

INDIVIDUAL MINISTERIAL RESPONSIBILITY:
ABSOLUTE OR OBSOLETE?

A discussion of the Fairbairn and Falklands resignations.

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Ministers resign frequently. Figures to hand for one arbitrary period - between 20th June 1970 and 6th December 1973 - indicate 22 resignations by Ministers (including Whips).⁽¹⁾ But only rarely is the Ministerial Responsibility formula relevant. One factor complicating the study of resignations is that in a reshuffle dropped Ministers may be allowed to resign. The requested resignation of Sir Ian Gilmour is such a case, though Sir Ian made the nature of his resignation plain both by emphasizing in his resignation letter that it had been requested and referring to his "sacking" in the statement he made on the same day. Sometimes the camouflage is dropped - for example, in May 1981, Keith Speed was dismissed after dissenting from navy cuts in public. It is difficult to unscramble resignations and sackings when the latter are, in effect, the same as the former. At this purely practical level of counting resignations are we properly interested in resignations carried through or these cases where Ministers have felt under an obligation under the convention resign, but had their offer turned down by the P.M.?

Another type of resignation which again does not require Individual Ministerial Responsibility as an explanation is the consequence of some misjudgement in a Minister's personal life or some error of the Minister not affecting departmental business. Such a category would include the Profumo (1963) and Lord Lambton (1973) resignations, and would also include (say) the Hugh Dalton case of 1947. Dalton, as Chancellor of the Exchequer disclosed to a journalist facts about the Budget due later that same afternoon. He resigned after the journalist's paper managed to get details in print before the House had heard

the relevant details. Though the Dalton case is sometimes discussed as if it were an example of IMR, it hardly seems necessary to invoke the doctrine to make a Minister responsible for his own non-departmental misjudgements.

Resignations also take place on policy grounds - where the Minister refuses the collective responsibility for a Governmental policy. Examples here include Bevan in 1951 over NHS charges, Bob Cryer in 1978 over the decision to cut off funds to the Kirby Workers Co-operative.⁽²⁾ While some resignations on policy grounds are gestures of independence clearly again some cases are again sackings pre-empted.

Individual Ministerial Responsibility (IMR) was defined by Sir Ivor Jennings⁽³⁾ as having two elements, "Each Minister is responsible to Parliament for the conduct of his Department. The act of every Civil Servant is by convention regarded as the act of his Minister". Both these separate assumptions need to be underlined. The first points to the expectation that the "punishment" of the Minister will be by Parliament. The second is that IMR is peculiarly about vicarious error. A weak version of the principle is sometimes found - that the Minister is responsible to Parliament (i.e. must only answer to Parliament and take corrective action). This almost certainly exists as a convention, but it is very different from the punishment version of IMR that has generally been advanced. The Economist in 1954, proposed "if Ministers, fail to take early and effective action to counter potential miscarriages of justice or policy within their departments, they must step down from office".⁽⁴⁾

This doctrine of individual Ministerial Responsibility has been described as, "the main shaft and supporting pillar of the political edifice".⁽⁵⁾ An important article by Professor S.E. Finer in Public Administration in 1956⁽⁶⁾ demonstrated that the so-called convention was inoperative; the "supporting pillar" was left in rubble. Finer describes how most cases of error do not lead to resignation. Resignation can be avoided by a timely re-shuffle by the PM or when there is resort to the alternative principle of Collective Responsibility - whereby the individual Minister does not resign as the faulty decision or error is claimed as involving the Government as a whole.

Finer claims⁽⁷⁾ that the major reasons for the occasional use of the non-convention is (i) where no party has an overall majority in the House, (ii) (more importantly) where the Minister's act has not

so much offended the Opposition as alienated his own party, or a substantial element of it. Even then Finer notes that the punishment may be avoided if the Prime Minister reshuffles posts or can make the punishment purely formal by reappointment to another post soon afterwards. It is Finer's argument for the denial of the existence of the convention that makes the emergence of cases with at least superficial claims to Ministerial Responsibility status particularly interesting

1982 has apparently been a very good year for individual Ministerial Responsibility. In an interview on Agenda (BBC Scotland, 31/1/82) the former Solicitor-General, Nicholas Fairbairn, invoked the text book Ministerial Responsibility precedent of Sir Thomas Dugdale and the Crichton Down affair of 1954 in explaining his own "fall". In April, Lord Carrington resigned over the Falklands issue as did his deputies Humphrey Atkins, Lord Privy Seal and principal foreign affairs spokesman in the Commons, and Richard Luce, a Minister of State, while John Nott at the Ministry of Defence had his offer turned down. Do the Fairbairn and Falklands cases indicate that IMR has been too cavalierly relegated to the realm of constitutional folklore?

