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Arnold Kean

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A TRANSPORT COLOSSUS: THE BRITISH EXPERIENCE

BY ARNOLD KEAN†

I. COMPARISONS AND SEMANTICS

"COMPARISONS ARE ODOROUS, *palabras*, neighbor Verges."¹ Shakespearean scholars disagree about the significance of *palabras*, Spanish for "words," in Dogberry's celebrated adage, but the writer who ventures on a comparative study, malodorous or not, had better be careful with his *palabras* or semantics. Indeed, the creation of a Department of Transportation (DOT) in the United States Government could be something of a shock for the unschooled Englishman, knowing as he does that transportation ceased in his country as long ago as 1867, when the Australian colonies refused to receive any more transported convicts. The present writer was alarmed when kindly hosts at the San Diego Assembly of ICAO informed him that arrangements for his transportation had been completed.

A. *Federal And Unitary Governments*

"Government" is an especially slippery word. The United States has fifty-one governments, we have only one; but pause for a moment: is there not another one lurking on Stormont in Northern Ireland, and yet another in the Isle of Man, where they still inject odd words of Old Norse? And what of the Channel Islands of Jersey, Guernsey, Alderney, and Sark, where Norman French is still to be heard? Can it be that we have been keeping quiet about our federal form of government?

The United Kingdom of Great Britain and Northern Ireland is, notwithstanding, a unitary state, which does not include the Channel Islands or the Isle of Man, though it accepts responsibility for, among other things, their defense and foreign relations. It includes England, Scotland, Wales, and Northern Ireland; but Northern Ireland, while represented in the United Kingdom Parliament at Westminster, also has its own Parliament which can legislate for any matters not specifically reserved to the Parliament of Westminster by the Government of Ireland Act 1920.² These reserved matters include such things as defense, foreign relations, air navigation, and shipping, but not inland transport. The bull point is that the Parliament at Westminster could alter this relationship at any time, and is sovereign in that it is not bound by the restrictions of a

† M.A., Queens' College, Cambridge, England; formerly Commonwealth Fund Fellow at the Harvard Law School; member of the Legal Committee of the International Civil Aviation Organization; Principal Assistant Solicitor at the Board of Trade.

¹ SHAKESPEARE, MUCH ADO ABOUT NOTHING, Act III Scene 5.

² 10 & 11 Geo. 5, c. 67.

written constitution, whether in respect of state rights, due process, the separation of powers, or any other feature which Americans take for granted. British government departments dealing with transport are the creatures of a sovereign parliament in a unitary state, and any comparison with similar bodies in the United States must be made against this different background. The British observer may be pardoned for expressing wonder at the immense learning and energy devoted in the United States to problems of jurisdiction and due process—witness the interesting and learned papers contributed by American delegates at the recent London Conference on Aircraft Noise, which were almost wholly devoted to these problems.

B. *Presidential And Cabinet Government*

The United States Government is a presidential system. Co-ordination within the government is approached by inter-departmental committees, but is ultimately achieved by the decision of the President, the sole master of the executive branch. The United Kingdom, on the contrary, has a system of government by a high and mighty committee, the Cabinet. The Prime Minister is as his title denotes *primus inter pares*. The Cabinet, with the Prime Minister as chairman, consists wholly of members of Parliament of high standing. It is the forum *par excellence* for major policy decisions, and co-ordination can be achieved by discussion in that forum. The fact that the different branches of transport (land, sea, or air) are within the jurisdiction of different Ministers of the Crown does not mean that there is no co-ordination; it means that, failing agreement at official levels,³ arguments about policy must be decided between Ministers, and if they cannot agree, by the Cabinet itself. If the different branches of transport are dealt with within the walls of the same government department, co-ordination may take place within those walls. The Churchillian variant was that of the "overlord," or Minister for the co-ordination of work in allied fields, who was above, but not of, the parallel departments. Lord Leathers was appointed by Churchill to be overlord of some of the economic Ministries, with the title of Secretary of State for the Co-ordination of Transport, Fuel and Power, an experiment which has not been repeated.

It follows, therefore, that the creation of a massive department to deal with all branches of transport, in place of separate departments, does not necessarily produce greater co-ordination; it may tend to shift co-ordination and disputes away from the Cabinet to another and lower level.

C. *The Role Of The Treasury*

The role of the Treasury is another element of co-ordination, ever present, because in the hierarchy of Whitehall the Treasury is a very senior department, exercising an inevitable and well-informed financial

³ In British English, politicians are not officials. In a government department, the civil servants are officials, but the Minister is not.

control over the policies of all other departments. Its far-reaching influence is not unlike that of the Bureau of the Budget in Washington.

Treasury control is not restricted to the expenditures of government departments, but extends to the capital expenditures of the nationalized industries, which in the United Kingdom occupy a large part of the field of transport. Each of these is a public corporation, and is neither the Crown nor a government department. It is not exempt from taxation and enjoys none of the privileges of the Crown. In aviation, there are three nationalized corporations: British Overseas Airways Corporation (BOAC), British European Airways Corporation (BEA), and the British Airports Authority, which was created in 1965 to operate the four major international airports.⁴ In inland transport the Transport Act of 1947⁵ created the British Transport Commission to run the railways, road haulage (trucking services), and inland waterways. Today, there has been a reorganization,⁶ but a portion of the road haulage is the only segment to have been returned to private enterprise. In shipping there is, and has been, only private enterprise, apart from the large short sea fleet operated by some of the nationalized transport industries across the English Channel and elsewhere. The statutes governing nationalized industries require their capital investment to be on lines settled in consultation with the appropriate Minister and with the approval of the Treasury.⁷ If the nationalized industry needs to borrow money, it must look to the Treasury for approval or for a guarantee, and this gives the Treasury a further lever of control.⁸ It will require Treasury loans for capital expenditure, unless it has been able to accumulate sufficient reserves, or alternatively, a Treasury guarantee. In consequence, the Treasury has several strings to its bow by which it can and does co-ordinate investment in the nationalized sector of transport.

II. THE BRITISH EXPERIENCE

It is against this background that the British experience must be viewed. Starting with the post-World War I period, the Ministry of Transport, despite its name, was set up to deal only with inland transport—roads, railways, and canals.⁹ Shipping was, and long had been, a matter for the Board of Trade, which is not surprising for an island kingdom dependent for its existence on overseas commerce. Such civil aviation as existed at the time was dealt with by the Air Ministry, the military department which fathered the Royal Air Force.

⁴ The Airports Authority Act 1965, c. 16.

⁵ 10 & 11 Geo. 6, c. 49.

⁶ The Transport Act 1962, c. 46.

⁷ For example, §§ 3(8) & 5(2) of the Air Corporations Act 1966, c. 11; § 3(2) of the Airports Authority Act 1965, c. 16.

⁸ For example § 6 of the Air Corporations Act 1966, c. 11; §§ 5 & 6 of the Airports Authority Act 1965, c. 16.

⁹ Ministry of Transport Act 1919, 9 & 10 Geo. 5, c. 50.

TABLE 1

1939						
Board of Trade		Ministry of Transport			Air Ministry	
Other Matters	Merchant Shipping	Railways	Highways and Road Traffic	Docks and Canals	Civil Aviation	Royal Air Force

At the beginning of World War II in 1939, shipping was divorced from the Board of Trade, and a separate Ministry of Shipping was set up, which had a brief existence until it was merged in the Ministry of War Transport. This large department, staffed mostly with shipping experts from the City of London, had jurisdiction over shipping and inland transport, while civil aviation (still under the wing of the Air Ministry) was necessarily reduced to the vanishing point for the duration of the hostilities. When the Chicago Conference met in 1944, the United Kingdom was represented by the Secretary of State for Air and officials of the Air Ministry. In 1945, however, the Ministry of Civil Aviation Act¹⁰ set up an independent Ministry of Civil Aviation, which turned out to be a compact body much smaller than most British government departments and in fact geographically located in a part of London remote from Whitehall. There were now two civilian departments, the Ministry of Transport, dealing with all forms of transport except aviation, and the Ministry of Civil Aviation which dealt with what was then an unaccustomed field.

A. *The British Colossus, 1953-1959*

It was in 1953 that the United Kingdom began an experiment in consolidation not unlike the establishment of the Department of Transportation by the United States. All forms of transport by land, sea, and air were for the one and only occasion placed under a single government department. The scope of that department's activities was much broader than that of the United States Department of Transportation. Unlike the DOT, the Ministry of Transport and Civil Aviation (MTCA)¹¹ had under its wing merchant shipping, including the coastguard (a body whose principal function is to report weather conditions and to rescue shipwrecked mariners). As is the present case, there existed little or no economic regulation of British shipping, and no independent regulatory commission. The MTCA also embraced inland transport. The Government of 1945-1951 had, as previously stated, nationalized the railways and the greater part of road haulage, as well as inland waterways and carriage by inland waterways, under the British Transport Commission. Partial control over the public corporations, which are the nationalized industries

¹⁰ 8 & 9 Geo. 6, c. 21 (1945).

¹¹ Civil aviation functions were transferred to the Ministry of Transport by the Transfer of Functions (Ministry of Civil Aviation) Order 1953 which changed the name of the Ministry of Transport to Ministry of Transport and Civil Aviation. STAT. INSTR. 1953, No. 1204.

in Great Britain, continued to be exercised by the Treasury. There was also a measure of control by the appropriate Minister who appointed the chairman and other members of the nationalized corporations.¹² He had power (which in fact was rarely exercised) to give the corporation general directions in the national interest,¹³ although day-to-day management was left to the corporation itself. He received their annual accounts and reports¹⁴ which he presented to Parliament for scrutiny by the Select Committee on Nationalized Industries, one of the few specialized standing committees of the House of Commons. Relations with the British Transport Commission were part of the functions of MTCA which have no parallel in the functions of DOT.

