

THE SCOTLAND BILL IN THE HOUSE OF  
COMMONS

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On 22 February 1978, exactly a year after delivering the death-blow to the little-lamented Scotland and Wales Bill, MPs settled down to give a third reading to the more robust of its offspring, the Scotland Bill. A casual observer might have been forgiven for supposing that nothing had changed. There were more speeches against devolution than in favour, as before. It was said that the heart of the Commons was not in the Bill, as before. Mr Tam Dalyell, on the Labour side, was rising from his mound of papers like a jack-in-the-box, as before. Across the chamber, Mr Enoch Powell was lounging, sphinx-like, as if he had not moved since he helped to check the guillotine twelve months before. Yet the truth is that everything had changed, except the House of Commons.<sup>1</sup>

The Bill had changed, and so had the Government's tactics. The odd coalitions of supporters and opponents had shifted a little. The unionists were more determined, and so were the Nationalists. Above all, the stakes were higher. But maybe the most important change was that the Bill was actually discussed at some length and not subjected to filibuster (at least, not successfully). The question is: why did the anti-devolutionists fail to stop the Bill and fail to change the structure of the Assembly as envisaged by the Government? The story of the committee stage is the story of the failure of the "antis" to turn their natural majority against devolution into victory.<sup>2</sup>

It is easy enough to explain this by Government arm-twisting and the spectre of a General Election, but that is not good enough. The Conservatives, Ulster Unionists and assorted Labour rebels should have been able to use the committee

stage to cripple the Bill. Yet what did they manage? The only clauses removed from the Bill were declaratory, and did not affect the arrangements for setting up an Assembly. One (Clause 1) declared that the proposals which followed did not affect the unity of the United Kingdom, and the other (Clause 40) stated that the Assembly would "have regard" to national pay policy. The Government hardly noticed they had gone.

What the opponents of the Bill did achieve was the imposition of the 40% test in the referendum which would follow Royal Assent and the addition of an opt-out clause for Orkney and Shetland. So the Secretary of State will be required to lay before Parliament an order repealing the Act unless at least 40% of the Scottish electorate vote "Yes", and to set up a commission to consider the future of Orkney and Shetland if the islanders vote "No". Thus the case put by the antis will be decided outside the House: during the long days of debate they made no significant internal changes in the Bill. Given the frequent assertion that the Commons were solidly against devolution, that needs some explanation. Whips, for all their power, are not enough to account for it.

To begin at the beginning, Scotland and Wales were dealt with in separate Bills, as all the antis (and the Liberals) had said they should be from the start. Wales, where the fervour for devolution was muted, was promised an executive body only: Scotland held on to its "Parliament". Thus the Government were guaranteed the votes of some Labour rebels who had voted down the combined bill because of their passionate belief that Wales did not want devolution. Not surprisingly, most of them were Welsh.

The second crucial concession was the referendum. Towards the final days of the Scotland and Wales Bill, as it hung in parliamentary limbo, Government Ministers began to espouse the notion of shifting the last responsibility for the Bill to the people themselves, hoping to give the Commons a hefty shove. The introduction of the referendum was necessary to buy votes: some anti-devolutionists would be happy to have it both ways, voting for their Government in the lobbies and reserving the right to campaign for "No" in the country. The referendum would allow a kind of controlled schizophrenia in the Labour Party which might ensure that the Bill passed its third reading, leaving the Government to fight another battle, an easier one, on

the hustings. Assuming that the rush to devolve began with the belief that the people wanted it, this at least seemed logical.

The splitting of the Bills and the introduction of the referendum were the moves which gave devolution a new lease of life, but parliamentary arithmetic demanded more. The Liberals, who had split against the first guillotine, had to be brought round. The new Bill which emerged in November 1977 could scarcely be said to be bristling with Liberal fire, but it was cheerfully admitted in Government circles later that they had won "more than 50% of their battles", quite enough to keep them happy.

In the lengthy (and secret) talks which preceded publication of the new Bill, the Liberal banner was carried by Mr Russell Johnston, MP for Inverness-shire, and by Lord Mackie of Benshie, a grand old man of the party if ever there was one, and a formidable fighter. They faced Mr John Smith, Minister of State in the Privy Council Office and argued for proportional representation in Assembly elections; a relaxation of the powers of the Secretary of State to override Assembly decisions; a quasi-constitutional court to settle questions about the scope of its powers on legal rather than political grounds; tax-raising powers for the Assembly and provisions which would end the proposed annual haggle between Westminster and Edinburgh over the block grant.

