

CHAPTER IV

FRUSTRATION IN PARLIAMENT

Magnanimity in politics is not seldom the truest wisdom

Edmund Burke

1. *The supremacy of Parliament*

The new Parliament of Great Britain, as set up by the Treaty of Union, acted from the first as a continuation of the English Parliament. This could hardly have been otherwise so far as matters of procedure were concerned, but it raises questions as to the character of the British Constitution.

On the Scottish view the Treaty of Union is an essential part of the British Constitution. This means that a breach of the Treaty by Parliament would be unconstitutional. Some Scottish Nationalists go so far as to argue that a breach of the Treaty would mean a cancellation of the Union and that the rights of the independent Scottish Parliament would be revived – and indeed have been revived.

The English take the Treaty of Union more lightly. It has even been argued by cynics that since Scotland as an independent kingdom disappeared as a result of the Treaty, there now exists no entity which can seek redress on the ground that the Treaty has been broken. The Treaty, so to speak, conveniently cancels itself out.

Apart from such extreme arguments there is a real conflict of traditions and attitudes. It is sometimes said that the English, when they rejected the absolute supremacy of Kings, immediately replaced it with the absolute supremacy of Parliament, as is most obvious in the claim to enforce Parliamentary privilege without the safeguards of legal trial. The absolute supremacy of Parliament, if taken literally, would be incompatible with any constitutional checks. On this theory it could be held that

Parliament has the unquestionable right to abolish Scots Law and disestablish the Church of Scotland even although these are stipulated to be essential conditions of the Treaty of Union.

As against all this it has been argued that Scotland never accepted either the supremacy of Kings or the supremacy of Parliament, but has supported the supremacy of law and the supremacy of the people – or rather the supremacy of the people under law. Hence the right of Parliament to impose whatever measures it may choose upon the people of Scotland is hotly denied. This right could not be acquired by the Treaty of Union since the Scottish Parliament which adopted the Treaty had itself no authority to do away with the fundamental liberties of the Scottish people.

These may seem academic questions. In actual practice the people of Britain as a whole are a strong check on Parliament, whatever may be the constitutional theory. But the conflict of attitudes is a real one, and many Scotsmen resent the doctrine that the wishes of the Scottish people can legitimately be overridden in all matters by an English Parliamentary majority. In this attitude, curiously enough, they had at one time the support of Sir Winston Churchill, when he claimed that the Scots were not bound to accept the kind of slavery imposed by a Socialist Government. There is no evidence that his support survived when his own Party came to power.

2. *Legislation for Scotland*

The Treaty of Union, besides promising the independence of Scottish courts of law, stipulated that no alteration should be made 'in Laws which concern private Right, except for the evident utility of the subjects within Scotland'. Scots Law, it must be remembered, differs from English Law both in its principles and in its terminology and is more akin to Roman Law and to the systems of Law prevailing on the continent of Europe. Hence there are many matters in which it cannot be amended or developed merely by adding to it the incompatible laws of England. By the nature of things as well as by the spirit of the Treaty there ought to be some machinery for special Scottish legislation.

There are two obvious ways of dealing with this problem. One is to pass laws for England and then to translate these laws into Scottish terms. This is known as legislation by appendix and, like most translations, is almost bound to be inadequate and can even be unintelligible. The other way is to pass special laws for Scotland; but how can enough time be found to do this in an over-burdened and predominantly English Parliament?

There is also a third way – the special needs of Scotland can be ignored altogether or at least for an indefinite time. The fact that a reform would require legislation is often considered an adequate ground for doing nothing. It is sometimes even said of the most necessary reforms that there can be no legislation for Scotland unless there is unanimity of opinion. How can a modern country be governed on such a principle?

A system of this kind is bound to be unsatisfactory and becomes intolerable in a Parliament where sufficient time cannot be found even for necessary legislation in regard to England. The words of one wise Englishman, Sir James Headlam Morley, sum up the position very well:

‘I should have thought that the experiment of a unitary parliament for the whole of the United Kingdom had in fact broken down. . . . It seems to me impossible to maintain that the House of Commons under modern conditions can exercise any intelligent control over the affairs, whether of Ireland, Wales, or Scotland.’

