

WELSH POLITICS COME OF AGE

Responses to the Richard Commission

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Cover: Detail from roof of the
National Assembly debating
chamber – the Senedd Building -
during construction in early 2004.



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INTRODUCTION

This book arises from a conference organised by the Institute of Welsh Affairs and the ESRC Devolution and Constitution Change Programme in April 2004, at which Lord Richard himself was one of the speakers. Other contributions were made by the authors to be found in this volume, joined by Dr Gillian Bristow, Roger Scully, Llew Smith MP, and Stevie Upton.

Of course, events have moved on a good deal since publication of the Commission's report, and this book takes account of these up to the end of November 2004. In particular, following widespread consultation with its membership, Welsh Labour held a special conference on the Richard Commission's report in September 2004. This raised the question how far the recommendations could be taken in part, as it were, and how far they should be swallowed whole. A good deal of the arguments between the parties on the future direction of the Welsh constitution centres on this unresolved question. What has become clear since the Richard Commission reported is that whatever eventually is put into effect will depend a good deal on the political formation in power in Cardiff Bay following the 2007 Assembly election.

The opening Chapter traces the origins of the Commission to the period leading up to the 1997 UK general election. Unlike Scotland Wales did not have the benefit of a Constitutional Convention to hammer out agreement between the parties on the shape of the devolution settlement. The decision that a referendum should be held to approve Labour's devolution plans led to the commitment that an element of proportionality would have to be built into the Assembly elections. Without proportional representation Labour would not have been able to persuade the Liberal Democrats and Plaid Cymru to co-operate in the referendum. In turn, proportional representation prevented Labour winning a majority of seats in the first elections in 1999 and led to the coalition between Labour and the Liberal Democrats in October 2000. It was this that produced the agreement that a Commission should be established to consider the Assembly's powers and electoral arrangements.

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In Chapter 2 Professor Charlie Jeffery surveys what he describes as the Richard Commission's "closely argued and in many respects compelling set of recommendations" and provides a frank account of the politics that are likely to determine their implementation. He concludes that in the end another referendum seems inevitable if for no other reason than to clear a path forward.

The implications of the Richard recommendations for the Assembly as a legislature are examined by Alan Trench in Chapter 3. He examines some practical implications of the Assembly being able to legislate, including how much legislation would be passed, how the Assembly would relate to Westminster, and what the change would mean for the its internal workings.

There seems little doubt that the Richard Commission found the second part of its brief, the electoral arrangements of the Assembly, the hardest. Professor Laura McCallister, Plaid Cymru's nominee on the Commission, confirms this in the fourth Chapter. She describes with great clarity the intricate process through which the Commission went in coming to what she frankly acknowledges to be the least worst option. As she puts it, "few members of the Commission rejoiced" at being forced by the evidence face up to the advantages of STV. At the same time she says that the report "was deliberately drafted as a holistic, interlinked blueprint for improved devolved governance and inter-governmental relations." Acknowledging that the Labour Party in particular will be tempted to drop this aspect of the Commission's recommendations, she argues, "Carving out some of its central proposals weakens the logic of others related to powers and size and, in so doing, jeopardises the workability of the scheme as a whole."

Chapter 5 examines the fundamental question of the Assembly's finances. On these the Richard Commission's conclusions were inconclusive. It noted that though tax varying powers for the Assembly along Scottish lines would be "desirable" they were not "essential". On the complex matter of the operation of the Barnett formula, the mechanism for distributing increases in funding between the countries of the United Kingdom, the Commission pronounced that it was not competent to come to any view on whether it would be desirable to make any change. In her chapter Gillian Bristow argues strongly that Wales stands to gain from the introduction of a more equitable needs-based formula. However, she concludes that, due to political forces outside Wales resolution of the question is a long way off.

The question of the quango state and its relationship with the National Assembly was part of the Richard Commission's deliberations. Again, it did not come to a clear view in its recommendations. It noted that the coming of the Assembly had brought a closer political involvement in the direction of the quangos by the Assembly Government. At the same time, it was critical of the Assembly's record in scrutinising them, recommending that the subject committees develop a more robust role in this regard.

Of course, since the Commission reported there has been a decisive shift in the relationship between the Assembly Government and the quangos. In July it was announced that the work of the three largest bodies –the Welsh Development Agency, ELWa (Education and Learning Wales) and the Wales Tourist Board – is to be brought in-house, as it were, and administered directly by the civil service. In November 2004 it was further announced that the Welsh Language Board, the curriculum authority ACCAC, and Health Professions Wales were also to be absorbed, while the Arts and Sports Councils were to have their strategy and planning and some funding functions taken over by the Assembly Government.

In chapter 6 Kevin Morgan and Stevie Upton put these developments under the spotlight. Will they result in greater efficiency, effectiveness and accountability? They find reasons why the answers will not necessarily be positive and also question the impact of the changes on the civic capacity of Wales.

Chapters 7 and 8 explore responses to the Richard Commission's proposals from politicians in Cardiff Bay and Westminster. While those in Cardiff Bay are generally supportive and optimistic about the recommendations, especially those that would enhance the Assembly's legislative role, the views of those based in London range from cautious to hostile. The way the balance of these views are worked through will to a great extent determine the eventual outcome.

In Chapter 9 Richard Wyn Jones and Roger Scully, of the Institute of Welsh Politics, report on what the extensive surveys carried out since the referendum in 1997 tell us about wider opinion on the Assembly and its powers. No-one can foretell the exigencies of events, but they conclude that the referendum that is likely to be held on primary powers for the Assembly is there to be won. Opinion has shifted in fundamental ways since the 1997 referendum, and broadly in support of the Richard

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What is particularly significant is that while pro-devolution views were concentrated in the more self-consciously Welsh identifying parts of Wales at the time of the 1997 referendum, today they are evenly spread across the country. This tells us something about the developing civic culture of Wales that is embracing the country as a whole.

Chapter 10 examines the issues in the wider context of the development of Welsh political culture. Peter Stead proposes an agenda that challenges the Labour Party in particular to more fully engage with the politics identity in Wales. As he puts it, "It is impossible to develop first class politics in a vacuum. The starting point must be a culture in which every single person is treated as an adult, and the fulfilment of every individual life is a goal. At present Wales does not have public life sufficiently focussed on these targets. The time has come for Wales to grow up."

To put it another way, Welsh politics need to come of age. The title of this book suggests that the Richard Commission has provided what is, in the jargon of the times, a 'route map' for this to happen. Meanwhile, the final chapter suggests that the Richard Commission set an agenda for the future development of Welsh politics that may well have unforeseen consequences. It observes that the Commission's unanimous recommendations caught the political establishment in Wales by surprise. They left little room for manoeuvre for Labour to finesse an internal compromise. Instead key decisions were left until after the forthcoming UK general election. However, the Chapter judges that the Commission has produced a parallel agenda. Unwittingly, it has set in train a dynamic that promises to take the devolution settlement forward in unexpected ways beyond the National Assembly election in 2007.

John Osmond
January 2005

Chapter 1

PROVENANCE AND PROMISE

John Osmond

It was the Welsh Labour's conversion to proportional representation in the mid 1990s that led directly to the establishing of the Richard Commission. Without the element of proportionality in Assembly elections Labour would not have had to enter a coalition with the Liberal Democrats in the first term. And without that coalition, and the partnership agreement that underpinned it, there would have been no commitment to establish a Commission to examine the constitutional future of the National Assembly.

As argued in the final chapter, the likelihood now is that, just as coalition politics provided the essential motivation for establishing the Richard Commission, so coalition politics will prove essential to carrying through its recommendations. In all of this it is instructive to observe how the devolution process has an inbuilt dynamic for change, one that at times has swept the parties forward on a tide of events seemingly beyond their control.

THE COMMITMENT TO PR

The story begins in July 1996, just eight months before Labour came to power in May the following year. Still uncertain of his victory, and exhibiting extreme caution over tax and spending commitments, Tony Blair visited Scotland determined to remove from the election agenda Labour's promise of tax varying powers for the proposed Scottish Parliament. The mechanism was to be a referendum in which the people of Scotland would be asked two questions, one on whether they supported a Parliament and, crucially, a second on whether they agreed that it should have the power to vary income tax by 3p in the £ up or down.

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By placing the tax decision directly in the hands of the Scottish people, the referendum would remove it from the immediate general election debate. The commitment to a Scottish referendum was therefore driven entirely by the exigencies of Scottish politics and the impact it was feared they might have on Labour's electoral prospects in the United Kingdom as a whole. However, the most immediate effect was on Wales. For it was soon appreciated that it would be impossible to have a referendum in Scotland without also having one in Wales as well.

Tony Blair's referendum ploy came out of the blue. The Shadow Secretary of State for Scotland, George Robertson, was informed beforehand, but the Shadow Secretary of State for Wales, Ron Davies, was left in the dark. In fact, on the eve of the announcement he was taking part in a BBC Wales television programme and, under persistent questioning, insisted Labour had no plans for a referendum to endorse devolution.

Yet within days Ron Davies was locked in negotiations with Blair on the help he would need if he were to lead the Welsh Labour Party through the forthcoming general election and into a referendum. There was one pivotal requirement. Blair would have to lean on the party in Wales to reverse its conference decision a year before, in 1995, in favour of first past the post for a Welsh Assembly, and opt instead for some variation of proportional representation. Davies argued that without a commitment to PR it would be very difficult for Labour to win a referendum in Wales. Certainly, without PR it would be impossible to persuade the Welsh Liberal Democrats and Plaid Cymru to campaign for a Yes vote.

There was a further argument that doubtless weighed with Blair. Labour was already committed to the Additional Member system of PR for elections to a Scottish Parliament, the result of protracted negotiations that had taken place during the previous decade within the Scottish Convention. It would surely look anomalous for the party to fight for a Yes vote in parallel referendums in Scotland and Wales for institutions which would have a different electoral mandate.

In any event, Ron Davies won his concession and went on to lead the Yes campaign to the wafer thin majority in the referendum that was held a little over a year later, in September 1997. There is little doubt, given the closeness of the result, that without the PR commitment the referendum would have been lost.

Labour's commitment to proportional representation for the National Assembly was, of course, grudging. In fact, compared with the Scottish Parliament and the Northern Ireland Assembly the concession was minimal – just 33 per cent of the Assembly membership were to be elected by a proportional system, compared with 43 per cent in Scotland and 100 per cent in Northern Ireland (see Table 1).

Table 1: Size and Electoral Systems of Devolved Bodies in UK

UK Devolved Bodies	Constituency Members	Regional Members	Total Members	Ratio FPTP : List	Ratio Member : Population
Wales	40	20	60	67% : 33%	1: 48,600
Scotland	73	56	129	57% : 43%	1 : 39,200
Northern Ireland	Elected by STV system		108	n/a	1: 15,700

Source: Richard Commission report, page 229.

Note: the relatively high ratio of member to population in Wales adds to the case for increasing the members of the National Assembly.

Indeed, in an unguarded moment Rhodri Morgan confessed that the Welsh system had been devised to ensure that Labour would achieve a majority of seats in at least three elections out of four. Experience so far has signally failed to fulfil these expectations. In 1999 Labour won only 28 of the 60 seats. In 2003, in more favourable and perhaps optimum political circumstances, it barely won half.¹ As argued in the final chapter of this book, in the forthcoming 2007 election Labour is likely to slip back to between 26 and 29 seats.

¹ Its majority was produced by Plaid Cymru allowing its Meirionnydd AM Lord Elis-Thomas to become Presiding Officer and Forward Wales Wrexham AM John Marek his Deputy. At

AN INDEPENDENT COMMISSION

In the immediate wake of the first election to the Assembly, and under the disputed leadership of Alun Michael, Labour attempted to govern Wales with a minority administration. However, within months this proved untenable. In February 2000 Alun Michael gave way to Rhodri Morgan as First Minister following a vote of no confidence. The ostensible reason for this was his inability or refusal to commit the Treasury to fully match fund the 2000-2006 European Objective 1 programme for west Wales and the Valleys. Underlying the vote, however, were other factors that were just as instrumental in uniting the opposition parties against him. These were frustration with his style of government, his lack of a coherent policy programme, his caution, but above all, his approach to the devolution process. This amounted to acting as though nothing fundamental had changed from the point of view of the executive governance of Wales. Instead, Michael behaved as though the old Welsh Office was, in effect, continuing, but with the elected Assembly operating as some kind of advisory body. The vote of no confidence was a declaration that it was impossible to continue in this way and that the devolution process had to move in the direction of creating a parliamentary body.

This determination was enshrined in the partnership agreement between Labour and the Liberal Democrats that formed the first coalition in the Assembly a few months later, in October 2000. This included a commitment to establish an independent Commission to examine the powers and electoral arrangements of the Assembly, though with a timetable that ensured its recommendations would not be published until safely beyond the 2003 Assembly election. In the meantime there was to be a Review of the Assembly's procedures, chaired by the Presiding Officer, which took place over a year between January 2001 and February 2002.² Substantial submissions were made by each of the parties and it was striking how rapidly the Review's agenda crystallised and agreement was achieved. So much so it can be argued that during this period the Assembly took on the character of an informal Constitutional Convention. A consensus was found on a wide-ranging series of propositions that, once put into effect, would build a *de facto* parliamentary body out of the Assembly established under the 1998 Wales Act. The two most important were:

² For a full account of the Review see J. Osmond. 'Constitution Building on the Hoof' in J.

1. A separation of the executive and legislative arms of the Assembly, with the soon to be created Welsh Assembly Government on one side, and the independent Presiding Office (later to be named Assembly Parliamentary Service) on the other.
2. Adoption of what became known as the *Rawlings Principles* (named after their author, Richard Rawlings, Professor of Public Law at the London School of Economics) which provided the Assembly with maximum discretion in handling secondary legislation – judged by some commentators to be aimed at giving the Assembly primary powers by ‘the back door’.

THE WORK OF THE COMMISSION

This was the Assembly’s constitutional direction inherited by the Richard Commission when it began its work in September 2002. First Minister Rhodri Morgan explained that his choice of Lord Richard to lead the Commission had been determined by his unique combination of Labour links, independence, experience and influence in Whitehall. As he put it, in his announcement to the Assembly, the Labour Peer was:

“... halfway between being 100 per cent Labour Government loyalist, never departing from the party line, and an independent who is outside the party. He is the right kind of person in terms of having clout in Whitehall and Westminster ...”³

Of the nine other members of the Commission, four were nominated by each of the political parties, and the remainder were made as a result of advertisement and interviews following the Nolan process. It could not be argued that the political nominees were chosen from the front rank of the parties. And neither did the public appointments produce any high profile personalities. The overall sense was of a low key commission, with only perhaps half the members initially having great insight into the constitutional and political intricacies with which they had to grapple.

³ *Assembly Record*, 18 April 2002. Lord Richards of Ammanford was MP for Barons Court, London, between 1964-74. Following that he was the UK Permanent Representative at the United Nations until 1979, chairing the Rhodesia Conference in 1976. Between 1981 and 1984 he was a European Commissioner. He was a member of the Shadow Cabinet as Leader of the House of Lords from 1992-97: and a member of the Cabinet as Lord Privy Seal and

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On the other hand, an advantage was a sense that they did not come with preconceived views and in general represented middle ground opinion in Wales. The outlook of the political membership was fairly clear. Labour's nominee, Ted Rowlands, had been MP for Merthyr between 1972 and 2001 and brought a good deal of scepticism to the notion of extending the Assembly's powers. Though pro-devolution in the 1960s and 1970s he had swung to opposing an Assembly in 1997, largely as a consequence of the proposal that it should be elected by proportional representation. A general scepticism towards devolution was also true of the Conservative nominee Paul Valerio, a Swansea Councillor from 1968 to 1996.

On the other hand the Welsh Liberal Democrat and Plaid Cymru nominees were strong advocates for primary legislative powers. Peter Price, representing the Welsh Liberal Democrats, was a solicitor and a former Conservative Member of European Parliament between 1979 and 1994, who had joined the Liberal Democrats in the mid-1990s. Plaid Cymru's nominee, Professor Laura McAllister, of the Department of Politics at the University of Liverpool, though no longer a member, had stood for the party in Bridgend during the 1980s.

The views of public appointees were rather more difficult to gauge. Eira Davies was managing director of a Wrexham web publishing business, and a member of the Board of S4C. Vivienne Sugar had been the chief executive of Swansea County Council from 1995 until July 2002. Sir Michael Wheeler-Booth, a member of the Commission which drafted the Standing Orders for the National Assembly, had had a long career as an officer in Parliament since 1960, ending in 1997 when he was Clerk of the Parliaments. Tom Jones, a farmer from Welshpool, was chair of Wales Council for Voluntary Action, and a member of the Countryside Council for Wales. Huw Vaughan Thomas had been chief executive of Denbighshire County Council from 1995 to 2001 and previously chief executive of Gwynedd County Council.

The Commission had its own secretariat, headed by Carys Evans, a civil servant who had been working in the Assembly Government's Strategic Policy Unit, and before that in Whitehall, serving for a time as personal private secretary to John Major when he was at the Treasury. She brought a grasp of detail and acumen to the job which was reflected in the rigour and intellectual coherence of the final report.

The Commission sought and received an impressive array of evidence. Between October 2002 and September 2003 it issued two consultation papers, held 115 evidence sessions and three seminars. It received more than 300 written submissions, held nine public meetings across Wales, and visited Scotland, Northern Ireland and London to gain information and views from these seats of government.⁴

At the start of the Commission's work Lord Richard said he had been sceptical that any change was needed so soon after the Assembly had been established. However, at the launch of his report 18 months later, he said the weight of the evidence had influenced him to change his mind. The main recommendations are summarised in Figure 1 on the following page. Lord Richard described the Assembly's present powers, procedures and relationship with Westminster as "grotesque" and "a lawyers' nightmare."⁵ As the former Secretary of State for Wales Ron Davies had conceded in his submission, the Assembly he had done so much to establish in 1999 had been the best compromise he had been able to extract from a divided Welsh Labour Party. The evidence showed that its operations were poorly understood, even by some AMs let alone the wider public, and that it was failing to deliver in promoting through Westminster the primary legislation it wanted. Illustrating this Lord Richard quoted the view of one speaker at a public meeting held by the Commission in Newport, which he said had stuck in his mind: "We were short-changed on the devolution argument compared with Scotland."⁶

In addition, there was what he described as "the Redwood factor", after the former Conservative Secretary of State for Wales John Redwood whose lack of accord with Welsh aspirations had done so much to fuel the case for devolution in the 1990s. This was the inherent instability in the present system whose smooth operation depended on governments of the same complexion being in place in both Westminster and Cardiff Bay.

⁴ The details of these activities and submissions are listed in Annexes 2, 3, and 4 of the report. The Commission also benefited from the publication of two reports during its deliberations: *Devolution: Inter-institutional relations in the United Kingdom*, Report of the House of Lord Select Committee on the Constitution, 2002-03; and *The Primary Legislative Process as it affects Wales*, Report of the Welsh Affairs Committee of the House of Commons, 2002-03.