In 1951, some but not all of road haulage had been de-nationalized. It was subject to the licensing system under which traffic commissioners, appointed by the Minister but independent of him, provided economic regulation of inland freight and passenger services by fixing routes, charges and frequencies. There were and still are twelve traffic commissioners, each sitting in a different region of the country.¹⁵ They license passenger bus services, subject to an appeal to the Minister, and freight services, subject to appeal to an independent tribunal known as the Transport Tribunal,¹⁶ which formed and still forms no part of a government department and, therefore, resembles an American independent regulatory commission. It is presided over by a person of high standing in the legal profession. The MTCA had responsibility for the construction and maintenance of the national network of classified (*i.e.*, major) roads.

On the shipping side, the MTCA was responsible for the administration of the Merchant Shipping Acts, particularly for the regulation of safety, including the licensing of marine crews. Although, in dealing with foreign shipping relations, the Ministry took account of the economic interests of British shipping, there has never been a system of economic licensing. Anyone, British or foreign, can, as far as the law is concerned, set up as a carrier by sea.

As successor to the Ministry of Civil Aviation, the MTCA was responsible for regulating air safety, including the provision of air traffic control. It became the proprietor of most of the country's major airports. With the assistance of the Foreign Office, it negotiated traffic rights with foreign states and was responsible for the exercise of government control over the nationalized air corporations: British Overseas Airways Corporation and British European Airways Corporation, which provided the major part of British scheduled air transport, of which they had a

¹² Schedule 1 to the Air Corporations Act 1949, 12, 13 & 14 Geo. 6, c. 91. Schedule 1 to the Airports Authority Act 1965, c. 16.

¹³ Section 5 of the Air Corporations Act 1949, 12, 13 & 14 Geo. 6, c. 91; § 2(6) of the Airports Authority Act 1965, c. 16.

¹⁴ Sections 22 & 23 of the Air Corporations Act 1949, 12, 13 & 14 Geo. 6, c. 91; §§ 8 & 21 of the Airports Authority Act 1965, c. 16.

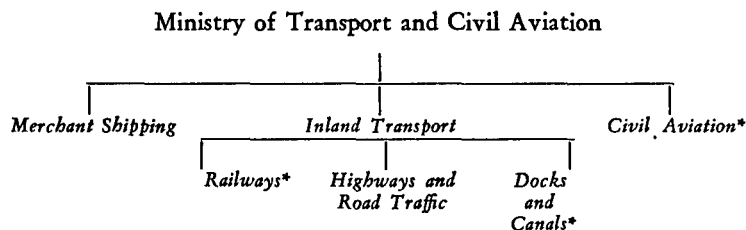
¹⁵ For the traffic commissioners, see Part III of the Road Traffic Act 1960, 8 & 9 Eliz. 2, c. 16 (a consolidation act).

¹⁶ See § 175 of the Road Traffic Act 1960, 8 & 9 Eliz. 2, c. 16.

statutory monopoly apart from such services as others might provide as associates of one or other of the corporations.¹⁷

TABLE 2

1953-1959



* Includes exercise of government responsibilities towards nationalized industries but not day-to-day management.

For the six years from 1953 to 1959 the Ministry of Transport and Civil Aviation was, in effect, even larger than the DOT in the range of its activities if not in the size of its staff. An opportunity was presented for co-ordination between land, sea, and air transport. What was achieved is necessarily a matter of opinion. In 1959, however, civil aviation was transferred from MTCA to the Ministry of Supply.¹⁸ This was the Ministry, created in 1939¹⁹ for war procurement purposes, which had continued after the war, with responsibility for the development and procurement of, among other things, both civil and military aircraft. The development and procurement of civil aircraft were grouped under one minister with the functions inherited from the original Ministry of Civil Aviation. The Ministry of Supply's name was changed, by the Order which affected the transfer of functions, to Ministry of Aviation.

B. The Present Position

The process of dismemberment has recently been carried further. Responsibility for shipping (not including docks, harbors, and inland waterways) has been transferred to the Board of Trade²⁰ and thereby put back where it had been prior to 1939. The Ministry of Transport still retains the inland transport functions it had in 1939, with the addition of general control over the nationalized railways and inland waterways, and the partially nationalized road haulage industry. All of these had been in private hands in 1939.

In the summer of 1966, the civil aviation functions of the Ministry of

¹⁷ Section 24(1) of the Air Corporations Act 1949, 12, 13 & 14 Geo. 6, c. 91. This monopoly ceased when that provision was repealed by the Civil Aviation (Licensing) Act 1960, 8 & 9 Eliz. 2, c. 38.