Since these words were written the congestion of Parliament has become very much worse, and the problem becomes more and more insoluble – insoluble, that is, so long as the English refuse even to consider the obvious solution of setting up a Parliament in Edinburgh to deal with exclusively Scottish affairs. How desperate they are to avoid the obvious can be seen by a proposal once made in ‘Crossbow’, the organ of the Bow Group of Young Conservatives. This had the merit of recognising Scottish dissatisfaction and asked ‘Could Scotland have, not a separate Parliament, but a separate House of Lords?’ This House, they suggest, could meet in Edinburgh and could

have the power of initiating Scottish legislation or of considering it in committee.

It would be hard to find any proposal more contrary to the Scottish tradition of democracy; but at least it was welcome as a rare gesture of goodwill.

3. *The Scottish Grand Committee*

One concession has been made to Scottish legislative needs by setting up a piece of Parliamentary machinery commonly known as the Scottish Grand Committee. This was introduced in the early part of this century when Sir Henry Campbell-Bannerman was Prime Minister, and its powers were extended after the Second World War. It is composed of all the Scottish members of Parliament with the addition of ten to fifteen others to act as watch-dogs and to see that all decisions are in accordance with the policy of the party in power. At present it may be permitted to discuss Bills on the second reading as well as at the committee stage, and it may also be allowed to discuss the Scottish estimates for six days instead of the former two. As it has no powers of initiative, it can only affect matters of detail and help to remove the worst anomalies. The time allowed it for discussion is narrowly limited, and the subjects it can deal with are in effect determined by the Government of the day. Its mere existence does at least recognise that Scotland has special legislative problems.

The inadequacy of this machinery is freely recognised by Scottish members, and even by some English members, especially when they are in opposition. Thus the time allowed in 1954 for the Scottish Town and Country Planning Bill was said by spokesmen for the Labour Party to be ‘an outrage on Parliamentary democracy’. In 1958 the Local Government and Miscellaneous Financial Provisions (Scotland) Bill was said to be opposed by all the local authorities in Scotland, and one speaker declared that the majority of English members had not the slightest idea of what the measure meant. The Bill was none the less forced through by the guillotine, and by this gagging of the Opposition the Government were declared to be guilty of gagging the whole of Scotland.

When the Scottish Town and Country Planning Bill was passed on to the House of Lords, Lord Silkin pointed out that it was substantially in the same form as the corresponding English Bill *before* this had been changed by 212 amendments: it was, he said, quite unrealistic to expect that any amendments could be made in the Scottish Bill which were in conflict with the English one. This he very properly described as a legislative farce, and he appeared to hint that the only solution was to get rid of special legislation for Scotland.

This dog in the manger attitude is the main source of all the trouble. The British Parliament cannot begin to deal adequately with Scottish legislation, yet the two main political parties consistently refuse to set up any machinery which can. Even the creaking machinery that exists already is not used to its full capacity, nor is it always lubricated by the necessary expert advice from the Lord Advocate or the Solicitor General for Scotland. In 1963, for example, neither of these officials had a seat in Parliament, and this was recognised to be 'an inconvenience'. It was, however, an inconvenience that could be defended on the ground that it had happened before. By 1966 it seemed to be comfortably accepted that the absence of the Scottish law officers in Parliament is normal, no matter how many anomalies may be imposed on the laws by which Scotland is governed. Parliament apparently cannot even afford the money to pay an adequate number of draftsmen properly skilled in Scots Law.

4. *The political parties*

Of the two main political parties each assures us that its opponents are of doubtful honesty and proved incompetence. Whatever be the truth of this in general, they are both right so far as the treatment of Scottish affairs is concerned.

The Conservative Party developed in its present form as an opponent of Home Rule for Ireland. Although political parties have little regard for consistency, the Conservatives opposed Home Rule for Scotland as well, even if the situation there was very different. In spite of occasional verbal salutes to the principle that the people of Scotland have a right to decide in

favour of a Scottish Parliament, like the Labour Party they refuse to allow a plebiscite and do so on precisely the same grounds. In a letter authorised by Mr. Macmillan in 1959, we were told the old old story once again: a plebiscite could not be held without legislation, which would be controversial; in any case it could not offer any reliable guide; and a true reflexion of considered judgement could be expected to emerge only through normal Parliamentary processes, and in particular through open debate in an elected assembly. Why a predominantly English Parliament could judge the needs of Scotland better without a plebiscite to discover Scottish opinion he did not condescend to explain.

