons, have refused to acknowledge that any meaningful changes have taken place. They claim that ministers and senior officials remained largely immune to exhortations to become better managers, and, by

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1. Andrew Likierman: "Management Information for Ministers: The MINIS System in the Department of the Environment", Public Administration, Vol.60, No.2, 1982, p.133.
 2. See "Efficiency and Effectiveness in the Civil Service", Cmnd 8616 (the government's observations on the Third Report of the Treasury and Civil Service Committee).
 3. Christopher Joubert was the official who devised the organisational structure which divided the DoE into cost centres served by the computerised information system MAXIS (Management of Administrative Expenditure Information System)

implication, they claim that ministerial and civil service role responsibilities were fundamentally unaltered.

Thus, Sir John Hoskyns, the former head of the Downing Street Policy Unit, who, in 1982-3 launched a biting attack on the system of career politicians and officials. Clearly unconvinced about the chances of any kind of significant change coming via the establishment of internal "managerialism", he advocated an influx of businessmen as both ministers and civil servants.¹

Perhaps of even more significance are the views of the man who spent so much time in the early 1970s and early 1980s in an attempt to change the attitudes of ministers and officials towards management, Lord Rayner. Asked specifically whether he could perceive any real change in the attitude of senior civil servants, he answered,

Taken as a whole, I must be frank and say, 'No.' There are a number of senior civil servants who are very much aware of the needs of management, so it's not an overall criticism, but the answer is, 'No, it's not developed along the lines that I would have imagined it would.' [2]

From a different perspective, two academics have cast doubt on the very theories of management which were utilised by the advocates of managerialism during the past two decades. For Metcalfe and Richards³ even Raynerism, MINIS and the FMI could

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1. Sir John Hoskyns. "Whitehall and Westminster: An Outsider's View", Parliamentary Affairs, Vol.36, 1983, pp.137-47, and Sir John Hoskyns: "Conservatism is Not Enough", The Political Quarterly, Vol.55, No.1, 1984, pp.3-16.
 2. Quoted in Hugo Young and Anne Sloman: No, Minister (BBC London, 1982), p.45.
 3. Les Metcalfe and Sue Richards: "The Impact of the Efficiency Strategy: Political Clout or Cultural Change?", paper presented to the 14th Annual Conference of the J.U.C. Public Administration Committee (University of York, September 1984).

never change the Whitehall "culture", because they relied upon "an impoverished concept of management".

However, the general view which emanates from those who disparage the effect which managerialism has had on ministers and officials, ought to be placed in context. The true diehard managerialists, we should remember, aimed to do so much, and were almost certainly going to be disappointed in the short term. Furthermore, the most serious attempt to introduce the principles of modern management right across Whitehall (and this a flawed attempt which placed disproportionate stress on financial management) did not begin until 1979. Therefore, by the end of our period of interest, there had been only four years of concentrated and coordinated managerialism.

This point notwithstanding, it can safely be said that the period 1966-83 witnessed a growing concern with management in government, which did impinge upon ministerial and civil service role responsibilities. The disenchantment of the managerialists understates the amount of change which has taken place.

Criticisms have been voiced concerning the effect which the new managerial climate has had on role responsibilities. The preoccupation with financial as opposed to personnel management, already noted, has been sharply criticised by Rosamund Thomas.

... despite the reference to 'people' institutional arrangements, or systems - like FMI and MINIS - predominate in the quest for efficiency and effectiveness. There is a need for more attention to the human side of management, such as leadership, morale, the importance of good supervision and other factors which constitute wider definitions of management.[1]

Other, influential, critics go further, and make what is rapidly becoming an unfashionable case for greater emphasis to

1. Rosamund M. Thomas, op.cit.

be placed on the "policy" and "administration" aspects of ministerial and civil service role responsibilities, and far less on the "managerial" aspect. Sir Patrick Nairne, Permanent Secretary of the Department of Health and Social Security, 1975-81, is worth quoting at length:

In the past the Civil Service role of policy advice to ministers received too much emphasis at the expense of its management functions; but it would be wrong to try to tip the balance too far in the other direction ... decisions which Ministers take, and their departments implement, on policy matters and operational or service functions in the wider public sector are usually far more significant in terms of cost and resources than the scale of staffs employed within departments themselves. It comes to this. Looking back over thirty years or so of working in Whitehall, I do not need to highlight the change from, put broadly, a virtually exclusive branch concern with staff organisation and complements to the wide-ranging managerial pre-occupations of the present ... we are all managers now. But management must, as the Fulton Report itself made clear, mean first of all the management of policy business under the political direction of ministers.[1]

