

REPORTS

THE ATTRACTION OF INWARD INVESTMENT:

The Report of the Select Committee
and the Government's Reply

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1. Background

Foreign direct investment in Scottish manufacturing industry has, for more than two decades, been of major importance to the economy of the country. Apart from the direct and indirect employment benefits associated with these foreign, mainly American manufacturing companies, Scotland has gained a significant presence in high technology industries and a continuing stimulus to productivity. Yet in recent years concern has risen over the substantial decline in employment in some of the long-established plants of foreign corporations. If the employment contribution of overseas-based firms is to be maintained, it is essential that new foreign companies continue to be attracted to Scotland and existing companies direct their expansionary investment projects towards their Scottish affiliates. Given the recession, reduced levels of foreign direct investment from the USA, and a dramatic increase in competition for internationally mobile projects, the achievement of this objective is no easy matter. What is crucial, nevertheless, is that the attraction effort undertaken by bodies in Scotland be effective and competitive.

2. Second Report from the Committee on Scottish Affairs, Session 1979-80: Inward Investment

It was in this context that the Committee on Scottish Affairs⁽¹⁾ set out to investigate "the effectiveness of the machinery for selling Scotland in the multinational market place".⁽²⁾ The Committee's analysis of certain of the key problem areas was sound. First, it was argued that a policy for inward direct investment must be based on detailed information, entailing "giving a high priority to time and resources spent on sectoral studies"⁽³⁾ and systematically classifying "the rapidly changing population of mobile companies and their marketing and product development stra-

tegies".⁽⁴⁾ Second, it was accepted that no serious attempt could be made to operate in this complex and increasingly competitive area without some more formal and sophisticated method of planning and targeting than is used at present.

This planned and professional approach to investment attraction was seen to involve "targeting the clients and tailoring the case presented to each".⁽⁵⁾ Although the Committee did not consider the elements involved in such a planning system, the programme would have to address itself to resources; coordination of interests; target countries, sectors and companies; related promotional policies and so forth.

Third, the Committee recognised that coordination was a priority. That there is overlap and duplication between government departments and statutory agencies and authorities responsible for investment attraction is widely agreed. In Scotland alone the Scottish Economic Planning Department (SEPD), the Scottish Development Agency (SDA), the New Towns, Regional Authorities and District Councils all have an involvement in investment attraction. The effect according to the Committee was that "would-be investor(s) (were) bemused by the number of separate but ill-defined authorities who seemed to have an interest".⁽⁶⁾ Apart from coordination in Scotland, relations between Scottish bodies, the national Invest in Britain Bureau (IBB) and the Foreign and Commonwealth Office (FCO) also require to be clarified and focused. Fourth, and finally, the Committee emphasised the need for monitoring. Among other observations, it was noted "that close relationships should be maintained with these arrivals (incoming foreign firms), once they are established, in order to deal with any possible problems and to give assistance on a continuing basis".⁽⁷⁾

While the Select Committee did accurately identify a number of problems associated with the attraction of foreign investment to Scotland, there were two major deficiencies in its report. First, the observations were not followed through by the presentation of a coherent inter-related set of recommendations displaying the connections between the elements of the attraction process. Attracting foreign firms to Scotland is a marketing exercise which entails a series of seven identifiable stages of activity - information collection and interpretation, planning and targeting,

promotion, negotiation, settlement, monitoring and evaluation. An effective and competitive attraction agency must be concerned with all of these areas of activity and the inter-relationships between them. The Select Committee's analysis was only partial and considered the various elements in isolation rather than as part of a complete package.

The second major defect in the report concerned the solutions posed to remedy existing defects. In summary, the Committee argued the case for having the IBB as the main attraction agency in the United Kingdom. The overseas promotion of Scotland would, under such a scheme, be handled through a Scottish input of personnel into the Invest in Britain Bureau. Abroad, the Committee recommended the disbanding of the SDA's promotional offices in the United States and Continental Europe, since "a separate Scottish effort alongside the FCO network would result in duplication of effort and would confuse potential investors".⁽⁸⁾ Again the solution suggested involved seconding staff with expertise on the Scottish scheme to the FCO network. Within Scotland, the SDA was seen as the "umbrella" body in the area of inward investment attraction, but the main SDA role envisaged was that of improving the investment climate and of providing an environment within which foreign investors could flourish.

In reaching these recommendations, the Committee was strongly influenced by political discussions and by the political make-up of the membership. It is certainly true that Scottish investment attraction policy must be conceived and implemented within an overall UK framework. Equally, some of the components of investment attraction are more effectively handled at national level. However, it was a mistake for the Committee to believe that the promotion of Scotland could be most effectively handled through the IBB/FCO network. The IBB is the most obvious body to undertake the more strategic activities in investment attraction, such as information gathering and appraisal, monitoring and evaluation. Activities such as advertising, investment missions, investment seminars and presentations relating to Scotland (or other regions) are more likely to be effective when undertaken by regional bodies. Local initiatives have often proved crucial in attracting key inward investment projects, and over time a considerable body of

expertise and skill has been built up at the regional and sub-regional level. It would be wasteful and could be harmful to try to reproduce this through the Invest in Britain Bureau. In its conclusions, therefore, the recommendations of the Committee on Scottish Affairs were both weak and unsatisfactory. Moreover almost no attention was given to reconciling the interests and coordinating the activities within Scotland of the SEPD, SDA, Regions, and New Towns.

