T050

Judges' interference with Government

As a constitutional lawyer I protest at the injunction (report, 10 May 1989) preventing distribution by the Government of its leaflet on the community charge. Over recent years the judiciary have, on their own initiative, expanded their interference in Government activity through the use of judicial review. Already giving rise to disquiet, this has now gone beyond the bounds of anything that could be considered constitutionally proper.

Opposition parties have exposed themselves to criticism by wilfully misrepresenting the community charge, duly imposed by two Acts of Parliament. In some cases antagonism has led to actual law-breaking. In the face of such improper acts it was undoubtedly the duty of the Government to issue guidance of the kind given by this leaflet. I received mine yesterday, and was very pleased to do so. It is a factual guide, conspicuously free from any taint of party propaganda. It explains how fuller information can be obtained by applying for any of eight further leaflets. I am outraged that citizens are now prevented from reading it.

I look back to wartime days, and the vital need there was for the Government to put out a stream of guidance and information. That this should be able to be done without hindrance from the courts is obviously necessary in any emergency conditions, but the need is not limited to emergencies. It is the duty of any government to keep citizens informed of changes in the law and other matters of vital concern to them.

If the Government put out clearly inaccurate and misleading information there would be a case for judicial restraint, particularly if the information were of a party political nature. That is far from being the case with this leaflet. The objection taken here is of the nit-picking variety, and should not be allowed to hold up its distribution. As the former Lord Chancellor, Lord Cave, once said, no form of words has ever yet been framed with regard to which some ingenious counsel could not suggest a difficulty (***Pratt v South Eastern Rly*** [1897] 1 QB 718, 721).

Judges need to be on guard against the plausible advocate. They also need to guard against being too clever themselves. Lord Diplock pointed out that where the meaning of words is plain 'it is not for the judges to invent fancied ambiguities' (***Duport Steels v Sirs*** [1980] 1 All ER 529, 541). What this unconstitutional act by Mr Justice McCowan invites is an intervention by Parliament to cut down the recent growth of judicial review. It should now be spelt out by legislation in terms which limit it to its proper sphere.[1]

[1] The Times, 11 May 1989. On 16 May 1989 the Divisional Court lifted the injunction, holding that in the circumstances it should not have been granted.