The queer thing is that the Scottish Conservatives, who supported all this, not only demanded, but also enjoyed, something very like Home Rule within their own party. They did not even call themselves Conservatives but Unionists, and they rejected English interference. Yet they refused to allow their fellow-countrymen the kind of rights they claimed for themselves. This autonomy they now seem to have abandoned – or was it taken away from them? – after a series of electoral defeats. Nowadays they do call themselves Conservatives and have adopted English methods of organisation. As a result they have foolishly issued public notices which assume that English Courts already govern electoral procedure in Scotland. It is hardly surprising if they find less and less support at the polls.

The Labour Party has a different history. It was founded originally by a Scotsman, Mr. Keir Hardie; during its early struggles much of its impetus and most of its liveliness came from the so-called Clydesiders led by Mr. Maxton; and its first Prime Minister was Ramsay Macdonald. During all this period Home Rule for Scotland was part of its official policy, and even Mr. Attlee favoured 'the principle' up to the General Election of 1945. As soon as the election was won and the Party obtained real political power, he dropped the whole idea like a hot brick.

Mr. Gaitskell later showed a little more grace – he at least recognised that a political betrayal merits some semblance of excuse. Addressing the Scottish Council of the Labour Party in

1956 he declared blandly that there is a form of Scottish Parliament in existence already, only it sits at Westminster. This form, incredible as it may sound, is the Scottish Grand Committee – did he expect any one to believe that the only Labour promise to the Scottish people was to give them something they already had? He was also good enough to assert that he was not closing his mind to further changes, but there was one proviso – these changes must not conflict with the true interests, realistically assessed, of Scotland herself. This meant presumably that they must be assessed by Englishmen.

Mr. Gaitskell also professed to explain why the Labour Party had changed its mind. He recognised that under Tory rule between the Wars practically the whole of Scotland had become a distressed area through the drift south of industry – this process was known as ‘rationalisation’. At that time it was only natural to think that Scotland should have control over her own affairs. Now that they had nationalisation and economic planning the grounds for such a claim had disappeared.

Curiously enough, Mr. Macmillan had answered this piece of sophistry two years earlier at a Unionist rally in Edinburgh. On his view it was Socialist rule which justified the Scottish claim. Under the Socialists, he told us, the control of Scottish affairs had slipped steadily and mercilessly southwards; and all this injured the material interests of Scotland, offended her nationhood, and touched her pride. Now that the Conservatives were in power, everything in Scotland was improving so much that as an English minister he was sometimes rather jealous, though as an exiled Scot he rejoiced at Scotland’s share.

Both of these gentlemen were dead right in what they said of their opponents, however unduly they may have flattered themselves. Conservative ‘rationalisation’ and Socialist ‘nationalisation’ have precisely the same effect – the control of Scottish affairs slips steadily and mercilessly southwards and so does her industry and wealth.

It should not be forgotten that there is also a Liberal Party, which has been committed to Home Rule since 1886. Unfortunately when it was in power it never found time to pass a

Home Rule Bill for Scotland. There may have been excuses for this such as the opposition in the House of Lords; but if Scotland has to postpone its hopes of self-government till the Liberal Party returns to power, the prospect is pretty bleak.

5. *Party discipline*

When English Party leaders make speeches north of the Border, they are full of solicitude for the Scottish interests so badly neglected by their opponents. Even if the goodwill is most marked when they are in opposition, and even if it cools a little when they get back to London, it may still be asked why the Scottish members of Parliament cannot do more to meet the special grievances of Scotland.

One answer is that their efforts are restricted by Parliamentary machinery – they are given neither the time nor the opportunity. Another answer is to be found in the nature of Party discipline.

It is hard to be precise on this topic, but there is no doubt that members of Parliament enjoyed more independence in the Nineteenth Century than they do to-day. The congestion of Parliamentary business itself demands more Party discipline, and it is a serious matter for a recalcitrant member if he falls foul of the Party Whips. His position is weak if his electoral expenses are paid by the Party, and especially if he is a poor man dependent on his Parliamentary salary. If he is obdurate, he may lose his seat at the next election. He will certainly have to abandon all hope, not only of the glittering prizes which mark political success, but also of the minor offices and honours which proliferate under present conditions and give the Party in power an extent of patronage only less formidable than that enjoyed in the Eighteenth Century.

This Party pressure applies to Scottish members as well as to others. If they devote too much time to defending the interests of Scotland, they are likely to be looked on with disfavour. If they were to commit themselves to self-government for Scotland, especially when their own Party is in power, they would be regarded as men of bad judgement: their chances of a successful

political career would, to say the least, be greatly diminished. Considerations like these are almost bound to affect men who are able and ambitious. Those who lack ability and ambition will in any case be ready to toe the Party line; and even if they refused to do so, their own weakness would make them ineffectual.

