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‘Far reaching and perhaps destructive’? The 1974-79 Labour Government, devolution and the emergence, and failure, of the Scotland and Wales Bill

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ABSTRACT

The story of devolution in the United Kingdom is a long and chequered one which long predates the establishment of devolved legislatures in Scotland and Wales after referendums in 1979. The devolution programme of Tony Blair’s Labour Government came eighteen years after the failure of the 1974–79 Labour Government’s attempts at establishing Scottish and Welsh devolution. This article explores how after establishing a Royal Commission on the Constitution in his first Government, Wilson would be left to take up the reins of devolution again after the two elections of 1974. It focuses on how Harold Wilson, and then James Callaghan, developed, often with huge reluctance and great caution, devolution proposals that would eventually form the Scotland and Wales Bill (the Labour Government’s first set of legislative proposals for devolution). The bill endured a tortuous fate in parliament and its slow progress eventually ground to a final halt in February 1977. However, despite the bill’s failure, the work that went into developing it and the concessions that were made by the government during its aborted journey through the House of Commons had consequences that were felt during the remainder of the 1974–79 Labour Government’s fraught existence and long after.

Introduction

The story of devolution in the United Kingdom is a long and chequered one which long predates the establishment of devolved legislatures in Scotland and Wales after referendums in 1979.

The devolution programme of Prime Minister Tony Blair's Labour Government came eighteen years after the failure of the previous Labour Government's attempt at establishing devolved assemblies in Scotland and Wales. The failure in 1979 of devolution referendums in Scotland and Wales marked the end, for the time being, of a turbulent and challenging episode that had begun in 1969 when Harold Wilson's Labour Government established a Royal Commission on the Constitution.

The Royal Commission when it reported in 1973 was united in support of devolution, but divided on much else including what form and shape devolution would take. While the report did not attract much immediate attention or action, devolution would re-emerge on the political agenda as a result of the two general elections (28 February and 10 October) of 1974. These elections witnessed the return of the Labour Party to office, initially as a minority and then with a slim majority, but were also marked by the rise of the Scottish Nationalist Party (SNP). The SNP secured successive record hauls of seats, returning seven Members of Parliament (MPs) in the February election and 11 MPs in October, and in the October election secured 30 per cent of the vote in Scotland. As a result, and after much internal wrangling between the Labour leadership in London and the party in Scotland,¹ by the time of the October election, the Labour Party was officially committed to devolution.

This article focuses on how this early commitment evolved into what would become the first legislative stab, by the Labour Government, at devolution: the Scotland and Wales Bill. The purpose of this article is to explore the development of the Wilson and Callaghan Governments devolution proposals and it therefore focuses on intra-executive debates on devolution, rather than the broader debates within the Labour Party and the broader UK party system. Drawing on extensive primary and secondary source material, this article seeks to

¹ J. Mitchell, *Devolution in the UK* (Manchester, 2009), p.120.

provide one of the fullest accounts of the cautious and often unenthusiastic approach taken by the 1974-79 Labour Governments to devolution. It paints a picture of a Government which was not only deeply concerned at the implications of their dalliance with devolution, but whose room for manoeuvre was limited by the political necessity of delivering devolution and the need to manage dissent on the backbenches. As a result, the Government's response was a largely hesitant one, with a deep reluctance to concede more in the way of devolution than was deemed necessary. Indeed, as the article will explore, this caution even led to a refusal to confirm initially whether a Scottish Assembly with some legislative and executive powers would even have its own executive accountable to it.

The Scotland and Wales Bill had a tortuous fate in parliament, reflecting the general lack of enthusiasm among Labour backbenchers and the hostility, certainly to a Welsh Assembly, from Conservatives. However, while the Scotland and Wales Bill ended in failure, the work that went into developing the bill (especially the early endorsement of asymmetric devolution and the proposals for a body corporate Welsh Assembly with executive devolution), and the concessions that were made by the government during its aborted journey through the House of Commons (most notably pre-commencement referendums) had consequences that were felt during the remainder of the 1974-79 Labour Government's fraught existence and, in terms of the development of Welsh devolution after 1997, long after.

The Royal Commission on the Constitution, 1969-73

The Royal Commission on the Constitution was established on 15 April 1969 by the Wilson Government, following a string of strong performances at by-elections by the SNP and Plaid Cymru. In 1966, just months after Labour's landslide election win and its best ever performance in Wales (polling 60.7 per cent of the vote and returning MPs in 32 of the 36 seats), Plaid Cymru won its first seat in the House of Commons with Gwynfor Evans winning

the Carmarthen by-election. A year later, in Hamilton, Winnie Ewing was returned for the SNP, while in Rhondda West (1967) and Caerphilly (1968) Plaid Cymru narrowly missed out in what had hitherto been considered Labour citadels.

Harold Wilson had previously remarked that Royal Commissions ‘take minutes and waste years’, and it was certainly the case that this commission took some considerable time to conclude.² Running from 1969 until 1973, the Royal Commission not only saw Wilson’s Government replaced by Ted Heath’s Conservative Government during its lifespan, but it also outlasted its original chair, Geoffrey (Lord) Crowther, who died in 1972 and was replaced by James Shaw (Lord Kilbrandon).³ That the commission took so long, and as we shall see, failed to produce a clear set of recommendations, can to a significant degree be blamed on ill-defined terms of reference, described shortly after the commission reported as ‘impossibly vague’. The commission’s remit encompassed local government organisation in the United Kingdom 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’.⁴

The commission was able to agree on a small number of things. The commissioners were, for example, united in rejecting independence and federalism, and third: there was a general level of support for the principle of devolution. Beyond that, the commission was unable to agree on much else. Two reports were produced: the Official Report of the Royal

² P. Dorey, *The Labour Party and Constitutional Reform: A History of Constitutional Conservatism* (Basingstoke, 2008).

³ A. Evans, ‘Devolution and Parliamentary Representation: The Case of the Scotland and Wales Bill’, 1976-7, *Parliamentary History* 37, (2018), pp.275-6.

⁴ Royal Commission on the Constitution 1969–1973, Vol. I, *Report*, Cmnd. 5460 (1973); Evans, *Devolution and Parliamentary Representation*, pp.275-6; T. Daintith, ‘Kilbrandon: The Ship That Launched a Thousand Faces?’, *The Modern Law Review* 37, (1974), p.544. See also: J.P. Mackintosh, ‘The Report of the Royal Commission on the Constitution’, *Political Quarterly* 45, (1974), pp.115-23; A. Evans, ‘Back to the Future? Warnings from History for a Future UK Constitutional Convention’, *Political Quarterly* 86, (2015), pp.26–8; R. Rawlings, ‘Riders on the Storm: Wales, the Union and Territorial Constitutional Crisis’, *Journal of Law and Society* 42, (2015), pp.471–98; I. McLean and A. McMillan, *State of the Union: Unionism and the Alternatives in the United Kingdom since 1707* (Oxford, 2005).

Commission and a Memorandum of Dissent produced by Lord Crowther-Hunt and Professor A.T. Peacock. However, the internal divisions within the commission stretched beyond a straightforward official report-memorandum of dissent split.

