

The Westminster Parliamentary Counsel Office in the 1950s

FRANCIS BENNION'S JOURNAL 1953-58

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On 16 March 1953, having been the successful candidate out of a field of ten, I began to be an assistant to parliamentary counsel (unestablished) at a wage of £1,000 per annum (plus 8 per cent extra duty allowance and 7½ per cent cost of living bonus). Have been given Room No.1 in the old building at 7 Old Palace Yard, Westminster, which houses the Parliamentary Counsel Office. The numbering works backwards and my room is garret-like but spacious, with a large carpet, large desk, coal fire, telephone, two windows and a bed behind a screen (in case of working late).

Ellis¹ has decided that I am to work with him for a start – presumably because he shrinks from imposing a burden on the others. He is tallish, with a bricky complexion, large head and jaw. Twelve years at the Chancery bar preceded his Parliamentary Counsel work. His speech is rather slow and he appears shy – a possible reason why he is a bachelor. Age about 60. Smokes a pipe of which the bowl is almost entirely burnt away. Unassuming and clearly of great ability. On a Saturday morning in tweeds and an old brown bowler, or in his room in a decrepit and (literally) out-at-elbows black coat, he looks delightfully a gentleman of an old school.

With Ellis I have been doing a Bill (my part of course minute) to cope with the great flood of 31 January 1953 by giving power to take land for coast protection and providing for compensation and rehabilitation of flooded land.² At a meeting of the Cabinet legislation committee on 17 and again on 24 March the Bill was discussed. The Solicitor General³ was bovine and made superficial and mostly inept suggestions, while Capt. Harry Crookshank⁴ in the chair (looking very like Robertson Hare) disposed smoothly of difficulties and sped the business along. Amusing interlude on other subjects when Florence Horsbrugh (Minister of Education)⁵ asked that a troublesome motion on nationalizing public schools be talked out by prolonging debate on earlier motion re. Birmingham jewellers (this was agreed to) and sought suggestions for killing Follick's⁶ Simplified Spelling Bill. Agreed that it would probably be emasculated in committee stage (though surprising number of members favoured it). Lord Salisbury⁷ said that anyway Lords would throw it out.

On 27 March five lawyers sat round a table in the House of Lords. They were Ellis, Rowlatt⁸, Napier⁹, Brass¹⁰ and me. Subject: how to satisfy Welsh nationalist clamour to have a capital (probably Cardiff).

¹ Sir Alan Ellis KCB QC, First Parliamentary Counsel to HM Treasury (1890-1960).

² Later the Coastal Flooding (Emergency Provisions) Act 1953.

³ Sir Reginald Manningham-Buller QC MP, later 1st Viscount Dilhorne, Lord Chancellor (1905-1980).

⁴ Leader of the House of Commons, later 1st Viscount Crookshank of Gainsborough (1893-1961).

⁵ Later Baroness Horsbrugh (coy about date of birth; died 1969).

⁶ Mont Follick MP (1887-1958).

⁷ 5th Marquess of Salisbury, Lord President of the Council and Leader of the House of Lords (1893-1972).

⁸ Sir John Rowlatt, KCB KCIE, QC, 2nd Parliamentary Counsel to HM Treasury, son of Mr Justice Rowlatt (1898-1956.)

⁹ Hon. Sir Albert Napier KCB KCVO QC, Clerk of the Crown in Chancery and Permanent Secretary to the Lord Chancellor (1881-1973).

Rowlatt had studied the question (I had only read the file) and led forth. He is the antithesis of Ellis – small, badly-shaved, excitable. His hair seems always awry, and he sat through this meeting with the collar and one lapel of his coat turned inside. Clearly he has ability though, and he ably poured scorn on Welsh pretensions by showing that ‘capital’ is not a title you confer like ‘Regis’ but a general recognition that a city is the seat of government, the judiciary etc. You could not pass an Act saying it shall be an offence not to call Cardiff the capital of Wales.

Brass said could the Queen on her Coronation tour of Wales refer to Cardiff as the capital and so set a precedent. Rowlatt said no, because not all Welshmen agreed on Cardiff and the Queen would be in an invidious position. Brass said Caernarvon had agreed not to press her historical claim in return for being made a royal borough. I said that it was for a country to decide itself which should be its chief town or capital and couldn’t the Council of Wales (which no one there knew anything about) do something on these lines? Napier said a petition from the Welsh people to the Queen to make Cardiff the capital would help.

Agreed that the best thing would be a proclamation by Her Majesty that it was her will and pleasure that Cardiff be recognized as capital. Rowlatt said there was no legal power to do this but it scarcely mattered as nothing would be effected by such a proclamation anyway.¹¹ Afterwards I walked back with Rowlatt (Ellis had got tired of the discussion and slipped away). He observed that the sense of a subject was always in inverse ratio to total salaries of men engaged on discussing it. Also that Brass was not such a fool as he seemed and that Napier’s father (Field Marshal Lord Napier) was born in 1811.