The talks were amicable. The Liberals knew they could not hope for a Government commitment on PR; but they got a promise of a free vote on the Labour side. On the question of a constitutional court, the Liberals were satisfied with the role assigned to the judicial committee of the Privy Council, giving it pre- and post-enactment powers of review on Assembly legislation and removing the more offensive aspects of the override powers enjoyed by the Secretary of State which had aroused such opposition in the original Bill. They dropped their tax-raising demand when the Government said they would introduce a proposal if they could find a workable system. They could not, and did not, but honour was satisfied on both sides. On the block grant, there was to be no new clause in the Bill, but a promise that the Government would consult with the Assembly about the possibility of four-yearly rather than annual negotiations.

So the Liberals were brought in. However, the Lib-Lab

talks should not be seen simply as a Government surrender to some sort of blackmail from a crucial voting block. After the stalemate of the Scotland and Wales Bill, there is evidence that the Government rethought their whole approach to devolution. Some of the major changes might have come without Liberal pressure — the apparent loosening of the over-ride powers, for example — because the most important thing was to produce a Bill which would be reasonably attractive to the electorate who were to be given the chance to seal its fate in the referendum. Any concession to popular feeling which did not increase parliamentary opposition made political sense.

In redrafting the Bill, Mr Smith and the civil servants in the Devolution Unit strengthened considerably the position of the Assembly. While the UK Parliament would remain sovereign — the keystone of the Government's fight against the SNP — at several key points the word "shall" in relation to the Assembly was changed to "may". Even in such an apparently uncontroversial section as that dealing with standing orders, the Government argued that the precise nature of the rules by which the Assembly would conduct its business were a matter for the elected members and should not be imposed from outside. Such a defence of the Assembly's right to some freedom of action was hardly likely to calm the frenzy of the die-hard antis and could be seen as a hindrance to the passage of the Bill through a reluctant House. But nonetheless it was done.

So there was considerable progress in the constitutional arrangements during the months after the first guillotine defeat. But on the economic front there was almost none. The main reason for this was the hostility of the Government's "supporters" from North-East England, Merseyside and parts of the West Midlands who bitterly resented what they feared would be economic "weighting" in favour of Scotland's problems, while their own areas of deprivation were left to fester. Pleas for wider Assembly control over trade and industry might have been logical or even necessary, but concessions would probably have meant another fiasco on guillotine night, and that would have been the end of the story. So the Government gave no ground.

Mr Smith demonstrated in the run-up to the second attempt to get a Bill through the House that he was a master of the balancing act needed to placate those who were offended by the limited extent of devolution and at the same time those who

would resist any attempt to devolve significant economic powers. The committee stage was to prove that this strategy — at least as a realistic assessment of what was possible — was right.

The guillotine vote came on the night of 16 November 1977, and as the majority of 26 for the Government was announced, the faces on the Front Bench were a picture. Mr Smith wore a very broad grin, the broader for having gone through the trauma of that vote nine months before when he saw, not only his Bill in ruins, but maybe his promising Ministerial career as well. He had no illusion that the Commons approved of devolution any more than it had done before, but he guessed that the Government had found a formula which would link most of his party, the Liberals, the SNP and a couple of stray Tories in a fragile coalition which could stagger through the hours of committee debate on the floor of the House and emerge with a Bill more or less intact. The proposals were far from perfect — for *anybody* on the devolution side — but they might at least become law.

In his closing speech on the debate on the guillotine — imposing a strict timetable for the discussion of amendments which would prevent a filibuster — he said: “The House of Commons must have the capacity to act as well as to argue. We are not a talking shop to embark on endless discussion on interesting points about Bills. We are a legislative chamber and we have an obligation to come to decisions and to act upon them. It is not as though devolution was hurried into the House of Commons last week and was being rushed through in some fleeting way.”<sup>3</sup>

That simple argument was the strongest card. There was no such thing as devolution in principle, the Government seemed to say, only a workable scheme for an Assembly. Ten years had passed since Edward Heath made the “Declaration of Perth” at the Scottish Tory Party conference and delay was no longer acceptable. So Mr Smith had the argument ready, and the political instinct and intellectual capacity to drive it home from the dispatch box. He was assisted in his task by the fact that the Tories did not have *their* argument ready.

