



After the '79 – Book Review

After the 1979 referendum, and the subsequent unscrupulous coup d'état by the Thatcher regime in London, Scotland was in a state of stunned paralysis, before it slowly started to recover its wits. The failure in the immediate aftermath did not lie in the referendum result (a clear majority for devolution), but in an inability to recognise the “repeal” of the 1978 Scotland Act under the notorious 40 per cent stipulation for what it was – an abuse of the English theory of the “sovereignty of Parliament” (which the Scottish courts had long since declared to be invalid in Scotland) to thwart the will of the people. It was a blatant “shifting the goalposts” tactic that was used for neither the first nor the last time.

Only one significant commentary on the referendum appeared in book form: The Referendum Experience: Scotland 1979, edited by John Bochel, David Denver and Alan Macartney, and published by Aberdeen University Press in 1981. The Scotland-UN Committee had by then started to make its mark as possibly Scotland's leading source of advanced and unconventional political thinking, and so the editors of the Cenchrastus review of Scottish and international literature, arts and affairs associated with Edinburgh University sent the book for review by James Wilkie. It was published in issue no. 11 at New Year 1983. The review roundly condemns London's open contempt for the wishes of the Scottish people, but it also highlights the superficiality of political thinking in Scotland, the supine and uncritical acceptance of anything handed down by “higher authority”, and the failure to oppose the arrogantly unconstitutional actions of the Thatcher regime.

Every political system requires “a frequent resort to first principles” if it is to remain in touch with the purposes for which it has been established. This proposition enjoyed particularly widespread currency during the American Revolution and the Philadelphia Convention that drew up the Constitution of the USA – events that were to no small degree influenced by Scottish political ideas.

One would have thought that the 1979 national referendum on the government of Scotland would have provided a classic opportunity for a similar reappraisal of the role of “homo politicus” in the light of fundamental principles. But the opportunity, as we know, was thrown away, and the debate remained at an indescribably primitive level of vituperation, empty slogans, manipulation of facts and abuse of the language. What the great figures of the Scottish Enlightenment would have thought of it is probably best left un conjectured.

What, then, of the somewhat scanty literature the event brought to life, and *The Referendum Experience* in particular? Does it help to redeem the situation in any way? It must be said immediately that this book does not do full justice to its potent subject in the above sense, but that within its limitations it is an excellent production that will almost certainly remain the standard reference work on the subject.

Its coverage of the event itself could hardly be faulted. The book was obviously meticulously planned in advance of the referendum, with the cooperation of a host of correspondents throughout Scotland in addition to the fifteen contributors listed. Of the editors, Messrs. Bochel and Denver are English, and have in previous years acquired something of a reputation for a bias against Scottish nationalism. Here they are balanced by Allan Macartney of the Scottish National Party, all three being university teachers of politics.

The documentation of the subject is meticulous to the last detail – the background is sketched; the competing factions are described and analysed, even to the extent of providing lists of committee members' names; local campaigning gets a chapter to itself; the campaigns in the cities each receives an individual section, with Professor Christopher Harvie making a contribution on the Lothian campaign; the media get three chapters devoted to local and national press and broadcasting; the outcome is summarised by Messrs. Bochel and Denver; Dr. James Kellas projects the movement into the future in a chapter entitled 'On to an Assembly'; and the editors give their conclusions in a final chapter.

The book is profusely provided with tables, maps and diagrams, extracts from party and other documents, etc., and 20 pages of illustrations of posters and campaign literature. It is a magnificently comprehensive documentation of an historic event; with few obvious lapses it is remarkably well balanced in its assessments throughout; and it has clearly made much future research superfluous.

To return, though, to the general criticism made at the beginning, there are broader questions that the book does not attempt to answer, and it would have been improved by adopting a more birds-eye view of the matter, if only in its final chapter. Despite short references to contemporary home-rule movements in other countries (there is a whole chapter on Wales) – which although relevant are scarcely the international norms with which comparisons really ought to be made – the book is shot through with "British parochialism", the inability to consider the matter in any other than a United Kingdom context.

Seen from the perspective of Central Europe, it is baffling to observe that the self-government movement can raise any controversy at all, let alone opposition. The legislative norm throughout Europe and most of the civilised world in East and West, including the Soviet Union, is that practically every nation, land, region, province, town and district controls its own affairs through a legislature that is sovereign under the people and the law within its range of competence. What was all the argument about in Scotland? We are not told.

If the book fails to penetrate the surface of the superficial argument in order to lay bare the true underlying motives, it certainly brings out the muddy thinking that permeated the whole debate. To quote an example from its own text, Dr. David Butler writes in the foreword that, "in a quite new fashion, a part of the British public was asked to decide the way in which it was to be governed." In a limited sense there is some truth in this; in a broader sense it is wholly misleading. The Scots have never yet been asked how they wish to be governed; they have never been asked to make a decision on the question of self-government as such.