In 1983, "management" loomed much larger in the role responsibilities of ministers and officials alike, than it had in 1966. Commitment may have been less intense in some departments than in others, some ministers and senior officials were more interested in management than others. A great deal had yet to be done if the objectives of the managerialists were to be met, but these objectives were politically controversial and were never likely to be achieved without hard battles being fought. In this light, perhaps the extent to which managerialism has impinged upon ministerial and civil service role responsibilities is all the more remarkable.

1. Sir Patrick Nairne: "Some Reflections on Change", Management in Government, Vol.37, No.2, 1982, p.81.

SUMMARY

This has been a wide-ranging chapter. It has involved a certain amount of glossing over a number of topics which deserve much closer scrutiny. The chapter was, however, styled as a broad survey of developments which have affected, to a greater or lesser extent, the personal and role responsibilities of ministers and their officials. In that light, let us conclude by offering a summary of the developments, indicating in each case which particular aspects of ministerial and civil service responsibilities were affected.

Table 7.1 Developments which impinged upon personal and role responsibilities

PERSONAL RESPONSIBILITY

MINISTERS	<u>i</u> House of Commons Resolutions, May 1974, June 1975.
	<u>ii</u> Heath corollary to Churchill/Butler ruling on minority ministerial shareholdings.
CIVIL SERVANTS	None

ROLE RESPONSIBILITY

MINISTERS				
Policy Leadership - - - - -	A	B	C	
Management of Department - - - -	A			D
Ambassador for Department - - -		B	C	
Legislative Pilot - - - - -				
CIVIL SERVANTS				
Policy Advice - - - - -	A	B	C	
Administration of Policy - - - -	A		C	
Management of Department - - - -	A			D

Key: A = The Changing Map of Whitehall
 B = The Use of Special Political Advisers
 C = The Growth of Lobbies and Pressure Groups
 D = The Advent of Managerialism in Government

CONCLUSION: An Evolving Doctrine

The period between the election of the second Wilson government in 1966 and the return of the second Thatcher government in 1983 ought to be viewed by constitutional historians as one of the most important in the development of the doctrine of individual ministerial responsibility. In this thesis an attempt has been made to describe both the practical operation of the doctrine and the changes in the theory which underpinned it, during these years.

By 1966 it had become clear that a doctrine which occupied a central position within the British constitution had failed to evolve to meet the requirements of modern government. The precise role and function of the doctrine had become confused. In part, this stemmed from a long-term failure to sharpen the institutions of parliamentary scrutiny in order to keep pace with the expansion of executive power, and in part from a failure by those who spoke and wrote about individual ministerial responsibility to differentiate between the distinct, yet interlocking elements of the doctrine.

In this thesis it has been argued that individual ministerial responsibility can best be understood with reference to the four elements of personal responsibility, role responsibility, accountability and sanctions. A sub-division of ministerial role responsibility provides a link with the work of departmental civil servants. This can also be understood with reference to the four elements. One of these, accountability, was the subject of significant change, affecting both ministers and civil servants, in the period 1966-83.

During the 1960s a partial victory was secured by the broad but extremely loose alliance we have described as liberal-

democratic malcontents, which resulted in important structural reforms, creating a new regime of parliamentary accountability. Within this, the traditional mechanisms of parliamentary scrutiny continued to operate, but to these were added new Select Committees and the Parliamentary Commissioner for Administration. The new organs of scrutiny were imperfect, but they did exhibit a capacity for growth. They had the effect of increasing the quantity and enhancing the quality of scrutiny which could be brought to bear on ministers and civil servants. In a real sense, ministers became more accountable to Parliament for their role responsibilities as a result of the advent of these new organs of scrutiny. Furthermore, the work done by the Select Committees and the PCA brought about a significant improvement in the accountability of officials. The civil servants' accountability to their superiors in the administrative hierarchy, to their ministerial masters, and most importantly, to Parliament, was enhanced. In particular, the operation of the new Select Committees produced a situation where the de jure statement of civil service non-accountability to Parliament (with the singular exception of the relationship between a department's Accounting Officer and the Public Accounts Committee) came into obvious conflict with the emerging de facto accountability to this source.

