

AN AUSTRALIAN IN THE PALACE OF THE KING-EMPEROR: JAMES SCULLIN, GEORGE V AND THE APPOINTMENT OF THE FIRST AUSTRALIAN-BORN GOVERNOR-GENERAL

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INTRODUCTION

The nomination in 1930 of an Australian, Sir Isaac Isaacs, as Governor-General of the Commonwealth of Australia has become a minor landmark in the development of Australian independence. Opposed or supported at the time as a measure of the strength of Australia's links with Britain, the appointment has become, for lawyers and historians alike, a test-case for Australian autonomy and the countervailing cultural and legal force of the imperial connection. The central collision between Australian Prime Minister James Scullin (who nominated Isaacs) and King George V (who resisted strongly) added to the constitutional interest of the appointment but contributed to the long closure to researchers of key parts of the documentary record.

For some, the story is a heroic one. This interpretation has its most vivid expression in the final volume of Manning Clark's *History of Australia*. In a chapter entitled 'An Australian in the Palace of the King-Emperor', Clark takes Scullin's meeting with the King in November 1930 as his theme and describes how 'Jimmy Scullin has not grovelled to the English governing classes ... Jimmy Scullin has spoken for the Australia that was coming to be.'¹ In more measured ways, John Robertson's biography of Scullin and Ross McMullin's history of the Australian Labor Party both make Scullin almost a lone champion fighting British resistance to Isaacs.²

The few extended discussions of the appointment of Isaacs place it in this imperial framework, with varying degrees of emphasis on closed-door negotiations among the protagonists, the hostile reaction of empire loyalist groups, and the seemingly inexorable growth of national autonomy. Zelman Cowen's biography of Isaacs and Christopher Cunneen's chapter on Isaacs in his study of Australian Governors-General down to 1936 drew on the available archival records and the public response to Isaacs's nomination in newspapers across the country. Gavin Souter, in his history of the Australian Parliament, covered much the same ground. Hilary Rubinstein investigated

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1 C M H Clark, *A History of Australia* (Melbourne University Press, 1962-87) vol 6, 359.

2 John Robertson, *J H Scullin: A Political Biography* (University of Western Australia Press, 1974) 238-9, 285-8; Ross McMullin, *The Light on the Hill: The Australian Labor Party, 1891-1991* (Oxford University Press, 1991) 167.

the organised opposition to Isaacs, using the papers of two leading conservatives, Sir James Barrett and Sir Harrison Moore.³

Documents showing what happened in private between Scullin and the King became available only gradually, and long after the event. Harold Nicolson's account in his 1952 biography of George V quoted from the King's diary and showed how the affair exasperated the King's private secretary, Lord Stamfordham (and Nicolson himself).⁴ This glimpse of the British records was almost the only one for many years, supplemented by a Canadian article little noticed in Australia.⁵ The Australian side of the negotiations was the first to emerge in detail, on the publication in the 1960s of memoranda by Scullin and Isaacs recording Scullin's discussions with the British government and the King.⁶

The United Kingdom Dominions Office file covering the first phase of the negotiations was released in 1981; the subsequent file on the final phase of the negotiations was opened only in 2004, and it is now possible to consult the extensive records on the appointment assembled by Stamfordham and deposited in the Royal Archives. These various records are the last, and most important, parts of the official British paper trail of the appointment. They trace the evolution of the King's attitude and suggest how and why (contrary to his own wishes and against strong and persistent recommendations from some of his advisers) he accepted Isaacs as Governor-General.

In broad outline, the story told in newspaper reports of 1930 – the Australian nomination, the King's resistance, the loyalist opposition – has been corroborated by the gradual release of archives. But revealing details continue to emerge. While Isaacs would not have become Governor-General without the refusal of Scullin and his cabinet to back down, it was not Scullin who persuaded the King to give in, but instead private advisors who operated largely outside the framework of cabinet government. In this as in other ways, the growth of Australian independence was a complex negotiation that involved British concessions in ways that were opaque even to some of the agents of change themselves.

BRITISH REACTION

The decision of the Australian cabinet to propose as Governor-General Sir Isaac Isaacs, a Justice (soon to become Chief Justice) of the High Court, reached the British

³ Zelman Cowen, *Isaac Isaacs* (Oxford University Press, 1967) 191–207; Christopher Cunneen, *Kings' Men: Australia's Governors-General from Hopetoun to Isaacs* (George Allen & Unwin, 1983) 173–82; Gavin Souter, *Acts of Parliament: A Narrative History of the Senate and House of Representatives, Commonwealth of Australia* (Melbourne University Press, 1988) 267–9; Hilary L Rubinstein, 'A Gross Discourtesy to His Majesty': The Campaign Within Australia, 1930–31 Against Sir Isaac Isaacs' Appointment as Governor-General' (1998) 14 *Australian Jewish Historical Society Journal* 425.

⁴ Harold Nicolson, *King George the Fifth: His Life and Reign* (Constable, 1952) 477–82.

⁵ J R Mallory, 'The Appointment of the Governor General: Responsible Government, Autonomy, and the Royal Prerogative' (1960) 26 *Canadian Journal of Economics and Political Science* 96.

⁶ L F Crisp, 'The Appointment of Sir Isaac Isaacs as Governor-General of Australia, 1930: J H Scullin's Account of the Buckingham Palace Interviews' (1964) 11 *Historical Studies Australia and New Zealand* 253; Cowen, above n 3, 200–2.

government in March 1930.⁷ Once the Australian government committed itself to the nomination, what counted was its reception in London, by the British government, the King and the Imperial Conference, the gathering of representatives of Britain, India and the self-governing dominions whose long agenda for its October–November 1930 meeting included the procedure for the appointment of Governors-General.

This response emerged gradually over the following months. Prime Minister Ramsay MacDonald, who took over the initial correspondence from his Secretary of State for Dominion Affairs, raised objections and requested delay. MacDonald, preoccupied like Scullin by the deepening financial crisis of the Depression, found himself caught between, on the one hand, the claims of Australia, the Irish Free State and South Africa to nominate their Governors-General, and, on the other, a rearguard action by the King to claim the power of selection.

The King (as Stamfordham told the outgoing Governor-General, Lord Stonehaven) was 'horrified' by the Australian government's action:⁸

the whole situation staggers the King and one wonders whether, if Scullin has his way, the State Governors will not all resign, and one also questions whether this is not the beginning of the break-up of the Empire.⁹

The King's reaction was instinctive, and he said little in private about his reasons. Unlike the approach of the Australian government, the King's thinking about the vacancy began, not with a nominee, but with the question of process. Prompted by Stonehaven, Stamfordham had put his thoughts on paper the previous November:

Now that Governors General are divested of all *political* power and responsibility surely more than ever the appointments ought to be made irrespective of any party or political consideration, and that [sic] the *King's* wishes should prevail ...¹⁰

Stamfordham's assistant, Sir Clive Wigram, passed this on to the King, who was out of London:

His Majesty quite agrees with what you say, but the difficulty is to get the various Prime Ministers of the Dominions to surrender their prerogative of selecting a Governor General. It would be much better from every point of view if The King selected his own Representative, and the Dominions would benefit.¹¹

Wigram duly told Stonehaven, who agreed: 'I believe that ninety-nine per cent of His Majesty's subjects would much rather trust the King's judgment about men than that of his Ministers, whatever party they belong to'.¹²

⁷ Telegram from Lord Stonehaven to Lord Passfield, 28 March 1930, The National Archives of the UK (TNA): Public Record Office (PRO) DO 121/42 Dominions Office and Commonwealth Relations Office: Private Office Papers, Correspondence Leading to the Appointment of Sir Isaac Isaacs as Governor-General of Australia, 376.

⁸ Telegram from Lord Stamfordham to Lord Stonehaven, 6 April 1930, Royal Archives (RA) PS/GV/L 2293/46. Documents in the Royal Archives are cited by permission of Her Majesty Queen Elizabeth II.

⁹ Letter from Lord Stamfordham to Lord Stonehaven, 8 April 1930, RA PS/GV/L 2293/49.

¹⁰ Letter from Lord Stamfordham to Sir Clive Wigram, 26 November 1929, RA PS/GV/L 2293/9.

¹¹ Letter from Sir Clive Wigram to Lord Stamfordham, 27 November 1929, RA PS/GV/L 2293/10.

¹² Letter from Lord Stonehaven to Lord Stamfordham (extract), 8 January 1930, RA/PS/GV/L 2293/12.

Scullin had claimed (on the basis of the decisions of the Imperial Conference of 1926) that it was his responsibility to advise the King on the appointment of the Governor-General:

The Report of the Committee as adopted by the Conference seems to me very clearly to indicate that the understanding reached in regard to the tendering of advice to His Majesty in relation to Dominion affairs extends also to advice in relation to the appointment of Governors-General.¹³

MacDonald disagreed: '[t]he conclusion which I draw from these proceedings is that the Conference did not contemplate substantial variation of the then existing procedure with regard to the appointment of Governors-General.'¹⁴ He also objected to Isaacs on account of his age (Isaacs turned 75 in 1930). After the exchange of several long telegrams, Scullin agreed to postpone the appointment until the Imperial Conference.

MacDonald's Attorney-General, Sir William Jowitt, gave ambivalent support to MacDonald's attempts to preserve some degree of British government influence in the selection process. In a long memorandum of advice written for MacDonald and given to the King, Jowitt wrote that the British government would 'apparently' be 'a party to any advice which may be given'. For this conclusion he relied on the statement of the Secretary of State for Dominion Affairs at the 1926 Imperial Conference that 'it would be generally agreed as in the interests of the Dominions themselves that His Majesty's Government in Great Britain should be a party to advising the King on the appointment of Governors-General'.¹⁵

Jowitt was more confident about the King's power of veto over nominations for the office. Before 1926, he wrote, the King was entitled to discuss any nomination 'most fully', and if he was not satisfied that the nominee was suitable, 'he was acting constitutionally in declining to give his approval'. Both propositions were still true, and indeed 'the King's position is stronger now than it was before 1926', since the Governor-General was now more than ever the King's personal representative. If the King rejected the nominee of a British Prime Minister who was unwilling to nominate someone else, the Prime Minister would resign, and this doctrine 'presumably' applied also to the Dominions, but it was 'of course, almost certain that any of the King's Prime Ministers would endeavour to carry out the King's wishes rather than to force the issue of resignation'.¹⁶ The King liked the memorandum: '[t]his is very clear & ought to be most useful in dealing with questions like this in the future. The decision come to in 1926 conference [sic] should be ammended [sic] or made much clearer so that I will know where I am'.¹⁷

¹³ Telegram from James Scullin to Ramsay MacDonald, 16–17 May 1930, National Archives of Australia (NAA): Prime Minister's Department, CP290/1, Papers Collected in the Offices of the Secretary and the Prime Minister, Bundle 1/23, Miscellaneous Papers re Establishment of Governor General etc.

¹⁴ Telegram from Ramsay MacDonald to James Scullin, 23 April 1930, NAA: CP290/1, Bundle 1/23.

¹⁵ The Appointment of Dominion Governors General: Memoranda by the Dominions Office, TNA: PRO CAB 32/73 Cabinet Office: Imperial and Imperial War Conferences: Minutes and Memoranda, Cabinet Committee on Policy: Memoranda 34–54, IEC 30(38), 36.

¹⁶ *Ibid.* 40.

¹⁷ Note by the King, undated, RA PS/GV/L 2293/67.

As part of preparations for the Imperial Conference of 1930, a British cabinet committee discussed the position the government would take on the appointment of Governors-General. Stamfordham attended one of its meetings. Jowitt was more convinced than ever about the King's power of veto: '[t]he appointment of a Governor-General was not a matter in which advice in the technical sense could be tendered. The decision in such cases was His Majesty's decision, who must be entitled to determine who his Personal Representative should be.'¹⁸

But MacDonald, backed by the Dominions Office, effectively conceded the point he had earlier contested with Scullin, by telling the cabinet committee that the dominion Prime Minister would now be responsible for advice to the King on the appointment of the Governor-General. Stamfordham failed in his repeated attempts to get the committee to channel dominion ministerial advice through the British government.¹⁹ All that was left for the King was reassurance that names should be discussed with him before being formally submitted and that he could reject a nominee at that stage. None of this gave much comfort to him in dealing with Scullin, who had put forward only one name and already seemed unwilling to consider any other.

Australia was not alone in making the claim, and MacDonald later changed his stance. Ahead of the Imperial Conference, the Irish Free State and South Africa both lodged formal submissions. South Africa's laid down the principle that their ministers only, and not the British government, would formally advise the King on the appointment of a new Governor-General.²⁰ To the same effect was a submission from the Irish Free State on the channel of communication between its ministers and the King, although it did not address the particular question of the appointment of the Governor-General.²¹

Departmental advice shepherded MacDonald and the King in the same direction. In May, the King got Stamfordham to pass on a report of an Empire Day speech in which the Chief Justice of the Supreme Court of Victoria questioned the right of Australian ministers to advise the King, but the Dominions Office reply was discouraging:

it seems, at any rate, clear that it is impossible for an appointment as Governor-General to be made which is not in accord with the wishes of the Dominion Prime Minister concerned who must therefore determine, in the last resort, the advice to be tendered to the King.²²

The July cabinet committee meeting confirmed the bleak outlook for any royal attempts to make a personal choice or to channel advice through British ministers. Its conclusions were reflected in Dominions Secretary J H Thomas's summary for cabinet (in September 1930) of the positions Britain would take at the Imperial Conference. He

¹⁸ Imperial Conference and Economic Conference 1930, Policy Committee, minutes, 14 July 1930, TNA: PRO CAB 24/213 War Cabinet and Cabinet: Memoranda (GT,CP and G War Series), CP 233(30), 308.

¹⁹ Ibid.

²⁰ NAA: Governor-General, A11583, Volumes of Minutes, Notes and Papers relating to Imperial Conferences, Imperial Economic Conferences and Imperial Meetings, 18, Imperial Conference 1930 – 'E(30)' Series – Memoranda, E(30)12.

²¹ Ibid E(30)21.

²² Letter from E B Boyd to Lord Stamfordham, 30 May 1930, TNA: PRO DO 121/42, 47. See 'Governor-General', *The Argus* (Melbourne), 26 May 1930, 7; William Irvine, 'The Crown and the Dominions' (1930) 51 *English Review* 695.

conceded to the dominion Prime Ministers the 'ultimate responsibility' for advice to the King on the appointment of a Governor-General. At the same time, he emphasised the need for informal consultation with the King ahead of formal advice (including the King's right to reject or suggest names at this stage), and he aimed to preserve 'complete freedom of consultation and discussion' ahead of a formal recommendation, leaving an opening for the King to consult with the British government. Governments other than that of the dominion concerned could also give informal opinions about any of their employees or residents nominated as Governors-General.²³

In October, with the King's approval, Stamfordham met Thomas's private secretary to convey the strength of the King's opposition to Isaacs, and to gauge the extent of Thomas's support. As Stamfordham wrote to Wigram, 'if I find that he has become lukewarm and advocates giving in, it will be hopeless for the King to say no'.²⁴ The result was unsatisfactory. Thomas wanted merely to wait while the Imperial Conference continued, leaving Stamfordham to grumble about the government's lack of resistance to dominion demands: 'the policy of the Dominions Office was one of want of courage', he told Thomas's private secretary.²⁵

The deliberations of the Imperial Conference confirmed the gloomy Buckingham Palace prognosis. 'Of one thing I am sure, and that is that at the forthcoming Imperial Conference the Dominion Prime Ministers will win all along the line and get what they want', Wigram wrote to Stonehaven in August.²⁶ Governors-General were a minor topic in a conference preoccupied with economic issues and defence, but the claims of Australia, the Irish Free State and South Africa prevailed, with British support. Jowitt veered between advocacy for the King's prerogatives and asserting ministerial responsibility. He told a meeting of principal delegates on 2 October: 'in this matter the King was not obliged to take the advice of any Government'.

The Governor-General, since 1926, is not the representative of any Government but is in the same position in respect of the Dominion as the King in respect of the United Kingdom. Since British Ministers have no right to alter the succession, Dominion Ministers have no right to appoint the Governor-General.²⁷

When the committee to which the issue was referred met a week later, Jowitt backtracked but tried to preserve the King's rights through the preliminary consultations in which Scullin had shown so little interest. 'A constitutional monarch has always to be sheltered by advice. It must never be the King who takes the blame', he told the committee – but also 'there was a hundred years of precedent for the fact that if the King objects to an individual, he is not pressed in the matter – but another name is submitted to him'.²⁸ (Jowitt omitted the case of Herbert Gladstone, forced on

²³ Memorandum by the Secretary of State for Dominion Affairs, TNA: PRO CAB 24/214, CP 298(30), 361.

²⁴ Letter from Lord Stamfordham to Sir Clive Wigram, 17 October 1930, RA PS/GV/L 2293/264.

²⁵ Memorandum from Lord Stamfordham to the King, 20 October 1930, RA PS/GV/L 2293/265.

²⁶ Letter from Sir Clive Wigram to Lord Stonehaven, 9 August 1930, Papers of John Lawrence Baird, Viscount Stonehaven, National Library of Australia (NLA) MS 2127/2/272.

²⁷ Brief Record of Meeting of Principal Delegates, 2 October 1930, NAA: Department of External Affairs, Central Office, A981, Correspondence Files, Alphabetical Series, IMP 131, Imperial Conference 1930: Reports of Proceedings, 16.

²⁸ Record of Meeting of the Sankey Committee, 9 October 1930, NAA: A981/IMP 131/4.

Edward VII as Governor-General of South Africa in 1909 by the British government. A Labor member used this example in Parliament in Canberra two months later.)²⁹

Although the representatives of Canada and New Zealand were content with a system that put a panel of names to the dominion or left the King to make the final choice, the chair, Lord Sankey, the Lord Chancellor, guided the committee to the conclusions later endorsed by the conference: ministerial advice on the appointment would come exclusively from the dominion concerned, but informal discussion with the King would precede it. If a dominion government wanted to continue to use the British government as its channel of communication, it could do so.³⁰

SCULLIN IN LONDON

Where that left Isaacs was now to be worked out. Before Scullin arrived, Wigram thought that he would be easily persuaded by the formidable array of opponents he would encounter on this, his first visit to London. He wrote to Stonehaven:

I do hope that not an inch will be surrendered to Mr. Scullen's [sic] preposterous demands. He will be tamer when he arrives home and finds The King, the Prime Minister, the Attorney General and the Dominions Minister all on one side, but I expect he is in a funk of facing such a situation, and wants to force a decision before he reaches this country.³¹

Back in Canberra, Keith Officer, adviser in the Department of External Affairs, likewise thought that Scullin could be talked round in London, and he told Stonehaven so, when Stonehaven summoned him to Sydney to hear the Governor-General's concerns about his successor and other matters (Officer crossed the harbour in the vice-regal barge).³² Officer wrote to the Australian government's liaison officer in London, Richard Casey:

I thought a situation agreeable to all could be found when Scullin reached England if steps were taken to bring him in contact with really suitable men whom he might consider for the office.³³

The King, MacDonald and Thomas did try to dissuade Scullin in London, but they were not exactly on the same side, and their efforts were much less successful than Wigram hoped. Once the British cabinet had decided to endorse dominion ministers as the source of advice to the King on the appointment of Governors-General, MacDonald and Thomas became merely emissaries conveying the King's disapproval of Isaacs. They no longer tried (as MacDonald had at first, if half-heartedly) to deflect Scullin's claim to advise the King.

MacDonald believed the King was reasonable in wanting personal acquaintance with the next Governor-General, but he tried to moderate some of Stamfordham's arguments against the appointment. In particular, he warned against taking the line that Isaacs was ineligible because he had been a politician:

²⁹ Philip Magnus, *King Edward VII* (Dutton, 1964) 443; Commonwealth, *Parliamentary Debates*, House of Representatives, 5 December 1930, 1075-6 (R A Crouch).

³⁰ Record of Meeting of the Sankey Committee, 9 October 1930, NAA: A981/IMP 131/4; Imperial Conference 1930: Summary of Proceedings, NAA: A11583/18/E(30)41, 20.

³¹ Letter from Sir Clive Wigram to Lord Stonehaven, 23 June 1930, NLA MS 2127/2/246.

³² Keith Officer, pocket diary, 20-1 June 1930, Papers of Keith Officer, NLA MS 2629/2/13.

³³ Letter from Keith Officer to Richard Casey, 25 June 1930, TNA: PRO DO 121/43, 36.

The reply to that is rather fatal, namely, that we have sent out party politicians for generations as Governor-Generals, and instances can be given of these Governor-Generals, whilst representing His Majesty, making their political views known, or in any event allowing them to influence their actions. It is an argument which cannot bear public examination.³⁴

MacDonald's relations with Stamfordham were bad for other reasons, and this warning had no effect.³⁵

The King reiterated to both MacDonald and Thomas (for communication to Scullin) the strength of his opposition to Isaacs; they duly told Scullin that the King would not accept his advice.³⁶ But behind this strong show of opposition, Stamfordham was reassessing the King's options, as the decisions of the Imperial Conference left Scullin clearly endorsed as the source of constitutional advice on the appointment. If (as now seemed likely) Scullin stuck to Isaacs as his sole nominee, should the King accept his advice?