3. Inward Investment: The Government's Reply to the Committee's Second Report of Session 1979-80

The Government response to the Select Committee, while leaked in the press in the early days of 1981, did not formally appear until March 1981.⁽⁹⁾ The step taken by the Government was to create a "Locate in Scotland" (LIS) group, bringing together the functions at present exercised by the SEPD and the SDA, under a single director and in a single building. The aim is to develop a structure in Scotland "which can give a strong lead to and provide a focus for other promotional bodies such as the local authorities and the New Towns; which can develop good working relationships and standing with the Invest in Britain Bureau (IBB), the Diplomatic Service and its Posts overseas in the presentation of Scotland as a distinctive location for investment; which is clearly identifiable to prospective investors abroad and to the public in Scotland; and which is demonstrably effective and competitive".⁽¹⁰⁾

From an organisational viewpoint, this structure seems much more likely to succeed than that which was proposed by the Select Committee. The integration of SEPD and SDA personnel under the Locate in Scotland banner should do a great deal to eliminate the confusion which existed among potential investors as to the relative responsibilities and authority of the two bodies; the aim is to create in Scotland "one door" at which all relevant enquiries would arrive. In evidence to the Select Committee the ability of the Industrial Development Authority (IDA) in Ireland to act as a "one stop" body for would-be investors was compared unfavourably with the then position in Scotland. Furthermore, the retention of a direct Scottish presence in the promotion of foreign investment at home and abroad will continue to tap "the

fund of interest in and affection for Scotland built up abroad by emigration and historical association;⁽¹¹⁾ while exploiting the expertise in the area of investment promotion built up in Scotland over the years. In promotions abroad, the SDA offices in New York, San Francisco and Brussels are being retained under the direction of Locate in Scotland for an experimental period.

Before making some comment on the future of the LIS initiative some of the other aspects of the Government's response to the Select Committee are worth noting in that they may shape the future of LIS. For example, the principle is accepted⁽¹²⁾ of having secondment from LIS to IBB or temporary exchanges of personnel between the two bodies in order to better effect coordination. While this objective is most worthy, it is important that LIS is established with sufficient speed, direction and foresight to enable these arrangements to be undertaken to the advantage of the Scottish promotional effort. Of considerably more immediate significance to LIS is the Government's rejection of the recommendation that the administration of regional development grants under the Industry Act 1972 (Section 8) should be transferred to SEPD in Scotland and not remain with the Department of Industry as at present. The standard argument was advanced that this is a national scheme and its constituent grants paid on an automatic and non selective basis to all applicants who meet the defined and published criteria. Such assistance could not therefore be offered selectively to potential inward investors to attract them to particular parts of Assisted Areas. While this is well trodden ground, a little more ingenuity on the part of the Government could well have led to the devising of a scheme which ensured a closer relationship between promotional and financial activity. The continuation of this separation in the UK is increasingly anomalous by the international standards of heightened competition and in this sense, LIS does not represent much of a step forward. Paradoxically, the fact that the schemes are national and subject to well known rules should have enabled a formula for regional financial devolution in all but the difficult cases. In part to offset this type of argument the Government do commit themselves to encouraging the mobility of the civil

servants administering Section 8 of the Industry Act 1972 where necessary and desirable, although the tone is reluctant.

4. The Future for "Locate in Scotland"

Despite what is said above, at this formative stage it is genuinely difficult to evaluate LIS. The effectiveness and competitiveness of the body will depend on what it does rather than on what it is. This applies, for example, at an organisational level to the way SEPD and SDA personnel collaborate in the internal workings of LIS; it applies to the leadership which LIS can provide to the local authorities and New Towns; and it applies to the relationships between LIS and the Invest in Britain Bureau. Even if these difficult areas of organisation can be overcome, the key to success or failure still remains that of developing a successful marketing programme. To return to an earlier theme, the actual promotion of Scotland as an investment location is not a single activity, but must be seen as a coordinated package of operations, all of which must be successful to be effective overall. This is a new concept in Scotland. The information function, a fundamental prerequisite for a promotional strategy, is poorly developed at a Scottish level; and where work has been undertaken (as in the SDA sectoral studies) it has not been fully reflected in the promotional strategy. The second functional area requiring early attention is that of monitoring. At present this scarcely exists in Scotland, other than on a highly informal and almost random basis. To be done properly, this will inevitably be costly and requires a dramatic change in present practice. Again it would appear essential that an evaluative dimension be introduced to assess the benefits and costs of the investment attraction effort.

In conclusion, therefore, the Select Committee investigation into inward investment attraction was very necessary. While failing to undertake a comprehensive analysis of the problems and particularly failing to develop a workable solution, the Committee did provide a most valuable forum for discussion. Scotland has at last started to face up to the issues involved in mounting an effective inward investment attraction operation. In the Government's response, the worst excesses of the Select Committee's

recommendations have been avoided and the formation of Locate in Scotland provides an important organisational framework for progress. The real test, however, is still to come.

REFERENCES

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4. Ibid, para.2.12, p.6.
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6. Ibid, para.1.1, p.1.
7. Ibid, para.2.10, p.5.
8. Ibid, para.6.2, p.33.
9. First Special Report from the Committee on Scottish Affairs Session 1980-81, Inward Investment: The Government's Reply to the Committee's Second Report of Session 1979-80, HC.205, HMSO, (London)1981.
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STODART AND LOCAL GOVERNMENT: WAS THE FUSS JUSTIFIED?

The Report of the Committee of Inquiry
into Local Government in Scotland.

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'We trained hard - but it seemed that every time we were beginning to form up into teams, we would be reorganised. I was to learn later in life that we tend to meet any new situation by reorganising, and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency and demoralisation.'

- Gaius Petronius, first-century Roman centurion.

Scotland was given a two-tier system on the mainland (nine regions responsible for most of the major services and strategic planning; and fifty-three districts with responsibility for housing and the more local services) and three separate all-purpose island authorities. The modifications to the Wheatley proposals were an increase in the number of regions (the South-East split to form Fife, Lothian and Borders) and in the number of districts (for political or local civic reasons); the pattern of island councils; and the location of the housing function at district and not regional level. The two tier principle was compromised in the legislation by reducing the role of the necessarily small district councils in the sparsely populated rural regions (e.g. planning to Borders, Dumfries and Galloway and Highland Regions); and by the formation of Joint Board arrangements in a number of areas for such things as police, fire and major cross-boundary road bridges.

The legislation set out to define as logically and as clearly as possible the relative responsibilities of each set of authorities. In most cases it succeeded adequately; in some it failed miserably. With good rationale and reasonable definition the planning function was split: local planning to (most) districts and strategic planning to regions. With poor rationale and inadequate definition recreation and leisure became a concurrent function, as did industrial promotion and development where definition was absent and rationale obscure ⁽²⁾.

Of lesser note, but constantly irritating, problems were created in such activities as snow clearing; street cleaning and gully emptying; the lighting of pathways and tenement stairs; the fixing of local holidays; and the operation of school libraries. And then, where definition was clear, some related services ended up on different sides of the great divide. Most obviously the much vaunted relationship of housing to social work was ignored lest districts be deprived of importance - with the consequence that a separate committee of inquiry had to be set up to recommend ways in which bridges might be built! ⁽³⁾

Until 1974-75 Scotland had, for longer than most people could remember, lived with a stable but complex patchwork of local authorities. Around 2 million (of its 5 million) people lived in the four

The reorganisation of the institutions of government is a fascinating pastime. Politicians have always found such tinkering a happy occupation, with the added bonus that it creates the illusion of progress to which Gaius Petronius refers. Enthusiasm for reorganisation was at its height in the early Seventies. For outmoded government machinery was blamed for many of the ills - social and economic - which had beset the UK for a generation and more. Get the machinery right and the right decisions and solutions would follow. We can only marvel at our willingness to fasten on to panaceas.

The reorganisation of local government in 1974/75 (a year later than in England and Wales) was part of this pattern. In this case there can be no doubt that the old system had outlived its usefulness. Geographical boundaries, size of authority and distribution of functions bore little relationship to contemporary patterns of living, working and leisure - let alone to the exigencies of complex and specialised service provision. The problem was that while there was little consensus about what should be done, reorganisation was expected to resolve difficulties and deficiencies which had more to do with the nature of local democracy, political conflict, a decaying urban fabric and with particular policies than with institutional arrangements. But that is to jump ahead of the argument.

In the late sixties, the Labour government set up two Royal Commissions to investigate the requirements for reform and to suggest new patterns for local government in Scotland, and in England and Wales. The Commissions quite properly set about an extensive programme of research, consultation and deliberation in an attempt to find a framework which would form the basis of agreement for change. To cut a long and familiar story short, the two bodies reported with different sets of recommendations⁽¹⁾. The Conservative administration which received them enacted the reforming legislation. This bore little resemblance to the proposals of Redcliffe-Maud in the case of England and Wales - for political reasons; and much more resemblance to the Wheatley proposals in Scotland. However, even though the recommendations were clear, we can see looking back that there was little public consensus about the proposals.

single tier, all-purpose Counties of Cities. The rest enjoyed the jurisdiction of upper tier County Councils and a range of lower tier councils (large burgh, small burgh and district), each bringing with them a different balance of responsibility. The changes, then, were radical, striking at the heart of local civic pride and established loyalties and - for a substantial number of people - bringing the complications of two tiers where previously there had been one, more readily understandable.

The visibility and proximity of the local authority to its electors and the consumers of its services (when compared with the distance of Whitehall and Westminster or the obscurity of NHS administration) has probably always given local government a problem of unpopularity. Since 1975 this has been exacerbated by a number of things: unfamiliarity with the new system (names and boundaries as well as distribution of functions); the gravy train image created around the reorganisation itself (with popularly inflated numbers of officials, salary scales and the like); the constant sniping of the media; the changed financial context within which local government operates (the end of an era of sustained rapid growth coincided with reorganisation); and repeated attempts by national governments of both parties to portray the local authorities as the extravagant and irresponsible partners in public spending (when in reality gross local government spending has been reduced as a proportion of the whole and central government spending has increased).

When there is added to all this the almost inevitable conflict which comes from two tiers of authority competing in the same political space, however clearly their relative responsibilities are defined, it is hardly surprising that the new arrangements got off to an inauspicious start. Because there were, in addition, the unfounded expectations that somehow the new authorities would quickly resolve the problems of urban decay and industrial decline, of missing generations of public investment and of geographical inequities in the distribution of existing resources - problems whose solutions had eluded succeeding generations of governments - it didn't take long for the prophets of doom to emerge.

The Jeremiahs were helped on their way by two external forces. When the Scottish National Party emerged in the mid-1970s they were

ambivalent about being represented in local government. Though not anti-local government as such, they were both uncertain if it was an appropriate arena for them and bitterly critical of reorganisation in general and the regions in particular. And then, not unrelated to the rise of nationalism, there was the devolution episode. Throughout the debate doubts were expressed about the future of local government together with the view that, if an Assembly were created there would be insufficient political space for local authorities in their existing form.

Looking back on the mid-seventies it is clear, that there was little public consensus about the reorganisation and hence little legitimacy for the new system. And, beyond this, were a series of constitutional uncertainties and national problems which conspired to make it difficult for the new authorities to establish themselves. By the end of the decade a clear view was again emerging that something would have to be done, or seen to be done. Once again, however, there was no agreement about what it should be.

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The Conservative Party went into the 1979 general election with a commitment to review the performance of Scottish local government. This was fulfilled when in December 1979 a Committee of Inquiry was appointed under the chairmanship of Anthony (now Lord) Stodart (former Conservative MP for West Edinburgh and a junior Scottish Office Minister with responsibility for agriculture in the Heath government). Despite the feeling that further change was required the Secretary of State balked at major upheaval, seeming to accept the view that minor adjustment would reap major reward. The Committee was given the following terms of reference:

'With a view to improving the effective discharge of functions by Regional, Island and District Authorities -

- (i) to review the working relationships among the new authorities since 15 May 1975
- (ii) to recommend whether any transfer or rationalisation of functions between them is desirable and consistent with fully maintaining the viability of the existing authorities; and

(ii) to report by December 1980.⁽⁴⁾

The terms of reference were set to be restrictive. Restrictive in that they precluded anything more than a tidying-up of existing arrangements; and restrictive in timescale. This was not to be a Committee of Inquiry with a brief to engage in extended research and discussion as a means of finding a solution to a perceived problem. Rather the Committee was to act as a broker; that is to say, it was clearly expected to listen to all points of view and strive to emerge with something which would form the basis of the consensus solution which had proved so elusive.

In addition to the Chairman, there were eleven members. Of these, seven were serving councillors (three from District, three from Region and one with dual membership) five of whom were Conservatives and two Labour. The remaining four comprised an academic lawyer, a retired civil servant (who had been closely involved with reorganisation), a serving (regional) Chief Executive, and the managing director of a Scottish supermarket chain (presumably representing commercial and industrial interests). The preponderance of local government representatives further helped to ensure that the status quo was not unduly disturbed - and presumably helps to explain the one significant departure from the terms of reference in the recommendations which relate to remuneration of councillors. Among the politicians the Tory majority was an insurance policy for the Secretary of State.

The Committee met for the first time in January 1980 and reports that it met on 20 occasions. Among its first acts was to invite local authorities and other organisations and individuals to submit their views on the operation of the reorganised system. All 9 regional councils, 1 of the island councils, 50 of 53 districts, 7 government departments, 37 community councils, 113 other organisations and 90 individuals responded and lodged evidence. Of these, 23 were invited to supplement written with oral evidence on matters which were being scrutinised particularly closely by the Committee.

So far as the evidence was concerned, most controversy surrounded the absence of the Convention of Scottish Local Authorities. Since 1975, much has been made of the existence of a single local authority association representing all of local government's interests⁽⁵⁾. It was perhaps not surprising, that there seemed to

be great expectation of the evidence which would come from COSLA. It was rather less surprising to confirmed local government watchers that the Committee were informed that it would be impossible "for the Convention to submit a single Memorandum of Evidence which would be of any value to your Committee and would, at the same time, be acceptable to a reasonably substantial percentage of the Convention's membership".

Two points require to be made. First, the weakness of a single association is that it cannot properly represent divided interests in matters which exacerbate rather than heal those divisions. And, second, if there had been a consensus within local government on the remit of the Committee, then the Committee would probably not have had to be set up in the first place. However, such was the criticism fired in COSLA's direction over the non-submission of evidence that it has attempted to put matters right in commenting on the Committee's findings: the separate regional and district policy committees are each to make a response.

The Committee's report was on the Secretary of State's desk before Christmas 1980 and published at the end of January. For those who were looking for simple and dramatic solutions to the problems of local government, the report was a disappointment. It was, as its terms of reference suggested it would be, severely circumscribed. Its discussion and recommendations can be divided into three: the shape of local government; the major problems arising from concurrent functions; and relatively trivial tidying-up measures, together with a miscellany of minor points arising out of the evidence presented.

On the shape of local government the Committee were clear that there was nothing to be done. While considering that a network of single tier authorities had its attractions, the Committee recognised that such a proposal was outside its scope and would require separate investigation. What it was concerned with were the representations of the four cities (Edinburgh, Glasgow, Aberdeen and Dundee) and Moray, Argyll and Bute Districts for all-purpose status. In the case of the last three geographical isolation from the rest of their regions (Grampian and Strathclyde) was the reason for the claim. For the former, dented civic pride formed the basis of representation. The cities had been all-purpose authorities before

1975 and much resented their submersion in larger and more distant regional authorities.

Their claim that they could provide the whole range of services was unchallengeable: they had done so before 1975. But their claim was found to fail because it struck at the very rationale for re-organisation: to remove them from their regions would be to undermine "the viability of existing authorities". To remove Edinburgh from Lothian would be to take away two-thirds of its population and its geographical hub; Glasgow, Aberdeen and Dundee are similarly placed as the focal points and major population centres of their regions. The reformers of the mid-seventies had under-estimated the strength of local civic tradition and pride and had over-estimated the ability of the new regions to surmount the difficulties caused by physical size, geographical distance and newness. But such problems were beyond the reach of Stodart to solve.

The major concurrent functions are in planning, industrial development and recreation and leisure. After deliberation the Committee came down in favour of the status quo for planning; that is to say that the regions should remain strategic planning authorities and that local planning and development control should be a district function. Their only suggestions for improvement were for better definition of liaison arrangements, for clearer criteria for the "calling in" by regions of planning applications, and for the districts to be the sole agents for the Scottish Development Authority in the rehabilitation of derelict land.

The industrial development role of local authorities has been a patent nonsense since 1975. Not only has there been confusion between the tiers of local government, but also between local and central government. Stodart made recommendations about the first; the second - arguably the more serious - involving the Scottish Development Agency, The Scottish Office and Whitehall departments was beyond the Committee's remit. Regions and districts had represented strongly that each should have sole responsibility. After weighing-up the arguments, the recommendation was in favour of the regions and of association with strategic planning and the major infrastructure services (although it was suggested that there should be provision for delegation by regions to districts). This was the one subject, however, which produced formal dissent and reservation.

Two members of the Committee (the retired civil servant and the academic lawyer) signed a note of reservation. This is an "on the one hand and on the other" argument which concludes that the whole thing is very difficult to resolve and so recommends that something approaching the status quo should be perpetuated, albeit with the regions in the co-ordinating role.

The three district councillors found no such difficulty. Their argument was simple and to the point: districts have a role, they have performed well, and they should continue to be allowed to perform. Not for them the ambiguity of joint committees - the favoured creature of the majority supported by the two dissenters - and on this they have a point. The idea of such committees would be to give district councils a voice in industrial development matters at regional level - and presumably some share of the action. The fact that such a committee flies in the face of the realities of local political conflict and the uneasy relationships at the heart of the committee's discussions seems not to have caused undue concern.

It probably has to be the case that any Committee of Inquiry such as this indulges in occasional collective lunacy. Stodart went on from joint committees in the industrial development field to arrangements for recreation and leisure more complex than even the present ones. On the face of it the issue was a simple one. Few people had had anything good to say for the concurrence of recreation and leisure functions; the districts had been the major partners since 1975; so what better quid pro quo for industrial development than to vest responsibility wholly with the districts. This is the essence of the final recommendations but with a number of complicating provisos. Regional Councils should have power to contribute to the capital and running costs of facilities where the catchment area is wider than the district involved; all community centres other than those which are an integral part of an educational building should be transferred to districts, but management committees should be set up to protect regional and community interests; the regions should continue to run the community education service whose personnel would run many of the buildings being transferred.

Any suggestion that what Stodart was about was clear lines of responsibility and accountability is hard to accept after this.

There is no doubt where major responsibility is to lie, but in setting out to achieve this the Committee have set enough hares running to keep many people active for a long time. Given the weight of evidence and experience it is extraordinary that twelve "sensible men and true" could come up with proposals which ignore the realities of politics and personal and professional relationships - let alone the conventional rules of accountability. Is Strathclyde or Lothian really going to fund facilities run by Glasgow or Edinburgh Districts over which it has no control? Is the community to receive the best service from community education officers employed by regions, operating out of community centres owned by districts and run to the latter's specification and in accord with their policies.

A similarly strange proposal is made in the consumer protection field, where it is suggested that food standards, composition and labelling be transferred to district environmental health officers. All the evidence points to this complicating rather than simplifying matters. Beyond this, the miscellaneous matters commented on by the Committee in its report arose out of the evidence presented and are not contentious to the same extent. On the face of it most of these matters appear unexceptional; in fact, many of them have been the cause of much wasted time and effort and of public irritation. The fixing of local public holidays; control of public processions; the financing of house adaptations for the disabled; the appointment of wardens for sheltered housing; the provision of street nameplates and seats; the maintenance of footpaths, pedestrian precincts and roadside verges; all of these came under scrutiny and led to recommendations designed to clarify obscurities and ambiguities in the 1973 Act. Alongside these, and slipped in as if in the same category, is the recommendation that the system of member allowances be replaced by the payment of a basic salary to all councillors.

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The Report was published in January 1981. The Secretary of State asked for a response to its recommendations as quickly as possible, with a view to his introducing the necessary legislation in the 1981/82 Parliamentary session. At the time of writing these

responses are still being presented. What seems likely is that the Government will bring forward rationalising legislation and that this will deal with most of the matters raised by the Committee. Despite continued argument by the interested parties, most of the miscellaneous items are likely to be carried forward without significant change. Proposals to deal with recreation and leisure will be enacted, but professional and political interests are likely to iron out some of Stodart's more extreme contortions. Most political interest will, however, be directed to the industrial development issue. So strong are the vested interests here that there must be a strong chance that an uneasy compromise will emerge leaving both regions and districts in the ring and so perpetuating the problem Stodart was set up to solve.

And where will all this take us? Unlike Gaius Petronius' experience, most of the minor changes will be beneficial in that they will remove friction and make the division between regions and districts sharper and easier to understand. What will not happen, however, is any dramatic change in the performance of local government. Those who looked for magic solutions after 1975 will again be disappointed, as will those who believe that the architects of 1975 got it wrong. Whether or not the two-tier system is the right one, it is here to stay for the foreseeable future; whether or not local government has the correct range of powers and responsibilities, they are the ones we shall have to continue to live with. What will have happened is that George Younger and his government will have been seen to have done something. Having done it, their most useful contribution would be to try to bolster rather than undermine.