The sanctions element of individual ministerial responsibility had attracted much attention before 1966, and continued to encapsulate all aspects of "the doctrine" for most casual observers thereafter. Mythology and constitutional folk-lore still surround the usage of sanctions. The experience of the period 1966-83 showed that ministerial resignations or dismissals were likely to take place only when failures had occurred in the sphere of what we have termed personal

responsibilities and it might be damaging for the government if the miscreant remained in office. In these circumstances, the most important sanctions-holder was undoubtedly the Prime Minister, while Parliament's role in this respect was negligible. During the period 1966-83 there were no resignations or dismissals which could properly be said to have been prompted by failings in the realm of the role responsibilities of individual ministers. Nonetheless, the crudest and most superficial use of the term "individual ministerial responsibility" in newspaper reports and academic articles alike tended to be prompted by cases where this had supposedly happened.

Sanctions short of resignation or dismissal were invoked against ministers from time to time for failures in relation to both personal and role responsibilities (though it is easier to identify the use of sanctions in respect of the latter than the former). Again, the vital sanctions-holder in any given case was the Prime Minister.

Civil servants were much more likely to find sanctions of various sorts brought to bear against them for failures in the sphere of their personal responsibilities than those in relation to their role responsibilities.

During this period when the accountability element of the doctrine was subject to the most important changes, there were a number of developments which impinged upon the responsibilities of ministers and officials. Ministerial personal responsibility was affected by the House of Commons Resolutions of May 1974 and June 1975, which related to the declaration of interest by MPs, and by what we have termed the "Heath corollary" to the the Churchill/Butler ruling on minority ministerial shareholdings, in 1970.

Changes in the map of Whitehall, the use of special political advisers, the growth of lobbies and pressure groups, and the advent of managerialism in government in different ways touched upon various aspects of both ministerial and civil service role responsibilities. In the case of ministers, this involved responsibility for policy leadership, departmental management, the ambassadorial function, and legislative pilotage; in the case of officials, responsibility for policy advice, administering policy, and managing departments.

A full Parliament has elapsed since the end of the period covered by this thesis. Since 1983, there have been a number of interesting cases relating to a few of the themes with which we have been concerned. This is not the place to offer an analysis of the doctrine after 1983, but the significant aspects of some of these cases should be mentioned.

In Chapter Six it was argued that there were four broad reasons for the non-application of sanctions against ministers in cases where there were substantive grounds for questioning the way in which role responsibilities had been discharged. The second reason, which involved a recognition that failure had occurred, but an assertion that this was not the fault of ministers, was utilised as a defence by ministers in the Northern Ireland Office in the wake of the escape by nineteen Republican prisoners from the Maze Prison in September 1983.

When the report of the official inquiry into the incident (the Hennessy Report) was published a few months later,¹ the

1. Report of An Inquiry by HM Chief Inspector of Prisons into the Security Arrangements at HM Prison, Maze, HC 203 1983-84.

prison Governor was specifically blamed for this major failure in security,¹ and the head of the Security and Operations Division of the Prison Department in the Northern Ireland Office was also criticised.² The Governor later resigned. Civil servants and ministers at higher levels of the structure were not criticised. In spite of this, the Secretary of State, James Prior, and his Parliamentary Under Secretary, Nicholas Scott, came in for severe public and parliamentary criticism.³ Prior based his defence on the claim that no policy decisions had contributed to the failings at the Maze. This placed a rather limited construction on the role responsibility of ministers in the Northern Ireland Office, and did not really address the question of the role responsibility of the civil servants. The Times' comment was scathing:

A malaise as pervasive as this is shown to have been, in an executive branch of the public service so close to the security of the state, is a matter of ministerial responsibility, not as direct, but just as real as for any policy decision. The policy/administration distinction provides no refuge in a debacle as large as that. It does not dispose of the question of a ministerial resignation ...[4]

There were to be no ministerial resignations, or indeed sanctions against civil servants above the level of the prison Governor. Prior and Scott retained the support of the Prime Minister and, with a few exceptions, that of their backbenchers. Armed with copies of the Hennessy Report, they were able to ride out the storm.

