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Economical with the Actualité

On 12 October 1992 Paul Henderson, Trevor Abraham and Peter Allen, directors of the Midlands engineering firm Matrix Churchill, were brought to trial at the Old Bailey.[1] They were charged with dishonestly obtaining licences to export material intended for military use to Iraq by pretending that it would be used for civilian purposes. They claimed in their defence that the Government had been aware of the true purpose of the goods they wished to export (not least because Henderson, a long-standing MI6 informer, had revealed it to the intelligence services). They also claimed that at a meeting with the Machine Tools Technologies Association (MTTA) in January 1988 Alan Clark, then a Minister at the Department of Trade and Industry, had encouraged them to disguise it.

Before the trial opened, the defence lawyers sought discovery of a wide range of confidential Government records, including intelligence reports, minutes of meetings, and correspondence between officials and ministers, to substantiate their case. Despite the risk of a miscarriage of justice, strenuous attempts were made in Whitehall to keep the records confidential. Four ministers signed so-called public

immunity certificates (PII certificates in the jargon) claiming that disclosure of most of the documents requested by the defence would be contrary to the public interest. The trial judge refused to accept the PII claims and ordered that the documents they covered should be disclosed to the defence. That was only the beginning of the prosecution's troubles. On 5 November, Alan Clark, by now out of Parliament, was cross-examined about his 1988 meeting with the MTTA. In one of the most extraordinary exchanges in recent British political history Clark admitted that he knew the Iraqi orders would be used to make munitions. Asked about the DTI note of the meeting, which recorded him as saying that the orders would be used for general engineering purposes, he answered,

> Well, it's our old friend being economical, isn't it?
> Q. With the truth?
> A. With the *actualité*. There was nothing misleading or dishonest to make a formal or introductory comment that the Iraqis would be using the current orders for general engineering purposes. All I didn't say was 'and for making munitions' . . .
> Q. You didn't want to let anyone know that at this stage these machines and their follow up orders were going to munitions factories to make munitions?
> A. No.
> Q. And the emphasis on peaceful purposes and general engineering and so on would help keep the matter confidential?
> A. I do not think it was principally a matter for public awareness. I think it was probably a matter for Whitehall cosmetics.[2]

Clark's evidence sank the prosecution case. The trial was adjourned until 9 November, when Alan Moses, the chief prosecution counsel, announced that the prosecution would be abandoned. The defendants were then acquitted.

Public Interest or Executive Convenience?

The collapse of the trial provoked a storm of indignation in Parliament and the press; to quell it, the beleaguered Prime Minister, John Major, appointed Sir Richard Scott, then a member of the Court of Appeal, to conduct an inquiry into the whole story of arms-related exports to Iraq. The inquiry took more than three years to complete; the eventual report ran to five volumes and more than 1,800 pages. Its immediate political impact was slight. Following a House of Commons debate in February 1996, the Government survived censure by one vote; the affair then passed into history. Yet its implications were profound. In minute detail, Scott traced the twists and turns of Government policy over a period of nearly ten years. He probed ministers' answers to Parliamentary Questions and their replies to MPs' letters. He subjected the run-up to the Matrix Churchill trial to exhaustive examination. He investigated related prosecutions, and examined the history of the legislation that gave the Government power to control exports in the first place. In doing all this, he threw a rare shaft of light on the inner workings of Whitehall – on the mentality of officialdom; on the relationship between civil servants and ministers; above all, on the executive's approach to Parliament and the public. He revealed a culture of secrecy and a structural temptation to duplicity that called the health of British democracy into question.

Two aspects of that culture stood out. The first had to do with the PII certificates. When the report was published, a good deal of legal argument took place about the state of PII law. In some quarters Scott was criticized for suggesting that the legal advice which had persuaded the ministers concerned to sign the certificates was unsound. But, for a non-lawyer, this is not the point. What matters is not the state of the law at the time the ministers signed; it is the mentality that led them and their officials to think that PII claims were

appropriate at all. In drawing up and signing PII certificates, they were saying that it was more important for certain classes of official documents to be kept secret than for accused persons to have a fair trial. Only one of the ministers (Michael Heseltine) seemed concerned with the rights of the accused in criminal proceedings. The other ministers, and the officials who advised them, displayed a cavalier indifference to the possibility that, if the PII claims were upheld, innocent men might go to gaol. Behind that scandal lay a deeper one. Few would dispute that in certain policy areas, at any rate, the state may have secrets which it should be entitled to keep; that some official records may be so sensitive that they should not be disclosed, even if non-disclosure runs counter to fundamental legal principles. But the secrets involved in the Matrix Churchill case were not in this category. Disclosure posed no danger to the state. The public interest was not at stake – only the reputations of certain ministers and civil servants. The real purpose of the PII certificates was to protect the executive from embarrassment, not the public from harm. Whether in accordance with the then state of the law or not, the PII system was abused. The notion of the public interest was treated as a cover for executive convenience. In the process, the ethic of public service, whose vitality is essential to the public interest, was violated.

Even more disturbing than the story of the PII certificates were Scott's revelations about Whitehall's approach to Parliament. To appreciate their significance, the historical background needs to be sketched in. Government policy towards arms exports to Iraq was shaped by disparate pressures – the importance of the arms industry to the British economy, the shifting fortunes of the long Iran–Iraq War and the barbaric nature of the Iraqi regime. When the war broke out in 1980, Britain adopted a posture of neutrality, and the Government banned exports of 'lethal items' to both combatants. In December 1984 it adopted a more precise set of guidelines, emanating from the Foreign Secretary, Sir Geoffrey Howe. These reiterated the Government's refusal to supply lethal

equipment to either side; stated that, subject to that 'overriding consideration', existing contracts would be honoured; added that orders for defence equipment which would 'significantly enhance the capability of either side to prolong or exacerbate the conflict' would not be approved in future; and concluded with a commitment to 'scrutinize rigorously' all applications for licences to export defence equipment to Iran and Iraq in line with this policy. These guidelines were not announced to Parliament, however, until October 1985, when they were made public in answer to a Parliamentary Question by Sir David Steel.