The King considered several courses of action, none of them very appealing. He and Stamfordham were both convinced, by the petitions they received from loyalist groups and by the letters of Stonehaven and others, that the appointment of Isaacs would be unpopular in Australia. Could this be used against Scullin in some way? As far back as May 1930, the King had wondered about getting Scullin to call a plebiscite on the issue, but MacDonald discouraged him:

The propaganda which would accompany a plebiscite would be bound to raise the issue of whether the wishes of the Australian Government or of the Government here – or, indeed, of His Majesty himself – were to prevail. If this question were to be put in the way it would be put, there would be only one verdict from the plebiscite; and, when it was given, it would have disastrous consequences.³⁷

According to Scullin, Stamfordham asked him, when they met in London, whether he would be prepared to hold a referendum. Scullin recorded his reply: 'Yes, and would, if necessary, be prepared to fight an election on the issue'.³⁸ By the time Scullin discussed Isaacs with the King, the idea had been dropped: 'he hastened to assure me

³⁴ Letter from Ramsay MacDonald to Lord Stamfordham, 30 October 1930, TNA: PRO 30/69/577 James Ramsay MacDonald and Predecessors and Successors: Papers, Colonial Appointments, Governor General of Australia, Viceroy of India, Governor of Tasmania, Correspondence.

³⁵ See Kenneth Rose, *King George V* (Weidenfeld and Nicolson, 1983) 350–1, and correspondence concerning the Viceroy of India, TNA: PRO 30/69/577.

³⁶ Letter from Ramsay MacDonald to Lord Stamfordham, 30 October 1930, TNA: PRO 30/69/577; Memorandum from Lord Stamfordham to the King, 17 October 1930, RA PS/GV/L 2293/262; Memorandum by James Scullin, undated, Papers of James Henry Scullin, NLA MS 356.

³⁷ Letter from Ramsay MacDonald to Lord Stamfordham, 19 May 1930, RA PS/GV/L 2293/98.

³⁸ Memorandum by James Scullin, undated, NLA MS 356. Stamfordham did not mention this in the record of his meeting; Memorandum from Lord Stamfordham to the King, 30 October 1930, RA PS/GV/L 2293/276.

that the last thing he desired was a referendum or public controversy', Scullin wrote.³⁹ MacDonald's advice prevailed:

Were he to go home and tell a story of being thwarted at the Palace in what he conceives to be his right as the Prime Minister of Australia, there can be no doubt at all but that he would rouse a very dangerous agitation in the Dominion. The King's Prerogative as opposed to the right of the Prime Minister would be a deplorable issue.⁴⁰

Stonehaven agreed: 'Scullin's position in Australia is so difficult that it is logical to suppose that there is nothing that he would welcome more than an opportunity of resigning on a constitutional issue, and representing himself as standing up for "Australia's Rights".'⁴¹

The King even toyed with the idea of abolishing the office of Governor-General; perhaps, unhappy with the only nominee put to him to fill the position, he could refuse to appoint anyone at all. But the realisation that the office was created by the *Constitution*, not merely by letters patent issued by the King, quickly scotched this possibility, as Stamfordham wrote:

The idea of abolishing altogether the office of Governor General in Australia has suggested itself to the King in the last few days as a possible solution of the difficulty: but, judging from Sir Harrison Moore's article, this could not be done without upsetting the Constitution given to Australia in the Commonwealth Act.⁴²

As the options narrowed and the Imperial Conference approached its conclusion, Stamfordham began very quietly asking around, seeking informal advice largely outside the channels of ministerial responsibility. Scullin had no idea that this was happening, and even MacDonald was probably unaware of its full scope, although one of his ministers, the Lord Chancellor, Sankey, was among those Stamfordham approached. The exercise illustrated the point made by Sankey during the deliberations of the Imperial Conference (but omitted from its conclusions on the appointment of Governors-General): 'when names were put up to the King, it was up to him informally to take advice, although this should be exercised with discretion'.⁴³

From some, Stamfordham got the message that the King should stick to his guns: the Marquess of Crewe (a politician and former Secretary of State for the Colonies) and Baron Forster (Stonehaven's predecessor as Governor-General) both questioned the right of the Australian Prime Minister to advise the King.⁴⁴ But neither considered how the dispute would play out if the King kept to this line.

Even today, it is conceivable, although extremely unlikely, that the monarch would refuse advice to appoint a Governor-General; Vernon Bogdanor, for one, leaves the

³⁹ Memorandum by James Scullin, undated, NLA MS 356. This does not appear in Stamfordham's record of the King's meeting: Memorandum by Lord Stamfordham, 29 November 1930, RA PS/GV/L 2293/338.

⁴⁰ Letter from Ramsay MacDonald to Lord Stamfordham, 30 October 1930, TNA: PRO 30/69/577.

⁴¹ Letter from Lord Stonehaven to Lord Stamfordham, 2 December 1930, RA PS/GV/L 2293/358.

⁴² Letter from Lord Stamfordham to Sir Claud Schuster, 3 November 1930, RA PS/GV/L 2293/289.

⁴³ Record of Meeting of the Sankey Committee, 9 October 1930, NAA: A981/IMP 131/4.

⁴⁴ Memorandum by Lord Stamfordham, 31 October 1930, RA PS/GV/L 2293/277; Memorandum by Lord Stamfordham, 5 November 1930, RA PS/GV/L 2293/293.

possibility open.⁴⁵ Stamfordham explored what would happen next if the King took this step, and the answers were unwelcome although unsurprising to him. As Jowitt had said in his memorandum for MacDonald, if the King rejected a Prime Minister's advice, the consequence might be the resignation of the government. This was the message Stamfordham received when he consulted Sir Claud Schuster, the long-serving secretary of the Lord Chancellor's office. If the King rejects the Prime Minister's advice, he said,

it is open to the Ministers tendering the advice to resign & His Majesty is then under the necessity of finding other ministers.

Of course in this case no sensible body of ministers ought to resign. But, if a particular body of ministers refuse to be sensible, what remedy is there, & what is the King's position? His action, in that case, becomes the party cry in the ensuing general election.⁴⁶

Schuster was short of time and unwilling to shoulder the whole responsibility for this advice, so he suggested that Stamfordham should ask someone else: Hugh Macmillan, a newly appointed judicial member of the House of Lords. Stamfordham, probably unwilling to bring someone else into this highly sensitive discussion, was reluctant, but when Schuster again urged him to do so, he went ahead.

Macmillan responded with a long memorandum of advice. He began with the protection that ministerial responsibility gave the King:

His Majesty must act on the advice of some responsible Minister, that is, of some Minister who can be called upon to answer for the appointment. The King can do no wrong, and if an appointment is called in question the responsibility for it must be taken by a Minister, for His Majesty is not answerable.⁴⁷

He quickly dismissed the argument put by the Chief Justice of the Supreme Court of Victoria in his Empire Day speech: the *Constitution*, Macmillan pointed out, was silent on the way in which the monarch would appoint the Governor-General, and it must have been recognised at the time of its enactment that constitutional usage might change.