No doubt Finer's response to these examples would be that even if they are clear cut examples (and this will be examined later) they cannot be taken to represent the functioning of a convention. Finer discusses 20 cases found between 1855 and 1954 and puts them in context by noting that, these are, "a tiny number compared with the known instances of mismanagement and blunderings".⁽⁸⁾

Finer distinguishes between two main types of IMR resignation policies. These two types of resignation are so different that Finer could have used this as further grounds for dissenting from the view that there was a convention of IMR. One can label the first type something like "non-collective error". The examples given by Finer are mainly drawn from foreign affairs. The well known and most clearly cut case is probably Sir Samuel Hoare's peace plan for Abyssinia. When the cabinet refused to back the plan, and throw the umbrella of protective collective responsibility over it, Hoare resigned. The second type Finer himself labels "Vicarious Acts and Policy" and here he is discussing the type which Jennings had most prominently in mind. One of the most extreme examples of this genre was Lowe in 1864. Finer explains how, Lowe resigned over the censoring of reports of HMIs,

but a Select Committee discovered that Lowe had expressly forbidden the practice, but as he was nearly blind he had never read the reports and had had them read to them - and been unable to detect the censorship.

This interpretation of IMR as involving Ministerial sacrifice for the sake of the error of others can very quickly be challenged by cases that suggest it is an unreasonable proposition: it can be argued that Lowe was scarcely culpable. Childers took office in 1886 as Home Secretary on the morning of the day that riots took place in Trafalgar Square. He was able to resist pressure for his resignation on the grounds that in the little time at his disposal he had acted reasonably.

But the doctrine always was about glorious illogicality - it always was an artificial kind of accountability and therefore mere appeals to commonsense do not undermine a residual nostalgic appeal. Lowe's version in 1904 made clear that the Minister did not have to be directly involved to be technically responsible, "If a butler, after being told that he is responsible for the plate chest, carelessly allows the spoons to be stolen, he may be discharged without a character and may never again get a good place... Disgrace, poverty, even starvation, are the sanctions by which the sacredness of responsibility is everywhere enforced"⁽⁹⁾.

More and more in the past decades the argument that the Minister acted reasonably has overcome the doctrinally pure view of Jennings or Low that the Minister is responsible for all actions done in his name. It is said that when the Foreign Office was set up in 1782, the Foreign Secretary was supported by an Under Secretary and 9 other clerks. What might be "reasonable" for that scale of business, is increasingly found to be unreasonable for contemporary conditions.

Yet we cannot quite bring ourselves to pension-off the principle. It was precisely because Carrington's resignation was superficially unreasonable that he came out of it so well. Lord Windlesham claimed, "...it is by acts of selflessness of this sort that the British parliamentary system...maintains its honour"⁽¹⁰⁾. In his tribute to Lord Carrington on the 5th April⁽¹¹⁾, Lord Shackleton noted, "The fact is that he has followed the great British tradition ...that, feeling he was the responsible Minister, whoever else may

have been to blame...he must go."

The vicarious sacrifice version of IMR is the one that has received most attention. In discussing the resignations of 1982 with several Members of Parliament one can record - as a matter of fact and not of criticism - that there was no revelation of any coherent definition of IMR - which again makes one suspicious that this is a major convention of the profession. What was evident was some half remembered constitutional theory that involved Crichel Down and the resignation of Sir Thomas Dugdale. For Members of Parliament Ministerial Responsibility means something such as happened over Crichel Down in 1954 - the Minister "doing the right thing".

It is true that it was the Crichel Down affair which revitalised discussion. But the episode concerned the resale or let by the Ministry of Agriculture of a piece of land compulsorily acquired in 1937 by the Air Ministry. Various farmers had been promised the chance to bid for the tenancy, but this promise was not honoured and the land was sold to the Crown Lands Commission. But the most significant elements of the Crichel Down affair seem to have been lost as it passed into parliamentary folklore. Among the points which should be noted are that the Agriculture Ministers did have the main information before them, resignation did not protect officials but only took place 5 weeks after an inquiry set up by Dugdale himself had "named and blamed" officials, six volumes of evidence and correspondence was placed in the Library of the House of Commons. Sir Thomas Dugdale did not resign because he accepted responsibility for maladministration, but because he refused to accept that his original decision was wrong. He also seems to have been disillusioned by the events and near the end of his career and, by any standards, did no more than take early retirement⁽¹²⁾. A Minister getting "cheesed off" with the fuss is not really what the constitutional lawyers meant by IMR.

Dugdale's resignation speech certainly sounded like IMR, "I have told the House of the action which has been taken...to make a recurrence of the present case impossible.... Having now had this opportunity of rendering account to Parliament of the actions which I thought fit to take, I have, as the Minister responsible during this period, tendered my resignation to the Prime Minister"⁽¹³⁾. But in many respects Crichel Down is unsatisfactory by the standards of the vicar-

ious error model. But if one discounts Crichton Down as the example, one has to go back to the Lowe case of 1904 to find a good example on which to base the "convention". Arguably Finer allows too large a proportion of his 16 cases into the vicarious category: none are straight forward cases of resignation accepting responsibility for the error of officials.

In Parliament there is a nostalgic version of IMR that involves looking back to some finer period when life was simpler and Ministers resigned to protect others. This nostalgia, like the good summers of our youth, not sustained by the records.

Since the Second World War there has been a running battle between commonsense - which would rarely find resignation necessary - and the so-called traditional view that resignation is the appropriate response to error in departments. Perhaps the metaphor would be more accurate, if one said that periodically it is suggested that the traditional notion is invoked but regularly it is routed from the field. In July 1982 there was some parliamentary opinion that the Home Secretary should resign when the system for the protection of the Queen was shown to be lamentably disorganised, but as in the case with the escape of the IRA suspect Gerard Tuite from Brixton prison it is more than likely that the officers will carry their own can.

Indeed Crichton Down - that core case of the IMR proponents - was the occasion for a strategic retreat from the "unreasonable interpretation that the Minister goes whether or not it was he who stole the spoons. The Home Secretary, Sir Maxwell Fyfe set out four categories of cases:

1. Where a civil servant carries out an explicit order by a Minister, the Minister must protect the civil servant concerned.
2. Where a civil servant acts properly in accordance with the policy laid down by the Minister, the Minister must equally protect and defend him.
3. Where a civil servant "makes a mistake or causes some delay, but not on an important issue of policy and not where a claim to individual rights is seriously involved, the Minister acknowledges the mistake and he accepts the responsibility, although he is not personally involved. He states that he will take corrective action in the Department".
4. "...where action has been taken by a civil servant of which the Minister disapproves and has no prior

knowledge, and the conduct of the official is reprehensible, then there is no obligation on the part of the Minister to endorse what he believes to be wrong, or to defend what are clearly shown to be errors of his officers. The Minister is not bound to approve of action of which he did not know, or of which he disapproves. But, of course, he remains constitutionally responsible to Parliament for the fact that something has gone wrong, and he alone can tell Parliament what has occurred and render an account of his stewardship".(14) (15)

Proposition 4 makes the Minister immune from actions of civil servants of which he would have disapproved had he been informed. Chester considered that the Maxwell Fyfe "rules" "confirms the doctrine of Ministerial responsibility"⁽¹⁶⁾. He thought that there would be few cases where the Minister, "...remains responsible in the Parliamentary sense, but which, it is known, are the fault of some official..... Any Minister who tried to avoid criticism by blaming his officials would soon lose his parliamentary reputation and be felt to be an unsure Cabinet colleague"⁽¹⁷⁾.

With hindsight we can see that the tendency to blame officials has itself become a working convention - "I acted on the best advice available" is considered a suitable Ministerial justification. It is now evident that the Maxwell Fyfe formula leaves very little scope for Ministerial responsibility. Matters in (1) and (2) are likely to be covered by collective responsibility and (3) and (4) allows the civil servant to carry the can for his own behaviour.

