

Ponting

MR FLESHER

25 February 1985

TIMES LEADER, 25 FEBRUARY 1985

Further to our conversation, I understand that the Prime Minister would respond to any Parliamentary Question on today's main leader (attached) by referring the matter to the Law Officers. You will see the main allegation of the Leader is in its last paragraph.

From the transcript of Mr Justice McCowan's direction to their jury in the Ponting Case, you will see on page 3 letter E the following interesting and relevant passage appears:

"It is not a question of the Conservative Party being the state no more than it would be of the Labour, Liberal or SDP Parties being the State if any one of them happened to be the Government. This is not a political matter at all."

While a lengthy constitutional reply might answer the Times more fully, the Judge's remarks may prove useful in briefing material.

I am copying this minute to Henry Steel of the Law Officers Department.



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NATIONAL INTEREST

Mr Justice McCowan directed the Ponting jury that "the policies of the State were the policies of the government then in power". His direction was intended to deter the jury from thinking that Mr Ponting had some wider or higher duty to exercise by informing Mr Tam Dalyell of ministerial intentions to be less than open with Parliament. In the Commons later the Attorney General was asked to comment on the judge's direction. He said he agreed with it as a statement of the law.

Even as a legal direction concerned with the narrow point at issue in the trial, it was a disgraceful statement. That the Attorney General should endorse it as he did was both disgraceful and damaging. Is there nobody on the Treasury bench who is capable of seeing how damaging, inept and fundamentally ill-conceived is Mr Justice McCowan's direction as a standard text to define the intricacies of the British constitution?

This is not just an academic point. The consequences of McCowan go far wider than the snub he received from his duly directed jury. They can be found already in the row over the range and quality of MI5 surveillance. They colour attitudes to the coal strike. They will sour discussions with moderate trade unionists. They will be used by every militant - particularly those in the civil service unions - to forge an anti-Conservative government alliance supposedly against the doctrine that the State and the government of the day - this government - are indivisible.

On issues of national security the courts recently have shown a reluctance to go behind ministerial decisions. They have argued that such decisions are prerogative acts which preclude judicial review. At the very heart of state security that must still be the case. But the doctrine is in danger of being stretched so widely that it gives the idea that the whole administrative apparatus of national security only has to nod at the courts to be exempt from further scrutiny. And when a judge comes along to add the gloss that the security of the state and that of the present Govern-

ment's policies are indivisible may give them temporary power to use the permanent institutions of the state - the monarchy, the civil service, the armed forces - to further their policies. But those institutions will outlast them and be at the service of their political opponents.

It follows that the enemies of the state are those who want to subvert this system. Hitherto, there have been more covert subversives than overt ones. However, the rise of the unparliamentary Left which has deeply permeated some sections of the trade union movement and thus has threatened the Labour Party itself, has brought about a situation where the opponents of this Conservative government are too often associated with the opponents of parliamentary government itself.

The internal policies of the Labour movement have meant that this dividing line on the Left is not often enough and clearly enough identified by the Labour leadership. That leadership has failed on occasion to stand fair square on the side of parliamentary democracy when events have tended to blur the issue. In a saga such as the miners strike, for instance, which has unquestionably involved an open challenge to the Parliamentary system and was clearly meant to by those who organised it, Labour spokesmen have tried to trim with this malicious wind in the interests of Party unity.

Opposition and Alliance backbenchers would reject this argument by saying that it is the government which has subverted the parliamentary system by cutting corners with its huge majority and showing disdain for parliamentary punctilio in, for instance, the Belgrano affair. Ministers should have been more sensitive to this criticism. Had they been more sensitive then they might have been more alive to the damaging effect of letting the McCowan doctrine take root elsewhere. Ministers, forced at close range to observe the behaviour of Labour backbenchers treating the Parliamentary process with contempt, may feel that such behaviour is more widely known than it is, including the fact that Mr Kinnock's own well founded attempts to

Doubt on 'special relationship'

From Professor Emeritus Keith Buchanan

Sir, We are asked to believe that Mrs Thatcher's visit to Washington has led to a rebirth of the special relationship between the USA and the UK. I find this comment unconvincing.

I am British-born but taught in a New Zealand university for much of my working life. My father came over in 1914 with the first Anzacs to contribute to the defence of Britain. His reward: a massive dose of phosgene and long years of unemployment here.

With this background I find the spectacle of Mrs Thatcher aligning herself with the US against a Commonwealth country (New Zealand), following so close on the empty protest against the US invasion of Grenada, another Commonwealth country, singularly unedifying.

Her schoolmistressy dressing-down of Mr Lange for daring to go against US nuclear policy and for standing up for what he perceives as the interests of New Zealand is both gratuitously insulting and an example of the interference in the affairs of another country that she would be the first to condemn.

The "special relationship" of which so much is made always seemed to imply a measure of partnership between equals; it has been Mrs Thatcher's achievement to reduce the status of Britain from that of a partner to that of a US satellite.

Yours truly,
KEITH BUCHANAN,
2 Ffridd Helyg,
Llanuwchllyn,
Y Bala, Gwynedd.
February 22.

From Mr George Ivan Smith

Sir, As a citizen of another Commonwealth country, Australia, I find it unusual, unfortunate and unwelcome that Britain's Prime Minister chose to criticise the Prime Minister of New Zealand publicly while visiting a non-Commonwealth country, the USA.

Whatever one may feel about Mr David Lange's decision to bar nuclear equipped warships from New Zealand's ports, it remains an accepted convention that British politicians do not, when on a foreign visit, decry the policies and practices of their own country. Still less should they use some foreign platform from which to criticise the policies of fellow-Commonwealth countries because that would be adding interference to bad taste.