Ash Wednesday (23 February) 1955

The gap of nearly two years in this Journal can only be explained by my indolence. But I have repented and resolved to be more diligent. I will now try to recollect anything worthy of note that has happened in that time. I might start by saying that on 16 March 1954 I was confirmed in my post at the end of the probationary period and am now getting close on £1,500 per annum. Since joining the office I have had a hand in drafting the following Acts:

1953 Coastal Flooding, Expiring Laws, Historic Buildings, National Insurance, Public Works Loans, Valuation for Rating;

1954 Baking Industry, Cotton, Expiring Laws, Juries, Rights of Entry, Town and Country Planning.

Town and Country Planning was by far the longest and most difficult. Indeed it was called by McColl¹² in the House the most complex statute ever passed. I began working on it with Krusin¹³, finding it very absorbing and interesting as it gave continuous scope for ingenuity, although of course the drafting problems were well beyond me. Krusin had to give up after a time as the worry of the Bill gave him a duodenal ulcer. Elliston¹⁴ took over and handled it in his competent, unworried manner. He was, not surprisingly, disinclined to dig too deeply into the repulsive draft that was handed to him and it was left to me to try and spot the flaws in it. This I did with a wearisome regularity, even dreaming of two, which were dealt with next day by putting down amendments.

It is no exaggeration to say that at least two-thirds of all the amendments put down by the Government and carried into the Bill originated with me. Nevertheless the Bill remained an atrocious piece of legislation – a most unfair burden on all concerned with Town and Country Planning. The main reason for this was the fact that the Bill had to unscramble the financial provisions of the 1947 Act and put them to a use for which they were never designed. Also

¹⁰ Sir Leslie Brass CBE, Legal Adviser to the Home Office (1891-1958).

¹¹ Cardiff was proclaimed capital of Wales on 20 December 1955.

¹² James McColl MP (1908-1971).

¹³ Later Sir Stanley Krusin, 2nd Parliamentary Counsel to HM Treasury.

¹⁴ Julian Elliston CB TD, Parliamentary Counsel to HM Treasury (1911-1970).

our instructions were ill thought out and delivered piecemeal. Changing draftsmen in mid-stream of course didn't help.¹⁵

One small piece of anti-bureaucracy I was responsible for. The Department wanted to make the protection for purchasers provision in Part III only available to one who satisfied the local authority, in accordance with regulations, that he was an intending purchaser. This seemed intolerable, and I managed to get it dropped. One thing that surprised me particularly in doing this Bill was that when it came to solving a valuation problem the Inland Revenue valuers were quite useless and often my solution (on common-sense lines) was the one that went into the Bill¹⁶ (this also happened with Valuation for Rating¹⁷).¹⁸

I will get on to more interesting ground with some scraps about Rowlatt. He is always talking about the Judge, whom he invariably refers to as 'my old father'. One of Mr Justice Rowlatt's stories concerned Mr Justice Phillimore¹⁹, who was a bit of an old woman. He once tried a case where a ship had run on to some rocks. The tough, hard-bitten mate was being cross-examined by counsel—

What did you do when you saw breakers ahead?

Er – nothing.

Didn't you tell the helmsman to alter course?

No, I didn't.

Did you say anything?

No.

Phillimore J: But didn't you say to him 'You silly goose, you'll have us on the rocks!'

This is one of those things in which humour lurks without being easily explained. It just gives me a warm, hilarious glow inside, like the recent thing in *The Times* when they included 'eclipse of the sun, 2.15' in 'Today's Arrangements'.

Rowlatt took a dislike to Nigel Birch²⁰ because he smoked a cigar at Legislation Committee and appeared afterwards wearing a teddy-bear coat. This is typical of Rowlatt's philistine asceticism, an attitude he describes as that of the 'suburban professional' (or, I would add, North Oxford) class. I remarked that Ministers of Works did seem to be fond of cigars – I remembered Birch's predecessor, Sir David Eccles²¹, always smoked them at meetings on the Historic Buildings Bill. 'Yes,' said Rowlatt. 'He is now sometimes known as "the abominable showman"'. Eccles is a beefy Wykehamist who may go down to posterity (if at all) for his slogan 'Treat 'em mean and make 'em keen.'

Harking back to Town and Country Planning, I would like to record a prophecy. Everyone says the 1954 Act is so bad it will prove unworkable and will soon have to be scrapped. I venture to think it will last at least twenty years – it is a compromise between no compensation and full compensation for planning, and compromises tend to stick with us.²²

10th March 1955

Elliston told me a story told him by someone in MI5:

Judge (to young counsel): What is your name?

