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## **Devolution and parliamentary representation: the case of the Scotland and Wales Bill, 1976-77**

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### **Introduction**

Returned with a majority of just three seats at the October 1974 General Election, the Labour Governments of 1974-79 oversaw one of the most dramatic periods of post-war British politics. Following Harold Wilson's surprise resignation as the Leader of the Labour Party and Prime Minister in 1976, his successor, James Callaghan, was bequeathed an economy seemingly deteriorating by the day, a paper-thin parliamentary majority, and the controversial policy of devolution to Scotland and Wales.

The Scotland and Wales Bill marked the Labour Government's first attempt to fulfil its commitment to introduce devolution for these nations. It was a Bill dogged by controversy from the start, attracting fierce opposition, from the Government's own backbenches and from the Opposition, and prompting intense discussion, pursued doggedly by the Conservative Opposition, of what the consequences of devolution should be for the parliamentary representation of Scotland and, to a lesser extent, Wales.

In this context, the Cabinet on 20th January 1977, met to discuss the Scotland and Wales Bill and a memorandum, penned by the Lord President of the Council (and the Minister responsible for steering devolution through the House of Commons) Michael Foot, on the parliamentary representation of Scotland and Wales post-devolution. Suggesting that this question had "become increasingly hard to temporise over", and was likely to dog the Government's efforts to get the Bill through the House of Commons, Foot suggested that the Government should "agree that the representation issue (covering all four countries) should be considered by the Speaker's

Conference”.<sup>1</sup> This calculated concession, to be deployed “at a moment selected to give best advantage in relation to the passage of the Bill”, received “general support” and the tentative agreement of the Cabinet.<sup>2</sup>

Yet in less than a fortnight the Government had turned against the idea, with Ministers briefed to launch a “direct and robust” attack on the suggestion of a Speaker’s Conference.<sup>3</sup> This article explores how and why the idea of a referral of the question of territorial representation, post-devolution, to a Speaker’s Conference came to be identified as the best way of dealing with the problem and secure the initial, and conditional, support of Cabinet and why the Government then changed its mind.<sup>4</sup> As this article will explain, while questions about territorial representation in Parliament had long been a feature of devolution debates, parliamentary statecraft considerations were at the heart of the rise and fall of Foot’s Speaker’s Conference proposal, a reflection of the controversial nature of the Scotland and Wales Bill and the increasingly unfavourable parliamentary arithmetic facing the Callaghan Government.

### **The genesis of the Scotland and Wales Bill**

Tabled in the House of Commons in December 1976, the Scotland and Wales Bill represented the latest stage in several years of deliberation on the future of the UK’s constitution. In 1969, the then Labour Government established, following the success of the SNP and Plaid Cymru at

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<sup>1</sup> TNA. CAB/129/194/4. Scottish and Welsh Representation at Westminster: Memorandum by the Lord President of the Council, 17 January 1977, p.1-2

<sup>2</sup> TNA. CAB/129/194/4. Scottish and Welsh Representation at Westminster: Memorandum by the Lord President of the Council, 17 January 1977, p.2; TNA. CAB/128/61/2. Conclusions of a Meeting of the Cabinet held at 10 Downing Street on Thursday 20 January 1977 at 10.00am, p.9-10

<sup>3</sup> TNA. CAB/198/533: Letter from Quinlan to Saville, dated 1 February 1977

<sup>4</sup> See, also: J. Mitchell, *The Scottish Question*, (Oxford, 2014), pp.174-179

the 1967 Hamilton and 1966 Carmarthen by-elections and near misses for Plaid Cymru in by-elections in Labour heartlands in Rhondda West (1967) and Caerphilly (1968), a Royal Commission on the Constitution.<sup>5</sup> With a suitably ill-defined remit that ranged from local government organisation to “the present functions of the central legislature and government in relation to the several countries, nations and regions of the United Kingdom” and “the constitutional and economic relationships between the United Kingdom and the Isle of Man, the Commission took four years to complete its work, outlasting its original Chair, Lord Crowther (following his death in 1972, Lord Kilbrandon was appointed as his successor).<sup>6</sup>

When the Royal Commission finally reported, it was, however, unable to reach consensus on the way forward. Two reports were ultimately published (an official report and a dissenting minority report), though the nature of the Royal Commission’s divisions were more complex than a straightforward binary division between supporters of these two reports.<sup>7</sup> Little immediate public action followed the publication of the Royal Commission’s findings and neither the Labour or Conservative parties UK manifestos for the February 1974 General Election included any

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<sup>5</sup> For more on the Royal Commission on the Constitution, see: Mackintosh, J.P. The Report of the Royal Commission on the Constitution, *The Political Quarterly*, 45(1), 1974, pp.115-123; A. Evans, Back to the Future? Warnings from History for a Future UK Constitutional Convention, *The Political Quarterly*, 86(1), pp. 26-28; R. Rawlings, Riders on the Storm: Wales, the Union and Territorial Constitutional Crisis, *Journal of Law and Society*, 42(4), 471-498; I. McLean and A. McMillan, *State of the Union: Unionism and the Alternatives in the United Kingdom Since 1707*, (Oxford, 2005), pp. 181-196

<sup>6</sup> Royal Commission on the Constitution 1969–1973, Vol. I, Report, Presented to Parliament by Command of Her Majesty, Cmnd. 5460, 1973.

<sup>7</sup> Bogdanor has divided the Royal Commission’s membership into three distinct blocs: ‘nationalists’ (those that sought ‘special treatment [for Wales and Scotland] on the grounds of nationhood’); ‘regionalists’ (those who were convinced that ‘the causes of dissatisfaction with government were common to all parts of Britain’ and therefore proposed a scheme of executive devolution for Scotland, Wales and the English regions); and, finally, ‘sceptics’ (who proposed a deliberative and advisory Welsh Council, but were somewhat more sympathetic to the idea of a Scottish Assembly) (Bogdanor, V. *Devolution in the United Kingdom*, (Oxford, 1999), pp.173-175).

commitment to implement either the Royal Commission's recommendations or indeed made reference to devolution, both instead being dominated by the Miners' Strike.<sup>8</sup>

By the time of the October 1974 General Election, in a context of increasing electoral support for the Scottish National Party<sup>9</sup> and after considerable internal wrangling between the UK party leadership and the Executive of the Labour Party in Scotland, Labour was officially committed to devolution. In September 1974, the Labour Government produced the first in a series of devolution White Papers, *Democracy and Devolution: Proposals for Scotland and Wales*, proposing directly elected assemblies for Scotland and Wales, both elected under the First-Past-The-Post (FPTP) electoral system and both funded by a block-grant from Westminster (tax raising powers were not proposed for devolution to either of the assemblies). In neither case, as will be discussed later in this article, would devolution lead to a reduction in Parliamentary representation and the Secretaries of State for both nations would continue to exist and would remain in the Cabinet. The key distinction between the models of devolution proposed for both nations was that while the Scottish Assembly would have legislative powers, Wales would have executive devolution-only.<sup>10</sup> In its October 1974 General Election manifesto, Labour reaffirmed this commitment to devolution.<sup>11</sup>

Following the return of a Labour Government, with a precarious majority of 3 seats, and the SNP returning with a record 11 Members of Parliament (after polling over 30% of the vote in

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<sup>8</sup> Ibid., p.175; Though, as Mitchell has highlighted, work began behind the scenes in Whitehall in December 1973 on how to respond to the Royal Commission's reports (J. Mitchell, *Devolution in the UK*, (Manchester, 2009), pp.114-117)

<sup>9</sup> In November 1973, the charismatic SNP candidate Margo Macdonald famously won the Labour heartland seat of Glasgow Govan at a by-election on a swing of 31%. While, at the General Election in February 1974, the seat reverted back to Labour, the SNP returned 7 seats (at that point their best ever performance at a General Election).