In August 1988, the Iran–Iraq War came to an end. The third guideline was now otiose: there was no longer a conflict to be prolonged or exacerbated. Meanwhile, prospects of lucrative contracts with the former combatants loomed. In Whitehall, pressure mounted to revise the Howe guidelines. Its chief source was the DTI, the sponsor department for the arms industry. In December 1988, after much prevarication and confusion, three middle-rank ministers – Clark, William Waldegrave of the Foreign Office, and Lord Trefgarne of the Ministry of Defence – agreed to a change in the third guideline. Instead of prohibiting the export of defence equipment which would 'significantly enhance the capability of either side to prolong or exacerbate the conflict', it now said that the prohibition should apply to exports 'which, in our view, would be of direct and significant assistance to either country in the conduct of offensive operations'. The change was more than semantic. The new policy was, and was intended to be, more liberal than the old. The ministers responsible for it also agreed, however, that it should not be announced to Parliament. Four months later, in April 1989, policy changed again, following Iran's proclamation of a *fatwah* against Salman Rushdie. Ministers now decided that the new, liberal regime should be applied only to Iraq; policy on arms exports to Iran would revert to the more stringent pre-1988 position. This latest change of policy, designedly discriminating in favour of Iraq, was also to be kept secret.

Secrecy was easier to proclaim than to preserve. Rumours of British arms sales to Iraq surfaced in the press. Concerned citizens wrote to their MPs. MPs wrote to ministers, and tabled questions in the House of Commons. To keep their post-cease-fire policies secret, ministers had to dissimulate. Scott devoted thirty-one pages of his report to Government statements on defence sales policy after the cease-fire.[3] With icy clarity, he showed that in 1989 and 1990 ministers wrote a total of more than seventy misleading letters to MPs, falsely implying (or in some cases stating) that Government policy on arms sales to Iran and Iraq had not been changed. He also showed that similarly misleading answers were given to a series of parliamentary questions. As he put it himself, these answers

> failed to inform Parliament of the current state of Government policy on non-lethal arms sales to Iraq. The failure was deliberate and was an inevitable result of the agreement between the three junior Ministers that no publicity would be given to the decision to adopt a more liberal, or relaxed, policy, or interpretation of the Guidelines, originally towards both Iran and Iraq and, later, towards Iraq alone. Having heard various explanations as to why it was necessary or desirable to withhold knowledge from Parliament and the public of the true nature of the Government's approach to the licensing of non-lethal defence sales to Iran and Iraq respectively, I have come to the conclusion that the overriding and determinative reason was a fear of strong public opposition to the loosening of restrictions on the supply of defence equipment to Iraq and a consequential fear that the pressure of the opposition might be detrimental to British trading interests.[4]

In short, ministers believed that their policies would not withstand parliamentary and public scrutiny. They therefore decided to disguise them. In the name of the public interest (and in the hope of promoting Britain's arms trade), they misled the public's elected representatives. In doing so, they

flouted one of the fundamental axioms of parliamentary democracy – that the executive must be accountable to Parliament.

Mad Cows – Madder People?

The culture of secrecy was not confined to the arms trade. On 20 March 1996, three weeks after the Commons debate on the Scott Report, the Secretary of State for Health, Stephen Dorrell, told the House that ten young people had contracted a new variant of a fatal neurological disease, the Creutzfeldt–Jacob Disease (vCJD), and explained that they had probably been infected with Bovine Spongiform Encephalopathy (BSE), a fatal brain disease of cattle. In December 1997 the recently elected 'New' Labour Government appointed the Master of the Rolls, Lord Phillips, to head an inquiry into the whole affair.[5] When the Phillips Report was published in September 2000, there were eighty known cases of variant CJD in Britain. By May 2003 there had been ninety-six confirmed deaths from vCJD and thirty-three probable deaths. Given the length of the incubation period, there is no way of telling what the eventual toll will be. What is certain is that, for several years, Britain was the scene of a ruinous BSE epidemic, which endangered public health, inflicted enormous damage on her livestock industry and had no parallel elsewhere. Assuming that infected beef products are the source of vCJD, the chances are that more vCJD cases will appear in due course. Yet, for the best part of a decade, ministers and officials repeatedly insisted that there was no evidence that BSE could be transmitted to human beings, and that British beef was safe to eat. On one notorious occasion, the then Minister of Agriculture, John Gummer, was even filmed attempting to feed his four-year-old daughter, Cordelia, a hamburger. That was the most egregious episode in a prolonged official campaign to allay public anxieties that turned out to be well founded, but it was by no means the only one.

The story of the BSE crisis begins in December 1986, when the State Veterinary Service first identified the disease. It had never been seen before, and no one knew what caused it. It belonged to a class of diseases known as Transmissible Spongiform Encephalopathies (TSEs), which also included scrapie, a brain disease of sheep. It seemed reasonable to assume that cattle had contracted it from scrapie-infected meat and bone meal; since scrapie had been endemic in parts of Britain for centuries, and had caused no known damage to human health, this implied that the same would be true of BSE. In May 1988, the Ministry of Agriculture, Fisheries and Food (MAFF) banned the use of ruminant protein in ruminant feed (the ruminant feed ban). Meanwhile, it set up a working party, chaired by Sir Richard Southwood, to examine all the ramifications of the BSE outbreak, including its implications for human health. At its first meeting, the working party recommended that the carcasses of infected animals should be destroyed, so as to ensure that they did not enter the human food chain; this was accepted. In February 1989 it produced its report. It accepted the scrapie theory, and judged that the risk that BSE could be transmitted to humans was 'remote'. It added, however, that if its assessment of the risk turned out to be wrong, 'the implications would be extremely serious'. It also recommended that certain bovine offals should be excluded from baby food – thus implying that 'remote' did not mean 'non-existent'. In November 1989 MAFF brought in a Specified Bovine Offals (SBO) ban prohibiting the use of these offals, not just in baby food, but in all human food.