On devolution to Scotland, eight of the commissioners⁵ favoured a model of legislative devolution, with the policy fields to be devolved mainly in those areas where the Scottish Office had executive responsibility.⁶ Under this scheme, the assembly would consist of 100 members, directly elected for four years by the single transferrable vote system of proportional representation.⁷ There would be an executive, drawn from the membership of the assembly, headed by a chief minister (one possibility floated for the title of this minister was ‘the Scottish Premier’) and with a separate Scottish Civil Service.⁸ This scheme would entail the abolition of the Secretary of State for Scotland, although there would still be a minister within government with ‘special responsibility of representing the interests of that country in the Cabinet’, such a role could be combined with other duties.⁹ At the other end of the spectrum, a rival scheme for Scotland, proposed by one commissioner,¹⁰ favoured a deliberative and advisory assembly for Scotland, with some functions relating to the legislative process.¹¹

The commissioners were less enthusiastic when it came to devolution for Wales. The single most popular proposal, albeit backed by six of the 13 commissioners, was legislative devolution along the lines sketched out above for Scotland.¹² Three members¹³ favoured a

⁵ Lord Kilbrandon, Alun Talfan Davies, Sir Mark Henig, Rt Rev James Longmuir, Professor Harry Street, Professor Francis Newark, Sir Ben Bowen Thomas and Nancy Trenaman.

⁶ Royal Commission on the Constitution, *Report*, para. 1123-33.

⁷ Royal Commission on the Constitution, *Report*, para. 1140-1141.

⁸ Royal Commission on the Constitution, *Report*, para. 1144-6.

⁹ Royal Commission on the Constitution, *Report*, para. 1148.

¹⁰ Sir David Renton MP.

¹¹ This model was based on the proposals of the Scottish Constitutional Committee of the Conservative Party which were for a body to take the Second Reading Committee and Report stages of Scottish Bills referred to it by the House of Commons and to consider private legislation and statutory instruments (Royal Commission on the Constitution, *Report*, para. 1184-5).

¹² Lord Kilbrandon, Alun Talfan Davies, Sir Mark Henig, Rt Rev James Longmuir, Professor Francis Newark and Sir Ben Bowen Thomas.

¹³ Nancy Trenaman, Professor Harry Street and Sir David Renton MP.

‘Welsh council with deliberative and advisory functions only’ on the basis that ‘administrative devolution is more recent and less well developed in Wales than in Scotland’ and that ‘Wales has no separate system of law and needs little separate legislation’. This model would, according to its proponents, protect the continued existence of a Secretary of State for Wales and reconcile this with ‘the need, represented to us by many witnesses, for a directly elected assembly to act as the voice of Wales’.¹⁴

As for England, there was unanimous agreement that ‘legislative devolution, even if applied to Scotland and Wales [...] should not be applied to England or to the regions of England’. Instead, eight of the commissioners¹⁵ favoured the creation of ‘non-executive co-ordinating and advisory councils’ with some members indirectly elected by local authorities and others nominated by the central government.¹⁶ One commissioner favoured devolving power to enlarged local authorities overlapped with indirectly elected regional co-ordinating committees.¹⁷

Finally, among the main body of commissioners, two supported ‘the principle of uniformity’ across the UK and a system of executive devolution to assemblies in Scotland, Wales and across the English regions. According to the advocates of this scheme, this approach would ‘permit the maximum transfer of power consistent with the maintenance of political and economic unit in a small densely populated country such as the United Kingdom’ and would make a ‘significant contribution to the reduction of centralisation’ across the country.¹⁸

In what was a wide ranging analysis of the system of government in the United Kingdom as a whole, beyond the question of devolution, the two signatories of the

¹⁴ Royal Commission on the Constitution, *Report*, para. 1181.

¹⁵ Lord Kilbrandon, Alun Talfan Davies, Sir Mark Henig, Rt Rev James Longmuir, Professor Francis Newark, Sir David Renton MP, Professor Harry Street and Sir Ben Bowen Thomas.

¹⁶ Royal Commission on the Constitution, *Report*, para.1188-1889.

¹⁷ Nancy Trenaman.

¹⁸ Lord Foot and Sir James Steel, for their rationale see: Royal Commission on the Constitution, *Report*, para. 1170, 1192.

Memorandum of Dissent¹⁹ rejected legislative devolution for Scotland and Wales on the grounds that ‘it makes no sense today to seek to move “sovereignty” downwards when in more and more subjects it is actually moving upwards—to Brussels’, that it would give the people of Scotland and Wales ‘additional political rights which would be denied to the people in the different regions of England’, and that it would be unacceptable to preclude MPs at Westminster from legislating on a wide range of subjects that had been devolved to Scotland and Wales, while at the same time Scottish and Welsh MPs at Westminster would ‘have a full share in legislating in the same matters for England alone’.²⁰ The scheme proposed by the two dissenting commissioners would entail the establishment of seven elected assemblies and governments: one for Scotland and Wales apiece and one for five English regions. These bodies would ‘take over the control of, and responsibility for, virtually all the outposts of central government now operating in their areas’, including the Scottish and Welsh Offices in Scotland and Wales respectively and the Department of the Environment Regional Offices, and regional health authorities, in England.²¹

Facing this smorgasbord of differing schemes and analyses, it is not altogether surprising that, as has been noted elsewhere, many MPs greeted the publication of the Royal Commission’s report with ‘bafflement and even mirth’.²² Moreover, by the time the commission concluded its work, the political agenda had, for the time being, moved on from devolution. The Heath Government was embroiled in industrial unrest, the oil crisis was underway, and the economy was in recession. Indeed, the only discussion within the Heath cabinet on the report came on 4 October 1973, weeks before the report’s publication. At that meeting, the main concern was the embarrassment that might arise by the Heath Government

¹⁹ Professor Peacock and Lord Crowther-Hunt.

²⁰ Royal Commission on the Constitution 1969–1973, Vol. 2, *Memorandum of Dissent*, Cmnd. 5460-I, p.viii.

²¹ Royal Commission on the Constitution, *Memorandum of Dissent*, para.16.

²² V. Bogdanor, *Devolution in the United Kingdom* (Oxford, 1999), p.175.

being reminded of its earlier pledge ‘to put forward constitutional proposals in relation to Scotland during the lifetime of the present parliament’.²³

Indeed, to dodge suggestions that the Royal Commission had taken the time it did to report as a result of the Heath Government trying to avoid having to bring forward its own devolution proposals, the cabinet discussed whether it would be helpful if Lord Kilbrandon ‘could take a suitable opportunity of making clear that the commission’s timetable had been settled entirely by them’. In terms of action points, the cabinet agreed that the government should provide a formal statement welcoming the report, but they agreed that they ‘did not intend to give their own views until there had been ample opportunity for public reactions to the report to crystallise’.²⁴

Accordingly, on 31 October, when the report was published, the then Prime Minister, Edward Heath made a statement to the House of Commons. In his statement, the Prime Minister paid tribute to the commissioners for their efforts ‘over such a long period of time’ and acknowledged the ‘very wide terms of reference’ the commission faced and the large quantity, and diversity, of evidence that was given to it on what the appropriate constitutional and economic relationships of the United Kingdom should be. As a result, Heath said it was ‘not perhaps surprising that the members of the Commission have not found themselves able to make unanimous recommendations’.²⁵ The Prime Minister made no formal commitments regarding the implementation of the report, noting instead that the commission ‘expects its report to lead to a public debate in which the various solutions identified can be examined’,

²³ In 1968, with the ‘Declaration of Perth’, the then Leader of the Opposition and Leader of the Conservative Party, Ted Heath had set the basis for a Conservative offering on devolution. A Constitutional Committee, chaired by Sir Alec Douglas Home, was established and ended with the proposal of a Scottish Convention, a body that would be based in Edinburgh and would scrutinise and debate Scottish legislation. See G. Pentland, ‘Edward Heath, the declaration of Perth and the Scottish Conservative and Unionist Party, 1966-1970’, *Twentieth Century British History* 26, (2015), pp.249-73. At the 1970 General Election, the Conservative Party pledged that the Convention would ‘form a basis for the proposals we will place before Parliament’ (Conservative Party 1970).