Yours sincerely,
GEORGE IVAN SMITH,
Elm Cottage,
Butterow West,
Stroud,
Gloucestershire.
February 22.

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The sovereign state of Britain is the Crown in Parliament. The system of parliamentary democracy embraces the notion of governments formed from parliamentary majorities for limited periods of office, with regular provision for peaceful change when the parliamentary majority reflects a different balance of political interest. To be loyal to the principles of parliamentary democracy involves a residual disloyalty to the Government of the day since it must imply acceptance that a different Government with different policies from the present one would also command the same loyalty from its servants and from the other state institutions as this one does. There is only one proviso: that such a Government shows the same fundamental loyalty to the system as its predecessors.

There is no formal ultimate guarantor of such a loyalty other than the convention that the government of the day is "Her Majesty's Government". Government business is the Queen's business. Thus ministers may have their Parliamentary majority behind them and it

GLEMP'S EXILES

The position of the Polish Primate is unlike that of any other religious leader in Europe. When Poland was still a monarchy, the Primate governed as "interrex" between the death of one king and the election of the next. After Poland was divided between three foreign empires at the end of the eighteenth century, Polish nationhood was increasingly identified with, and carried forward by, the Roman Catholic Church. For centuries, therefore, the Polish Primate has been a national as well as a religious leader - and most often a leader of the nation in opposition to the secular powers that be.

In Poland today, the Church is the only national institution to

government which has subverted the parliamentary system by cutting corners with its huge majority and showing disdain for parliamentary punctilio in, for instance, the Belgrano affair. Ministers should have been more sensitive to this criticism. Had they been more sensitive then they might have been more alive to the damaging effect of letting the McCowan doctrine take root elsewhere. Ministers, forced at close range to observe the behaviour of Labour back benchers treating the Parliamentary process with contempt, may feel that such behaviour is more widely known than it is, including the fact that Mr Kinnock's own well founded attempts to correct these tendencies in his Party have themselves attracted the contempt of the Labour Left, in and out of Parliament.

Mr Leon Brittan's explanation of the principles which govern surveillance by the security services of subversive elements in the country is wholly respectable. British politics has for too long pretended that there is no concerted attempts to subvert our institutions and that the notion of the Communist front "couldn't happen here". It has always happened here and it is happening now. While politicians should obviously be concerned that the security services are correctly monitored, they should also be reminded that the first technique in this game is to rubbish the police and the security services so as to inhibit them in their task.

It is in these circumstances that the McCowan statement is so damaging. It should not go unchallenged and unexplained. Ministers should attempt to set these matters - including Ponting - in a coherent non-party and truly national context by reminding the public that it is our multi-party system, not the policies of the day, which deserve the highest protection, and will receive it. That is indeed the national interest.

Prime Minister. Let this, then, be a visit of religious communion with a sister church; of shared reflection on the spiritual unity of Christian Europe; and a pastoral visit to the large community of Polish Catholics in Britain. Yet with this last purpose, politics again inevitably intrude. For this is no ordinary community of "emigrants", who have freely decided to seek their fortune in another land.

The majority of Poles living in Britain are still, in the true sense of the word, exiles. Whether they found themselves here as Stalin imposed Soviet domination on Poland in 1944/5, or as General Jaruzelski reimposed it by proxy in 1982, they are unnaturally

while visiting a non-Commonwealth country, the USA.

Whatever one may feel about Mr David Lange's decision to bar nuclear equipped warships from New Zealand's ports, it remains an accepted convention that British politicians do not, when on a foreign visit, decry the policies and practices of their own country. Still less should they use some foreign platform from which to criticise the policies of fellow-Commonwealth countries because that would be adding interference to bad taste.

Yours sincerely,
GEORGE IVAN SMITH,
Elm Cottage,
Butterow West,
Stroud,
Gloucestershire.
February 22.

Forty divided years

From Mr George H. Vassiltchikov

Sir, In the flood of reminiscences, editorials, explanations and apologies that have marked recently the anniversary of the Yalta conference I have sought in vain mention of one consideration that certainly weighed heavily on the attitudes and decisions: the latent suspicion that at the last minute the Western or the Eastern allies (as the case might be) would strike a separate deal with the Germans.

As the war progressed this suspicion literally obsessed the Soviet side, while in the West, "to keep the Russians in the war" at any price - and understandably so, since it was they who were doing most of the fighting at the time - was, we know now, one of the reasons why Roosevelt and Churchill connived in pussyfooting over the Katyn massacre and why the latter would have nothing to do with the anti-Nazi German resistance.

Yours sincerely,
GEORGE H. VASSILTCHIKOV,
73 Durrels House,
Warwick Gardens, W14.

Lack of linguists

From Mrs Patricia A. Forsyth

Sir, The comments of the Vice-Chancellor of London University, Sir Randolph Quirk, concerning the shortage of linguists in commerce and industry (report, February 13), are appalling.

Surely he is aware that good female linguists are being channelled into courses in science, technology and engineering to give them greater opportunities in the labour market.

Why then encourage more boys to concentrate on languages in schools? There is already a glut - albeit mainly female - of perfectly suitable candidates who can offer innate language ability coupled with technical qualifications.

Less specialization at A level would perhaps enable our sixth-form girls to make a greater contribution to improving our international image.

Yours etc,
PATRICIA A. FORSYTH,
St Elmo,
Anderton,
Millbrook,
Torpoint, Cornwall.

Race law and the Jews

From Dr Jacob Gewirtz

Sir, Your editorial, "Hatred, history and the Holocaust" (February 15),