The difficulties in which they were to find themselves during the 91 hours of debate by the committee are epitomised by the predicament of Mr Francis Pym, their chief devolution spokesman, in that guillotine debate. As a former Chief Whip

in the Heath Government, he had supervised the application of a guillotine on the European Communities Bill and was thus in a difficult position to argue that there should be no curbs on the discussion of a major constitutional Bill. Indeed Mr Pym was on record — outside the Commons — as saying that the Government were right in claiming that it was impossible to steer a constitutional measure through the Commons without a guillotine if there was organised opposition to it. The power of a small group of backbenchers to stop legislation in its tracks increases as one night of debate follows another and the faint-hearted lose their appetite for the struggle. It was precisely what had happened to the Scotland and Wales Bill and everyone knew it would happen to the Scotland Bill. The Tories objected to the term “filibuster”, but to most observers it was the first word which sprang to mind.

So Mr Pym’s righteous indignation about Government bully-boy tactics seemed more like traditional political fencing than serious concern about the constitutional implications of curtailing debate. The Government were proposing it, so it must be opposed. The soft underbelly of the Tory attack was showing on the first night and it was not long before the pro-devolutionists would be putting the boot in.

Strangely enough, the Tory problem was laid bare on the first night of the committee stage, not by a devolution supporter but by the indefatigable Tam Dalyell, Labour MP for West Lothian, whose opposition to the Bill was to be expressed in an unending series of questions and declarations at every stage of the discussion, turning him into a kind of chorus to the debate, pulling every argument back to his firm belief that devolution would lead to a separate Scotland and the end of the United Kingdom. He demanded from Mr Pym a statement of his devolution policy. It was a question which would be put night after night. Mr Pym rested on the Tory promise of all-party talks to come up with a workable devolution scheme, and would not (for the moment) go further. But it was clear to the whole House that the consensus on devolution was shaky, to say the least, and that all-party talks would almost certainly produce nothing. So why not say so? Why not come out wholeheartedly against legislative devolution?

There is a view among some of the staunchest antis on the Tory side that it was this weakness which reduced their

effectiveness in the debate. Mr Dalyell would agree. In the debate on Clause 1, Mr Pym moved an amendment to soften the effect of the Bill's declaration that none of the provisions affected the unity of the UK. It was, said Mr Dalyell, "a fudging amendment". Tory criticism of the Government's scheme — that it would lead to constant bickering between Edinburgh and Westminster which in turn would lead to separation — would apply to any scheme for legislative devolution, would it not? No, said Mr Pym, but not very convincingly, since many of those on the benches behind him clearly agreed with Mr Dalyell. He ended with a defiant, but lame, statement: "That is what I think."

On that first night, the Government lost Clause 1. Having failed with his amendment, Mr Pym led his side into the "No" lobby against the motion, "that the clause stand part of the Bill" and found himself alongside the SNP and thus defeating the Government. Ministers were embarrassed by the shaky start, but unconcerned. The clause did not have to be saved. But for the Conservatives the division had been embarrassing too. Although SNP jibes accusing them of voting against the unity of the UK were clearly unfair, there was a sense of unease among the Tory backbenchers who realised that maybe the votes had set the pattern for what would follow.

Behind Mr Pym during his vigil on the Bill was an assortment of dedicated opponents of devolution in any form. One of their leaders was Mr George Gardiner, MP for Reigate, an articulate right-winger and close associate of Mrs Margaret Thatcher. Round him sat Iain Sproat (South Aberdeen), Ian Gow (Eastbourne), Tim Raison (Aylesbury), Graham Page (Crosby) and a collection of antis with less stamina. They were ready to bring each debate back to one simple proposition: that legislative devolution was not only expensive and unnecessary but would lead to tension which would ultimately destroy the UK. It was no secret that some of them suspected Mr Pym of being "soft" on devolution and hedging his bets about any future Tory policy. For them, that was just not good enough. They were happier with his sidekick on the Front Bench, Mr Leon Brittan, barrister and ex-President of the Cambridge Union, who seemed more offended by the principle of the Bill than Mr Pym and was better equipped to challenge the intellectual agility and rhetorical skill of the Minister of State, Mr Smith.

This Tory weakness had implications for their strategy. It was clear from the early debates that the subject of the guillotine was to be brought up at every turn, thereby preparing the ground for the hordes of Tory Peers to argue over every detail which had not been discussed in the Commons and justifiably give the Bill a mauling, safe from any Government steamroller, in a House where a few phone calls to the shires could bring in the Tory vote. Mr Pym and his colleagues regularly warned the Government of the consequences of curtailment debate. They would not like it in "another place", and we all knew what that meant. But did we? Perhaps there was a misreading of the Lords' intentions. After all, their Lordships were very keen on PR, which was scarcely close to the heart of Mrs Thatcher and her followers in the Commons. Certainly some of the backbench Tories were nervous that the Lords would not wreck the Bill — for the rather obvious reason that they were nervous about their future as legislators — and that therefore the Tory Front Bench strategy in the Commons was misconceived.

