

Letter in Justice of the Peace

Prime Minister Decides Prosecution Policy On Knives

Introductory note by Francis Bennion

The following letter is followed by a response from the Editor, Adrian Turner.

CORRESPONDENCE

The Editor,
Justice of the Peace.

Sir,

A recent editorial (p. 377 *ante*) was right to chastise the Prime Minister Mr Gordon Brown for himself apparently deciding a point of prosecution policy, namely that youths of 16 and 17 will in future be prosecuted, rather than merely cautioned, for possession of knives. However the editorial was mistaken in suggesting that for a Prime Minister to intervene in this way is a 'first' and unprecedented.

In 2006, in these columns, I recounted for the umpteenth time the story of the Campbell Case that in 1924 brought down the first Labour government (see [2006] 170 JPN 847, [LINK] www.francisbennion.com/2006/039.htm). It happened because the Prime Minister of the day, Ramsey Macdonald, intervened in the arena of prosecutorial discretion by procuring abandonment of the prosecution of the editor of a left-wing newspaper. There was a massive row, and the Government resigned after losing a confidence vote.

Before this the official view had been that prosecution policy, at least in important political cases, was to be determined by the government of the day and not the prosecuting authorities – who had at most a right to be consulted. This was reflected in the fact that the Home Secretary had a statutory power to order the Director of Public Prosecutions to prosecute in a particular matter. The Campbell Case led to a change in favour of the independence of the prosecutors under the supervision of the Attorney General. This has led me to say in various places that the Attorney General now holds the prosecutorial power as an independent constitutional function.

It seems Mr Gordon Brown has not been told of the Campbell Case or the prosecutorial independence that now prevails (or is supposed to). Unhappily this ignorance applies widely, despite my own small efforts over many years to make the true position known.

Francis Bennion

The Editor responds:

I am grateful, as ever, to Francis Bennion for this lesson in history. Clearly, I should have inserted the words 'in modern constitutional times' in my editorial. I suspect, however, that my discomfort is small compared to Mr Brown's on finding himself compared to Ramsay MacDonald.