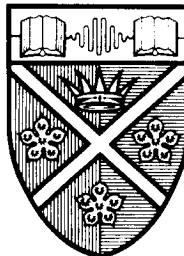


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*MINISTERIAL RESPONSIBILITY:
LIFE IN THE STRAWMAN YET?*

David Judge

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MINISTERIAL RESPONSIBILITY: LIFE IN THE STRAWMAN YET?

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The most recent booklength study of constitutional conventions posed the questions: 'Why...should we study conventions? Is it not an arid and formal task?' (Marshall 1984: 217). The fact that these fundamental questions were raised in the concluding paragraph of the final chapter suggests that Marshall was sufficiently convinced of the intrinsic importance of conventions to motivate his readership. Indeed, conventions are of crucial importance to the theory of British government and it is not the intention of this paper to deny this. Rather, its purpose is to demonstrate that conventions are still of contemporary significance not only for their prescription of the obligations, rights, duties and entitlements of executive office, which is the focus of constitutional lawyers; but also, more importantly and more neglectedly, for their description of power relationships, which is, or should be, the focus of political scientists.

Between the prescriptions of constitutional lawyers and the descriptions of political scientists lies the tension between theory and practice. On the one side, constitutional lawyers, as will be seen below, have developed 'absolutist' definitions of conventions, complete with obligations, binding rules and sanctions. In so doing they have induced academic rigor mortis into the study of what is supposed to be the flexible, malleable core of the constitution. In the hands of constitutional lawyers conventions become immutable - they are what constitutional law textbooks say they are. Yet political scientists on the other hand, in following the British empirical tradition, have found that their descriptions of political reality do not always correspond to the constitutional

rules as stipulated in these textbooks. Being unwilling to junk the only corpus of theory -constitutional law - that many of them have mastered, the only recourse for many traditional students of British government has been to argue that certain conventions have been considerably weakened or, in fact, no longer exist. In this manner much of the contemporary discussion on conventions is concerned to dismember strawmen. First of all, strawmen arguments are constructed around the stipulation of binding non-legal rules, and then these arguments are lacerated by descriptions of reality which reveal that such rules are not binding in practice. The conclusion appears obvious: the convention no longer exists.

Such conclusions have been reached on the doctrine of ministerial responsibility. Politicians and academics alike now dismiss this convention as a myth of the constitution (see Finer 1956, Dell 1980, Marshall 1984: 55). But if ministerial responsibility can be dismissed in this way then it can only be because such commentators endow the convention with mythical qualities in the first instance. The purpose of this paper, therefore, is to show that there is a convention, or more accurately conventions, of ministerial responsibility and that these provide powerful principles which both affect political behaviour and provide a frame within which to describe and analyse the power relationships between parliament, ministers and civil servants. That these conventions have evolved and changed, often in paradoxical and contradictory ways to the original doctrine of the 19th century, does not invalidate the general claims of this paper.

CONVENTIONS: OLD GROUND REVISITED

From A.V. Dicey's day onwards successive generations of students have been bemused by what makes a convention a convention. Definitions are rife. Most entail, variously, habits, understandings, practices or behaviour which may regulate conduct (Dicey 1959: 24) or 'be considered to be binding by and upon those who operate the constitution' (Marshall and Moodie 1971: 23-4) but which are not enforced by the law courts. A common assumption is that 'conventions are concerned with matters of obligation' (Wade and Phillips 1977: 17). But this raises the question of the sources of obligation. Followers of Dicey have argued that, in the last instance, these obligations are enforced through the knowledge that if conventions are breached then this 'will almost immediately bring the offender into conflict with the courts and the law of the land' (Dicey 1959: 446). Subsequently, few constitutional law textbooks have appeared without this latter quotation and some consideration of the counter-view of Sir Ivor Jennings (1959a: 134) that conventions are obeyed 'because of the political difficulties which follow if they are not'. This debate is, however, essentially ^{as} sterile as Dicey was concerned only with the specific obligations to convene parliament annually and to ensure that the executive governed with the confidence of the House of Commons. On the other hand, contrary to Jennings' original formulation, conventions are as likely to be breached because of the political difficulties which follow were they to be observed rather than were they not. Thus, as Geoffrey Marshall (1984: 6) points out, more fertile analytical ground is mapped out if we accept that

we do not need any special or characteristic explanation for obedience 'since we pick out and identify as conventions precisely those rules that are generally obeyed and generally thought to be obligatory'.

Indeed, Marshall (1984: 7) opens up largely unexplored terrain in his observation that the emphasis upon obligatory behaviour 'may obscure the point that the conventions, as a body of constitutional morality, deal not just with obligations but also with rights, powers and duties'. In this sense conventions can either oblige some restraint or confer an entitlement to some action. More importantly for the present argument, Marshall distinguishes between conventions as the 'positive morality of the constitution', that is the beliefs of political actors about what is required of them in contemporary circumstances; and the 'critical morality', that is how political actors feel that they ought to act in accordance with precedent and the rationale of the constitution. Marshall clearly believes that the second view provides the better defining characteristic of a convention. But for present purposes both forms of morality are of equal importance; for, in tracing their convergence and divergence over time, changing distributions of power and changing political relationships can be analysed.

The notion of critical morality is of importance for this paper because it defines the parameters of expected behaviour and exposes the reasons for these expectations. Political scientists and constitutional lawyers alike have largely overlooked these reasons, preferring instead to stipulate expected patterns of behaviour without explaining why these patterns have developed. With this

neglect has come the sterility of constitutional legal debate, with its concentration upon obligations and the justiciability of conventions, but with little attention to the political dimension - to power relationships and especially the delimitation of executive power. The interpreters and critics of Dicey thus largely ignore the 'political' statements in The Introduction to the Study of the Law of the Constitution that 'the conventions of the constitution, looked at as a whole, are customs, or understandings, as to the mode in which the several members of the sovereign legislative body...should exercise their discretionary authority' (Dicey 1959: 428). And that the reason for these constitutional rules in the 'long run' is to 'give effect to the will of that power which in modern England is the true political sovereign of the state - the majority of the electors' (Dicey 1959: 429). Hence, the major purpose of conventions is to specify the relationship which ought to exist between the executive, parliament and the electorate, and so to 'give effect to principles of government accountability that constitute the structure of responsible government' (Marshall 1984: 18). In other words, conventions delineate the flow and strength of political power in constitutional relationships.

For a short and exceptional period in the mid-19th century the critical morality, the prescriptions of the constitution, corresponded with the positive morality, the beliefs of politicians about political practice. Liberal theory, with its interlocking doctrines of parliamentary sovereignty, ministerial accountability to the Commons and the rule of law, clearly provided the foundations of the critical morality. For as A.H. Birch (1964: 65) notes

'this view of the constitution amounted to a theory of legitimate power'. Accordingly, British government should be both representative and responsible. Power was to flow, and to be regulated, serially, from the electorate to parliament, and from parliament to the executive. By this view the cabinet replaced the monarch as the director of public affairs, yet its own power rested upon the confidence of parliament and, indirectly, upon the electorate. After the 1832 Reform Act, therefore, as royal influence virtually came to an end and as the cabinet came to be formed around ministers of 'a certain political colour' to gain the confidence of a majority in the Commons, so political practice increasingly corresponded to the political theory of liberalism. Indeed, the political practice and the positive morality of this period provided the precedents to flesh out the skeletal frame of liberal theory. These elaborations were little more than descriptions of political practice. Again, as A.H. Birch (1964: 131) points out with regard to individual and collective responsibility, 'in both cases the practice was established before the doctrine was announced'. Thus, by the middle decades of the 19th century the conventions of ministerial responsibility combined both practice and prescription, both critical and positive morality.