Before considering what the official opposition achieved in their fight against the Government's plans, it is worth looking at the other members of the anti-devolution coalition. As with the "pros", the net was spread wide, and traditional party loyalties were, for the moment, forgotten. The Tories' best friend and worst enemy was Mr Dalyell. When he expounded his theory of break-up he did so with more diligence (and often better research) than most, though not all, of the Tories. Yet when he pressed Mr Pym on his policy he was no less diligent, and caused a few embarrassing moments. A more reliable friend was Mr Enoch Powell, speaking on nearly every clause, and carrying the break-up argument to its logical extremes night after night. It was impossible, he said, to devolve power to a subordinate legislature in a unitary state. He argued simply that the devolution exercise could not be carried through in the United Kingdom.

Among the Labour antis there was less diligence. Mr Eric Heffer (Liverpool Walton) argued the case against any advantage for Scotland at the expense of deprived areas in England, and Mr George Cunningham (Islington South and Finsbury) prepared for his triumph in the referendum debate with a string of procedural points in an attempt to mitigate the effect of the guillotine.

In the Scottish contingent on the Labour side, those who were most active were the MPs suspicious of the Assembly, particularly Mr Robert Hughes (Aberdeen North) and Mr Robin Cook (Edinburgh Central). They took the standard left-wing line that devolution would contribute nothing to the economic regeneration of the British economy and threw in some biting attacks on the narrow philosophy of the SNP, with Mr Hughes sparking off a furious row when he described the Nationalists as "allies of Dr Goebbels". If they were, their propaganda was not very effective in the House.

The Nationalists kept a low profile during the committee stage. Their bench was often occupied by only one or two members and many of their interventions were ritual denunciations of English members who, they claimed, did not understand the problems of Scotland. They provided an easy target for Mr Dalyell when he launched into one of his dissertations on the "slippery slope" argument, nodding their heads vigorously when he said the Assembly would be a vehicle for the drive to independence. However embarrassing this may have been for the Government, the Nationalists trooped dutifully into the right lobby on the crucial votes. The same is true of the Liberals, and they embarrassed the Government not at all. Mr Johnston acted as a kind of extension of the Government Front Bench, articulating, in his woolly way, the principles of devolution. He was the most active of the pro-devolutionists.

Indeed, many of those supposed to be in favour of devolution were distinguished only by their silence. But that did not annoy the Government too much. Had every anti speech been matched by one in favour, the number of amendments discussed would have been even lower and the frustration might have triggered off more Government defeats. The burden of supporting the Government fell on members like Mr Johnston, Mr Jim Sillars (SLP, South Ayrshire), Professor John Mackintosh (Labour, Berwick and East Lothian), Mr Alick Buchanan-Smith (Conservative, North Angus and Mearns) — a brave heretic — and, as often as not, Mr Norman Buchan (Labour, West Renfrew).

These were odd coalitions, for and against, but how much did they influence the course of events after the Government's victory on the guillotine motion? Once the votes had been garnered by careful surgery on the Scotland and Wales Bill,

much of the political battling became counterproductive, and the Government were reasonably happy to leave the antis to make the running.

The guillotine vote was won just before the start of the committee stage. From then on the debate went the Government's way until the two hammer blows on 25 January — the imposition of the 40% requirement on the referendum and the Orkney and Shetland option clauses. In the heart of the Bill, the opposition coalition had little effect, and it was almost as though most speakers were determined to extend the second reading debate for three months, but do no more.

Second reading is the occasion for general speeches on the principle of a piece of legislation and is intended to pave the way for line-by-line examination of each clause at the committee stage. But on the Scotland Bill the same general arguments were heard again and again. The opponents argued that each clause drove them back to the principle. Mr Sproat would refer to the "irreducible conundrum" that was the Bill, others would talk of "the very heart" of the legislation, and there was a general drift away from the detail of pre-enactment review, or PR or tax-raising powers, to the principle of legislative devolution. Dominating it all was "the West Lothian Question", posed by Mr Dalyell and gratefully seized upon by all his temporary allies.

The argument is now well known. Mr Dalyell argued that after devolution a Scottish MP would be able to vote on English matters such as education and local government — matters for which he had no responsibility in Scotland because the Assembly would have legislative competence in these areas. He said Scottish MPs would be "mongrel" members. The Government's answer to this was, in effect: "So what?"