<sup>10</sup> Bogdanor, *Devolution in the United Kingdom*, p.178

<sup>11</sup> Mitchell, *Devolution in the UK*, p.120

Scotland), the work of developing detailed devolution proposals began. As Mitchell has recorded, in November 1974 Wilson established a Ministerial Committee on Devolution, chaired by the then Lord President of the Council, Ted Short and a year later, in November 1975, the Government published proposals for Scottish and Welsh devolution in the White Paper *Our Changing Democracy: Devolution to Scotland and Wales*.<sup>12</sup>

While *Democracy and Devolution* “indicated in broad terms the roles and powers of the Assemblies”, *Our Changing Democracy* sought to “turn those general principles of devolution into detailed proposals”.<sup>13</sup> The White Paper proposed that, at least initially, the Scottish Assembly should be composed of 142 Assembly Members, two members for each of the existing 71 Parliamentary constituencies in Scotland, elected every four years.<sup>14</sup> The head of the Scottish devolved executive, the ‘Chief Executive’, would be invited to form an administration after each Assembly election by the Secretary of State for Scotland. While Executive Members would “normally” be members of the Assembly, there would be “no rigid rule about this”.<sup>15</sup>

The White Paper proposed that Scottish devolution should proceed on the lines of a conferred powers model, as such the Act creating the Assembly “will devolved certain subjects; anything not shown as devolution will remain the direct responsibility of the Government and Parliament as present”.<sup>16</sup> Devolved subjects would include local government, health, social work, education and cultural matters, housing and a “wide range of transport matters”.<sup>17</sup> The White Paper also

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<sup>12</sup> Mitchell, *Devolution in the UK*, 122; HM Government, *Our Changing Democracy: Devolution to Scotland and Wales*, Cmnd. 6348 (HMSO, 1975)

<sup>13</sup> HM Government, *Our Changing Democracy: Devolution to Scotland and Wales*, Cmnd. 6348 (HMSO, 1975), p. 1, para. 1

<sup>14</sup> *Ibid.*, p. 9, para. 32

<sup>15</sup> *Ibid.*, pp. 10-11, paras. 44-46

<sup>16</sup> *Ibid.*, p. 24, para. 116

<sup>17</sup> *Ibid.*, pp. 24-35, para. 114-171

proposed that, although tax raising powers would not be devolved, the Scottish Assembly would be able to levy a surcharge on local authority taxation, as a means of providing the Scottish Executive with a “useful degree of discretion”.<sup>18</sup> In its summary of the scheme for Scotland, the White Paper claimed that this proposed package of devolution will “create for Scotland and elected Assembly which across a great range of subjects will take over the work of Parliament and they will create a Scottish Executive which, in these subjects, will have wide responsibilities now borne by the Government”.<sup>19</sup>

With regards to Wales, the White Paper continued the Government’s established position that, due to Wales’ different history and closer political, legal and administrative bond with England, the model of devolution on offer would not be the same as that which was being proposed for Scotland.<sup>20</sup> Moreover, the Government argued that the appetite for devolution in Wales was “different” to that in Scotland. Whereas the Scots, according to the White Paper, favoured legislative devolution, the Welsh public desired “better democratic control over the government already carried out in Wales, particularly by non-elected bodies”.<sup>21</sup>

The proposed Welsh Assembly would be a single-chamber body, initially composed of 72 members, again two for each of the existing Parliamentary constituencies in Wales. Unlike the scheme of devolution being proposed for devolution in Scotland, Welsh devolution would be constituted on local government lines, with executive power invested in the Assembly as a corporate body.<sup>22</sup> As the White Paper notes, this would mean “that there will not be a sharp distinction between an Executive sponsoring policies and an Assembly discussing and

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<sup>18</sup> Ibid., p. 22, para. 108

<sup>19</sup> Ibid., p. 35, para. 169

<sup>20</sup> Ibid., p. 36, para. 172-174

<sup>21</sup> Ibid., p. 36, para. 174

<sup>22</sup> Ibid., p. 38, para. 188

questioning these policies”. Instead, the Assembly would fulfil both deliberative and decision making functions, though in practice it was envisaged that most of the Assembly’s work would be conducted through its Committees.<sup>23</sup> The management of policy making would be overseen by the Executive Committee of the Assembly, composed of the Executive Members of each Committee and a Chair, appointed by the Assembly and called the ‘Chief Executive’.<sup>24</sup>

Though the Welsh Assembly would not have primary legislative powers, it would have the power to make delegated legislation in the fields devolved to it by Westminster, again in the form of a conferred powers model.<sup>25</sup> Devolved subjects would include local government, health, education, housing and, as with Scotland, a “wide range of matters in the transport field”.<sup>26</sup> As with Scotland, the Assembly would have the ability to issue a surcharge on local authority taxation.<sup>27</sup> These proposals and the key distinction between the differing forms of devolution proposed for Scotland and Wales were at the heart of the Scotland and Wales Bill, introduced before Parliament in November 1976 and which received its second reading in December 1976. This article will not focus on the Bill itself, but rather on how the Government deliberated over one of the by-products of this proposed legislation (and as earlier mentioned a recurrent feature of devolution debates). Namely, whether devolution to a part of the United Kingdom should result in a reform of that territory’s Parliamentary rights or representation.

### **Why did the issue of territorial representation, post-devolution arise?**

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<sup>23</sup> Ibid., p. 38, para. 188

<sup>24</sup> Ibid., p. 39, para. 191-194

<sup>25</sup> Ibid., p. 39, para. 196

<sup>26</sup> Ibid., pp. 46-53, para 233-273

<sup>27</sup> Ibid., p. 45, para. 229

As a memorandum prepared by the Cabinet Office's Constitution Unit in November 1975 noted, "it is often argued that devolution (particularly legislative devolution) should entail either a restriction of voting rights or a reduction in the number of MPs at Westminster".<sup>28</sup> Devolution has consistently prompted debate about the representation of the (proposed) affected areas at Westminster, from Gladstone's Home Rule Bills through to the devolution reforms of the late 1990s.<sup>29</sup> These questions have largely arisen as a consequence of Westminster's dual remit as both a state and sub-state legislature, the result being that asymmetric devolution would leave the Parliament as the domestic parliament of some but not all parts of the UK.<sup>30</sup> In its majority report in 1973, the Royal Commission on the Constitution acknowledged this issue nothing that

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<sup>28</sup> The National Archives (TNA). CAB 198: Records of the Cabinet Office Constitution Unit, CAB 198/533: Scottish and Welsh representation at Westminster after devolution. Letter from Bantock to Elridge: Discussion of Parliamentary Business Thursday 6 November: Representation at Westminster, 4 November 1975

<sup>29</sup> Facing the 'double dilemma' of preventing Irish MPs, post-Home Rule from voting on 'English or Scotch affairs', yet continuing to tax Ireland at Westminster (V. Bogdanor, *Devolution in the United Kingdom* (Oxford, 1999), p.30), Gladstone's first Home Rule Bill proposed to remove Parliamentary representation from Ireland in its entirety, while his second originally included the infamous 'in and out' clause (J. Kandle, *Ireland and the Federal Solution*, (Quebec, 1989), p.75). The first approach would have resulted in taxation without representation and, according to McLean and McMillan, had the 1886 Bill progressed further it "would have been wrecked on that reef", while the "in and out" clause was removed from the 1893 Bill due to its impracticality (indeed, Gladstone had rejected the idea in 1886, arguing that to devise such a scheme was "passes the wit of man" and would be impossible) (McLean and McMillan, *State of the Union*, p.207-9).

While the ability of Northern Irish MPs to vote on matters at Westminster that were otherwise devolved to Stormont prompted Harold Wilson to ask his Attorney General, Sir Elwyn Jones to, fruitlessly, explore an 'in and out' solution during the 1964-66 Parliament, as a means of preventing the Ulster Unionists from frustrating his Government's policy of steel nationalisation (G. Walker and G. Mulvenna, Northern Ireland Representation at Westminster: Constitutional Conundrums and Political Manoeuvres, *Parliamentary History*, 34(2), 2015, 237-255).

Most recently, the advent of devolution to Scotland and Wales in the late 1990s has resulted in a long and winding discussion of English Votes for English Laws (EVEL) that has culminated in reform of the House of Commons' Standing Orders in October 2015 (for detailed analyses of the post-2015 'EVEL' Standing Orders, see: M. Kenny and D. Gover, *Finding the Good in EVEL: An evaluation of 'English Votes for English Laws' in the House of Commons*, (London, 2016); House of Commons Procedure Committee, *English votes for English laws Standing Orders: report of the Committee's technical evaluation*, Third Report of Session 2016-17, 19 December 2016, HC 189).

<sup>30</sup> TNA. CAB 198/533. Letter from Scott-Whyte to Garlick, 24 November 1976

“if legislative devolution were to be selected regions [of the UK] only, a problem would arise over the level of representation of those regions in the House of Commons compared with that of regions which did not have legislative assemblies of their own”.<sup>31</sup>

In the specific context of the Scotland and Wales Bill, the issue of territorial representation focused the minds of Ministers as a result of Parliamentary pressure. As the Cabinet meeting on 20<sup>th</sup> January, in which the Government appeared to endorse the idea of a referral to a Speaker’s Conference, noted, “aspects of the role and numbers of Members of Parliament for Scottish and Welsh constituencies after devolution had already attracted much attention” with Conservative MPs consistently pursuing the issue of territorial representation, post-devolution.<sup>32</sup> For example, in November 1975, the month that *Our Changing Democracy* was published, the following early day motion (EDM) was tabled in the House of Commons by the Conservative MPs Nigel Lawson, Douglas Hurd, John Cope and Kenneth Lewis:

That this House insists that any devolution of power from Westminster to a Scottish Assembly must be accompanied by a commensurate reduction either in the scope or the voting rights of Scottish Members at Westminster or in their number.<sup>33</sup>

This was the first of what would be a steady stream of attempts by MPs, from across party lines, to raise the question of parliamentary representation, post-devolution for Scotland (and Wales).

This cross-party alliance can be evidenced from the Scotland and Wales Bill’s Second Reading debate, held between the 13<sup>th</sup> and 17<sup>th</sup> December 1976 (the Bill cleared its second reading by a

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<sup>31</sup> Royal Commission on the Constitution 1969–1973, Vol. I, Report, Presented to Parliament by Command of Her Majesty, Cmnd. 5460, 1973, page 246, para. 811

<sup>32</sup> TNA. CAB/128/61/2. Conclusions of a Meeting of the Cabinet held at 10 Downing Street on Thursday 20 January 1977 at 10.00am, p.9

<sup>33</sup> TNA. CAB 198/450: Scotland and Wales Bill. Representation at Westminster. Constitutional Aspects of the Bill, Letter from Eldridge to Bantock, 3 November 1975

margin of 292 to 247 votes). During this debate, the question of representation was fast to emerge and formed part of Mrs Thatcher's speech, responding to the opening statement by the Prime Minister, James Callaghan. According to Thatcher, the Government had ignored the effects of devolution on Parliament and principally on the balance of representation within the House. Noting that England and Northern Ireland were already under-represented in the House, while Wales and Scotland were over-represented, Mrs Thatcher suggested that this situation was already a "grievous imbalance" that "should be corrected by the customary way of referring the matter to a Speaker's Conference", and accused the Government of proposing "to aggravate the imbalance by keeping the existing numbers but adding to the 71 Scottish Members 150 people sitting in Edinburgh and, in the case of Wales, another 80 people sitting in Cardiff".<sup>34</sup> After suggesting that, should devolution be established, there would almost inevitably be demand for further powers in Edinburgh", she warned that there would soon follow demands "here to restrict the voting powers of the Scottish Members of Parliament". Though the Government had tried to ignore this problem, she warned that it would "not go away just because it is ignored".<sup>35</sup>

Even a committed devolutionist such as David Steel, the then Liberal leader, drew attention to the problems devolution caused for representation within Westminster. Steel, his support for devolution notwithstanding, outlined seven points "on which the Bill will have to be altered fundamentally if it is to meet with final acceptance". The first of these points was "the question

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<sup>34</sup> As McLean and McMillan highlight, the recommendations of the 1944 Speaker's Conference proved critical to the post-war over-representation of Scotland and Wales, at the expense of England and Northern Ireland (McLean and McMillan, *State of the Union*, p.214-215). The Speaker's Conference resolved not to cut the number of Scottish and Welsh seats and agreed "that on average every constituency in England should be larger than average" (McLean and McMillan, *State of the Union*, p.215). By 1976, Scotland had 71 MPs, when if the same population basis as applied to England it would have had 57, and Wales 36, instead of 31.

<sup>35</sup> HC Debates (Hansard), 13 December 1976, Series 5, Vol. 922, col. 1005

that cannot be ignored of the over-representation of the people of Wales and Scotland in this Chamber once domestic Scottish and Welsh matters have been devolved”. Noting that the Royal Commission on the Constitution had dealt with this question and “came out with figures [for the level of Scottish and Welsh representation as they should be”, Mr Steel said he could not blame any English MP for complaining about 71 Scottish MPs being able to vote on matters affecting England, but which are otherwise devolved. As such, Steel was firm in his opinion that the Government must tackle that problem.<sup>36</sup>

Similar concerns were raised by a variety of members. For example, Eric Moonman, a Labour MP for Billericay and a sceptic of the need for Scottish and Welsh devolution, as if to pick up on Mr Steel’s comments, queried whether English Members would tolerate the continued over-representation of Scotland in the House of Commons if those members vote on “English matters, such as primary and secondary education”.<sup>37</sup> While James Molyneaux, an Ulster Unionist MP for South Antrim, expressed the outrage of Northern Irish MPs at the proposition that Scotland and Wales could maintain their existing levels of parliamentary (over)representation, when Northern Ireland was still reduced to the level of under-representation at Westminster (12 MPs) that had been provided to the province when the Stormont Parliament had existed. As Molyneaux told his fellow MPs, “the House will not expect my colleagues and me to support the Second Reading of the Bill when not a vestige of just or logical reason exists for denying to Ulster equal representation in Parliament”.<sup>38</sup> For Russell Fairgrieve, the Conservative MP for Aberdeenshire West and an opponent of the devolution plans outlined in the Scotland and

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<sup>36</sup> Ibid., col.1019

<sup>37</sup> Ibid., col.1033

<sup>38</sup> Ibid., col. 1043

Wales Bill, it was “patently obvious” that the number of MPs from Scotland would have to be reduced and such a reduction would be “one obvious price for our Assembly”.<sup>39</sup>

However, as many of the above contributions made clear, this was not just a concern about the sheer numbers of Scottish (and Welsh) representatives at Westminster, post-devolution. For the speeches of Margaret Thatcher, David Steel and even Mr Moonman also spoke of the toleration of English MPs at the prospect of Scottish MPs voting on devolved matters. Though this was generally used as an attempt to illustrate the unsustainability of Scotland’s existing levels of representation in the event of a Scottish Assembly, it touched a much bigger question about the nature of parliamentary representation, post-devolution. Tam Dalyell, unsurprisingly, was quick to make this point in the Second Reading debate:

At first glance, and superficially, it might seem sensible for the hon. Member for Aberdeenshire, West (Mr. Fairgrieve) to say that in all the circumstances there should be 50 Members of Parliament from Scotland, but on this issue of reduced representation is it any more tolerable that 50 or 35 Members of Parliament should cast votes on subjects for which they are not responsible than should 71 of them? The issue is not one which can be judged very easily.<sup>40</sup>

For Mr Dalyell, it was not just a question of saying that “Scots shall have reduced representation. The issue is one of responsibility.”<sup>41</sup> The questions prompted by devolution were not just about the sum-total of Scottish and Welsh representation, but also about the influence of, and role played by, those representatives in Westminster and as a brief prepared by the Cabinet Office’s Constitution Unit highlighted in December 1976, these questions were quite distinct from one

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<sup>39</sup> Ibid., col. 1056

<sup>40</sup> Ibid., col. 1058

<sup>41</sup> Ibid.

another,<sup>42</sup> though both fall under the umbrella of territorial representation, post-devolution and were treated as such by the Government.

With sustained pressure on the Government to act to address these questions coming from all sides, allied to the fact that the Government was for all extents and purposes a minority administration on the subject of devolution (and would soon become a minority administration in name as the slim 3 seat majority won in October 1974 was whittled away by deaths and by-elections), the issue of parliamentary representation was firmly on the political and institutional agenda. This article now turns to the question of why Michael Foot, the Minister responsible for steering the Scotland and Wales Bill through Parliament, came to view a Speaker's Conference as the best way to respond to these pressures.

### **Why a Speaker's Conference?**

The Scotland and Wales Bill's second reading debate was but one aspect of the pressure that was building on territorial representation.<sup>43</sup> As early as November 1975, when the Early Day Motion calling for devolution to "be accompanied by a commensurate reduction either in the scope or the voting rights of Scottish Members at Westminster or in their number"<sup>44</sup>, work was underway

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<sup>42</sup> TNA. CAB 198/533: Devolution: Representation at Westminster, 13 December 1976, 1

<sup>43</sup> On 19<sup>th</sup> January 1977, a day before the Cabinet meeting when the idea of a referral to a Speaker's Conference, Michael Quinlan from the Constitution Unit produced a memorandum for Michael Foot on the subject of 'Scottish and Welsh Representation at Westminster'. While this document noted that "so far vague amendments touching on the issue [of Scottish and Welsh representation] have been put to Clause 1 of the Scotland and Wales Bill", it warned that "at some point during Committee stage, if the Government does nothing, properly-drafted amendments on the issue will be put down, will be selected and will come to a vote" (TNA. CAB 198/533: Scottish and Welsh Representation at Westminster CP (77)4, sent from Quinlan to Foot, dated 19 January 1977).

<sup>44</sup> TNA. CAB 198/533: Scotland and Wales Bill. Representation at Westminster. Constitutional Aspects of the Bill, Letter from Eldridge to Bantock, 3 November 1975

within the Cabinet Office's Constitution Unit on the difficulties devolution posed for Scottish and Welsh representation in Westminster and as pressure built on the Government, three main options emerged: 1) an 'in-and-out' style mechanism to limit the voting rights of Scottish (and perhaps Welsh) MPs; 2) a change in the balance of parliamentary representation; and 3) no change at all.

### *The 'in-and-out'*

As a note produced by the Cabinet Office's Constitution Unit for the Cabinet acknowledged, the logical answer to the post-devolution problem of "Scots MPs continuing to play a role in legislation for England, Wales and Northern Ireland on subjects that for Scotland will be devolved" was an "'in-and out' voting arrangement". Yet, as Gladstone found with his Home Rule efforts in the 1880s and 90s and as Harold Wilson and Sir Elwyn Jones discovered in the 1960s, the Constitution Unit argued that "no form of "in-and-out" voting has been discovered that would be... workable".<sup>45</sup>

Indeed, the 'in-and-out' was swiftly discounted by the Cabinet Office's Constitution Unit. In a memorandum prepared for the Lord President of the Council, Michael Foot, in response to the aforementioned EDM, J.L. Bantock, a Civil Servant based in the Constitution Unit, argued that a restriction of voting rights had been repeatedly rejected as impractical in the past and more recently by the Royal Commission on the Constitution. Furthermore, he raised two practical and political hurdles that decades later would become frequent fixtures in the debates regarding 'English Votes for English Laws'. Firstly, that it would "be difficult to define "English" business

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<sup>45</sup> TNA. CAB/129/194/5: Scottish and Welsh Representation in the House of Commons, Note by the Constitution Unit, 1

which does not affect Scotland and Wales”; and secondly, “the potential problem of maintaining the Government’s majority on issues from which some members are excluded”.<sup>46</sup>

While these difficulties meant that the Constitution Unit swiftly moved on to discuss alternate responses to the question of territorial representation, post-devolution, the voting rights of Scottish MPs re-emerged in November 1976. On 22 November 1976, John Garlick, the Second Permanent Secretary, and head of the Constitution Unit, at the Cabinet Office, wrote to Scott Whyte (a colleague in the Unit), noting that at that day’s meeting of the Ministerial Committee for Devolution Strategy (DVY), Shirley Williams had argued that “the Government would not be able indefinitely to continue, post-devolution, an arrangement in which Scots MPs voted at Westminster on the application to England of matters that in Scotland were devolved”.

According to Garlick, Williams’ comments reflected what, in his opinion, was “an increasing awareness of the situation among MPs”.<sup>47</sup>

Acknowledging the difficulties posed by the idea of restricting voting rights, Garlick noted that previous consideration by the Constitution Unit, on the idea of an England and Wales Grand Committee (“and other possibilities”) had failed to identify a “workable way ahead”. However, he nonetheless wondered whether some further work ought to be done “partly as an educational and defensive briefing process for Ministers”, but also in case they could identify “any possibility that made a better contribution to the problem than merely reducing Scots representation at Westminster”.<sup>48</sup>

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<sup>46</sup> TNA. CAB 198/533: Note for the Lord President of the Council on representation at Westminster following devolution, attached to a letter from Bantock to Eldridge, 4 November 1975

<sup>47</sup> TNA. CAB 198/533: Scots MPs at Westminster, letter from Garlick to Whyte, 22 November 1976.

<sup>48</sup> Ibid.

While this might suggest that the idea of some form of institutional reform in Westminster, as a response to devolution, was not necessarily dead, the response from Quinlan reiterated the inherent problems that would arise from altering Westminster's procedures to accommodate differential territorial duties. As Quinlan noted, "the trouble [with devolution] is that the difficulties are inherent in using the UK Parliament as the domestic Parliament of some but not all parts of the UK". While this anomaly was more easily ignored during the existence of the Stormont Parliament in Northern Ireland, Scottish devolution, according to Quinlan, posed a problem "of a different degree" and, so, that anomaly would "be more difficult to set aside" and would be further magnified by Scotland's overrepresentation.<sup>49</sup>

However, the UK Government, even though it would be "the domestic Executive in differing degrees [for the different nations of the UK, as a result of devolution]", would still need to command the support of the House of Commons in order to discharge its duties and to survive in office. Therein laid the rub of differential voting rights for MPs. As Quinlan illustrated,

Suppose that Scottish (and Northern Ireland) members were debarred from voting on the Second Reading of a Bill applying to England and Wales, and the Government as a result was defeated on what they regarded as an essential manifesto commitment. They might then seek a vote of confidence, which would have to be from the whole House because they would be, after all, the Government of the whole United Kingdom.<sup>50</sup>

The net result could be, according to Quinlan, a Government in a state of legislative and administrative limbo. Unable, in this instance, to secure a key manifesto commitment, even though it commanded a UK-wide majority. While Quinlan acknowledged that this scenario, of a bifurcated House with differing England and Wales and UK-wide majorities in the House of Commons, may not be relevant "in a House with a large and geographically well spread

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<sup>49</sup> TNA. CAB 198/533: Scots MPs at Westminster, letter from Scott Whyte to Quinlan, 24 November 1976.

<sup>50</sup> Ibid.

Government majority... any system of “inning and outing” seems inevitably to lead to contention, frustration and recrimination in a closely balanced House”.

Indeed, even a slightly less radical mechanism, such as an England or England and Wales Grand Committee was not without potential problems. While such a device, Quinlan stated, “might obscure the problem [of differential voting rights and representation in a post-devolution, House]”, ultimately the Government would take little time to be convinced of the need “to call upon its full strength to reject a proposal or reverse a decision of the Committee and the weakness of the contrivance would then be exposed”. Furthermore, even if a Government felt that such a Committee was desirable, there would, according to Quinlan, be little value in such a gesture unless there was a broad, cross-party consensus behind it. Such a consensus, he argued, “could only be achieved by steering the proposal through the present or some future Committee on Procedure, and there could be no certainty of success” (whether such a consensus could be reached for a Committee that would be at the mercy of the Government is, at the very least, debatable). Ultimately, Quinlan was left to conclude that the only obvious solutions to these problems was “a comprehensive federal solution”, which itself raised problems of its own.<sup>51</sup>

It was thus little surprise that when the Cabinet came to discuss the territorial representation issues raised by the Scotland and Wales Bill, the advice from the Constitution Unit was that “an “in-and-out” voting arrangement” (described as the logical answer to these problems) was impractical on the grounds that it would be:

- a) Difficult to identify English only legislation, not least because “almost any major social legislation for England and Wales would have resource implications – and hence tax or financial priority aspects – that would also concern Scotland.” Furthermore, even if such

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<sup>51</sup> Ibid.

legislation could be identified, there would always be the risk that a UK Government could seek to ‘game’ the system, “by deliberate inclusion in the Bill of some provisions apply to devolved fields in Scotland, or to non-devolved fields”; and

- b) The difficulty that would arise when the party balance in the House of Commons as a whole differed from the balance in England, Wales and Northern Ireland. As the Constitution Unit noted, such a situation had arisen twice in recent memory, after the 1964 and February 1974 General Elections. The result “could be deadlock between the Government of the day and the majority of those entitled to vote on English, Wales and Northern Ireland legislation.

While the Constitution Unit memorandum acknowledged that a “more sophisticated relationship between the House as a whole and an England-and-Wales committee” could be devised, e.g. by providing a Grand Committee with powers akin to the Lords under the Parliament Acts, namely a suspensory delay of “one or two years rather than allowing it [the Committee] to indefinitely block a measure that the House as a whole were prepared to pass”, such a device would have limited effect and, insofar as the will of the House as a whole would ultimately prevail, “would fail to meet the English equity difficulty”.<sup>52</sup>

In his memorandum to the Cabinet, of which the Constitution Unit’s paper was an annex, Michael Foot made clear that these arguments made clear to him that no solution could be arrived at through ‘in-and-out’ voting. Instead, he argued that “the only prospect for change is in relative representation at Westminster”.<sup>53</sup> This article now turns to the development of Michael Foot and the Cabinet Office’s Constitution Unit’s thinking on this matter and the factors that

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<sup>52</sup> TNA. CAB/129/194/5: Scottish and Welsh Representation in the House of Commons, Note by the Constitution Unit, 17 January 1977, 5

<sup>53</sup> TNA. CAB/129/194/4: Scottish and Welsh Representation at Westminster, Memorandum by the Lord President of the Council, 17 January 1977, 2

lead Michael Foot to propose, and the Cabinet to tentatively endorse, a referral of territorial representation to a Speaker's Conference.

*Better and not necessarily disadvantageous to make a measured concession: the case for a referral to a Speaker's Conference*

With the "in and out" rejected as unworkable, an alternative response to the questions about territorial representation at Westminster, post-devolution, came in the form of a referral of the levels of parliamentary representation to a Speaker's Conference.

Since 1916, Speaker's Conferences had been used as a mechanism to explore political issues, in particular the topic of electoral reform. Initiated by the Government and chaired by the Speaker of the House of Commons, these Conferences consisted of parliamentarians from across the partisan spectrum and (to varying degrees) parliamentarians from both Houses of Parliament. By 1976, there had been five such conferences, four of which had focused on questions of electoral law and electoral reform (1916-1917, 1944, 1965-1968 and 1973) and by the end of 1976 it had become apparent that a referral to a Speaker's Conference had firmly established itself as Michael Foot's preferred response to the question of territorial representation at Westminster, post-devolution.<sup>54</sup>

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<sup>54</sup> The other Speaker's Conference, which sat between 1919 and 1920, was established to examine and develop schemes of devolution for England, Scotland and Wales. The Speaker's Conference concluded in stalemate, divided between proponents of intra-parliamentary devolution (in the form of bicameral grand councils, composed of MPs representing constituencies in the respective nation and Peers chosen from the Committee of Selection) and advocates of directly-elected devolved legislatures. See: A. Evans, A Lingering Diminuendo? The Conference on Devolution, 1919-20. *Parliamentary History* 35 (3), 2016, 315-335; A. Evans, An interlude of agreement? A reassessment of the Conference on Devolution's 'consensus' on powers. *Contemporary British History* 29(4), 2015, 421-440.

The first signs that a Speaker's Conference would be favoured by Foot came in the summer of 1976. In August 1976, the Constitution Unit in the Cabinet Office had been commissioned to produce a note about Westminster representation post-devolution for the Lord President to submit to the Prime Minister. As internal Constitution Unit correspondence reveals, the "present thinking" was that on the question of Westminster representation post-devolution, "a problem about which something will undoubtedly have to be done", it may prove necessary "under pressure" to offer to refer the issue to a Speaker's Conference. Given the tactical nature of this proposal, it was suggested that the note would have to consider the timing of any announcement e.g. whether it should be offered in the Minister's speech during the second reading or in response to an amendment or a point made during the second reading debate.<sup>55</sup> This would remain Foot's position until early 1977, culminating in his memorandum to the Cabinet in January 1977 that led to the Government endorsing, in principle, his suggestion of referring the issue of territorial representation to a Speaker's Conference, before Foot was forced to abandon this policy in favour of retaining the status quo.

Examining Foot's correspondence and the ruminations of the Cabinet Office's Constitution Unit, who provided the intellectual ballast to Foot's devolution policies, one can derive a number of principal factors that underpinned Foot's support for a referral to a Speaker's Conference. Namely, a sense that the question of territorial representation would have to be resolved; secondly, the idea that a Speaker's Conference need not be a particularly bad concession for the Labour Government to make and in some cases could be quite beneficial and finally, concerns about parliamentary management and the realisation that refusing to budge on this issue could make the passage of an already controversial Bill, through an essentially Hung Parliament, even more difficult.

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<sup>55</sup> TNA. CAB 198/533: Letter from Bryars to Quinlan, dated 23 August 1976; and Letter from Bryars to Nafzger, dated 24 August 1976

a) *An untenable status quo?*

The debates that surrounded the sustainability of Scottish and Welsh over-representation at Westminster post-devolution had been pre-empted by the Royal Commission on the Constitution's majority report in 1973. While the Royal Commission on the Constitution acknowledged that a case could be made for continuing the existing levels of Scottish and Welsh representation (particularly on grounds of national distinctiveness and interests)<sup>56</sup>, advocates of legislative devolution to Scotland and/or Wales on the Commission nonetheless concluded that such a scheme should include reform of their representation at Westminster. For proponents of legislative devolution on the Commission, the representation of Scotland and Wales should, "subject to any allowance which might be found appropriate for special geographical conditions", be on the same population basis as England. The probable effect being that Scottish representation would be reduced from 71 to 57 MPs and Wales from 36 to 31.<sup>57</sup>

As the earlier mentioned Second Reading debate on the Scotland and Wales Bill in December 1976 demonstrated, there existed a strong body of opinion, stretching across party lines that the status quo, that this over-representation in the House of Commons, described by Thatcher as a "grievous imbalance", was not a sustainable proposition post-devolution. Not least because this imbalance risked being magnified as a result of national (and, in the case of Scotland, legislative) devolution, with Scottish and Welsh MPs able to vote on, and play a full part in debating, policy issues affecting England and Northern Ireland but which had been devolved in Scotland and

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<sup>56</sup> Royal Commission on the Constitution 1969–1973, Vol. I, Report, Presented to Parliament by Command of Her Majesty, Cmnd. 5460, 1973, p.247, col.815

<sup>57</sup> Royal Commission on the Constitution 1969–1973, Vol. I, Report, Presented to Parliament by Command of Her Majesty, Cmnd. 5460, 1973, p. 341, col. 1147

Wales. As the Labour backbencher, and MP for Billericay, Eric Moonman queried, “will English Members tolerate it if the 71 Scottish Members vote on English matters, such as primary and secondary education—matters that would be devolved were they Scottish?”<sup>58</sup>

Given the marginality of the Government’s position in the House of Commons and the cross-party support in favour of addressing Scotland’s over-representation post-devolution, it is perhaps not surprising that the Minister responsible for steering devolution through the House, Michael Foot began to examine whether the Government’s position on the status quo should be maintained. Indeed, in a letter to the Prime Minister in September 1976, Foot argued that the Government would have to judge “whether a policy of obduracy on the status quo could in the long run succeed” and if decided it couldn’t, would need to work out, firstly, whether a concession might be best offered at an early juncture, “to help our devolution aims”, rather than “wrung from us later on”.

Tasked with steering a measure that was not, to put it mildly, widely loved through a difficult House of Commons and facing “not unjustified pressures” to act on the question of parliamentary representation post-devolution, Foot was genuinely concerned that if the Government did not take the initiative and make a “measured concession”, a worse outcome could be forced upon them. It was this fear that led Foot to see, by September 1976, a “good deal of possible merit in agreeing a reference to the Speaker’s Conference”. Indeed, the centrality of this concern to Foot’s thinking on the question of territorial representation at Westminster post-devolution can be seen from the conclusions of the Cabinet meeting on 20<sup>th</sup> January 1977

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<sup>58</sup> HC Debates (Hansard), 13 December 1976, Series 5, Vol. 922, col. 1033

which saw the Cabinet endorse, in principle, his proposal of a reference to a Speaker's Conference.<sup>59</sup>

According to Foot, not only had the issue of the role and numbers of Scottish and Welsh MPs attracted considerable attention during the Scotland and Wales Bill's parliamentary proceedings, but it "seemed certain that sooner or later amendments requiring change from the present situation would be pressed to a vote. Not only, Foot feared, was the status quo indefensible in equity, but for the Government to "try and stand on it would run a high risk that Parliament might impose specific changes damaging to the Government".<sup>60</sup> As he stressed in his memorandum to the Cabinet, while a Speaker's Conference in itself may not be helpful to the Government, "something worse... will be forced on us if we offer no concession voluntarily".<sup>61</sup>

As the speaking note prepared for Foot's use at this Cabinet meeting outlined, while a referral of Westminster representation to a Speaker's Conference ("conditional upon devolution coming to effect") was a "respectable and logical" policy, the alternative (i.e. opting for the status quo) would risk a litany of damaging consequences for the Government. While some of those negative consequences would, in the scheme of things, be temporary (namely, the Government's devolution plan and popularity would suffer), they could also be more longstanding, "for example, by having a specific outcome – a precise cut in numbers... carried against us in

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<sup>59</sup> In speaking notes prepared by the Cabinet Office's Constitution Unit for Foot, ahead of the Cabinet meeting on 20<sup>th</sup> January, it was suggested that Foot argue that resentment had focused more sharply at the over-representation of Scotland and Wales as a result of the intractability of the "in and out" question. According to these notes, Foot was recommended to claim not only that the Government was "in for more major trouble on this, and in my view we must give ground", but that "the status quo is untenable politically and in equity" (TNA. CAB/198/533: Westminster Representation: Speaking Note, appended to letter from Quinlan to Foot, dated 19 January 1977).

<sup>60</sup> TNA. CAB/128/61/2. Conclusions of a Meeting of the Cabinet held at 10 Downing Street on Thursday 20 January 1977 at 10.00am, p.9

<sup>61</sup> TNA. CAB/129/194/4. Scottish and Welsh Representation at Westminster: Memorandum by the Lord President of the Council, 17 January 1977, p.2

Parliament’’.<sup>62</sup> As the speaking note concluded, it was clear that ground would have to be given and the concession of a reference to a Speaker’s Conference was “the most gradual and controlled as well as the most appropriate way of doing so”.<sup>63</sup>

*b) Not necessarily disadvantageous: the potential merits of a Speaker’s Conference*

While support for a Speaker’s Conference was primarily based on defusing parliamentary opinion and as a preventative measure, the case for such a referral was also strengthened by suggestions that the impact of such a conference may be less significant than would perhaps be anticipated and, indeed, may even be beneficial. For example, the conclusions of the Cabinet meeting on 20<sup>th</sup> January 1977 made reference to “evaluations” that suggested the possible impact of reducing Scottish and Welsh MPs, and increasing Northern Ireland’s representation at Westminster, “to parity with England in electorate size” could have only a limited impact on the outcome of General Elections.<sup>64</sup>

For example, work undertaken by the Cabinet Office’s Constitution Unit in May 1976 suggested that a reduction in the level of Scottish representation from 71 MPs to the level it would be due on a strictly population basis (57 MPs) would, in the words of the-then head of the Constitution Unit Sir John Garlick, “never have resulted in change of a majority party at Westminster since 1945”.<sup>65</sup> At the extreme end of the hypothetical scenarios explored by the Unit, removing all

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<sup>62</sup> TNA. CAB/198/533: Westminster Representation: Speaking Note, appended to letter from Quinlan to Foot, dated 19 January 1977

<sup>63</sup> Ibid.

<sup>64</sup> TNA. CAB/128/61/2. Conclusions of a Meeting of the Cabinet held at 10 Downing Street on Thursday 20 January 1977 at 10.00am

<sup>65</sup> TNA. CAB/198/533: Letter from Nafzger to Bryars. Dated 18 May 1976; TNA. CAB/198/533: Letter from Garlick to Bryars, dated 3 June 1976

parliamentary representation from Scotland, the Constitution Unit data suggested that on only two occasions, 1964 and February 1974, would the majority party in England and Wales have been different from that of the UK majority) on two occasion. In May 1976, these findings had led Garlick to conclude that the consequences of reducing Scotland's parliamentary representation, post-devolution, was "not so serious for the Labour Party as to make it impossible to contemplate", a judgement that seemed vindicated by the Cabinet's discussion on 20<sup>th</sup> January 1977.<sup>66</sup>

Furthermore, as the Cabinet Office's Constitution Unit explained in its memorandum to the Cabinet, the impact of any referral of representation to a Speaker's Conference could be mitigated as a result of provisions of the House of Commons (Redistribution of Seats) Act 1949. The 1949 Act allowed for a Boundary Commission to depart from certain rules regarding the distribution of seats on the grounds of 'special geographical considerations'. As the Cabinet Office's Constitution Unit noted, while, theoretically, "this provision should not increase the total number of seats for Scotland and Wales", in reality, it could enable the level of representation for Scotland and Wales to be raised above what they may be owed on the basis of arithmetical parity, thus cushioning the impact of any reduction in the number of Scottish and Welsh Members.<sup>67</sup>

Finally, and perhaps the most appealing of the possible factors that could mitigate any reference to a Speaker's Conference, was the likelihood that any reform would not take place until the middle of the 1980s.

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<sup>66</sup> TNA. CAB/198/533: Letter from Garlick to Bryars, dated 3 June 1976

<sup>67</sup> TNA. CAB/129/194/5: Scottish and Welsh Representation in the House of Commons, Note by the Constitution Unit, 17 January 1977, pp.1-2

### **Why the idea of a referral to a Speaker's Conference failed.**

On February 1 1977, a letter from Quinlan in the Constitution Unit, which included some suggested speaking material for the Lord President ahead of a forthcoming debate on the Scotland and Wales Bill, indicated that the Government was now focused on making a “direct and robust attack” on the case for change to Scotland and Wales’ representation at Westminster and against a referral of their representation to a Speaker’s Conference”.<sup>68</sup> Within the space of a fortnight, the Government had gone from agreeing, in principle, to refer the matter to a Speaker’s Conference to a position where the very idea of a referral was seen “as opening the door in a degree unacceptable to the government’s supporters”.<sup>69</sup>

The reasons for this swift reversal can be found in the minutes of a special meeting held at Downing Street on 31<sup>st</sup> January. Among those present at the meeting was the Prime Minister, Jim Callaghan; the Lord President of the Council, Michael Foot; and the Chief and Deputy Chief Whip, Michael Cocks and Walter Harrison respectively.<sup>70</sup> At the heart of this meeting, and also the ultimate failure of the idea of a Speaker’s Conference referral, was a difference of opinion between Foot and Cocks as to whether a Speaker’s Conference would help or hinder, or indeed positively damage, the Labour Government.

According to the minutes of this meeting, Foot contended that the question of whether a concession should be made on a Speaker’s Conference had become increasingly urgent as a result of an amendment tabled to the Scotland and Wales Bill, tabled by the shadow Leader of

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<sup>68</sup> TNA. CAB/198/533: Letter from Quinlan to Saville, dated 1 February 1977

<sup>69</sup> Ibid.

<sup>70</sup> TNA. CAB/198/533: Note of a meeting to discuss the Scotland and Wales Bill and representation at Westminster at 10 Downing Street at 1500 on Monday 31 January 1977

the House of Commons, Francis Pym.<sup>71</sup> Pym's amendment, Foot warned, would "have the effect of making the first Assembly elections contingent upon the House of Commons having made a decision upon the recommendations of a Speaker's Conference".<sup>72</sup> In Foot's opinion, "if the reference to a Speaker's Conference was announced, there would be a possibility of defeating the amendment", otherwise he feared that Pym's amendment would be carried "and it would be very difficult later to remove it from the Bill".<sup>73</sup>

However, while Foot continued to champion the idea of a managed concession, he also recognised that the proposal to refer Scottish and Welsh representation to a Speaker's Conference had resulted in "considerable unhappiness" at a recent meeting of the Parliamentary Labour Party (PLP), not least as any reduction "would be contrary to the Manifesto and White Paper".<sup>74</sup> And therein lied the rub. While the concession of a Speaker's Conference may have had certain merits as a means of attracting support from the opposition, and in particular the Ulster, benches. It's overall utility as an instrument of parliamentary statecraft would be limited if those numbers came at the expense of discontent among the Government's own backbenchers.

This position was forcefully made by the Chief Whip, who expressed his deep unhappiness at the proposal "because of the effect on the opinion of backbenchers". Backbenchers who, in a political climate where by February 1977, the Labour Government's slim majority had vanished, resulting in deals with the SNP and Plaid, for example, on the Aircraft and Shipbuilding

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<sup>71</sup> Francis Pym had tabled an amendment to the Scotland and Wales Bill, calling for a Speaker's Conference to, in his words, "consider not only the number and role of Scots and Welsh MPs, but also the appropriate representation for Northern Ireland and England within the vital context of the unity of the UK" (TNA. CAB/198/533: Conservative Party press release, appended to Letter from Quinlan to Dudding, 31 January 1977).

<sup>72</sup> TNA. CAB/198/533: Note of a meeting to discuss the Scotland and Wales Bill and representation at Westminster at 10 Downing Street at 1500 on Monday 31 January 1977

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

Industries Bill, were already growing “very suspicious of private deals with other Parties” and were loath to see David Steel claim credit for any concessions (a month before the Callaghan Government and Steel’s Liberals announced the Lib-Lab pact).<sup>75</sup>

With backbenchers already restive at the thought of making concessions to other parties, the idea of a reference to a Speaker’s Conference threatened to become a vicious circle, rather than a useful expedient for the Government. As Cocks warned the meeting, such a reference would leave Scottish and Welsh MPs fearing for their seats, as he explained “there was a consensus among backbenchers that any reference would result in reduction of Scots MPs”, while many English Members had only supported the Bill out of sense of loyalty to Scottish and Welsh colleagues. Far from aiding the Government, such a concession would, in Cocks’ opinion, “make it more difficult to get a majority on the guillotine [needed to secure the Bill’s passage]”<sup>76</sup> because of the animosity it would brew on the Government’s own backbenchers. As Cocks noted, in response to Foots’ suggestion that a concession “was likely to detach the UUUC and Nationalists from the Conservatives [on the Pym amendment]”, “it was no use eroding the Government’s support on its backbenches by picking up little groups of supporters on particular issues”.<sup>77</sup>

It was this argument that struck a killer blow against the idea of conceding a referral to a Speaker’s Conference. With the Deputy Chief reporting that as many as 39 backbenchers had indicated that they would either abstain, or rebel against the Government on the crucial guillotine vote, the Prime Minister, himself no enthusiast for a referral to a Speaker’s

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<sup>75</sup> Ibid.

<sup>76</sup> By 31 January, 7 days had been spent on the floor of the House debating the Bill and only 2 clauses and 1 schedule had been passed.

<sup>77</sup> TNA. CAB/198/533: Note of a meeting to discuss the Scotland and Wales Bill and representation at Westminster at 10 Downing Street at 1500 on Monday 31 January 1977

Conference,<sup>78</sup> came down on Cocks' side. In Callaghan's opinion, a concession would be seen by backbenchers "throwing away of the prospect of a Labour Government in the future [because of the likely cut in Scottish and Welsh MPs that would follow a Speaker's Conference] for this Bill on which they were not keen".<sup>79</sup> While the Labour Government had made the Scotland and Wales Bill a key part of its legislative agenda, it was in the most reluctant of circumstances.<sup>80</sup> Ultimately, the Bill was just not important enough, for many in the Labour benches, for either the sort of trade-off that a Speaker's Conference referral entailed, however distant the consequences may be, or for the discontent that it would generate among Labour MPs representing Scottish and Welsh constituencies.