Figure 1: Richard Commission's Main Recommendations

- There should be a legislative Assembly for Wales, with powers to pass primary legislation in the policy areas in which it took on powers in 1999.
- A new Wales Act could be put through Westminster and the new parliamentary style Assembly could be elected by May 2011 – that is, the elections due to be held after those due in 2007.
- In the interim, broad framework powers should be delegated to the Assembly, within the 1998 Government of Wales Act provisions. This should allow the maximum scope for the Assembly Government to exercise its secondary legislative powers to deliver its policies.
- To exercise primary powers, the Assembly's Members should be increased from 60 to 80.
- The present system for electing Members – 40 first-past-the-post constituency Members and 20 List members elected by the Additional Member System – cannot sustain an increase to 80. Instead, the report says the best alternative is for all 80 members to be elected by the Single Transferable Vote system.
- The corporate body structure in which the Assembly as a whole is a single legal entity, with the members delegating their powers to the First Minister and Cabinet - should be replaced with a separated executive and legislature.
- Tax varying powers would be desirable but are not essential to the exercise of primary powers.
- The examination of primary legislation would require a change in focus in the work of the Assembly, particularly in the Committees, with a stronger culture of detailed scrutiny and challenge.
- The direct increase in costs of an Assembly with primary law making powers is likely to be £10 million a year, of which around half would be due to the increase in AMs from 60 to 80.

What would happen if, for example, there was a Labour administration in Cardiff, and an unsympathetic Conservative administration in Westminster? Lord Richard concluded that, "This prospect of different colour administrations was one we could not ignore." So the weight of the evidence pointed to more powers. It was not that the system was currently breaking down, operating as it was with co-operative Labour administrations in Cardiff and London. As Lord Richard put it:

“The surprising thing – and I want to emphasise this – is that we didn’t reach this conclusion because the present system isn’t working. Almost the opposite in fact. It is precisely the success of the Assembly and the Welsh Assembly Government in establishing itself as the government of Wales in the key public policy areas that creates the pressure for change. We examined in detail the dynamics of the present situation and found that the Assembly is increasingly setting the legislative agenda for Wales in devolved areas and negotiating with Whitehall and Westminster for the legislation it needs. Since this is already happening and likely to happen increasingly in future, it seemed to us that the most efficient and straightforward process would be for the Assembly itself to pass this legislation in Cardiff.”⁷

There is no surprise that these arguments received endorsement from Plaid Cymru and the Welsh Liberal Democrats. What is more significant is the extent to which they influenced leading figures in the Welsh Conservative Party. Perhaps the outstanding example was Lord Griffiths of Fforestfach, who previously had been head of Mrs Thatcher’s Policy Unit in Number 10 Downing Street during the 1980s. In a wide-ranging lecture in September 2004 he set out why Conservatives should fully support the recommendations, commenting at one point:

“From a Conservative point of view the starting point in thinking about the Richard Commission’s recommendations must be that devolution is for all intents and purposes irreversible. Public opinion has moved on from 1997 and it is crucial that the Conservative Party is not perceived as the anti-devolution party, articulating the views of those who preferred the old structures and forever dragging its feet on the devolutionary process.”⁸

However, the radicalism of the Richard Commission’s proposals, together with the strength of the case it set out for them, put the Welsh Labour Party on the back foot. Confronted with hard-line opposition from Welsh Labour backbench MPs fearful of a reduction in their numbers, First Minister Rhodri Morgan and the Secretary of State for Wales Peter Hain had been hoping for a set of options which they could finesse through a consultation process. As it turned out, to achieve a consensus they had to build those options themselves.

⁷ Speech by Lord Richard at the press launch of his report, Cardiff, 31 March 2004.

⁸ Lord Griffiths: *Building Self Reliance: Why Welsh Conservatives Should Support the*

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These emerged in a paper *Better Governance for Wales* that the Welsh Labour Party approved in a special conference in September 2004. This delayed any definitive view until after publication of a White Paper in the wake of the forthcoming 2005 general election.

PUBLIC OPINION

Lord Griffiths was right to underline the importance of the 1997 referendum and the impact it had on public opinion in Wales. The narrowness of the 0.6 per cent, 6,721 majority – out of 1,112,117 votes cast – belied the significance of what occurred. For the result set Wales on a trajectory towards the coalition scenario being anticipated here.

In the first place it was a major turnaround compared with the 1979 devolution referendum, when there was a four-to-one majority against. The result represented a remarkable 30 per cent increase in votes for the Yes side, or a 15 per cent swing, compared with 1979. The swing was greater than occurred in Scotland⁹, and reflected major changes in Welsh society that had occurred in the intervening couple of decades.

More to the point, the event itself precipitated a major shift in attitudes towards the governance of Wales. This is illustrated by Table 2 which traces the evolution of views between 1997 and 2003 towards the constitutional options for governing Wales. The first point to note is that the position as recorded in 1997, at the time of the referendum, had been remarkably stable for more than a decade. Similar polls during that period reported the same message. That is to say, a steady 40 per cent were against any constitutional change. Around 20 per cent favoured an Assembly along the lines we currently have, while a further 20 per cent supported an institution with full legislative powers akin to the Scottish Parliament. This left around 10 to 15 per cent supporting independence for Wales, with the remainder Don't Knows.

However, once the 1997 referendum had taken place there was almost immediately a fundamental alteration to this pattern which, as I say, had held steady for more than ten years. Those opposing any form of constitutional change dropped sharply, while those in favour of devolution began to cluster around the option of a Parliament along Scottish lines.

Table 2: Constitutional Preferences (%) in Wales, 1997-2003

Constitutional Preference	1997	1999	2001	2003
Independence	14.1	9.6	12.3	13.9
Parliament	19.6	29.9	38.8	37.8
Assembly	26.8	35.3	25.5	27.1
No elected body	39.5	25.3	24.0	21.2

Source: Institute of Welsh Politics, University of Wales, Aberystwyth

By 2003 nearly 40 per cent wanted a Parliament, slightly fewer than 30 per cent were satisfied with the present Assembly, with around 10 per cent clinging to independence as an aspiration. But equally important, those who did not want any devolution at all had halved from 40 per cent to around 20 per cent. This shift of opinion is underlined by the wide ranging surveys reported by Richard Wyn Jones and Roger Scully, of the Institute of Welsh Politics, in Chapter 9.

THE NATIONAL DIMENSION

There is a clear sense in which the response to this question goes to the heart of the whole issue. For what is being judged is the interests of a nation. The Richard Commission acknowledges this at the core of its report when it considers the arguments for giving the National Assembly primary legislative powers. The key moment came when the Commission engaged with arguments put by Peter Hain, the Secretary of State for Wales. As things stand, the Assembly Government has to argue its case within the milieu of Whitehall departments for measures it wants to be enacted at Westminster. Each year the Assembly Government makes bids for around five or six separate Welsh Bills, and sometimes attempts to insert Welsh clauses into English Bills going through Westminster. The Richard Commission concludes that the Assembly Government's success rate has been limited, with many its proposals having little chance of getting into the legislative programme because they are a low policy priority for the UK Government. However, it quotes Peter Hain, in the evidence he gave the Commission as

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“There are lots of frustrated Secretaries of State around the Cabinet table who cannot get their Bills in the Queen’s Speech. There is always a big negotiation ... as to what goes in and what there is legislative time for and so far we have a pretty good track record of Welsh legislation, Welsh-only legislation and Welsh clauses in legislation ... It does not follow that because you cannot get everything tomorrow, the fundamental settlement has to be altered in a substantial fashion.”¹⁰

The Commission disputes this with a restrained single sentence, but nonetheless one that goes to the crux of the argument by presenting a completely different perspective on the essential nature of the National Assembly. As it declares:

“This views the Assembly as the counterpart of an individual UK Department, rather than the democratically elected body for the whole of Wales with responsibility for a broad range of policy matters.”¹¹

THE QUESTION OF SIZE

There is no doubt that increasing the number of AMs from 60 to 80 was the most politically difficult of the Richard recommendations for the Assembly Government. Extending the powers met a ready consensus, at least in Cardiff Bay. However, increasing the numbers of politicians is hardly a populist cause. Not only that, it foregrounds the case for reducing the number of Welsh MPs at Westminster and strengthens the argument for changing the electoral system. As Rhodri Morgan put it in his inimitable style during the initial Assembly debate on the report:

“Does having 20 extra AMs raise the argie-bargie over fewer Members of Parliament and, therefore, over boundary reorganisation? You would lose the link with Westminster and, therefore, need new voting systems, such as the single transferable vote that Richard recommends.”¹²

¹⁰ Richard Commission report. Chapter 7. paragraph 57.

He raised these difficulties during the Assembly's first debate on the Richard Commission recommendations at the end of April. His civil servants would undertake a "time and motion study" over the summer on the work of AMs. This would assess what the additional burden would be if members were involved in putting through perhaps six pieces of primary legislation a year. As the First Minister explained:

"You might say that primary legislative powers means a lot of extra work, requiring many extra Assembly members to do it and scrutinise it. I am not convinced about that, because, although it seems a lot at first at gross level, is it really at the net level? When we pass items via secondary legislation, it can sometimes be more complex than passing them via primary legislation. Examples of that are the passing of the Assembly learning grants and of the free bus pass scheme. Using a mixture of secondary legislative powers and non-legislative means, such as financial incentives to local authorities, is much more complicated than doing it through clean means, such as through primary legislative powers. Therefore it is not the case that because there is gross extra work here, there is also net extra work."¹³

These arguments reveal the narrow ground that was being prepared for a rejection of this core Richard proposal. Yet it is exceedingly narrow ground. Simply focusing on the workload ignores the wider democratic and political arguments for increasing the size of the Assembly. These are alluded to in the Richard Commission report but not fully spelled out. The recommendation for 20 extra members is simply stated as part of the main conclusions.

Richard's main argument hinges around the Assembly's record of scrutinising secondary legislation and holding the executive to account. Here the Commission's findings are extremely robust. The fact of the matter is that so far, with just 60 members, the Assembly's record is poor and, as the Commission says, has yet to develop a strong culture of scrutiny. There is a sense that the Commission exercised considerable restraint in its criticisms on this score, as if it was cautious of recommending that such a flawed institution be allowed more powers. Nevertheless, the following quotations, scattered through the report, provide a strong flavour of its concerns:

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- “Some of those who appeared before committees felt that sessions were not sufficiently rigorous or challenging.”¹⁴
- “We have been struck by the wide coverage and crowded nature of the meeting agendas, which often leaves insufficient opportunity to probe key issues within each agenda item.”¹⁵
- “AMs have not developed a sufficiently detailed understanding of the work of quangos to be able to examine their work effectively.”¹⁶
- “Ministers’ membership of Subject Committees has benefited their deliberations, but it suppresses the development of a scrutiny culture in committee and obscures the lines of accountability.”¹⁷

And, as the former Labour AM for Preseli, Richard Edwards, told the Commission:

“It is very difficult for Members to achieve their maximum potential in terms of knowledge and expertise of subject matter when they are members of several committees and the pressure of time means they cannot research as thoroughly as they might be able to do otherwise. I think this is reflected perhaps in the scrutiny function of the Committee. I think there is plenty of breadth in terms of scrutiny, but perhaps depth when it comes to subject matter is questionable.”¹⁸

As far as secondary legislation is concerned the report notes that during the first term nearly half of the Assembly’s statutory instruments were made by the Cabinet under the Executive procedure, while only nine per cent of plenary time was spent debating subordinate legislation. The overall conclusion is that:

“If the powers of the Assembly are increased, scrutiny will have to be given much greater priority in the work of the Assembly, particularly of committees. This would be an onerous responsibility since there would be no revising chamber and no reference back to Westminster.”¹⁹

¹⁴ Richard Commission report, Chapter 4, para. 32.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, Chapter 6, para. 30

¹⁷ *Ibid.*, Chapter 4. *Findings.*

Beyond the issue of democratic scrutiny there is a wider, more political argument for increasing the size of the Assembly. The intense committee workload of the AMs results in the National Assembly having very few 'backbenchers' in the sense of relatively independent, free-floating legislators who form a significant proportion of MPs at Westminster. Sixteen of the 60 Members are office-holders: the nine Cabinet Ministers and five Deputy Ministers, together with the Presiding Officer and his Deputy. The remaining Members have between them to cover a broad range of policy areas, often as party spokespersons or Committee Chairs. That is to say they have to oversee matters that in Westminster terms absorb the attention of some 400 backbench MPs.

The Richard Commission calculated that 46 'backbench' AMs have to fill 109 Subject and Standing Committee seats in the Assembly. Most of the AMs sit on four or five committees. The result is a totally different style from Westminster. As evidence from the Plaid Cymru AM Rhodri Glyn Thomas put it, quoted in the report:

"In the House of Commons, if you fall out with somebody, you can avoid them for three or four weeks, or even three or four years. In the Assembly you will bump into them the following morning. It is that kind of close, cosy arrangement ... [that] does potentially, I think, lead to a situation where scrutiny is not a natural process."²⁰

There is an additional dimension, which only became clear in the wake of the first elections to the Assembly. In any parliamentary institution the calibre of members varies. In broad terms, and perhaps being over generous, one can expect a quarter of an institution's membership to comprise outstanding individuals with qualities that fit them to be front rank politicians capable of holding high office. Another quarter or so one can expect to be relatively ineffective. Within the remaining 50 per cent one can expect to find a range of middle-ranking people with moderate abilities.

To make this point is not to criticise the present membership of National Assembly. It is a fact of life. It is, however, to make the argument that an institution with just 60 members provides a very small pool within which to find political leadership, especially when that has to be spread across four parties. Moreover, this is not just a matter of finding the leadership to make up a Cabinet.

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There are two further requirements. As already underlined, there needs to be people of calibre who can fulfil the backbench scrutiny role. Additionally, the Assembly needs to be a training ground for the next generation of senior politicians, capable in one or two decades of taking a Cabinet role.

As the Richard Commission found when it examined other legislative bodies around the world, there are no accepted rules to follow when calculating their size. However, it is instructive to compare the National Assembly with the Scottish Parliament and the Northern Ireland Assembly (Table 3).

Table 3: Size and Electoral Systems of UK Devolved Bodies

UK Devolved Bodies	Constituency Members	Regional (List) Members	Total Members	Ratio FPTP : List	Ratio Member : Population
Wales	40	20	60	67% : 33%	1 : 48,600
Scotland	73	56	129	57% : 43%	1 : 39,200
Northern Ireland	Elected by STV system		108	N/a	1 : 15,700

Source: Richard Commission report, page 229.

This shows that while having the smallest membership of the devolved institutions, the National Assembly has the largest proportion of members to population. In particular, in comparison with Scotland, and following the Additional Member electoral system, the relatively small size allows disproportionately fewer List members. Wales has only 33 per cent of its membership adjusted by PR compared with 43 per cent in Scotland (Northern Ireland, of course, has the more proportional STV system). It is hard not to conclude that the decision to give the National Assembly just 60 members was based on a narrow political calculation of allowing the maximum proportionality consistent with providing a Labour majority.

If first-past-the-post had been an option for the framers of the 1998 Wales Act it is likely they would have opted for 80 members, based on two members per Westminster parliamentary constituency. After all, this was the proposal in the 1978 Wales Act that would have established an

And is it just serendipity that the gleaming Richard Rogers debating chamber now rising behind its stockade in Cardiff Bay has room for 80 members? The promise contained in the evidence, arguments and recommendations of Richard Commission is that the National Assembly is an institution destined to grow. The Commission seems to be saying that, just as when buying a new school uniform one is wise to choose a set of garments a little too big, enough for a small child to grow into, so the size of the Assembly should be big enough for it to flex its muscles in future.

Chapter 2

RICHARD'S RADICAL RECIPE

Charlie Jeffery

The Richard Commission's report is a comprehensive document informed by an extensive consultation of the general public, experts and other interested parties.²¹ It is strongly evidence-led with its recommendations clearly following the weight of the evidence put to it. Moreover the report was presented unanimously, though with an ambiguous caveat entered by one of its members, the former MP Ted Rowlands, which reinterpreted it as a basis for reform at some unspecified future point.²² The end result is a closely argued and in many respects compelling set of recommendations (see Figure 1). It is ranked by a number of commentators as one of the best such reports since the Kilbrandon Commission reported on devolution in the 1970s.²³ This chapter attempts an overall evaluation of those recommendations, and makes some comments about the likelihood that they will be enacted.

Figure 1: Key Recommendations of the Richard Commission

- Transformation of the National Assembly into a fully-fledged legislative assembly with primary legislative powers on all matters not explicitly reserved to Westminster, with a widening of the scope of the Assembly's discretion in secondary legislation as an interim measure pending the attainment of primary legislative powers.
- Tax-varying powers, again on the Scottish model (power to vary the standard rate of income tax by $\pm 3\%$), are 'desirable, not essential'.
- The 'corporate body' model to be abandoned in favour of a clear separation of government and legislature.
- The Assembly to increase in size from 60 to 80 members in order to meet new workload demands of primary legislation, in particular the scrutiny of the Welsh Assembly Government's legislative programme.
- The current 'additional member system' of electing the Assembly to be replaced by the single transferable vote.

²¹ Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, *Report of the Richard Commission*, The Stationery Office, Spring 2004 (hereafter Richard Commission, 2004).

²² Richard Commission. 2004. Annex 8. n. 305.

The central recommendation is to replace the current system of executive devolution, based on a complex division of labour between Wales and Westminster, with legislative devolution on the Scottish model. What is proposed is, in effect, a Welsh Parliament. The report sets out two reasons for this. The first is to bring about a more transparent and systematic division of powers between Westminster and the Assembly which removes the often bewildering complexity of the current arrangements. The second reason is a more positive endorsement of the momentum the Assembly has established in setting a distinctive Welsh policy agenda. The Assembly as it were has made its mark and has earned the right to fuller powers in developing policies for Wales. The timescale the Richard Commission envisaged for achieving all this is set out in Figure 2. The Commission – for reasons discussed later – has sensibly insisted this timetable is at best tentative.

Figure 2: A Possible Timetable for Implementation

2005	Manifesto commitments on Richard Commission Report at UK General Election
2006	New Wales Bill published
2007	Assembly Election
2007	Wales Bill introduced at Westminster
2008	Royal Assent
2008-10	Boundary Review
2011	First Election to Legislative Assembly

THE COMMISSION'S GUIDING CRITERIA

Two sets of criteria guided the Commission in its work:

- Those concerned with *efficiency*. Efficiency criteria were central to the terms of reference the National Assembly gave the Commission, which focused on the integration and consistency of policy-making and of Wales-UK relationships, and whether the size of the Assembly was adequate for its tasks.²⁴ The Secretary of State for Wales, Peter Hain, also stressed efficiency criteria, notably in his insistence that the Commission's recommendations should pass a 'practical delivery benchmark test'.²⁵

²⁴ The terms of reference are reprinted in Richard Commission. 2004. Annex 1. pp. 265-266.

