

Monday, 23 November 2015

European Union Referendum Bill

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Report (2nd Day)

Lord Owen (Ind SD): My Lords, I would like to make points of general application to all the amendments. I have read all the debates that have taken place on this subject here, and it seems to me that it is time for the House, way before we get into any ping-pong, to ask itself what its role is in relation to this legislation.

I gave evidence to the Select Committee in another place, at a time when it looked as if the referendum might be transparently rigged. There was the question of the independence of the Civil Service, and its involvement—and also the question of how long a time would have to elapse between the announcement of the results and the time when the referendum would take place. In fairness to the Government, and in the light of the Select Committee, I must say that most of the major issues of fairness were dealt with, and I thought that we were accorded a judgment in favour of fairness, which I strongly uphold. That, certainly, is the duty of this House.

However, we must now look at the debates, and the direction in which they are going. I agree with the statement already made that it is patently obvious that a lot of the substance of the amendments and the arguments is an attempt to shift the debate. That does happen in these situations, and we cannot stop it. But it does mean that we are talking ourselves into a situation of legitimacy in terms of intervening in the referendum in ways that would be not only absurd but dangerous for this House to adopt.

We have already taken one decision in recent weeks: I voted for

it myself, but only after very careful consideration as to whether we were overstressing our powers. I will not go into that debate now, but I was confident that what we were doing was just about acceptable. But to delay the referendum is not acceptable. To do anything in this House, either through ping-pong or otherwise, that would delay the undoubted constitutional right of the Prime Minister to choose the timing of his announcement—and therefore, following his announcement, the timing of the referendum—would be absurd.

It is also necessary to remember that there are some differences between the referendum that took place in 1975 and the one that is due to take place on whether we should leave the European Union or remain within it. In 1975, there was no provision in the treaties for a two-year period during which negotiations would be held. This is a very substantive difference. When the then Foreign Secretary, the former Prime Minister, James Callaghan, was asked by a civil servant in the Cabinet Office what he would do in the remaining few weeks of a referendum campaign were the decision to be taken to leave, he made it quite clear that he would be feel obliged immediately to curtail in some substantive measure the powers of the European Union—there could be no delay. That was the right decision, given the nature of that referendum and the fact that there was no two-year period for negotiations. He had to be able to demonstrate forthwith that the powers had changed as result of the referendum.

That judgment was not liked by the civil servants who got it but, as of course they do in these cases, they immediately set about creating the necessary legislation and powers so that had that referendum voted to come out of the European Community, we would have been able to take powers as soon as the referendum was held. That needs to be borne in mind when we discuss some of these very detailed provisions. I cannot help but agree with the noble Lord. Subsection (1)(a) of the proposed new clause in Amendment 24B refers to,

“information about rights, and obligations, that arise under European Union law”.

We could have a cursory glance at that, which I should think

would take a White Paper of about an inch thick. A very substantial glance at it would take a White Paper of about five or six inches thick.

We need to keep a sense of proportion here on one particularly important matter: the giving of a referendum is a right for Members of Parliament and nobody else, because it curtails their democratic rights. It is a very serious curtailment of their rights, so much so that, although we call it an advisory referendum, we all know that they accept an obligation to take into law decisions which, as citizens, they may personally have voted against. That is why, in my view, referendums are to be used rather more sparingly than seems to be developing. It is a very considerable infringement on the rights of a representative, elected, democratic Member of Parliament—and, frankly, those rights do not retain in this House.

For example, the mandate, but perhaps more importantly the actual details about who is enfranchised to vote, is a Member of Parliament's decision and not for this House. We can express views, but the idea that we could hold up a referendum on this issue is absurd. People may say, "We have no intention of doing that. When it comes to the ping-pong, we will accept it and rationalise it. We realise our powers". It is much better not to embark on this. Ping-pong that is not serious is a waste of everybody's time. More importantly, it gives an image to the country at large, which does not understand our procedures, that we in this Chamber think we have rights that we do not have. We do not have rights over the franchise for this referendum or over the Prime Minister's decision as to when he calls to an end the negotiations and puts the issues to the people. He will of course know and listen to all the arguments about the way in which that decision and the facts should be presented.

Again, we have to be honest about this: we have had a long debate on this issue, and not just on this current referendum Bill. After all, it was announced under the previous Government and was in the manifesto. We know the issues and the electorate, because they are not stupid, will take it upon themselves to be cognisant of those factors that concern them in how they make that individual decision. So if I may make a plea, it is that the

House will be very careful from now on to not give the impression that we have rights in this debate which we do not have. This is developing on quite a large number of fronts and it is going to end in tears.