For a man of such a reputation for success, Carrington was strangely accident prone. He was Secretary of State for Energy and chairman of the Party in 1974 - when the miner's strike induced the disastrous General Election for the Conservatives. He was in fact embroiled, as Parliamentary Secretary, in the Crichton Down affair. He offered his resignation, but this was declined by the Prime Minister. He also put forward his resignation in 1961 after the Romer Committee's criticism of security at the Underwater Detection Establishment at Portland. The Prime Minister, Harold Macmillan declined to pass on the resignation to the Queen on the grounds that, "It would not be right to visit on the First Lord a general criticism of organisational methods. Every Board of Admiralty for several years had been dealing with"⁽¹⁸⁾.

George Brown, old fashioned in these matters, pressed that, "In the light...of flat and frank criticism, does it not make nonsense of Ministerial Responsibility if no Ministers accept the corollary of that and resigns. Is it not indecent to keep telling us what has happened to a couple of junior officers when a Minister who is flatly criticized stays in office?"⁽¹⁹⁾. The Prime Minister responded with another version of the revised (i.e. castrated) doctrine...."The doctrine of Ministerial responsibility is well known - it is the ultimate responsibility. But in modern conditions it must be recognised that the Minister's duty is to carry out his task as efficiently as it is possible"⁽²⁰⁾.

Other post Crichton Down and pre 1982 cases where IMR has been canvassed have failed to produce a single resignation.

When the 1964 Ferranti Affair emerged - (it was judged that Ferranti had been permitted to make excessive profits on a guided weapons contract) - the commonsense argument, - that the principle of IMR was unjust, prevailed. In parliamentary debate it was pointed out that the incumbent Minister was not in the department at the time the contract went through. Another member claimed that the convention of IMR was not sustainable when so much work had, in practice, to be delegated. By the 1960s, the ruling proposition was "Who can blame the poor Minister". Julian Amery, Minister in the Ferranti case, explained that the mistake was a miscalculation by the Technical Costs Branch and that constitutional practice over the past half century indicated that a Ministerial resignation over such a matter would be inappropriate⁽²¹⁾.

The Sachsenhausen concentration camp case of 1964-8 found George Brown as the relevant Minister and found him sticking to his view that only the Minister could be responsible - but failing to resign. At issue was the contested eligibility of some prisoners of war to share in the 1964 compensation scheme for Nazi victims. It had been decided that detention in a concentration camp or comparable institution would be the relevant criterion. The Foreign Office refused to accept that detention in Sonderlager A or the Zellenbau at Sachsenhausen was comparable to a concentration camp.

After the intervention of the Ombudsman the Foreign Office reviewed the cases and made financial compensation. George Brown argued, however that he was unhappy at the Ombudsman's investigation, "....

we will breach a very serious constitutional position if we start holding officials responsible for things that are done wrong....If things are wrongly done, then they are wrongly done by Ministers and I think that it is tremendously important to hold on to that principle. If things have gone wrong, then Ministers have gone wrong and I accept my full share of responsibility in the case. It happens that I am the last of a series of Ministers who have looked at this matter and I am the one who got caught with the ball when the lights went up. But I accept, I repeat, my share of the responsibility...."⁽²²⁾ The general view of M.P.s in a debate in February, 1968 was not that Brown should follow the logic of his own argument and resign, but that the whole idea that only a Minister could be culpable was ill founded.

The Vehicle and General Co.Ltd., episode of 1971 concerned the circumstances surrounding the cessation of trading of an insurance company. The company ceased trading in March 1971 leaving about 1 million motor policy holders uninsured. This crash became subject to a tribunal of inquiry for several reasons. In principle the company was supervised by the Board of Trade (later Department of Trade and Industry) and the failure to prevent the collapse suggested negligence; there were rumours of a leak of information. The Report of January, 1972 criticised two Assistant Secretaries and found the performance of an Under-Secretary "below the standard of competence which he ought to have displayed and constitutes negligence"⁽²³⁾.

