



SOLACE submission to

the Committee on Standards in Public Life

“constitutions, codes and crooked timber”

June 2009

The SOLACE Management Board



Introduction ...

The great moralist Immanuel Kant famously said, “out of the crooked timber of humanity no straight thing was ever made.” He was pointing to the truth that every human being is flawed, finds it difficult always to act in good faith and very often make errors of judgement. And despite our noble pursuit of the highest ideals, every one of us has touches of vanity and a smattering of venality – that includes Council chief executives, local political leaders, Members of Parliament and even electors.

The shock, disbelief and anger at the expenses claims of very many MPs has served to corrode even further the fragile confidence that electors have in the British political class. At a time of great economic challenge when businesses expect the nation’s politicians to be focussed on how best to create the conditions for economic success, they are horrified that Parliament is focussed inward on its own protocolsⁱ. Throughout this debacle the continual reference to “rule based” conduct and the absence of any “values based” code of behaviour which fosters the noblest spirit of public service has corroded confidence further. Public service leadership, whether it be of political or managerial character, stems from a wellspring of strong public service values (and private adherence to publicly espoused values) rather than the diligent following of rules.

Less than six months ago politicians were saviours – the economy had wobbled on the very brink of systemic market failure and Government action had stabilised the financial sector and appeared to have calmed the wider economy. At the G20 earlier this year coordinated global politics effectively calmed a panicking global economy. In the UK, the recession has been sharper and deeper than expected but the real economy has survived the seismic financial shocks of late 2008. The crisis in the economy appears to have mutated into a crisis in democracy. We have witnessed a period of near systemic paralysis in the national body politic with MPs transfixed by the daily reporting of their individual wrongdoings. But we should not confuse an erosion in support for particular democratic institutions with a crisis in democracyⁱⁱ. The level and intensity of citizens activism may well have increased as their confidence in their own MP diminished. However, it is the case that the electorate’s response at the European elections has eroded further popular support for mainstream political parties. Undoubtedly the governing party fared less well than all the other parties (in relative terms) but together the three main national parties have the support of 57 per cent of those who voted this month.

The current public mood is largely attributed to two factors. First, the deep impact of the recession on voters personal concerns, hopes and fears; and second, the widespread outrage at some of our MPs claims for the costs of “phantom” mortgages on their second homes as well as for their more trivial claims for trouser presses, bath plugs and ornamental duck houses. Unfortunately, this latter focus on the expenses abuses of MPs is no passing hysteria; the political crisis that has followed will persist for some time and politicians of all parties have much to do to regain the public’s fragile confidence.

The main party leaders have acted swiftly and decisively: they recognise that trust cannot be commanded - the public will only trust Parliamentarians when they have demonstrated anew their trustworthiness. This will not happen quickly nor simply. The Government and Opposition parties are addressing this issue with urgency. But it is not an easy problem to remedy and it is probable that it will take some while for politicians trustworthiness to return

to the even modest levels that were recently reported by the Committee on Standards in Public Lifeⁱⁱⁱ. Public attitudes towards politicians, and the democratic institutions to which they elect them, may not improve until substantially after the next General Election.

The very process of national political campaigns and the electors fresh examination of candidates and their respective prospectuses will offer new opportunities for trustworthiness to begin to be re-established. Until then the focus may remain on the narrow question of individual Parliamentarians adherence to expenses codes and to a growing extent on the wider issues of constitutional and electoral reform that encircle these smaller debates. What this rather frantic period has raised into public scrutiny and debate is the following: first, the content of the character of the British political class; and second, the character of our wider system of governance.

A fragile licence to operate ...

Usually professionals are subject to codes of conduct and accepted protocols and conventions. Significant transgressions result in being “struck off”, “debarred” or having one’s professional “licence to operate” removed. Against these professional standards the self-regulating processes of Parliament has been found wanting. The “licence to operate” of professional politicians rests on their collective moral authority; which in turn rests on their collective judgement and conduct. When their judgement is called into serious question, general trust and confidence in the body politic corrodes at an astonishing rate. To date the weight of media pressure, on the expenses issue, has driven several Cabinet Ministers to resign as well as lead to some twenty MPs to give notice that they will not seek re-election. Over the coming weeks, the number of MPs who decide that they will not seek re-election could easily double.

The current plight of MPs and the levels of voter mistrust in their personal conduct are ominous signs for the future health of our democracy. A healthy democracy requires open discussion and debate between citizens and their elected representatives. And debate needs to be based upon respect and reason. It is a very small step between losing respect for individual Parliamentarians and losing respect in the entire political class. That is why these are perilous times for democratic institutions. The famous flexibility of Britain’s unwritten constitution seems more a hindrance than a help to the modern body politic as it struggles to cope with the pressures of the current age.

Citizens want their elected representatives to act with authenticity, integrity and honesty. They know that the moral sense is fragile and that they do not elect angels nor saints. Nonetheless, they want their elected representatives to be fairly straightforward and reasonably selfless in the conduct of their public life. It is undoubtedly the case, as the saying goes, that “sunlight is the best disinfectant” – and that disclosure and transparency are crucial guarantors of trustworthiness in our democracy. But the problems of the past few weeks has created a position where mistrust is so widespread that there is a grave danger that the misdemeanours of the worst will serve to sweep out of office the good and the effective as much as the less good and the most venal.

Sir Christopher Kelly’s much awaited report on MPs expenses should offer some comfort in the medium term but as of now the position is fluid. There are widespread calls for changes in the

system of voting; for changes in the selection and re-selection of candidates for MPs (including arguments for powers of “recall”); for changes to the balance between Government and Parliament; and for changes to how MPs are subject to the continual discipline of their party whips. There are strong arguments in favour of significant constitutional change; but none of these changes guarantees changes in personal judgement and conduct of individual MPs. There will always be people in the professional political class who seek the wind in order to sail close to it; and there will always be a few who find it difficult to contain their most venal self interests. Using this current crisis to advance the case for formal constitutional change is understandable (“why waste a crisis” in the words of some) but it does not of itself solve the problem that triggered the public outcry – namely, the urgent need to adopt a robust and rigorous system for paying MPs salaries and agreeing to repay them their reasonable expenses.

Lessons from local government ...

A strong code for Parliamentary expense claims is required; one that is effectively managed and controlled by independent minded people who are not beholden to MPs but who are corporately responsible to Whitehall. For those of us in local government we witness with amazement how the MPs expenses code appears to have operated in the absence of wider corporate controls and responsibility. At how the Fees Office appears not to be the corporate responsibility of any senior manager within Whitehall. This is undoubtedly because of arcane and archaic constitutional protocols in relation to Parliamentary Sovereignty – all of which have failed to prevent the present crisis.

In local government, we are shocked at how the recommendations of a series of Independent Pay Review groups for MPs salaries have simply been set aside by Parliament itself. It is plain that successive worsening of MPs salaries has led over decades to a position where the abuse of allowances and expenses has become an accepted norm. In local government there is a strong tradition of Councils accepting, without discussion, the recommendations of local Independent Remuneration Panels. Moreover, many Councils involve local citizens in these panels and in some cases the remuneration of elected mayors (who unlike other councillors tend to have a democratic mandate as large, numerically, as MPs) has been set through discussions in citizens juries.

Of course local government has had its problems (among both the elected and the appointed) but the fact of corporate responsibility and the specific expectations on chief executives and monitoring officers actively to prevent abuses has greatly improved ethical conduct in local government. Appreciating the distinction between the role of an Independent regulator in investigating allegations of bad practice and the role of corporate management in promoting good practice, is absolutely crucial. Independent watchdogs can deal with individual misdemeanours they cannot stop collective failure and they do not assure that an institution has a strong corporate ethical reputation. The aim is more than the negative goal of “sorting out the scoundrels” – it is a positive goal of enhancing ethical reputation.

The presence of strong and effective senior managers is a stabilising force in local government. These senior officers are appointed by the whole Council and are accountable to politicians on the executive as well as on the scrutiny side. One of the distinctive differences between local and central government is the position of the most senior officials. In local government, officials

cannot become creatures of the governing executive, they must serve the whole Council. This affords them a legitimacy in the exercise of advice giving as well as in the regulation of good ethical standards of conduct amongst elected members. Of course, from time to time, there are lapses in ethical standards (amongst managers as well as amongst elected members) but in the main local government has seen a significant improvement in its overall standards of conduct. Expenses codes are routinely subject to review by Councils and adherence to the codes will be subject to close management attention and public scrutiny through open publication.