It is noticeable that the most outspoken defence of Scottish interests is apt to come from the Scottish peers in the House of Lords. Although nearly always educated in England, they are not entirely oblivious of the history of Scotland in which their ancestors played a part; and unless they are bent on a political career they have less reason to be influenced either by the favours or by the disapproval of their Party.

The members for Scottish constituencies are sometimes described as the representatives of the English Parties in Scotland. This is unfair. Many of them are patriotic Scotsmen, and all of them try to do their best for their constituents. Without their efforts the treatment of Scotland would be worse than it is, and we owe them a debt of gratitude. If they are relatively ineffective, this springs, not from moral obliquity, but from the system of which they form a part.

In both political parties the English point of view must predominate by sheer weight of numbers, and this is generally hostile, or at least indifferent, to any real self-government for Scotland. Yet in lesser matters we may find interesting variations. If we collected the speeches made by professional politicians, irrespective of party, when they are out of office, we might get a tolerable statement of at least the minor injustices under which Scotland suffers. When power changes hands after a general election, it is almost comical to observe how often and how quickly the two parties also exchange their attitudes. The new opposition brings up the old grievances which they ignored or belittled when they were in power; and the new government produces the same specious answers, supplied by the same civil servants, which its members had condemned when they were in opposition. This superficial and apparently unconscious comedy is for Scotland almost tragic as a permanent obstacle to necessary reform.

6. *Frustration*

It should not be thought that there is any deliberate attempt to oppress Scotland or to neglect her interests. Sometimes her special needs may be met – as, for example, in 1921 when the Church of Scotland was granted the spiritual liberties that had been sought through so many centuries. But inevitably it is English interests that are considered first. If Scottish interests are similar, well and good. If they are different, they have to suffer. Sometimes there may come a readjustment if the outcry from Scotland is fierce enough. Even if it comes, it may come very late. Often it may never come at all.

Let us try to sketch summarily an outline of the kind of treatment that Scotland may, and too often does, receive. Later we shall have to discuss some of these grievances in rather more detail.

If Scotland produces mainly oats and England mainly wheat, it is wheat that will receive government support. If Scotsmen drink whisky and Englishmen drink beer, whisky will be taxed till it is beyond the reach of a working-man: to do this with beer would cause a revolution. Highland games will be subject to entertainments tax, while English cricket matches will get special exemption. Indeed cricket, as a game sacred to the English, must have very special privileges: its implements will be freed from purchase tax. Golf-clubs, however, will not, although golf is almost equally sacred to the Scots.

The reasons advanced for this last discrimination were that cricket was a democratic game for the poor man, while golf was a game for the rich. This reasoning was hard to bear. In Scotland golf has always been, and still is, a game for poor men and is democratic in a sense unknown in England. It is only the English – and still more the Americans – who have made it a rich man's game.

These discriminations may be dismissed as trivial, but they display the prevailing pattern. If Scotland builds ships, and England builds aeroplanes, it is aeroplanes that will get lavish government support. If Scotland has beds of shale oil capable of producing precious petrol for her needs and even of saving

foreign currency, this industry will be taxed out of existence – it will certainly receive no help. If Scotland has many inlets of the sea which require special bridges, the building of these bridges will be held up for years and even then will have to be financed by tolls, while money is poured out on special English motorways, which are entirely free. If the Highlands and Islands are uniquely dependent on ships for their transport, the necessary piers will be allowed to sink into disrepair and subsequently closed to the detriment or destruction of one community after another. Indeed the Highlands as a whole have no counterpart in England, and this may explain, at least in part, their melancholy history of depopulation and decay.

When a system of equalisation grants was introduced under the Labour Party in order to help struggling municipalities, it was so well suited to English conditions that the prosperous city of Birmingham received over £1,000,000, while the city of Glasgow, which was in much greater need, got nothing. This continued for some years till the Conservative party came into power. Only then was some adjustment made to remedy this injustice, and the Conservatives preened themselves as the friends of Scotland; but it would never have occurred to them to make up some of the money lost.

Unfortunately changes are sometimes made in the other direction. There was at one time a measure for the support of what are known as 'marginal lands', and the grants given under this measure really did help the Highlands. Unfortunately they did not do much for small farmers in England, where there is relatively little marginal land. It was decided to abolish these grants, and a new system was suddenly introduced to help the English farmers. This, as sometimes happens, aroused so many protests from Scotland that the grants for marginal lands were reduced gradually instead of being abolished outright. A later measure – the so-called Winter Keep Scheme – failed to restore anything like the original benefits.

