SCARMAN REPORT

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Extract from a speech by The Rt. Hon. Sir Keith JOSEPH, BT, M.P., (Leeds North-East) the Opposition Spokesman on Industry and with overall responsibility for Policy and Research, speaking to Conservative Association members, at Hove Town Hall, on Thursday, 1st September, 1977.

THE SCARMAN REPORT

I want to speak about the Scarman Report - the report of the Industrial Court on the Grunwick dispute. Although the Act under which an Industrial Court can be appointed has been on the Statute Book since 1919, there is widespread and proper caution about the use of the Industrial Court procedure. The phrase Industrial Court is itself something of a linguistic confidence trick - to try to give some of the legal sanctity of a Court of Law to a body that is, in fact, no part of the system of law courts. The idea was and is no doubt that a political - not necessarily a partisan - solution to solve a dispute might have more chance of acceptance if handed down by a body with at least the word "courts" in its name. But the report of an Industrial Court has, of course, no legal force or validity.

In this particular case, the Government were fortunate in securing as Chairman a very distinguished judge - Lord Scarman, a man of the very highest repute. I can guess that Lord Scarman only accepted the thankless task of presiding over this Industrial Court out of a sense of public duty.

It is against this background that I want to-day to air some doubts about the wisdom of using the Industrial Court procedure in this case and to make some comments on the Report itself.

First, was it wise to employ this rarely employed procedure in this case? There can be little doubt that the Industrial Court was set up because there was violence on the streets.

/The proper

The proper answer to violence on the streets is the firm use of the existing law or reform of the law, if the law is inadequate. If a government's main reaction to violence on the streets is to set up an Industrial Court which then produces a report favouring the party for whom the violence was used, may not the government have, in fact, actually made the situation worse? Indeed the setting up of an Industrial Court whatever the content of its Report, carries a risk that the outcome will intensify rather than reduce the underlying problem.

That is the first question.

The second question is about the quality of the Report. Is it a solid enough document to carry weight? The members of an Industrial Court have a particular resonsibility to produce a report as near impeccable as possible. Unlike a Court of Law, there is no appeal against a questionable judgment to a superior Court. That is right because an Industrial Court report, unlike a judgment in a Court of Law, has no legal force.

But an Industrial Court is only set up when there is a strong and widespread desire to settle an issue. And the risk is that such will be the urge to implement any so-called solution that the conclusions and the recommendations of even a weak report, or of a report that may actually initiate or reinforce trends that will damage the nation, will be pressed upon the parties in the dispute by politicians, by the media, by organisations and by public opinion.

In fact, it is only to public opinion that any appeal against the report of an Industrial Court can be made. It is for this reason that such a report even when produced by an Industrial Court headed by so distinguished a man as Lord Scarman should not be exempt from sober scrutiny.

It is upon such a scrutiny that I now embark.

The Report seems to me to be flawed in several ways.

(a) There are passages that seem to be either naive or slipshod.

/(b) There is

(b) There is a false symmetry in some aspects of the Report and too little symmetry in at least one other.

(c) One of the main implications of the central recommendation of the Report is ignored.

I don't think that I shall be alone in finding it naive of the members to say (para 73) that they "have no doubt that union representation, if properly encouraged and responsibily exercised, could, in the future help the company as well as its employees". The qualifying words beg all the questions. Of course, members could hold such an opinion. It would be natural for Mr. Parry to believe it. But to "have no doubt" goes far further than expressing an opinion. How can Mr. Lowry "have no doubt" that a union could help the company? Is not the Industrial Court aware that some unions in some cases inject restrictive practices and limit the flexibility and productivity of a company? Is not the Industrial Court aware that such a fairly common union attitude could jeopardize a firm's survival in a highly competitive market [and hence the pay and even the jobs of its workers?