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- Those concerned with the *quality of democracy* in Wales. These democracy criteria were self-imposed by the Commission, and insisted that gains in democracy and accountability were “valuable in themselves” and that “more open, participative and responsive governance’ was ‘likely to produce better policy outcomes’”.²⁶ The Commission echoed the views of Lord Falconer, Secretary of State for Constitutional Affairs, that while constitutional change had to be about the effectiveness of public institutions, it also had to deliver stronger democracy and stronger public engagement and in that way improve relationships of trust and accountability between citizens and institutions.²⁷

To put it another way, the Assembly terms of reference and Peter Hain prioritised the delivery of better *outputs*. However, the Commission itself balanced this with a concern to ensure improved citizen *input* into devolved government.

THE CURRENT NATIONAL ASSEMBLY

The Commission was generally positive about the record of the National Assembly so far. It pointed to innovative policy responses to distinctive Welsh agendas, good working relationships with Westminster, Whitehall and the Secretary of State in delivering policy for Wales, and the success of the Assembly in widening the original conception of secondary legislation. Westminster was now leaving such wide discretion to the National Assembly in secondary legislation that Wales “already has some of the features ... of legislative devolution”.²⁸

However, the Commission was clear that this positive record had been achieved against a number of odds. The Assembly was saddled at the outset with an unwieldy status as a ‘corporate body’ with no formal separation of legislative and executive functions. The de facto separation of the functions of National Assembly as legislature and Welsh Assembly Government as executive had remedied this problem and introduced greater transparency of roles and accountability of the Government. Unsurprisingly the Richard Commission confirmed that this de facto separation should become a formal, legal one (in line with practice in Scotland and Northern Ireland).

²⁶ *Ibid.*, 2004, n. 1.

A second problem was the haphazard and complex delineation of responsibilities between Westminster and Assembly. The powers assumed by the Assembly in 1999 had been accumulated on an unsystematic, case-by-case basis in over 300 separate items of Westminster legislation, with no particular consistency in the nature of the empowerment even on closely related issues. Only with the establishment of a comprehensive database entitled Wales Legislation Online at Cardiff Law School is it now possible to establish any kind of overview of what the Assembly is empowered to do.²⁹ Even Assembly Members have only a limited notion of what the Assembly can and cannot do:

“I do not know what the powers are that we have. When Westminster passes a new Act it may repeal previous Acts. If these contained devolved powers, then they vanish, unless they are re-enacted in a subsequent Act. Not many people would know exactly what the powers are.”³⁰

A third set of problems arose from the way the National Assembly needs to work through Westminster in order to be empowered to address any new or changed priorities or concerns it identifies. Though relations with UK institutions are generally good, there remain serious institutional frictions and mismatches inherent in the current settlement, at times compounded by an uneven awareness of the intricacies of Welsh devolution in Whitehall. And Wales is at best low on the legislative radar screen at Westminster.

The outcome is a messy process of Westminster legislation for Wales, one which the Commission memorably described as having ‘jagged edges’.³¹ Legislative proposals are made in the Assembly, but scrutinised in Westminster. And, due to the tightness of the Westminster legislative timetable, Welsh legislative provisions often have to be piggy-backed uncomfortably onto legislation designed for other purposes and piloted by ministers who know little about Wales.

²⁹ See www.wales-legislation.org.uk/scripts/home.php?lang=E .

³⁰ Quoted in Alastair Cole and Alan Storer, ‘Political Dynamics in the Assembly’, in J. Osmond and J. Barry Jones (Eds.), *Building a Civic Culture: Institutional Change, Policy Development and Political Dynamics in the National Assembly* (Institute of Welsh Affairs).

WHAT KIND OF SUCCESS?

On some measures it might seem a 'success' that the Assembly has been able to do what it has despite this messy institutional set-up. Indeed, some of the evidence presented to the Commission saw in this 'success' an argument for retaining the status quo. Civil servants and politicians were quite capable of muddling through the intricacies of the settlement, so why change? The Counsel General to the Assembly, Winston Roddick QC, captured this interpretation in his evidence to the Commission:

"I have dealt with problems of law and statutes that were infinitely more complex than the settlement which we have had to deal with here. That is why I can say with confidence that we have not encountered unusual uncertainties or complexities some witnesses claim to exist."³²

The Commission rightly came down hard on this rather complacent, 'insider' view of the current settlement. It focused on the one hand on 'efficiency' criteria, making the point, with copious support from the evidence presented to it, that Wales was disadvantaged by the system of Wales-UK interactions outlined above, that Welsh priorities did frequently fall off the radar screen entirely, that UK ministries were at times insensitive to Welsh concerns.

But it also made the crucial point – which is repeatedly made by commentators on devolution, and repeatedly ignored by government³³ – that even where things do despite everything work out well for Wales, there can be no guarantee that they will continue to do so. Much of the current 'success' depends on good working relationships between Labour governments in Westminster and Wales, and between Peter Hain and Rhodri Morgan.

³² *Ibid.*, p. 115.

³³ Perhaps the best analysis of the precarious nature of inter-institutional relations between UK and devolved legislatures and governments was the report of the House of Lords Constitution Committee in December 2002. Based on an extensive evidence-gathering exercise among academics and experts in government, it strongly recommended a move to a more structured and formalised system of intergovernmental relations. The report was received with a straight bat in a government response that nothing much needed to be done, as the current system was working effectively. See House of Lords Constitution Committee, Second Report, *Devolution: Inter-Institutional Relations in the United Kingdom*, HL Paper 28, 17 December 2002 at <http://www.publications.parliament.uk/pa/ld200203/ldselect/ldconst/28/2801.htm> and The Government's Response to the Second Report of the Select Committee on the Constitution.

It is likely, for example, that a future Conservative government at UK level would be less receptive to the National Assembly. A different UK government could easily enough block the National Assembly's access to the Westminster legislative process. It may not need to be overtly hostile. More likely is that fewer opportunities to 'piggy-back' Welsh provisions onto Westminster Bills would arise or be conceived if the Welsh and UK governments came from different political traditions without an internal party track into negotiations about Westminster priorities. The clearer separation of Welsh and Westminster responsibilities that the Richard Commission recommended would allow fuller scope for the expression of Welsh priorities and insulate the Assembly from the effects of changes of government at Westminster.

Interestingly, and in recognition of the length of the timetable which would precede formal implementation of its recommendations, the Commission proposed a 'halfway-house' which could bring about greater clarity in the Westminster-Wales relationship now, and offer greater opportunity for the National Assembly to develop a distinctive policy profile now. This 'halfway' measure was to build on the powers set out in the current Government of Wales Act with the UK Parliament conferring delegated powers in broader terms than has traditionally been the case, though following some recent precedents in health and education policy.³⁴ The effect would be for Westminster's primary legislation on Wales as a rule to have a framework effect, "allowing maximum scope for the Assembly to exercise its secondary legislative powers to implement its policies without further recourse to Westminster."³⁵

At the time this recommendation received little comment. It later took on rather more significance when the First Minister, speaking at a conference organised by the Devolution research programme of the Economic and Social Research Council in June 2004, proposed that a variant of the Richard Commission's proposal on interim framework powers should become the end-point of the current reform process.³⁶ This apparent rejection of the recommendation that the National Assembly should be awarded primary legislative powers is discussed further below in the section dealing with the possibilities for implementing the Commission's report.

³⁴ Richard Commission, 2004, p.244, as summarised in box 13.2.

³⁵ *Ibid.*, p. 256.

³⁶ See Nations and Regions: The Dynamics of Devolution. Quarterly Monitoring Programme.

THE VIEW FROM 'OUTSIDE'

The Richard Commission did not focus just on the institutional problems which make the current settlement less than optimal on efficiency grounds. It also sought views from the general public by drawing on academic research on public attitudes and by encouraging submissions from the public. These revealed very different concerns than those which occur to 'insiders'. In particular, there appears to be a widespread crisis of trust in UK government and a desire for greater 'proximity' of decision-making. This anti-centralist feeling helps explain an apparent paradox in public opinion:³⁷

- People in Wales think the Assembly has not yet made enough difference to health, education and other key policies ...
- ... but they also think that the National Assembly should have more influence over policy in Wales (with the Scottish Parliament model of devolution now the most popular constitutional option in Wales).

The message appears to be one of less Westminster and more National Assembly. The Richard Commission – having stressed criteria about the quality of democracy – took these concerns seriously. Consequently, its recommendations for strengthening the Assembly and disentangling it from its current, complex and problematic relationships with UK institutions are not just about the efficiency criteria set for it, but also have to be seen as a response to public concerns about the remoteness of Westminster and public optimism about bringing more decision-making powers to Wales. This mix of efficiency and democratic reasons for strengthening the powers of the Assembly make the recommendations in this part of the Report especially compelling.

SIZE OF THE ASSEMBLY

The Commission proposed an increase in the size of the National Assembly from the current 60 members to 80. It presented a cautious and carefully argued case to support this proposal, based on an assessment of how the Assembly works now.

³⁷ For a summary of public attitudes on devolution in Wales see Richard Wyn Jones and Roger Scully. 'Devolution in Wales: What Does the Public Think?'. Briefing no. 7. ESRC

In particular, it asked what additional tasks primary legislation would bring, for example on scrutiny, and how 'efficiency' gains on current practices could be made. Its conclusion, also drawing on an in-depth comparison with the working of the Scottish Parliament, was that "the existing size and structure of the Assembly would be placed under considerable strain if the Assembly's powers were significantly broadened".³⁸

These arguments were so cautiously made - others have questioned whether even 80 members would be sufficient³⁹ - because they had implications for how the Assembly's members were elected, and edged into what was by some way the more controversial part of the Commission's remit dealing with electoral arrangements. There were concerns, expressed by Rhodri Morgan among others, that a message of 'more politicians', however pressing the need to have them to cope with additional workloads, was going to be difficult to sell to the public.⁴⁰

But the biggest problem on the question of size concerned the electoral system. Technically the easiest solution would have been to increase the size of the list element in the current Additional Member electoral system (AMS) to produce the extra 20 AMs needed. However, AMS was deeply unpopular within the Labour Party, especially its regional list element, and the Commission naturally needed to steer a course which would be acceptable politically. First past the post was ruled out (even though many in and close to the Labour Party favour it), and the Single Transferable Vote ended up being selected by the Commission as a 'least worst' alternative.

ELECTORAL ARRANGEMENTS

One result of the attempt to find a 'sellable' solution was that the arguments and recommendations of the Commission on electoral arrangements were by some way the least compelling in report. This does not mean the Commission did not receive evidence to support its recommendations. It clearly did, at least insofar as a great deal of representations were made which were critical of AMS.

³⁸ Richard Commission, 2004, p. 80.

³⁹ See Alan Trench's contribution to this volume.

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These were critical in particular of the Assembly Members elected from the regional lists. They were also made disproportionately by members of the Labour Party.

The central concern expressed about AMS was that successful list members are often 'failed' constituency candidates. This is true. But broadly speaking that was the point in introducing AMS. Traditional first-past-the-post elections in Wales – including the constituency element of National Assembly elections under AMS – favour the Labour Party, which is strong in the most populous areas where there are the majority of constituencies. Supplementing first-past-the-post with a regional list 'top-up' under AMS was a way of opening up space for other voices in Welsh politics.

Some members elected by regional list do also stand in constituencies but have no chance of success due to Labour's structural advantages, but then much the same happens in AMS systems elsewhere without the apparent level of controversy in Wales. Such members are not seen as 'failures' or in some way 'second class' elsewhere. There is no particular reason – beyond the residual uneasiness of the Labour Party in Wales with the principle of a more proportional system – for them to be seen as 'failures' in Wales.

It may well be that the perceived problem with AMS is not in any way fundamental, but reflects more a difficult process of adaptation to the idea of multi-party politics which should ease over time. If this is right, then the Richard Commission may have been over-hasty, as it were throwing the baby out with the bathwater without giving full enough consideration to adaptations which might make AMS more palatable to Welsh (Welsh Labour?) tastes. The Welsh Labour Party's own, subsequent recommendation in September 2004 to take steps to prohibit simultaneous candidacy in constituencies and on regional lists rather underlines the point.⁴¹

IS STV THE ANSWER?

Equally, the case for the single transferable vote (STV) looks over-stated in the Report, though it is clearly presented more as a 'least worst system' than a perfect solution).

Internationally STV is a rarely used system with a number of problematic features. One in particular appears to resonate with definitions in Wales of electoral 'failure'. STV works by establishing multi-member constituencies in which voters can express in rank order as many preferences as there are candidates.

Some of these candidates may win enough first preferences to get elected at the first count, though this is relatively rare. Others need to rely on the second, third or subsequent preferences of other voters, which are reallocated as the strongest candidates are elected and/or the weakest eliminated. This means that the last-elected candidates in any constituency can have won a share of first preferences of less than 10 per cent. It is by no means clear that having the first preference of 10 per cent of voters is any better – employing the same criteria of electoral 'failure' presented as evidence to the Commission – than being a member elected from the regional list who also fought and lost a constituency battle.

Though advocates for STV were able quickly to present simulations which suggested that there would be little impact on the party-political composition of the Assembly should STV be introduced, it was quickly evident that this section of the Commission's Report had little prospect of being implemented.⁴²

TAKING RICHARD – OR PARTS OF IT - FORWARD

Of course, there was no guarantee that any of the Richard Commission's recommendations would be implemented. What it proposed cannot be introduced without primary legislation at Westminster. Before that could happen, it would need a positive reception in the National Assembly. More importantly it needed a positive reception in the Welsh Labour Party, because it would have to part of a UK Labour Party election manifesto in order to get implemented (assuming that the Conservatives are unlikely to press for the implementation of the report should they win the election anticipated for May 2005). Finally there was the question of whether a referendum would be needed to endorse any move to a system of primary legislation.

⁴² See Richard Wyn Jones and Roger Scully. 'STV in Wales: How it Could be Made to Work

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The National Assembly debated the report on 28 April 2004. There was a general consensus – including at least an openness to change among the Conservatives in the Assembly – that the Assembly's powers needed to be strengthened, and that corporate body status be abandoned. There was no such consensus on increasing the size of the Assembly, nor on STV.

Then on 24 June, Rhodri Morgan cast doubt even on enhanced powers when he publicly advocated a framework powers model within the ambit of the current Government of Wales Act, which would guide future Westminster legislation on Wales, but also have backward reach into past laws. This last included a number of fragile assumptions about the preparedness of either House at Westminster to accept especially the backward-looking aspect of the proposal.⁴³

Morgan's intervention was received with some concern by supporters of a move to primary legislative powers and, indeed, by Lord Richard in a comment made in September 2004.⁴⁴ It is doubtful that Morgan himself believed much in it. The reason for its presentation certainly had more to do with internal Labour Party politics than conviction. Morgan's problem was that while most Labour Assembly members were in favour of primary legislative powers (though not of a bigger Assembly or, in particular, a move from AMS to STV), most Labour MPs were not.

This Westminster dimension took on greater importance given that Peter Hain, Secretary of State for Wales, and the sponsor of any manifesto commitment to implement Richard, had committed himself to listening to the views of Labour MPs before making a final response to the Report. With that Hain had granted the Welsh Labour group at Westminster a *de facto* veto.

The Welsh Labour MPs had two concerns: first (and the one publicly trumpeted) that it was too soon to increase the Assembly's powers and that more time was needed for the Assembly to prove itself; and second, less publicly trumpeted, but more heartfelt, that a move to primary powers would imply, as was the case in Scotland, a reduction in the number of Westminster constituencies in Wales to correct a tradition of over-representation. Turkeys rarely vote willingly for Christmas.

⁴³ As discussed by Alan Trench in this volume.

⁴⁴ See Nations and Regions: The Dynamics of Devolution. Quarterly Monitoring Programme.

In the end the position was finessed in a special Labour Party conference in September 2004 which has most likely made Rhodri Morgan's framework powers solution redundant. The conference produced a policy document on *Better Governance in Wales*⁴⁵ which committed Labour in Westminster to producing a White Paper after the next election which would:

- End corporate body status.
- Prohibit simultaneous candidacy in constituencies and regional lists in an otherwise unchanged AMS system.
- And present 'options' on developing enhanced legislative powers for the Assembly.

Among these options would be Morgan's June proposal and the Richard Commission's recommendation on primary powers. Peter Hain appears to prefer the latter, and the precise wording of the policy document appears to be designed to allow Morgan's proposal to die a quiet death. The quid pro quo lies elsewhere in the document. There is no commitment to increasing the size of the Assembly ("further work is required to assess the work load impact of enhanced legislative powers"⁴⁶), and there is a clear commitment that any changes to the National Assembly should not impact on the number of Welsh Westminster constituencies: "Under any option we recommend that the number of Welsh MPs should remain the same".⁴⁷

The final part of the compromise package was that a referendum would need to be held if the Assembly were to be given primary legislative powers.

ANOTHER REFERENDUM?

Peter Hain had long made it clear that this was his position, and Welsh Labour MPs (and the Conservative Party) had made the same commitment. The Richard Commission reserved its opinion on whether a referendum was necessary, should the key parts of its report be implemented, ruling the issue as beyond its remit.

⁴⁵ *Better Governance for Wales. A Welsh Labour Policy Document.*

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However, by emphasising quality of democracy alongside efficiency criteria in making its recommendations, it may in passing have strengthened the case for a referendum. For, if the democratic arguments for change are as strong as the Commission has suggested, then a referendum seems a logical way of testing that argument. If there is a crisis of trust in Westminster and a desire for more proximity of decision-making, then a referendum should reveal it. All this was expressed with characteristic vigour by Wales' leading constitutional expert, Rick Rawlings:

“Put simply, if the people of Wales cannot be convinced of the virtues of legislative devolution in open debate and secret ballot, then it is not worth the candle.”⁴⁸

Chapter 3

THE ASSEMBLY'S FUTURE AS A LEGISLATIVE BODY

Alan Trench

The Richard Commission's report is an impressive discussion of the role a devolved legislature should play and how it should work. It is the most serious such analysis produced in the UK since the Royal Commission on the Constitution chaired by Lord Kilbrandon reported in 1972 – even more thoughtful and detailed than the documents produced by the Scottish Constitutional Convention.⁴⁹

This chapter will look at the implications of the report for the Assembly as a legislature, and at two sets of issues in particular. The first is the sort of powers the Assembly should have to legislate for Wales, how those powers might work, and what the implications of those different models might be. The second is some of the practical implications of the Assembly being able to legislate – how much legislation would be passed by the Assembly, how the Assembly would relate to Westminster, and what that would mean for the internal workings of the Assembly might work as a result.

MODELS FOR THE TRANSFER OF POWERS

The Richard Commission discusses three legal forms for the Assembly to acquire broader legislative powers: a 'framework powers' model, the limited form of legislative powers it calls the 'Northern Ireland' model, and the broader form of legislative powers it calls the 'Scottish model'. This chapter will discuss how these work and also a fourth model, what one might call the 'defined functions' model, which the Report does not discuss but which might be tempting to some politicians concerned at the political implications of the more radical options.

⁴⁹ Royal Commission on the Constitution *Report* Cmnd 5460 (London: HM. Stationery

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'Framework Powers'

Before devolution, this idea was canvassed by many as a way devolution to an Assembly with only limited powers could lead to the development of different policy for Wales. Those advocating it included the then Secretary of State, Ron Davies, and Professor Vernon Bogdanor, and the Assembly itself adopted it as one of the 'Rawlings principles' in January 2002.⁵⁰

The idea is that Westminster legislation applying to England and Wales should be drawn so as to give as much discretion as possible to the National Assembly, and more so than is given to UK Ministers implementing the legislation in England. This would mean that legislation relating to the National Curriculum would define what that curriculum might be, how the Secretary of State might change it in England, and how he would ensure the curriculum was delivered in all schools. However, for Wales the legislation would simply say that there should be a National Curriculum and leave it to the Assembly to determine what subjects were included, how detailed the curriculum was and how schools should deliver it.

Legislation framed in this way would live up to Ron Davies's prediction that every Westminster bill would be a devolution bill, and Wales would quickly start to diverge from England in policy terms.

This way of drafting legislation has never been realised in practice. That is partly because there has been no need. The UK Government has proved surprisingly willing to include Wales-only measures in Westminster bills, so policy divergence has happened within a single legislative framework based in London rather than Cardiff.⁵¹ But there are strong objections of principle to it as well. It would keep the present problem of legislation having to be negotiated case by case and bill by bill, and depending to a considerable degree on how good a deal Welsh Assembly Government Ministers and officials can strike with Whitehall departments.

⁵⁰ See R. Davies *Devolution: A process not an event* (Cardiff: Institute of Welsh Affairs, 1999); V. Bogdanor *Devolution in the United Kingdom* (Oxford: Oxford University Press, 1999), pp. 254-64; Assembly Review of Procedure, Final Report, Annex v (February 2002).

⁵¹ See Commission on the Powers and Electoral Arrangements of the National Assembly for Wales *Report of the Richard Commission* (Cardiff: National Assembly for Wales, 2004)

As a basis for increasing the Assembly's powers framework legislation remains very insecure, as each increase depends on Westminster being willing to grant it. Moreover, what Westminster grants in one bill it could take away in another. It also means that powers of secondary legislation are different in the two parts of the UK – something that is legally possible, but which still makes more conservative lawyers sit up.⁵² Using this route to expand the autonomy of the Assembly raises the constitutional difficulty of ensuring that there is adequate democratic control of the powers granted to the executive. In the past it has been the means by which monarchs or governments (especially war-time governments) have sought to expand their power at the expense of Parliament. Granting them to an Assembly which fused the executive and legislative functions, as at present, would be very problematic. They would need to be granted to, and controlled by, an elected Assembly working as a parliament, not a body corporate substituting for a UK Secretary of State.

The Richard Commission rightly rejected such powers as a way of extending the Assembly's powers, but looked on them more favourably as a way of easing the transition from the present position to becoming a proper legislature.⁵³ In that context, they might provide a useful way for the Assembly to accustom itself to exercising broader powers, but in no sense could be a substitute for the ability to make proper legislation.

The 'Northern Ireland' Model

Treating Northern Ireland's legislative arrangements as a constitutional model is unusual. The Belfast Agreement set up a complicated and intricate set of arrangements to advance the peace process, of which devolution was only one part. What appears to be meant by the Northern Ireland model is not the establishment of a multi-party executive, but simply one limited aspect of the powers of the Assembly. That is a three-part categorisation of legislative powers:

- An 'excepted' list of powers wholly reserved to the UK level.
- A residual category of powers devolved to the Assembly.
- A list of 'reserved' powers where the Assembly could legislate, but only with the consent of the Secretary of State.

⁵² Government of Wales Act 1998, section 42. The cautions about this approach are noted in

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‘Reserved’ matters mostly relate to law and order – they cover policing, the criminal law, prisons and the courts, which are unlikely to be devolved to Wales. At the same time, Westminster could legislate for such matters, and the Northern Ireland Office was responsible for administering them. This form of devolution on probation partly gave the Assembly greater scope to legislate, but also served as an indication of the UK Government’s intention to transfer the powers involved more fully in due course. That in turn was meant to give momentum to the peace process.⁵⁴

The idea behind the Richard Commission’s discussion of this model may have been that the grant of limited legislative power would increase the powers of the Assembly while reassuring the UK Government that powers would not be used inappropriately. That is puzzling: the problem from a UK point of view is not so much that legislative powers would threaten it (it has now started to get used to a devolved Scotland going its own way, and so far has proved remarkably relaxed about distinct approaches in Wales too). That may be a factor for Wales’s Labour MPs, but is not shared more generally in London. Rather, the issue is convincing London that the issues of devolution in Wales are pressing enough to need new legislation and a fresh set of arrangements.

In any case, the practical experience of Northern Ireland confirms that it was a cumbersome mechanism justified only by the needs of the peace process. The category of reserved matters served as something of a break on the Assembly’s powers, as any bill creating a fine or penalty (widely used, to give a statutory prohibition or requirement teeth) needed the Secretary of State’s consent. Consent was also sought in a small number of other cases where substantive change to reserved matters was proposed, for example relating to the powers of resident magistrates. This was only an administrative matter, as the Secretary of State appears never to have refused his consent to a reserved measure proposed by the Assembly, but nonetheless was used relatively often – about two dozen times, for the 36 Acts passed by the Assembly while it was sitting.

⁵⁴ Another characteristic of the Northern Ireland machinery is that reserved matters could be transferred fully by an order of the Secretary of the State and did not need another Act of Parliament to do so. In fact, however, when transfer was contemplated the necessary powers

A further effect was that that it broadened the scope of the Assembly's influence, as the Northern Ireland Secretary took care to consult the Assembly on nine occasions when she or he proposed to act in relation to reserved matters, but then the initiative came from London not Stormont.⁵⁵

As constitutional machinery, the 'Northern Ireland model' is extremely poorly-suited to Wales's needs, and it is tempting to conclude that the Richard Commission only discussed it to pre-empt a suggestion likely to be made by those objecting to primary legislative powers. If the intention were to expand the Assembly's jurisdiction into the criminal justice area, it might provide an appropriate mechanism, but it would not deal with the more immediate problems the Assembly faces concerning areas like health, education, the environment or local government.

The 'Defined Functions' Model

One option not discussed by the Richard Commission is the sort of approach taken by the Scotland Act 1978, as well as the constitutions of some UK colonies. These can be described as the 'defined functions' model, and means that the Assembly would have the power to pass legislation, but only in relation to particular defined areas – for example, in the field of education the operation, management and staffing of schools. This may be what Rhodri Morgan has in mind when he talks about "broader framework powers looking backward as well as forward", as he did in June 2004.⁵⁶

The problem with this approach is that it authorises the Assembly to act only where it has clear and explicit authority to do so. In other cases, its legislation would be beyond its powers and as a consequence void. It creates the problem of deciding, in each case, what an Act (and each clause in it) is 'about', and how it relates to the powers conferred on the Assembly. That would be time-consuming and complicated, and lead to constant uncertainty about the scope of devolved powers and whether Assembly legislation was in fact valid.

⁵⁵ The Assembly responded to this by establishing an ad hoc committee to consider each measure. These included both bills at Westminster and orders in council.

⁵⁶ 'Creative approach could spare us years of arguing', *Western Mail*, 26 June 2004, p.12. The suggestion that this be some form of secondary powers is unworkable, and this sort of solution is probably the only way of implementing that idea. See also A. Trench 'Rhodri's

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It also creates the problem of deciding what happens if those powers are exceeded. In the case of the Scotland Act 1978, that would have mainly involved negotiations between the devolved authorities and the UK Government, but the Secretary of State had extensive powers (under section 38 of the Act) to decide whether to submit legislation for Royal assent. Those powers were more akin to the governor of a colony than a UK Minister responsible for relations with a devolved legislature, and – if the Act had ever come into effect – would probably have made it unworkable. This model would therefore leave Wales in a very similar position to the one it is in at present – heavily dependent on Westminster's goodwill to act and especially to pass legislation.

This is obviously not an attractive option. It is likely to create a good deal of intergovernmental wrangling, or litigation, or both, to decide if a matter is a devolved power or not. Because the Assembly would have wider scope to act, though, the consequences of things going wrong would be more serious too.

Imagine the Assembly seeking to extend the use of Welsh in schools. That might relate to devolved matters like education or the Welsh language, but would have implications for other matters like equal opportunities and labour mobility as well. Either the legislation would be held up while the Secretary of State referred it to the courts, or a third party might challenge it months or years later. The courts would have to decide a narrow technical point which would have dramatic practical issues at stake. Those legal uncertainties are inevitable even if both governments are seeking to co-operate with each other. If they had major political or ideological differences, it would be even worse.

The 'Scottish Model'

What the Richard Commission recommends is what it calls the Scottish model. This means key aspects of the form of devolution that the Scotland Act 1998 creates – a Parliament, an Executive accountable to the Parliament, with a generous grant of legislative powers. Those powers are general – the Scottish Parliament can do anything, except legislate on matters reserved to Westminster. Those lists of reservations (set out in Schedules 4 and 5 to the Act) are extensive and complicated, but mean that Westminster deals exclusively with matters such as the economy, foreign affairs, defence, citizenship, nationality and immigration, and social security.

Holyrood has competence over all other matters, including criminal justice, policing, education, health, local government and the environment. Because the powers granted are general but subject to reservations, cases at the margin are likely to be within the Parliament's powers not outside them – and that is made more likely by various mechanisms to help the courts construe Holyrood's powers broadly not narrowly.⁵⁷

Similarly new subjects – regulating new technologies, for example – will be within devolved competence. That helps to avoid the sort of legal uncertainty that bedevils the 'defined functions' model. There are also ways under the Scottish settlement to transfer additional functions to the Parliament (in other words, to remove them from the 'reserved' list) or deal with other problems about the border between reserved and non-reserved matters, if both Westminster and Holyrood agree.⁵⁸ Considerable use has been made of these powers; there have been about 27 orders since devolution.

It is not hard to see why the Richard Commission was so tempted by the Scottish model. It is now reasonably well-established and can be seen to work well. Its essential features can easily be understood by the public at large, but it is also a flexible instrument that creates a substantial degree of autonomy for Scotland. Consequently, it should be able to work well even if there are major political problems between London and Edinburgh. While there would be problems with intergovernmental relations if that happened, it would be far easier to resolve such difficulties under the Scottish model than under any other. Initial concerns about the implications of a single-chamber Parliament for proper scrutiny of legislation have proved to be ill-founded, mainly because of work done in scrutinising a bill and consulting the public on it that is undertaken by one of the Parliament's committees at Stage I of the legislative process.

At the same time, there are plenty of safeguards for the UK Government under the Scottish model. The Scottish arrangements do not mean that Scotland has been able to drift off into legislative isolation. One relates to competence: the Parliament cannot pass legislation that is contrary to the European Convention on Human Rights or European Union law.

⁵⁷ See Scotland Act 1998, sections 29(3) and 101.

⁵⁸ These provisions include sections 30, 63, 105, 107 and 108 of the Scotland Act 1998.

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The UK Government's lawyers carefully check all Scottish legislation to make sure it complies with these requirements, and can refer it to the Judicial Committee of the Privy Council if they have concerns.⁵⁹ The Presiding Officer has to certify that all bills are within the Parliament's legislative competence on their introduction, as must the Executive for all its bills.⁶⁰ That usually means that three sets of specialist lawyers (the Scottish Executive's, the Scottish Parliament's and the UK Government's) scrutinise each piece of legislation to check the Parliament can pass it.

Westminster still remains sovereign in any event – just because a matter is devolved does not mean that Westminster cannot legislate on it. It can and does. However, it has accepted the restraint of only doing so with Holyrood's consent, under the 'Sewel convention'.⁶¹ During its first session (1999-2003), Holyrood passed 62 Acts. During the same period there were 42 Sewel motions approved for 39 Westminster bills dealing with devolved matters. Not all those Sewel motions would have justified an Act of the Scottish Parliament. In many cases, the Sewel motion was used because it was simply not worth finding time or space at Holyrood for a one or two-clause bill covering a matter already being dealt with at Westminster. Some bills had more than one Sewel motion, either because the Scots decided to sign up to additional measures after approving a Sewel motion, or because of amendments made to a bill after it started its Parliamentary proceedings. But some bills with Sewel motions were large-scale, important pieces of legislation with major effects on devolved matters: the most notable example was the Proceeds of Crime Act 2002, enabling the profits of criminal activity to be confiscated even if there was no criminal conviction. Yet it is hard to conceive of the Assembly sticking exactly to that template. There seems to be little demand for the National Assembly to have the sort of tax-varying powers the Scottish Parliament has – the Commission's discussion concluded without a formal recommendation, as being desirable not necessary, and the First Minister has expressly rejected seeking such a power on the grounds it would give little benefit and is probably unusable anyway.⁶²

⁵⁹ Scotland Act 1998, sections 33 and 35.

⁶⁰ Scotland Act 1998, section 31.

⁶¹ Named after Lord Sewel, a Labour Government Minister responsible for helping to take the Government of Scotland Bill through the House of Lords in 1998, Sewel motions allow the UK Parliament to pass primary legislation in devolved areas on behalf of the Scottish Parliament. This is done at the request, or with the express consent, of the Scottish Parliament.

This is probably right. While tying Wales tightly to UK Government funding under the Barnett formula may not be appropriate in the long term, there is little alternative in the short term, and it would be better for Wales to look to the sort of wholesale renegotiation of Barnett in ten or twenty years than go down a blind alley now.

Wales also will not get the sort of competence for law and order matters – policing, prisons, the criminal law and prosecutions – that Scotland has. Similarly, Holyrood has powers in relations to land law and Scottish civil law generally, which would not be appropriate in the case of Wales. North of Hadrian's Wall that builds on a long history of distinct institutions and practices in that field, and disentangling the Welsh part of those arrangements would be complicated practically as well as being likely to provoke opposition in the short term.

The case the Richard Commission makes for the Scottish model is a strong one. It offers a sound and workable model for devolution in Wales, and one which can easily be understood by people in Wales and in other parts of the UK. If the Assembly is inherently unstable – as practically all observers consider it to be – what replaces it needs to be stable and effective. The Scottish model can offer that in a way no other approach can. However, that raises the question of what the impact of becoming a legislature would be for the Assembly.

GETTING THERE FROM HERE

However its powers are broadened, a number of important questions will arise for the National Assembly in the future. This section will look at four of these: the implications of Wales legislating for itself, the relationship it will continue to have with Westminster, the roles back-bench Assembly Members and Welsh Assembly Government Ministers will play, and the staffing and practical implications of acquiring such powers.

Wales Legislating for Itself

A National Assembly able to legislate properly for Wales, not just to develop its own policies which must be implemented in co-operation with Whitehall and Westminster, would be a much more powerful body than it is now. It would enable Wales to provide for its own needs by shaping and delivering its own political and legislative programme. Welsh politics

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If relations with the UK Government were to worsen (and that is inevitable, sooner or later) the Assembly and its Government would be able to deliver their programme. That is a major step forward. It will not mean that what happens in Whitehall and Westminster is irrelevant to Wales, but will enable democracy in Wales to be workable.

It will have other major advantages. As well as delivering on Welsh priorities, the Assembly and Government will be able to manage the statute book for Wales, at least for devolved matters. Instead of being scattered across several pieces of primary legislation and a considerable body of secondary legislation, often drafted by different hands taking different technical approaches to the problems they face, the Assembly will be able to ensure that its legislation forms a single and accessible whole. Users of that legislation will be able to find it and make sense of it much easier than they can at present, where it calls on a raft of legal skills just to find the material. Although sterling work has been done at Cardiff Law School and its 'Welsh Legislation On-line' database to make matters clearer (without, it might be added, any help practically or financially from the UK Government), that is not the solution to the problem.⁶³

However, the question remains of how active a legislature the Assembly might be. The Richard Commission took at face value evidence from the Assembly's Permanent Secretary and Counsel-General, and assumed that there would be no more than four to six bills a year. That is probably a serious underestimate. It omits private members' bills and other non-government bills (in Scotland, Parliamentary Committees can propose bills, and there were 3 Committee bills in the Parliament's first session). Holyrood passed 62 Acts between 1999 and 2003, and 42 of those dealt with the sorts of matters one would expect to be devolved to the Assembly. That suggests the Assembly would have something nearer than 10 bills a year to deal with rather than five.⁶⁴

That greater legislative workload suggests that the Assembly would play a more prominent role in Welsh politics and Wales's public life than expected. It might be a small parliament, but it would be an important and active one.

⁶³ The database is at www.waleslegislation.org.uk.

The Continuing Role of Westminster

Westminster will remain important for Wales, even with such a busy National Assembly. It will be the sole legislature for all non-devolved or reserved matters, as it is for Scotland. Major issues – whether to go to war or not, whether to join the Euro or accede to the European Constitution, whether asylum-seekers should be entitled to benefits, and probably what powers the police should have – will be dealt with in London. That leaves a major role for Welsh MPs. But Westminster will also serve as a second legislature for devolved matters. Robert Hazell has described Wales's position under the present arrangements as the worst of all worlds, able to determine a policy but not to implement it, while Scotland effectively has two legislatures in Holyrood and Westminster, and so gets the best of both worlds.⁶⁵ It is therefore worth considering how the convention works in Scotland, because (as the Richard Commission concluded) similar principles are likely to govern what happens in Wales too.

Legislative relations between Holyrood and Westminster are governed by the Sewel convention – the principle that Westminster will only legislate for a devolved matter with the consent of the devolved legislature responsible.⁶⁶ Of the 40 Westminster Acts between 1999 and 2003 that had Sewel motions, 20 dealt with the sorts of matters that would be likely to be devolved to the National Assembly.

That number might well be higher for Wales, as many bills intended to deal with concerns originating in England will have effects on the Assembly too, either because of a knock-on effect in policy or because of a need to manage the physical border between England and Wales. In no case has Holyrood (yet) rejected a Sewel motion, although the SNP have opposed a number and such a rejection will occur sooner or later. When that happens, the problem is likely to be greater for the UK Government than the Scottish Executive, as the initiative for such measures generally comes strongly from London.

⁶⁵ R. Hazell, 'Multi-level Governance' in J. Osmond and J. Barry Jones (Eds.), *Birth of Welsh Democracy: The First term of the National Assembly for Wales*, IWA, 2003.