Quite apart from the fact that a major reorganisation needs a decade or even a generation in which to settle down, one of local government's major problems has been and is the image in which it is cast. There may have been little consensus about the way forward, but governments are in as good a position as any to create a climate in which one can grow. Given this, the fuss about Stodart pales into insignificance beside the current arguments about finance and the nature and scope of local democracy. If local government is to survive and flourish in the way we have believed it should for a hundred years and more, those issues have to be resolved and resolved quickly.

Most observers would agree that much progress has been made in a short time and that, for all its problems, Scotland has a better system than was produced for England. However, many of Scotland's intractable social and economic problems are outside its scope and this is where the dilemma lies. Their existence is likely, once again, to result in a call to do something about Scotland's government - whether or not it is the machinery and institutions of government which have prevented solutions being found. Reorganisation at a national level would have consequences for the pattern of local arrangements. And so, in the longer term, Stodart may well appear to have been a minor and largely irrelevant interlude, even if in the shorter term it serves as a basis for a few sensible changes.

Postscript

As this went to press the Secretary of State announced to the House of Commons his intentions on the Stodart Report⁽⁶⁾. He said that of the 72 conclusions and recommendations of the Committee he was accepting 60, subject in some cases to minor variations and that a further 7 would be considered in a separate review of Scottish Roads Legislation. The Government plans to introduce legislation into the next session of Parliament with a view to an operational date of April 1983.

Mr Younger categorically rejected any change to a single tier system of local government indicating that the Government considered the present Scottish system to be basically sound. He went on to say that the Government's intention was to tidy up those areas of concurrency, concentrating on industrial development and leisure and recreation. In the case of industrial development he indicated that the Government did not consider it right to deprive the districts of their present powers to provide factories and mortgages for industrial purposes. The intention is therefore to leave the industrial development function uncomfortably split between regions and districts. However, industrial promotion outside the area of the local authority concerned is to be the sole prerogative of the regional councils.

The intention for leisure and recreation is more categorical. That is to say the district councils are in general to have compre-

hensive responsibilities for this, for countryside matters and for tourism. The inadequacy of the present arrangements will, however, be continued to some extent in that regional councils are to have scope to make financial contributions to those facilities serving a larger area than a single district. The collective lunacy of the Committee in its dealings with community centres and community education has been ameliorated to some extent by the Secretary of State refusing to transfer all free standing community centres from the regional education authorities to the districts.

For the most part the other proposals of the Committee are accepted, though there are one or two matters which are not acted upon. For example, local holidays are considered by the government to be essentially a "local" matter and therefore their fixing is to remain with the district councils; wardens of sheltered housing will not be appointed only by districts nor will housing authorities alone be empowered to contribute towards the costs of adapting housing for the disabled; litter bins are to be provided by highways authorities as well as district councils. Not surprisingly, in the view of other statements, the Government is not prepared to accept the recommendation for salaried councillors. The Secretary of State not only rejected the recommendation but made it clear that he believed the matter not to have been within the Committee of Inquiry's remit.

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THE FUTURE OF CHILDREN'S HEARINGS: Commentary on the responses to the 1980 Consultative Memorandum on Part III of the Social Work (Scotland) Act 1968.

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Scotland's right to maintain a juvenile justice system that differed from its English counterpart not merely structurally but in its leading objectives was confirmed and strengthened on 19 May 1981 when the Secretary of State gave his long awaited statement on the future of children's hearings. Given a Conservative manifesto commitment to firmer measures to deal with young people who break the law and an ensuing English White Paper⁽¹⁾ that was clearly intent on translating this into practice, it was all the more surprising to hear it announced that after 10 years of operation no fundamental changes need to be made to the Scottish system.

The possibility of additional powers⁽²⁾ had been raised more than a year earlier in a Consultative Memorandum⁽³⁾ issued on behalf of the Secretary of State for Scotland. The document had claimed that its object was to strengthen the hearings system and not to make any change in its underlying principles. But close examination of the terms of the document made it easy to see why it raised in Scotland a good deal of uncertainty and speculation over the likely impact of the proposed changes on a juvenile justice system that seemed to have become a settled part of the national scene.

Lay members of the community had been brought into the process of reaching decisions about children in trouble; 'the best interests of the child' had been established as the criterion of good decision making; the aim of the system had been firmly defined in terms of re-education and rehabilitation rather than punishment.

The 1980 document proposed a number of powers, some of an explicitly punitive nature; these included the imposition of fines on children, the ordering of compulsory reparation and the right to refer unco-operative parents to the sheriff court with a view to the imposition of caution (a financial security) for the good behaviour of their children. These proposals stemmed from the un-

argued assumption that since all compulsory measures of care tended to be unpopular they were therefore indistinguishable from punishment, so that the creation of additional powers which did not claim to be anything other than punitive would not affect the essential nature of the system. The object of such punishment, it was said, was to bring home to a delinquent at an appropriately early stage the seriousness with which his infringements of the law were regarded and the disapproval of the community.