Moreover, the very existence of the Standards Board, and its external powers of enquiry in the event of alleged wrongdoing, has served to buttress the powers of monitoring officers and chief executives in positively building positive ethical cultures in their Councils. Added to this the Audit Commission, itself, has prompted inquiries into standards of ethical governance in local government.

In all organisations it is important to have rules that act as firm boundaries for potential bad conduct but it is also important that there is a strong and positive corporate culture that establishes norms of good conduct in the first place. Elected politicians are, like all professionals, rightly concerned to manage their personal reputations. They need to operate within a system which serves to enable them to disagree and debate robustly with each other – but in a way that does not serve to undermine the corporate reputation of the body on which they are elected. In bodies dominated by party politics (like local government or Parliament) it is crucial that there is a strong corporate and integrating force to enable everyone to connect with the one organisation. Debate can lead to division despite the fact that the debaters share common goals and aspirations for the democratic institution to which they are elected.

It is not enough to have managers who “administer” the expenses system. What appears to have been inadequate in Parliament is management leadership; where senior officials are expected say “no” to powerful interests. The Fees Office do appear to have refused a good number of requests for expenses – but too many unacceptable claims appear to have been approved. It is an irony that the “tragedy of the commons” occurs when the apparently sensible behaviour of individuals, acting in pursuit of their own self-interest, is ruinous to collective well-being. This is precisely what has happened in Parliament. In the case of expense claims, “rules” may help, but the simple application of common sense helps more. No public servants can claim for their gardens to be maintained at the taxpayer’s expense and for a culture to have established where this, among many other things, has become acceptable is astonishing. A culture of disclosure, transparency, corporately managed obligations and independent oversight is the best answer.

Of course we all pretend to perfectionism and some of us even claim to be intrinsically motivated by altruism and the public interest. But these personal goals, however genuinely believed, are no basis for crafting constitutions – whether they are for Councils or for Parliaments. Constitutions need to be crafted in the knowledge that those who are elected are special in their roles but not special in their character. The timber of their humanity is just as crooked or straight as the rest of us. The case for radical constitutional change has considerable merit. But as Vernon Bogdanor recently commented, “important constitutional reform should not be a knee-jerk reaction to a crisis but the result of popular reflection.”^{iv}

Over the past 12 years the Government have introduced considerable constitutional innovation with differential devolution to Scotland, Wales, Northern Ireland and the city region of London. And the current conditions for radical constitutional change are positive in one important respect – each of the three main parties have leaders who possess strong personal inclinations towards constitutional change. But it also needs to be recognised that the current point of the Parliamentary cycle is probably the worst time for implementing changes that require all-party support. Gaining some form of multi-party agreement to medium term review of the constitution and the electoral system (through a Royal Commission or an elected form of constitutional convention) is possibly the best route forward.

Those who want constitutional or electoral change now are implying that the problem is that “good people are trapped in a bad system”. This is not the public’s first order conclusion – they doubt the merits of the people they elect as much as the system into which they elect them. Both need addressing – the system of representative government and the means of selecting and electing people into that system.

Representation is not easy ...

Making individual choices about our lives may be difficult, but at least it is clear who is responsible for the consequences. Making collective or social choices is much harder: even though it involves agreeing a way forward between people who possess similar characteristics and who have similar goals. Making public choices that affect us all is substantially harder still. Public choices are not collective choices. In a public choice, the views and needs of everyone has to be taken into account; not just a group of people with similar or common interests. This is the complex task of governing.

Direct democracy, where everyone is capable of personally and directly voting on contested issues has its prospects and potentials but also its perils and pitfalls. Referenda, for example, need an object which involves a clear-cut choice and subjects which are curious for evidence to inform their judgements. One solution to the weaknesses of direct democracy is deliberation. This involves citizens discussing issues amongst themselves: listening to different points of view and coming to compromises between themselves. But deliberative democracy also has its perils and pitfalls. Deliberation widens the circle of informed judgement about an issue – in this sense it is educative as well as legitimising. But if, say, a community of just 100 people are seeking to arrive at a public choice any one subject matter, and each citizen has the right to express their opinion on what they think ought to happen for just 5 minutes; they also have a corresponding duty to listen to the views and opinions of the other 99 people – something that will take up to 8 hours and 15 minutes.

The law of big numbers; the increasing demands of social complexity; the reflexive character of a media-dominated commentary on issues of public import; and the difficulties of discovering a public choice decision from a myriad of different perspectives, all point to representative politics as being the safest and most effective route to better government. Direct and deliberative approaches to democracy need rekindling; but they remain complementary to, rather than an alternative to, representative democracy. Techniques such as deliberative polling, citizens juries and 21st century town meetings all can contribute to improving participation in democracy but they are not a substitute for representative democracy^v.

Modern representative politics is, despite the appearances of tradition, just a few generations old. It is the dominant but not the only form of democracy available to us. In Ancient Athens representatives were selected by lottery: each citizen served for one year and no individual could serve more than twice in any lifetime. On the whole, this is the same basis on which citizen juries are chosen (by both local and national government) to consider contested public issues. And perhaps all methods of election should first pass “the random elector” test. Is the system proposed better than simply selecting citizens at random and asking them to make public choices on our behalf?

Crafting constitutional change ...

Finding constitutional means of deciding who should represent people and how they should frame public choices, has troubled constitutional theorists for hundreds of years. The guiding idea (from Rousseau to Jefferson) was that elections would enable a natural aristocracy to emerge – people with the particular capacities to govern and to choose on behalf of the wider public. This notion (of a political elite) has eroded over the years in favour of a more common interpretation of elected politicians as being more or less “representative” of people at large. In a recent commentary of the impact of this trend, the former Cabinet Secretary Andrew Turnbull, suggested that a formal separation of powers between executive and Parliament might best solve the problem of having a “too restrictive pool of talent” from which the Government could draw its members (usually 100 members of the Government are drawn from the 350 or so MPs which comprise the ruling party)^{vi}. In more popular conversation the discussion is often not how to select the best candidates to govern but instead how best to select the most representative people to govern. Of course it is crucial that the gender balance and ethnic origin of Parliamentarians broadly “reflects” the wider population of the country but it is also crucial that talented people with wide experience and good judgement are drawn into public life.

The statistical use of the word, “represents”, has served partly to undermine the necessary focus that there ought to be on how best elected people (usually through some form of majoritarian voting system) can feasibly represent the social diversity of the electorate as a whole. And the focus on “representation” can also serve to overlook the primary function in any electoral system: which is, first and foremost, the capacity to remove from office those currently in power. Arguably, this function of democracy should override any other consideration. As some have argued, better to have a system which is less representative but which more easily enables electors to remove those in power; than a system which is more representative but which is much harder for electors to remove incumbents.

Of course it is important that a system of voting enables electors to choose someone who they think is more likely to represent their views; but given the bewildering diversity of electors’ views and the fluid character of political positioning this positive dimension of representation (voting for people) perhaps ought to be weighed against the negative power of democracy – of voting against people. This is the correct interpretation of current public mood. Arguments for fairer voting systems (at both national and local level) are sound in their own terms but they are not a sufficient response to the current public disquiet about the conduct of some MPs.

Recent accounts of political leadership (and in particular accounts of how election campaigns are conducted) have paid special attention to the art of persuasion in political rhetoric and the role of emotion in the act of voting. Conventionally, electors are portrayed as choosing between party groups in relation to how they present their case for change in the public market place for ideas. In this model, electors choose who best to support in relation to their particular interests and issues. And the conventional models expect electors to have enduring personal political positions, once their basic beliefs have been set in early adulthood, or to shift their positions as their personal circumstances change. In practice, the neurologist and political commentator Drew Westen^{vii} has shown that when it comes to political campaigns, electors are engaged as much through emotional attachments (and associated fears and longings) as through the buying of specific political ideas or programmes.

Social diversity presents enormous challenges to political representation. In social terms, representation is plural because every individual has different representatives for their different social activities. But in political terms, representation is singular because politics proposes the single entity - the state. The key insight of the constitutionalists of 18th century France and America was that, "political singularity and social diversity could be reconciled if a single people were represented in diverse ways."^{viii} Electing people to different public bodies (with clear separation of powers) could provide effective governance if these representatives then serve to lead and challenge each other in respect of the civic, national and public good. This is the essence behind the "checks and balances" within constitutions drafted on the Madisonian model (strong executives with strong checks and balances: effective leadership with plural and diverse scrutiny).