⁶⁶ For detailed discussions, see House of Lords Select Committee on the Constitution in its report on *Devolution: Inter-Institutional Relations in the United Kingdom* Session 2002-03, (London: The Stationery Office, 2003), chap. 4, and P. Cairney and M. Keating 'Sewel Motions in the Scottish Parliament' *Scottish Affairs* no. 47 (Spring 2004), pp.115 –134. The convention itself is set out in the *Memorandum of Understanding and supplementary agreements between the United Kingdom Government. Scottish Ministers. the Cabinet of the*

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Sometimes the Executive wishes to 'sign up' to a UK policy, to save legislative time or because it thinks it is inherently a good idea. There is also a concern to avoid creating legislative gaps which could be exploited by those determined to do so (a particular concern with the Proceeds of Crime Act). However, what often drives a Sewel motion is the desire of the UK Government to have certain provisions extend to Scotland. Sometimes – as with the Proceeds of Crime Act – this involves extensive changes to Scottish law as well as the law for England and Wales. On many other occasions, the extent to which the Westminster legislation affects devolved matters is limited – one or two clauses, with not much substantive effect. Nonetheless, a cautious approach has been taken to such legislation by the Executive which has always sought Holyrood's consent.

Even in cases where Scotland has not signed up to Westminster legislation, it has found it hard to resist the pull of what is proposed for England and Wales. An example is the case of the Fur Farming (Prohibition) Act 2000. Although there were no fur farms in Scotland (or Northern Ireland) at the time, the risk that they would set themselves up north of the border was such that the Executive introduced a similar bill at Holyrood (as also happened at Stormont), as a pre-emptive measure. That sort of tendency will not go away, even with a legislative Assembly. The political programme for the whole of the UK is to a considerable degree set in London, and Cardiff will have to respond to that if only to reject it. What Rick Rawlings has called "the uniquely powerful geo-political concept of England and Wales" will continue to exert much pressure on Wales, both in the diffuse political sense and in the hard administrative legal sense.⁶⁷ A legislative Assembly will enable Wales to opt out of the UK Government's initiatives, but it may take nerve to do so. However, even without opting out of initiatives, legislative powers would enable the Assembly to decide when to act, as well as the precise way it wanted to act.

The Role of Ministers and AMs

An Assembly legislating at a rate of ten bills a year will be busier than the Richard Commission perhaps anticipated. That reinforces the need to ensure that there are enough AMs to handle such powers, to ensure that legislation is debated and scrutinised properly, as well as holding the executive to account.

The need for the Assembly to have 80 AMs is therefore even stronger than the Commission suggests. In this context, however, the roles of Ministers and back-benchers will need to change. This is partly a consequence of the other main recommendation of the Commission, to split the Assembly's parliamentary and executive sides legally not just in practice. That would mean, for example, Ministers coming off Assembly Committees, and taking a clearer line as the person making policy as part of the executive, rather than in co-operation with committee members.

Reduced involvement in committees would also free their time, so instead of preparing for and attending committees they would be able to attend to other business. The great hazard for Ministers, both individually and collectively, would be the risk of encouraging expectations they could not fulfil, for lack of resources or legal powers – a 'capability-expectations' gap.⁶⁸ That is something that can be guarded against by trying to prevent expectations developing of a golden dawn happening the day after powers were granted.

The shift for AMs outside the executive will be greater. The first aspect of this will be scrutiny. The Richard Commission report judges that in this area the Assembly could do a lot better.⁶⁹ And compared with what happens at Westminster, its efforts do seem remarkably limited.⁷⁰ AMs will need to raise their game, and can learn much from what happens in the UK's other legislatures. The importance of committees, and committee work, is likely to increase – that is where much of the detailed work of scrutinising legislation will be done. That will mean avoiding regular changes in the composition of committees, so their members can develop expertise in its subject matter, as well as a more systematic approach to controlling their work programmes than appears to be the case at present.

⁶⁸ For a discussion of such a gap in the Scottish context, see J. Mitchell 'Scotland: Expectations, Policy Types and Devolution' in A. Trench (ed) *Has Devolution Made A Difference? The State of the Nations 2004* (Thorverton: Imprint Academic, 2004).

⁶⁹ Richard Commission report, Chapter 4. See also M. Sandford and L. Maer, *Scrutiny under Devolution* (London: The Constitution Unit, 2003); and M. Sandford and L. Maer, *The Development of Scrutiny in the UK: A review of procedures and practice* (London: The Constitution Unit, 2004).

⁷⁰ Compare the work done by the Assembly's Health and Social Affairs Committee on what became the Health (Wales) Act 2003 and that of the Commons Welsh Affairs Committee. The Assembly Committee did not produce a formal report (although it did take part in some of the Commons Committee's deliberations), while the Welsh Affairs Committee produced a very good one: see House of Commons Welsh Affairs Committee *The Draft National Health*

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Even if the Assembly is more active in legislating than Richard expects, it will not be a prolific source of legislation. There is a model in Europe for a sub-state assembly with legislative powers which only enacts modest amounts of legislation and operates in a close relationship with its country's central legislature and government. That is the *Landtage* or state parliaments in Germany.⁷¹

The structure of German federalism means that much activity takes place between governments, and the governments of a state play a key role in Berlin as members of the upper house of the federal parliament, the *Bundesrat*. But the *Landtage* are keen to increase their importance, and already have the resources to match. It is telling that in the *Länder* similar in size to Wales – Schleswig-Holstein with 2.8 million inhabitants, or the Rhineland Palatinate with 4 million – have larger *Landtage* than the Assembly, with 75 and 101 full-time members respectively.

It may be worth the Assembly looking more closely at such a parallel, for working practices, resources and support structures, as well as to some of the other models (for example, in Canada) that it has used to date.

Staffing and Resources

That German parallel may be particularly useful for understanding the practical needs of an Assembly with primary legislative powers. One area where the Richard Report is open to criticism is that it underestimates the problems this would create. Part of the reason for this is that, as suggested above, the report significantly underestimates the likely volume of legislation.

Dealing with legislation may mean extra staff for the parliamentary side of the Assembly. But the main challenge will be for the Assembly Government, which will be responsible for the bulk of the drafting work for the new legislature. The Richard Report budgets the cost of drafting as being £500,000.⁷² That would equate to a drafting office about the size of that in Northern Ireland, which has seven drafters and one support staff. By contrast, the Scottish Parliamentary Counsel now number 15, having doubled in number since devolution.

⁷¹ See A.B. Gunlicks *The Länder and German Federalism* (Manchester: Manchester University Press, 2003), especially chan. 6. or R. Sturm *Föderalismus in Deutschland*

A Northern Ireland-sized office is unlikely to be adequate, especially given the Assembly's commitment to work bilingually - it already drafts secondary legislation in both English and Welsh and is committed to continue doing so.⁷³ That will increase the staff needed, either because bilingual drafters will work more slowly than monolingual ones do, or because of the extra time and work to translate legislation.

The problem is not so much with the cost of running the drafting office – even an extra £500,000 is small in the context of the Assembly's total budget. Rather, the problem is the time it will take to train such drafters. When he was the Assembly's Counsel-General, Winston Roddick QC, suggested that primary powers were only a step-change, not a quantum leap. However, that view was based on the judgement that members of his office had gained sufficient experience drafting secondary legislation so as to move with relative ease to drafting primary legislation. However, with all respect to the Counsel-General and members of his office, such a view is questionable. Even Whitehall lawyers (who are similarly trained to draft secondary legislation) need full training if they wish to become Parliamentary Counsel, a process that normally takes a qualified lawyer with a year or two of professional experience a further seven or eight years. It will not be the straightforward process Winston Roddick appeared to anticipate.

Given how long a training that is, the Assembly needs to start thinking soon about how to acquire that sort of expertise if it is to be ready in 2011 to take on primary powers. That is just seven years away, not long to train draftsmen. One way of building up those skills will be to develop relations with the UK Government's drafters, in Parliamentary Counsel's Office. That could take the form of secondments, or sending Assembly staff there to follow their training, but would require the support of the Secretary of State to make happen. At the same time the UK Government is not the only source of such expertise. It could be sought from Scottish Parliamentary Counsel in Edinburgh, the Northern Ireland Legislative Counsel in Belfast, or even the Office of the Parliamentary Counsel to the Government for the Republic of Ireland in Dublin. All have experience of preparing legislation in the same sort of legal and drafting environment as Wales would acquire, and can offer the further advantage of being used to doing so for small countries and with small legislatures. This is a job that will require early commitment from the Welsh Assembly Government's chief legal adviser, if the Richard Commission's timetable is to be met.

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WHAT SORT OF A LEGISLATURE?

The present arrangements for devolved government in Wales are already creaking at the seams. They are underpinned by having Labour governments in both Cardiff and London, and will be very hard pressed to survive a change of government at either end. It is therefore important that all politicians committed to Welsh devolution use the present favourable climate to deliver a coherent and durable settlement for Wales.

If the Richard Commission's report is implemented, the National Assembly will be a distinctive sort of legislature. Even with 80 members, it will be small and close to the people of Wales. With the Assembly's existing commitment to bilingualism, it will work in an unusual way. It will still have a close relationship with Westminster and the UK Government's programme and concerns. Co-operation will still be very important: the National Assembly will not be able to drift off into a different sort of world. Welsh MPs will have a key role to play in linking the two bodies to each other. But such an Assembly will also be able to use its autonomy to function in a distinctive way. It will have many good reasons to co-operate with Whitehall and Westminster, but not be compelled to in the way it has to under the present arrangements. While there are a few areas where the report's analysis can be criticised, these are limited in scope or effect. Its thrust is right, and its apparent radicalism is because there is no real alternative. Wales needs proper devolution, or it may as well not bother.

Is there an alternative to the Richard Report? In June 2004, Rhodri Morgan signalled he thought there was and plumped for a version of the 'framework powers' option the Richard Commission thought workable as a transitional measure, claiming it was a 'creative approach'.⁷⁴ This option is unlikely to be workable constitutionally or practically, and considered more broadly has few political attractions either. Its only merit is to avoid a battle in the Welsh Labour Party. Let us hope that the First Minister will rediscover his political courage soon.

⁷⁴ See R. Morgan 'Creative approach could spare us years of arguing' *Western Mail*. 26 June

Chapter 4

THE BEST ELECTORAL SYSTEM

Laura McAllister

So much attention was focused on the vexed question of extending the powers of the National Assembly for Wales that the second part of the Richard Commission's terms of reference was initially ignored. This applied equally to both public and academic interest and, albeit in a different way, to the planning and organisation of the Commission's own work schedule. It is interesting, therefore, that the Commission's unanimous recommendations for changing the Assembly's electoral system proved amongst the most radical and far-reaching of those set out in its report. It is also significant that this was the area upon which few anticipated agreement from a politically diverse Commission. One suspects that some of the verdicts on the Richard report as "far-reaching and progressive", and "unexpectedly radical", were directed at the recommendations for switching to the Single Transferable Vote (STV) system.

Perhaps the first thing to say is that the STV recommendation, using multi-member constituencies to elect an enlarged Assembly of 80 members, emerged from interpretation of the evidence presented to the Commission, as well as that already in the public domain. It represented an analysis of the electoral system options, judged against a set of criteria the Commission had established for itself. It is also true that this area saw most movement within the Commission. Some members began with a deep-rooted, historical affinity for First-Past-The-Post (FPTP), based largely on its straightforward member-constituency links and its likelihood of producing majority government. Others had an ideological commitment to proportional representation (PR) and some were simply agnostic.

This underlines the healthy shifts that occurred, permitting the Commission to reach its unanimous verdict. However, this did not represent an evangelical conversion to STV, a system devised independently by an English lawyer and a Danish mathematician. Instead, the Commission found itself staring STV in the face as the only appropriate system that met its own criteria for electing an enlarged

BACKGROUND

Reflecting a strong steer from the Liberal Democrats in the partnership government that was responsible for establishing the Commission, the terms of reference directed it to two key areas: the depth and breadth of the Assembly's powers, and the Assembly's electoral system, its size and representativeness. It is not hard to see the joins between the two coalition parties. Labour would scarcely have welcomed the opening up of further debate on PR when many of its members were at best unconvinced in the first instance. It had taken some skilful bargaining and horse-trading to get the 1997 Welsh Labour Conference to back the current AMS system at all. The terms of reference presented a formidable work schedule that involved exploring two very different areas, each with its own literature, complexities, arguments and counter arguments. Although the Commission scheduled its time to examine each part of the brief separately, it soon became clear that there was an inherent and necessary link between powers, size and the electoral system. Consequently, the Commission avoided imposing any formal boundaries between its consideration of the two areas, seeing them as distinct but not separate. This connection was to become more and more important as the Commission's work progressed.

An independent commission faces rather unique pressures. Some doubts were cast at the outset as to just how rigorous and challenging the Richard Commission would prove to be. Its members were certainly a mixed bunch. Yet, instead of being an obstacle, this became one of its strengths, as was a determination not to adopt an overly technocratic approach. The Commission took a healthy scepticism towards the views of the technocrats or 'insiders', always looking to balance their arguments with those of the general public and its own collective experience and evaluations.

The terms of reference were somewhat unfairly described as "tortuous". In reality, they posed few problems for the Commission's operation and it rightly pushed at their boundaries where necessary. In adopting a practical approach to the investigation, inviting hard evidence of where and when all of the components of the existing settlement - powers, number of AMs and the electoral system - had hindered the operation of good governance, the report was bound to be evidentially based. At the same time, the Commission was mindful that, in the final instance, evaluative judgements were needed to reach its recommendations.

Later, in the report-writing phase, it was conscious of the need to make the report holistic. It should show that the different recommendations were interlinked to offer a coherent blueprint for improved governance. This was evident in the final report, which adopted a strong sequential direction, showing clearly that having reached decisions as to the extension of the Assembly's powers, it then became necessary to make related recommendations on numbers and electoral system. It was also mindful that the recommendations should point to a sustainable 'solution', since the constitutional issue was unlikely to be revisited in the medium term. Any change also had to improve the clarity of the settlement for the sake of accountability, so that the people of Wales would know better where responsibilities and power lay.

THE IMPORTANCE OF ELECTORAL SYSTEMS

The method of electing members in democratic political systems can form the heart of good governance models. There were hints at this in the White Paper, *A Voice for Wales*, where reference was made to the need for inclusiveness and to ensure that all sections of Welsh society were represented in the new Assembly. Fundamentally however, the inclusion of an element of PR in the Assembly's election was the price Labour knew it had to pay to gain the support of the other parties for its devolution proposal and in order to win the referendum in 1997. It was also felt to be a method of election that would not jeopardise Labour's prospects of winning a majority of the seats in the Assembly.

In examining the second part of its brief, the Commission set itself two important principles: first, that size follows function, and second, that an increase in numbers would be justified only by a greater workload for AMs. These were hardly earth shattering conclusions, and simply underlined the practical, logical impetus that drove the Commission's deliberations. What they do emphasise is the direction or sequence of the recommendations for change. Had there been no recommendation for additional powers, there could be no justification for a change to the existing electoral system. The direction of the consequential is especially important for it underlines the rationale behind the report's overall recommendations. If the Commission was convinced that the Assembly should accrue additional powers, then the number of AMs should increase. This then meant revisiting the electoral system to ensure proper operational capacity and human resources for effective scrutiny.

THE OPTIONS

The Commission's deliberations on electoral alternatives were structured around seven key considerations:

1. The degree of importance attached to maintaining Westminster constituency boundaries in Assembly elections, the issue of "co-terminosity".
2. The relative advantages of continuity from retaining the Additional Member System (AMS).
3. Possible enhancements of AMS, such as changing the balance of members elected by each part of the ballot to improve proportionality.
4. Using a national list rather than the current regional lists within AMS.
5. Replacement of AMS with another PR system.
6. Replacement of AMS with a majoritarian system.
7. Consideration of any other options.

Methodologically, consideration of these options had to entail some sort of 'SWOT analysis' of the current system, set against the alternatives. The Commission was assisted by what had gone before: there was plenty of evidence already collected on electoral systems that helped it avoid 'reinventing the wheel'. The Commission was also keen to explore those systems already operational, close to home and further afield.

The Commission researched material collected by the Independent Commission to Review Britain's Experience of PR Voting Systems; the Sunderland Commission report on Local Government Electoral Arrangements in Wales; and the various systems for electing the Scottish Parliament, the Northern Ireland Assembly and in the Republic of Ireland. However, in truth, these formed little more than an empirical background for the Commission's deliberations. As befits an independent commission, decisions were reached against a self-styled "best for Wales" criteria and the vision for the Assembly it had constructed. Not a lot of attention was given to the logic of the views reached by other investigations.

The terms of reference had also directed the Commission to the issue of representativeness which, of course, is subject to a wide range of interpretation. The Commission settled on five principal objectives:

1. Identity between elected member and the area represented.
2. A match between the share of votes cast for each party and the number of seats won.
3. Reflection of the population at large within the Assembly's membership, based on gender, age, ethnicity, and disability.
4. Representation of different interests.
5. Consideration of the policy profile of AMs and whether their own priorities reflect the concerns of the people as a whole.

Taken together, these offered a broad and comprehensive framework against which to test different electoral systems and their likely outcomes in patterns of votes and seats.

There was some discussion as to the role of a more proportional electoral system in boosting turnouts. This was deemed important in the light of disappointing turnout in 1999 and 2003, although the local and European elections of June 2004 saw improved turnouts of 45 per cent and 41 per cent respectively. There is no concrete evidence that more proportional systems boost turnouts, although some estimate PR can enhance turnout by between 3 and 12 per cent.

FIT FOR PURPOSE?

Adopting a practical approach to the Commission's brief meant the need to establish some critical foundations that would shape conclusions. These took the form of three key questions:

1. Is the Assembly able to carry out its designated responsibilities with 60 AMs?
2. Is there scope for additional capacity and absorbing further workload with this existing membership?
3. If additional powers and functions were accrued, what is the optimum number of AMs?

The conclusions set out in the report in answer to these questions show a clear direction or consequential that is vital to any explanation of the Commission's electoral system recommendation. The Commission concluded that the Assembly as it is currently structured does not have all the tools to provide good governance. Therefore, it should have primary law-making powers to ensure it is able to deliver, where appropriate, effective and distinctive Welsh policies according to its own

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Having reached this conclusion, the Commission had then to examine the questions of resource and capacity. It identified some scope for more efficient use of time and personnel without any change to the way that the Assembly was currently constituted to absorb the additional work that primary law making powers would bring. However, this slack was judged insufficient to support the full burden of extra powers. Thus, the Commission recommended the minimum feasible increase of one third, to 80 AMs, with the proviso that this should be accompanied by a review of internal procedures to free up any additional capacity. Again, the importance of having sufficient capacity to take on vastly expanded scrutiny duties was a key driver. Scrutiny interaction works three ways: of government or the executive, by its own representatives, and by the opposition parties. This makes the question of the scale of representation of each of the different parties all the more crucial.