Counsel: Bury, m'lord. (Pronouncing it like fury)

Judge: Never heard of that – how do you spell it?

¹⁵ The Bill was passed as the Town and Country Planning Act 1954.

¹⁶ For example ss. 32(2), 36(2), 65(2), 4th Sch.

¹⁷ For example s 2(5).

¹⁸ All this sounds very priggish, but it is what happens to stick in my memory.

¹⁹ Later 1st Baron Phillimore of Shiplake.

²⁰ Minister of Works, later Lord Rhyl of Holywell.

²¹ Later 1st Viscount Eccles (1904-1999).

²² It actually lasted nine years, being mainly repealed by the Town and Country Planning act 1962.

Counsel: B – U – R – Y.

Judge: Nonsense – that’s Berry. I shall call you Mr Berry. What are you smiling about?

Counsel: Well m’lord, the twelve good men and true over there are under the impression that they’re sitting on a *jury*!

26th April 1955

Rowlatt told me that it is said of Lord Jowitt²³ that if there is one thing he likes better than the sound of his own voice it’s the sight of his own face.

29th April 1955

Hardships of a draftsman – Rowlatt’s comment on joke by Mr Justice Pearce²⁴ at Royal Academy dinner (I am only going to make a short speech – if you want to know what that means I refer you to the Finance Act 1940, s. 13(1): ‘short lease’ means a lease which is not a long lease): ‘This was drafted just when things were getting difficult in the war and there seemed (in the time) no better way of saying it. *Punch* took it up immediately but I little thought it would provide a witticism at a Royal Academy banquet 15 years later’.

14th June 1955

I asked Krusin what he thought of the recent remark by Lord Radcliffe²⁵ about modern ‘opportunist’ legislation to the effect that it ought to be called ‘sub-law’ or ‘para-law’ because it was not on the same level as true law (e.g. the common law). SMK thought the idea of true law just ‘sentiment’! This shows how right Radcliffe is. My humble efforts to make Bills conform to legal principle rarely succeed – expediency wins the day. E.g. on the Copyright Bill²⁶ I have tried to have definitions of copyright (wrongly inserted in the Copyright Act 1911) omitted as a man does not need to be given a ‘right’ to publish a book he has written, but needs a right not to have it copied, which can be done in terms of infringements. I managed this with the Copyright and Television Exhibiting Right Bill, which was killed after Second Reading by the General Election.

21st July 1955

Krusin (who according to Rowlatt is a Russian Jew) came out with a wonderful Irish bull: ‘If I’m going to turn a blind eye to anything, I like to do it with my eyes open.’ I know what he means.

12th October 1955

The same sort of thing creeps into Krusin’s Bills occasionally. E.g. (in the Copyright Bill) a reference to what is to happen if the publisher of a book is dead at the time of publication, and to 25 years from X or 10 years from Y, ‘whichever is the longer’.

Anyone studying hygiene should come to this Office. You don’t know what dirt is, or how it should be treated, until you’ve seen a ‘devil’ at close quarters!²⁷

13th October 1955

My article on Lord Justice Denning made no small stir. Most articles in the MLR make a *small* stir, but mine appears to have made no stir at all!²⁸

28th November 1955

Rowlatt has been asked to ‘vet’ Pakistan’s new constitution, and he wants me to look through it also. I never tackled anything I felt less equipped to do! The Paks have got a cheek I think –

²³ 1st and last Viscount Jowitt, Lord Chancellor 1945-51 (1885-1957).

²⁴ Later Lord Pearce of Sweethawes (1901-1990).

²⁵ 1st and last Viscount Radcliffe, Lord of Appeal in Ordinary (1899-1977).

²⁶ Later Copyright Act 1956.

²⁷ Junior counsel assisting seniors were known as devils.

²⁸ ‘Want of Consideration’ 16 MLR (1953) 441.

burning to renounce their allegiance to the Queen but only too glad to make use of her minions.

Should civil servants write to the press? Not *as* civil servants generally, but it is sometimes valuable to have an 'inside' view without it being revealed that it *is* an inside view. Otherwise the official viewpoint is apt to be under-represented and misunderstood. These reasons prompted me to write as 'Janus' (looking both before and behind!) in the *Estates Gazette* to refute some nonsense about the legal effect of s.33 of the Town and Country Planning Act, 1954.

1st December 1955

On looking at the Paks' bright new constitution I was amused to see that it contains such antiquated terms from the British constitution as 'Comptroller and Auditor-General' and 'puisne judge'; and that in setting up a central Exchequer fund they call it the 'consolidated' fund, a term which reflects nothing but Victorian public finance, and indirectly refers to earlier funds (not found in India) which were later 'consolidated'!

