

CHAPTER TWELVE

MODERN DEVELOPMENTS

Devolution

Devolution of power from Parliament at Westminster to assemblies in Scotland and Wales has been in question for some time. The Scottish National Party (10 M.P.s 1974) and Plaid Cymru (3 M.P.s) press for more political power and independence from Westminster.

Successive governments have published reports (1970 Douglas-Home Report; 1973 Crowther/Kilbrandon Report; 1974 White Paper; and 1975 Government White Paper: 'Our Changing Democracy: Devolution to Scotland and Wales'). Mr. H. Wilson stated that a Bill will be introduced in Parliament at the start of the 1976 session, and has asked that there be a 'great national debate' on devolution plans.

The 1975 White Paper proposes a single-chamber Scottish Assembly, initially with 142 members, and a Welsh Assembly with 72 members. Each Assembly will have a Chief Executive who will ordinarily be the leader of the majority party in the Assembly and who will form an Executive which will command the support of the Assembly.

Matters to be devolved include: local government; health; social work; social security; education, science and the arts; housing; physical planning and the environment; roads and transport, and control of local authority airports; development and industry; natural resources; tourism.

The Government's proposals envisage powerful and wide-ranging new systems of democratic control to meet the desire of the Scottish and Welsh peoples for more direct and effective involvement in the running of their own affairs, recognising their distinctive identities within the wider framework of which they will remain a part. The sovereignty of the Westminster Parliament and the duties and obligations of H.M. Government would not be affected. Reserve powers will be retained at Westminster. Disputes arising over the exercise of devolved powers or disputes between Assemblies will be decided by the Government at Westminster or by the Courts. Responsibility for the law courts must remain with the Government at Westminster.

The changed status for Scotland and Wales is not a purely Scottish or Welsh affair. England is implicated, as is Northern Ireland. Dispersal of power will also affect the way England is governed.

Strong advocates within the SNP require 'federalism' in some form, but the exact nature and extent of the devolved powers has yet to be determined. Scottish opinion is, however, divided among three principal parties: Labour, Scottish National and Conservative. Not until the moderates have voiced their opinion can the full extent of the demands and the proposals be known, and not until full debate in Parliament has occurred will change be made. Plaid Cymru similarly advocates large-scale devolved powers; others desire no change or weakening of the U.K.

Because of the division of opinion some M.P.s are recommending that a Referendum be held to make the final decision once the draft proposals have been debated.

Criticism is made that another Assembly would create a four-tier system of government: district councils; county councils, Assemblies and Parliament. This was 'over-government' by more and more officials at enormous cost to the people.

Referendum

The referendum is one method by which the wishes of electors may be expressed with regard to proposed legislation. It is developed in its highest form in Switzerland. Australia and New Zealand have used the referendum, and de Gaulle used it in seeking the consent of the French nation for his policies. In a democracy a referendum should be preceded by a programme of education and public debate.

In early 1975 the issue was Britain's continued membership of the EEC. The *European Communities Act, 1972*, secured our membership of the EEC, which was expressed to be 'of unlimited duration'. On March 10 the Labour Government (which was split over the issue of continued membership) attended an EEC summit meeting in Dublin, and opened renegotiation demands which were met by the other co-members. On April 26, a special Labour Party meeting had approved by 3,724,000 votes to 1,986,000 its NEC recommendation that the U.K. should leave the EEC. To preserve party unity Mr. Wilson decided to order a referendum. The *Referendum Act, 1975*, was passed which fixed Referendum Day as June 5, when all voters in the U.K. on the electoral rolls were entitled to vote. Ballot was by counties (not parliamentary constituencies) and the count was held at Earl's Court, London. Parliament voted £125,000 to each side for campaigning. Other money came from industry and other sources for continued membership, whilst the trade unions subscribed to the anti lobby. The result was:

For staying in EEC 17,378,581 (67.2 per cent)
For leaving the EEC 8,470,073 (32.8 per cent)

Some 70 per cent of the total electorate voted in the referendum.
Some points to note are:

1. The referendum is a device which has consequences affecting: (a) Parliamentary sovereignty; (b) collective responsibility; (c) representative Parliament; (d) treaty obligations already entered into (e.g. the *European Communities Act, 1972*) and (e) subjecting laws to popular vote.
2. The use of the referendum is a major constitutional change which should be used, if at all, only after due deliberation.
3. If the result of a referendum is *binding* on a Government this derogates from Parliamentary sovereignty.
4. The task of Government on major matters is *decision*. If a Minister could not accept the decision of his colleagues in Cabinet he should resign (see below). The referendum may be looked upon as merely 'passing the buck' to the people. That was not 'decision by Government'.
5. If there were a low poll at a referendum it could not be argued that the people had been decisive. Uncertainty would increase.
6. If the referendum were used as a tactical device by one Minister today, it could be used by another Minister tomorrow on a different issue.
7. The people had not asked for a referendum on the EEC issue. (The *European Communities Act, 1972*, had already been passed.) The original

member countries of the EEC had not used the referendum to form the EEC initially.