These conclusions were evidentially based, grounded in precedent, and reached by the Commission using its own analysis. At this point it faced the equally significant question of the best electoral system for the Assembly.

NARROWING THE OPTIONS

In undertaking an elimination process, the Commission was prompted by the ideal or prototype electoral system it had constructed from core principles and related definitions of representativeness. Aware that no perfect electoral system exists, it was able to methodically 'tick off' systems against these criteria, practically counting up the points in favour of each system.

Some were jettisoned right away. First was the Additional Vote, where voters rank candidates 1,2,3 etc., with the candidate with lowest votes eliminated and votes redistributed to the next-placed candidate until one gains an absolute majority. This was ruled out because it offered little clear improvement on AMS and could prove even less proportional. The Supplementary Vote, where only the top two candidates are retained and have the eliminated candidates' votes reallocated to them was also rejected because it might prove even less proportional than AMS. The Additional Vote Plus, which combines AV in single member constituencies with a party list - a proposal made by Lord Jenkins' Commission for the House of Commons - is close to AMS.

However, the Commission felt it offered few real advantages over AMS in the Welsh context. Three remaining alternatives were then considered:

1. First Past the Post

A return to a majoritarian system was rejected on two bases: principled and practical. It was felt indefensible to return to FPTP for two reasons: first, the PR rubicon having been crossed, a return to FPTP would put Wales out of line with all of the other devolved administrations in the UK and undermine New Labour's commitment to PR, at least for all second order elections. This was set against the final stages of the Local Governance (Scotland) Bill on moving to STV for council elections in Scotland, as well as Lord Falconer's planned review of the voting system for the House of Commons.

Secondly, the pattern of partisan voting in Wales would have meant that most parties would have their representation adjusted either to well above or below their true level of support. For example, on the basis of the 2003 Assembly election results, Labour would win three-quarters of the seats in a 60 member Assembly, having secured 40 per cent of the vote, whilst the Conservatives, with nearly 20 per cent of the vote would have won only one seat. Similarly, the reduction in the representation of the smaller parties in what remains a compact legislature would have serious scrutiny implications for the operation of the body.

2. Changes to AMS

The Commission considered carefully arguments in favour of reform of the existing AMS system. Most of these centred on the key feature of AMS, the creation of two types of elected member. Most popular were suggestions for distinguishing more formally between the two types of AM: those elected in the constituency ballot and those elected from the party regional list. Amongst the proposals were the introduction of protocols to regulate competition between the various AMs in the same geographical area. However, there was no real evidence from Scotland - where such protocols already exist - of any radical improvement and they had proved extremely difficult to enforce.

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Replacing the regional list with a national one might exacerbate the gaps between the two types of member. Limiting candidates to standing on one ballot only would pose selection problems for the smaller parties and reduce active campaigning for the regional candidates. This last proposal came predominantly from the Welsh Labour Party in the period after the 2003 election. Labour currently has no regional AMs and has become increasingly indignant by the activities of opposition parties' AMs in Labour-held constituencies, accusing them of cherry picking specific local issues whilst ignoring others. They were also critical of such candidates having already been unsuccessful on the constituency ballot.

The Commission considered the so-called 'Clwyd West question' where all four main party candidates were elected to the Assembly in 2003, since all defeated candidates in the constituency ballot were elected via their party's regional lists. There is an alternative perspective which does not regard this as a problem. For instance, candidates who were narrowly beaten in the constituency ballot, such as Plaid's Helen Mary Jones who lost by just 21 votes in Llanelli, were given the opportunity of being elected via the regional ballot.

There were also calls to replace the closed party list with an open one, whereby voters could indicate their preferred individual candidate from the party list. Yet this might limit the opportunities for promoting a diverse range of candidates – another dimension of representativeness. It is interesting that the issue of a closed list was subject to further criticism in the European elections of June 2004.

It is also worth noting that most of the above changes would require amendments to the Government of Wales Act.

3. STV

The flaws in alternative systems, together with unconvincing suggestions for amendments to AMS left the Commission staring STV in the face. It is fair to say that few Commissioners rejoiced at this. There was certainly no evangelical conversion to STV. Nevertheless, it was clear that in order to follow the guiding principle of an evidentially based analysis, motivated by providing the Assembly with the tools for good governance, STV met more of the Commission's criteria than any

That is not to say that STV was Hobson's choice. Some Commissioners were positive and supportive of it as a system that met most of the Commission's requirements, whilst others were more pragmatically in favour. Nevertheless, the recommendation gained unanimous support.

The former Secretary of State for Wales, Ron Davies, told the Commission that STV had been considered by Labour in the mid-nineties but was ruled out on the grounds of practicality, as it would have necessitated a Boundary Commission review to create the new constituencies. Opponents of STV point to its infrequent use. It is seen by some as the "Anglo-Saxon method of securing proportional representation".⁷⁵

Others believe that it encourages coalition governments and electoral instability. It is also criticised for encouraging a form of 'parish pump' politics, with too much emphasis on local issues. Its counting system is also deemed overly complex and lengthy. The key argument *for* STV is that it is proportional, whilst allowing clear constituency member links. For the Commission, the merits of STV over the other systems under consideration were three-fold:

1. All members would have equal status and share the same relationship with the electors.
2. Most votes count, meaning 'safe' seats are unlikely, thus offering an incentive for all parties to campaign actively in every constituency.
3. There would remain opportunities for improving the representation of various interests, most especially the ethnic minority communities, from which no current AM is currently drawn.

What is interesting about this 'cost benefit analysis' of STV is that these merits might just as easily be construed as weaknesses by other evaluations. This underlines the difficulty of the methodology that shaped the Commission's final decisions on the best electoral system for the Assembly.

FUTURE ELECTIONS TO THE ASSEMBLY

The Richard Commission deliberately avoided stating precisely how STV might be implemented for Assembly elections. This lay outside its terms of reference and, aside from time constraints, detailed suggestions for putting the system into effect would have drawn attention away from the essential rationale for changing to STV.

The Commission did consider the issue of constituency size, and recommended that the new STV constituencies will have "...a range of four to six Members (and exceptionally of three Members in some areas)." The rationale for this was strongly located in a balance between proportionality and local accountability. Evidence was received - from the Parliament for Wales Campaign, the Electoral Commission and University College, London's Constitution Unit in particular - suggesting ways in which STV might be mapped in Wales. This included suggestions for constituencies created from pairing existing Westminster/Assembly ones, drawing up new seats or using the 22 unitary local authorities as constituency boundaries.

The advantage of the latter rested on its avoidance of time-consuming boundary reviews. The detail of these proposals did exercise the Commission, but more as a gauge as to how its core criteria might be met. It simply would not have been feasible to draw the new electoral map of Wales in more detail, given the other demands on time and attention.

Following the report's publication, Richard Wyn Jones and Roger Scully from the Institute of Welsh Politics at the University of Wales, Aberystwyth offered a specific proposal for how STV might be implemented in an 80-seat National Assembly.⁷⁶ They used pre-requisites based on simplicity, clarity, and the avoidance of protracted debate over constituency boundaries. They suggest an Assembly elected using twenty, four-seat constituencies, created through pairing the existing forty Westminster/Assembly constituencies. None of these would be overly large - all would be under 100,000 in population. They also make specific proposals for which constituencies to pair - Rhondda and Cynon Valley in the south, and Delyn and Alun and Deeside in the north, for example. These mirror some of the pairings suggested in evidence to the Commission.

Jones and Scully then map out possible results in a STV election, using the votes cast for each party in the constituency ballot under AMS in the 2003 Assembly election. What is most interesting about their projections is that, first, “it achieves almost an identical level of proportionality” to results under AMS, and second, that each party gains a similar proportion of seats in a STV election. Labour would win half of the Assembly’s 80 seats (compared with 30 of the current 60 seats), Plaid Cymru would win 19 (as opposed to 12 now), whilst the Conservatives would win 12 (11) and the Liberal Democrats eight (six).

This congruency with seats won under AMS might be construed as offering another compelling reason for recommending STV. Whether this convinces the opponents of STV, especially within Welsh Labour - and let us not pretend there are not many, at both senior and grassroots level - will depend upon whether their resistance is driven by ideological or practical reasons.

A DISPOSABLE PART OF THE REPORT?

No one, least of all the Commissioners, thought the electoral system recommendations would be universally popular, especially with the governing party in Cardiff Bay and London. However, suggestions that the STV proposal was always destined for the long grass may prove wide of the mark. The consultation and subsequent negotiations on the Richard recommendations within Welsh Labour were always bound to be delicate and difficult. It is interesting that the powers issue has so far proved as thorny as the question of size and electoral system.

Of course, the Commission had no control over the impact and outcome of its report. This made it all the more important that the conclusions and recommendations were based on its own evaluation of the evidence presented. This has clear advantages, in particular allowing the evidence to speak for itself set against a framework of core principles and criteria. Some rather compelling evidence regarding the limited alternatives for a better electoral system is described in the report. Set alongside the Sunderland Report on Local Government Electoral Arrangements in Wales, the report adds a balanced cross and non-party analysis of the suitability of different electoral systems for Wales. Clearly, there is no perfect system. Choices are entirely dependent on the subjective weighting of the criteria and variables.

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The new Wales - at the centre of which, according to the Richard Commission proposals would be a legislative Assembly - requires an electoral system that is fair, representative, relatively simple and produces the outcome for which most electors have voted. STV is by no means perfect, but it comes closer to meeting these criteria than any of the others the Commission considered. Having established a framework for measuring the efficacy of an electoral system, the debate now moves on to whether politicians prefer self or party interest to more objective measurements in judging which is the most appropriate.

To jettison the STV element of the blueprint for change would seriously weaken the thrust and integrity of the overall Richard Report. It was deliberately drafted as a holistic, interlinked blueprint for improved devolved governance. Carving out some of its central proposals weakens the logic of others related to powers and size and, in so doing, jeopardises the workability of the scheme as a whole. The lessons of a hurried compromise on constitution building in Wales are there for all to see. The Commission was asked to revisit the 'settlement' and make suggestions for improvements. This time around, one might legitimately hope for a clear, coherent, sustainable settlement providing the tools for good governance for Wales.

Chapter 5
POWER OF THE PURSE

Gillian Bristow

Finance is the critically important determinant of the National Assembly's policy processes and underpins all major policy decisions. Consequently it is no surprise that the allocation of financial resources from Whitehall to Wales, and by the Assembly Government within Wales has dominated political debate from the beginning. In its first term, the Assembly benefited from the generally rising tide of UK public expenditure which allowed for unprecedented increases in Welsh health and education spending. The process of allocating the budget also became much more open, democratic and transparent under devolution. The Assembly Government has taken full control of how its budget is to be spent and the Subject Committees have played an important role in determining spending priorities.

However, key questions continue to surround both the sustainability and efficacy of the current arrangements for financing devolution in Wales. For example, despite large health budget increases the Welsh health service remains in serious difficulties. Furthermore, continued large increases in expenditure on health and education threaten to distort expenditure patterns elsewhere, particularly in respect of economic development and the Assembly Government's not inconsiderable obligation to match fund Wales' current tranche of European programmes. Moreover, political attention is increasingly focusing on the implications of retaining the population-based Barnett formula as the mechanism for allocating changes in public expenditure to the devolved administrations. The formula has been sharply criticised, not least because it is believed to disadvantage Wales and the North East of England, particularly in comparison to Scotland. As a consequence, there have been growing demands for the introduction of a new, more transparent mechanism for financing devolution based on a through review of expenditure needs across the UK.

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The report of the Richard Commission elided these finance questions, choosing instead to applaud the advantages of the current fiscal arrangements. This chapter will explore the political complexities and as yet economic unknowns which explain the Commission's reluctance to propose radical change. It will be argued that it is what the report *didn't* say on finance that will inevitably dominate future discussions on the way forward for the constitution of Wales as the public expenditure largess of the first term fades to a more distant memory.

KEY QUESTIONS

In Chapter 10 of its report, 'The Financing of Devolution', the Richard Commission begins by acknowledging that the power of the purse is one of the most important of the Assembly's functions. It considers the adequacy of the Assembly's financial powers by addressing three key questions:

1. How effective are the financing arrangements in ensuring that the Assembly Government is accountable to the Assembly and to the electorate for its expenditure decisions?
2. Is the size of the Assembly's budget in itself a bar to the exercise of the power devolved under the present or a future settlement?
3. Are there any changes, such as revenue varying powers, which should be considered in the interests of improving accountability?

These questions are couched in objective terms, focusing quite specifically on the accountability of the Assembly's decision-making processes and the exercise of its powers, rather than seeking to address questions relating to the equity of the Assembly's financial settlement in absolute or relative terms. This is in keeping with the Commission's independent, apolitical remit. At the same time it does not in itself prohibit consideration of the mechanisms in place to determine the Assembly's budget and their outcomes for effective policy-making in Wales.

The Commission's findings relate to two key issues - the appropriateness of the mechanism for determining the size of the Assembly's budget, and how much (if any) of this budget should be self-financed through, for example, tax-varying powers.

DETERMINING THE SIZE OF THE BUDGET

In relation to the determination of the size of the Welsh budget, the Commission reached two major conclusions. Both exhibited a clear preference for maintaining the status quo. Firstly, it concluded that the existing arrangements for financing devolution and determining the budget available for public spending in Wales provide the Welsh Assembly Government with substantial budgetary freedom and allow for policy decisions in Wales to diverge from those taken in the rest of the UK.

These financial arrangements, it is observed, have changed little since devolution, although their operation has become more transparent and, perhaps, better understood. In short, the bulk of the Assembly's budget is provided via a block grant from central government, the annual changes in which are determined by the Barnett formula. The formula operates by allocating a proportion of every increase in public spending in England, to Scotland, Wales and Northern Ireland. The amount allocated is based on the proportion of each country's population to the population of England.⁷⁷

The Commission emphasised that one of the main advantages of this system is the high degree of financial autonomy it affords to the Welsh Assembly Government. The UK Government does not attempt to direct priorities in Wales by attaching conditions to the Assembly's funding, with the exception of some relatively minor constraints imposed by the Treasury on the use of resources generated by locally financed expenditure. As a consequence, the Assembly is free to allocate funding between services as it sees fit.

Furthermore, while the Commission acknowledged concerns about the adequacy of the budget, it emphasised that the Assembly Government has found the resources to diverge from standards of provision in England in a number of areas including student support, subsidised transport and prescription charges. In other words, the Assembly's budget has been sufficient to allow policy innovation to occur.

⁷⁷ See HM Treasury, *Funding The Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly: A Statement of Funding Policy*. HM Treasury: London: Third

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However, the Commission does provide a health warning. The current system means that the Welsh Assembly Government's overall budget is constrained by public spending decisions taken in Whitehall. Thus far the climate has been relatively benign. The early years of devolution have coincided with high levels of spending growth which are unlikely to continue. Indeed, the Assembly's 2004-05 budget takes the administration's spending to £11.9 billion. This represents a 6 per cent increase in spending on 2003-04 and means that the Assembly's budget for 2004-05 was some £4.5 billion higher than the 1999-2000 budget inherited from the Welsh Office. However, in more stringent public expenditure conditions the scope for policy innovation may be more limited and relations between Cardiff and London more strained as a result.

Secondly, the Commission concluded that "alternative methodologies for calculating the devolved Budget would require the agreement of the UK Government and the devolved administrations - we are not in a position to evaluate the options or their implications for Wales."⁷⁸ In other words, it concluded that replacing the Barnett formula with an alternative needs-based system for determining devolved levels of public expenditure is essentially a question for the UK Government which (as the Commission observed) currently has no plans to replace the present system.

PUBLIC SECTOR EFFICIENCIES

The immediate consequence of retaining the status quo in Wales is a pressing need for public spending efficiencies. In the context of a more frugal UK public expenditure climate and in the wake of the Gershon public sector efficiency review, public sector organisations in Wales, as across the rest of the UK, will be expected to make considerable savings in the years ahead. In the light of this the Welsh Assembly Government has published a consultation document on its proposed new model for the public services in Wales and its approach to achieving the required efficiencies.⁷⁹ The targets set for resource savings are ambitious, with a total of £600 million value for money improvements to be achieved by 2010.

⁷⁸ The Richard Commission report. Chapter 10: *Findings*. n. 212.

This is equivalent to around 5 per cent of the current total investment in public services, which in broad terms will require that public sector agencies become around 1 per cent more efficient year on year for the next five years.

This objective is to be achieved through a new, more co-operative model of service delivery in Wales, with scale economies to be achieved through more effective co-operation and co-ordination between agencies across the whole of the public sector in Wales and more innovative use of ICTs in service delivery. For example, it is estimated that £120 million's worth of value for money improvements are attainable through better, more collaborative, public procurement by 2008, building on the foundations laid by the Welsh Procurement Initiative.

There are already positive efforts being made across many of the major public bodies in Wales to achieve efficiency savings. Local government is already making good progress towards the development of more joint working arrangements, particularly in the area of routine, back-office functions. For example, Cardiff and Blaenau Gwent Councils have developed joint delivery of key IT services. However, there is room for further progress, particularly in relation to the development of shared service consortiums such as for the procurement of social care goods (medicines and health care equipment). Further progress is also needed in the area of e-government which is not particularly well-developed across Wales compared with England. More dedicated funding in the short-term for such initiatives will be needed to release resources over the longer-term.

THE CONTINUING DEBATE

The Commission's supine, holding position on the Barnett formula seems to square with pragmatic political realities which at present are strongly weighted in favour of maintaining the status quo. But this is unlikely to be the end of the story.

It is fair to say that the Barnett formula has proved to be a useful tool for determining what are essentially political decisions about what constitutes a 'fair' allocation of resources. It is relatively simplistic and affords a degree of certainty to the devolved administrations as to their annual changes in funding. Importantly, it also provides scope for a

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Indeed, the formula can be by-passed and additional, specific elements of public expenditure allocated to the devolved administrations without reference to it, as has occurred in Wales in respect of the additional public expenditure demands wrought by the Objective 1 programme.⁸⁰ This helps explain why the Welsh Assembly Government has also been reluctant to press for its reform.

As well as these pragmatic virtues, there are also strong political sensitivities around the Barnett formula and its operation which present very powerful obstacles to its immediate demise. The Labour government is itself divided over the need for and desirability of change. This fissure reflects the very different opinions that exist about the relative merits of dismantling a system which has provided Scotland with a sustained (26 per cent) per capita public spending advantage over English regions.⁸¹

There is growing disquiet particularly amongst north of England MPs as to the scale of this spending advantage and the extent to which it can be justified in relation to relative prosperity levels, and notions of justice or equity. For example, Scotland spends 11 per cent more per head than its neighbour, the north-east of England, even though its GDP per head is some 25 per cent higher.⁸² However, other Labour MPs fear that to challenge Scotland's spending advantage might threaten Scottish Labour and so hand a valuable weapon to the Scottish National Party.