The question of the accountability of civil servants

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1. Ibid., paragraph 10.12.
 2. Ibid., paragraph 10.15 - 10.16.
 3. For example, see HC Deb 6s 52 1983-84.
 4. The Times, 8 February 1984.

became a major issue after 1983. The prosecution and acquittal of Clive Ponting, an Assistant Secretary in the Ministry of Defence, in January 1985, after he had leaked official documents, became something of a cause célèbre for those who argued that the civil servant should be in a positive relationship of accountability to the public via their parliamentary representatives as well as to his departmental superiors and ministers (Ponting had sent to Tam Dalyell, MP, documents relating to ministerial handling of the controversy surrounding the sinking of the "General Belgrano" during the Falklands War).¹

Even before the Ponting case, the prosecution, early in 1984, of the Foreign Office clerk Sarah Tisdall, had indicated the seriousness which the government attached to civil service leaks. Tisdall's rationale for leaking, and her chosen method, put her in a weaker position than that of Ponting, but the principle was the same in each case. Furthermore, it could be argued that Tisdall was rather unfortunate to find herself in the dock at the Old Bailey, given the fact that another civil service "mole" with similar motives managed to escape this fate. Ian Willmore, an administration trainee in the Department of Employment, left the civil service on his own terms, without being prosecuted, because, beyond his own statement which was made only after he had been offered immunity from prosecution, the government lacked any clear proof that he had been the culprit.²

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1. For a full account, see Clive Ponting: The Right to Know. The Inside Story of the Belgrano Affair (Sphere, London, 1985).
 2. For a discussion of these cases, see Robert Pyper: "Sarah Tisdall, Ian Willmore and the Civil Servant's 'Right to Leak'", The Political Quarterly, Vol.56, No.1, January-March 1985.

Together, these cases helped to open up the debate about the accountability of civil servants. The First Division Association and other civil service unions came out in favour of an official code of ethics and an appeals procedure to rationalise the relationship between ministers and civil servants.¹ Sir Douglas Wass, former Permanent Secretary at the Treasury and Head of the Home Civil Service, suggested a compromise between the extant, closed system of civil service accountability, and the establishment of clear and accepted lines of accountability to Parliament. He favoured independent appeals procedures, perhaps based on a civil service "ombudsman" or an "inspector general".²

The government continued to place great faith in the traditional procedures. Robert Armstrong, Cabinet Secretary and Head of the Home Civil Service, responded to the increasing problem in two ways. In August 1983 he sent a letter to all Whitehall Permanent Secretaries, demanding that they exercise greater vigilance in order to stem a spate of leaks.³ In the wake of the Tisdall and Ponting cases, Armstrong was obliged to offer a more constructive statement which might help those officials who faced a dilemma when confronted with possibly illegal, unconstitutional or even simply politically controversial aspects of their work. However, his Note of Guidance on the Duties and Responsibilities of Civil Servants in Relation

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1. See the Memoranda submitted by the FDA and the Council of Civil Service Unions, to the Treasury and Civil Service Committee: Seventh Report from the Treasury and Civil Service Committee HC 92 1985-86.
 2. See Sir Douglas Wass: "The Civil Service at the Crossroads" The Political Quarterly, Vol.56, No.3, July-September 1985
 3. Ironically, this letter was itself leaked, and it appeared in The Guardian, 31 August 1983.

to Ministers (the "Armstrong Memorandum"), was a blunt restatement of constitutional facts.¹ Its basic theme was that civil servants are accountable only to their own superiors in the administrative hierarchy, and to ministers. When these official superiors and ministers request participation in unscrupulous and possibly illegal activities, the conscientious official cannot invoke any superior accountability to people or Parliament, but must consult a personnel officer or the Permanent head of his department. As a last resort, the official could resign in protest.

The Armstrong Memorandum was bitterly attacked by, among others, Clive Ponting, who pointed out that,

... even if he does resign the civil servant cannot make public the reasons because he would still risk prosecution under the Official Secrets Act.[2]

The utility of this Memorandum was soon put to the test. Colette Bowe, Director of Information at the Department of Trade and Industry, leaked carefully selected extracts from a vital document at the height of the Westland affair in January 1986.³ The document was a letter written by the Solicitor General, Sir Patrick Mayhew, which cast doubt on the legality of a statement made by Michael Heseltine, the Defence Secretary, who was lobbying for a "European" solution to Westland's problems. The

1. This was reproduced as Appendix A to the Memorandum submitted by the Cabinet Office to the Treasury and Civil Service Committee, op.cit.