Since Scotland is a country of deep sea-inlets and of many islands it is to her interest that territorial waters should extend beyond the three mile limit, and that the limits should be drawn from headland to headland instead of hugging the land. This is

in fact the law of Scotland. England is a country of few inlets and few islands, and so the Scottish view was rejected – on the ground that it was contrary to international law. Up till 1964 the British Government continued to maintain this attitude even after the International Court of Justice ruled (in the case of Norway) that the view held in Scotland is in accordance with international law. The damage done to inshore fishermen and to the Scottish fishing grounds during the present century has contributed to the ruin of the Highlands; but unlike Norway or even Iceland Scotland has no power to defend herself.

And so the dreary catalogue goes on. Even where no English interests are involved, Scotland has to wait year after year for legislation recognised to be necessary. Acts, for example, have been passed to give adopted children in England various rights, including the right of succession. Yet, as a Scottish Sheriff had to complain, 'In Scotland the years dragged on and nothing was done. That neglect was evil.' The same evil neglect was shown in regard to the Scottish rating system, which, though reasonable in itself, had ruinous effects under a system of continuous inflation. To this topic we shall have to return, but enough samples – and they are only samples – of the methods of legislation from which Scotland suffers have been given already.

If it is painful to read about such grievances, it is still more painful to endure them. Even if some of them may seem trifling, they show how unfair the present system is, and the continuous accumulation of them may be compared, if not to the Chinese water torture, at least to a continual dropping on a very rainy day. They are not made easier to bear by English legislators who congratulate themselves on their ignorance of Scottish affairs and resent the time that is set aside for their discussion. Such discussions, so obviously necessary under the present system, have even been attributed to the chauvinism of the Scots; and on one occasion an English member exclaimed indignantly, 'Is not Scotland England?' Let us hope that such attitudes are confined to a minority of Englishmen; but so long as they prevail, the most serious problems of Scotland will continue to be neglected.

On the other hand, the Imperial Parliament does waste

precious time in discussing the most trivial of Scottish affairs. Thus, for example, on one day in June 1965, three Scottish Bills were considered by the House of Lords. The first provided for the maintenance and control of salmon fishing on a stretch of the river Annan. The second extended the municipal and police boundaries of the burgh of Coatbridge. The third corrected a previous oversight in the Order governing the Widows' Fund for Writers to the Signet. Such a waste of Parliamentary time is necessary, not because Scotsmen are irrational, but because English politicians are resolute to prevent them from exercising any control over their own purely national concerns.

7. *A change of heart*

It may be true that not all Scotland's grievances could be removed by the creation of a Scottish Parliament, for some of the affairs in question might remain under the jurisdiction of the Parliament in Westminster. It may be true that a Scottish Parliament would be hemmed in on every side, though magnanimity would here be the truest wisdom. Yet even if it were unnecessarily restricted, its very existence would have a psychological effect. The feeling that Scotland has so little control even over minor matters is a sickness spreading apathy into all walks of life. If only it were possible to do something, however little, there might be a revival of energy and hope. And even in matters not under its control, a Scottish Parliament might at least be able to speak with an authentic voice. Whether this voice were listened to or not, it would be able to speak in a way that could not wholly be ignored; and it would no longer be possible to pretend that no one knows what the Scottish people want.

What is needed is a change of heart in England, where a centralising government impoverishes 'the regions' both materially and spiritually in spite of spasmodic efforts to undo some of the damage already done. We may think that such a change of heart is impossible, but it is sometimes forgotten that a Home Rule Bill for Scotland has at times gained a first, and even a second, reading in the British Parliament, when self-government was perhaps a less crying need than it is to-day.

Between 1889 and 1914 the subject had been before the House of Commons thirteen times; and on the last eight occasions the principle had been accepted by a general majority of the House. In 1919 a *Speakers' Conference* was set up to consider a plan of federal devolution. Moved perhaps by a war fought for the rights of small nations and possibly mindful of the streams of Scottish blood shed in this cause, the Conference approved a scheme of devolution by 187 votes to 34. The vote of its Scottish members was as high as 35 to 1. Nothing practical came of it; but it is strange that Scotsmen should be consigned to a 'lunatic tartan fringe' because they venture to suggest that a principle not only rational in itself, but also accepted from time to time by the Mother of Parliaments, might reasonably be translated into action.