This specific and exceptional conjunction has misled political scientists and constitutional lawyers ever since into believing that these elaborations upon the theme of responsible government are the defining characteristics of the constitution. Under the pervasive influence of Dicey, the description and prescriptions of the time were conflated into binding rules, that is into conventions. But

as Birch (1964: 74) once more observes 'it is only too clear that (this) was in fact an idealised view'. This view, based as it was upon the experience of the three and a half decades between the first and second Reform Acts, became increasingly inappropriate after 1867 as the political, and hence power, relationships changed between the executive and the legislature in the wake of the extended responsibilities of the state and strengthened party cohesion (see Judge, 1983).

Thereafter, the divergence between political practice and the prescriptions of mid-19th century liberal theory has led to successive claims that the conventions of ministerial responsibility are mythical. Commentators have been led to believe that the very fact that ministers in the period 1832-67 basically acted in accordance with liberal prescriptions as to how they ought to act means that conventions bind behaviour. That the correspondence between constitutional description and prescription was due to the exceptional fluidity of party allegiances within an overarching ideological consensus at a time of limited and closely prescribed government is largely ignored. Consequently, in their codification of these practices into rules of the constitution, constitutional lawyers froze exceptional political features into the heart of conventions. Politicians, however, were less ice-bound. As political relationships changed, as the state became more interventionist, as party control and with it executive control increased in the Commons, and as fissures within the liberal consensus widened in the 20th century, so a new positive morality developed amongst ministers. Ministerial actions came to be

rationalised within pertaining political realities. In which event established practice came to constitute conventional behaviour in its literal sense.

This 'literalist' position is contingent upon prevailing political circumstances and has led to a strong strand of constitutional thought which argues that conventions should be defined in terms of descriptive statements of practice. Hence, Mackintosh (1977: 13) argues that 'a convention is simply a generally accepted political practice'. There might be a case here for using the term 'political' convention to describe positive morality and to describe political practice. This 'literalist' version of conventions is dependent upon the power relationships between the electorate, parliament and the executive; so that as these relationships change so will behaviour founded upon them. Moreover, they can thus be distinguished from the 'absolutist' version of conventions, that is 'constitutional' rather than 'political' convention. 'Constitutional' conventions by this argument define how these power relationships ought to be constructed rather than how they actually operate.

'Political' conventions are, therefore, whatever politicians think it right to do in any given political circumstance. Now, if this usage is accepted, conventions in this 'literalist' guise are neither weak nor mythical, as they guide, structure and reflect the actions of the major participants in the policy process. These patterns of behaviour thus define the positive morality of the time and help also to describe the existing power structure. Moreover, the distance between actual practice and prescribed behaviour, that

is the difference between positive and critical morality, enables some assessment as to how far the flow of influence between the electorate, parliament and the executive has been redirected, and in certain crucial instances, reversed since the mid-19th century.

In differentiating between the practice of 'political' conventions and the prescriptions of 'constitutional' conventions neither does it mean that the latter are weak or mythical. The critical morality of the constitution still specifies the rules that politicians ought to feel obligated to. It specifies an absolute view of representative and responsible government grounded in 19th century liberal theory and mid-19th century practice. This view is as strong as ever. No member of the modern executive, for example, would deny the liberal democratic principles of ministerial responsibility. The fact that actual executive actions do not fully correspond to these principles does not remove the prescription that they should. 'Constitutional' conventions are thus the conscience of the constitution. In providing a stipulation of how ministers should act, they provide a moral frame within which to assess the actions of ministers. No minister would deny his individual and collective responsibility for executive actions. In this sense ministers subscribe to the theory of constitutional conventions. Correspondingly, no minister believes his responsibility to be absolute. Responsibility is thereby tempered by 'practicalities' and positive morality. Just as adulterers realign the critical morality of their marriage vows to their own positive morality, so ministers learn to 'live in sin' with their 'literalist' version of conventions.

COLLECTIVE MINISTERIAL RESPONSIBILITY: THE CONVENTION 1980s STYLE

The central strands of the doctrine of collective responsibility are neatly summarised by Geoffrey Marshall (1984: 61). These are that 'the government should stand or fall together, that the administration speaks formally to Parliament with one voice and that ministers resign or dissolve if defeated on a Commons vote of confidence'. Encapsulated here is the critical morality of the convention - the duties and obligations imposed upon the executive if it wishes to conform to the maxims of responsible government. Yet these fundamental obligations have become entwined in the pages of constitutional law textbooks with various corollaries such as elaborations upon the basic confidence rule and rules relating to cabinet unanimity, solidarity and confidentiality. By this process the critical morality of the constitution has become entangled with the positive morality of political practice.

Confidence

At the heart of collective responsibility is the belief that the cabinet can continue to govern only with the confidence of the House of Commons. In fact, no government since 1841 has challenged the absolutist interpretation of the convention that a defeat on a vote of confidence necessarily entails its resignation or dissolution. No government could do otherwise without proclaiming its irresponsibility to the wishes of the people's representatives. This did not mean, however, that any defeat on the part of a government necessarily required its resignation or dissolution. Between 1832 and 1867, for example, given the undeveloped nature of

the party system, 'governments could survive, though perhaps with diminishing prestige, a fair number of defeats provided that there was no sustained series of hostile votes revealing a continuing dissatisfaction' (Mackintosh 1977: 83). Thus cabinets determined the issues upon which they believed the House had withdrawn its confidence. These ranged from major to relatively minor matters (see Mackintosh 1977: 85-6). However, as party cohesion strengthened, and with it executive control of the House tightened, so the expectations of ministers and backbenchers about what constituted an issue of confidence changed. A new belief developed that any defeat inflicted upon the programme of the government carried the same sanction as a formal vote of no confidence. This change in positive morality corresponded to the changed political environment of cabinet government. Moreover, as political circumstances have altered over the last decade and a half so the 'political' convention has changed accordingly. Thus, as the ideological consensus both within and between the major parties came under strain in the 1970s, and, more particularly, as the Labour government of 1974 experienced difficulties in controlling the Commons in the exceptional circumstances of minority government, so a 'new' positive morality sought to distinguish defeats on confidence votes from defeats on items central to government policy, and all other government defeats (see Norton 1982: 69). In these circumstances the 'constitutional' convention remained intact but the 'political' convention, the positive morality, adapted to changed political relationships.

Unanimity

The combination of critical and positive morality can also be discerned in the expectations relating to cabinet unanimity. On the one side the critical, prescriptive element is that ministers should act as a cohesive unit insofar as 'men working together to guide national affairs ought...to be in sufficient agreement to give genuine advocacy to collective decisions' (Mackintosh 1977: 531). But this prescription has tended to mask the political practice upon which cabinet unanimity was initially founded and later described. On the other, practical, side the rationale of cabinet unity was to provide a defensive shield against the Crown and so prevent the victimisation or dismissal of individual ministers for their views. This defensive rationale remained equally important as the focus of the cabinet's responsibility moved from the Crown to the Commons. As party cohesion increased, and as the role of the Opposition became more critical and negative towards the end of the 19th century, so the principle of cabinet unity was maintained to prevent unnecessary political ammunition being provided to the opposition in the form of public disagreements between cabinet colleagues. By the beginning of the 20th century, therefore, cabinet unity served as a defence against political embarrassment and ill-intentioned partisan attack. Moreover, as party government was deemed to be strong government (Jennings 1959b: 281) because of fundamental intra-party consensus, then any public disagreement would not only weaken the leadership of the party but, by logical extension, would weaken government itself.

Obviously, this stipulation is contingent upon intra-party

consensus. Jennings believed that such consensus was pre-ordained: 'a party cabinet is normally agreed on fundamentals; if it is not...the time has come for a new alignment of parties' (1959b: 281). As a general description of party government for most of the last 150 years Jennings' statement is basically accurate. Yet there have been significant periods when the government party has been internally divided, when its own orthodoxies have been challenged by events, and when ministers have voiced diverse and dissentient views. On these occasions a positive morality has been invoked which allows sections of the cabinet to speak against majority cabinet decisions. Thus, in the 19th century the fundamental and divisive issues of catholic emancipation, repeal of the corn laws, and women's suffrage were treated as 'open questions' (Jennings 1959b: 278-9; Marshall 1984: 58).

