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THE YEAR AT WESTMINSTER: THE SCOTLAND
ACT BRINGS DOWN THE GOVERNMENT
THE CRIMINAL JUSTICE (SCOTLAND) BILL

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I

After the Referendum

Scotland was, once again, the fulcrum on which the political year turned at Westminster. On one side of the balance was the need for the Labour Party to continue the tortured progress of devolution to which they had committed themselves. On the other was the survival of the Government. In the end, neither aim was achieved and the whole structure collapsed, leaving the Royal High School in Edinburgh an empty shell and the Callaghan Government tottering into an early election which in its heart it knew it could not win.

So the story of devolution at Westminster after the referendum is the story of what might have been. Had the referendum result been decisive the Commons would probably have given reluctant support to the Scotland Act, even without a 40% vote. The Government could have eased devolution from the centre of the stage and slipped through the summer to an October election which James Callaghan believed gave him at least an even chance of blocking Mrs Thatcher's progress to Downing Street.

If the "No" side had won, the problem would have still been simple. Politically it would have been easy to drop the hot potato and, while it would have outraged the SNP, the Government's authority would not have been challenged as a result. But neither course was open to the Labour leadership.

When 32.9% of the electorate voted "yes" the loyalty of Labour's devolution converts was strained to its limit, and the morale of the dedicated opponents of the Assembly rose to new

heights. Within days of the resumption of Parliament, Eric Moonman, the Labour MP for Basildon (who was to lose his seat in the Election on May 3) was whipping the anti-devolutionists into strategy meetings to put pressure on Michael Foot, Lord President and Leader of the Commons. They urged him to move forward immediately with the repeal of the Scotland Act. Most Labour devolutionists maintained a polite and embarrassed silence.

Within a month of the referendum the Government had fallen, the first time since 1924 that a Prime Minister had been sent to the Queen with his resignation after losing a vote of confidence. The problem which exercised Callaghan's mind in that month was one of timing.

Although the Scotland Act had been amended by Messrs Cunningham, Dalyell et al to force repeal if the 40% requirement was not met, the length of time the repeal order could lie on the table before the fateful vote was unrestricted. Indeed one of the most celebrated backstairs confrontations of the early devolution days was a chance meeting between George Cunningham, architect of the 40% vote, and John Smith, then the Devolution Minister. Just after the anti-devolutionists' triumph in inserting the clause, which they believed would kill devolution, Smith pointed out that if less than 40% of the electorate voted "yes" the Government could, firstly, let the repeal order lie for a long time and, secondly, could whip its supporters to vote down its own order. In retrospect this all seems painfully obvious, but at the time — long before the referendum — Cunningham was shocked, and furious. That realisation was later to become a near nightmare for him and his followers as the Government wriggled to find a way out of the impasse.

When the result came through, Callaghan decided to play for time. There is a school of thought which holds that a quick vote in the week after the referendum might have won the day. But although many suggested this would have been the best tactic, it was not a genuine option at the time. Such was the consistency of the wet blanket which extinguished all devolution fervour on March 1 that the Government Whips would have had the devil's own job in persuading their recalcitrant MPs into the lobby to vote down the repeal order. And they told the Cabinet so. A defeat at that stage would

have done no good — even if we assume a lukewarm Government commitment to devolution — because it would almost certainly have precipitated a vote of confidence which the Tories, with the support of SNP MPs looking for electoral benefit, would have won.

So the Government's best hope was to gain time to catch its breath. Yet in the end the Government choked, in a particularly humiliating way, and the reason had more to do with the dangers of political bluffing than the merits or otherwise of devolution. Indeed, it now seems likely that the demise of the Edinburgh Assembly and the collapse of the Government came about because of a political blunder by Callaghan, the old master. Whether it was caused by a lack of nerve or political misjudgement or sheer exhaustion (or by a combination of all three) we cannot tell. But the fate of the Government was sealed at a meeting in Foot's room at the Commons on the night before Callaghan made his statement on the future of the Scotland Act on 22 March — the "wait and see" announcement which brought on the vote of confidence. Before looking at the events of that day it is worth going back to the days immediately after "Black Friday" when the referendum results came in.

Immediately after the results, it was fairly clear that the game was up. *The Scotsman's* banner headline on 3 March was "Callaghan fighting for survival: plans for Assembly gravely wounded", and that was no overstatement. Within hours of the result one prominent Scots Labour MP was wondering aloud whether he could vote for radical constitutional change in the face of the electorate's verdict. Yet he had been one of the most enthusiastic supporters of the Assembly. By Sunday a survey for the television programme "Weekend World" suggested that a minimum of twenty-four Labour MPs would rebel against any attempt to vote down the repeal order. David Steel, the Liberal leader, was "far from certain" that the Act should be saved. So the portents were bad.