What they were asked to do in 1979 was to vote on one particular, grudgingly inadequate measure that came nowhere near to meeting their aspirations as expressed in opinion polls and in other ways. And then their reluctant acceptance of this measure according to all known constitutional rules and precedents was deliberately misrepresented to the world as a rejection of the whole principle of self-government.

What about these constitutional precedents? The book notes the marked divergence of procedure in 1979 from that adopted for the 1975 EEC referendum, when Prime Minister Harold Wilson stated that a one-vote majority would be sufficient to decide the matter. It notes the lack of official information, the parliamentary ban on the use of public funds for this purpose or even for the free printing and distribution of leaflets by the contending groups; it notes the separation in time from a general election, in order to cut down attendance, and the refusal to limit expenditure, as in an election, or oblige expenses to be published, thus giving the Tory business supporters free rein. Above all, the subject of the notorious 40 per cent rule is handled at some length.

It is a matter of opinion how far academic detachment should go in interpreting such matters, but there are occasions – and this is one of them – when "objectivity" really demands the use of more pointed language. It is not detachment, but dereliction of duty, to shrink from seeking and recording the motives behind the actions.

The divergences from the 1975 precedent were not "pragmatism", as the book states, but deliberate manipulation by sectional interests – institutionalised lawlessness of a sort that would be prevented by the constitution in any civilised state. A political establishment was in favour of EEC entry and against self-government for Scotland, and in the course of getting their way little trivialities like the rule of law and the will of the people could go to the devil.

The facts are that in 1975 a constitutional change of staggering proportions took place, and that a massive transfer of sovereignty and the subordination of the whole body of Scots law to the Treaty of Rome was considered to have been approved by a simple majority consisting of 35 per cent of the registered electorate. Why the difference in treatment, and by virtue of what constitutional authority was this discrimination exercised?

It is on this latter point that the book is weakest. The index has an entry "Parliament – sovereignty over referendum results", but the text never even starts to get off the ground on the subject. Is it accepted as axiomatic that a parliament exercises sovereignty over the people – the people from whom its entire authority to legislate is derived? The implications of this are horrifying – or would be if the proposition were not so patently nonsensical.

The sovereignty of the people over all the institutions of state is the constitutional norm over the whole civilised world; it is the standard accepted by the international courts and organisations; it is even well founded in Scots law. One can accept that Members of Parliament are elected to use their judgement on the issues of the day under normal circumstances, but immediately they remit any matter "upstairs" to their constitutional superiors for a decision they relinquish any power to tamper with the result. And in this case it should be noted that the Scottish elected representatives voted to implement the Scotland Act by a massive majority of over two thirds.

To take another point: with reference to David Butler's phrase "a part of the British public", it is not mentioned that Scotland has never ceased to be a distinct, and distinctive, constitutional entity in its own right, with its own entrenched constitutional statutes and common law. As Lord Cooper pointed out, the "sovereignty of Parliament" is a distinctively English principle with no counterpart in Scottish constitutional law. The mere holding of the referendum represented acceptance, confirmation and acknowledgement of this status by the London authorities.

First principles are beyond sovereign power. In their light what happened in Scotland in 1979, and as a logical consequence the government of Scotland from that day to this, cannot be justified legally or morally. Blackstone wrote of "an extraordinary recourse to first principles" in the event that the social contract were "in danger of dissolution." After 1979, what remains of the social contract in Scotland? What survives of the unwritten constitution? Is there really no remedy available in such circumstances other than an extralegal one?

These and similar issues all arise out of the referendum experience. Why are they not discussed exhaustively in this book, or for that matter in the country at large? It may have something to do with the neglect of political philosophy (as distinct from political science) in our universities, and the scant attention paid to the teaching of constitutional law. But even a broader vision of the lasting significance of the referendum experience seems to be lacking.

It is a fact that the tide of political change has a tendency to flow in waves, each one reaching a higher point than its predecessors, and on its retreat leaving behind a residue of awakened consciousness, ideas and inspiration in the minds of people who previously had been unaware that a certain solution was possible, or even that a certain problem existed. The movement for European union is a good example.

To state this is not to deny that such change arises largely as a result of a reaction against the inadequacies and wrongs of a previous situation. It is rather to acknowledge that there are limits to the size of the advances that creative thinking can achieve at one stroke, and the sense of insecurity that grows stronger the further one departs from ways that have proved their value over a long period of time, even if they have outlived their usefulness.

But when the time for change arrives, it is understandable that solutions to the problem of replacement will be sought, consciously or otherwise, in ideas that have already seen the light of day. Thus the Scotland Act 1978, unloved by friend or foe, will continue to live in this sense, while in the constitutional sense both it and the 1979 referendum constitute a chapter whose ending has not yet been written by a long way.

James Wilkie