Macmillan disliked the idea of appointment on the advice of Australian ministers, even if it was constitutional:

It would seem inappropriate that it should be within the province of the Ministry for the time being to secure the appointment of its nominee to such an office, especially as the power to advise as to appointment must presumably carry with it the power also to advise as to removal.⁴⁸

But whether it was appropriate or not, it was now the way in which the Governor-General had to be appointed. Macmillan drew this conclusion from the Imperial Conference of 1926 and the advice that British ministers had given the King concerning the method of appointment (the Imperial Conference of 1930 was still meeting when he drafted his memorandum, and he made no reference to its decisions):

⁴⁵ Vernon Bogdanor, *The Monarchy and the Constitution* (Oxford University Press, 1997) 285.

⁴⁶ Letter from Sir Claud Schuster to Lord Stamfordham, 2 November 1930, RA PS/GV/L 2293/285.

⁴⁷ Memorandum by Lord Macmillan, 8 November 1930, RA PS/GV/L 2293/305.

⁴⁸ *Ibid.*

the present Prime Minister of this country has quite definitely accepted the position that he has now no say in the appointment of a Governor-General of Australia and has in effect so advised His Majesty.⁴⁹

So formal advice could come only from Scullin:

His Majesty can find no Minister to advise him and accept responsibility other than the Prime Minister of Australia, whose claim has been submitted by His Majesty's Ministers in this country as the outcome of the changes effected in 1926.⁵⁰

Scullin should have consulted the King before insisting on a single nominee:

In the present case there would appear to have been a complete disregard of these means of informally ascertaining His Majesty's pleasure. This should be pointed out.

But, if he continued to insist, should the King reject his advice?

The refusal, if followed by the Minister's resignation and an election, is in effect an appeal by the Sovereign to his people. If the appeal fails and the Minister is returned, the Crown is placed in a position of considerable humiliation and is shown to have misjudged the position.

...

I am of opinion, having regard to all the circumstances, that the case is not one in which it would be expedient to force an issue with the Prime Minister.

Stamfordham heard the same conclusion from Sankey, in conversation: the Lord Chancellor disapproved both of Scullin's selection and of the way he had put it to the King, but the nomination should 'undoubtedly' not be refused.⁵¹

The King now – before meeting Scullin – made his choice. Deeply though he disagreed with the appointment of Isaacs, the alternatives were even worse. He and Stamfordham found Macmillan's analysis of his situation, however unwelcome, more persuasive than the heartening but superficial advice from others to stand firm. The King talked to Macmillan, who then prepared a second memorandum, one that would guide the King's discussion with Scullin when they met.

The result was almost a script for the meeting, written by Macmillan in the King's voice: it began (with the thicket of respectful capitals customary in royal correspondence), '[t]his is the first occasion on which a recommendation for this high office has been made to Me by My Australian Prime Minister and marks an important innovation in constitutional procedure'.⁵² It summarised Macmillan's reasoning (the advice from the British government that dominion ministers would now advise the King; the failure to follow the practice of 'informal preliminary consultation'), and reiterated the objections to Isaacs: the King did not know him; he was 75; he had 'no previous experience in similar capacities'; and he had once been a politician. It concluded with a dignified and disapproving form of words with which the King could reluctantly concede:

If, notwithstanding these considerations you still tender to Me the same advice, I have to consider whether I shall accept it, having regard to the interests of my people in Australia which must be My main concern.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Memorandum by Lord Stamfordham, 7 November 1930, RA PS/GV/L 2293/302.

⁵² Memorandum by Lord Macmillan, 17 November 1930, RA PS/GV/L 2293/323.

In the circumstances I am not disposed to take the course of declining to make the appointment suggested but it must be understood that I make the appointment on the advice of the Prime Minister of Australia and notwithstanding the existence of the objections to which I have alluded and which I still entertain.⁵³

This was just what the King wanted: 'I have kept the document & think it excellent, please thank him again', he wrote to Stamfordham.⁵⁴

Meanwhile, Stamfordham's hope that personal persuasion could sway Scullin was fading. Thomas and MacDonald having failed, Stamfordham, Casey and finally the King himself tried to turn him around. Scullin and Stamfordham met on 30 October. Both left detailed records of their discussion. Scullin's recollections of the meeting make up much of a memorandum he typed or dictated to record the events in London leading to Isaacs's appointment.⁵⁵ Published in 1964, it covered much the same ground as notes by Isaacs himself (published two years earlier) that recorded what Scullin told him about events in London.⁵⁶ Scullin's memorandum was written at least a month after he talked to Stamfordham, since it includes his meeting with the King on 29 November. Stamfordham, on the other hand, wrote a long record for the King on the day of the meeting.⁵⁷

The two accounts agree on the main points, although their tone is different. Scullin includes more of the interchanges between the two men and shows more clearly the antagonism between them (Stamfordham later described Scullin as 'the embodiment of obstinacy and narrowminded self-assurance').⁵⁸ Most of the arguments were not new. Stamfordham deplored the change in procedure that led Scullin to submit only one name ('a pistol had been put at the head of the King', as Stamfordham put it); Scullin replied that the Prime Minister of South Africa had put forward only one name.⁵⁹ There is no mention of Ireland in Stamfordham's notes, but Scullin said he used the appointment of the Governor-General of the Irish Free State as a second precedent for the submission of a single name to the King: 'Lord Stamfordham [sic] threw up his hands and excitedly exclaimed: Do not talk to me about Ireland. That is a country of rebels and the man nominated for the position of Governor General was himself a rebel.'⁶⁰

⁵³ Ibid.

⁵⁴ Note by the King, undated, RA PS/GV/L 2293/322.

⁵⁵ Memorandum by James Scullin, undated, NLA MS 356; Crisp, above n 6. Although the document records Scullin's recollections, it is not clear when it was typed or by whom. The original document contains two slight indications, omitted from the published version, that the typist was not Scullin: a reference to Scullin in the third person ('Mr Scullin's speech in Hansard') and the misspelling of Stamfordham's name (as 'Stanfordham') throughout, a mistake more likely to be made by someone taking Scullin's dictation than by Scullin himself. Vagueness about dates ('About a week later', 'on a Saturday') hints that the document was written some time after the events it records.

⁵⁶ Memorandum by Sir Isaac Isaacs, 1 July 1931, Papers of Sir Isaac Isaacs, NLA MS 2755/9/1-4; Cowen, above n 3, 200-2.

⁵⁷ Memorandum from Lord Stamfordham to the King, 30 October 1930, RA PS/GV/L 2293/276.

⁵⁸ Letter from Lord Stamfordham to Lord Somers, 8 December 1930, RA/PS/GV/L 2293/377.

⁵⁹ Memorandum from Lord Stamfordham to the King, 30 October 1930, RA PS/GV/L 2293/276.

⁶⁰ Memorandum by James Scullin, undated, NLA MS 356.