2. Clive Ponting: Tragedy and Farce (Sphere, London, 1986) p.241.

3. For accounts of this, see: Gavin Drewry: "The Defence Committee on Westland", The Political Quarterly, Vol.58, No.1, January-March 1987; Magnus Linklater and David Leigh: Not With Honour (Sphere, London, 1986); Dawn Oliver and Rodney Austin: "Political and Constitutional Aspects of the Westland Affair", Parliamentary Affairs, Vol.40, No.1, January 1987; Robert Pyper: "The Westland Affair" in Lynton Robins (ed.): Topics in British Politics 2 (Political Education Press, London, 1987).

leak was carried out by Bowe on behalf of her Secretary of State, Leon Brittan. She experienced a crisis of conscience regarding this method of disclosing the contents of a Law Officer's letter (the Press Association was to be offered unattributable extracts), but was unable to consult either her Principal Establishment Officer or her Permanent Secretary, in accordance with the Armstrong Memorandum, because these people could not be reached at the height of the crisis. Offered reassurance by her fellow conspirators in the Department, Bowe felt able to go ahead with the leak.

Unlike Ponting and Tisdall, none of the officials in 10 Downing Street or at the DTI who participated in the conspiracy to leak extracts from this letter with the specific intention of discrediting Michael Heseltine, were to find themselves in the dock at the Old Bailey. They were, nonetheless, named and blamed in the course of an investigation conducted by the Select Committee on Defence.¹ Curiously, none of the civil servants criticised by the Committee were to have sanctions imposed on them. Indeed, one of the officials, John Mogg, Brittan's Private Secretary, was promoted to the rank of Under Secretary only a few weeks after publication of the Committee's Report.

In addition to demonstrating the fundamental weakness of the Armstrong Memorandum, the Westland affair raised the issue of the function and powers of the Select Committees. The government refused to allow the civil servants involved in the affair to be questioned by the Defence Committee, and the latter chose not to push the issue, being prepared to accept an appearance by the Cabinet Secretary in lieu of the officials.

1. Fourth Report from the Defence Committee, HC 519 1985-86.

The critical report issued by the Defence Committee¹ produced an immediate response from the government, in the form of an attempt to roll back some of the most important advances which Select Committees had made in the period covered by this thesis. The "Osmotherly Rules" which governed the appearances by officials before Select Committees were to be tightened up, to the point where civil servants would be quite useless as witnesses. This was immediately recognised as a regressive step, designed to eliminate the possibility of senior departmental officials being closely questioned about their own conduct, and that of their ministers. In the face of considerable protests in Parliament, John Biffen, the Leader of the House, was obliged to alter course, and give an assurance that civil servants would continue to be questioned in detail by Select Committees.²

Although it raised very important questions relating to civil service accountability, the Westland affair will probably be best remembered for precipitating the resignations of two Cabinet ministers.

The departure of Michael Heseltine on 9 January 1986 was a clear instance of resignation on grounds of an inability to comply with the agreed policy of the Cabinet. Heseltine could not accept collective responsibility for the Cabinet's decision not to tolerate independent ministerial statements (that is, statements not cleared by the Cabinet Office) on the Westland issue.

It is tempting to view the resignation of Leon Brittan on 24 January 1986 as an example of the operation of the sanctions

1. Ibid.

2. HC Deb 6s 103 1985-86.

element of individual ministerial responsibility. He was implicated in the disclosure of the Law Officer's letter, had lost the confidence of many of his own backbenchers¹ and decided to resign, apparently in spite of protestations from the Prime Minister. In fact, closer examination reveals rather striking similarities between the Brittan resignation and the departure of Carrington, Atkins and Luce from the Foreign Office in April 1982. In each case, ministerial resignations had more to do with minimising damage to the government's credibility than with individual culpability (though Brittan was not blameless).