To link devolution with cuts in public expenditure in the devolved territories would not present the most comfortable beginning to the devolution programme, particularly when the achievable public expenditure savings are likely to be limited given England's overall dominance in UK public spending terms. With Gordon Brown (a Scot) residing within this constituency, there is good reason to believe the Barnett formula will remain in existence at least as long as he is Chancellor.

⁸⁰ See Bristow, G. and Kay, A., (2002) 'Spending Autonomy in Wales: Setting the Budget within the Framework of the Barnett Formula', in Osmond J. and Jones B. (Eds.) *Building a Civic Culture: Institutional Change, Policy Development and Political Dynamics in the National Assembly for Wales*, IWA; pp. 83-96

⁸¹ Midwinter, A., 'Financing Devolution in Practice: The Barnett Formula and the Scottish Budget, 1999-2003', *Public Money and Management*, June 2004, pp. 137 - 144.

⁸² HM Treasury. *Prudent for a Purpose: Building Opportunity and Security for All*. Spending

A more immediate political obstacle to any reform of the Barnett formula has recently been provided in the shape of the resounding 'No' vote in the referendum on an Assembly in the North East of England. Although the continued operation of the Barnett formula was made explicit in the White Papers on both the Scottish Parliament and the Welsh Assembly, the formula is most likely to be replaced if regional assemblies are established in England. This is because the Barnett formula will not sit comfortably in the context of English devolution. To put it starkly, the formula itself is driven by changes in total English spending or a notional English 'block'. As soon as this block of expenditure becomes disaggregated, the basis for the formula disappears.

Moreover, the establishment of English Regional Assemblies would only serve to intensify scrutiny of the "fairness" of regional public expenditure differentials, and increase pressure for the introduction of a more comprehensive and justifiable method for assessing comparable expenditure needs.⁸³ The strength of the defeat for Labour's proposals for the North East has brought the constitutional reshaping of the UK to an abrupt halt and with it any immediate imperative for Barnett formula reform. This suggests that much of the English electorate is equally averse to radical change at present, and favours the low-risk status quo.

NEEDS ASSESSMENT

A more principled, objective argument for retaining the present financial arrangements relates to the challenge that will inevitably be posed by the search for a replacement. Bypassing the Barnett formula, or removing it altogether, creates a whole new series of questions about what to replace it with in order to achieve a fairer system of fiscal redistribution across the UK. The basic principle for judging the fairness of an any alternative system is relatively straightforward and difficult to object to: any particular area should be able to offer its residents broadly the same level of public services as another area, regardless of the level of economic prosperity and therefore the tax base in that area. This is the principle of equalisation - from each according to their means (tax base) and to each according to their needs.

⁸³ See Bailey, S. and Fingland, I... 'Convergence of Public Expenditures in UK Territories'.

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It is this last word, the definition of 'needs', that presents the major difficulty. The assessment of relative economic need is neither a simple nor a mechanical process and there is no single, universally accepted technique for its measurement. Needs assessments are inevitably technically complex. Their costs and potential economic and political distortions must be weighed against the potential benefits of developing a more equitable and cohesive system. It is relatively easy to see how factors such as geography (sparsity of population and mountainous terrain) and differences in population size impinge upon a region's public expenditure needs. It is much more difficult to assess needs which relate to economic and social deprivation and different rates of dependence upon public services. Amongst the key issues to be addressed are the following:

- **Assessment of service delivery costs and responsibilities.** For instance, the higher costs of delivering services in rural areas are usually recognised as something that should be compensated for by higher public expenditure. This is likely to lead to a redistribution of resources to less affluent areas in a way that would act to reduce regional disparities. However, congested areas such as London and the South East also face higher costs in delivering public services because of the need to pay higher wages to attract and retain employees in an expensive part of the country. Yet making an adjustment for these costs carries the danger of further bidding up wages and prices in these regions and actually increasing regional disparities. Adjusting for specific, more localised costs such as the additional costs of policing London given its large number of high profile terrorist targets, represents another potential area for assessment.
- **Encouraging equality of outcomes.** It is widely acknowledged that any needs assessment should aim to ensure public expenditure is allocated in a manner which reduces the disparities in, for instance, educational achievement, health status, and access to transport that currently exist across the UK. However, regions also need to be given the freedom to vary the provision of services to suit the needs of their own jurisdictions. It is thus the *capacity* for equality of outcomes that must be achieved, not strict equality of outcomes in levels of service provision in practice.

- **Incentivising economic growth.** A needs assessment will need to take account of the impact of deprivation on the costs of providing basic education services and/or the costs of enhancing educational opportunity in deprived areas (as well as such considerations as the number of pupils, and percentage of pupils in small schools). The differential incidence of ill health will also be an important factor to assess. These indicators will need to be carefully and sensitively selected so as to avoid providing perverse incentives for the regions to become and remain 'needy'.⁸⁴ Any needs assessment will have to be regularly updated so as to reflect changing conditions. Care will also have to be taken in making judgements about what weights to attach to different indicators. This implies a very detailed and informed understanding of the social geography of the UK nations and regions if the weights attached to indicators are to accurately reflect differential needs and be able to target resources accordingly. The partial and incomplete evidence of regional needs that currently exists will not suffice.
- **Helping regions adjust to the new expenditure relativities.** There should be explicit recognition of the political merits of gradual rather than sudden adjustment in levels of regional public spending per head.⁸⁵

It is also worth noting that a more sophisticated, needs-based system of allocating public expenditure across the regions will not necessarily remove the scope for political influence. However independent the committee administering it, any formula or needs based system would be subject to lobbying. Nonetheless, as long as the formula and associated system itself was itself explicit and open, it would at least have the advantage of greater openness in its conclusions over funding.⁸⁶

⁸⁴ McLean, I. and Macmillan, A., 'The Distribution of Public Expenditure Across the UK Regions', *Fiscal Studies*, vol. 24, no. 1, 2003, pages 45-71.

⁸⁵ Mackay, R., 'Regional Taxing and Spending: The Search for Balance', *Regional Studies*, vol. 35, no. 6, 2001, pages 563 - 575.

⁸⁶ McGovern, M., Kay, A., Bristow, G. and Pickernell, D. 'Fair Division or Fair Dinkum? Australian Lessons for Intergovernmental Fiscal Relations in the UK'. *Environment and*

A GROWING SOURCE OF TENSION

There are good reasons for arguing that ultimately these issues will have to be addressed and for stating that the Barnett formula does not offer a sustainable basis for allocating funds across UK regions over the long-term:

1. It is coming under increasing attack from a growing range of sources, with the SNP, Plaid Cymru and the Liberal Democrats all in favour of its reform. Indeed, as well as failing to quell disquiet in certain English regions and from some political parties in Wales and Northern Ireland, the formula is also failing to allay resentment in Scotland. The Scots continue to fear the consequences of the (as yet to materialise) 'Barnett Squeeze' whereby strict application of the formula will result in slightly lower proportionate increases in spending in Scotland than in England.
2. The non-statutory basis of the formula and its lack of legal standing in the absence of a fiscal constitution means there are no formal mechanisms for challenging outcomes perceived to be unfair or inappropriate.

This anti-Barnett sentiment will inevitably become a growing source of tension in the devolution settlement. It may only become a matter of open dispute when the parties in office in the devolved administrations have profound disagreements with the UK Government (or differ in political colour), and/or when the public expenditure climate becomes particularly tight. With the Treasury still ultimately holding the purse strings, it is not surprising that the Labour-led Assembly Government is unwilling to be seen as responsible for opening up this particular Pandora's Box.

However, there are good reasons for challenging this position. Fundamentally, there are strong justifications for arguing that the level of per capita public expenditure in Wales would be even higher if the Assembly's budget were determined according to a needs-based formula. There is little doubt that economic and social conditions have changed dramatically in Wales since the last Treasury needs assessment in 1979. On the majority of socio-economic indicators of need, the disparity between Wales and England has grown. Indeed, Welsh GDP per head has fallen from 88 per cent to 80 per cent of the UK average.

Wales can also present a powerful case for higher public spending in relation to both the level of demand for public services and the costs of service provision. Relative to the UK average, a higher proportion of the Welsh population are of pensionable age, reflecting the attractiveness of Wales as a place for retirement. This places greater pressure on the cost of health care. According to estimates produced by the late Phil Williams AM, this is equivalent to an extra health cost in Wales of £200 million a year. He assumed that a similar additional cost results from the provision of social services for the elderly and concluded that Wales would benefit by around £800 million a year were public expenditure determined according to a needs assessment formula.⁸⁷ Recent statistics also suggest that the prevalence of coronary heart disease in the UK is highest in Wales and the North of England.⁸⁸

In short, any funding formula based on an index of need would tend to benefit Wales relative to the current position under the Barnett formula. According to McLean and MacMillan, "Wales has already been a victim, not a beneficiary, of Barnett" in that although its prosperity has fallen whereas Scotland's has risen it has enjoyed relatively less beneficial public expenditure outcomes than Scotland.⁸⁹ This, they argue, reflects the fact that Wales has traditionally presented a less credible threat to the union than Scotland. Strict application of the formula in the future would of course further reduce the level of public spending per head in Wales relative to England.

There is an additional reason for challenging the Assembly Government's position on the Barnett formula and indeed questioning the conclusions of the Richard Commission report. It is possible to argue that the current system does in fact serve to constrain the freedom the Assembly can exercise over the allocation of its budget. The Barnett formula directly squeezes health expenditure in Wales since the formula translates any increase in health expenditure in England into the same cash increase per capita for Wales. This, however, results in a smaller percentage increase in spending in Wales which does not relate to need and does not address the historical imbalance of health expenditure in favour of England.

⁸⁷ Williams, P., *The Case for Replacing the Barnett Formula: A Submission to the Treasury Select Committee Inquiry into Regional Public Expenditure by the Plaid Cymru / Party of Wales Group at the National Assembly for Wales*, 2002.

⁸⁸ Rayner, M., Petersen S., Moher M., Wright L., and Lampe F., *Coronary heart disease statistics*. British Heart Foundation: London. 2001.

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If the Assembly wants to match the current percentage rate of increase of health spending in England, the inevitable corollary is reduced spending in other areas – in effect, reducing autonomy over policy choices.

THE REVENUE SIDE

On the question of determining how much (if any) of the Assembly's spending should be self-financed, the Commission was equally loath to propose radical change. Again, two key conclusions were reached, which collectively suggest an incremental approach to the issues of greater fiscal autonomy for Wales.

Firstly, the Commission concluded that tax-varying powers are desirable though not *essential* to a legislative Assembly. This reflects the belief that whilst revenue-raising powers are desirable in principle for devolved law-making administrations to enable them to fund additional projects with direct accountability to the electorate, these powers are unlikely in practice to generate levels of funding that will make a significant impact in these regards. Thus, for example, the UK Government estimate that for Wales the revenue raised or foregone by an adjustment of 1p in the basic rate of income tax would be £120 million in 2003-04. A 3p variation would represent £360 million, approximately 3.5 per cent of the Assembly's planned Departmental Expenditure Limit for 2003-04.⁹⁰

Secondly, the Commission concluded that if a tax-varying power is to be granted, the most practicable method appears to be that of the Scottish variable rate. This method has the advantage of being both broadly based and easy to administer. The Commission also explored the relative merits of another option with a precedent within the UK, which would be to give the Assembly the power to precept local authorities. This would mean requiring local authorities to collect a specified amount of revenue on the Assembly's behalf. This was considered to carry a number of disadvantages, not least of which is the scope for confusion of accountability in respect of council tax payments. In other words, council tax payers would not know what part of their bill would be funding the Assembly and what part would be funding the spending of local government. Other options for raising revenue were not considered in detail by the Commission.

The Richard Commission's position in respect of tax-varying powers again can be seen as a highly pragmatic position in the current political climate. Reforms to taxation that would allow more revenue to be raised by devolved regional or local government would amount to a revolution in the context of the highly centralised tax system that exists in the UK. More specifically, the absence of tax-varying powers for the Welsh Assembly is politically expedient given prevailing public opinion in Wales and the inability of the population of Wales to bear a significant tax burden. Given its relative poverty compared with the rest of the UK, it is inevitable that public expenditure transfers from central government will continue to be needed to fund public services adequately in the region.

Full fiscal autonomy is not a realistic option for Wales. And there are also clearly economies of scale in having a unified UK tax structure. Political realities also cannot be ignored. In Scotland, even the SNP pledged not to raise income tax in Scotland in the May 2003 election campaign for the Scottish Parliament. Full fiscal autonomy, especially where it means higher taxes, is not attractive politically.

But this may be to miss the point. Devolution means that it is for the people of Wales and Scotland to decide their own priorities and to pay for them (if they are relatively more expensive than elsewhere) or benefit from lower taxes if their priorities are somehow cheaper. Fiscal autonomy is essential to democracy and accountability. Those who are responsible for providing public services should also be responsible for raising the money to pay for them. Fiscal autonomy is also a means for greater self-reliance and independence of policy choices.⁹¹

The options for developing partial fiscal autonomy, or fiscal autonomy at the margin, should therefore be more fully explored. This would improve accountability and also establish better links between taxation levels and economic performance and between levels of public expenditure and the quantity and quality of public services. It would allow for more innovative policy approaches (such as reduced taxes for environmentally positive actions or penalties for environmental degradation) and would allow certain taxes which perhaps impede economic growth to be cut. The critical point is that partial fiscal autonomy can be achieved in many ways, of which granting income tax varying powers are only one.

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Countries such as Germany and Spain have developed systems whereby their regions have responsibility for raising revenue through setting some of their own tax rates, whilst still receiving a block grant to meet the bigger part of their expenditure needs. The Assembly could, for example, be given responsibility for setting levels of VAT, fuel duties and alcohol duties (within the constraints of EU legislation), whilst still receiving a block grant from the Treasury. These options need to be more fully explored given that the pressure for change is likely to grow. The Treasury has already indicated its enthusiasm for the idea of 'new localism' which includes at least the beginnings of some thinking about how new revenue streams could be made available to regional and local political institutions.⁹² Developments such as the congestion charge in London have demonstrated a growing willingness to encourage successful places to raise more of their own revenue in addressing their needs. The increasingly parsimonious climate for public spending in the UK can only accelerate this process.

CONCLUSIONS

The Richard Commission's preference for the status quo in respect of the fiscal arrangements for devolution in Wales is politically expedient and pragmatic in the context of current political realities. However, this does not mean it represents a sustainable position over the long-term.

The momentum for changing the fiscal constitution of the UK is both inevitable and inexorable. There are strong objective arguments for the introduction of a new needs-based system for allocating public expenditure across the UK, one which is supported by greater fiscal autonomy.

However, the decision to change will ultimately be a political one. There are winners and losers from the current financial arrangements and changing these arrangements will inevitably also result in winners and losers. Difficult assessments must therefore be made as to the relative electoral costs of doing nothing relative to the electoral costs of instituting reform. What seems likely is that the nature and pace of reform will be driven by political forces within Westminster, Scotland and the English regions, and outside of Wales.

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The critical determinants of change are destined to reside within the hands of UK government and its political will for a more innovative and decentralised system of allocating spending and raising revenue. It may also depend on a re-worked set of proposals for English devolution. Consequently, it is safe to say that reform of the Barnett formula is a long way off.

Chapter 6

CULLING THE QUANGOS

Kevin Morgan and Stevie Upton

The Bastille Day announcement that the Welsh Assembly Government planned to abolish its three premier quangos – the Welsh Development Agency (WDA), Education and Learning Wales (ELWa) and the Wales Tourist Board (WTB) – took everyone bar insiders by surprise. This 'bonfire of the quangos' signalled a momentous change in the governance of Wales, arguably the most radical after the creation of the Welsh Office and the National Assembly. Yet unlike these earlier political innovations, both of which were preceded by extensive public debate, the decision to abolish the quangos was made behind closed doors by an inner circle of Labour politicians, advisers and civil servants. It was a move that did little to enhance Wales' reputation for open government or partnership working.

In the wake of this decision it is worth examining how and why the 'bonfire' came. Without a full and frank discussion of the issues raised by the decision, it becomes impossible to have an intelligent debate about the future governance of Wales. To this end we shall address the following themes:

- Firstly, we aim to contextualise the debate by examining Labour's schizophrenic relationship with the quangos, the popular term for what are now called Assembly Sponsored Public Bodies. Among other things we ask why does Welsh Labour want to abolish the very bodies it worked so hard to create in the first place?
- Secondly, we examine the Bastille Day decision to abolish the quangos by 'merging' them into the Welsh Assembly Government. What factors might have precipitated the decision over and above the official line that it was merely designed to increase democratic accountability? But this surely begs another question: accountable to whom? If the Assembly was suffering from a 'scrutiny deficit' before the merger, how will it cope with a much larger portfolio?

- Thirdly, the First Minister drew a distinction between 'complex' quangos that were protected by Royal Charter, and the relatively 'straightforward' quangos - the WDA, ELWa and the WTB - where merger was said to be unproblematic. But is the merger of the 'Big 3' as simple as we are led to believe? If so, why is there so much disquiet about the merger process among key stakeholders, especially internal employees and external clients?
- Finally, in assessing the wider implications of the 'bonfire' decision we argue that it runs the risk of rendering Wales a more state-centric and less pluralistic country. Does this mean that a new centralism is beginning to emerge in Welsh politics in which the embryonic devolution project morphs into big government rather than empowering civil society to manage itself?

LABOUR'S SCHIZOPHRENIC ATTITUDE TO QUANGOLAND

Welsh Labour's attitude towards the quangos was not always as hostile as it is today. This is one reason why we need a historical perspective to explain what can only be called a love-hate relationship. Indeed, Labour governments have been the main architects of quangos in Wales. The most prominent was the WDA, created in 1975 after a long campaign for an arm's length public agency to lead a more robust approach to regional development, at a time when the traditional industries were shedding jobs at an alarming rate.

As political memories can be short and selective when the occasion demands, it is worth recalling that the trade unions were among the earliest to recognise the need for specialist public bodies to spearhead the regeneration of the region in the inter-war period. No less a figure than Arthur Horner, who became leader of the South Wales miners in 1936, and one of the most perspicacious trade union leaders of the twentieth century, was one of the first to call for a new power to undertake land reclamation, to build infrastructure, to protect our coastlines, and to determine the location of new factories.