These governance models are well understood in local government with executive and scrutiny both possessing corporate and coherent responsibilities for decision making, as well as for questioning decision making. Proposals for election to single purpose bodies (such as police boards, etc) run the problems encountered in the "commission plan" model of local government evidenced in the US. In "commission plan" local government, public interest issues are routinely splintered across single purpose bodies who do not consider issues more widely than their specific remit. This can easily lead to public service fragmentation and wasteful duplication of provision. Better that elected multi-purpose local government bodies are charged with determining issues in the round and choosing trade-offs between goals and objectives locally.

In the 21st Century, British society is fundamentally more socially diverse than it was in late 18th century France and America. And yet we continue with a state that is among the most centralised and unified of the community of democratic nations. The re-balancing of power in British politics that is required is as much between central and local government as it is between chambers and channels within central government. To this end the Leader in the *Financial Times* of 1 June 2009 argued that, "revitalised municipal government is the cure to hyper-centralism. The UK should shed its preference for decentralised administration that remains centrally controlled and rate-capped. Local democracy is meaningless without fiscal power."^{ix} An examination of constitutional change simply within Parliament would miss the opportunity of correcting the main problem with the British state – over-centralisation. Constitutional change is required across government (central and local) and not simply within Parliament.



Constitutional change is required not simply to restore public trust in politicians but to restore confidence in representative democracy.

Citizens and governments ...

This month each elector had the chance to vote, on a closed party list, for some eight people to represent them in the European Parliament (some regions returned fewer than 8 MEPs, some regions returned more). And just over 15 million voted – some 34 per cent of the electorate. Over the next 12 months electors will have a chance of voting in a General Election. But that's not all. In London, for example, over the coming four years electors will vote for (up to) a further seven people to represent them - one local mayor, three councillors, one Member of Parliament, one Mayor for London, one Greater London Assembly Member, and one "top-up" GLA member from the party list. That's 15 people in total representing each and every elector in London. Each government has many citizens but it is also the case that each citizen has many governments. Hence the call, here, for a renewed decentralisation of power and functions within the UK to local government.

For each citizen to have confidence in the system of representative government they need to be critically informed about the respective roles of each tier of governance, they need to have trust in politicians, and they need to have confidence in the wider body politic as a whole. As returning officers, local government chief executives are the public managers entrusted with the responsibility of counting votes and, as such, we are desperately concerned that voting counts. We want citizens to be critically engaged with the electoral process, we want electors to have a choice between competing candidates, and we want a voting system that combines fairness, decisiveness and accountability.

"Winner takes all" electoral systems (at the national or local level) enable leadership at the expense of legitimacy. Fair voting systems enable proportionality but sometimes at the expense of clear leadership. And constituency based systems of election guarantee accountability locally (for individual MPs) but do not necessarily enable national accountability (of governing parties). Electoral systems function effectively when they operate in a healthy political culture of open debate and challenge – with engaged citizens and a critical but non-partisan media. As returning officers we have experience in conducting referenda, deliberative polls, citizens juries and elections based on "first past the post" (FPTP); supplementary vote (in mayoral elections); additional members systems (at the Greater London Authority); different approaches to achieving proportionality in both Scotland and Northern Ireland; as well as the party list system in the European elections. Our expertise in implementing electoral systems is without parallel and our impartiality in conducting these elections is accepted by all parties.

Citizens know that they cannot elect saints to govern us. But they also know that it is possible to improve the rules and roles in government so that it is feasible to develop a clearer political leadership and a clearer system of checks and balances on that leadership. What's more it is entirely feasible for our electoral systems to be simplified and improved. Local government has been at the forefront of such constitutional change and electoral experimentation in the UK. It has developed a range of new style constitutions; it has established working arrangements across Council executives and scrutiny; it has piloted dozens of different approaches to running elections; it has been subject to an Independent watchdog on elected member behaviour in

respect of a national code of conduct; and it has ensured that local political leaders and senior managers focus on the corporate ethical culture of their organisations.

Successful Councils are not just well organised (with effective boundaries, rules and disciplines) they also promote good behaviour amongst councillors as well as officers. The successful Councils have moved from being simply competent: they have embraced a culture of can do and candour^x. In public service there is not point simply getting things done if they are not done in a spirit of openness. Disclosure and transparency are one half of the story – the other is integrity, honesty and reliability. The lessons of local government speak large to the wider challenges of the moment. And these lessons suggest the following as fruitful avenues for change.