For most of the 20th century, however, the prevailing political consensus allowed the positive and critical moralities to continue in tandem. Cabinet ministers were able to present a united front because they were in basic agreement about the programme of their government. In periods of party turmoil however - whether the coalition government of the 1930s, or the polarisation within and between the major parties in the 1970s - then critical and positive moralities have tended to diverge. On three famous occasions, 1932, 1975 and 1977, this divergence reached the point where the convention had to be suspended. On these occasions ministers 'agreed to differ' publicly. The 'special circumstances of a coalition government formed to deal with a national crisis' (Wade and Phillips 1977: 102) are usually deemed sufficient to

account for the 1932 suspension. However, this explanation is 'not obviously applicable to a single-party government' (Marshall 1984: 57). But this is correct only insofar as single-party government is seen to be ideologically homogeneous and founded upon a basic consensus. If commentators, such as Jennings and Marshall, are willing to concede the logic of 'agreements to differ' in coalition governments simply in recognition of ideological discord, (in Jennings words: 'the truth is that coalitions do not love each other' [1959b: 265]), then this logic can equally be applied to single-party governments in the 1970s and 1980s. To misquote Jennings, the truth is that factions within governing parties do not love each other. In other words, the major parties now closely resemble ideological coalitions. In reflecting this heterogeneity cabinets have increasingly become intra-party battlegrounds. In such circumstances the same political logic, if not exact constitutional precedent, links 1932, 1975 and 1977.

Whereas the incidence of public dissension by cabinet ministers was remarkably limited in times of ideological consensus, the fragmentation of consensus since the 1970s has led to a re-examination of positive morality by cabinet ministers. Successive cabinets under Mr. Wilson, Mr. Callaghan and Mrs. Thatcher have witnessed ministers openly expressing their dissent from a range of cabinet decisions, other than on those exceptional occasions when the convention has been suspended. Mr. Benn between 1974-79, for instance, managed to convey his opposition to several cabinet decisions on economic, foreign and European policy without

feeling the need to resign or being called upon to do so by the PM. Moreover, since 1979 Mr. Benn has breached still further the absolutist version of the convention stipulated by Lord Salisbury in 1878, that 'for all that passes in cabinet every member of it who does not resign is absolutely and irretrievably responsible and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues....' (cited in Wade and Phillips 1977: 99). On a series of well publicised occasions Mr. Benn has retrospectively dissociated himself from decisions taken by cabinets of which he was a member.

Despite Mr. Benn's personal zeal in challenging the absolutist version of cabinet unity (see Benn 1980: 125-6), the changes in ministerial behaviour in recent years are a reflection of far deeper political forces than his rhetoric. Faced with a deepening economic crisis, both major parties have sought to break out of the social democratic consensus by adopting radical, and opposite, programmes of salvation. 'Commitment' is called for within both parties. Yet commitment, by definition, can broach no compromise. When the new commitment policies are not shared by all members of the parliamentary party, and when the cabinet reflects, no matter how distortedly, archaeological layers of former 'commitments', then the positive morality of a consensual age no longer applies. Yet, simultaneously, ministers are conscious of the critical morality of the constitution which maintains that ministers should publicly defend cabinet decisions in the House of Commons. They still feel obliged, therefore, to vote and speak in favour of government policy in the House even when it is known that

they personally disapprove of the details of this policy. In this limited sense ministers still feel obligated by the 'constitutional' convention.

At the same time ministers also feel a political responsibility to their party supporters. In times of ideological consensus the political and constitutional responsibilities are synonymous and serve to reinforce the unity of the cabinet. But in times of intra-party discord these responsibilities become disjointed, with the result that ministers speak with one public voice in the Commons but with several semi-public voices at party meetings. In many ways the position of ministers in these circumstances is analogous to the defenders of a besieged castle. The defensive wall of a parliamentary majority is sufficient to prevent the arrows of the opposition's criticism penetrating the heart of government policy. And ministers are willing to parade on these battlements in an open display of unity against the opposition. Yet in between these appearances on the parliamentary battlements, semi-muffled disputes can be heard emanating from within the keep of the cabinet as individual cabinet ministers signal, to their respective party supporters outside, their attempts to influence the present battle strategy.

Indeed, the belief that the respective members of party factions or tendencies should know that their cause is being promoted within the cabinet forms a powerful part of the positive morality of cabinet ministers. At one time, in the late 1970s, this new morality was believed to be confined to the Labour party with its strong internal ideological divisions and its tradition of

party democracy (see Beloff and Peele 1980: 31). But the ideological tensions within Conservative cabinets since 1979 have been of sufficient magnitude to perpetuate the new political morality. Hence, the spectacle of senior cabinet members publicly distancing themselves from crucial aspects of cabinet policy has been a recurring feature of Mrs. Thatcher's governments.

Sir Ian Gilmour, as Lord Privy Seal in the first Conservative cabinet, delivered a series of critical attacks on the economic and social policies pursued by that cabinet. In one of the most publicised of these, at Cambridge in February 1981, his criticism was wrapped in the most transparent of coverings:

'The interventionist state and the welfare state are not going to go away. That is something as I have indicated which I welcome. Those who believe otherwise have, in my view, fallen into the trap of ideology and dogma - which is or should be to Conservatives the unpardonable sin' (Times, 12th February 1981).

Yet, Gilmour was prepared to 'live in sin' with his monetarist-minded colleagues rather than resign. His reasoning, as explained by Nicholas Wapshott (Times, 2nd June 1981), 'is the pragmatic one...that with people such as himself in the cabinet the worst excesses of the present leadership will be avoided, perhaps not even considered, for fear of causing a revolt'. This logic now forms the central part of the new positive morality which sustains dissentient ministers in the cabinet with the belief that but for their presence there things would be even worse. The actions of the remaining 'wets' in the present cabinet clearly reflect this morality.

Peter Walker has persistently and publicly challenged his

cabinet colleagues to break with monetarist nostrums. In 1981 he delivered this challenge in a speech in New York, he repeated it in a frank interview on BBC TVs Newsnight programme (18th July) and reiterated it in a speech in Sherborne (26th July). By October 1982, Mr. Walker's speech to the Tory Reform Group at the Brighton Conference was seen to place him in 'direct public conflict with the PM and the Chancellor of the Exchequer' (Times, 8th October 1982). When speaking to the same group a year later he pressed his attack still further on the blinkered economic approach of the PM and the Treasury which appeared to him to disregard the needs of the poor, the homeless and other disadvantaged groups. 'The Conservative party must be the party of national unity or it is nothing' reaffirmed Mr. Walker.

Similarly, James Prior has invoked the ghost of Disraeli at the public banquets of the Conservative party. As one of the most dexterous exponents of the code language of criticism he has repeatedly castigated the economic policies of his cabinet colleagues. In October 1982 he told the Tory Reform Group that the party could not deal with the nation's devastating problems by adopting 'the over-simplifications of those who called themselves 19th century liberals'. A year later Mr. Prior acknowledged the divide between 'wets' and 'dries' in the cabinet and openly conceded his doubts about the initial economic strategy of the cabinet in the statement: 'Looking back over the years, I think one of my difficulties with the policy as it was originally enunciated was with the high interest rate, high exchange rate policy' (Times, 12th October 1983). Whilst denying any disloyalty to the PM he did

uphold his belief that there should be a 'very considerable debate' on economic policy and greater dialogue and understanding between 'my side of the party' and the 'other side'. Prior's 'side' obviously believe that this dialogue should extend beyond the closed meetings of the cabinet. Thus the critical comments of 'wets' such as St. John-Stevas, Francis Pym, as well as Prior, Walker and Gilmour, continue to feature in the columns of national newspapers.