The scrupulous qualifications of the Southwood Committee's Report were soon lost from sight. MAFF opinion hardened into a dogma. The Government's scientists had said there was no evidence that BSE could be transmitted to human beings. Ergo, beef must be safe to eat. Scientists who took a different view were not consulted. Outside critics were contemptuously dismissed. Unfortunately, the epidemic turned out to be far more serious than anyone had foreseen. When

the working party reported in February 1989, BSE cases were running at 400 a month. By the end of the year, more than 10,091 cases had been confirmed. By the end of 1990, the figure had risen to 24,396. In September 1990, MAFF extended the SBO ban from human to animal food. But this was the age of de-regulation, when, as the Phillips Report put it coyly, '[e]nforcement was expected to be done with a light touch'.[6] That was an understatement. De-regulation had become a shibboleth in Whitehall; and it soon became clear that MAFF's regulatory regime left ample scope for evasion. By 1991 BSE had spread to cattle born after the ruminant feed ban – showing that the ban had been evaded or was ineffective. There was growing evidence of non-compliance with the SBO ban as well; in 1995 a spot check revealed that more than half the slaughterhouses visited were failing to observe the regulations then in force. Meanwhile, new evidence called Southwood's estimate of the risk to human life into question. In laboratory conditions, BSE was transmitted to mice, and later to a pig. In March 1990, a domestic cat developed BSE-like symptoms, suggesting that BSE could cross the species barrier more easily than scrapie, and not only in a laboratory. By September 1994, fifty-six other cats had followed suit. In 1993, two dairy farmers died of vCJD. A third died of it in 1994, and a fourth developed it in 1995. Cases of BSE had appeared in all their herds.

Privately, one or two Government scientists began to have second thoughts about the transmissibility of BSE to human beings. However, these did not penetrate the MAFF bunker. Officialdom clung to the dogma of the early days. In the months leading up to Dorrell's statement explaining that the new vCJD cases had probably been caused by BSE-infected beef, the Cabinet decided to respond to growing public anxieties with the familiar refrain that its professional advisers had assured it that there 'was no evidence that the disease could be transmitted to humans'. The Meat and Livestock Commission (MLC), a quango whose task was to promote efficiency in the livestock industry, ran a hard-hitting

advertising campaign designed to bolster beef sales. Dorrell himself said on television that there was 'no conceivable risk' from eating beef. The Chief Medical Officer insisted that there was 'no scientific evidence of a link between meat eating and development of CJD', and that 'beef was safe to eat', adding for good measure that he would continue to eat it himself. The Chief Medical Officer for Scotland declared that the Government's 'scientific advisers are saying consistently that there is no evidence at all that eating beef or other foods derived from beef is dangerous'.[7]

These assurances were part of a syndrome going back to the beginning of the epidemic. As the Phillips Report put it, throughout ministers and officials 'followed an approach whose object was sedation', shaped by 'a consuming fear of provoking an irrational public scare'.[8] This was not because they deliberately set out to deceive. It was because,

> [a]lthough most of those concerned with handling BSE . . . understood the available science as indicating that the likelihood that BSE posed a risk [to humans] was remote, they did not trust the public to adopt as sanguine an attitude. Ministers, officials and scientific advisory committees alike were all apprehensive that the public would react irrationally to BSE. As each additional piece of data about the disease became available, the fear was that it would cause disproportionate alarm, would be seized on by the media and by dissident scientists as demonstrating that BSE was a danger to humans, and would lead to a food scare or, even more serious, a vaccine scare.[9]

In short, 'we', ministers, civil servants and Government-approved scientists, were by definition rational. 'They', the public, were not. And if 'they' disagreed with 'us', that only proved how irrational 'they' were. Or, as Stephen Dorrell put it in a television programme, it was the people, not the cows, who were mad.[10]

The consequences were both perverse and tragic. The sedation may or may not have calmed the general public, but

it almost certainly had a significant effect on inspectors, slaughterhouse managements, and MAFF officials themselves. The Government's campaign of reassurance was based on the assumption that the measures it had taken to minimize BSE risks would be fully implemented and vigorously enforced. But that crucial premise went almost unmentioned in ministerial and advisory committee statements. Ministers did not say that the risks *would be* remote *if* their precautionary measures were observed; they only said that the risks were remote. As a result, the campaign blunted the zeal of those who had to implement and enforce the measures on which it was predicated. Why go out of one's way to enforce every last jot and tittle of a tiresome and unpopular regulation if the risks it was supposed to guard against did not exist?

There was a deeper perversity as well. Ministers were caught in a vicious circle of their own making. They distrusted the public; and they believed that the public distrusted them. That was one of the reasons why they were so anxious to shelter behind their scientific advisers. But because they distrusted the public, their campaign of sedation ended by exacerbating the distrust which it was designed to counter. In discussion with the Phillips committee, the Government's chief scientific adviser, Sir Robert May, argued that instead of taking 'a simple message out into the market place . . . the full messy process whereby scientific understanding is arrived at with all its problems has to be spilled out into the open'.[11] Because it was terrified of public irrationality, the Government did very nearly the opposite. Science was treated as an oracle, even as a bludgeon, not as a process. When the oracle turned out to be wrong, and the bludgeon lost its power, public confidence was still further undermined.

The BSE epidemic and the vCJD outbreak it brought in its train were not scandalous in the sense that the Arms to Iraq affair was scandalous. Ministers and officials did not mislead Parliament or the public about the true nature of their policies. Their downfall came partly because they insisted on treating the inherently provisional judgements of their scientific

advisers as fixed and permanent truths, and then over-simplified them grossly for public consumption, and partly because the fetish for de-regulation pulled against the public interest in safe food. Consumers and farmers paid dearly for officialdom's hubristic scientism and ideological fixations, but the latter cannot be equated with the furtive evasions anatomized in the Scott Report. Yet both episodes had important features in common. The DTI's role as sponsor for arms exporters was paralleled by MAFF's as sponsor for farmers, so that in both cases powerful private economic interests bore heavily on the guardians of the public interest.[12] (To take a particularly gross example, in the early stages of the epidemic, scientists in the State Veterinary Service were forbidden to publish articles about BSE, in the belief that publicity might damage British exports.) On a deeper level, both reflected the inward-looking culture of the British state, which instinctively operates on the 'need to know' principle. (Those who need to know, know; those who don't know, don't need to know, and therefore should not be told.) On a deeper level still, both had to do with trust and the breakdown of trust – with government's unwillingness to trust the public, and the erosion of public trust in government – and thereby with the fundamentals of democratic citizenship. At the heart of the BSE crisis lay one of the most intractable problems of modern governance: the problem of how to assess and manage risk in accordance with democratic norms. The ministers and officials concerned made a mess of it. Not the least of the reasons why is that they too were enmeshed in the culture of secrecy which had played such a malign part in the Arms to Iraq affair.