In the time of the V. & G. events under discussion, six different Ministers had been "in charge" of the relevant division. The Report found that little of the department's work went to the Minister. For these reasons neither the Report nor Parliament was critical of Ministers. In the usual type of modern parliamentary discussion, John Davies as Minister directly involved argued that, "I do not think.....it would be appropriate for Ministers and senior officials....to assume a responsibility greater than allocated to them in the Tribunal's conclusion"⁽²⁴⁾. Reginald Maudling, Home Secretary, appeared to be taking a more robust line and argued that, "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...This is still the right doctrine of ministerial responsibility"⁽²⁵⁾. But he instantly quali-

fied this traditional view and added, "One must look at this classic doctrine in the light of modern reality. In my own department we get 1½ million letters a year, any one of which may lead to disaster.... It is no minimising of the responsibility of Ministers to Parliament to say that a Minister cannot be blamed for a mistake made if he did not make it himself and if he has not failed to ensure that that sort of mistake ought not to be made"⁽²⁶⁾. We are left with the usual modern proposition that it would be unreasonable to actually insist on applying the rules.

This "commonsense" view is now so prevalent that the "vital doctrine"⁽²⁷⁾ has lost its vitality. Ministers seem not only to allow the culpable civil servant to be accidentally revealed in an inquiry, but to directly point the finger. For example, Mr. Jenkins as Home Secretary when the Court of Appeal decided that the Home Office had acted improperly in preventing early applications for T.V. licenses to avoid an increase in rates, made it plain that he felt that he and the department were still in the right. He claimed that, "what is done in my department is my responsibility" but also claimed that he was acting on Civil Service advice, "...it would have been better to take the advice of someone who would have given the right advice"⁽²⁸⁾. While there were Conservative cries of "Resign" this was ritual trumpeting and one Conservative M.P. pointed out that much as he would have liked him to resign on other matters this was not such an issue.

The Fairbairn Fall

It is in the light of Finer's academic attack on the convention - unchallenged in 25 years since publication - and the non-occurrence of IMR resignations in that period, on either non-collective or vicarious grounds, that Fairbairn's claim of resignation under the convention is both interesting and suspect. One can present the fact in an IMR light. There was a decision not to prosecute which offended party and public opinion. For this mistake by others, Fairbairn resigned. But several problems arise in trying to accept this simple version.

In the Sachsenhausen debate a Labour backbencher observed that George Brown's insistence that a Minister rather than a civil servant should be faulted stemmed from his "vein of quixotry"⁽²⁹⁾. This de-

scription equally well fits Fairbairn. Fairbairn did not publicly disassociate himself from the decision not to prosecute. His resignation letter claimed...."I am entirely satisfied that the Crown office the Crown counsel handled the delicate decisions in the Glasgow rape case with total propriety"⁽³⁰⁾. One respects the dignity in his refusal to join the pack, but it then becomes difficult to say that he is taking upon himself the blame, when none is conceded.

A second problem for the IMR version of events, is that if a Minister was responsible, was that Minister Fairbairn? Sir David Milne's description of The Scottish Office (1957) is unrevealing on the distinction between the responsibilities of the Lord Advocate and the Solicitor General, but it does say that the Lord Advocate's duties (include)....criminal proceedings in the courts....The powers and duties of the Lord Advocate in relation to criminal proceedings - which include not only the decision whether to prosecute, but the conduct of cases in the courts - are exercised through the Crown Office. He is assisted in carrying them out by the Crown Counsel, by the Crown Agent....and locally by the procurator fiscal at each sherrif court. Crown Counsel consist, in addition to the Lord Advocate, of the Solicitor-General and four members of the Scottish barcalled Advocates Depute"⁽³¹⁾. Each Advocate Depute has a geographical area and, "The Advocate-Depute concerned may take the decision (to prosecute) himself, or he may refer the case to one of the two Law Officers (i.e. the Lord Advocate or the Solicitor-General)"⁽³²⁾. In the Parliamentary Statement on January 21st, 1982, Lord Mackay seemed to make clear that the ultimate responsibility was his - "The Lord Advocate is answerable to Parliament"⁽³³⁾.