The 'other side', led by Mrs. Thatcher, has replied in kind. Sir Geoffrey Howe's speech on industrial relations in Taunton in 1980, and the Prime Minister's own admission that 'some of us would have liked to have gone further' over the 1980 Employment Bill publicly revealed doubts about Mr. Prior's activities as Employment Secretary (see Shell 1981: 159). More generally, the PM has been prepared publicly to point out the 'mistakes' made by some of her cabinet colleagues. One such 'mistake' was James Prior's expression of doubt over the future of Sir Charles Villiers as Chairman of BSC after his handling of the steel workers' strike. Another was the public correction of Mr. Pym's statement over the possibility of negotiations with Argentina, in May 1983. Yet, the pinnacle of prime ministerial criticism of the 'wets' came in the unprecedented attack on her cabinet dissidents in March 1981. Speaking at The Guardian's Young Businessmen's Luncheon, the PM declared:

'What really gets me is that those who are most critical of the extra taxation are those who are most vociferous in demanding the extra expenditure. What gets me even more, is that having demanded that extra expenditure they are not prepared to face the consequences. I wish some of them had a bit more guts and courage than they have shown'.

Mrs. Thatcher made no attempt on that occasion, nor at the next cabinet meeting, to disown the widespread interpretation that this was an attack on her 'wet' cabinet colleagues for their lack of 'guts' over the Budget.

The Prime Minister has therefore accommodated herself to the new positive morality by responding in kind. She has not demanded the resignation of dissenters, preferring instead to voice her own public displeasure with her colleagues. Yet there are limits to this toleration of public dissent; and these are essentially political rather than constitutional. Dissident ministers have remained in the cabinet only so long as the balance of party forces warrants their retention there. When the strength of 'wet' opinion was dissipated, as in the failure to articulate a coherent alternative strategy in 1981; or when 'Thatcherite' reinforcements arrived on the backbenches in May 1983, then the PM has acted to remove dissenters from her cabinet. Ministers, such as Sir Ian Gilmour, were left in no doubt that they had been sacked because of their disagreement with the government's economic policy (Times 15th September 1981). Even those 'wet' ministers of sufficient party standing to avoid dismissal, such as Prior and Walker, found themselves exiled to departments at the peripheries of economic policy. In September 1984 Mr. Prior's sense of isolation, both physically at Stormont Castle and ideologically within the cabinet, led him to resign his cabinet post and seek the communal comfort of the backbenches.

Solidarity

An important corollary of collective responsibility is collective decision-making. If ministers are to be held accountable for the decisions taken in cabinet then they should have the opportunity to express their views upon those decisions. Indeed, the critical morality of the convention that ministers should participate in collective decisions is upheld in the equal right of ministers to voice an opinion at cabinet meetings. Although, strictly speaking, votes are rarely taken in cabinet the PM does, in Harold Wilson's famous phrase, 'collect the voices' (Wilson 1976: 55). In this sense 'joint accountability is an inducement as well as an entitlement for cabinet ministers to inform themselves about, and comment on, the work of their colleagues' (Moodie 1971: 105). The convention particularly serves to constrain precipitate action by a single department minister, or more importantly a series of precipitate actions by the PM. Individual ministers, including the PM, know that, at some stage, they may be called upon to defend their actions in front of their cabinet colleagues. In which case they may have to modify their behaviour in the light of collective criticism by their cabinet colleagues. Of course this is not to deny that the PM can, on occasion, commit the cabinet to a course of action which they would not collectively have chosen - as the GCHQ affair in January 1984 demonstrates - but the point is that the PM cannot habitually do so. So, for all that it is fashionable to talk of the 'disintegration of cabinet government' the practice of the cabinet can still be accommodated within the convention of collective

responsibility.

The veracity of this last statement can be seen in the conduct of economic policy-making in the Thatcher cabinet. At first glance such an examination appears to reveal the very opposite - the weakness of collective decision-making. If anything it seems that this policy area has been effectively 'hived-off' from the full cabinet to a series of cabinet committees and informal groups of Treasury ministers (see Riddell 1983: 45-6; Burch 1983: 411). Indeed, other than for a cursory discussion in July 1980, the first full cabinet review of economic strategy was deferred until June 1981. This major review was forced upon the PM by the ferocious reaction of cabinet 'wets' to the budget of March of that year. The fact that the budget was unveiled to the full cabinet only hours before the Chancellor's statement in the House did much to increase this disquiet. Yet, the exclusion of spending ministers from the preparation of the budget was simply a continuation of the practice established in the 19th century to prevent leaks of tax changes. As tax changes have come to be predicted with remarkable accuracy well before the Chancellor's statement so the rationale for secrecy has largely disappeared over the last few decades. Only the desire of the PM and Treasury ministers to exclude their cabinet colleagues from the formulation of economic strategy has maintained the secrecy surrounding the preparation of the budget. If anything this desire was heightened on the part of Mrs. Thatcher given the manifest division of opinion between 'wets' and 'monetarists'. Correspondingly, as events in

March 1981 revealed, the annoyance of the 'wets' at their exclusion also increased. In fact, so dismayed were leading cabinet 'wets' at the size and nature of the deflationary package contained in the budget that a campaign, which had originally been launched by Mr. Prior in 1980, to involve the whole cabinet at an early stage of budget preparation was reactivated.

This campaign appeared to have been successful when, in June 1981, the PM sanctioned a full cabinet review of economic strategy. Thereafter, annual reviews were held in January 1982, February 1983 and February 1984. Yet success on these occasions was both illusory and real. On the one side, the simple fact that the full cabinet now has the opportunity to express its opinions well before the budget's introduction in parliament strengthens the formal collective control of the cabinet. On the other side, however, the practical result of these reviews has been merely to reinforce the strategy proposed by the Treasury. Thus, after the first review Geoffrey Smith (Times, 20th June 1981) noted that it had been proposed not as a concession to the 'wets' but to disarm them. Critics in the cabinet were thus robbed of the opportunity to claim that they had not discussed strategy; yet, their own disorganisation and lack of a viable alternative resulted merely in a public endorsement of the 'broad general policy' tempered by private reservations about the financial stringency of the Treasury. As the cabinet became ever 'drier' in composition after Mrs. Thatcher's various reshuffles so the public endorsement of the Chancellor's broad strategic judgement became even more enthusiastic. By February 1984 one cabinet minister pronounced

that the latest review session had been 'bland and boring' (Guardian, 10th February 1984). Nonetheless, the very concession of these annual reviews signifies the acknowledgement by the present PM of the practical importance of maintaining the formality of collective responsibility. In a very real sense collective agreement on economic strategy is seen to matter to the PM, even if only in the negative sense of confirming that there is no systematic alternative available within the cabinet.

Even without a clearly articulated alternative, the 'wets' have been able, nevertheless, to secure incremental changes to the economic strategy, most notably through their opposition to the scale of public expenditure cuts demanded by the Treasury. Each year the Treasury has failed to achieve its expenditure targets, often securing as little as one-half (1979) or one-third (1981) of its proposed cuts. On notable occasions the PM and Treasury ministers have found themselves in a minority in the cabinet. At the cabinet meeting of 20th August 1981, for example, out of twenty-one ministers present only eight supported the Treasury proposals. Thus, it is clear that the annual expenditure process is not simply a unilateral exercise by the Treasury, nor even a bilateral process of agreement between the Chancellor and spending ministers; but instead can be understood as a result of collective compromise and deliberation. One of the severest critics of collective responsibility, Edmund Dell (1980: 32), has been led to just such a conclusion in his statement that: 'The level of public expenditure is an issue central to the responsibility of the Chancellor of the Exchequer....this task should not be made

impossible by the compromise forced on him through the operations of collective responsibility'. Relief that Dell's technocratic view has neither prevailed nor even been accepted within the Thatcher cabinet is shared not only by this author seeking to establish the vibrancy of collective responsibility but also, more importantly, by the recipients of welfare benefits and employees in the public sector'.