Stitch-up

The culture of secrecy was (and is) blood brother to a culture of central control, whose manifestations were (and are) omnipresent. One of the most piquant recent examples

concerned that Cinderella of British democracy, local government. In May 1997, a few months before Lord Phillips began the BSE inquiry, Tony Blair's 'new' Labour Party entered office committed to a 'democratic renewal'. Scotland was to have a Parliament, with extensive legislative powers; Wales was to have a less powerful elected Assembly. In general, Labour's approach to local government was much more cautious, but there was one striking exception. In 1986 the Thatcher Government had abolished the Greater London Council, following a succession of bruising battles with its left-Labour leader, the flamboyant, charismatic and infuriatingly cheeky 'Red Ken' Livingstone. Since then, there had been no London-wide local authority, only thirty-two separate London boroughs, and a web of quangos. Thanks largely to Blair's personal enthusiasm, Labour's 1997 election manifesto promised a complete break with the past. If the London electorate approved the proposal in a referendum, the capital would be governed by a directly elected executive mayor, scrutinized by an elected assembly. On 7 May 1998 the referendum duly took place. In a low poll, Londoners voted for a directly elected mayor by a margin of 72 per cent to 28 per cent. Legislation establishing an elected mayor and assembly (the Greater London Assembly, or GLA) was passed in 1999.

By then, attention had shifted from the constitution of the new London authority to a bitter, yet at times farcical, struggle for the mayoralty. Blair and his advisers seem to have hoped that London's new governance system would give birth to a new kind of municipal politician – dynamic, entrepreneurial, charismatic and more reminiscent of Richard Branson than of the solid party wheel-horses who normally congregated in the nation's town halls.[13] The outcome could hardly have been more ironic. At first, the Conservative candidate was Jeffrey Archer – not exactly a second Branson, but undeniably dynamic. Unfortunately, he had to abandon his candidature when it emerged that he had persuaded a friend to give him a false alibi in connection with the *Daily Star*'s allegation that he had slept with a prostitute. He was

succeeded by Steve Norris, another colourful figure, but a truthful one. However, the embarrassments which the Conservatives suffered in their search for a candidate were as nothing compared to the Labour Party's. No Branson-like figure came forward. Instead, the front runner for the Labour nomination was Thatcher's tormentor, 'Red Ken' Livingstone, now a Labour backbench MP. As it happened, Livingstone had many of the qualities that Blair hoped to see in Britain's first directly elected mayor. He was undeniably charismatic, and patently dynamic. Arguably, he was also entrepreneurial. But, from Downing Street's point of view, he had the wrong kind of charisma. He had mellowed in the eleven years since the abolition of the GLC, but he was as irreverent as ever, and his carefully polished one-liners were as deadly. Worse yet, he still called himself a socialist, and appeared to mean it. Unlike other 1980s leftists who had seen the error of their ways and received preferment for doing so, he gave no sign of repenting of his past. To Blair and his colleagues, he symbolized all that was wrong with the so-called loony left councils of the 1980s. He was wild, irresponsible, disloyal and (worst of all) an electoral albatross. A Livingstone candidacy would put at risk all that Blair had done to banish the memory of the bad old days of sectarianism, schism and unelectability. At all costs, Livingstone had to be denied the Labour nomination.

The costs were high. Possible alternatives to Livingstone were few and unimpressive. Unsuccessful approaches were made to the independent MP Martin Bell. There were rumours that the lightning would strike Pauline Green, leader of the Socialist Group in the European Parliament. There was talk of Mo Mowlam. The well-known black broadcaster, Trevor Phillips, put his hat into the ring, as did Glenda Jackson, the former actress and present MP for Hampstead. At a late stage in the proceedings, they were followed by Nick Raynsford, a London MP and impeccably Blairite junior minister. But Raynsford's hopes were dashed when, after much hesitation and prevarication, Frank Dobson resigned

his Cabinet post as Health Secretary and announced his candidature. Raynsford and Phillips then withdrew, and threw such weight as they had behind Dobson.

The party leadership now had its candidate for the nomination. The trouble was that party members seemed unlikely to vote for him. Meanwhile, the Livingstone threat loomed ever larger. The leadership reacted in two ways. It set up a panel of party loyalists, chaired by Clive Soley, the chairman of the parliamentary Labour Party, to vet all the candidates for the nomination. Livingstone was asked repeatedly if he would promise to fight on the party's still-unwritten manifesto, but in an adroitly worded statement he refused to give the leadership a blank cheque. He was, he said, 'perfectly aware that Labour candidates stand on the manifesto democratically agreed by the party'. But he added ominously,

> The Labour Party stands for the devolution of power to the people and democratic control of local government. The Labour Party in Scotland has entered a coalition with the Liberal Democrats. In Wales, Labour has formed a minority administration. Those decisions were taken in Scotland and Wales, not Westminster. Devolution means that how we regenerate London's transport system is a decision for Londoners.[14]

Despite Livingstone's refusal to eat humble pie, the panel reluctantly decided to allow his candidature for the nomination to go forward, fearing mass resignations from the party if it refused to do so.