The simple "vicarious" resignation version does not take into account the episode when Fairbairn talked to the press, notably to the Glasgow Evening Times⁽³⁴⁾ of January 20th, and muddied the waters by attempting to defend a decision which he, himself, almost certainly would not have taken. If talking to the press was Fairbairn's principal crime, he must have been puzzled when Mrs Thatcher was herself recently taken to task by George Robertson, M.P., for allowing her reply to his Parliamentary Question to appear in the press before it was submitted to Parliament⁽³⁵⁾.

However, it would probably be more fruitful if one concluded that if IMR doesn't exist, resignations take place for particular

combinations of political circumstances and not as the result of an almost automatic dispensation of retribution for administrative error. In the Agenda interview in which Nicholas Fairbairn discussed his resignation the interviewer suggested that he had been got "with the second barrel". This metaphor of course relates to Fairbairn's unfortunate involvement before Christmas 1981 in a case of attempted suicide. The argument implied was that Fairbairn was being "punished" belatedly for that episode - not, of course, a Ministerial Responsibility issue. In fact several press stories of that earlier incident forecast that Fairbairn would resign - on this sort of personal misadventure grounds. These stories based on briefings to the press seem to have been part of a campaign to get him to resign which predated the Glasgow Rape episode. When rape became such an issue of high political salience, and some gesture of Governmental concern was required, it was Fairbairn's bad luck to be adjacent to the scene - even if not technically responsible. In this exercise of political damage limitation, it has been suggested that at a meeting between Whitelaw (Home Secretary) Pym (as Leader of the House) and Jopling (as Chief Whip) it was decided that Fairbairn was expendable. None of these three could be described as political friends of Fairbairn. The reference to Fairbairn in the recently published Hunter Report gives a further reason why the Chief Whip might have been determined to oust him from office. This version of events then suggests that instead of Fairbairn being driven from Office by the massed concern of the House, Pym engineered "a squeeze". Through the "usual channels" (i.e. the Whips machinery) he asked Michael Foot to request a statement. Pym's statement⁽³⁶⁾ before Fairbairn spoke put Fairbairn in a very bad light: it was an episode designed to draw attention to Fairbairn. On the advice of three such influential figures as Whitelaw, Pym and Jopling, the Prime Minister had little option but to accept. She had enough problems without expending valuable political capital on this internal squabble....

The only sense that ministerial responsibility seems to have operated is that its concomitant civil service irresponsibility has been permitted. We were not allowed to examine the basis of the decision not to prosecute. If the analogy to the Crichton Down case is pursued, there would be a good case for an inquiry in the Fairbairn case. In this case Fairbairn himself did not decide not to prosecute -

moreover when the publicity broke and he attempted to secure the papers from the Crown Agent they were not forthcoming for about six days. This clearly seems a case where Maxwell Fyfe's defence can be invoked "where action has been taken by a civil servant of which the Minister disapproves and has no prior knowledge"⁽³⁷⁾.

However even though Fairbairn has a "technical defence" - that a Minister cannot be held unreasonably responsible, there is still that lingering, half-remembered, three quarters misunderstood, version of IMR that says - despite the evidence of the last twenty five years - Ministers are responsible for departmental misjudgement. This vague version - despite Maxwell Fyfe and the experience of innumerable cases to the contrary - says that the Minister is responsible even when he was not consulted. Something remains of the attitude expressed in Low's analogy of the butler and the spoons. This lingering norm of IMR perhaps contributed to the PM's loss of confidence.

The traditional version of IMR was often followed by re-appointment in another Office, but there is no sign of that in Fairbairn's case. If he was unpopular enough in high places to be fired, his unpopularity will prevent re-appointment. Moreover he can hardly with ease resume a position in the legal branch of Government and it would be politically odd for him to emerge in a junior post in (say) the Department of Energy. Another informal convention works against him. As Solicitor General he was 26th in seniority in the Government. It is unusual to appoint a Minister to a much lower post and hence as a minimum he would have to be given a Minister of State post in a non-legal department. He is a career politician without prospects.

Again, if the analogy to the Crichton Down case is pursued it will be remembered that that episode involved an inquiry with the naming of non-Ministerial names. It is strange that there have been so few calls for an inquiry in this case: Fairbairn has little to fear and some sort of basic justice suggests that the end of a career deserves examination of the circumstances.