Mrs Thatcher, the Tory leader, warned the Government that they would be bending the Constitution if they tried to prolong the devolution business. This statement illustrated her concern. She could see in the collapse of a measure which was unpopular (at least at Westminster) a chance for her long-awaited vote of confidence, but she had to tread carefully.

Nothing would be worse for party morale than for her to rush into the ring, throw down a censure motion and then find herself on the losing side. She had to be sure of her moment. She feared that any successful delaying tactic by the Government would leave her looking weak, apparently unwilling to challenge Labour to a vote of confidence. She also had to worry about the SNP, necessary partners in any successful confidence vote.

Their line, early on, was predictable and clear. "A Yes is a Yes is a Yes", they said. No one need worry about the 40%, indeed it would be treacherous even to consider it. As usual there were two camps. A kamikaze squad wanted an immediate challenge to the Government, in the hope of reaping rewards in an early election. Another group wanted to turn every screw on the Government, without opening the trap door, even if it meant some kind of amendment which would get a modified Bill through, although this view (at that time or since) has never been properly clarified. Publicly the SNP said: "either we get our Assembly now or there is an election". So Callaghan's most sensible course, faced with SNP threats against no action, and Tory threats against an attempt to vote down the repeal, was to play for time and, so the story went, call the SNP bluff.

In the middle distance, of course, was the Government's other problem — the so-called winter of discontent after the failure of the 5% pay policy. As a result of his blunder in not seizing the opportunity of an election in October 1978 (largely because of the promptings of Michael Foot) and his miscalculation about the reception of his pay policy by rank-and-file trade unionists, Callaghan feared an early election. October 1979 was the goal, but this soon became June as the Parliamentary pressure on the Government increased week by week and they began to run out of legislation. It was a question of winning not a few more months, but a few more weeks.

Against this background, which moved into vivid close-up after the referendum, the safest policy seemed to be what came to be known as "the Frankenstein solution". This, appropriately, was one of the last additions to the devolution patois which had grown up over a decade and included such favourites as "Dalintober Street", "The Secretary of State's governor general powers" and, of course, "the West Lothian question". "Frankenstein" actually began life as Dracula but a newspaper got the allusion

all wrong, and Frankenstein it stayed. The idea was that the Act could be preserved in suspended animation, even through a General Election, to be revived (under a Labour government) with a surge of energy which would startle the world and grant the beast virtual immortality.

The Scottish Council of the Labour Party played along towards this general aim. The meeting of its executive after the referendum regretted the result, but stopped short of a ringing call to the Government to push the Act through whatever the consequences. The message was clear: they made Callaghan well aware of their support for the Act and their belief in its electoral value but left the wheeling and dealing to him. At the same time the National Council of the SNP said they would ask their MPs to bring the Government down if the Act were not pushed through.

When Callaghan said in the Commons on March 6 that "of course" the repeal orders would be brought forward, he knew that the Labour antis were being numbered at anything up to 40. Warnings had come from the Whips that there was no sign of slackening in their opposition to the very idea of voting against the repeal. David Steel was having difficulty holding Liberals behind the Act. Richard Wainwright had already said bluntly that he would vote against it.

Frankenstein was to be created through all-party talks. Such talks were the devolutionists' way out. In the early days after the referendum it appeared to be working. The SNP and the Liberals calmed their rhetoric, and seemed content to help Callaghan to play along until after the Budget. This would have suited the Prime Minister well because by then the defeat of devolution would pale into insignificance beside the treasured prize of a June election, far away from the winter's slough of despond.

At Labour's annual Scottish conference on March 12, little miracles were worked and there was no call — officially — for a three-line Whip against rebels. Clearly the calculations of the party managers had reached Perth. There comes a time when three-line Whips start to lose their sting, and the fag end of a Parliament is just such a time.

While Labour in Scotland were agonising about their many internal divisions, the SNP, through George Reid, MP for East Stirlingshire and Clackmannan, announced that they would

delay a censure vote only if the Scotland Act were put to the test within three weeks. They presented a tough line, although it later crumbled privately when they considered in detail the likely consequences of an early election. Talks, Reid said, could take place after the vote. In this he was echoing Mrs Thatcher's line and preparing the way for the alliance which would ditch the Government. With the Liberals committed to an early election — as they had been since October — the opposition line-up began to look formidable indeed. Frankenstein was the only answer, but he had what could be called a credibility problem.

No one was particularly happy about ducking a decision on devolution. Even the Assembly's enthusiastic supporters in the Labour Party felt uncomfortable about the ploy, since it reeked of smoke-filled rooms. Some of them wanted to face execution bravely. Apart from anything else there was the question of what the Scottish people would think. Most of them were supposed to believe either that a simple majority was enough and the Act should be put to the Parliamentary test or that there was no mandate for such a constitutional change and the whole thing should be shelved, with the possibility of some kind of second-best devolution for those who were philosophically committed to it. Frankenstein made sense at Westminster, but nowhere else, and that was his greatest weakness.

In the middle of March the pressures on the Government began to increase. Donald Stewart, the SNP leader, met Callaghan in the Prime Minister's room and told him bluntly that there had to be a vote, and quickly. The SNP seemed to have decided that an early election, on balance, would be better for them than one in the autumn, although it was a fine judgement to say the least. They could see no political advantage in talking with Callaghan and nourishing Frankenstein.

D-day was to be Thursday March 22 when Callaghan would make his statement on the future of the Act, a statement which would probably have been delayed even longer had it not been for the sudden burst of SNP activity that week. On Thursday morning the Cabinet met and, with the knowledge that the Chief Whip could not guarantee a majority to keep the Act alive, played along with the Prime Minister for more time. Much more interesting was what had happened the previous night.

On Wednesday March 21 the SNP had held their weekly party meeting at Westminster and discussed their attitude to the Act. Stewart had already made his position clear to Callaghan and he was not prepared to change his stance. He told colleagues that if he backed down no one who mattered at Westminster would take his word for anything again. He was determined to continue to tell the Government that unless a vote on repeal was promised by the end of the following week the SNP would put down a motion of no confidence, one which everyone knew would finally lure Mrs Thatcher into the fight.

But by this stage some SNP MPs were wondering about the wisdom of killing off the Act so quickly. All but one of them believed that there was no hope of getting it through, even with a three-line Government Whip. They were well aware of the feelings of their Labour enemies. Some wanted simply to keep the argument alive, while there was still an Act to cling to, and others believed that it would do them no harm in the eyes of the electorate if they were seen to give Labour another chance and wait, confidently, for Labour to come up with nothing. In that position, some of the MPs believed they would be poised to hold electoral ground that seemed to be fast slipping away.

Two MPs were missing from that meeting. The nine present discussed various possibilities and it was clear that Stewart was facing opposition. Some of the MPs wanted to give the Government more time (even if it was only to let them fail dramatically). No dates were fixed, but the deadline of the following week was beginning to stretch. It was put to the vote and the MPs came down 5-4 to have an open-ended look at Callaghan's statement if he named a date, even if that date was beyond the previous deadline of ten days. Stewart let it be known that he might find it necessary to resign as leader if the party failed to carry out its threat to bring down the Government.

Late that evening, Stewart and Andrew Welsh, his Chief Whip, went along the corridor to Michael Foot's room, where the Lord President was already convinced that the Government would face a confidence vote within a week or two. Despite all the ambiguous statements from the SNP, senior Ministers were sure that anything less than a speedy vote (which they knew they would lose) would have the SNP Whips rushing to the

table office with their censure motion, closely pursued by breathless Tories. They did not know that the SNP Parliamentary group was splitting at the seams over devolution.

So Foot, who already knew what Callaghan intended to say the next day, was not surprised when Stewart said that they needed a firm date. He did not name a date, concealing the weakness in his position which had opened up earlier. Foot saw Callaghan. It seems that by this stage the Prime Minister was irritated by the whole business. His instinct was to get on with it, whatever the consequences. Looking at the alternatives it was clear that the Government would stand a better chance of surviving a confidence vote and humiliating Mrs Thatcher than carrying devolution. Better to have a confidence vote without the disastrous split which a vote on the Scotland Act would reveal in the Labour ranks, and which would lead to an even more dangerous censure debate.

The Callaghan statement set a time limit of the end of April for all-party talks on improving the Scotland Act. Immediately Stewart rose to denounce him. "The Prime Minister is not prepared to face the outcome of an early vote on this," he said. "He is prepared to treat the Scottish people with contempt rather than face an early election." No one in the party could accept the Prime Minister's statement — it was too vague — and the motion of no confidence duly went down within an hour, followed shortly afterwards by Mrs Thatcher's own motion. Perhaps the most suitable comment on the episode was made by Willie Ross, the former Scottish Secretary of State, in his last Commons intervention. "Is the Prime Minister aware that I wish him well," he said, "but I hae ma doots?"

So the Commons moved towards the confidence vote, through the wheeling and dealing with the Welsh Nationalists over compensation for slate-quarrymen, the vague hints to Ulster Unionists, and the arm-twisting of Frank Maguire, the maverick Republican. In the end the Government lost by one vote, with one Labour MP missing sick. They nearly made it.

That vote ended Callaghan's hopes of a summer election, and so his chances of keeping power. Yet how different it could have been. If he had promised a vote on the Scotland Act on the day before the Easter recess he would have split the SNP. Perhaps a confidence motion would have gone down anyway, but it would probably have had some names missing. In

those circumstances the Tories would have held back, and he could have held on for a few weeks. That was all he wanted.

But he seems to have been convinced that the SNP were solid. Perhaps they would have closed ranks in any case, but it would have been a delicate manoeuvre. Yet because of the insipid statement their unity was never put to the test. If the statement had offered something more tangible it would, of course, have offended the Labour antis but that would scarcely have mattered. It would have given the Government that breathing space which they needed to prepare for a dangerous election.

Yet maybe justice was done. By the end of the process, devolution had become little more than a symbol of the Government's troubles, and a lever for the Opposition. As soon as the results came in, Westminster knew that the scheme was dead. The Prime Minister's mistake was that he did not realise that the SNP might after all have helped him to prolong the agony, and postpone the funeral.

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After the election the Conservative Government moved quickly to repeal the Act. On a long, hot night in June, MPs voted 301-206 to throw it out. At the same time, Mr George Younger, the Secretary of State for Scotland, announced that all-party talks on devolution would start soon. The Labour Party argued that the Act should stay on the statute book while the talks went on, but the Government were determined to clean the slate. Mr Malcolm Rifkind, a Scottish Minister (who had campaigned for "Yes" in the referendum) talked at the end of the debate about the beginning of a new phase of devolution. It was clearly to be non-legislative, and the young and ill-starred Scotland Act, with the Assembly it created, was just an unpleasant memory.

II

The Criminal Justice (Scotland) Bill

One of the casualties of the vote of confidence which brought down the Labour Government was a Bill which focused the law and order debate in Scotland, and showed that in some respects Labour Ministers were trying to trump their Tory opponents in the rush to strengthen the police and claim credit for reducing crime. The Criminal Justice (Scotland) Bill had

just finished its dramatic committee stage when the Government fell, and to no one's surprise it was not one of the pieces of agreed legislation rushed through before the Election.

It was a stern Bill. Tucked away in a host of procedural reforms was a proposal to allow police officers to question a suspect at a police station for four hours without having to make an arrest. It also proposed an extraordinary power giving sheriffs and judges the right to conduct trials in the absence of the accused.

Its tough measures were attacked on the Labour side by civil libertarians — principally Donald Dewar (Garscadden) and Neil Carmichael (Kelvingrove) — and by Conservatives who claimed that the Bill did not go far enough in strengthening the power of the police.

The long sessions of the Scottish Standing Committee, in which the Bill was discussed line by line, revealed splits in both parties. Ronald King Murray, the Lord Advocate, and Harry Ewing, an Under-Secretary, found themselves under constant attack from Dewar and Carmichael for infringing personal liberty.

On the Tory side, the troops were led by Nicholas Fairbairn, later to become Solicitor General for Scotland. He argued, most of the time, for stronger powers, (backing for example, greater powers of search for the police and the creation of a new offence of "vandalism) but also, as a practising advocate, attacked some of its powers as "a horrific breach in the laws of natural justice". This did not always please Teddy Taylor, who sat on the Committee and called consistently for more powers in the Bill.

The Government suffered two memorable defeats. In the first Peter Doig (then MP for Dundee West) used his chairman's casting vote to support a Tory amendment giving the police wide powers of search. In the second the "draconian" power given to a judge to expel an accused from a courtroom and continue a case in his absence was thrown out by an alliance of Tories and Dewar, Carmichael and Gordon Wilson, the SNP member of the Committee.

Yet for all the confusion the lines were fairly clearly drawn. The Conservatives argued, among other things, for the return of the birch. Among those voting for the proposals were two MPs later to become Ministers, Malcolm Rifkind and

Hamish Gray, as well as Mr Fairbairn. They failed in attempts to oblige judges to give minimum sentences for murderers, to reduce the number of jury challenges, to introduce a general crime of vandalism and, of course, to bring back corporal punishment.

Throughout the committee stage they were attacked for proposing bogus solutions to problems and Mr Taylor, inevitably, was described as Ayatollah Taylor. In return the Tories united behind a standard Right-wing claim that Labour members cared more for criminals than for their victims.

Perhaps the most interesting feature of the long debates was the Government's concern to steal the Conservative claim to speak on law and order. Mr Ewing said he was a member of the law and order party: they had increased the number of policemen in Scotland by 1000 since coming to office, he said.

In this race to be tougher with lawbreakers the scene was set for the Tory law reforms certain to be introduced during Mrs Thatcher's first administration. With the exception of the birching proposals, which Mr Taylor admitted reluctantly were not official party policy, their views on curbing crime can be expected to be enshrined in law. It seems likely that the Criminal Justice (Scotland) Bill, for all its bitter battles, was only a preliminary skirmish.