The panel interrogations were only a skirmish; the real battle was still to come. The ground on which it was fought had been assiduously tended by Livingstone's enemies. Until Dobson threw his hat into the ring in October 1999, the universal assumption was that Labour would choose its mayoral candidate by OMOV – one member, one vote. But by then it was clear that, in an OMOV selection, Livingstone would win. In normal circumstances, Blair and his associates

would almost certainly have favoured OMOV. It was modern, democratic and transparent. As such, it marked a break from the murky election processes associated with Old Labour. But, in comparison with the leadership's adamantine determination to stop Livingstone, these attractions counted for nothing. No sooner had Dobson announced his decision to stand than the party's National Executive decided that Labour's candidate for the mayoralty would be selected by an electoral college composed of three sections with equal voting strength – Labour MPs, MEPs and GLA candidates; trade unions and other affiliated organizations; and individual party members. For good measure, it also decided that the unions would not be obliged to ballot their own members before casting their votes. It was a classic Old Labour stitch-up, of exactly the sort Labour modernizers were supposed to be against. In the short term, it served its purpose. Livingstone was far ahead in the individual member section, and slightly ahead in the trade-union section, but Dobson's overwhelming lead in the section for MPs, MEPs and GLA candidates put him fractionally ahead in the electoral college as a whole. In the longer term, Dobson's victory availed him nothing. Livingstone could justifiably complain that the party machine had stolen the selection; after some hesitation he announced that he would stand for the mayoralty as an independent (breaking an oft-repeated promise not to do so). On 5 May 2000 he was triumphantly elected, albeit only after the second preferences of the bottom nine candidates had been taken into account. The Conservative, Steve Norris, was a good second. Dobson came a bad third in the first count, and was therefore excluded from the second count. Nothing quite like it had been seen since Dick Taverne's crushing victory as an independent in the Lincoln by-election in 1973.

Livingstone had beaten the Labour Party machine, but he had not beaten the Labour Government. The central issue in the mayoral election was the state of the London Underground and the way to finance long-overdue investment in its crumbling infrastructure. In the 1997 general election the

Conservatives fought on the ticket of Tube privatization. The Labour manifesto rejected 'wholesale privatization' and committed the party to 'a new public/private partnership to improve the Underground, safeguard the public interest and guarantee value for money to taxpayers'.[15] However, the form of this mysterious new partnership was not specified; and it was not until Labour entered office that ministers decided what meaning to give the term. As so often, they followed where their predecessors had led. The Major Government had launched a 'private finance initiative' (PFI) designed to tap private capital for public infrastructure projects. The principles were straightforward. Private companies would make the necessary investment and bear part of the risk involved. Payment would be spread over several years. At the end of that period, the assets would revert to full public ownership. In the interim they would be available for use by the relevant part of the public sector. It was rather like a hire-purchase agreement: use now, pay later. For ministers anxious to keep taxes low, the beauty of PFI was that, under Treasury rules, the investments did not count towards the public sector borrowing requirement. Another alleged advantage was that the private companies concerned were bound to be more efficient than the public sector, so that the taxpayer would get better value for money. These considerations weighed as heavily with the new Government as with the old. Fatally, the public–private partnership (PPP) it devised for the London Underground was modelled on the Conservatives' PFI.

'Son of PFI'[16] was a much more complex animal than its parent. The trains would still be run by London Underground, which would soon become a subsidiary of a new body called Transport for London (TfL). The track would be handed over in three sections to private infrastructure companies ('infracos'), which would maintain and improve it. The infracos would also be responsible for maintaining and renewing the trains at night, when they would not be in service. At the end of a period – at first of fifteen years, but later extended to thirty – ownership of the track would revert to

TfL. The payments to the infracos would be determined by their success in achieving specified outputs. The benchmarks for calculating success would be based on extraordinarily arcane and necessarily contestable assumptions about the Tube's performance under public ownership. This delicate structure contained two gaping holes. If the contracts with the infracos were too generous, as a wide range of outside experts believed them to be, risk would not be transferred from the public to the private sector after all, and the taxpayer would not get better value for money. Worse still, experience of the privatized railway system showed that separating the track from the trains could have disastrous consequences for safety. (The notorious Ladbroke Grove train crash, which killed thirty-one people and injured 425, took place in October 1999, when the hapless Dobson began his campaign for the Labour nomination for the mayoralty. The Hatfield crash, which rubbed home the dangers of splitting responsibility, occurred a year later.)

Opposition to the PPP was the central plank of Livingstone's election campaign. Susan Kramer, the Liberal Democrat candidate, was also opposed. Steve Norris was for outright privatization of the Tube. Once elected, Livingstone insisted – with justice – that the PPP had been rejected by a massive majority of London's voters. This cut no ice with the Government. Nor did a sceptical report by the House of Commons Select Committee on Transport. Livingstone himself commissioned the Industrial Society, directed by Will Hutton, to review the issues. The Hutton Report, published in September 2000, concluded that the PPP should go ahead 'only if it meets much more rigorous safety and value-for-money criteria, and if it is substantially amended to protect against the risk that the contracts are incomplete and overgenerous'.[17] Once again, the Government was unmoved. With characteristic chutzpah, Livingstone appointed Robert Kiley, a tough former CIA officer who had turned around the New York subway system, as Transport Commissioner for London. Kiley condemned the PPP contracts; argued that

the necessary investment could be financed partly by operating surpluses and partly by borrowing against future income; and insisted that managerial control over the entire system should remain with London Underground. Despite rumours of a compromise, the Government refused to budge. Livingstone twice tried to stop the PPP through judicial review, but the courts were powerless to intervene. In a last, desperate throw he took the issue to the European Court, but there too the Government won. Meanwhile, the contracts with the infracos, which had been over-generous in the first place, became even more favourable to them. In the end, the PPP turned out to be more expensive than the public sector alternative would have been. On the Government's own criteria, it should have been rejected.