But, of course, if Fairbairn was selected as a scapegoat, the last possible thing we can expect is an inquiry. The scapegoat has performed his function well; he has allowed political symbolism of concern; he has diverted attention from blame in other quarters. Fairbairn is clearly a victim of his own value system. Having pre-

ferred to "walk" without disputing the umpire's opinion, he can hardly (with honour intact) question the decision from the pavilion, but why the press, cause of so much fuss, should be content with the old scape-goat gambit is disappointing.

The Falklands Four

Of the four who submitted their resignations over the Argentinian invasion, three had their's accepted and one (John Nott) had his refused. The PM's refusal argued the strange doctrine that the Secretary of State had no course open to him other than to offer to resign. Nonetheless she was turning it down because his department was, "not responsible for policy towards the Falkland Islands"⁽³⁸⁾. Of course had Mr Nott persisted with his offer, the PM could hardly have insisted that he stayed in office in spite of his conscience. "Tenacity of resignation" further complicates any more systematic treatment of this whole problem.

It is well known that Mrs Thatcher went to considerable efforts to persuade Lord Carrington not to resign. Had he been dissuaded there would be little reason for re-examining IMR - and hence the personality and personal circumstances of the Minister are important.

The first to suggest resignation was Richard Luce - on the grounds that this was a matter of honour. While the House of Commons as a whole may have been dismayed over events and ritual calls for resignations could have been expected from the Labour side, more specifically - and in line with Finer's analysis - there was considerable Conservative back bench displeasure expressed at a meeting after the debate on Saturday. Lord Carrington however declined to allow Luce to resign on his own and on the Saturday it was agreed that both would stay or go together. After communications between Lord Carrington and Mrs Thatcher, the formal letters of resignation were sent and accepted on the Monday morning (5th April). While Humphrey Atkins also resigned on the Monday morning this was not co-ordinated with the Luce/Carrington resignations and while they admired the gesture, it was thought to be unnecessary.

From the point of view of the Labour Opposition, someone might have captured the rather old fashioned flavour of the incident by quoting Nigel Birch when Dalton resigned before the Conservative calls for his resignation could build up. Birch complained, "They

have shot our fox"⁽³⁹⁾. To have a Minister resign is not as satisfying as driving him from Office.

The Carrington/Luce/Atkins cases are probably nearer to IMR than Fairbairn. But there are, of course, problems in seeing these as specimens of IMR. For a start, it has never been proposed that departments had mini-collective responsibility which meant that all went as an individual. Who was responsible? - traditionally only Carrington would count. The "South Atlantic desk" operated under the wing of Richard Luce - he went to do the negotiating in New York - but this is not "responsibility" in terms of the constitutional literature. Even if Luce was responsible did he resign because of his failures, the failures of his predecessors, or the failures of those who tut-tutted at his excitement as the "new boy" when they had "seen it all before"?

Again, as with Fairbairn, the whole exercise in honourable sacrifice is marred by the insistence that there have been no errors of judgement. In his BBC interview on the 5th April, Carrington insisted that with the same intelligence reports he had been receiving any other foreign secretary would have acted in the same way. His resignation letter argued that, "much of the criticism is unfounded. But I have been responsible for the conduct of that policy and I think it right that I should resign"⁽⁴⁰⁾. In other words the Carrington line is that the spoons were receiving sound care and attention when the Argentinian burglars broke in without warning.

One supposes that the resignations were "non-collective" rather than vicarious - in other words the Foreign Office had been indulging in a policy which the full Cabinet could not accept. But the Franks inquiry might describe events in a very different light. If press speculation is correct and the Foreign Office suggested sending hunter-killer submarines as a preventative measure one might find that the resignations were from those who pressed the sound policy and John Nott who argued against stayed on. This would be a strange version. Low in 1904 said that the essence of good government is the power to find the proper man to hang if things go wrong⁽⁴¹⁾. It is not self evident that the lynch mob got the right men.