²⁴ The National Archives (henceforth ‘TNA’). CAB 128/53/44: Cabinet Conclusions, 4 October 1973.

²⁵ Parliamentary Debates (Hansard) House of Commons Official Report (henceforth referenced as HC Deb) 31 October 1973, series 5, vol. 863, c. 163-164.

before expressing the government's view that there 'should be the widest possible public discussion before any decisions are taken on issues which affect so fundamentally the way in which our country is governed'.²⁶

In response the then Leader of the Opposition, Harold Wilson, echoed the Prime Minister's tribute to the commissioners and drew attention to the lack of consensus among the commission. Although Wilson acknowledged that he had not had 'an opportunity to study the report as fully as I should like', he was clear in his assessment 'that there is not a majority for any group of propositions among the members of the Commission' and, in such circumstances, it was right 'that public debate should be allowed and encouraged to continue as thoroughly as possible'.²⁷

Between the two 1974 elections: the hesitant first steps towards implementing devolution

While both Ted Heath and Harold Wilson emphasized the need for public debate, neither sought to stimulate such a discussion through their manifestos in the February 1974 General Election. While both the Conservative and Labour manifestos focused on the industrial and economic situation facing the country, only a passing reference was made to the Royal Commission in the Conservative manifesto and the Labour manifesto did not mention it at all.²⁸ However, the outcome of the election would result in Labour having to engage with devolution.

The General Election of 28 February 1974 saw the first hung parliament since the Second World War. Labour emerged as the single largest party in the House of Commons with four more MPs than the Conservatives (although polling a lower share of the vote than the Conservatives). While Ted Heath unsuccessfully sought to reach an arrangement with the

²⁶ HC Deb (Hansard) 31 October 1973, series 5, vol. 863, c.164.

²⁷ HC Deb (Hansard) 31 October 1973, series 5, vol. 863, cc.164-165.

²⁸ This was despite a reported plea by Ron Hayward, the General Secretary of the Labour Party, to Harold Wilson for the party to commit to Scottish devolution due to his concern at the party losing votes and seats in Scotland to the SNP. See B. Donoghue, *Downing Street Diary: With Harold Wilson in No. 10* (London, 2004).

Liberals, the election would result in Harold Wilson's return to office as Prime Minister and faced with a House of Commons in which not only was Labour simply the largest minority, but one where there was a larger nationalist presence (the SNP had returned seven MPs and Plaid Cymru two).

In recognition of these political realities, the Queen's Speech on 12 March 1974 announced that the government would 'initiate discussions in Scotland and Wales on the Report of the Royal Commission on the Constitution, and will bring forward proposals for consideration'.²⁹ The government did not approach devolution from a standing start. Work that had been underway in Whitehall ever since the Kilbrandon report had been published. Discussions had been ongoing within the civil service about the implications of the report since late 1973. In January, a Kilbrandon Unit was established to provide a more structured approach to these discussions and analyses, drawing together officials from across Whitehall. In March 1974, shortly after the Labour Government took office, Lord Crowther-Hunt, who had been a member of the Royal Commission (and was one of the signatories of the Memorandum of Dissent), was appointed by Wilson to be a constitutional adviser to the government.³⁰

On 3 June 1974, the government published a Green Paper, *Devolution within the United Kingdom: Some alternatives for discussion*, outlining what it considered to be the main schemes for reform contained in the Royal Commission Report and Memorandum of Dissent, namely: A) Legislative devolution for Scotland and Wales; B) Elected assemblies in Scotland, Wales and the English Regions with executive devolution, ordinance making, and some revenue raising, powers and a devolved civil service (along the lines of the Memorandum of Dissent's proposals); C) Executive devolution for Scotland, Wales and eight English regions,

²⁹ Parliamentary Debates (Hansard): House of Lords Official Report (henceforth referenced as HL Deb) 12 March 1974, Vol 350, c.10.

³⁰ Donoghue, *Downing Street Diary: With Harold Wilson in No.10*, p.66.

D) Welsh Advisory Council; E) A Scottish Council with advisory and legislative functions; F) Regional co-ordinating and advisory councils for the English regions; G) Co-ordinating committees of local authorities in England.³¹

After the publication of the Green Paper, and over the summer of 1974, discussions took place between the government and stakeholders in Scotland and Wales.³² In addition to these discussions, a ministerial group, chaired by the Prime Minister, Harold Wilson, was established during the summer to consider the contents of a White Paper to be published in the autumn.³³ The progress made by this group, and the government's initial thinking on devolution, was discussed at a cabinet meeting on 2 August 1974. The tone expressed by the Prime Minister was one of supreme caution. Warning the cabinet that 'mishandling of the situation could arguably lead in the long run to the break-up of the United Kingdom', Wilson also cautioned against the 'possible risk of embarking on a progress of change which, once started, could not be halted'. Nonetheless, he reiterated that on 'political grounds some move towards devolution was necessary'.³⁴

While a move towards devolution may have been politically necessary, it was clear that the Prime Minister was keen on containing the extent of any such move. Outlining the work of the ministerial group on devolution, the Prime Minister explained that 'full legislative devolution' (the main proposal in the Royal Commission report) had been rejected, with the group instead considering 'some form of modified legislative devolution'. Anxious to avoid making any sudden commitment, the group had 'concluded that at this stage [that] the

³¹ The schemes consulted on in the Green Paper are listed as an annex in: HM Government (September 1974), *Democracy and Devolution: Proposals for Scotland and Wales*, Cmnd. 5731, pp. 12-21.

³² HM Government, *Democracy and Devolution*, para. 17, 19.

³³ According to the diaries of Bernard Donoughue, an academic brought in to establish and run the No.10 Policy Unit and who became a senior and close adviser to both Wilson and his successor James Callaghan, the meeting of the ministerial group to sign off the White Paper on 30 July 1974 was "very depressing" with participants 'frightened at what we are doing' (Donoughue, *Downing Street Diary: With Wilson in No.10*, p.169).

³⁴ The National Archives (TNA). CAB 128/55/32. Cabinet Conclusions, 2 August 1974.

government should commit themselves only to proposing elected assemblies in Scotland and Wales, the former with some legislative powers and the latter with mainly executive powers'. The justifications offered for this differential treatment included 'the existence of a separate Scottish legal system and of separate Scottish statutes [...] [and] the differing wishes and expectations in the two countries'. It is an irony that while the group had sought to avoid making any early commitments, they had through their support, at least in the broadest of senses, of a distinction between a law making (even strictly bounded) Scottish Assembly and a mainly executive Welsh Assembly reinforced an asymmetrical approach to the governance of both nations³⁵ and, in so doing, confirmed that that devolution would treat Scotland and Wales markedly differently – a decision with a legacy that lasted well beyond the 1970s.³⁶

In terms of the next steps, the devolution ministerial group had drafted two White Papers. One that was fairly short and said little beyond announcing that the Government intended to establish elected Assemblies in Scotland and Wales, while the second went into more detail. The cabinet was informed that the group had decided that the short version was preferable, albeit it should be somewhat expanded to stress 'the importance of preserving both the unity of the United Kingdom and the principle that the economy must be managed on a United Kingdom basis'. It was further suggested that the White Paper should emphasise the continuity of the two territorial Secretaries of State and the continuation of the existing level of Scottish and Welsh representation in the UK Parliament post-devolution.

³⁵ The precursor of political/elected devolution for Scotland and Wales, administrative devolution (the creation of territorial departments, headed by a Secretary of State sitting in the Cabinet, within Whitehall with responsibility for much of the day to day administration of Scotland and Wales) was also defined by asymmetry. Administrative devolution was granted to Scotland in 1885, while it would take until 1964 for a Secretary of State for Wales to be established (the Welsh Office was formally established in 1965).

³⁶ The executive model of devolution for Wales had been set in train from 1970 when the party in Wales submitted its position to the Royal Commission on the Constitution, despite the wishes of a number of figures within the Labour Party in Wales this submission made the case for an elected Council for Wales with executive, rather than legislative powers. This proposition was repeated by the Labour Party in its 1970 manifesto. See R. Wyn Jones and R. Scully, *Wales Says Yes: Devolution and the 2011 Welsh Devolution Referendum* (Cardiff, 2012), pp. 29-34.

According to Wilson, ‘a short white paper giving a general statement of principle on these lines should be sufficient to meet the immediate political requirement while leaving the government the maximum room for manoeuvre after the Election’. There was, however, a deep reluctance among the cabinet at making a decision too hastily, leaving the Prime Minister to accept instead that no final decision would, at that stage, be needed, but that further work should proceed on a White Paper containing ‘a general statement of intent to establish elected assemblies in Scotland and Wales, the former with some legislative powers and the latter with mainly executive powers’.³⁷

The cabinet returned to the subject of the White Paper on 5 September.³⁸ At this meeting, concerns were expressed about the lack of clarity, in the drafts of the White Paper they had been presented with,³⁹ regarding the functions of the territorial secretaries of state after devolution, and whether there would be confusion between legislative and executive devolution (prompting suggestions that the government should keep the treatment of Scotland and Wales separate). Summing up the cabinet’s discussion, the Prime Minister’s comments exemplified the political bind he, and his colleagues now found themselves in. Cautious and unenthusiastic about ‘the far reaching and perhaps destructive nature’ of the devolution proposals they were having to weigh up, Wilson was also too well aware of the fact that it had been his earlier government which started a move towards devolution by establishing the Royal Commission and that his ‘present Government was committed to making proposals in a White Paper’.

With the government needing to act, his main concern was to avoid being seen as putting forward proposals ‘in a grudging or reluctant spirit’, yet at the same time maintaining

³⁷ TNA. CAB 128/55/32. Cabinet Conclusions, 2 August 1974.

³⁸ TNA. CAB 128/55 Cabinet Conclusions, 5 September 1974.

³⁹ TNA. CAB 129/179/8: Devolution: Memorandum by the Prime Minister.

as much room for manoeuvre as possible. Wilson was keen to avoid making any further commitments, at this stage, beyond the specific offer of establishing assemblies. In particular, he was keen to not ‘specifically provide for separate executive governments for Scotland and Wales or commit the government on the scope of the powers and functions to be devolved’. His hope was that the ‘precise nature and timing of the devolution to be introduced could then be considered in the light of more mature consideration’.⁴⁰ The cabinet agreed that a drafting group, consisting of the Chancellor, the Environment Secretary and the Secretaries of State for Scotland and for Wales, and chaired by the Secretary of State for Prices and Consumer Protection [the Rt Hon Shirley Williams MP], should produce a revised draft of the White Paper.⁴¹

This revised draft was put to the cabinet on 12 September 1974.⁴² Presenting the draft, Shirley Williams explained that her group had concluded ‘it as politically inevitable that the White Paper should specifically convey that the assemblies would be given (at this stage still unspecified) executive powers of the kind now exercised by the Secretaries of State for Scotland and Wales’. While the White Paper might need to specify that some executive powers would be devolved to the assemblies, there remained the question of whether there should be separate executives in Scotland and/or Wales. For some members of the cabinet, it was considered inevitable that there would have to be some form of executive in Scotland and Wales and those ministers argued that the government may as well make this reality clear in the White Paper. However, the overall view remained that to maximise the government’s freedom of movement, ‘it would [...] be preferable not to include any commitments on

⁴⁰ TNA. CAB 128/55 Cabinet Conclusions, 5 September 1974.

⁴¹ TNA. CAB 128/55 Cabinet Conclusions, 5 September 1974.

⁴² TNA CAB 129/179/15: Devolution: Memorandum by the Secretary of State for Prices and Consumer Protection.

executives in the White Paper”, nor should the document “settle the extent and nature of the powers which would be devolved on the assemblies”⁴³.

Accordingly, when the White Paper was published later that month, the only firm proposals were that ‘for Scotland and Wales the Government now propose the creation of directly elected assemblies’, that the Scottish Assembly ‘should have a legislative role and have legislative powers within fields in which separate Scottish legislation already exists’ including housing, health and education. However, both would assume ‘certain powers of the Secretary of State in respect of delegated legislation’ and that the Welsh Assembly would also have responsibility ‘for many of the executive functions at present carried out by nominated bodies within Wales, and by the Secretary of State’.⁴⁴

‘It would be important to get on with the government’s proposals for devolution as quickly as possible’: The Labour Government and devolution after the October 1974 election

If the election results and political arithmetic of the February General Election had indicated to Wilson and his Labour colleagues that a move towards devolution was necessary then the results of the October election would hammer home that point. Labour was once again returned as the largest party in the House of Commons, this time with a slender majority of three seats. Significantly, the SNP returned 11 seats, an increase of four, and polled 30 per cent of the vote in Scotland, a marked improvement on their previous record performance in the February General Election. In Wales, Plaid Cymru returned three members, also a record. Armed with a slim majority and, particularly in Scotland, the presence of a larger and more popular

⁴³ TNA. CAB 128/55 Cabinet Conclusions 12 September 1974.

⁴⁴ HM Government, *Democracy and Devolution*, para 27-30.

nationalist presence, the government had no scope of doing anything other than implementing devolution.⁴⁵

Indeed, when the cabinet met on 15 October, the Prime Minister, Harold Wilson pressed the point that, despite his belief that election results ‘were much better than they might have been’ and that ‘devolution had not featured prominently in the election campaign’, it was nonetheless important for the government to get on with their devolution proposals ‘as quickly as possible’.⁴⁶ To assist in this process, Wilson informed his colleagues that a special unit was being set up in the Cabinet Office ‘to deal with long-term constitutional questions including particularly the detailed working out and management of the devolution process’.⁴⁷

This special unit was called the Constitution Unit, and would build on the work previously undertaken by officials since late 1973 when the Royal Commission had reported. The unit, which reported directly to the Lord President of the Council (the Cabinet minister with special responsibility for devolution during the Wilson and Callaghan Governments), initially Ted Short and then Michael Foot.⁴⁸ The unit was headed by Sir John Garlick (also the Second Permanent Secretary in the Cabinet Office) and its staff included Michael Quinlan a figure who would go on to become Permanent Secretary at the Ministry of Defence and a pre-eminent thinker on nuclear deterrence.⁴⁹

At the Queen’s Speech on 29 October 1974, the government outlined its commitment to ‘urgently prepare for the implementation of the decision to set up directly elected assemblies in Scotland and Wales’.⁵⁰ Work would steadily take place, behind the scenes throughout the

⁴⁵ K.O. Morgan, *Callaghan: A Life* (Oxford, 1997), p.630.

⁴⁶ TNA. CAB 128/55 Cabinet Conclusions (Confidential Annex), 15 October 1974.

⁴⁷ TNA. CAB 128/55 Cabinet Conclusions (Confidential Annex), 15 October 1974.

⁴⁸ S. Bulmer, M. Burch, C. Carter, P. Hogwood and A. Scott, *British Devolution and European Policy-Making: Transforming Britain into Multi-Level Governance* (Basingstoke, 2002), pp.8-10.

⁴⁹ Evans, *Devolution and Territorial Representation*, p.282; Mottram, R. Sir Michael Quinlan (2 March 2009, *The Guardian* [online], <https://www.theguardian.com/politics/2009/mar/02/sir-michael-quinlan-obituary> (accessed 3 May 2020).

⁵⁰ HL Deb 29 October 1974, c.11.

rest of 1974 and 1975 on getting the government's proposals fully ready. To provide a ministerial steer for this process, Wilson established, in November 1974, a ministerial committee on devolution, chaired by the then lord president of the council, Ted Short.⁵¹

The next big advance in the government's public thinking on devolution came in the autumn of 1975, by which time the proposals being worked on by the Lord President of the Council and the Constitution Unit were sufficiently well developed as to be put to the broader ministerial steering committee on devolution. The months leading up to this meeting, on 24 October, had been defined, behind the scenes, by multiple disagreements within the government on devolution with a core group of senior ministers (Roy Jenkins, James Callaghan, Anthony Crosland and Denis Healey) either urging the Prime Minister to abandon devolution or to proceed on the most minimal basis possible.⁵²

There followed a number of reports in the press about disquiet amongst Labour backbenchers and within the cabinet more generally as to the devolution. On the 25 October, *The Times* reported that the Chief Whip, Bob Mellish, had been told by large numbers of Scottish and Welsh Labour MPs that they were 'not in favour of devolution on a scale that will put Labour's majority at Westminster at risk, and that there could be no majority in the Commons for the imposition of a guillotine on the Devolution Bill' (as we shall see, this would be a prescient warning).⁵³ On 27 October, *The Times* suggested that there was 'evidence that the devolution proposals [...] [had] ran into serious criticism, and that the Government's timetable for publishing the bulky White Paper on or about November 19, with a Bill to follow early in the new year, might be upset'.⁵⁴ Two days later, there were reports that some ministers

⁵¹ Mitchell, *Devolution in the UK*, p.222.

⁵² A meeting at Chequer on 10 September was considered by Bernard Donoughue to have been particularly ominous as it appeared possible that a majority of the cabinet was opposed to devolution: Donoughue, *Downing Street Diary: With Wilson in No.10*, pp.285, 415, 493, 494.

⁵³ G. Clark, 'Disquiet over devolution as ministers meet', *The Times*, (25 October 1975), p.1.

⁵⁴ G. Clark, 'MP fears damage by devolution "leaks"', *The Times*, (27 October 1975), p.1.

were ‘becoming convinced that some commitment to the creation of an English assembly will have to be offered to English MPs’ in order to secure their support to devolution for Scotland and Wales.⁵⁵

It was amidst this frenzied atmosphere that the cabinet met on 30 October to discuss the forthcoming Queen’s Speech and the government’s devolution programme. Ministers were treated to a stern rebuke from the Prime Minister, James Callaghan who strongly condemned the leaks from the previous week’s devolution steering (DS) committee meeting. According to the Prime Minister, the leaks had not only ‘suggested wrongly that the meeting of DS had revealed major differences of opinion between Ministers’, but they had also done ‘great harm to the Government’s standing in Scotland and Wales by suggesting that Ministers had not been acting in good faith in their earlier statements about their proposals for devolution’.⁵⁶

Furthermore, he suggested that the leaks had placed him in a ‘very difficult position when answering Parliamentary Questions shortly afterwards’ and had forced him to answer a ‘question about the introduction of legislation in more robust terms than he might otherwise have done’.⁵⁷ The question he was referring to was from the Scottish Labour MP Dickson Mabon, at Prime Ministers Questions on 28 October. Mabon asked Wilson for assurances that the government’s devolution bill would be introduced in January and not in March, in response Wilson promised that the White Paper would ‘come within the next few weeks’ and that the devolution legislation would be ‘‘introduced at the earliest possible moment’.⁵⁸

In the discussion that followed, the cabinet agreed that the Queen’s Speech would need to include a hard commitment to implementing devolution. Aware of the difficulties that would arise in any devolution legislation reaching the statute book by the end of the forthcoming

⁵⁵ M. Hatfield, ‘Devolution demands feared from MPs for English regions’, *The Times*, (29 October 1975), p.2.

⁵⁶ TNA.CAB 128/57/46. Cabinet Conclusions 30 October 1975.

⁵⁷ TNA.CAB 128/57/46. Cabinet Conclusions 30 October 1975.

⁵⁸ HC Deb (Hansard) 28 October 1975, vol. 898, c.1290.

legislative session, the cabinet resolved that ‘it was necessary to avoid a form of words in the Queen’s Speech which seemed to suggest that the government was committed to no more than the publication of a White Paper early in the Session and at the same time avoid a commitment to legislate by the end of the Session’. Once again, the impulse of maintaining maximum flexibility possible was a powerful one for ministers.

It was therefore agreed that the Queen’s Speech would include a commitment to the government bringing forward ‘legislative proposals for the establishment of Scottish and Welsh Assemblies’,⁵⁹ and that the timetable for the next steps would be in the White Paper to be published in the autumn. In terms of the rough outline of a timetable, it was accepted that a draft devolution bill should be ‘published when ready – probably in March or April of 1976’, and that a parliamentary debate on the substance of the bill, curiously the cabinet considered that such a debate might not necessarily be a formal second reading debate, ‘might be arranged in the summer’. It was then anticipated that comments/feedback made at this time could then be incorporated in a successor bill in the subsequent legislative session – this line of discussion, when added to the earlier suggestion that any debate on the bill might not necessarily be a formal second reading, could indicate that the government was considering treating any such measure as almost a draft bill, rather than anticipating it being the final vehicle for devolution. Drawing the cabinet’s discussions on this matter to a close, the Prime Minister, James Callaghan emphasized that it would be essential, in the face of the criticism to come, that ‘the whole cabinet should present a united front in support of the policies which were approved and of colleagues with responsibility for devolution matters’ (emphasis on avoiding a repeat of any leaks).⁶⁰

⁵⁹ The exact phrasing in the Queen’s Speech on 19 November 1975, was ‘My Government will bring forward legislative proposals for the establishment of Scottish and Welsh Assemblies to exercise wide governmental responsibilities within the framework of the United Kingdom’ (HL Deb 19 November 1975 vol. 366, c.5).

⁶⁰ TNA.CAB 128/57/46. Cabinet Conclusions 30 October 1975.

On 19 November 1975, the government published a further devolution White Paper, *Our Changing Democracy: Devolution to Scotland and Wales*. For Scotland, the White Paper proposed the creation of a unicameral Scottish Assembly, initially with 142 members (with two members from each of the 71 constituencies used for Westminster elections) elected for a four year term.⁶¹ Importantly, the White Paper made clear that there would be an executive branch of devolution,⁶² with a separation of powers between a Scottish Executive, headed by a Chief Executive and whose membership would largely be drawn from the Scottish Assembly,⁶³ and the Scottish Assembly.⁶⁴

The Scottish Assembly's legislative competence would be based on what is today referred to as a 'conferred powers model' of devolution: specific subject areas would be devolved (conferred) to the assembly and anything not specifically devolved would be reserved to Westminster. According to the White Paper, the government had opted for a 'positive standpoint of devolving wherever possible and keeping subjects back (or making exceptions within subjects otherwise devolved) only where there is cogent reason for doing so', for example, where devolution might risk 'basic unity' or 'where devolving or dividing a subject would be very awkward to work'.⁶⁵ Among the subjects to be conferred, according to the White Paper, were local government (exceptions including the election, and membership, of local authorities), health, education, sciences and arts (with the exception of universities and research councils), housing, development and industry (exceptions including the nationalised industries), natural resources (exceptions including the main aspects of agriculture and sea

⁶¹ HM Government, *Our Changing Democracy: Devolution to Scotland and Wales*, (London, 1975): HMSO, Cmnd. 6348, paras.32-35.

⁶² The Cabinet had given their approval to the White Paper at their meeting on 11 November 1975 (TNA. CAB 128/57/47: Cabinet Conclusions 11 November 1975).

⁶³ The White Paper allowed for the possibility of appointing individuals from outside the assembly. According to the White Paper, it 'may be desirable to include a distinguished person, or one with special expertise (for example in the law), who is not an Assembly Member' in the executive (HM Government, *Our Changing Democracy*, paras. 43-50).

⁶⁴ HM Government, *Our Changing Democracy*, paras.43-50.

⁶⁵ HM Government, *Our Changing Democracy*, paras.62, 116.

fisheries), and law and the legal system (exceptions including treason, counter-terrorism laws, police, and prosecution system).⁶⁶

As had been long anticipated, the model of devolution on offer to Wales would be markedly different. The White Paper contained proposals for an assembly with 72 members (as with Scotland this would be based on two members elected from each of the constituencies used for Westminster elections). The assembly would not possess primary law-making powers, but would instead have secondary legislative and executive powers within devolved fields. Furthermore, unlike Scotland where there would be a formal separation of powers between assembly and executive, the powers to be devolved to Wales would be ‘vested in the Assembly as a corporate body’. There would, therefore, be no formal, distinct split between an executive and the assembly. Instead, the assembly would be empowered to delegate its functions to committees (the assembly would be required to set up committees to cover all the main devolved subjects) and each committee would include a chairperson ‘to conduct the business impartially’, and an executive member ‘who will take the main initiative on policy and administration’. Committees would, in turn, be able to delegate their powers to sub-committees or to their executive member. The executive members would sit on the Welsh Assembly’s Executive Committee (it’s de facto cabinet) whose role would be to ‘oversee general policy and the allocation of resources’. The executive committee would be headed by a chief executive and would be appointed by the assembly as a whole.⁶⁷

1976-77: the emergence and demise of the Scotland and Wales Bill

The start of 1976 saw the government heading towards its pledged introduction of a devolution bill. A taster of what the government could come to expect had materialised during a four-day debate on the White Paper in the House of Commons. There was, to put it mildly, deep

⁶⁶ HM Government, *Our Changing Democracy*, paras. 119-68.

⁶⁷ HM Government, *Our Changing Democracy*, paras. 190-194.

scepticism amongst Conservative MPs about the government's proposals, with their opposition most strident, in relation to Scotland, on the proposal of a devolved executive to accompany the assembly. According to the then Leader of the Opposition (and future Prime Minister), Margaret Thatcher, this would 'likely lead to maximum conflict, friction and argument between the Assemblies, Government and Parliament' thanks to there being 'rival Executives, and disputes will surely arise between them'.⁶⁸

Mrs Thatcher also warned that the assembly would be 'used as a forum to demand more powers',⁶⁹ and raised the spectre of what would become known, later in the devolution debates of the 1970s, as the 'West Lothian Question', warning that 'some Members of Parliament will not be able to vote on health and education matters as they affect their own area but will nevertheless be able to vote and even have decisive votes over these matters in other Members' areas'. Mrs Thatcher expressed doubts as to 'whether such a situation could endure for long without more resentment and demands for changes here'.⁷⁰ However, if the Conservatives were objecting to the form of devolution proposed to Scotland, their position regarding a Welsh Assembly was outright hostility.⁷¹

Ominously, for the government, the debate featured anti-devolution speeches, and interventions, from a handful of Labour backbenchers, including Leo Abse, Neil Kinnock, Tam Dalyell and Donald Anderson and when the main question was put at the end of the four day debate, the government won by 295 to 37 votes (a large margin at first glance, but one that, on closer inspection, saw a large body of parliamentary opinion opposed to the government's proposals).⁷²

⁶⁸ HC Deb (Hansard) 13 January 1976, Vol 903, c.233-4.

⁶⁹ Thatcher went on to draw an explicit distinction with the model of devolution for Scotland proposed by the Conservatives which would see a Scottish Assembly as 'essentially part of the Westminster system and not part of a system in parallel to Westminster' (HC Deb 13 January 1976, c.239).

⁷⁰ HC Deb 13 January 1976, 234-5.

⁷¹ HC Deb 13 January 1976 cc.238-239; HC Deb 19 January 1976 c.1051, 1054-5.

⁷² HC Deb 19 January 1976, cc.1072-76.

On 16 March 1976, Harold Wilson made his surprise announcement that he would be resigning as Leader of the Labour Party and Prime Minister. His successor, James Callaghan may have been a Member for a Welsh constituency (Cardiff South East), but he was by no means an enthusiast of devolution. According to his biographer, Kenneth (Lord) Morgan, Callaghan considered devolution to be a ‘necessary evil’ that was required to ‘placate the Scottish Nationalists and Plaid Cymru members in the House on whose support he partly depended’ and for the remainder of his premiership it would be a course ploughed by the new Prime Minister ‘without enthusiasm or great commitment’ at a personal level.⁷³ In the reshuffle that followed Callaghan’s elevation, Michael Foot was appointed as Lord President of the Council in place of Ted Short. Foot’s deputy was John Smith, a former opponent of devolution but by then a convert.⁷⁴

With a new Prime Minister, James Callaghan, and a restructured cabinet in place, work at a political level resumed on devolution. On 25 May, the cabinet met to discuss, among other matters, the content of a statement that Michael Foot would make that afternoon in the House of Commons on devolution. As Foot explained, the statement would outline the government’s intentions regarding the promised devolution legislation. During the cabinet’s discussion on the draft statement, the question of a referendum came up (having been raised by some members, including Leo Abse, during the devolution debate in the House of Commons on 13 January).⁷⁵ It was judged that, for the time being, a referendum should be rejected, but that ‘the terms in which this was done should not completely rule out the possibility of a later

⁷³ Morgan, *Callaghan*, p.510. The diaries of Bernard (now Lord) Donoughue, the head of the Number 10 Policy Unit from 1974 to 1979, also make clear that Callaghan, at worst, simply did not like devolution and was, at best, ‘not really interested’ in the subject. See B. Donoughue, *Downing Street Diary. Volume Two: With James Callaghan in No.10* (London, 2009), pp. 59, 120-121. See also: Evans, *Devolution and Territorial Representation*, p.290.

⁷⁴ Smith would take on much of the detailed work surrounding the devolution legislation, while Foot who is said to have found much of the detail of devolution “extremely boring” approached the issue ‘with the broadest of brushes’. See K. Morgan, *Michael Foot: a Life* (London, 2007), pp.334-5, 354-8.

⁷⁵ HC 13 January 1976 vol.903, c.220.

referendum [including, it was suggested, on Scottish independence] [...] should this become expedient'.⁷⁶

The cabinet also discussed the proposed announcement that control of the Scottish and Welsh Development Agencies would be devolved. This prompted concern from a number of ministers who feared that it would cross 'a boundary previously drawn to exclude the devolved administrations from economic matters'. There was general acknowledgement, however, that 'the changes proposed would more than anything else to rally the support of the Labour movement in Scotland and the Scottish Trade Union Congress' and rejection could 'alienate moderate opinion and threaten the government's whole strategy'.⁷⁷

The statement, later that day, confirmed that the government was 'determined to introduce legislation affecting both Scotland and Wales at the beginning of the next session, and to ask Parliament to pass it that session'. The choice to continue with a combined bill, rather than have separate bills for Scotland and Wales, was justified on the grounds that separate bills would 'demand too much time for both to pass in a single Session'. Foot also said that the government had decided against a referendum on their proposals, citing the 'wide opportunities, before and since the last General Election, for public discussion of them'. He also informed MPs that the government would not seek to publish a draft bill in the present session and would focus on the preparation of a full bill for the next session.⁷⁸

Foot's statement also touched on policy decisions that had been made in the light of the comments made about the White Paper. Primarily, the government intended to devolve responsibility 'for all operations of the Scottish and Welsh Development Agencies and for all appointments to them'. The government also intended to soften the role that had been intended

⁷⁶ TNA.CAB 128/59/7: Cabinet Conclusions 25 May 1976.

⁷⁷ TNA.CAB 128/59/7: Cabinet Conclusions 25 May 1976.

⁷⁸ HC Deb (Hansard) 25 May 1976, cc.271-2.

for the UK Government in the operation of devolution: queries regarding the vires of assembly bills would now be submitted to the Judicial Committee of the Privy Council, and the Secretary of State would not have a role in fixing the maximum size, or pay, of the Scottish Executive (these would be a decision for the assembly). He also indicated that more work was being undertaken on UK reserve powers and announced that a further report would be made to the House of Commons before the summer recess (late July).⁷⁹

The remaining work proved too large an exercise for Foot to solely relay to MPs via a statement.⁸⁰ So, a supplementary White Paper was published by the government. According to the White Paper, the government had ‘decided upon a number of improvements’ on their previous proposals, which they intended to incorporate in the devolution bill that would be introduced at the start of the forthcoming legislative session.⁸¹

The White Paper announced that the composition of the initial Scottish Assembly would be increased to 150 members (with every constituency having at least two members and larger constituencies having three), that the Secretary of State would have only a formal role in the appointment of the chief executive (the previous White Paper had envisaged the Secretary of State inviting a prospective chief executive to form an administration), and to restrict the potential scope for Executive posts to be filled from outside the assembly to posts equivalent to the law officers at Westminster. For Scotland and Wales, the White Paper announced that the government would not seek a power to take back devolved functions and the reserve powers to give directions or to annul statutory instruments would only be available ‘if their exercise is considered by the government necessary to prevent unacceptable repercussions on matters for which they remain responsible’. The White Paper confirmed that

⁷⁹ HC Deb (Hansard) 25 May 1976, cc.271-3.

⁸⁰ TNA.CAB 128/59/21: Cabinet Conclusions 29 July 1976.

⁸¹ HM Government (1976), Devolution to Scotland and Wales: Supplementary Statement, Cmnd. 6585.

universities would remain reserved matters and that the devolved services would be financed by a block grant, with no immediate fiscal levers to be devolved in either Scotland or Wales.⁸²

In November 1976, the Scotland and Wales Bill was formally introduced before parliament and the focus, within government, then moved to the management of the bill's progress through the House of Commons. A Green Paper, *Devolution: The English Dimension*, had been published by the government, in the somewhat vain hope that its publication could 'help with the passage of the Scotland and Wales Bill by making it clear that the Government were aware that devolution to Scotland and Wales had implications for England and that they were ready to listen to views about future arrangements in England'.⁸³

Rather more significantly, the cabinet considered, on 9 December 1976 (a week before the start of the bill's second reading debate), a paper prepared by the Constitution Unit for Michael Foot on post-assent referendums. The paper proposed that the government 'announce their intention to hold referenda in Scotland and Wales, following royal assent to the Bill'. According to Foot, the pressure for referendums had become very strong⁸⁴ and it was, in his opinion, 'virtually certain that sooner or later the govt would have to concede the principle'. Judging that the issue could not be avoided, he argued that the government should make its concession while on the front foot, at second reading, 'in order both to retain the initiative and to maximise the Government's majority, the size of which would have an important psychological effect at later stages in the passage of the Bill'.⁸⁵

⁸² HM Government (1976), *Devolution to Scotland and Wales: Supplementary Statement*, Cmnd. 6585, para. 9-10, 15-19, 33-34, 36-38.

⁸³ The draft did not contain any commitments 'but aimed to remove misconceptions about the scope of the proposals for Scotland and Wales, to expose the options for change in England and to test English opinions generally' (TNA.CAB 128/60/36: Cabinet Conclusions 2 December 1976).

⁸⁴ By this point, Foot reported to the cabinet, 64 Labour backbenchers had signed an amendment calling for a referendum.

⁸⁵ TNA.CAB 128/60/40: Cabinet Conclusions 9 December 1976.

Not for the last time Foot's advocacy of the government making a pre-emptive concession failed to rouse his colleagues.⁸⁶ While there was general agreement 'that the principle would have to be conceded', there was also extreme caution and a feeling that the timing of the concession should be held back to 'stages of the Bill's passage where the government might be more at risk'. In his summing up, the Prime Minister James Callaghan acknowledged the difficult balancing act that faced the government. The government knew that it would have to concede the referendum and he was concerned that 'the Government should avoid appearing to be forced into a late and grudging acceptance of it', but he agreed that 'the balance of advantage lay against announcing acceptance during the Second Reading debate'. Instead, he proposed to say, during his opening speech in the debate, that 'the government recognised the strength of the arguments in favour of referenda in this case; that they had not so far reached a conclusion about them', but that it would listen to the debate and reach a conclusion soon afterwards. The cabinet would consider the matter on 16 December, after the first three days of debate, and that the ministerial committee on devolution strategy would consider the detailed aspects of referenda with a view to the cabinet making a decision as early as possible in 1977.⁸⁷

By the time the cabinet met again to discuss the matter on 16 December 1976, the situation had escalated further. A pro-referendum reasoned amendment, tabled by Leo Abse had secured over 150 signatures and while Foot explained to his colleagues, it was unlikely to be called by the Speaker of The House of Commons, the 'pressure of expectation centre upon it had built up greatly, and the size of the government's majority on second reading would be seriously imperilled if the govt made no new response to this pressure'. According to Foot, the 'balance of advantage pointed to doing so now'. At this point, the cabinet agreed, although

⁸⁶ For Foot's advocacy of a Speaker's Conference as a means of assuaging complaints about the numbers of Scottish and Welsh MPs, post-devolution, see: Evans, *Devolution and Territorial Representation*, pp.274-92.

⁸⁷ TNA.CAB 128/60/40: Cabinet Conclusions 9 December 1976.

there was deep scepticism as to the extent of any relief it would give the government. It was decided that the acceptance of a referendum should be announced by the Minister of State for the Privy Council Office (John Smith) at the opening of the final day's debate on the second reading, but that the Prime Minister, James Callaghan would seek during Prime Ministers Questions to give the House of Commons warning of the impending announcement'.⁸⁸ The concession of a referendum, while inevitable, would have consequences that stretched beyond the fate of the Scotland and Wales Bill.

Later that day, at the opening of the final day of the second reading debate, John Smith announced the government's concession. Smith informed the House of Commons that the government had agreed that their proposals would be subject to post-legislative and pre-commencement referendums in Scotland and Wales and that they would bring forward new clauses, to this effect, at the bill's committee stage.⁸⁹ Smith's concession sparked a flurry of points of order and attempts at interventions, to the extent that the proceedings briefly resembled a departmental question time rather than a legislative debate. Questions to Smith from MPs ranged from whether the votes on a referendum would be whipped, to whether English voters would have a say and what the consequences would be of Wales says no and Scotland says yes.⁹⁰ The official opposition continued its criticism of the government's plans, with Francis Pym, who closed the debate for the Conservatives, criticising the inclusion of both devolution propositions in a single bill, the proposed establishment of a separate executive for Scotland and the creation of an assembly that he believed was unwanted in Wales.⁹¹ At the end of the debate, the bill secured its second reading by 292 votes to 247.

⁸⁸ TNA. CAB 128/60/42: Cabinet Conclusions 16 December 1976.

⁸⁹ HC (Hansard) 16 December 1976 Vol. 922, c.1737.

⁹⁰ HC (Hansard) 16 December 1976 Vol. 922, cc.1738-41.

⁹¹ HC (Hansard) 16 December 1976 Vol. 922, cc.1856-63.

The margin of victory at second reading would be the bill's only high point. From that point forward the bill became rapidly stuck in an interminable committee stage. The government had been aware of the perils of this stage of the bill's proceedings and at the cabinet meeting on 22 December 1976 it was common wisdom that 'it would not be possible to carry the Scotland and Wales Bill without a timetable motion at some point'. To that end, the government had sought to reach agreement with the official opposition through the 'usual channels', but to no avail. With a deal unlikely to be reached informally, it was agreed that the government would have to consider in the New Year whether to table a timetable motion for debate in the first week after recess'.⁹²

At their meeting on 3 February, the cabinet once again discussed a timetable motion and the tactics they should adopt to secure one. A majority took the view 'that the prospect for carrying a timetable motion would be improved if the new clauses providing for post-assent referendums were debated first'.⁹³ While they agreed to table those clauses as quickly as possible, they decide to refrain from making a decision about tabling a timetable motion.⁹⁴ However, a fortnight later, the cabinet had been compelled into acting, prompted to move a timetable motion for the bill on 22 February, by the 'slow rate of progress on the Bill so far and the ease with which debates on the bill could be spun out without serious filibustering'. With progress deemed impossible without a timetable motion, the government's proposal was for a motion that would allot 20 further to accommodate the added referendum provisions.

⁹² TNA.CAB 128/60/43: Cabinet Conclusions 22 December 1976.

⁹³ The cabinet also discussed the wording of referendum questions. The proposed wording for the referendum in Scotland was:

The Scotland and Wales Act 1977 provides for an elected Scottish Assembly and Executive. Scotland would remain part of the United Kingdom. The new assembly and executive would exercise substantial powers devolved by parliament. These provisions will however come into force only if approved in this referendum in Scotland.

DO YOU AGREE THAT THE PROVISIONS OF THE SCOTLAND AND WALES ACT 1977
SHOULD BE PUT INTO EFFECT IN SCOTLAND?

⁹⁴ TNA.CAB 128/61/4: Cabinet Conclusions 3 February 1977.

There were no illusions about the prospects of success, but they were equally certain that a timetable motion would not be easier to secure if they waited any longer.⁹⁵

Conclusion

In September 1974, at the outset of the Labour Government's attempts at developing devolution, Harold Wilson had acknowledged the concerns that was under discussion was far reaching and perhaps destructive. While, the devolution proposals themselves were not particularly far reaching (falling short of the devolution envisaged for Scotland by a majority of Royal Commissioners and, by a plurality of commissioners, for Wales), the experience would certainly prove destructive for the 1974-79 Labour Governments. In this respect, the Scotland and Wales Bill was a false dawn. The government's attempt to bring in a timetable motion for the Scotland and Wales Bill failed, on 22 February, by 283 votes to 312. The failure to secure a timetable motion proved the death knell of the bill, but not, at that point, devolution. Callaghan's Labour Government could not escape the political realities of a hung parliament where, to survive, his minority administration⁹⁶ would require support from the SNP and, the pro-devolution Liberals.⁹⁷ On 23 March 1977, an agreement was reached with David Steel's Liberals who would provide parliamentary support for the government during the 1977-78 session. Amongst the price that Callaghan would have to pay for this deal was the re-introduction of devolution legislation, this time as separate bills for Scotland and Wales. The eventual failure of these measures, and particularly the legislation for Scottish devolution, at referendums in 1979 would presage the fall of the Callaghan administration.

⁹⁵ TNA.CAB 128/61/6: Cabinet Conclusions 17 February 1977.

⁹⁶ By March 1977, the number of MPs taking the government whip had declined from 319 to 310. See J. Kirkup, *The Lib-Lab Pact: A Parliamentary Agreement 1977-78* (Basingstoke, 2016), pp. 28-30.

⁹⁷ K. Kerr, 'The Failure of the Scotland and Wales Bill', in, H.M. Drucker and M.G. Clarke (eds), *The Scottish Government Yearbook 1978* (Edinburgh, 1978), p. 119.

While the Scotland and Wales Bill was an undoubted failure, the process that led to its drafting and the concessions made by the government during its incomplete journey through the House of Commons left a legacy that hung-over subsequent devolution legislation. First, was the decision made in summer 1974 by the ministerial steering group on devolution, ratified by the cabinet on 12 September 1974, to reject the fuller visions of devolution supported by a majority of the Royal Commission on the Constitution in the case of Scotland and a plurality of commissioners in the case of Wales, in favour of a more cautious and conservative approach to devolution. In coming to this decision, the Wilson Labour Government would effectively entrench a key element of devolution that has lasted to this day: asymmetry.

At the same meetings that saw the ministerial steering committee reject the Kilbrandon schemes of legislative devolution, the decision was made to support a Scottish Assembly with some law-making powers but a Welsh Assembly with mainly executive functions. As the devolution proposals were further finessed, the asymmetry between the devolution proposals for Scotland and Wales would widen and harden. Scotland would have a law-making assembly and, after much wrangling within the cabinet, an executive with a clear separation between the two. Wales, on the other hand, would have an assembly with only executive functions and the power to create secondary legislation, powers would be invested in the assembly as a body corporate with no formal assembly-executive split. Not only would this asymmetry be carried over into the Scotland and Wales Acts that followed, but it would remain essentially the model of devolution that came into effect for Wales in 1998.⁹⁸ Indeed, the story of Welsh devolution since 1998 has been, in many crucial respects, that of a long road to banish the ghosts of the 1970s.

⁹⁸ As a further example of devolution legacies, the model offered for Scotland, initially in the Scotland and Wales Bill, and then the failed Scotland Act 1978, would in many respects be the model of devolution enjoyed by Wales between 2011 and 2018, namely legislative devolution under a conferred powers model of devolution (R. Wyn Jones and R. Scully, *Wales Says Yes: Devolution and the 2011 Welsh Referendum* (Cardiff, 2012), p.173).

The other major, and eventually fatal, legacy of the Scotland and Wales Bill (for the Callaghan Labour Government's attempts at devolution) was the concession of a referendum. The parliamentary arithmetic and the scale of backbench unrest within the Parliamentary Labour Party meant that such a concession was inevitable. Yet, its concession would set in motion the ultimate failure of the Scotland and Wales Bill's successors, the Scotland and Wales Acts. During the passage of these acts, amendments were tabled, and passed, that would require any Yes vote at the pre-commencement referendums to constitute 40 per cent of total eligible voters. In neither Scotland nor Wales was this threshold met. In Scotland, where a slim majority voted in favour of devolution, the Yes vote only represented 32.9 per cent of the total eligible electorate. In Wales, the threshold requirement never came into consideration, with devolution rejected by 79.4 per cent of those voting.⁹⁹ Devolution, despite some attempts to keep the Scotland Act alive, was to go into a long hibernation.¹⁰⁰

The move towards devolution had been, as Wilson himself readily acknowledged, initiated by his first government with the Royal Commission on the Constitution. After the commission had reported, and Labour Governments narrowly returned after the two 1974 elections, it had fallen on his next administration, and that of his successor James Callaghan, to take devolution forward. The Scotland and Wales Bill marked the end of the first phase of their governments torturous experience of devolution, but its development would have profound legacies for the story of devolution, including and beyond the failure of the 1979 referendums.

Notes on contributor

⁹⁹ Evans, *Devolution and Territorial Representation*, pp.291-2.

¹⁰⁰ It would take until 1997 for devolution to come into effect, this time with referendums in Scotland and Wales returning resounding and, at best begrudging, votes in favour respectively.

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