In this tangled story, three themes stand out. The first has to do with democracy and decentralization. The Government said it wished to 'renew' British democracy. Blair proclaimed the virtues of 'open, vibrant, diverse democratic debate' on the local level. But when the debate took a turn that ministers and officials disliked, they made frantic efforts to stifle it. They took it for granted that their PPP offered the best solution to the problems of the London Underground, and that was that. The views of London's mayor and voters were immaterial. As in the Arms to Iraq affair and the BSE crisis, ministers knew best. Because they knew best, they made a nonsense of their own decentralization project. The second and third themes go deeper. There was a curiously frenzied quality about ministers' commitment to PPP. No doubt, part of the reason for their refusal to budge was that they were determined to punish Livingstone for crushing their mayoral candidate at the polls. Yet it is hard to believe that this is the whole explanation. They were motivated by ideological principle as well as personal pique. PPP was (or at least appeared to be) a market solution, and New Labour was committed to market solutions with all the zeal of a convert. Last, but by no means least, the Treasury was, and in modern times always has been, an instinctively centralist institution, viscerally suspicious of

lower tiers of government and hostile to suggestions that they should be given more autonomy. A victory for Livingstone would have been a defeat for the Treasury, and for the Chancellor of the Exchequer as its head. As such, it would have sent a dangerous message to other uppity local politicians. If only *pour encourager les autres*, he had to be humiliated. In comparison, local democracy, public safety and even value for money hardly counted.

Themes

The story I have told so far is more like a picaresque tale than a carefully plotted novel. It boasts a huge cast list, and covers a wide range of topics. Yet certain common themes weave in and out of it, albeit in different guises. In one way or another, each of my three episodes has to do with the public interest, public trust, public goods, and the public sphere of collective action and democratic accountability. Each also raises disturbing questions about the relationship between that sphere and the sphere of competitive market competition, on the one hand, and the state, on the other. In the first episode we saw ministers and civil servants taking it for granted that they had the exclusive right to define the public interest, and a corresponding right to mislead the public and its elected representatives about the policies they had derived from their definition. We also saw that they diminished democratic accountability – one of the supreme public goods – in the process. In the second, ministers, officials and their chosen scientific advisers botched an admittedly tricky case of the politics of risk because they did not trust the public to react rationally to a full account of the risks in question – in other words, because they took it for granted that they were better qualified than the public to decide what risks the public should run. For their pains, they further undermined public trust in government. In the third, the incoming Labour Government embarked on a novel, if

half-hearted experiment in municipal democracy and local autonomy for the capital, only to discover to its horror that voters and party members alike supported a charismatic critic of the party leadership, and favoured a solution to the long-standing problems of the London Underground which ran counter to that of the central state. Though the leadership rigged the selection process, its candidate was crushingly defeated in the subsequent election. Ministers reacted by forcing their own complex and costly quasi-privatization scheme down the throats of the successful candidate and the voters who had elected him.

The implications go wide, and I shall explore some of them more fully in later chapters. For the moment, I mention only two. The story I have just tried to summarize is quintessentially a story of the *public domain* – of the domain where the public interest is defined and public goods produced. In varying ways, the episodes I have described all help to show that it is now in jeopardy.

Definitions

At this point, some definitions are in order. The public domain, in my sense of the term, should not be confused with the public sector. It depends on public institutions (notably the rule of law), but it is not confined to them. In principle, a large public domain could coexist with a small public sector. There is certainly nothing sacrosanct about the ratio between the two which obtained in mid- and late-twentieth-century Britain. In earlier periods, the ratio was very different; and there is no reason of principle why it should not be different in future. As I shall show in the next chapter, the growth of the public domain provides one of the central themes of nineteenth-century British history. For most of that period, the public sector grew much more slowly. Government expenditure as a proportion of GNP was lower in 1900 than it had been in 1831, and in absolute terms it did not grow

very much until the decade of the 1890s.[18] As late as the 1920s, Keynes expected further growth in the public domain (not that he used the term) – not as a result of state action, but because privately owned companies would increasingly assume public responsibilities. The Bank of England (then still in private ownership) was already a classic case of such a company. In the 1950s, Anthony Crosland, the high priest of the revisionist social democracy of the day, thought one of the reasons why capitalism had changed so radically that it could hardly be called capitalism any longer was that the managers of big capitalist firms increasingly adopted a public-service ethic.

Indeed, the public domain should not be seen as a 'sector' at all. It is best understood as a dimension of social life, with its own norms and decision rules, cutting across sectoral boundaries: as a set of activities, which can be (and historically have been) carried out by private individuals, private charities and even private firms as well as public agencies. It is symbiotically linked to the notion of a public interest, in principle distinct from private interests; central to it are the values of citizenship, equity and service. In it goods are distributed on the basis of need and not of personal ties or access to economic resources. It is a space, protected from the adjacent market and private domains, where strangers encounter each other as equal partners in the common life of the society – a space for forms of human flourishing which cannot be bought in the market-place or found in the tight-knit community of the clan or family or group of intimates. In a memorable account of the growth of social citizenship in the post-war period, T. H. Marshall wrote that its real significance lay, not in promoting income equality, but in 'a general enrichment of the concrete substance of civilised life . . . an equalisation between the more and the less fortunate at all levels'.[19] He was writing about the post-war welfare state, but he caught the essence of the public domain as such.

In it, citizenship rights trump both market power and kinship or neighbourhood bonds; the duties of citizenship

take precedence both over market incentives and over private loyalties. As the Dahrendorf Commission put it,

> The private world of love and friendship, and the market world of interest and incentive, are not the only dimensions of human life in society. There is a public domain with its own values. . . . In the public domain people act neither out of the kindness of their hearts, nor in response to incentives, monetary or otherwise, but because they have a sense of serving the community.[20]

That, of course, is an ideal, and a demanding ideal at that. No one could pretend that it is always followed in practice. Indeed, part of the point of the story I told earlier in this chapter is to show how, in recent years, it has been badly flouted by civil servants and by politicians of both major parties. But this does not mean that the ideal is in some way unreal or irrelevant: the same applies to the norms of the market domain and the private domain. Sellers sometimes collude to do down buyers, and friends are sometimes false, but it does not follow that the market and private domains are in some sense normless. The important point is that the ideal is distinct and, so to speak, autonomous: that the norms governing behaviour in the public domain and the practices that embody and sustain them; the quality and character of the human relationships engendered in it; the principles that govern access to the activities that are carried on in it; and the incentives and disincentives that affect those who carry them on *differ* from their equivalents in the market and private domains.