2nd December 1955

'I know that there was talk about gremlins in the Treasury, but I have never suspected that there were gremlins among Parliamentary draftsmen because they are tidy, particular and meticulous' – Mr F T Willey, MP²⁹ in Standing Committee A, 1/12/55.

4th July 1956

Sée³⁰ came into the room I am now sharing with A N Stainton³¹ to tell us that John Rowlatt died this morning in the street outside the Office (heart attack). Stainton turned pale, and my eyes filled with tears. 'This place,' said Sée, 'won't be any *fun* without John Rowlatt.' I had last seen him only yesterday evening, when he had typically consulted me 'on a question of taste' – about whether a marginal reference on a proof of an Act should be moved up a quarter of an inch.

20th August 1958

Another spell of indolence – but now a brief word about the last interval. On (I think) the first of this month the royal assent was given to three Bills I had more or less drafted myself – the first time this had happened to me. They were Agriculture, Park Lane Improvement and Insurance Companies. Agriculture was technical and arid: the only memories I retain are of Tom Williams, aged 70, looking passé in a perpetual wing collar and Tom Fraser³² throwing an unbound copy of the Agriculture Act, 1947 at Lord John Hope and hitting him in the face. No reaction at all and no apology from the lout Fraser.

Park Lane Improvement was a works Bill to pinch bits of Hyde Park and Green Park to turn Park Lane into a dual carriageway, build a Knightsbridge-Piccadilly underpass etc.³³ Furious because not allowed to use 'dispark' in relation to Hyde Park and Green Park, although it fitted perfectly. Lord Kilmuir³⁴ disliked it at legislation committee and Harold Watkinson³⁵ supported him. I think they thought I'd invented the word³⁶. No support from Hutton³⁷.

²⁹ Minister of Land and Natural Resources 1964-67 (1910-1987).

³⁰ Peter Henri Sée CB, Parliamentary Counsel to HM Treasury (1910-1963).

³¹ Later Sir Anthony Stainton KCB First Parliamentary Counsel to HM Treasury (1913-1988).

³² Minister of Transport 1964-65 (1911-1988).

³³ Passed as the Park Lane Improvement Act 1958.

³⁴ 1st and last Earl of Kilmuir, Lord Chancellor 1954-1962 (1900-1967).

³⁵ Later 1st and last Viscount Watkinson, Minister of Transport and Civil Aviation 1955-59 (1910-1995).

³⁶ As portions of Hyde Park, a royal park, were being taken for the new road it was strictly necessary to dispark them. In *Richard II* II.iii.i. Shakespeare has Richard complain to his tormentors: 'You have fed upon my Seignories, disparked my parks, and felled my forest woods'.

³⁷ Later Sir Noël Hutton KCB QC, First Parliamentary Counsel to HM Treasury (1907-1984).

Insurance Companies interesting because I had to argue before the Consolidation Committee with representatives of the British Insurance Association. Usually the meetings are formal. I also changed the short title reference from Assurance Companies to Insurance Companies, which at last brought it into line with the content.³⁸

The background to this period has been the Highways Bill. Honour³⁹ (over 70 and failing) has been a continual stumbling-block and the work has been mostly done by Ellice Eadie⁴⁰ and me. Lord Reading⁴¹ an excellent chairman of the expert committee.⁴²

Must record briefly that I visited Pakistan in February-March, 1956, to revise their draft constitution. The work was done in five weeks, after which I had a two-week tour of West Pakistan by the Khyber Mail chiefly.

A word about C H Chorley⁴³, who has been my boss for the past 18 months. Amusing, sometimes tiresome, lightweight. Likes sex. Told me he had been trying for years to gain access to Home Office pornographic library. Custodian horrified at Chorley's request, so Chorley waited for him to retire and then asked his successor, who told him it was 'very dull'. Chorley accepted this, but I suggested it was merely a slightly more sophisticated put-off.

Chorley was intrigued that I occasionally took services at the little Norman church of Farleigh near Warlingham in Surrey, whose former rectory I inhabit. Insisting I be properly dressed for these occasions in academics, he presented me with his Oxford MA hood, which was handsome of him.

³⁸ The Bill was passed as the Insurance Companies Act 1958.

³⁹ Benjamin Honour CB, Head of Highway Law Consolidation Branch, Ministry of Transport and Civil Aviation, 1953-1958 (1888-1961).

⁴⁰ Mrs Ellice Eadie CBE, later a Parliamentary Counsel.

⁴¹ 2nd Marquess of Reading, Minister of State for Foreign Affairs 1953-1957 (1889-1960).

⁴² The Bill was passed as the lengthy Highways Act 1959, the first tidying of highway law since 1835.

⁴³ Harold Chorley CB, later 2nd Parliamentary Counsel (1912-1990).