

Comment

An ever closer union of the peoples of Europe

Mr Major's government won its vote of confidence in the House of Commons on 28 November, but only at the price of reducing its own majority. The whip was withdrawn from eight MPs who refused to vote with the government. On paper the Conservative majority in the House of Commons has been wiped out. The vote came as a climax to a period of 'European lunacy' on the government benches. Mr Patrick Nicholls, a vice-chairman of the Conservative Party, earlier surprised many of his colleagues by stating clearly what many of them privately think about our European partners. In his view the lesser countries of Europe insult our great nation by 'banging their begging bowls', while the French and the Germans are embarked on a plot to dominate Europe in the hope of succeeding where Hitler and Napoleon failed. Moreover, he went on to say, everybody knows that really the Germans are a nation of war-mongers and the French were all collaborators. All knockabout stuff you might think, but Mr Nicholls seems to believe it. Perhaps he should engage in constructive dialogue with Madame Cresson, the former French Prime Minister, who regards all Englishmen as cold, arrogant, self-deceptive and homosexual. Mr Nicholls resigned after his outburst, Madame Cresson is now in Brussels serving as a European Commissioner.

The dominant theme in the debate and the polemic which preceded it was economic. What seems to have driven the Euro-sceptics, as they describe themselves, to the brink of rebellion was the admission by the Chancellor of the Exchequer that Britain's net contribution to the 1994/5 Brussels budget would be £732 million over previous estimates. Many hard-working MPs would have been well aware of the number of hospital and welfare projects this vast sum would support in their own constituencies. The prospect of it disappearing into the hands of 'corrupt Europeans' was too awful to contemplate. Accordingly, the opponents of the budgetary increase began to mobilise support around an anti-European corruption platform.

One of the incidental effects of the resulting row in the

Conservative party has been to distract attention from inquiries into their own difficulties in this sphere. Two ministers have had to resign recently because of allegations against them of irresponsible financial behaviour. A massive investigation into the Conservative-administered Westminster City Council has been going on for some years. Inquiries are proceeding into the affairs of the Labour-administered Hackney Council, while the constituency of the former Labour Leader, Mr Smith, has been the subject of suggestions of nepotism and religious discrimination in favour of Catholics for some years. It is by no means clear that British politicians are totally blameless in matters of financial or political probity.

In this, as in many other debates, it is perhaps easier to achieve some consensus and create some kind of party around an economic than an intellectual or overtly political platform. What has been lacking in this whole debate, and what is obviously disastrously lacking in British politics with a few honourable exceptions on both sides of the house of Commons, is a rigorous intellectual analysis of political questions. The British pride themselves on their pragmatism and common sense, this is no substitute for careful thought.

A little while ago, an intellectually gifted Conservative Minister, who is also a Fellow of All Souls, was complimented by a member of the Opposition on his carefully argued and intellectually brilliant presentation of a Government measure. The Minister thanked the member opposite and went on to say, 'I can see the honourable Gentleman is trying to discredit me in the eyes of my party !' Until there is some honest intellectual analysis of our current relation to the European Union the confusion, chaos and bitterness which surrounds all European debates will continue.

It should first of all be admitted that the Euro-sceptics have hit the nail, if not on the head then at least on the side. Their attempts to mount a rebellion in the House of Commons against the European policies of the Government are an effort towards the reassertion of parliamentary sovereignty. Such a theory has become notional at best and redundant at worst. Constitutionally the Crown in Parliament is sovereign in the United Kingdom. The Crown in Parliament, as a result of the revolution of 1688-89, enjoys no legal limits to passing whatever laws it wishes. Ultimate control, according to the traditional constitutional view, lies with Parliament which makes the laws which judges enforce. The government governs within the law and is controlled in parliament by the casting of votes. In effect, the

sovereign powers of the Crown have been passed to the Prime Minister who governs for as long as he can command a majority in the House of Commons. As a result, through the exercise of elements of the Royal prerogative, the Prime Minister has vast resources of patronage and power to dispose of. The emergence of the European union has given him even more largesse to distribute. It is very difficult to dislodge a Prime Minister who is willing ruthlessly to use the Whips. The convention has emerged that Members of Parliament vote whichever way the government tells them to. This point was very clearly put by Dame Angela Rumbold who stated in the middle of this row that this was precisely the duty of the MP. It was not the function of the MP to think but only to act as the Whips instructed. The Euro-sceptics were quite right to question this lunatic and insulting proposition.

It has been the contention of the government that Britain was bound by treaty obligation to pass the European finance measure. Accordingly, the issue was made a matter of confidence. No government could survive with its power to make treaties undermined by the legislature at home. In fact it was debatable whether our treaty obligations did demand such a response. However, Mr Major and his advisers determined to force a confrontation and to get the Euro-sceptics to put up or shut up. In the event most of them were intimidated, by whatever means, to vote with the government. The eight abstainers are now to be forced to lurk outside in the cold banished from the party.

The chief issue in this matter is that of sovereignty. The government has not come clean about this issue because it knows that it is explosive. What the government is aiding and abetting is a further drastic limitation of our legislature. It is quite clear that Parliamentary sovereignty has been seriously limited by recent developments in Europe. When the United Kingdom acceded to the European Communities in 1972 it agreed on the incorporation of our legal system into the Community legal order. According to the provisions of the European Communities Act 1972, the courts of the United Kingdom are required to apply the law as interpreted by the European Court. As the courts of the United Kingdom have begun to act in accordance with the terms of the Communities act of 1972 so the constitution has begun subtly to change. The principle of judicial review has now been so extended that United Kingdom courts may now 'suspend' Acts of Parliament as contrary to the higher law

embodied in the Treaty of Rome. Thus, United Kingdom courts are no longer simply responsible for implementing the laws enacted by the United Kingdom parliament. They now operate within, what is effectively, a federal European legal system.

Since the revolution of 1688 the United Kingdom has strongly resisted the extension of all forms of judicial review, accession to the European Union has drastically undermined this feature of the revolutionary settlement. The consequences for the traditional features of our unwritten constitution in regard to the separation of powers and the sovereignty of parliament are incalculable. The Euro-sceptics are quite possibly right, but maybe for the wrong reason. Curiously, we see some of the battles of the seventeenth century being re-fought with Mr Major taking the part of Charles I.

In a recent analysis of these matters a Scots Advocate has concluded,

The fact that the United Kingdom has no written constitution, has left its law far more open than the legal systems of the other Member States to the 'constitutionalising' influences of the European Court of Justice. Paradoxically, then, the situation appears to be developing in the UK of a thoroughly Europeanised national constitutional structure, in which Parliament and the Executive are subject to review and control by the judiciary, notwithstanding the apparent hostility and resistance at the political level to any suggestion that the sovereignty of parliament be surrendered, even in part, to the supra-national ideal of a European Union.*

British politicians have begun to wake up, but twenty years too late.

* Aidan O'Neill, *Decisions of the ECJ and their Constitutional Implication* (London, 1994) p 102.

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