Confidentiality

The third, and final, elaboration upon the convention is confidentiality. Cabinet unity and solidarity are to be guaranteed, according to the absolutist version of the convention, through the confidentiality of cabinet proceedings. Secrecy becomes, in this version, a necessary corollary of cabinet unity. 'Those who come together and act jointly in pursuit of a common purpose need the assurance of privacy in their deliberations' (Cmnd 7520, 1979: 14). Former disagreements amongst ministers have to be submerged if the cabinet is to appear united in public. Moreover, should this unity be damaged then it would automatically damage the 'good government' of the country (Cmnd 5104, 1972: 68). In this vein Mrs. Thatcher, as with her predecessors, has identified unauthorised disclosure of cabinet discussions to be a double threat - to the unity and the efficiency of the cabinet - for 'it does not make for efficiency if you feel that everything you say might be repeated outside' (Mrs. Thatcher, interview Thames T.V., 6th January 1981).

The PM's desire for 'efficiency' has recently reached such

proportions that on several sensitive issues she has preferred to take decisions outside of the cabinet amongst a small group of confidants. Thus, the decision to ban trade unions at the GCHQ at Cheltenham was initially taken by the PM, Sir Geoffrey Howe (Foreign Secretary) and Michael Heseltine (Defence Secretary). Only later were Lord Whitelaw and Tom King (Employment Secretary) involved. The remainder of the cabinet first heard of the decision when it was announced in the Commons on 25th January, 1984. Their exclusion was reported (Times, 7th February 1984) to have arisen out of the PM's fear that if they had been informed earlier then the decision would have been leaked. This is the logic of 'Catch 22'. If decisions are not taken in cabinet because of the fear of leaks; then this fact alone means that the solidarity of the cabinet is strained and makes it more difficult for ministers to defend publicly decisions upon which they have had no say. Simultaneously, the likelihood of leaks to the effect that the initial decision was 'inept' and 'mishandled' increases, and with it comes reconfirmation in the PM's mind that the exclusion of her cabinet colleagues was warranted in view of their subsequent reaction.

Mrs. Thatcher has become ensnared in this 'Catch 22' cycle by virtue of her cabinet being the leakiest Conservative administration this century. Cabinet proceedings have been reported almost verbatim in the press on the basis of unattributable leaks: hence the PM's fear of disclosure. But, such disclosure is itself simply a part of the positive morality of the convention of collective responsibility. Patrick Gordon Walker (1972: 32) implicitly recognised this: 'In every cabinet the leak will be deplored and

condemned; but it is paradoxically necessary to the preservation of the doctrine of collective responsibility. It is the mechanism by which the doctrine....is reconciled with political reality'. It is perhaps unsurprising to find, therefore, that this mechanism has become overheated in the 'reality' of an ideologically divided cabinet. It is equally unsurprising that Mrs. Thatcher, whilst condemning cabinet leaks, has, nevertheless, utilised unattributable disclosures when the occasion warranted. In January 1981 she was openly accused by the then leader of the opposition, Michael Foot, of leading the leakers in disclosing that there would be no increases in personal income tax in the forthcoming budget. Two years later, in January 1983, George Foulkes MP, aired his belief that the PM had orchestrated a 'whispering campaign' prior to the publication of the Franks Report on the Falklands, in order to bolster her own standing in the eyes of the public. Similarly, pre-budget leaks in March 1983 revealed Mrs. Thatcher's desire to raise tax relief on larger mortgages. This was seen by many backbenchers as an attempt to ensure that credit was apportioned where it was due: in the hands of the Prime Minister.

Leaks, therefore, are part of the positive morality of the constitution. Ministers feel not only entitled, but obliged, to disclose information in times of intra-party discord. It is indisputable that when 'difficulties are greatest. It is then that leaks proliferate, that ministers try to defend their separate points of view with elements of outside opinion' (Dell 1980: 36). What is disputable, however, is that at such times the 'whole concept of collective responsibility becomes more and more ragged'

(Dell 1980: 36). For, as argued above, only if the confidence rule - the critical heart of the convention - is conflated with the unity, solidarity and confidentiality rules into an absolute and immutable doctrine can the judgement be sustained that 'collective responsibility becomes more and more ragged'. What is left in tatters in such an exercise is the strawman definitions of constitutional law textbooks; definitions which fail to distinguish between the prescriptive and descriptive elements of the convention as established in the 19th century. In essence, the prescriptive element, the confidence rule, still stands; whilst the descriptive, political elements - of unity, solidarity and secrecy - fashioned in a specific historical context, have changed in accordance with altered political circumstances.

INDIVIDUAL MINISTERIAL RESPONSIBILITY

The absolutist version of individual ministerial responsibility as defined in the late 19th century clearly located responsibility for decision-making in the hands of specified ministers (Gladstone 1879, Mill 1910). Whilst most attention in the 20th century has been focused upon the meaning of 'responsibility', the true significance of the convention rests in its specification of the locus of decision-making. This point has been most authoritatively stated by Nevil Johnson (1977: 84). In his view individual ministerial responsibility 'is fundamentally a doctrine about the manner in which public powers are to be established and located: it defines who is responsible for what rather than who is responsible to whom'. In this sense the convention reflected the political

practice of the 19th century, when parliament successfully frustrated the development of an administrative state structure based upon autonomous boards and agencies and simultaneously centralised the new powers of the state in the hands of ministers. The corollary of this development, under the theory of parliamentary sovereignty, was that the powers vested in ministers were ultimately powers controlled by parliament. In this manner, the location of power (in Whitehall) was linked to a conception of responsibility whereby ministers who were charged with the conduct, or supervision, of these new powers were also deemed responsible for their actions to parliament. This responsibility was held to be twofold: first, to answer queries in the House about the exercise of executive power; and second, to answer for, in the sense of culpability, any misuse of these powers. Both expectations were believed to be capable of fulfilment in an era of limited government - limited both in terms of the scope of its activity and in the number of its employees. And on such expectations were absolutist definitions of individual responsibility founded.

However, before examining the extent to which these definitions have been counterpoised by recent 'literalist' interpretations, it is important to mention, here, two associated conventions which are dependent upon the absolutist version of individual ministerial responsibility: the anonymity and political neutrality of the civil service. For these conventions reinforce the legal fact that power is located in the hands of a specified minister, and that the minister alone, as the head of a department, is responsible to parliament. They also propagate and sustain the constitutional

divide between policy and administration, and between ministers and their official advisers. And from this divide is cast the structure of both internal and external relationships between politicians and departmental officials.

Internally, the very structure of decision-making in the major departments of state reflects the division of responsibilities between elected politicians and non-elected officials. The convention of ministerial responsibility is unambiguous: ministers decide and officials merely advise. Correspondingly, departmental decision-making is still characteristically centralised and hierarchical (though see below pp. 45-48) with all major decisions funnelled upwards to the minister and his permanent secretary. Civil servants, conventionally, are the subordinates of ministers, subject both to the control and direction of their political masters. In this sense the convention both describes and prescribes the relationship between officials and ministers.

Whilst its descriptive accuracy is subject to dispute (see Benn 1981, Crowther-Hunt and Kellner 1980, Sedgemore 1980) its prescriptive element is unchallenged. The right of ministers to control the bureaucracy is unquestioned. Indeed, the recognition that politicians ought to exert executive control plays a major part in determining the role perceptions of bureaucrats themselves. Hence, the continued defence of the generalist administrator in Britain is dependent upon the notion that by training and 'instinct' the generalist is supremely conscious of the political and administrative parameters of the 'minister's mind'. By virtue of his political nous and the alleged commitment to work within the

framework set by ministers, the higher civil servant exercises self-restraint and self-control. That this self-discipline is not absolute is not disputed; civil servants may, and do, seek to redefine the parameters of the 'minister's mind' for him. But the counterweight of training and convention leads to a general predisposition within Whitehall to accept the present political boundaries as mapped out by ministers. In this way 'as long as politicians and general administrators match each other in respect of style and capacities then ministers retain a simple mechanism of control over their departments' (Judge 1981: 11).

Whether the self-control of the higher civil service is breaking down in an era of 'commitment' politics under the Thatcher government - with its abrasive administrative style, the importation of business management techniques and the depreciation/deprivilегing of the civil service - remains a question beyond the immediate scope of this paper. Undoubtedly, the impartiality of leading civil servants has come into question with Mrs. Thatcher's appointment of permanent secretaries in her own image (see Ridley 1983). In contrast, those civil servants with little or no enthusiasm for the Conservative government's overall strategy or specific policies have displayed their own 'partiality' through publicising, via unofficial leaks, their advice and discussions with ministers. In 1984 Sarah Tisdall and Clive Ponting, officials respectively in the Foreign Office and the Ministry of Defence, attained notoriety in the eyes of the government by leaking politically sensitive documents. Both were subsequently prosecuted under Section 2 of the Official Secrets Act. Both invoked in their defence a higher loyalty to the public

and to parliament over and above their loyalty to the Conservative government. The policy and administrative style of the present government has therefore 'led civil servants to question and analyse the basis of political decisions and the consequences for themselves and the public they service.....The conclusion....is almost universally hostile to what the government is seeking to do' (D. Heywood, Society of Civil and Public Servants, letter, Guardian, 21st May 1982).

Recent challenges to the impartiality and secrecy of the civil service in turn question the political grounds of obligation. Whilst civil servants recognise that their advice ought to be dispassionate and confidential they also believe that this is part of a mutual obligation. Ministers, correspondingly, ought to acknowledge the integrity and honesty of that advice and to work within the consensus (believed by the civil service at least) to be at the heart of the British polity. If politicians move the political fulcrum then these mutual obligations are likely to be put under strain in the disequilibrium that ensues. These tensions could easily be lessened if ministers allowed more openness in Whitehall and/or developed a politicised civil service. Whilst breaching the style of British government such changes would not make the convention of ministerial responsibility redundant; as long as civil servants acknowledged, and obligated themselves to the fact, that their role was one of advice not decision-making, and that the minister alone remained accountable to parliament for the final decision. Admittedly, the minister's task would be more arduous. His decision would be set more openly within the context

of a wide range of known policy options. He would, therefore, have to account for why certain options were discounted and why certain forms of advice were ignored. This would be all to the good in the eyes of the proponents of open government. The minister's accountability would increase and with it would come a concomitant increase in the effectiveness of Whitehall decision-making.

Yet, ministers have chosen to argue the reverse case. In their eyes, civil service impartiality and confidentiality is the mortar which secures the coping stone of ministerial responsibility into the arch of representative and responsible government. 'Sound decision-making' rests upon the anonymity of the official. The secrecy afforded by the convention enables the civil servant to express 'even uncomfortable facts or aspects of a question' (Cmnd 7520 1979: 15) which a minister might care to overlook in public. More particularly, ministers value the psychological reinforcement - both in their minds and in those of their officials - of the convention which identifies them publicly, at least, as the sole source of decision. Thus officials are aware that, as the spokesman for the department, the minister's words have to appear to flow not only from his mouth but also from his mind. Their actions are thereby regulated by their perception of what the minister wants or will stand for. This psychological constraint might be loosened, ministers fear, if officials were publicly identifiable and associated with a particular variant of advice. Secrecy, in this view, is not merely a corollary of a minister's own responsibility to parliament but becomes the very cornerstone of the convention. The convention subsequently not only defines the locus

of responsibility within the department but also secures 'good government' and political control.

As well as defining the internal relationship between official and minister the convention also stipulates the external relationship between the minister and parliament. Quite simply, the minister alone is responsible. He is the link in the chain of public scrutiny and control of the administration. But at this point of linkage a contradiction arises; for ministerial openness to parliamentary investigation is postulated upon the need for a private and closed decision-making process in Whitehall. In this contradiction, as will be seen below, the minister is able to minimise his external responsibilities to the Commons by emphasising his internal, departmental responsibilities.

Before developing this argument, however, it is important to note that when the convention became entrenched in the 19th century no contradiction was posited between internal and external responsibilities. In the temporary and exceptional circumstances of the mid-19th century, with the legislature in the ascendant, the House exercised collective control over ministers. This control was effected within the limits of a fundamental ideological consensus in the semi-closed and socially restricted worlds of Whitehall and Westminster. In these circumstances ministers formed the conduit between the administrative and legislative halves of a whole system of government. Thus, in subjecting themselves to parliamentary control, ministers simply answered as 'members of a uniform body, as an organic part of a socially homogeneous representation of the people' (Redlich 1908: 132). Only with the

development of party cohesion, executive dominance and adversarial procedures did ministers cease to act as a conduit and become instead a constriction in the flow of information between the two halves of government. Yet, while the substantive relationship between the executive and the legislature underwent fundamental change the formal constitutional and conventional relationship remained intact. Of necessity, a democratic system founded upon the principle of parliamentary sovereignty could not openly acknowledge executive ascendancy. But more pragmatically, ministers recognised that the bifurcated sense of responsibility defined by the convention enabled Whitehall secrecy to be maintained as a defence against the implicit sanction of the convention. In the adversarial setting of the Commons ministers successfully inverted the convention to mean that 'we are not going to tell you anything more than we can about what is going to discredit us' (James Callaghan, Cmnd 5104 1972). Indeed, this mentality is now reflected daily in debates and at Question Time; as ministers, by their very presence, adhere to the form of the convention, but stray from its spirit in their evasive answers or their refusal to answer at all (see HC Debates 1984, vol. 61: 761-2).

The same mentality can be observed in the executive's relationship with the new departmental select committees. Ministers have consistently defended the negative aspects of ministerial responsibility in the face of committee requests for information. Indeed, this defence and its underpinning logic is epitomised in a memorandum, drawn up by Mr. Edward Osmotherly of the old Civil Service Department, for the guidance of officials

appearing before select committees (CSD Gen. 80/38). Encapsulated within this document is the contradiction of the convention. On the one hand, civil servants are informed that 'the general principle to be followed is that it is (their) duty to be as helpful as possible to committees, and that any withholding of information should be limited to reservations that are necessary in the interests of good government or to safeguard national security'. On the other hand, however, the interests of 'good government' preclude officials from providing evidence upon: the advice given to ministers by their departments; interdepartmental exchanges on policy issues; the level at which decisions were taken; the manner in which a minister has consulted his colleagues; or cabinet committees and their discussions. Moreover, official witnesses are directed to 'confine their evidence to questions of fact relating to existing government policies and actions'. In the absence of prior ministerial authorisation officials are counselled to avoid discussion of alternative policy and if pressed to do so by a committee they 'should suggest that the questioning be addressed, or referred, to ministers'. Thus the 'general principle' of openness is inverted into a predisposition to confidentiality by the logic of ministerial responsibility. In practice, the new departmental committees have been consistently circumscribed by these restrictive bounds imposed by the negative face of the convention (see Judge 1984). A classic illustration of this process of circumscription was provided in the minute leaked by Clive Ponting (Assistant Secretary in the Ministry of Defence) to Tam Dalyell M.P. in August 1984. The document signed by J.M. Legge, head of defence

secretariat 11, argued that the Foreign Affairs Select Committee should be denied its request for full details of changes in the rules of engagement for the British task force approaching the Falklands in May 1982:

Our advice is that we should not provide the committee with a note listing all changes...the full list of changes would provide more information than ministers have been prepared to reveal so far about the Belgrano affair. (quoted Observer, 19th August 1984).

Resignation

The second sense of the convention, to answer for, and to be culpable for, any misuse of executive power, is replete with the sanction of resignation. Not only do constitutional law textbooks still describe resignation as the ultimate sanction of the convention, but much of the procedural posturing within parliament can only be understood in terms of the implicit threat of sanctions against a minister. Thus, general calls for individual resignations are commonplace in the Commons today. Yet such general calls misinterpret the obligation upon a minister to resign; for the obligation is of specific origin. It dates, as Mackintosh (1977: 519) notes, 'from the 1850s and 1860s when it was reasonable to assume that a minister could watch over every significant action of his department. Even then, there would have been no need to acknowledge errors in this way but for the power of the House of Commons to move and carry a motion censuring the individual in question without necessarily dislodging the government'. In these circumstances, the critical morality of the convention, that ministers ought to be culpable for executive misdeeds, was matched

by the positive morality, that ministers believed that they could be forced to resign in the face of a critical motion in the Commons. This correspondence between the critical and the positive morality was shortlived, for, by the 1890s and the entrenchment of the party system, the dismissal of individual ministers was no longer possible without defeating the government itself. By the end of the 19th century therefore a new positive morality replaced the general belief that ministers ought to resign in recognition of executive malfeasance with the more specific belief that a minister's resignation was contingent upon exigent political circumstances; in particular upon the extent of his party's support and, more importantly, upon the extent of prime ministerial support. Only if such support was not forthcoming, either in the unusual circumstances of minority government or if a minister had seriously alienated his own backbenchers, was the issue of individual ministerial culpability pressed to the point of resignation. With the new morality in force, ministerial resignations have subsequently been 'the haphazard consequence of a fortuitous concomitance of personal, party and political temper' (Finer 1956: 393).

The very fact that ministerial resignations in accordance with the constitutional convention have been so few and so haphazard, has raised the question of whether there is a convention of resignation at all? In the absence of compulsive force, Finer (1956: 394) believes that there is no convention of a 'minister being punished through loss of office for all the misdeeds and neglects of his civil servants which he cannot prove to have been outside all

possibility of his cognisance and control'. Similarly, Grant Jordan (1983: 137) concludes 'where Finer concluded 25 years ago. Individual ministerial responsibility doesn't exist'. His study of four ministerial resignations in 1982 (Fairbairn over the Glasgow rape case; Carrington, Luce, Atkins over the Falklands) finds that these cases cannot be included in a single category, nor does the text-book definition of individual ministerial responsibility explain and account for these episodes. Likewise, Robert Pyper's (1983: 208) examination of the Foreign Office resignations concluded that they 'did not represent a reassertion of individual ministerial responsibility....(nor did they) result from a logical apportionment of culpability'.

Yet, if individual ministerial responsibility 'does not exist', or at least if it has not been 'reasserted', then why did four ministers resign? If, as in the case of Fairbairn, it was because senior government colleagues were dismayed by his maverick personal and political style, and so chose to make him a 'scapegoat' (Jordan 1983: 183) for the mishandling of the prosecution in the Glasgow rape case (rather than the Lord Advocate who held ultimate responsibility), then his case conforms to the positive morality where resignation is contingent upon the loss of party support. Fairbairn's resignation conformed, therefore, to the political convention of individual ministerial responsibility. Moreover, the fact that a resignation was demanded in the first instance reveals the continuing strength of the critical morality of the convention. That it was a minister who resigned, rather than the legal advisers in the Scottish Office, simply reinforces the convention.

Correspondingly in the Falklands episode, the critical morality of the convention shone through Lord Carrington's letter of resignation (Guardian, 6th April 1982). In this letter he acknowledged the strong parliamentary and media criticism of the policy for which he had responsibility and which had resulted in a 'humiliating affront' to the country. In which event he felt it right that he should resign. Although Carrington believed that much of the criticism was unfounded, he, nevertheless, conceded that his judgement of British intelligence about Argentinian intentions had been wrong. In this sense he accepted a personal responsibility for the conduct of the Foreign Office, and so took 'his stand on the classic principle of ministerial accountability' (Times, 6th April 1982). Indeed, in the end, Lord Carrington had to insist upon resignation in the face of the prime minister's strong efforts to dissuade him from this course of action. In so doing he provided 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' (Marshall 1984: 65). On this occasion the critical morality prevailed over the positive morality of the convention. Yet it did so only because the positive morality of the time pointed roughly, if not exactly, towards the same outcome.

Party loyalty and the blanket of collective responsibility are, as noted above, normally wrapped around individual ministers to deflect the sanction of resignation. In the Falklands case, however, the PM could not afford to clasp the FO ministers too closely to her protective bosom without highlighting the collective

culpability of the cabinet. The PM, as chairman of the cabinet's Overseas and Defence Committee was, indeed, equally, if not more, responsible than her other ministers for the lack of co-ordination within Whitehall and the misinterpretation of Argentinian intentions which precipitated the Falklands crisis. Similarly, the Secretary of State for Defence, John Nott, can be accused of contributory negligence for his decision to withdraw, on grounds of cost, HMS Endurance from the South Atlantic, despite FO protests. Yet, Mrs. Thatcher chose to reject Nott's resignation arguing that 'the Ministry of Defence is not the department responsible for policy towards the Falklands Islands'. Clearly, Mrs. Thatcher was concerned with 'damage limitation' within her government. If anyone had to resign then such resignations were best confined to the 'lead' department, the Foreign Office, which exercised formal responsibility for foreign affairs. Indeed, just such an explanation has been offered by Pyper (1983: 208) who sees Carrington's resignation as an evasion of the need for a genuine assumption of responsibility. By this view an act of expiation was called for and the FO team fitted the bill. The problem with this analysis, however, is that Mrs. Thatcher was not convinced of the need for anyone to resign, least of all her Foreign Secretary. If a penalty had to be paid then the calculating politician would have sacrificed Richard Luce, the junior minister with responsibility for the South Atlantic desk, rather than allowing the entire FO ministerial team to resign. The prime minister's attempt to prevent Carrington's resignation might be seen to have been just such an act of political calculation: but, importantly, it failed.

One reason for this failure might have been that Lord Carrington had so alienated a substantial part of the Tory right-wing in the Commons that the PM ultimately had to concede Carrington's resignation. If this was the case then again it would be consistent with the positive morality behind the operation of the convention in the post-war period. For, just as backbench alienation is of significance in explaining the last instance of resignation in accordance with the convention of individual ministerial responsibility, Sir Thomas Dugdale in 1954 (see Finer 1956, Birch 1964, Mackintosh 1977), so too in 1982 a section of the Conservative parliamentary party awaited an opportunity to settle old scores with Carrington. Retribution was subsequently exacted not solely for the Falklands failure but also for Carrington's handling of Zimbabwean independence; the pro-Palestinian tilt of his middle-east policy and even his attention to European duties at the very time of the Argentinian invasion. Yet, once again, this interpretation minimises the PM's attempt to dissuade the Foreign Secretary's resignation. Far from siding with Carrington's critics, Mrs. Thatcher openly praised his handling of foreign affairs. In which case neither backbench alienation, nor the demand for expiation, fully explain the Foreign Office resignations. The crucial variable probably remains, therefore, Carrington's belief that he had to take personal responsibility. In his own words: 'Who wants to resign from being Foreign Secretary? But you can't ignore it (the demand to resign)' (Times, 6th April 1982). The critical morality of the convention appears to have had decisive sway in Carrington's decision.

Non-resignations

The assumption of personal responsibility by Sir Thomas Dugdale and Lord Carrington demonstrates that a constitutional convention, a critical morality of responsible government, still exists and continues to affect ministers' actions - despite Finer's and Jordan's claims to the contrary. However, two examples spread over 28 years do not constitute a general rule. In practice, the absolutist version of individual ministerial responsibility, that for every departmental error a ministerial head must roll, is over-ridden by positive morality. In fact, vicarious accountability in this absolutist form has never been a requirement of the political convention of responsibility in the 20th century. Thus, as Geoffrey Marshall (1984: 65) explains 'When action is taken of which a minister disapproves and of which he has no prior knowledge, there is no obligation on his part to endorse it, to defend the errors of his officers, or to resign'. James Prior, Secretary of State for Northern Ireland, echoed these words in the House of Commons in the debate on the Hennessey Report into the escape of 38 prisoners from the Maze prison:

'I do not accept - and I do not think it right for the House to accept - that there is any constitutional or other principle that requires ministerial resignations in the face of failure, either by others to carry out orders or procedures or by their supervisors to ensure that staff carried out those orders'.

(HC Debates 1984, vol. 53: 1042).