Brittan had been guilty of a major error, but he had survived the initial storm. However, by 24 January 1986 the question of the Prime Minister's own complicity in the leak had raised real doubts about the government's future. As had been the case in 1982, Brittan's departure had about it the aura of self-sacrifice in the interest of the greater good of protecting the Prime Minister. Immediately before his resignation, the Trade and Industry Secretary had been informed by officers of the 1922 Committee that the support of Conservative backbenchers for the government in the forthcoming censure debate was contingent upon his departure.²

This thesis ought to have demonstrated that, whatever else might be said about the doctrine of individual ministerial responsibility, it still exists as a useful description of how British government is organised and operates. The doctrine

1. See The Guardian, 25 January 1986.

2. The 1922 Committee meeting is described in Linklater and Leigh, op.cit., p.167.

should not be viewed as a constitutional myth. In the words of David Judge, there is "life in the strawman" yet.¹ This is not to deny that one element of the doctrine, sanctions, is nearer to myth than reality, but (contrary to the overblown claims of many constitutional historians) this was never the most meaningful or useful aspect of individual ministerial responsibility. The period 1966-83 witnessed no "reassertion" of this element, only a few false starts.

However, the accountability element was undoubtedly strengthened in this period. The position of civil servants was far from being totally clarified, and the gulf between the developing de facto accountability to Parliament and the legal/constitutional constraints, was obvious. Nonetheless, significant progress had been made. Clear acceptance, on the part of government, of the principle of civil service accountability to Parliament, could form part of a wider redefinition of the role of officials in the British system. This would strengthen individual ministerial responsibility by finally demolishing the remnants of another great myth surrounding the doctrine: that it would cease to hold any meaning once the existence of extensive civil service role responsibilities was recognised, and clear lines of accountability, stretching beyond the departments, were developed to cope with this.

1. David Judge: "Ministerial Responsibility: Life in the Strawman Yet?", Strathclyde Papers on Government and Politics, Number 37 (University of Strathclyde, Glasgow, 1984). It should be pointed out that Judge's criteria are a little suspect, since he sees life even in that withered arm, sanctions!

Within the British constitution, apparently jaded maxims, conventions and doctrines can be seen to contain life when they exhibit a propensity for evolution. During the period 1966-83, the doctrine of individual ministerial responsibility did evolve, albeit belatedly and partially. This thesis has attempted to demonstrate the nature and importance of that process of evolution.

APPENDIX

Part of the research for this study of individual ministerial responsibility involved conducting interviews with a number of ministers, civil servants, backbench Members of Parliament and journalists.

There was no attempt to mount a "quantitative" survey. Instead, potential interviewees were selected on a "qualitative" basis. The aim was not simply to amass a collection of quotations, but to produce useful background information which would convey something of the ambience of Whitehall and Westminster, and filter into the documentary aspects of the research.

Ministers and civil servants were asked about their own conceptions of individual ministerial responsibility, their experience with the Parliamentary Commissioner for Administration and the Select Committees, as well as their personal involvement in cases of special interest. Sir Cecil Clothier, Parliamentary Commissioner 1974-85, talked at some length about his work and the development of the office. Backbench Members of Parliament were selected because of their experience on Select Committees or because they had an interest in constitutional issues. Five journalists were interviewed because of their interest in, and knowledge of, the "Whitehall village".

Interviews were conducted on the understanding that people were speaking "for the record", but a number of interviewees asked for their comments to be used on a non-attributable basis. Notes were taken in the course of each interview, and written up immediately after the meeting. A few interviewees asked for, and were granted, permission to verify my transcripts.

The interviews were held between January 1983 and April 1984.

1. STATISTICS

Interview requests:	84
Interviews conducted:	34
Written questions requested and answered:	3
Written questions requested and not answered:	4
Failure to reply, refusal, mutually convenient appointment not possible:	43

2. BREAKDOWN OF INTERVIEWS

(For this purpose, written replies are counted as "interviews")

<u>Ministers:</u>	10
Cabinet Ministers	2
Ministers of State	3
Parliamentary Under Secretaries of State	4
Solicitor General (Scotland)	1
<u>Former Ministers:</u>	6
<u>Backbenchers:</u>	9
<u>Parliamentary Commissioner for Administration</u>	1
<u>Civil Servants:</u>	5
Permanent Secretaries	4
Deputy Secretary	1
<u>Former Civil Servant:</u>	1
<u>Journalists:</u>	5

3. INTERVIEWEES

The following agreed to speak on an attributable basis. The office occupied at the time of the interview is given, along with details of previous posts held.

John Biffen

Lord President of the Council
and Leader of the House of
Commons.

Chief Secretary to the
Treasury 1979-81.