This leads on to the topic of why collective responsibility did not cover the Falklands policy. Apparently, if hindsight is to be accepted,

every journalist and member of the Parliament knew that for 17 years the Foreign Office had been "soft" on the issue. Richard Luce's predecessor, Nicholas Ridley, attempted to negotiate "lease back" with the backing of the Overseas and Defence committee of the Cabinet. Moreover in a Guardian piece on April 14th, Richard Norton-Taylor quoted Whitehall sources as claiming that, "...responsibility for collecting and assessing intelligence throughout the Falklands crisis has ultimately rested with the Foreign Office"⁽⁴²⁾. The Joint Intelligence Committee is apparently directly responsible to the PM - and she chairs the Overseas and Defence Committee. This is hardly a Hoare-Laval Pact situation where the Foreign Secretary was playing his own hand outwith the ken of Cabinet colleagues. The Foreign Office Ministers do not accept that Mrs Thatcher should have resigned with them: their line is that they were the "lead" department in foreign policy. It can be argued, however, that the Cabinet office is the "lead" department in intelligence assessment.

That the Foreign Office was not sole culprit - or even most responsible party is suggested, by Richard Luce's call for an inquiry, to cover all Government departments concerned; to examine how these departments discharged their responsibilities in the period leading up to the invasion....."⁽⁴³⁾. This doesn't sound like bluff, but sounds like one convinced that vindication is around the corner. The Prime Minister's famous letter, concerning the Endurance, to a Beaconsfield activist put her name behind a proposal opposed by the Foreign Office.

If the Prime Minister was fully informed about the Foreign Office policies, this seems an unambiguous case of collective responsibility - made even more iron clad if the Foreign Office preferred options were being (say over Endurance) rejected by the Defence Minister and Prime Minister on cost grounds. Little wonder the Prime Minister attempted to dissuade Lord Carrington from resigning. If resignation is the penalty for the correct advice, what is the penalty for turning it down?

Humphrey Atkins' resignation letter was worded in such a manner to raise issues that the Prime Minister may have preferred to allow to leave at rest. He argued that while Peter Carrington was Secretary of State,⁽⁴⁴⁾ he as a member of the Cabinet shared fully the responsibility for the conduct of Foreign and Commonwealth Affairs. Since the Prime Minister chairs the Overseas and Defence Committee

of the Cabinet, the argument that Cabinet Ministers with responsibility should resign must have read like a hint.

If one compares the Fairbairn and the Falklands cases, they do not seem to be suitable for sensible inclusion in one category. The Fairbairn resignation has elements of resignation of the vicarious sacrifice type - but can be more simply interpreted as the price for more unpopularity with key individuals and proneness to accidents. Nonetheless if inquiries are the fashion, it seems strange that Fairbairn is denied the opportunity to have the circumstances of his removal investigated.

The Carrington/Luce/Atkins resignations may well be forgiven, but it might be that Carrington would not want to be back on board and like Dugdale be pleased to get out. We may find the Prime Minister using the modern excuse of "faulty advice": that would be in line with the modern practice that has buried IMR. While Mr Foot tried, to keep the fiction alive, it is necessary heavily to discount Opposition rhetoric: "I strongly favour sustaining Ministerial Responsibility. It is essential to parliamentary Government. Ministers should not be allowed to shelter behind the claim that civil servants have offered them incorrect advice. They should take absolute responsibility...."⁽⁴⁵⁾

We can conclude where Finer concluded 25 years ago. IMR doesn't exist and four cases in 1982 wouldn't have made a convention even if they were acceptable as isolated instances. When we do find IMR being involved, it does not explain and account for the episode, but prompts closer examination of the political circumstances to discover why politicians and their advisers suddenly want us to suspend our disbelief.

As usual Alan Watkins had something interesting to say about Ministerial Responsibility - making the point that Whitelaw - that the constitutional position of Willie Whitelaw (over the Queen's security) was not the same as Lord Carrington: Whitelaw had not "full ministerial responsibility..... (his) position here is more like Mr David Howell's in relation to British Rail".⁽⁴⁶⁾ While this is not incorrect, this is not a court of law matter with binding precedents. Mr Whitelaw would go when and if the political climate got too hot. The Sunday Telegraph editorial of the same week proposed a sort of indiscriminate responsibility - "by way of example, even the offer of

one senior resignation...would not come amiss"⁽⁴⁷⁾. Since we are in the realm of symbolic action and not constitutional law, almost any senior resignation would serve as well as any other: this might be bad logic, but good politics.

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