Stamfordham circled warily around the fact that Isaacs was Australian. He denied that the King objected to him on this ground. Stressing the need for political neutrality was as close as he came to telling Scullin that an Australian was unacceptable. (The alternative nominees he and the King considered tell a clearer story, since they included no Australians.)⁶¹ Scullin responded (as Stamfordham's notes reveal) exactly as MacDonald foretold, retorting that 'many of the Governors General and Governors from England had come out steeped with their own Party politics and that these facts had been much commented upon in the Australian Press'.⁶² Isaacs had been out of politics since he became a judge in 1906.

When Stamfordham claimed that 'numerous petitions and addresses' and letters from 'the various Governors' showed public opinion was against the government, Scullin's reply was also predictable:

the addresses and petitions were worthless, the result of the agitation of one or two irresponsible people: he knew all about them and, on his side, had repressed any public demonstrations on behalf of the appointment and that, if he had organised any propaganda to that effect, there would be far more communications supporting his choice than anything we had received against it. As to the Governors, they did not know the feeling of the people and he appealed to me whether he, the Prime Minister of a Government chosen by the Australian people, was likely to be mistaken in their views and wishes?⁶³

It was just as well that Stamfordham did not mention another source of his information about Australian public opinion, Scullin's defeated predecessor, Stanley Bruce (who was in London for most of 1930). Perhaps here Stamfordham did heed one of MacDonald's warnings, given back in May:

I am sure that you will not take it amiss if I venture to make one observation upon the references which have been made both in conversation and now in your letter to discussion with Mr Bruce. You are, of course, aware of his position in Australia; and if in any way it became known that his views had at any time been invited either by His Majesty or by yourself, any hope of a satisfactory settlement of this thorny problem would be blown sky high at once.⁶⁴

The King's next messenger was Casey. As the Australian government's liaison officer in London, he was (officially at least) Scullin's point of contact with MacDonald and the British government. It was from Casey that cabinet had requested information about the procedure for selecting the Governor-General, back in February, and he was part of the Australian delegation to the Imperial Conference.⁶⁵ But Casey's relationship with the government was ambivalent. He had been appointed by Stanley Bruce, with whom he developed a close, almost filial, relationship, and his political beliefs were antagonistic to Labor; he resigned in 1931 to run for Parliament as a conservative. In

⁶¹ The King considered a list of peers but concentrated on Field Marshal Sir William Birdwood and, at the last minute, the King's brother-in-law, the Earl of Athlone: 'Names for consideration as possible Governors-General of Australia', RA PS/GV/L 2293/228; Letter from Lord Stamfordham to Lord Athlone, 6 November 1930, RA PS/GV/L 2293/301.

⁶² Memorandum from Lord Stamfordham to the King, 30 October 1930, RA PS/GV/L 2293/276.

⁶³ Ibid.

⁶⁴ Letter from Ramsay MacDonald to Lord Stamfordham, 19 May 1930, RA PS/GV/L 2293/98.

⁶⁵ Letter from James Scullin to Richard Casey, 28 February 1930, NLA MS 356.

London many in the socially exclusive high echelons of the civil service accepted him as one of their own. As Stonehaven (who probably encountered him in London before becoming Governor-General) put it, Casey 'is persona grata and knows everyone'.⁶⁶

As the dispute over the nomination of Isaacs continued, Casey acted as a go-between, trying to find a mutually acceptable alternative rather than working to implement the Australian cabinet's decision. Casey also kept the British government informed. When Keith Officer wrote recounting his meeting with Stonehaven (holding out the hope that Scullin would change his mind in London), Casey sent Officer's 'personal and very confidential' letter to the Dominions Office.⁶⁷

How much Scullin knew about this is unclear, but the surviving record implies that it was to Stamfordham, rather than his Prime Minister, that Casey spoke most openly. In three meetings with Stamfordham in November, Casey suggested alternative candidates he thought Scullin might be persuaded to accept. Like Stonehaven, Casey thought the King could trump Isaacs by proposing a member of the royal family as Governor-General (Casey suggested the Duke of York and the Earl of Athlone). He also raised the possibility of choosing an English Catholic, in the hope of appealing to the Roman Catholic majority in Scullin's cabinet; J H Thomas had made a similar suggestion. But Casey jumped at Stamfordham's proposal of Sir William Birdwood, British commander of Australian forces in World War I, as Stamfordham recorded:

Casey knows him and thinks Scullin would accept him if he, Birdwood, could afford to take it. I rubbed in all the 'Birdwood Lotion' I could produce: his popularity with the Australians, his distinguished Army Service, no politics, not a Peer, which probably a Labour Government would prefer. So I hope the King will approve of our going for Birdwood with all our force: and per contra oppose to the uttermost any idea of a Roman Catholic, which is just the sort of proposal which these people like Thomas think of, in order to square and placate Scullin – not calculating how very unpopular such an appointment might be to the majority of the Australians, who are not Roman Catholics.⁶⁸

At their next meeting, Casey offered advice about the arguments that had the best chance of dissuading Scullin when he met the King:

Casey said that he ventured to think the King, in giving his reasons against the appointment, should lay stress on the fact that any local man must of necessity have a political bias, and that, even when Chief Justice, Isaacs had taken a very prominent part in the Arbitration Courts between employers and employed. Also that the King should point out to Scullin that if this appointment is made it will create a precedent which other Dominions may wish to follow and that it would be perfectly impossible to find anyone in South Africa for instance who had not a leaning either to the Dutch or English side ...⁶⁹

The outcome of these meetings was a letter from Casey to Scullin which Casey discussed with both Stamfordham and the Dominions Office. It proposed Birdwood and reiterated the King's objections to Isaacs, but to no effect.⁷⁰

⁶⁶ Letter from Lord Stonehaven to J H Thomas, 30 June 1930, NLA MS 2127/1/474.

⁶⁷ Letter from Keith Officer to Richard Casey, 25 June 1930, NLA MS 2629/1/153-7 and TNA: PRO DO 121/43, 36.

⁶⁸ Letter from Lord Stamfordham to Alexander Hardinge, 15 November 1930, RA PS/GV/L 2293/319.

⁶⁹ Letter from Lord Stamfordham to Alexander Hardinge, 20 November 1930, RA PS/GV/L 2293/329.

⁷⁰ Letter from Richard Casey to James Scullin, 21 November 1930, NLA MS 356.

After this, Scullin's meeting with the King on 29 November 1930 was largely a matter of form. Scullin had no intention of agreeing to an alternative candidate as Governor-General: he told MacDonald that he could not go back to Australia with any name other than Isaacs, and although this declaration was partly tactical (it signalled to the British government and the King his unwillingness to back down), it also captured political reality.⁷¹ The unanimous cabinet decision to nominate Isaacs both bolstered Scullin's stance in London and precluded him from seeking alternatives. Once it had become public, Scullin could not agree to a different candidate without conceding an embarrassing defeat. He told Stamfordham that 'if he returned to Australia and announced the appointment of a Tory Governor General, he would be quickly turned out of office'.⁷²

For his part, armed with Macmillan's advice and given no comfort by the deliberations of the Imperial Conference, the King had decided to give in. Stamfordham even told Casey so, on 20 November:

I told Casey quite frankly that, if Scullin still pressed for Isaacs, the King would give his reasons, which His Majesty will by that time have carefully considered, for thinking it was not a good appointment: and, if Mr Scullin does not see his way to accepting Birdwood, His Majesty would no doubt act constitutionally and make Isaacs Governor General on Mr Scullin's advice, but that, naturally, His Majesty would leave on record his reasons for only doing so with reluctance.⁷³

Did Casey give Scullin this information? It seems unlikely. Scullin was away from London from 18 to 29 November, visiting Scotland and Ireland, and the only surviving letter between him and Casey concerning the Governor-General in this period is the one in which Casey repeated the King's objections to Isaacs and put forward Birdwood as an alternative. Its message, framed in consultation with Stamfordham, would have been negated by any indication that the King was willing in the final resort to do as Scullin asked. The subtext of Stamfordham's record of his meeting with Casey is that Casey was acting in the King's interests rather than Scullin's. Making the most persuasive case for abandoning Isaacs appeared to be Casey's aim.