Secretary of State for Trade
1981-82.

Alick Buchanan-Smith	Minister of State, Department of Energy. Parl. Under Secretary of State, Scottish Office, 1970-74. Minister of State, M.A.F.F., 1979-83.
Lynda Chalker	Parl. Under Secretary of State, Department of Transport. Parl. Under Secretary of State, DHSS 1979-82.
Alex Fletcher	Parl. Under Secretary of State, Department of Trade and Industry. Parl. Under Secretary of State, Scottish Office, 1979-83.
Peter Fraser	Solicitor General for Scotland.
Malcolm Rifkind	Parl. Under Secretary of State, Foreign Office. Parl. Under Secretary of State, Scottish Office, 1979-83.
William Waldegrave	Parl. Under Secretary of State, DoE. Parl. Under Secretary of State, DES 1981-83.
Tony Benn	Member of Parliament. Postmaster-General, 1964-66. Minister of Technology, 1966-70. Secretary of State for Industry, 1974-75. Secretary of State for Energy, 1975-79.
Dame Judith Hart (written answers)	Member of Parliament. Parl. Under Secretary of State, Scottish Office, 1964-66. Minister of State, Commonwealth Office, 1966-67. Minister for Social Security, 1968-69. Minister for Overseas Development, 1969-70, 1974-75, 1977-79.
William Rodgers	Parl. Under Secretary of State, Department of Economic Affairs, 1964-67. Parl. Under Secretary of State, Foreign Office, 1967-68. Minister of State, Board of Trade, 1968-69. Minister of State, Treasury, 1969-70. Chairman, Select Committee on Expenditure. Sub-Committee on Trade and Industry, 1971-74. Minister of State, MOD, 1974-76. Secretary of State for Transport, 1976-79.

John Silkin	Member of Parliament. Government Chief Whip, 1966-69. Deputy Leader of the House of Commons, 1968-69. Minister of Public Building and Works, 1969-70. Minister for Planning and Local Government, 1974-76. Minister for Agriculture, Fisheries and Food, 1976-79.
Lord Wilson of Rievaulx	Prime Minister 1964-70, 1974-76.
Sir Antony Buck	Chairman, Select Committee on the Parliamentary Commissioner for Administration. Parl. Under Secretary of State, MOD 1972-74.
Donald Dewar	Member of Parliament (Front Bench spokesman). Chairman, Select Committee, Scottish Affairs, 1979-81.
Terence Higgins	Chairman, Treasury and Civil Service Select Committee. Minister of State, Treasury, 1970-72 Financial Secretary, Treasury, 1972-74. Chairman, Select Committee on Procedure, 1980-83.
Frank Hooley	Chairman, Select Committee on Foreign Affairs, Sub-Committee on Overseas Development.
Robert MacLennan (written answers)	Member, Public Accounts Committee. Parl. Under Secretary of State, Department of Prices and Consumer Protection, 1974-79.
Christopher Price	Chairman, Select Committee on Education, Science and the Arts.
Renee Short	Chairman, Select Committee on Social Services. Chairman, Select Committee on Expenditure, Sub-Committee on Social Services and Employment, 1970-79.
Tam Dalyell (written answers)	Member of Parliament.

Enoch Powell	Member of Parliament. Parl. Secretary, Ministry of Housing and Local Government, 1955- 57. Financial Secretary, Treasury, 1957-58. Minister of Health, 1960-63.
Sir Kenneth Couzens	Permanent Secretary, Department of Energy.
Sir Antony Part	Former Permanent Secretary, Ministry of Public Buildings and Works, 1965- 68, Board of Trade, 1968-69, Department of Trade and Industry, 1970-74, Department of Industry, 1974-76.
Sir Douglas Wass	Permanent Secretary, Treasury, Joint Head of the Home Civil Service.
Sir Cecil Clothier	Parliamentary Commissioner for Administration and Health Service Commissioner for England, Wales and Scotland.
Peter Hennessy	Whitehall Correspondent, <u>The Times</u> .
Peter Kellner	Political Editor, <u>New Statesman</u> .
Richard Norton-Taylor	Whitehall Correspondent, <u>The Guardian</u> .
Peter Riddell	Political Editor, <u>Financial Times</u> .
Hugo Young	Political columnist, <u>The Sunday Times</u> .

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2. DOCUMENTS

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