In the private domain, loyalty to friends and family is a (perhaps *the*) supreme virtue. In the public domain, it is not. E. M. Forster's famous assertion that he would rather betray his country than his friends was shocking because he had applied the norms of the private domain to a domain where they do not belong. Favouritism and nepotism are shocking for the same reason. To apply the values of the private

domain to the public domain is, in a profound sense, to corrupt it. It is equally shocking, because equally corrupting, to apply market norms to the public domain. That is why it is a crime to buy and sell votes or honours or government policies or justice. In the market domain, goods and services are – quite properly – commodities to be bought and sold. The price mechanism allocates resources, including labour. In principle at least, free competition ensures that they are allocated efficiently. But votes, honours, government policies and justice belong to the public domain. And because they belong to the public domain, they must not be commodified. By the same token, the measuring rods that assess efficiency in the market domain – 'throughput', productivity, added value, the monetary return on capital – have no place in the public domain. Academics do not miraculously become more efficient when the staff–student ratio falls and lectures are overcrowded; the value of a stay in hospital is not enhanced if low-paid contract nurses, with little commitment to the job, replace established nursing teams.

Boundaries

Much of this is obviously very fuzzy. Part of the point of this book is to open up a debate which will, I hope, yield greater precision in future; but for the moment boundary problems proliferate. One tricky problem concerns the frontier between the public and the market domains. Certain occupations – policemen, civil servants, judges, soldiers – normally belong to the public domain. Others – foreign exchange dealers, supermarket managers, software designers, pop musicians – inhabit the market domain. But many cross the frontier between the two. In one optic, barristers are market traders, selling their wares in a highly competitive market-place, where rents of ability can be very high. But that is not all they are. They also have duties to the Court. Their primary duty is to ensure that justice is fairly and impartially administered; and

that duty is supposed to override their economic interests. Trade unions also sell their wares – or rather their members' wares – in the market-place. They exist to screw the highest possible price for their members' labour power out of potential purchasers. But in doing this they mitigate what Keynes famously called 'the theory of the economic juggernaut'[21] in the name of the non-market principle of the just price; in doing so they also promote the public good of industrial citizenship. In the days before the 1911 National Insurance Act, most doctors earned their living from privately paid fees. But many doctors adjusted their fee schedules to their patients' ability to pay, and they did so because they subscribed, at least to some degree and in some cases, to a public-service ethic. Before universities were funded by the state, academic salaries were paid from the university's fee income. Despite charitable benefactions which financed scholarships for the exceptionally talented, access to a university education was largely confined to those who could pay for it. But academics also adhered (or tried intermittently to adhere) to a public-service ethic which told them to promote the public goods of disinterested learning, a qualified elite and the transmission of high culture to the young. These values decreed a meritocratic examination system, and ruled out the sale of degrees.

To decide who and what belong to the public domain, then, we have to look at providers as well as at what they provide. Most of all, we have to look at the ethic or ethics that motivate providers, and at the institutions and practices which embody and transmit those ethics. Doctors, lawyers, educators, trade-union bargainers are not rationally calculating market actors, behaving in accordance with the profit motive – or, at any rate, not solely. At least in principle, they are supposed to abide by an ethic of public service that tells them to pursue the public interest, even if they earn their livings in a market of some sort. They are not agents of their clients alone. They are also the agents of the public at large. Of course, they may fail to discharge their public-service obligations, but if they do, they dishonour their vocation.

Another problem, which provides one of the central themes of this book, has to do with the relationship between the public domain and the state. At first sight, the two can easily be confused: after all, the public domain is the domain of citizenship, and states have citizens. A closer look yields a much more complex picture. For most of the last 120 years, most activities of the British state have been part of the public domain. The officials who have carried them out have also belonged to it. This has not always been true, however. In Europe, at any rate, the state came before the public domain. Henry VIII, Elizabeth I, Philip II, Francis I, and the other leading monarchs of early-modern Europe ruled powerful and imposing states, but they did not acknowledge a public interest transcending private interests. Still less did they acknowledge any obligation to pursue it. The 'kingly state', as Philip Bobbitt calls it,[22] was an emanation of the sovereign (*L'état c'est moi*, Louis XIV famously declared), not a separate entity standing above both ruler and ruled. More than 300 years later, the totalitarian party-states of the twentieth century were emanations of the party and the leader. They perverted the service ethic of the public domain into an instrument of party control, colonized its institutions and remodelled its practices to fit party imperatives. Both in Hitler's Germany and in Stalin's Soviet Union, in other words, the state effectively destroyed the public domain – not that Tsarist Russia had had much of a public domain before the revolution. As I try to show in the next two chapters, the record of the British state is ambiguous. In the second half of the nineteenth century and the first half of the twentieth, it was, on the whole, a friend of the public domain, though on occasion an overbearing one. But it became a friend only because the early champions of the public domain radically reconstructed it; and in the final decades of the twentieth century a second reconstruction turned it into an enemy. Even in its friendly phase, moreover, the centralist, power-retentive instincts it was to manifest during the BSE crisis and the battles over the London Underground made it a less

whole-hearted friend than champions of the public domain always recognized. For the public domain is quintessentially the realm of engagement, debate and contestation. The pre-democratic, monarchical traditions of the British state have always been in tension with the need for social spaces in which these can flourish.

A Gift of History

In spite of fuzziness and boundary problems, two points stand out. The first is that the public domain is fundamental to a civilized society. (It is not an accident that 'civilize' and 'citizen' come from the same root.) This does not mean that it is fundamental to society as such. Most societies, through most of human history, have lacked a public domain; in most societies, there has been no public to *have* a domain. There have been rulers and ruled, monarchs and subjects, lords and serfs, masters and servants, owners and slaves, priests and lay people, classes and masses. And, of course, there have always been buyers and sellers. But these did not – could not – make a public. There were no citizens, and therefore no space where citizens could engage with each other. Because there was no space for citizenship, or the rights and duties of citizenship, the notion of a public interest could have no meaning. The private domain has always been with us; and Adam Smith was probably right in thinking that the 'truck, barter and exchange' of the market domain are natural to human beings. But there is nothing natural about the public domain. It is a gift of history, and of fairly recent history at that.