Proposals for extended powers of a punitive nature and indeed for a shift in philosophy might have been more securely grounded if it had been the case that the volume of referrals by the police and other agencies to reporters to children's panels was steadily increasing, that the burden on panels continued to grow and that List D schools were overcrowded, requiring long delays before admission. It might then have been argued with some plausibility that the hearings system had failed to contain a rising tide of delinquency and was badly in need of stronger powers. The trends that were actually to be observed were the precise opposite of these. Since 1974, the number of children referred, the number of children appearing at hearings, and the number in respect of whom a residential supervision order was made had all been steadily declining. While a few years earlier there had been widespread concern at the waiting lists for admission to List D schools, the number of places available now exceeded the requirement. Nor could it be said that the procurators fiscal were making correspondingly increased use of the courts as a preferred alternative to the hearings in borderline cases. The number of children against whom proceedings were taken in the courts had decreased each year since 1973, reaching its lowest point of 1,055 in 1979. This shrinkage could not be interpreted simply as an achievement of the hearings system but the trend had to be acknowledged, particularly as it stood in clear contrast to contemporaneous developments in England and in most other broadly similar countries. Whatever its precise significance it did at least destroy any suggestion that the hearings were responsible for any growth in offending. It was therefore the more necessary to question carefully the justification for important changes in powers.

In addition to the key proposals referred to above several other recommendations were circulated for discussion. These in-

cluded giving children's hearings the power to suspend disposal of a case for up to six months. By a period of good behaviour a child might therefore avoid a supervision order, a notion which clearly implied that a supervision order was in the nature of a 'sentence'. The limits of 'childhood', it was also proposed, should be more narrowly defined. At present young people up to the age of 18 are dealt with by hearings if they commit a further offence while under supervision. In future, it was argued, prosecution of all offenders beyond the age of 16 should be in the criminal courts, ensuring both parity of treatment and access to more appropriate disposals.

Some amendments to the grounds for referral were raised for discussion. The document proposed giving hearings the power to deal with potential non-accidental injury to children; with cases of self-inflicted injury, particularly solvent abuse. The recommendation of the Pack Committee that persistent indiscipline in schools should be made a ground for referral to a hearing was however rejected in the document. The Secretary of State further invited views of interested parties on the arrangements which might be made to transfer to the children's hearings his own responsibilities in relation to children committed by the courts for residential training.

The document also included proposals that had been canvassed in an earlier Consultative Memorandum⁽⁴⁾ of 1975 some of which had already been incorporated in the Criminal Justice (Scotland) Bill. The extension of certain periods of detention was justified on grounds of administrative necessity. Included also was the proposal to give hearings a power to order forfeiture of weapons. The Secretary of State also wished to ensure that hearings should generally see children who commit fresh offences while under supervision. The significance of the paragraph was not very clear, but seemed to imply a curtailment of the discretion enjoyed by reporters⁽⁵⁾.

The recipients of the document included all 1,472 panel members, professionals working within the system and in closely related fields and a number of interested observers. Only a minority of the individuals addressed responded individually. The views of panel members in particular tended to be channelled through representative groupings such as regional children's panels and the Scottish Association of Children's Panels. The responses of various

professional bodies also figured prominently among the 170 replies received.

The consultative document was in the main sharply criticised for proposing changes which if implemented would alter the nature of the hearings system quite profoundly. It had been asserted that fundamental changes were not deliberately intended and that the concern underlying the proposals had to do with public acceptability. But if that were the goal, respondents argued, it was public education that needed to be developed rather than the system altered.

The memorandum was also criticised for its lack of clarity as to the classes of children for whom these new measures were intended. It had asked whether hearings were equipped to "deal purposefully with the persistent and generally older offender", but went on to say that the proposed punishments were designed to bring home a sense of serious social disapproval to "a delinquent at an appropriately early stage". The management of the small minority of persistent offenders was not a problem unique to Scotland. There was no evidence to suggest that the hearings were any worse in this respect than other juvenile justice systems, or that the unoriginal methods such as fining and caution proposed would have an effectiveness with the hardened offenders denied to less punitive methods. If, on the other hand, it was intended that new penalties should be introduced as indications of social disapproval for youngsters at an 'early stage' in delinquent careers, they would in effect become alternatives to existing disposals at a level of delinquency where the hearings system currently operated with a considerable degree of success.

The great majority of respondents argued against the introduction of powers to refer parents to the Courts with a view to the imposition of caution and directly to impose fines on children. These punitive measures were resisted largely on the grounds that their introduction might have damaging consequences on the system as a whole. The honest discussion which was seen as the acknowledged strength of the hearings system would it was feared be undermined by an increasing pressure on children to deny the grounds of referral, to lie and be evasive. The memorandum had recognised that some further penalties must be available in the event of fines remaining unpaid or caution unmet; many feared that imprisonment, the obvious

and traditional penalty, would, however infrequently used, have serious repercussions for the work of the hearings, creating an even stronger barrier to honest communication. Furthermore it was anticipated that penalties such as these would almost inevitably be imposed on parents who were the most recalcitrant or anti-social; it was far from obvious why financial penalties or the threat of them should be expected to inject a new, realistic concern into parent-child relations rather than, as seemed more likely, damage them still further with resentment and bitterness.

The concept of reparation was agreed by many to have a place in the hearings system. But to be effective as a means of reform or reparation it should, so it was argued, be voluntary and specific to the victim. It might be useful for the attention of reporters and panel members to be drawn to the possibility of reparation, carefully defined, but without the creation of any additional powers. Some opposition was expressed to the idea of linking proposals for acts of reparation with a suspended disposal. The clear implication that a punitive disposal would follow failure to carry out an act of reparation was thought to make nonsense of the notion of voluntary action. Inviting parents to make recompense for damage caused by their children was believed to have some place among voluntary measures taken by panel members and reporters, though in practice this too might have limited applicability.