Mr Smith admitted he had no direct answer to the question as posed. Time and time again Tories would return to the disruptive effect in England of a Government kept in power by "mongrel" Scots legislating on subjects in England which were devolved in Scotland. The Government's answer was that this was a problem, but not a sufficient reason for blocking devolution. Perhaps Mr Powell realised this. He habitually referred to the Dalyell argument not as a question but as "the West Lothian Proposition". It fitted nicely into his argument that it was impossible to maintain the sovereignty of Parliament with a

subordinate legislature, but the argument found no converts among those who had decided they wanted devolution and that the Bill was as near to a satisfactory solution as they could get. The West Lothian debate enlivened the Bill's opponents because it was an eloquent statement of a situation they found offensive. To the pro-devolutionists (apart from the SNP) it was a secondary concern — an anomaly which they were prepared to live with to accommodate what they saw as a vital constitutional change.

The Government adopted a similar posture in response to the constant warnings about "the recipe for conflict" in the Bill. If there was a prize for the most-repeated phrase, "the recipe" would probably win hands down. Mr Smith based his reply on the assumption that the Scots would elect an Assembly which would behave responsibly and would demonstrate political maturity. Even if there was a Tory Government in London and a Labour Executive in Edinburgh — the most frequently-used scenario — he said he had no reason to suppose that most problems would not be tackled in a spirit of co-operation. He repeated this many times, and opponents said many times that it was not true. As soon as the committee stage started it was clear that there could be no agreement on the extent to which the Assembly would fight with Westminster, and it was the theme which lay behind most of the debate.

The twice-weekly sessions revolved around this dispute and the dispute over the relevance of the West Lothian Question. Until the coalition of antis turned to the referendum and Orkney and Shetland, they sang the same song over and over again. The amendments moved by the Tory Front Bench reflected this overriding concern, but they failed to amend the Bill in the way they wanted. Mr Pym and his colleagues tried to reduce the number of Assembly members; to strengthen the control of the Commons over Assembly legislation; to restore some of the power of the Secretary of State for Scotland which he had had in the Scotland and Wales Bill and to remove some of the devolved areas from the Assembly's control. But through it all there seemed to be no coherent plan. Mr Pym seemed equivocal on the desirability of the Assembly. He refused to say whether he thought *some* kind of devolution would work, only that he knew *this* scheme would not. So the opposition chipped away at the structure of the Bill, succeeded in knocking out the two declaratory clauses, but failed to present an alternative which

could persuade some waverers to oppose the Government.

In the eleven days of debate between the guillotine vote and the insertion of new clauses on the referendum and Orkney and Shetland, the main provisions of the Bill emerged unscathed. The House approved the mechanics of the Assembly: two members for each Westminster constituency with extra members for some large seats; first-past-the-post-elections; the power of the Assembly to dissolve itself in case of deadlock; technical details of membership qualifications.

The powers of the Assembly were also untouched. The structure of the ruling executive and its rights to legislate — circumscribed by the ultimate authority of Parliament, the powers of the Secretary of State and the Judicial Committee of the Privy Council — built up as the guillotines fell regularly at 11 p.m. and the Government notched up the marks on its timetable, and looked hopefully for Royal Assent before the summer recess.

During the debates on the extent of the Assembly's powers and the ways in which they would be exercised, two attempts were made to introduce a new dimension into devolution. One was a proposal for proportional representation and the other for tax-raising powers for the Assembly, both moved by Professor John P. Mackintosh. The PR amendment, predictably, fell by 209 votes to 107 and the tax-raising proposal by a crushing 301-61 margin. It seemed there was no possibility of extending the Assembly's powers in any way: the House was reluctant to go even as far as the Government had proposed, and that only after a display of fine arm-twisting and the threat of a vote of confidence leading to an election to which some of the rebels could only look forward with a shudder.

But the reluctance to experiment changed dramatically on 25 January 1978, a night which revived in Ministers' minds the memory of the guillotine vote a year before. In retrospect it is possible to see the ground being laid weeks before the ambush in the referendum debate. During his speech on second reading, Mr George Gardiner promised that he and his fellow objectors would be looking very carefully at the question of what constituted a decisive majority in the referendum. At the time, it seemed a cloud no bigger than a man's hand, but the Government's problems multiplied from the moment Mr George Cunningham put down his new clause, requiring the Secretary

of State to lay before Parliament an order repealing the Act unless at least 40% of the electorate (*not* just of those voting) voted "Yes" in the referendum.

It is now known that Tory anti-devolutionists were keen to have the new clause moved by a Labour member, in the hope of picking up some extra support. In Mr Cunningham — himself a Scot — they found a formidable ally. He argued persuasively that if the Government were so certain that a majority of Scots were in favour of the devolution scheme, why did they oppose his plan which would only ensure that the question was decided by a reasonable proportion of the people of Scotland?

His argument simply served to polarise the feelings of the pros and antis. Those who had been in the middle, persuaded to support the Bill, perhaps out of loyalty to their own government, tended to go the Cunningham way. For those with fixed views on the principle of devolution the argument was either a logical test of the Government's premise for drawing up legislation or an attempt to fix the result of the referendum, and an insult to the Scottish electorate. It was the touchstone. The argument brought out some of the passions which had often been dormant in earlier stages. There were predictions that the 40% test would be seen as an affront by Scots voters and, from the other side, claims that a constitutional issue of such importance should have a built-in test to guard against a freak result.

By the time Mr Smith rose to reply to the debate, passions in the House were running high. There was a complication which had heightened the tension. Earlier in the day the anti-devolutionists had accused the Leader of the House, Mr Michael Foot, of attempting to prevent debate on "the Grimond amendment" by imposing an extra guillotine in mid-evening, thereby splitting up a group of amendments. They suspected a "fix" — since the new time allocation would probably mean the Orkney and Shetland amendment would not be reached. All amendments not moved before the appropriate guillotine would fall, never to be revived.

The Government's intention had been to alter the guillotines to allow time for a debate on a proposal from Mr Norman Buchan for a third question — on independence — in the referendum. But their opponents were in no mood to believe that. Mr Foot withdrew the offending guillotine. Now, after

winning that fight, the antis realised that if the vote on the Cunningham amendment was not over and the Grimond amendment moved before 11 p.m., the chance to build the Orkney and Shetland complication into the Bill would be lost. So, as the Minister of State struggled manfully to prolong the debate and answer the points made by Mr Cunningham, the jeers and shouts began and he looked rattled for the first and last time in all his sessions at the dispatch box. Under pressure, he wound up a short speech.

He sat down at 10.27 p.m. and the rush to vote began. First came a paving amendment by the Labour MP, Mr Bruce Douglas-Mann — to build in a 33½% test — and when that was won the antis knew they could romp home on the Cunningham amendment. The question was whether it would be over in time to move the Grimond amendment on Orkney and Shetland, which they felt would follow in the wake.

What came next was a parliamentary caper worthy of a Feydeau farce. It involved the Serjeant-at-Arms and his sword, a folding opera hat and the redoubtable Sir Myer Galpern, a deputy speaker. As members trickled back into the Chamber to wait for the result of the Cunningham amendment — counting can take anything up to 15 minutes after an important vote — a teller for the "Ayes", Mr William Hamilton, reported to Sir Myer (in a loud voice) that he had seen some members deliberately obstructing the "No" lobby, presumably in an attempt to delay the count until the magic hour of 11 p.m. Sir Myer, his face suffused with indignation, sent the Serjeant-at-Arms to the lobby to flush out the offending members with his sword, while the Tories — with Mr Teddy Taylor as cheerleader — began to chant "cheat, cheat" at some very white-faced Government Ministers opposite. During all this furore, several members who were anxious to make points of order had to call for the collapsible opera hat, specially kept under the Serjeant's chair for use when members wish to "rise, covered" to make a point of order during a division. The Tory jeers and Labour laughter grew louder as Mr Foot plucked at his mane and looked around as if nothing had happened which should concern a mere Leader of the House.

When the loiterers were cleared from the lobby, the result was announced amid scenes of excitement which belied the belief in some quarters that devolution was a bore. The 40%

test was accepted by 168 votes to 142, a majority against the Government of 26. To keep the drama going, Mr Jo Grimond rose to propose his amendment with the comment: "A damned close-run thing, if I may say so." Indeed it was, with members filing into the lobbies just one minute before the guillotine fell. As expected, his amendment was carried, by 204 votes to 118.

The Government had resigned themselves to defeat on the 40% test some days before, but had hoped to avoid a similar fate on Orkney and Shetland. However, the apparent reluctance of some Shetlanders to accept the proposed devolution settlement had caught the imagination of many English members, thanks to some assiduous lobbying by a team from the Shetland Islands Council and a few trips north for the enthusiasts. MPs like Eldon Griffiths, Tim Raison and Ian Gow had seized on the subject and lost no opportunity to bring it up. So, although there was no debate on the amendment itself, the word had got around. The *antis* saw in the Grimond amendment — which proposed only that a commission should examine the position of Orkney and Shetland if they voted "No" — a chance to wreck the Government scheme and also to embarrass the SNP, whom they accused of arguing for autonomy for Scotland while opposing autonomy for a self-contained community because they feared the loss of oil revenue. The fact that the SNP were indeed sensitive and looked on the consequences of the amendment with some trepidation, is emphasised by the fact that two of the loiterers in the lobby were Nationalists, Mr Hamish Watt and Mr Douglas Henderson.

The Government's response to those who favoured an opt-out clause for Orkney and Shetland was that it would discuss with the Islands Councils their problems, but would also point out that there was little danger of oil revenues disappearing into an Edinburgh coffer for use in central Scotland because energy was not a devolved subject, and the Assembly had no direct right to the revenue. The moment the Grimond amendment was carried they gave up hope of removing it at report stage: the emotional appeal of the Shetland case had been too great. On the 40% test, the fact that they doubted their ability to delete it from the Bill was demonstrated when at report stage the necessary motion was put, not by a Government Minister, but by Mr Dennis Canavan, a Labour backbencher. They did try a compromise figure of 33½%, but this fell along with the

Canavan amendment after a debate dominated by a powerful speech from Mr Cunningham, during which he held a crowded House silent and attentive.

The only other significant Government defeat was on an amendment from Mr Dalyell imposing a statutory three month gap between the referendum and any General Election. Despite assurances from Mr Smith that the Government would not confuse the two campaigns, the new clause was inserted. For Mr Dalyell and others — loyal to the Labour Party — the prospect of arguing against their Government (on devolution) and for it (on everything else) was too much to be expected of anyone on the same day.

So at the back of the Scotland Bill which trundled into the House of Lords in the Spring were three new clauses, the result of the committee and report stages in the Commons. But the kind of Assembly they would be considering in their own scrutiny of the Bill would be precisely that envisaged by the Government.

The victories for the *antis* in the Commons came when they were able to reduce the argument to its fundamental principles, and rely on a groundswell of feeling against legislative devolution. That happened in the run-up to the vote on the 40% test. No one in the Chamber believed some supporters of the 40% test who said that it did not reflect their antipathy to devolution and was not a wrecking amendment: its supporters were seen to be the *antis*, and vice versa. Similarly, in the earlier debates, those who had said the Assembly would not work — a purely practical argument — were seen to be those who also found the principle of devolution a worrying one. The two arguments tended to blend together, but at the heart of the opposition lay not practical arguments but strong feelings for the unity of the UK and suspicions of the links between devolution and nationalism.

These feelings extended to the break-up argument, but always seemed to come from those who were dissatisfied with the prospect of a non-legislative "talking-shop" in Edinburgh. The conflict which resulted in the Government defeats at the end of the committee stage and in report stage came when the argument was reduced to the fundamental divide between those who believed that democratic progress lay in devolution, however tentative, and those who believed that any tinkering with the

constitutional framework was a "recipe for confusion and conflict".

On each devolution night at the Commons, through the winter, the divide seemed to open further as if in preparation for the 40% vote. There were the confident assertions of the die-hard unionists that there was no demand for devolution, such as that from Mr John Stokes, Tory MP for Halesowen and passionate defender of union and the Empire, who said: "On a recent visit to Scotland I could hardly find one Scotsman there who wanted the Bill. I tried to speak to everyone I saw."<sup>4</sup> How Mr Stokes explained the presence of the SNP in the House, or the Labour Party's conversion to devolution, or, for that matter, the nearly-forgotten "Declaration of Perth", no one knows. Many members appeared to be confident that devolution would be thrown out in the referendum, although some would doubtless admit that there was the 40% test, just in case.

The contrasting view came from the convinced reformists like Mr Buchanan-Smith, men who had not adopted a devolutionary stance for the sake of peace in the Party but because they actually believed in it. In his third reading speech, Mr Buchanan-Smith said that if the House failed to pass the Bill, it would be failing democracy itself.

With such conflicting views, it was inevitable that much of the debate would be repetitious and often tedious. Indeed, there were times when the devolution debate was raging in Scotland while, at the centre of the argument on the floor of the House, there was a still and awful calm. Fifteen MPs might be stretched on the green leather benches — their colleagues sometimes peeping in and scurrying off again — while Mr Dalyell quoted from his book or Mr Graham Page lectured on the history of the Judicial Committee of the Privy Council, or Mr Douglas Crawford talked about "the Scottish pound". Interest in the Bill was limited, both amongst MPs and, alas, in the Press. To be sure, there was a rush to the lobbies (or the typewriters) when the division bells began to clang, usually at 11 p.m., but for the debates themselves a large number of political aficionados took a break.

However, it would be unfair to denigrate those who took part (or most of them, anyway). Mr Dalyell took on a lonely fight, and fought it with a spirit which won him the admiration of everyone in the House, however frustrating he may have

been when he announced such earth-shattering news as his tally of letters from constituents: after the first guillotine, he said, more people had written to him about the price of canary seed than about devolution, presumably proving that the British public cared not a whit about constitutional change but were getting very upset about whether they would be able to feed their budgies.

Towering over the debates was Mr Smith, who won glowing compliments, not only from his supporters on devolution but from the Tory Front Bench, for his handling of the Bill. His grasp of the complex detail of the Bill never faltered, and he never failed to defend the right of the Scots to elect the kind of Assembly they wanted, with freedom to act over a wide range of issues within the framework of the UK. His constant theme was that the Assembly would be composed of reasonable people and that "the recipe for conflict" argument was scaremongering. Conflict there would be but it would be controlled in the political apparatus included in the Bill.

Mr Smith gave the impression of enjoying himself thoroughly, even when the debate was straying into the further reaches of the imaginations of some Empire Loyalists. Above all he relished the fight with Mr Teddy Taylor on the Tory Front Bench, whom he called "the urban guerilla" of Scottish politics. Mr Taylor it was who was the most effective member of the Tory Scottish team. He would leap to his feet with a savage attack on the guillotine or a brilliantly quick calculation of the cost of a particular measure, always reduced, in the populist way, to a simple (and quotable) phrase. It was gut politics and the Tory attack always seemed more fiery when the urban guerilla was on form.

For much of the time, the dedicated opponents or supporters of devolution traded scenarios for the conduct of Assembly business without getting anywhere. It is the view of some Government Ministers that the opposition could have achieved much more, given the shaky state of the devolution coalition, if they had succeeded in curtailing debate on some amendments and packing more into the time allowed by the guillotine. Seldom was there a debate which did not drag on longer than was necessary.

On one occasion the Tories were attacking the cost of the Assembly — about £4½ million in capital expenditure and £13

million a year in running costs. Speech after speech covered the same ground, straying into the West Lothian Question and what was claimed to be the lunacy of different laws in Scotland and England on uncontroversial subjects. Mr Sproat was moved to bring up the question of dog licences, only drawing a retort from Mr Johnston to the effect that there were different regulations for the control of dogs in the various cantons of Switzerland and he had not noticed a constitutional crisis there. Sometimes the debate seemed to miss the point.

But it would be unfair to suggest that the members who took part regularly did not take their role seriously: they did. Some of them (on both sides) were certainly misguided, and some hopelessly confused about the provisions of the Bill. But most of them tried, and several — like Mr Smith, Mr Dalyell, Mr Brittan, Mr Johnston, Mr Powell and Professor Mackintosh — distinguished themselves at different stages of the debate.

But what did the exercise achieve? A Bill was passed, slightly amended. The extent to which the devolution argument penetrates the most deeply held political attitudes was clearly shown in the collision between the unionists and the devolvers. The fragility of traditional party loyalty on the issue was demonstrated night after night.

The form of the debate was controlled by one important factor. The guillotine took away the chance of a filibuster and with it the chance for the antis to drive a steamroller through the Bill, building up frustration in all-night sittings and in long expositions of well-known attitudes. Their task was made more difficult by the fact that many Labour antis were “softer” than they had imagined, and trooped dutifully into the Government lobby to vote for the guillotine. It was also made more difficult by their doubts about the dedication of Mr Pym to their cause. With a more coherent Tory strategy they could perhaps have achieved more.

For the Government, it was a relief. With confidence in the result of the referendum, they could be happy with the outcome of the Commons stages of the Bill. While they might have been looking forward to the battles in the House of Lords with some trepidation they could reflect that they had steered through a hostile Commons a Bill which at one time seemed unpopular enough to be guaranteed instant defeat. The sad thing is that it was not done simply by winning the argument,

because winning the argument could not be enough for the House. They *did* present the better case, and they got the votes, but it was not the merits of the case which filled the Government lobby. The House of Commons just does not work that way.

#### REFERENCES

1. For a discussion of proceedings in 1976/7 see “The failure of the Scotland and Wales Bill: No Will, No Way” John Kerr in *The Scottish Government Yearbook 1978*.
2. The chronological sequence of events was:
 

4 November 1977	Scotland Bill published.
14 November	Scotland Bill given second reading, 307-263.
16 November	Guillotine motion carried, 313-287.
22 November	Committee stage began. Committee stage taken on floor of House so that all MPs could attend and vote.
22 February 1978	Bill given third reading in Commons, 297-257.

For a full chronology of devolution 1885-1978 see reference section at the end of the book.
3. Hansard, Col. 646, 16 November 1977.
4. Hansard, Col. 1665, 23 November 1977.