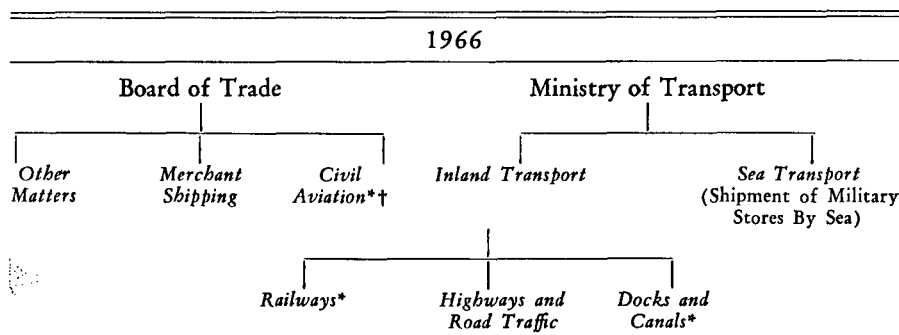
¹⁸ The Ministry of Aviation Order, STAT. INSTR. 1959, No. 1768.

¹⁹ The Ministry of Supply Act 1939, 2 & 3 Geo. 6, c. 38.

²⁰ The Transfer of Functions (Shipping and Construction of Ships) Order, STAT. INSTR. 1965, No. 145. The construction of ships has been transferred to the Ministry of Technology by the Transfer of Functions (Construction of Ships) Order, STAT. INSTR. 1966, No. 1410.

Aviation were transferred to the Board of Trade.²¹ In this way, shipping and civil aviation are now reunited in the same department, with results there has not yet been time to assess. The civil aviation functions are, however, more narrow in scope than those assumed by the Ministry of Aviation in 1959. The economic licensing of air transport has been put on a statutory footing by the enactment of the Civil Aviation (Licensing) Act 1960,²² which set up the Air Transport Licensing Board (ATLB), a body of nine members appointed by the responsible Minister to whom there is an appeal. The Board of Trade, as successor to the Ministry of Aviation, is the appellate authority (there is no further appeal to the courts). It can consult with the ATLB about foreign relations, and direct them to refuse a license if its grant would involve an inexpedient request for traffic rights from a foreign state. Tariff provisions, except for domestic services, are subject to confirmation by the Board of Trade.

TABLE 3



* Includes exercise of government responsibilities towards nationalized industries but not day-to-day management.

† Air traffic control provided jointly with Ministry of Defense (National Air Traffic Control Service).

The Board of Trade, unlike its predecessors, no longer owns and operates many airports of any consequence. A new nationalized corporation, the British Airports Authority, was established by the Airports Authority Act 1965,²³ and the four major international airports (Heathrow, Gatwick, Stansted, and Prestwick) were transferred to it. The Board of Trade exercises control over the British Airports Authority much to the same degree and by the same means as over BOAC and BEA. The Board of Trade, in conjunction with the Ministry of Defense, also provides the National Air Traffic Control Service (NATCS).

²¹ The Transfer of Functions (Civil Aviation) Order, STAT. INSTR. 1966, No. 741; The Transfer of Functions (Civil Aviation) (No. 2) Order, STAT. INSTR. 1966, No. 1015. The Prime Minister (Mr. Wilson) made the following statement in the House of Commons:

Whatever we do we have to divide some responsibility. Today, civil aviation is divided from shipping in the international field and from internal transport in the domestic transport field. What we are doing by this operation is to ensure that civil aviation, with its vast international ramifications, will be in the same Department as shipping, which also has great international ramifications. It would not be possible to amalgamate all these and domestic transport too. Hansard, Commons Debates col. 1665, 16 June 1966.

²² 8 & 9 Eliz. 2, c. 38.

²³ c. 16.

III. SOME CONCLUSIONS

One may conclude that in the United Kingdom co-ordination of transport does not necessarily depend on the grouping of functions within a single government department. There are means of co-ordination between departments. These elementary deductions may or may not be relevant for assessing the prospects for the United States Department of Transportation, which will operate in a different governmental environment and will exercise different functions. The grouping of shipping and civil aviation in the Board of Trade is a feature that does not appear in the American system. Finally, in the United Kingdom, transfers of functions between government departments are made not by statute but by subordinate legislation. These are Orders in Council made under the Ministers of the Crown (Transfer of Functions) Act 1946,²⁴ which are made by the Queen in Council and required to be laid before Parliament. If either House of Parliament prays against the Order within forty days it must be revoked, but a successful prayer is unusual. The Department of Transportation was, by way of contrast, set up not by an executive order but by an Act of Congress after a good deal of public debate. An Act of Parliament would similarly be required for setting up a new government department.

²⁴ 9 & 10 Geo. 6, c. 31.