To test the Industrial Court's assertion, would its members "have no doubt" that the company would have reached its present size and provided its present quantity of jobs had it had a union up until now? These questions surely leave some doubt about the answers. The unqualified assertion in the Report suggests either naivety or slipshod thinking.

/Then there is

Then there is the larger issue of false symmetry. The Report implies that self-defence by the company is provocative and bears part of the blame for violence on the union's behalf. The Report treats on the same footing the law-breakers and the law-abiders. The Report glosses over the violence and the illegality on the union side, while arguing that the company's punctilious observance of the letter of the law broke the "spirit" or the "policy" of the law. The Report finds the union "fully justified" in invoking the help of the trades union movement and mass picketing, even though it also finds that violence should have been foreseen - while drawing attention to the delays "which have so greatly embittered the dispute" that followed upon the company's exercise of what the Report specifically calls its "undoubted legal rights".

There is a false symmetry where there is no real symmetry, and where there should be symmetry, there is not. Let me explain. The acceptance of what is called "defeat" by the union is seen by the Industrial Court (para. 25) as apparently unthinkable. But the use of the word 'defeat' suggests that a union should be able to impose itself on staff even though by a large majority at the time the staff have shown that they did not want it. If employers are bound as is right, to accept a union if the majority of employees so wish, then should not the union desist from attempting to represent the employees if a majority does not so wish? This would not be "defeat". This would only be the corollary of the union's right to represent the staff, if a majority of them so desired.

It is hard indeed to reconcile the Scarman of page 7 of the Hamlyn Lectures - "the inestimable value ..... of certainty in the law" with the Scarman who chairs this Industrial Court and whose Report urges compliance with the spirit - inevitably uncertain and arbitrary - as opposed to the letter of the law with its relative certainty.

It is hard to reconcile the Scarman of page 6 of the Hamlyn Lectures who celebrates the strength of the law "with its inbuilt resistance to the power of others, whether they be baron or trades union - its very existence is, therefore, a bulwark against oppressor or tyrant", with the conclusions of the Industrial Court. /Who are

Who are the oppressors and tyrants here - the less than perfect employer, the majority of whose staff still prefer to stay with him, or the mass pickets attacking the police?

The unions are not automatically the oppressed. It is sometimes the employer, the job-creator, who is oppressed. Indeed, it is sometimes the non-union workers who are oppressed - by the union. Indeed, the story of Grunwick is at least as much of a struggle between the union and workers who do not want a union as it is between a union and an employer. There is no hint of any awareness of any of this in the Report.

The report suggests a "Scarman fork", the union entitled to its full legal rights and also to concessions where what it seeks is not secured by law, while employers who stand on their full legal rights are criticised for doing so on the grounds that they ignore the spirit of the law and exacerbate the dispute.

Finally, I come to the most extraordinary feature of all in this Report. The central recommendation of the Industrial Court is that the company reinstate the dismissed workers. Yet the members of the Industrial Court do not seem to have even addressed their minds to the attitudes and likely reactions of the continuing workers. The members of the Industrial Court know that re-instatement would be anathema to the employer, and have strong reason to believe that it would also be anathema to the large majority of workers who have stayed with the company and have suffered abuse and intimidation. The recommendation of re-instatement is virtually unargued and the difficulties not just glossed over but blandly and completely ignored.

What of the union which has both gone against the law and precipitated violence? Does the Industrial Court spell out the truth that dislike of an employer does not and will not justify breaches of the peace or of the law? No.

The tenor of this Report is not good for the country.

/At a time

At a time when the extent of trade union power is worrying many trade unionists themselves, and when there is already far too much violence, the Industrial Court scarcely refers to the violence which led to its own appointment, scarcely condemns the union under whose auspices the violence occurred and suggests the imposition, beyond the dictates of the law, of a union and fellow-workers upon the staff of a company who have apparently, overwhelmingly, rejected both. It is necessary to emphasise that the recommendations of an Industrial Court do not form part of the law of the land and are only as strong as their supporting arguments.

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