8. As the U.K. had already passed the *European Communities Act, 1972*, and were bound by the Treaty of Rome (expressed to be of 'unlimited duration'), the holding of a referendum could only damage our standing and cause in the World and in the eyes of EEC co-members. They might query whether we may repeat the exercise of the referendum at a later date.

Cabinet Secrecy

One of the conventions of the constitution is Cabinet secrecy or confidentiality, which is allied to the convention of 'collective responsibility' (see p. 118).

'Achievement of collective responsibility implies that there should be complete frankness between the members, who would not feel free to surrender their departmental and personal preferences for the object of their common policy unless they were confident that the stand they had taken and the points they had conceded would not become public knowledge and be used to their embarrassment.' (*The Cabinet Office to 1945*, by S. S. Wilson, H.M.S.O.)

The above broadly justifies the convention and need for cabinet secrecy. There were three classes:

1. Detailed discussions in Cabinet or Cabinet committee, the record of such discussions, and papers prepared for or arising out of those discussions;
2. Detailed discussions or communications between Ministers and their advisers concerning the development or formulation of policies and their execution;
3. Detailed discussions between ministers and their advisers and between persons responsible for the appointment and transfer of senior members of the public service and their fitness for positions of responsibility.

The law which could have been invoked is the *Official Secrets Act, 1911*, and the *Public Records Act, 1950* (which permits the opening to the public of official documents after 30 years).

The late Richard Crossman, former Cabinet minister, 1964-70, kept a detailed diary during the time he was a Minister. This gave details of Cabinet matters and of conversations and relationships within the Cabinet and with senior civil servants, notably Dame Evelyn Sharp (now Baroness Sharp), formerly Permanent Secretary of the Ministry of Housing and Local Government of which Mr. Crossman was Minister.

Mr. Crossman's literary executors proposed to publish the diaries. The Attorney-General sought an injunction in 1975 to prohibit the publication, and the Courts dismissed his application. Extracts from the diaries were published in the press later in 1975.

Baroness Sharp, who by then had retired from the Civil Service, thereupon published her account of the particular issues described by the late Richard Crossman, and refuted certain of his statements.

Mr. H. Wilson then appointed a Committee of Privy Counsellors to inquire into the operation of the convention of Cabinet secrecy and the writing of memoirs by Ministers even if the memoirs were to be published after death. Lord Radcliffe headed the committee of seven Privy Counsellors, who reported on January 23, 1976.

The principal recommendation is that ministerial authors should be pre-

cluded for 15, instead of 30 years, from publishing information falling into three categories:

1. The author must not reveal anything that contravenes the requirements of national security operative at the time of his proposed publication.
2. He must not make disclosures that would be injurious to his country's relations with other nations.
3. He must not publish information destructive of the confidential relationships upon which the system of government is based; that is, relationships between Ministers and colleagues or advisers in the civil service or outside bodies and private persons.

The committee thought the law did not provide satisfactory machinery for enforcement. New legislation creating a series of new offences was not recommended: they rely on a minister's acceptance of an obligation of honour reinforced by a rule that on taking or leaving office he should have his attention drawn explicitly to his obligations in relation to memoirs. A former Minister will also continue to submit any manuscript about his ministerial experience to the secretary of the Cabinet, with the right of appeal to the Prime Minister. The Prime Minister has confirmed that Ministers will in future be invited to sign an appropriate declaration so that a transgressor would be known to be breaking an official obligation he had undertaken.

A Written Constitution and a Bill of Rights

The devolution of power to Assemblies in Scotland and Wales; electoral reform; the use of the referendum; the doctrine of the Rule of Law in relation to trade unions and other groups are but some important and topical matters which agitate the minds of responsible figures today. White papers have been published. Lord Justice Scarman in his Hamlyn Law Lectures, 1974, published, *inter alia*, the need for a Bill of Rights, and Lord Hailsham, ex-Lord Chancellor, put forward his views on and the case for a written constitution for the U.K.

First, a written constitution can exist independently of a Bill of Rights. The U.S. Constitution was drafted in broad terms, but was then followed by amendments, the first ten of which constitute a Bill of Rights which are the bedrock of the individual liberties that have been jealously guarded in the U.S. for two centuries.

The First amendment guarantees freedom of religious worship, of speech, and of the press, and the rights of peaceable assembly, and of petitioning the Government.

Chief Justice Marshall said in 1819 that a constitution written to cover all eventualities 'would partake of a prolixity of a legal code and could scarcely be embraced by the human mind. . . . Its nature, therefore, requires that only its great outlines should be marked'. He added that the American Constitution was one 'intended to endure for ages to come and, consequently, to be adapted to the various crises of human affairs'.

Any Constitution must necessarily be drafted in broad terms; so too, a Bill of Rights.

It is impossible here to deal comprehensively with so vast a subject, but the following notes may highlight some problems involved in the question of a written constitution: