

Mrs Maychiavelli. Has the prime minister breached the Ministerial Code?

David Dring takes a look at the potential constitutional impropriety of Theresa May's conduct on Brexit, and considers whether she may even have breached the Ministerial Code. David is a Conservative Party member and active contributor to the Bruges Group's Facebook discussion group.

"Fair is foul, and foul is fair

Hover through the fog and filthy air" – Macbeth, William Shakespeare

There is an unpleasant cloud of distrust hovering over Westminster.

We are now at the point in time when our prime minister and government should have been emerging triumphant from the Brexit negotiations, delivering upon a vision of a confident new global Britain. Theresa May could have been taking her place as the champion of free trade in the modern world.

But sadly this is where reality kicks in.

We could not be further from the goals outlined in Mrs May's speeches: Lancaster House (January 2017), Florence (September 2017), and most recently Mansion House (March 2018).

The Department for Exiting the European Union (DExEU), having worked for months to the guidelines outlined by those speeches, suddenly discovered that there was a new plan. The so-called Chequers plan emerged in July 2018, devised behind the backs of DExEU ministers.

Worse still, this Chequers plan was presented to Cabinet less

than 48 hours before being formally discussed, barely leaving Cabinet ministers enough time to comprehend the full implications of the text. During the Cabinet discussion it was suggested that an amendment be made to one area of the blueprint, to which the PM reportedly responded, *"No, that's not possible, because I've already cleared it [the existing text] with Mrs Merkel."*

Unsurprisingly, both Brexit Secretary David Davis and Brexit minister Steve Baker resigned within hours of this discussion, with Foreign Secretary Boris Johnson following Davis out of the Cabinet a day later.

Discussing the UK's negotiating strategy with a foreign leader before presenting the plan to Cabinet, as well as bypassing the Secretary of State responsible for Brexit, would not only be inconsistent with the protocols of Cabinet government. It would also represent a breach of the Ministerial Code.

The UK's lead negotiator, Olly Robbins, in his appearance before the Exiting the European Union Select Committee in July, confirmed that the Cabinet Office's Europe Unit had prepared the Chequers plan without the knowledge of the Secretary of State, but with the full authorisation of the prime minister.

Fast forward to November and the publication of the draft Withdrawal Agreement. The old adage suggests that "history repeats itself" – and how right it was.

Just as with the previous Cabinet bounce of Chequers, the PM delivered the draft Withdrawal Agreement in a glorious 585 pages of unadulterated legal gobbledygook, and attempted to secure Cabinet approval within just hours. She despatched Secretary of State Dominic Raab to Brussels to sign off on the agreement. But Raab was not to be bounced quite so easily. Within hours, there was yet another Cabinet vacancy for Brexit Secretary.

Raab has stated his reasons for resigning very clearly in his subsequent media interviews. In particular, he cited the addition of key clauses to the agreement which he had neither seen nor authorised. If Raab's account is accurate, it would appear that the PM again breached the Ministerial Code, by failing to consult with her Secretary of State.

This conduct has attracted the attention of a number of concerned MPs. Sir William Cash, chairman of the European Scrutiny Committee, asked a series of questions to the PM throughout November following her Brexit statements to the House. Sir Bernard Jenkin did the same at the Liaison Select Committee on 29 November [at 1:23:00 in video].

However, the prime minister has thus far refused to answer or even acknowledge any question of impropriety. This has led the European Scrutiny Committee to launch an inquiry into the conduct surrounding the negotiations.

The prime minister is also under fire for refusing to publish in full the legal advice to the Withdrawal Agreement. This is likely to result in a charge of "Acting in Contempt of Parliament" to be sent to the Speaker in the next few days.

The principles enshrined in the Ministerial Code have been the cornerstone of good governance, ethics and integrity for generations. The idea that any PM would attempt to override the provisions of the Code is abhorrent.

If it is proven that this has indeed taken place, then Mrs Maychiavelli's place in history will be assured.