In particular, the observations submitted by regional children's panels and by the representative body of panel members were unanimous in their rejection of powers of a punitive nature. In this respect the ideas put forward on behalf of panel members were to some degree at variance with those expressed by panel members when they anonymously submit individual opinions. Recent research findings⁽⁶⁾ have indicated that the power to order reparation would be welcomed by a very large majority of panel members, while the power to fine parents receives the approval of a substantial minority. The authors speculate that "the consultative memorandum's emphasis on punishment, and its demonstrably superficial grasp of the hearings system's principles, may have served to alert panel members to the potential hazards of the proposed changes".

The minority who responded favourably to the idea of introducing punitive disposals did not argue their case explicitly. Their

comments did however suggest that they saw these punitive powers as no more than an extension of what was already available. For example, one respondent took the view that "small fines selectively used could be a helpful resource in a not too plentiful stock of resources" and another argued "There is no reason why a children's hearing should not act punitively if it is an appropriate measure of treatment for the child concerned". The confusion was also reflected in the following response, "We are of the opinion that both reparation and community service are compatible and could well be considered as a suitable punishment as a voluntary or a compulsory measure".

The other proposals while evoking less extreme views none the less attracted considerable and varied comment. There was virtually universal agreement that children who commit offences after attaining the age of 16 should be dealt with in the sheriff court. Not so with the proposal to transfer to hearings the Secretary of State's responsibilities in relation to children committed by the courts for residential training. Because the court exercised a different criterion of judgement, taking into account questions of public interest, it was felt by some that difficulties might arise for hearings required to implement court decisions.

The notion of a 'suspended disposal' was seen by a number of respondents as running counter to the philosophy of the hearings system. In general it was felt that as decisions taken by hearings are intended to be in the best interests of the children concerned, it seemed contradictory that those decisions might sometimes be deferred for several months. A number suggested that an early review would be a more appropriate way of dealing with cases where a supervision requirement seemed to be indicated but where there were grounds for expecting a fairly rapid response.

Some anxiety was raised by the apparent equating of intermediate treatment with community service orders and a number of respondents spelt out at some length the important distinctions. The principal emphasis of intermediate treatment was not so much on what might be described as 'socially useful drudgery' as on the development of character and a sense of responsibility, through carrying out group tasks often of a demanding nature. Since intermediate treatment was most useful as an adjunct to supervision in the comm-

unity, it was commonly seen as a condition written into a supervision requirement rather than as a disposal in its own right. Little dispute arose over the suggested amendments to grounds of referral. So far as solvent abuse was concerned the great majority were in favour of introducing grounds that were broad enough to encompass other forms of self-injury. No-one spoke in favour of making persistent indiscipline in school a ground of referral⁽⁷⁾.

Whether Ministers received all responses, or a selection or a summary, with or without a departmental commentary, is not known. Nor is it clear why it took nine and a half months to consider these. At a reception in Edinburgh Castle in April 1981 to mark the tenth anniversary of the hearings system the Secretary of State described the size of the response as "overwhelming" and indicated that this, "together with the fact that the encouraging response deserves serious Ministerial consideration, explains why I have not felt able before now to make a statement about the results of the consultative process"⁽⁸⁾. But take account of the process he did. When on 18 May Mr Younger announced the Government's intentions⁽⁹⁾, he declared that the respondents had been so heavily against both fining and the power to require caution from parents that he had decided to take no further action on either of these proposals. He had paid attention also to the substantial support for voluntary reparation and he promised to give greater encouragement to the use by children's hearings of this method of treatment.

There had been little dissent from the recommendation that all offenders over 16 should be taken to court, and he proposed to go ahead with this. Further consideration was to be given to the implications of transferring to children's hearings the Secretary of State's responsibilities for children committed by the courts for residential training. More significantly he appeared to be taking account of the view expressed, indicating that he considered it right to examine further the need for courts to continue to have the power to make a residential order of this kind. Such other proposals as the deferment of disposals by hearings and the extension of grounds of referral were also remitted for further consultation.

Both the Secretary of State's decision and the processes by which it appears to have been reached are worthy of note as exceptions to dominant trends. The confirmation of an Anglo-Scottish

difference would not in itself be remarkable, were it not for the policy area involved. The 'law and order' issue played a significant role in Conservative electoral strategy, and firm measures directed in particular against young offenders were confidently predicted. The English White Paper was essentially in line with such expectations; such strands of liberal sentiment as were allowed to show through were convincingly outweighed by the strong emphasis on custody orders and detention centres. That the Scottish system should have been allowed to remain virtually unaltered while juvenile justice in England and Wales was being steered in a more punitive direction could not easily have been foreseen.

Even more surprising is the fact that the decision not to endow the hearings system with new powers which would have transformed it almost beyond recognition was taken as the result of a process of consultation. The present Administration has shown little taste for consultative exercises. After the General Election of 1979 'quango-hunting' became a mandatory blood sport for Ministers, and the streets of Central London and Edinburgh were soon littered with the corpses of advisory committees and consultative bodies. Nor has there been any great enthusiasm for sounding non-governmental opinion on specific issues and proposals; the 'young offenders' White Paper, for example, was not preceded by any wide circulation of ideas for consideration. In general, Mrs Thatcher's government prefers to present itself as having a clear view of both ends and means. Yet in Scotland the consultative process was not merely carried through but ended in the withdrawal of the key proposals and the maintenance of a non-punitive status quo. It indicates both the strength of the loyalty that the hearings system has developed among those who make it work and the dramatic effectiveness with which, even today, a uniformly negative reaction by key respondents can block a policy initiative.

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