- 1 Decentralisation offers the best prospect as a bulwark against the centralism of the British state. Local government should therefore be engaged formally with any review undertaken of the future constitutional arrangements for Parliament.
- 2 Sir Christopher Kelly's review should be comprehensive in coverage. The issue of MPs salaries, terms and conditions and the roles and responsibilities of MPs should not be ducked. There is little point in tightening up, say, the procedures for expenses claims if, say, the overall remuneration and terms and conditions for MPs is not addressed.
- 3 Parliament should have an Independent Review Panel for remuneration, allowances and expenses. Disputes between MPs and those administering the scheme (for Parliamentarians will have a host of differing personal circumstances the impact of which may not all be identifiable in advance in respect of their potential expenses) should be referred to this Panel for its decision. Moreover, this Panel's recommendations to Parliament on the overall scheme for salary, allowances and expenses should be implemented without Parliamentary debate.
- 4 There should be a powerful and independent watchdog on the conduct of Parliamentarians following agreement of a formal Code of Conduct. The remit of this regulator should include audit of Parliamentarians expenditure and expenses as well as in investigating allegations of breach of the Code of Conduct.
- 5 A Permanent Secretary (Parliament) should be appointed to serve the interests of Parliament and ensure that Parliament's overall reputation is managed through the effective working of the House and its Members. This PS will also be responsible for ensuring that Members receive appropriate support in their roles and that they are properly briefed on their responsibilities including those in relation to the Code of Conduct. This PS is not the Independent watchdog of Parliament but the Whitehall facilitator of effective Parliamentary functioning. The role is to serve a sovereign Parliament but not to maintain it aspic. This PS (Parliament) should report to the Cabinet Secretary and also be responsible for effective corporate working across the Government-Parliament divide. Among other things, this would ensure that Committees of the House received the appropriate level of input from those officials serving the executive.

- 6 A Constitutional Convention should be established (involving a mix of elected Parliamentarians and citizens selected at random) to consider deep and widespread constitutional change. This Convention should be advised by an independent Commission of selected commissioners with non-aligned expertise in constitutional and electoral matters.
- 7 Local government's experience in implementing electoral systems, and the particular expertise of chief executives as returning officers, needs to inform any national discussion about feasible alternatives to the current FPTP system of election to Parliament and other tiers of government.

In the midst of an economic crisis, a political crisis has been manufactured through poor political conduct and effective media scrutiny. Both creditworthiness and trustworthiness appears to be at an all-time low. But it does not have to be like this – the position can improve. There is no crisis in democracy – citizens are engaged and they want their representatives to be engaging and accountable. Public institutions need to re-discover their democratic pulse^{xi}. Trust and confidence in representative politics can be restored. As practicing local government chief executives who work at the interface of political intention and operational practicability; and as experts in the process of constitution building and electoral management, we have considerable skills that can be called upon by Government and by any national convention as part of the national efforts required in rebuilding trust and restoring confidence. We stand ready to help re-found our representative democracy to meet the challenges of the 21st century.

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ⁱ Richard Lambert DG of the CBI, quoted in the Financial Times, 1 June 2009

ⁱⁱ Norris P (1999) *Critical Citizens*, Oxford

ⁱⁱⁱ Hayward et al (2009) *Survey of public attitudes towards conduct in public life 2008*, Committee on Standards in Public Life

^{iv} Bogdanor V (The Times 1 June 2009) *We need a new constitution for Britain*; for detail of Bogdanor's argument see (2009) *The New British Constitution*

^v Fung A (2008) *Democratising the policy process*, in Moran M et al, *The Oxford Handbook of Public Policy*,

^{vi} Turnbull A *Why we need a separation of powers*, FT 3 June 2009 p13

^{vii} Westen D (2008) *The Political Brain*, Public Affairs, New York

^{viii} Runciman D (2008) *The Politics of Good Intentions*, London

^{ix} FT Leader (1 June 2009) *Rebalancing power in British politics*

^x Bennis W et al (2008) *Transparency: how leaders create a culture of candor*

^{xi} Stoker G (2006) *Why Politics Matters*, Palgrave