### **Denouement: the collapse of the Scotland and Wales Bill**

On 22 February 1977, the Government was defeated on the guillotine motion for the Scotland and Wales Bill by 312-283 votes, with 22 Labour MPs voting against the Government's motion with many others abstaining.<sup>81</sup> As a result, the Scotland and Wales Bill, a measure already

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<sup>78</sup> It should be remembered that the Prime Minister was, of course, a Member of Parliament for a Welsh constituency, Cardiff South.

<sup>79</sup> TNA. CAB/198/533: Note of a meeting to discuss the Scotland and Wales Bill and representation at Westminster at 10 Downing Street at 1500 on Monday 31 January 1977

<sup>80</sup> Callaghan, as his biographer K. O. Morgan explains, was instinctively unenthusiastic about devolution, opposing, for example, the transfer of health functions to the Welsh Office in the late 1960s (K.O. Morgan, *Callaghan: A Life*, (Oxford, 1997) p.361). According to Lord Morgan, devolution came to be seen by Callaghan, during his premiership, as a "necessary evil", required to "placate the Scottish Nationalists and Plaid Cymru members in the House on whose support he partly depended". Devolution was thus a course ploughed by Callaghan "without enthusiasm or great commitment" (Morgan, *Callaghan: A Life*, p.510). The diaries of Bernard Donoughue, the head of Number 10 Policy Unit from 1974 to 1979 and thus a senior adviser to the Prime Minister, also make clear that Callaghan, at worst, simply did not like devolution and, at best, was "not really interested" in the subject (B. Donoughue, *Downing Street Diary Volume Two: With James Callaghan in No.10*, (London, 2009), pp.59 and 121). Indeed, Donoughue highlights that during the House of Commons debate on the Scotland and Wales Bill on the 13<sup>th</sup> December 1976, Mrs Thatcher "obviously knew the Bill inside out, which was more than you can say of Jim-or of me" (Donoughue, *Downing Street Diary*, p.120).

<sup>81</sup> HC Debates (Hansard), 22 February 1977, Series 5, Vol. 926 col.1234-1366

struggling for life, was effectively dead in the water.<sup>82</sup> That evening, Bernard Donoughue recorded the Prime Minister as being “quite relaxed”, despite the Government’s defeat, telling his aides he did not “mind losing the bill providing we get the credit in Scotland for ‘having tried to get devolution’.”<sup>83</sup>

However, while Callaghan remained unenthusiastic about devolution to the last, his Government would get no such respite from devolution. As time, deaths, defections and by-elections further eroded the Government’s position in the House of Commons, the commitment to implement Scottish and Welsh devolution became even more of a political necessity for Callaghan’s administration.<sup>84</sup> Devolution had formed an important pillar of Lib-Lab dialogue both before, and as part of, the formal agreement reached between Callaghan’s Government and David Steel’s Liberal Party, with Steel insistent on the re-introduction of devolution legislation as part of the price for his Party’s parliamentary support for the Government.<sup>85</sup>

On 26 July 1977, Michael Foot announced that the re-introduced devolution legislation would take the shape of two separate Bills for Scotland and Wales.<sup>86</sup> While guillotine motions were won for both Bills, devolution continued to inspire fierce hostility among a number of Labour backbenchers. The Government had previously conceded the principle of a referendum being held prior to the implementation of devolution and, on 25<sup>th</sup> January 1978, George Cunningham MP fatefully moved, and carried by a 166 votes to 151, an amendment that made

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<sup>82</sup> The Bill was withdrawn by the Government on 14 June 1977 (HC Debates (Hansard) 14 June 1977, Series 5, Vol. 933, col. 225)

<sup>83</sup> Donoughue, *Downing Street Diaries*, p.152

<sup>84</sup> As Kirkup notes by March 1977, when the Lib-Lab Pact was agreed, the total number of MPs taking the Government whip has eroded from 319 to 310 (J. Kirkup, *The Lib-Lab Pact: A Parliamentary Agreement, 1977-78*, (Basingstoke, 2016), pp.28-30

<sup>85</sup> Kirkup, *The Lib-Lab Pact*, pp.50-54

<sup>86</sup> HC Debates (Hansard) 26 July 1977, Series 5, Vol. 936 col.313-28

commencement of the Scotland Bill contingent on ‘Yes’ securing the support of at least 40% of the eligible electorate in a referendum.<sup>87</sup> Similar provision was made for the Wales Bill.

Unlike the Scotland and Wales Bill, both the Scottish and Wales Bills eventually made it onto the statute book as the Scotland Act 1978 and the Wales Act 1978. Neither, however, entered into effect. In referendums held on 1<sup>st</sup> March 1979, neither proposition secured the 40% of total eligible voters required by the Cunningham amendment, despite the fact that, in Scotland, a slim majority of those voting had voted in favour.<sup>88</sup> Following the referendum, a motion of no confidence in Her Majesty’s Government was tabled in the House of Commons by the Conservative Party on 28<sup>th</sup> March 1979. Far from Callaghan getting credit in Scotland for trying to get devolution, the Scottish National Party’s bloc of MPs joined the UUP, Liberals and SDLP in support of the Official Opposition’s motion of no confidence.<sup>89</sup>

## Conclusion

The idea of conceding a reference of territorial representation, post-devolution, to a Speaker’s Conference was championed, to a considerable extent, by Foot on parliamentary statecraft grounds.<sup>90</sup> While private estimates suggested that any reduction in Scottish and Welsh MPs may

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<sup>87</sup> HC Debates (Hansard) 25 January 1978, Series 5, Vol. 942, col.1542; see also, O. Gay, *Scotland and Devolution*, House of Commons Library Research Paper 97/92 (29 July 1997)

<sup>88</sup> Scotland voted by a margin of 52%-48% in favour of devolution, a Yes vote that represented only 32.9% of the total eligible electorate. In Wales, however, devolution was defeated by an overwhelming four to one margin (79.4% to 20.3% - equivalent to 11.8%).

<sup>89</sup> The Government was defeated by 311 votes to 310 (HC Debates (Hansard)) 28 March 1979, Series 5, Vol. 965, col.585). For a detailed discussion of the period between the referendum votes and the motion of no confidence, see: Morgan, *Callaghan: A Life*, pp.678-685; and, Donoghue, *Downing Street Diaries*, pp.453-474

<sup>90</sup> Foot’s dogged support for such a concession was also a reflection of the genuine nature of his support for devolution. As K.O. Morgan, the biographer of both Foot and Callaghan has noted, Foot was “always a far more enthusiastic devolutionist” than Callaghan (Morgan, *Callaghan: A Life*, p.681).

have a lesser impact on general election outcomes than had been assumed, a referral to a Speaker's Conference was, at best, the least worst option for the Labour Party.<sup>91</sup> As a political expedient, it was thus vulnerable to rival considerations of what would best safeguard the Labour Government's position in the House of Commons. In the end, parliamentary statecraft concerns prevailed, but not those of Foot. Instead, Callaghan, never an enthusiast for devolution, sided with Cocks' judgement that a Speaker's Conference referral would only serve to worsen the Labour Government's precarious hold on power by inflaming opinion among Scottish and Welsh Labour MPs, many of whom were either opposed to, or unenthused by, the Scotland and Wales Bill. In short, a referral to a Speaker's Conference was simply a price too high, for too poor a reward.

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<sup>91</sup> It is, perhaps, instructive to note that Bernard Donoughue, was firmly of the belief that neither of the potential outcomes of a Speaker's Conference referral, namely a reduction in Scottish representation and an increase in England and Northern Ireland's, "would be likely to assist the Labour Party!" (Donoughue's comments came in the form of annotations to a letter from the Lord President's office to the Prime Minister's: TNA. PREM/6/928: Letter from Saville to K.R. Stowe, dated 23 November 1976).