Hence, Mr. Prior willingly allowed the Hennessey Report to stand with its principal attribution of blame to the governor of the Maze, and its partial criticism of the head of the security and operations

division of the Northern Ireland Office. The path of accountability, according to the report, stopped well short of the supervising under-secretary, and, hence, well short of the Secretary of State. On these grounds Mr. Prior argued that the report had found no policy shortcomings; if it had done so then he stated he would 'not hesitate to accept that blame and act accordingly'. Yet, Mr. Prior's position was criticised in a confused leader in The Times (8th February 1984): 'Mr. Prior's formulation...if pressed...would empty the notion of ministerial responsibility of its meaning in relation to a large part of the business to which it has been thought to apply.....The policy/administration distinction provides no refuge in a debate as large as (the Maze case)'. The Times leader writer concluded therefore that Mr. Prior's resignation may reasonably have been required. Having outlined this absolutist version of the convention, the leader writer then proceeded to 'accept that the political setting, as well as the application of principle, is relevant to the determination of any particular case'. In so doing, positive morality, and the beliefs that ministers have as a matter of fact about what is required of them, overruled the initial absolutist stipulation of the convention.

Mr. Prior's interpretation of ministerial culpability was but the most publicised instance of one of Mrs. Thatcher's ministers allowing his officials to be publicly criticised without accepting any responsibility to resign. In 1983 an independent investigation into fraud and corruption in the Property Services Agency identified serious management flaws and a complacency on the part of management which was reflected in its attitude towards dishonesty and fraud.

Mr. Patrick Jenkin, as Secretary of State for Environment, published the report without accepting personal responsibility for management attitudes within the PSA. More generally, select committees have consistently revealed departmental shortcomings. One example will suffice: in 1982 the Public Accounts Committee criticised the poor quality of civil service management in the Ministry of Defence which led to serious underestimation of the costs and timescale of the Chevaline modernisation programme (HC 269 1982). Whilst Sir Frank Cooper, the permanent secretary, pinpointed ministerial indecision as a significant factor in the trebling of costs in real terms of the project, the committee's report made it clear that 'the delays and uncertainties on the future of the project were not an excuse for poor management; instead they underlined the need for firm and effective management to minimise disruption and to maintain financial and project control in difficult circumstances' (HC 269 1982: vii).

Civil Service Accountability

At the same time as the external accountability of senior civil servants has become an issue through select committee investigations, so their internal departmental accountability has been increased through recent administrative reforms. In this latter respect, foremost amongst the management initiatives introduced since 1979 have been the Management Information for Ministers System (MINIS) and the Financial Management Initiative (FMI). MINIS was initially associated with Michael Heseltine, as he introduced the system into the Department of the Environment in

1980 and into the Ministry of Defence when he became Secretary of State in 1983. Other departments have since been required to follow these examples. The primary object of MINIS is to enable a Secretary for State and his ministerial colleagues 'to review in detail the work of (their department) systematically, comprehensively and on a continuing basis' (HC 23611 1982: 125). Essentially, MINIS is designed to inform ministers of 'who does what, why and at what cost' in a department. To do this the activities of a department are divided into managerial blocks which are based upon responsibility units or cost centres. Each directorate presents an annual statement, outlining for each task, its costing, its priority rating and an assessment of performance; along with projections about future objectives and foreseen changes in the performance of the task. This information is then collated for the minister and provides 'the foundation for the critical scrutiny of the department's priorities and programmes and of the organisational structures established to give effect to them' (Zifcak 1984: 6).

In 1982 MINIS was extended to all of the main central departments in the form of the Financial Management Initiative (FMI). The aims of FMI are set out clearly in the Government's Observations on the Third Report of the Treasury and Civil Service Committee (Cmnd. 8616 1982). These are to ensure that managers at all levels within a department have a clear view of their objectives and the means to assess and measure performance in relation to these objectives; have well-defined responsibility for making the best use of their resources; and have the training, information and access to

expert advice needed to exercise their responsibilities effectively. The Minister for the Civil Service, Barney Hayhoe, has in fact argued that 'line managers are now being made accountable for results and resources as far as possible down the management line....The FMI....is bringing about a major shift in civil service attitudes....The search for efficiency and value for money in future will become an integral part of the decision-making and executive process' (HC Debates 1983, vol. 47: 555-7).

Yet there is an inherent contradiction within the FMI's notion of civil service accountability, and this arises out of the tension between accountable management within a department and the external accountability of the minister to parliament. This conflict between accountable management and political control is clearly identified by Sir Kenneth Clucas (former permanent secretary):

'If a civil servant is to be made individually answerable for a particular area of work then it follows that he must be given the power of decision. If the exercise of that power is subject to ministerial or parliamentary direction then the individual ceases to be responsible....Individual responsibility for management in any area may therefore be possible only in reverse proportion to the level of interest in that area shown by Parliament' (1982: 35-9).

Clearly, the convention of ministerial responsibility is at the heart of this contradiction. On the one hand ministers, such as Michael Heseltine, can argue that MINIS (and FMI) tries to 'get beyond the general distribution of responsibility into the practical detail of what it is all about....(and to continue responsibility in a form) which did not enable them (civil servants) to hide behind a general defence but did not call for proper and full accountability' (HC 236ii 1982: 167). By this view the ultimate responsibility

still rests with the minister. Yet on the other hand, as at least one member of the Treasury and Civil Service Select Committee remarked to Mr. Heseltine: 'You accept total responsibility to us but in my mind I think it is unrealistic, we have to look to a permanent organisation that administers the service, albeit over it a political control in the form of a minister' (HC 236ii 1982: 169). Ministers, therefore, have to adopt a contradictory, and unconvincing, stance; as simultaneously they seek to devolve decision-making responsibility within a department yet to maintain publicly that they alone are accountable externally for all decisions. This stance would be untenable if the full details of MINIS and FMI were subject to parliamentary scrutiny. Whilst Mr. Heseltine assured the Treasury and Civil Service Committee that he was personally in favour of providing parliament with as much information as possible, he nonetheless admitted that there might be 'over-riding political and policy constraints' (HC 236ii 1982: 172) which could prevent release. This drew forth the rueful comment from one member of the committee: 'I suppose it is precisely where there are political and policy constraints that parliament has the greatest need for information anyway' (HC 236ii 1982: 172). Significantly, but hardly surprisingly in view of the argument above, the government did not accept the select committee's recommendations upon the publication of annual departmental reviews (Cmnd 8616 1982: 10).

Conclusion

Despite recent academic orthodoxy, the conventions of

ministerial responsibility are alive and well. Indeed, they only appear 'weak' or 'mythical' if they are defined in 'absolutist' terms of obligations, binding rules and sanctions. What this paper has argued instead is that conventions can better be understood, first, in Marshall's terms of a body of constitutional morality, and, second, by making a distinction between the critical and positive elements of this morality. On the one side, conventions can be analysed as a critical morality or a prescriptive theory of legitimate government. From this theory political actors take their cues on how they ought to act. It defines how constitutional relationships should be structured rather than how they are in fact structured. For the purposes of this paper this morality has been labelled 'constitutional convention'. On the other side, conventions can also be defined in 'literalist' terms and labelled 'political conventions'. In this second sense, conventions constitute the positive morality of the constitution; and guide behaviour to the extent that politicians act in accordance with whatever they believe it is right to do in any given political circumstance. Actions are thus rationalised within pertaining political realities. And as such, in reflecting established political practice, they come to constitute conventional behaviour in its literal sense.

From this basic distinction between 'constitutional' and 'political' convention flows the argument of this paper. For the conjunction of critical and positive morality at the crucial stage of parliamentary development in the mid 19th century, a short and exceptional period, has misled successive generations of political

analysts into believing that political theory guides political practice. In making the distinction between 'absolutist' and 'literalist' versions of conventions the constitutional essentials can be abstracted from the political corollaries and elaborations of a specific historical period. The divergence between the two can thus be correlated with the changing power relationships between the electorate, parliament and the executive. In so doing the importance of power and political relationships are re-established in the study of conventions, and such study becomes far from 'an arid and formal task' as political life is breathed into, what were previously, strawmen arguments.

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