Stamfordham was not present when the King talked to Scullin, but on the same day he recorded in a memorandum what the King had told him about the meeting. According to Stamfordham, Scullin praised Isaacs to the skies:

He informed the King that in his choice of Sir Isaac Isaacs he had found the greatest Chief Justice and probably the greatest man that Australia had yet produced, both in character and in intellect: and that his appointment would be welcomed by the general public.⁷⁴

The King recapitulated the now familiar objections:

The King pointed out to Mr Scullin the new departure taken in the initiatory phases of this question — when Mr Scullin was asked merely the type of person he would like to see as Governor General, he did not reply to this question but stated that he wished for one man and one man only, namely Sir Isaac Isaacs, and in doing so had departed from the time-honoured custom of informally suggesting names to the Sovereign in order to

⁷¹ Letter from Ramsay MacDonald to Lord Stamfordham, 30 October 1930, TNA: PRO 30/69/577.

⁷² Letter from Lord Stamfordham to the King, 30 October 1930, RA PS/GV/L 2293/276.

⁷³ Letter from Lord Stamfordham to Alexander Hardinge, 20 November 1930, RA PS/GV/L 2293/329.

⁷⁴ Memorandum by Lord Stamfordham, 29 November 1930, RA PS/GV/L 2293/338.

ascertain whether such persons were likely to be acceptable: and, moreover, that in the history of this country there was no record of the King's wishes in such cases being ignored. The King added that Sir Isaac Isaacs, who would be more than ever His Majesty's representative, was personally unknown to him: that he was 75 years of age and that no Australian could be selected without having some party bias, local or social, from which a Governor General coming from another part of the Empire would be free.⁷⁵

Scullin cited the precedents of the Irish Free State and South Africa:

Mr Scullin also referred to Ireland: but the King in effect said, Ireland is a spoilt child and, after making a Treaty with the Free State she had to be humoured: but does Australia with her traditional loyalty to the Throne wish to be compared with Ireland, where, alas!, a considerable element of disloyalty exists?⁷⁶

After a change of government, the King said, 'the new Prime Minister might wish to have a new Governor General'. And how in future would the Prime Minister in Canberra tender advice to the King in London? Scullin replied only that this difficulty 'would have to be well considered'. When asked where the Governor-General would live, Scullin replied that his residence would be in Canberra (Stonehaven's three residences, in Canberra, Melbourne and Sydney, could not survive the prevailing budget cuts). The King deduced, with evident disapproval, that when the Governor-General travelled he would now have to stay with the local Governor or 'live in an hotel'.⁷⁷

Scullin denied that he had offered the appointment to Isaacs, but this was evasive. It was not Scullin himself, but the Attorney-General, Frank Brennan, who had approached Isaacs, and perhaps Brennan merely asked if he would be interested, without making a definite offer. The substance, however, was the same. Scullin now shot off a telegram asking Isaacs if he would accept the appointment. Maybe Isaacs was surprised to be offered something he thought he had accepted nine months earlier; at any rate, his affirmative reply met the King's implied request and allowed the machinery of appointment to start moving.⁷⁸

Writing to MacDonald the same day, Stamfordham added some salient points. The King had suggested Birdwood as an alternative, but Scullin refused. And the King had given an additional reason for deciding not to reject Scullin's advice: that he did not want to provide an opportunity for agitation by 'an ill-disposed minority' in Australia. (Stamfordham explained who the minority were: 'Trades Unionists, Communists and Irish, not of the highest class'.)⁷⁹ The conversation, Stamfordham added in a second letter, 'was throughout entirely friendly and Mr Scullin was strictly courteous'.⁸⁰

Scullin's briefer record of the meeting agrees in substance, but it shows how the King departed from the stately and ponderous language drafted by Macmillan:

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Telegram from James Scullin to Sir Isaac Isaacs, 29 November 1930, NAA: CP290/1, Bundle 1/23; telegram from Sir Isaac Isaacs to James Scullin, 1 December 1930, NAA: CP290/1, Bundle 1/23.

⁷⁹ Letter from Lord Stamfordham to Ramsay MacDonald, 29 November 1930, RA/PS/GV/L 2293/340.

⁸⁰ Letter from Lord Stamfordham to Ramsay MacDonald, 29 November 1930, RA/PS/GV/L 2293/341.

He said: It is now 30 years since I opened the Commonwealth Parliament in Australia. Since then we have sent many Governors, Commonwealth and State, and I hope they have not all been failures.⁸¹

As Scullin recalled it, the King's concession of defeat was also pithier than Macmillan's script:

After about 45 minutes discussion the King said: I have been for 20 years a monarch and I hope I have always been a constitutional one, and being a constitutional monarch I must, Mr Scullin, accept your advice which, I take it, you will tender to me formally by letter.⁸²

On the other hand, the King's closing words had a sting that Scullin omitted: 'if you will send the ordinary submission I will approve it, but I repeat that I do not like the appointment'.⁸³ It was as Stamfordham told Macmillan: 'Mr Scullin has seen the King and won all along the line!'⁸⁴ Wigram wrote to Stonehaven: 'it is rather galling to be defeated after these months of scrapping'.⁸⁵

Stamfordham looked for a form of words that would subtly disclose the King's disapproval in the announcement of Isaacs's appointment. In past announcements, the King had been 'pleased to appoint' or 'pleased to approve of the appointment' of the Governor-General.⁸⁶ Again, Macmillan came up with the solution:

His Majesty the King on the recommendation of the Right Honourable J H Scullin, Prime Minister of Australia, has appointed the Right Honourable Sir Isaac Alfred Isaacs, KCMG, Chief Justice of Australia, to the office of Governor-General of the Commonwealth of Australia in succession to Lord Stonehaven. The date on which Sir Isaac will assume office will be announced later.⁸⁷

As Stamfordham wrote to the King: 'Your Majesty constitutionally "approves", but actually disapproves: but You appoint.' The King liked the idea: 'I entirely agree', he wrote on Stamfordham's memo.⁸⁸ When Sir Robert Garran, the Australian Solicitor-General (and a delegate to the Imperial Conference), presented Stamfordham with an announcement in the usual form, he was met with the draft approved by the King.⁸⁹ The *Times* noted the variation and drew the intended conclusion.⁹⁰

⁸¹ Memorandum by James Scullin, undated, NLA MS 356.