It is literally a priceless gift. The goods of the public domain cannot be valued by market criteria, but they are no less precious for that. They include fair trials, welcoming public spaces, free public libraries, subsidized opera, mutual building societies, safe food, the broadcasts of the BBC World Service, the lobbying of Amnesty International, clean water, impartial public administration, disinterested scholarship,

blood donors, magistrates, the minimum wage, the Pennine Way and the rulings of the Health and Safety Executive. Less obviously, they also include liberty – not in the familiar sense of freedom to pursue private interests, but in the classical republican sense of freedom from domination. In the public domain, market power is overridden, and private clientelism forbidden; citizens bow the knee to nobody. And, in principle at least, republican liberty goes with democratic self-government and state accountability. In the public domain, citizens collectively define what the public interest is to be, through struggle, argument, debate and negotiation. If the rulers of the state and the officials who serve them are not accountable to the citizenry and their representatives, the language of the public interest can become a cloak for private interests. That was the moral of the Scott Report. The public interest is not a fixed essence to be derived from first principles through some allegedly value-free calculus of individual costs and benefits, or a kind of Mosaic tablet brought down from Mount Sinai by the great and good. It is inherently contestable, both in the sense that agreement on it can never be final, and in the sense that it is normally defined through conflict and the resolution of conflict.

By the same token, the public domain and its institutions and practices – at any rate in modern societies – are the sources of public trust. As wise economic liberals have always known, markets cannot work properly without trust. Nor, of course, can governments. But the market domain *consumes* trust; it does not produce it. Market actors have to trust each other. If they don't or can't, there is no market; there are only pirates or gangsters, preying on the weak and unwary. In a trustless society, exorbitant transaction costs would make market exchanges unfeasible. Trust can, of course, be produced in the private domain, and in small, face-to-face societies the trust relationships of the private domain may keep transaction costs low enough for markets to emerge. But private trust relationships are, by definition, narrow and introverted. Close-knit Peak District villages,

where you are not accepted unless at least one of your grandparents is buried in the churchyard, are not apt to trust strangers. Once market relationships extend beyond the narrow confines of a face-to-face community, public trust is indispensable to them. And public trust, like the public domain itself, is an artefact. It is a by-product of the argument and debate which are part and parcel of the public domain, and of the institutions that embody and transmit its values: an epiphenomenon of the *practice* of citizenship. For in the public domain – at least if it is working as it should – market rationality is transcended by another kind of rationality: by a civic rationality which induces trust through a complex process of social learning. But the learning process does not occur spontaneously. It depends on the institutions of the public domain and on the constraints they impose. The rule of law, enforceable contracts, enforceable property rights, and an efficient fraud squad – these quintessential products of the public domain are the bedrock of the market economy. They make it possible for market actors to learn to trust each other after all. And what is true of trust in the market-place is true more generally. Citizens trust each other because, and to the extent that, they are citizens: because, and to the extent that, they know that public institutions are governed by an ethic of equity and service. If that ceases to be true, if the public domain is invaded by the market or private domain, if justice is on sale, or public offices go to kinsfolk or croneys, trust and citizenship are both undermined.

The public domain is vulnerable as well as precious. The trust it engenders can be betrayed; and betrayal can produce a downward spiral of self-reinforcing distrust. That is what happened when ministers and officials gave misleading answers to Members of Parliament during the Arms to Iraq affair and embarked on a campaign of public sedation during the BSE crisis. The barriers that protect the public domain from invasion by the adjacent private and market domains are easily breached. Nepotism and favouritism can never be banished altogether. It is almost a law of sociology

that elites try to reproduce themselves; the elites of the public domain are no exception. Behind the arras encircling the public space of democratic politics lurk the loyalties of family and clan. Market power is even harder to banish. The 'universal pander of money', as Michael Walzer has hauntingly called it, sees to that.[23] Lloyd George, the pioneer of the social-citizenship state, sold honours; accusations of 'sleaze' haunted the Major Government, and now haunt the Blair Government. Much more insidious than the outright purchase of favours is the inevitable impact of private economic interests on public policy making. The DTI's excessive tenderness to the arms industry and MAFF's excessive tenderness to the livestock industry are only two cases of many. Throughout modern British history, the Treasury has displayed excessive tenderness to the financial services industry; and in the saga of the London Underground it was excessively tender to the private-sector infracos and the lawyers and consultants who advised them. There is, in fact, an inescapable tension between the egalitarian promise of democratic citizenship and the inegalitarian realities of the market domain. The capitalist renaissance of our day has made it more acute than it has been for most of the last 100 years, and exacerbated the threat it poses to the public good.

The public domain faces more subtle threats as well. It can be endangered by market mimicry, of the sort embodied in the Blair Government's PPP for the London Underground, as well as by market power. As I tried to show a moment ago, it depends, as much as anything, on an ethic or set of ethics, embodied in distinctive practices. The intrusion of market measuring rods and a market rhetoric may twist these practices out of shape, and corrode the ethics they embody and pass on. And if that happens, the motivations of the practitioners may subtly change. Instead of seeing themselves as servants of the public interest, and behaving accordingly, they may become market or quasi-market agents, maximizing their interests in a market mode, and sacrificing the public interest in the process. The introduction of performance-related pay

and corporate-sector assessment procedures into the universities or the civil service may lead academics to distort their research priorities or to dilute the intellectual quality of their courses, and civil servants to become less willing to tell the truth to power. The introduction of contingency fees may lead barristers to give a lower priority to their duties to the Court and their role as upholders of the principle of equality before the law. Market-style management techniques and employment practices may lead public service broadcasters to put the pursuit of ratings ahead of public enlightenment. And when the vehicle for market mimicry is a centralized and intrusive state, in which public accountability is lacking or inadequate, all these threats may be exacerbated.

In the last two chapters of this book I shall try to show that the public domain is now under threat in precisely these ways. However, the threat can be understood only against the background of the emergence and growth of the public domain in the late nineteenth and early twentieth centuries. I turn to the complex process that enabled it to grow in the next chapter.