⁸² Ibid.

⁸³ Letter from Lord Stamfordham to Lord Macmillan, 29 November 1930, RA/PS/GV/L 2293/342. The original submission, signed by Scullin and marked 'App'd' by the King, is in NAA: Department of External Affairs, Central Office, A461, Correspondence Files, Multiple Number Series, E7/1/2, Governor-General: Appointment of Sir Isaac Isaacs.

⁸⁴ Letter from Lord Stamfordham to Lord Macmillan, 29 November 1930, RA/PS/GV/L 2293/342.

⁸⁵ Letter from Sir Clive Wigram to Lord Stonehaven, 4 December 1930, NLA MS 2127/2/276.

⁸⁶ *The London Gazette* (London), 11 August 1925, 5362; Press notice, 12 February 1930, TNA: PRO PREM 5/59 Prime Minister's Office: Patronage Papers, Appointment of Lord Clarendon to Governor General of South Africa.

⁸⁷ 'Australia', *The Times* (London), 3 December 1930, 14.

⁸⁸ Memorandum from Lord Stamfordham to the King, 1 December 1930, RA/PS/GV/L 2293/350; Note by the King, undated, RA/PS/GV/L 2293/351.

⁸⁹ Letter from Lord Stamfordham to Sir Clive Wigram, 2 December 1930, RA/PS/GV/L 2293/354.

⁹⁰ 'Mr Scullin's Choice', *The Times* (London), 3 December 1930, 15.

CONCLUSION

With that, apart from a brief flurry of legal opinions about the validity of the sealing of Isaacs's commission, the battle was over.⁹¹ Isaacs himself created one last obstacle. As Chief Justice, he had life tenure and evidently intended to serve for some years, but as Governor-General, with an uncertain term of office, he would lose his judicial salary and renounce (for the time being) his judicial pension. It seems he privately agreed with Scullin's critics and feared that a change of government might now mean a change of Governor-General. He extracted a letter from Scullin purporting to guarantee the usual five-year term: 'my Government would regard any advice to the contrary tendered to His Majesty by any Australian Government as inconsistent with our mutual understanding and the requirements of the case', Scullin wrote.⁹² The reason given was to ensure that Isaacs could 'discharge his functions without fear or favor or expectation of favor', but while the letter could discourage his dismissal by Scullin's successor, it also protected Isaacs's financial position. The incident bears out Zelman Cowen's private comment on Isaacs: 'He was a considerable man, but rather unlovely.'⁹³

The fate in London of the Australian cabinet's nomination of Isaacs showed the force of the concessions already made to the Irish Free State and South Africa, the implications of the decisions made at the Imperial Conference of 1926, and the near impossibility of the King regaining control of a choice that had come to be made by his ministers. The King's fond hopes of making a personal choice of his Australian representative were understandable. After 1926, Vernon Bogdanor has observed, '[t]he Crown indeed was now the only formal link between Britain and the self-governing dominions', and George V took this role to heart as a motivating purpose of his reign.⁹⁴ But in 1930 the debate over the procedure for appointing a Governor-General turned out to be a choice, not between ministerial selection and royal selection, but between British ministerial advice and dominion ministerial advice, and the decisions of 1926 (to say nothing of the political trends they reflected) made the outcome foreseeable.

Stamfordham disliked both the idea of distant, obstreperous dominion Prime Ministers advising the King and the likelihood that they (like the Irish and the Australians) would choose objectionable nominees, but he knew where to lay the blame: '[t]hat 1926 Conference played the devil with the Empire.'⁹⁵ At least the blow was softened in the 1950s and 1960s by the willingness of Prime Minister Robert

⁹¹ A B Keith, 'Notes on Imperial Constitutional Law' (1931) 13 *Journal of Comparative Legislation and International Law* 246, 259; Letter from Sir Harry Batterbee to Lord Stamfordham, 12 January 1931, TNA: PRO DO 35/444/3 Dominions Office and Commonwealth Relations Office: Original Correspondence, Governor General of Australia, 20110/5; Letter from James Scullin to Richard Casey, 10 January 1931, NAA: CP290/1, Bundle 1/23; Letter from Richard Casey to James Scullin, 12 January 1931, NAA: CP290/1, Bundle 1/23.

⁹² Letter from James Scullin to Sir Isaac Isaacs, 19 January 1931, NAA: A461, E7/1/2.

⁹³ Letter from Zelman Cowen to Robert M Hutchins, 14 May 1962, Papers of Sir Zelman Cowen, NLA MS 6736/4/28.

⁹⁴ Bogdanor, above n 45, 248; Miranda Carter, *George, Nicholas and Wilhelm: Three Royal Cousins and the Road to World War I* (Alfred A Knopf, 2010) 328.

⁹⁵ Letter from Lord Stamfordham to Sir Alexander Hore-Ruthven, 11 August 1930, Papers of Alexander Hore-Ruthven, Earl of Gowrie, NLA MS 2852/8/6.

Menzies to ensure that Governors-General were personally acceptable to the monarch.⁹⁶

The King's private advisers brought him to accept Isaacs as the consequence of the decisions of 1926, despite his (and their) disapproval of both the nominee and the way the Australian government insisted on him. Stamfordham had the central place in this process; his importance is emphasised, and possibly exaggerated, by his control of the documentary record of the King's side of the debate. His files and his memoranda and correspondence are the main source, not only for his own opinions, but also for those of the King, with whom he worked so closely on this issue that it is often difficult to separate the two. His influence was unusually strong. He was 'the Olympian figure among royal private secretaries', in the words of Charles Douglas-Home, and George V testified to his importance: 'he taught me how to be a King'.⁹⁷

Stamfordham was at first incredulous at the news that Scullin might nominate an Australian: 'The idea of a local selection is, I imagine, mere talk on the part of the extremists, and I can hardly imagine the Commonwealth, at this stage of its existence [sic], doing anything so foolish.'⁹⁸ In backing the unwelcome advice of Macmillan and others to give in to Scullin, Stamfordham, 'an effective, literate, organized, Conservative-voting ex-soldier', as Miranda Carter described him, acted against his political inclinations but in perfect consistency with his role.⁹⁹ The function of the monarch's private secretary, Vernon Bogdanor has said, is to 'guard the constitutional position of the sovereign'.¹⁰⁰ Stamfordham judged that this was best done by accepting Scullin's advice (if he refused to back down) rather than embroiling the King in the political controversy that would follow rejection. Stamfordham, who hated the appointment but saw that the King had to make it, and Macmillan, who provided the framework of reasoning for the King's decision, became reluctant and hidden enablers of the Australian government's unwelcome choice.

⁹⁶ Sir Robert Menzies, *Afternoon Light: Some Memories of Men and Events* (Cassell, 1967) 255–8.

⁹⁷ Charles Douglas-Home, *Dignified and Efficient: The British Monarchy in the Twentieth Century* (Claridge, 2000) 16; Nicolson, above n 4, 452.

⁹⁸ Letter from Lord Stamfordham to Lord Stonehaven, 25 March 1930, NLA MS 2127/2/198.

⁹⁹ Carter, above n 94, 240.

¹⁰⁰ Bogdanor, above n 45, 201.