Labour's schizophrenic attitude to quangos in Wales can be dated with some precision because it coincides with the advent of Thatcherism. Eighteen years of unbroken Conservative rule brought the quango state into disrepute throughout the UK, but especially in Wales. Here it was perceived to be a vehicle for Tories to get into power despite the fact

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Rightly or wrongly, the quangos were charged with being unelected and unaccountable agents of Tory policy in a Labourist country. No Conservative politician embodied this tension between political power and political culture more spectacularly than the arch Thatcherite, John Redwood, a Secretary of State of Wales despite being MP for Wokingham in Surrey.⁹³

The Thatcher government's strong ideological commitment to privatisation and marketisation also discredited the quango state because the quangos were given a pivotal role in reforming the traditional public sector model of service provision. This involved the audacious claim that the Tories, through the Citizen's Charter, were implementing real devolution as opposed to paper devolution. This was because they were devolving power to the 'active citizen' not the inactive 'municipal citizen'. It fell to William Waldegrave MP, whose brief included the Citizen's Charter, to try to give this audacious claim an intellectual rationale back in 1993, though it has an eerily similar tone to the New Labour mantra about 'choice' in the public services:

“The key point in this argument is not whether those who run our public services are elected, but whether they are producer-responsive or consumer-responsive. Services are not necessarily made to respond to the public by giving citizens a democratic voice in their make-up. They can be made responsive by giving the public choices... Far from presiding over a democratic deficit in the management of our public services, this government has launched a public service reform programme that helped create a democratic gain.”⁹⁴

This suggestion that democratic accountability could be replaced with the market mechanism, in which economic choice substitutes for the ballot box, signalled the triumph of consumerism over citizenship. The implications of this narrow conceptualisation of the citizen as consumer became increasingly apparent in Wales during the 1980s and 1990s. The quangos established a reputation for being locally unaccountable, and the appointments process, based on an old-boy network, generated substantial controversy. In theory, a transparent system of public advertisement for the appointment of quango members existed, but frequently this system was bypassed in favour of a preferred candidate.

⁹³ K. Morgan and G. Mungham. *Re-designing Democracy: The Making of the Welsh*

As an example, Dafydd Wigley refers to the appointment in 1989 of Gwyn Jones as Chair of the WDA, following nothing more gruelling than a lunch with Peter Walker, the then Secretary of State for Wales.⁹⁵ Among the most controversial appointments were numerous Tory party supporters and their family members, many of whom were appointed to sit on the boards of multiple quangos.⁹⁶ The impact on democracy in Wales was two-fold. Firstly, accountability of those providing services fell by the wayside. Secondly, the Conservatives had found a way to place Tory sympathisers in positions of power, thus circumventing the need to win over an unsympathetic electorate.

The lack of accountability of the quangos basically stemmed from poor scrutiny. Based in Wales, and thus physically remote from Whitehall, agencies such as the WDA were not required to provide frequent and rigorous justification for their actions. In this sense they were neither wholly accountable to parliament nor to the local communities that they were designed to serve. Moreover, they were not subject to the same requirements for open meetings and access to information as were the local authorities.⁹⁷

During the campaign for a directly elected Welsh Parliament, one of the most powerful arguments in favour was that it would permit closer scrutiny of the nation's quangos. It was further hoped that a directly elected body would restore the balance in favour of elected government, following years during which waning local government power was matched by increasing quango influence.⁹⁸

The two most egregious features of the quango state in Wales – namely an unfair public appointments process and weak external regulation – began to be reformed in 1997 by a Labour-controlled Welsh Office. The new era bore fruit almost immediately when Elan Clos Stephens, the newly appointed chair of S4C, became the first person to head a quango through an open and transparent appointments process and by simply replying to an advertisement.

⁹⁵ Dafydd Wigley, *Speech to the Institute of Directors on the Future of the WDA*, Llanelwly (St Asaph), 17 September 2004.

⁹⁶ K. Morgan and E. Roberts, *The Democratic Deficit: A Guide to Quangoland*, Planning Research Paper No. 144, Department of City and Regional Planning, Cardiff University, 1993.

⁹⁷ J. Stewart. *The rebuilding of public accountability*. European Policy Forum. December

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Following the establishment of the National Assembly in 1999, scrutiny of the Welsh quangos steadily increased and accountability was improved. In post-devolution Wales, for example, the democratically elected Minister holds his or her quango to account in multiple ways: by controlling the purse strings; by appointing the chair; by selecting the board; by setting the strategic targets in the remit letter; and, ultimately, by sacking the chair and the board if the targets are not met. On top of all these political control mechanisms, quangos are also subject to internal and external auditors and, most visibly, to the *public* scrutiny of the relevant subject committee of the Assembly.

Despite this unprecedented array of accountability, the Welsh Assembly Government has found it surprisingly difficult to forge robust partnerships with its quangos, particularly its flagship the WDA. Why should this be so? Former politicians like Dafydd Wigley are saying in public what WDA board members have long argued in private, that one of the reasons for this uneasy relationship is the 'anti-quango' disposition of Rhodri Morgan, the First Minister.⁹⁹

Perhaps there is something in this because, back in the 1990s, the First Minister earned a colourful reputation as a 'whistleblower' who was second to none in exposing sleaze and malpractice in the Tory-controlled quango state. Indeed, it was largely as a result of these exposures that the WDA entered the darkest hour of its career, when it was hauled before the Public Accounts Committee because "the standards of the Agency have been well below what this Committee and Parliament have a right to expect."¹⁰⁰

Having won his spurs by exposing the WDA whilst in opposition, was Rhodri Morgan able to make the transition from campaigning against the Agency to managing it in office? The omens were not good because, as the inaugural Minister of Economic Development, he rarely met the chairman, the chief executive, or the board of the WDA. The result was that the board asked themselves why their political master was behaving like an absentee landlord who was manifestly loath to take ownership of 'his' quango.

⁹⁹ See Wigley *op. cit.*, and K. Morgan and G. Rees, 'Learning By Doing: The Governance of Economic Development in Wales', in P. Chaney, T. Hall and A. Pithouse (eds.), *New Governance - New Democracy? Post-devolution Wales* Cardiff: University of Wales Press.

Not all relationships with the quangos have been as bad as this. Indeed Ministers like Sue Essex succeeded in forging one of the best relationships of all with the Countryside Council for Wales, partly because she has a genuine passion for sustainable development and partly because she was a former board member of the body. So although we cannot generalise from Rhodri Morgan's uneasy relationship with quangos, the fact is that, as First Minister, his view tends to predominate and the 'bonfire' decision is perfectly consistent with everything we know about his political trajectory.

EXPOSING THE SCRUTINY DEFICIT

While the scope of the Richard Commission's report ranges across the entire remit and operation of the devolved government, chapter six is devoted entirely to the scrutiny of unelected bodies. The Commission offers a sober analysis of the Welsh quango question. It notes the hugely significant role that it played in the pre-devolution debate, not least because quangos more than doubled in number between 1979-97, a process that was replete with well-publicised financial mismanagement. It also noted that the reform of the quangos, designed to make them more directly accountable to the people of Wales, proved to be an important factor in securing support for the devolution proposals.

Although it says that the "expectation of a 'bonfire of the quangos' has, so far, not been fulfilled"¹⁰¹, nowhere do we find any evidence for the source of this phrase, or any proof that it formed part of the official devolution offer. To the extent that the actual devolution offer was addressed, in the context of what was promised in *A Voice for Wales*, the Commission merely notes that the Assembly will have sufficient powers to reduce the number of unelected bodies and bring the remaining quangos under 'fuller democratic control and scrutiny'.

In other words, there is no suggestion in the Richard Commission report that a 'bonfire of the quangos' is desirable, necessary or imminent. To be fair, however, in his oral evidence the First Minister leaves open the possibility of a 'bonfire' in the second term because, as he said:

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“For us, over the past four years, the question was how much institutional churn do you introduce? How much of it would require primary legislation? Is this a priority for the first term and the early years of the Assembly? We took the decision about the limit, about the institutional churn that Wales could cope with, and those were the decisions that were made but without any commitment for the long-term future... We continue to study the quangos and make comparisons with quangos elsewhere in the general direction of making sure that transparency and accountability is maximised.”¹⁰²

The Richard Commission noted that all but two of the major quangos had been subjected to a ‘strategic’ or ‘quinquennial’ review by 2003-04. The aim was to consider whether there was a continuing need for the quangos’ functions and, if so, whether a sponsored body was the best means of delivery. Significantly, while all these reviews suggested changes to improve the effectiveness, governance and accountability of the bodies concerned, “no review so far has recommended using the Assembly’s powers to transfer or abolish functions or whole ASPBs.”¹⁰³

Although the Richard Commission did not find any major problems with the quangos, it did uncover some serious shortcomings in the Assembly, particularly with respect to its scrutiny role. A culture of scrutiny was regarded as lacking throughout the Assembly, and committee members were felt to lack both the time and the expertise to undertake effective scrutiny. For example, the report quotes the experience of Dafydd Wigley, at that time the chair of the Audit Committee, who said:

“I am on three major committees and I am on three others, six committees in all. On some of those committees you could have 300, 400, 500 pages of background material to read once a fortnight and usually there are more informal meetings more frequently. The pressure on the individual members of the Audit Committee is substantial and does beg the question whether the Assembly is the appropriate size and whether we do need more Members in order to allow Members to give the time necessary to all the functions.”¹⁰⁴

¹⁰² Rhodri Morgan, quoted in the Richard Commission report. *Ibid.*, para. 21.

When asked why the Education and Lifelong Learning Committee had not scrutinised ELWa more effectively its chair, Gareth Jones, could only say:

“It is a question of time really, because we agree to scrutinise a body, let us say, once a year. I think with ELWa... it should be scrutinised far more often.”¹⁰⁵

While time is indeed part of the scrutiny deficit so too is expertise. The Commission learnt that AMs have not developed a sufficiently detailed understanding of the quangos to be able to examine their work effectively. As Roger Thomas, chief executive of the Countryside Council for Wales said:

“I suppose the point we are trying to make is that the members sometimes are not as well briefed... I think the back-up facilities they have sometimes may, therefore, be deficient in terms of being able to access information.”¹⁰⁶

Aside from the twin problems of time and expertise, the Commission also drew attention to another problem that compromised the scrutiny role of the Assembly, namely ministerial membership of subject committees. This meant that Ministers were responsible both for setting the policy direction of the quangos in their capacity as sponsoring Minister, and for holding the same quango to account in their capacity as members of the relevant subject committee. This was a situation that called for some clarification in the relationship between quangos, Ministers and subject committees.

For all the shortcomings of the Assembly’s scrutiny role, the Richard Commission still felt able to say that “the advent of the Assembly has changed the framework of accountability and scrutiny for quangos” because “there is now greater transparency and accountability to Ministers.”¹⁰⁷ Concluding its chapter on unelected bodies the Commission said, quite emphatically, that “we received no evidence to suggest that the present formal powers are a constraint upon the Assembly’s ability to hold to account the quangos that it sponsors.”¹⁰⁸

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

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Four months after these findings were published the First Minister made his Bastille Day declaration, a decision which had not been prompted by the Richard Commission, or indeed by any of the quinquennial reviews that preceded it. If the 'bonfire of the quangos' was not supported by dispassionate and professional evidence-based reviews, why was the decision taken?

RHODRI MORGAN'S GRAND PROJET

The small inner circle involved in the Bastille Day decision was delighted by the way it had prevented the news from leaking ahead of the announcement, confounding the media and discombobulating the opposition at the same time. But this tactical victory could cost the Welsh government dear in the longer term because the manner in which the decision was made was not a good advertisement for open and consultative government. The conspicuous absence of consultation with any of its partners exposes the government to the charge that partnership, the principle it commends to others on a daily basis, and the principle which ostensibly informs everything it does, can be unilaterally jettisoned when the occasion demands. Plainly, the 'bonfire' decision was not taken in a vacuum, and three wider issues are worth mentioning to understand the context:

- *The Treasury Spending Review* spelt a much tougher regime of public expenditure in the UK, with Gordon Brown committed to securing job cuts in the civil service: the 'bonfire' could help to deliver some of these cuts in Wales.¹⁰⁹
- *The Efficiency Review*, spearheaded by Sir Peter Gershon and presented to HM Treasury, is second to none in importance in Whitehall because it claims to have identified some £20.5 billion in 'efficiency savings' by merging and rationalising the back office functions of public sector bodies, savings that could be invested in mainline services: again, the 'bonfire' could contribute to this agenda.¹¹⁰

¹⁰⁹ HM Treasury, *2004 Spending Review. Stability, security and opportunity for all: investing for Britain's long-term future*. London: 2004.

- *The Richard Commission* report was causing increasing conflict between Labour MPs and Labour AMs: in this context a 'bonfire' would help to boost the status of the Assembly in the eyes of sceptical MPs ahead of a specially convened party conference, planned for 11 September 2004, and also help to make the case for more devolved powers.

Although none of these factors directly ignited the 'bonfire', together they help us to understand the wider political context in which the decision was made. The First Minister's statement to the 14 July plenary session was actually entitled 'Public Services in Wales', but the real story was in the detail, particularly the claim that "today marks the beginning of the end of the quango state as we have known it."

The official rationale for the abolition of the quangos is the drive for more 'democratic accountability'. This is apparent from the Assembly Government's vision for public services, *Making the Connections: Delivering Better Services for Wales*, which was published in October 2004. It has to be said that this is a genuinely significant new policy departure because here, for the first time, the First Minister sets out a citizen-based vision for public services that is radically different from the consumer-based vision of Tony Blair. The consumerist model of public service provision espoused by the Prime Minister (in which individual choice is extolled and where public bodies are enjoined to compete with each other) is rejected in favour of a model based on "more effective co-operation and co-ordination between agencies across the whole of the public sector."¹¹¹

Getting better value for money from the public sector in Wales had been overdue for the best part of fifty years. To its credit the Welsh Assembly Government was the first to make real progress in this respect, especially with the creation of the *Welsh Procurement Initiative*, which aims to leverage the power of a £4 billion a year public procurement budget to better effect. So there is clearly a good deal of scope to use quango reform to promote more effective and more innovative public services in Wales. Nevertheless, some of these sound and sensible aspirations have become confused with, and devalued by, the spurious and hubristic claims that have been used to justify the 'bonfire'.

¹¹¹ Welsh Assembly Government. *Making the connections: delivering better services for*

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According to Andrew Davies, the Economic Development Minister, scrapping the quangos and merging them with the Assembly civil service will create powerful 'one-stop shop' departments with 'increased commercial focus'.¹¹² Yet the notion that people become more commercially focused when they become civil servants is at best novel and at worst risible.

It is novel because it reverses a century of political science thinking, which suggests that arm's length bodies afford governments more commercial flexibility than they would otherwise enjoy. It is risible because nobody outside the Assembly believes it. This is not because civil servants are not competent and industrious. It is because the civil service code, with its safety-first protocols, invariably tends to rate process over outcome, making the service more risk-averse and less innovative than either the private sector or arm's length public bodies.

To support his case, Andrew Davies draws on the experience of the Wales European Funding Office (WEFO), which he says has worked better since it was fully integrated into the Assembly. But the argument is weak because, in two respects, the analogy is weak. Firstly, WEFO was largely integrated in all but name anyway, symbolised by the fact that its original director, John Clarke, was based in the Welsh Assembly Government in Cathays Park in Cardiff, rather than in Cwm Cynon, the Valleys location where his officials were based. Secondly, and more importantly, the WEFO function is to dispense Structural Funds, a highly bureaucratic process which is a world away from iterating with fast-moving businesses.

No less worrying is the lack of evidence for some of the other claims made on behalf of the 'bonfire'. For example, Andrew Davies claims he had "wide-ranging support for these changes from the business community."¹¹³ This extraordinary statement signals a new low in the history of political spin in Wales. The truth of the matter was very different. Not only was the business community never consulted, but the CBI actually said that the decision "calls into question the nature of the Assembly's partnership with business."¹¹⁴

¹¹² Andrew Davies, 'Why We're Scrapping the Quangos', *Western Mail*, 17 July 2004.

¹¹³ *Ibid.*

Most worrying of all was the hubris. Within days of the Bastille Day decision being announced, Davies issued a joint statement with the WDA chairman saying that the new 'commercial organisation' would be 'the best of its kind not only in the UK, but in Europe'. Again, what we have here is a triumph of spin over substance, because neither of them had undertaken the commercial benchmarking work to know what constitutes 'best practice' in the UK, let alone in Europe.

If the evidence to support the official case for the abolition of the quangos is weak, even more disturbing is the fact that the deeper underlying reasons for the decision are not being discussed at all. The need for public accountability of services is a useful argument in support of ASPB integration, and tying the decision to central government efficiency drives creates an impression of widespread support, but there is clearly more to the decision than this.

We are invited to believe that the decision to axe the quangos had been gestating for months. One of the earliest indications of the impending announcement came at the Wales Labour Party Conference in March 2004, when Andrew Davies launched a political tirade against unnamed people in the 'delivery agencies' who seemed to feel they had the 'right to set the priorities and agenda for 'their' quango'. It was an open secret that this was aimed, among others, at Graham Hawker, the then chief executive of the WDA. In retrospect we can see that Hawker's disastrous tactics played into the hands of politicians who were by nature anti-quango. The two most important political relationships in the life of a WDA chief executive are those with the chairman of the Agency and the sponsoring Minister, both of which were beyond repair. Perhaps the most astonishing thing about Hawker's tenure was his decision to restructure the Agency whilst keeping the chairman and the Minister in the dark about what was going on. When an anxious manager asked why the Minister was not being kept informed of the restructuring plan, one of Hawker's inner circle offered the staggering reply that there was no legal requirement to do so! Clearly, the WDA was broken; the question is whether the solution is worse than the problem.

As to the timing of the decision, there are suggestions that it was not made before 8 March, because the Finance Minister tabled a paper to Cabinet that day that argued that quangos should adopt three-year planning cycles. Why look at the future of the quangos if there wasn't one? The actual timing of the decision may be uncertain, but what *is* clear is that the secrecy was deliberate. Indeed, the three quangos

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If the lack of public debate was a cause for concern, the fervid and largely uncritical response from the Opposition parties was even more worrying. Rather than fulfil its main task of scrutinising the executive, the Opposition, facing the biggest project of the second term, behaved as though its critical faculties had been sedated.

The least bad response came from Mike German, leader of the Liberal Democrats, who gave the statement a “cautious welcome because of the questions that are as yet unanswered.” He raised two points: first, he was concerned that the Assembly's scrutiny role might not be up to the job of managing the incorporated ASPBs; and, second, he feared that the civil service code might have a restrictive effect on the commercial focus of former quango staff.

Like many others on the opposition side, however, Mike German became more critical of the ‘bonfire’ decision as time wore on, focusing his criticisms on the scrutiny deficit in particular. For example, in First Minister questions on 12 October 2004 he asked if the time allowed for scrutinising Ministers would be extended because, in the case of the Economic Development Minister, whose portfolio was being increased with the addition of the WDA and the WTB, he was being subjected to scrutiny for 15 minutes every four weeks in plenary and for 45 minutes in committee every three weeks or so. In his response the First Minister downplayed the lack of time, saying that was an issue for the committee chairs to take up with the Presiding Officer.

Aside from these exchanges the ‘bonfire’ decision was generally welcomed by Labour and opposition parties alike, underlining the fact that, from left to right, the quangos had few political friends left in Wales. Like a *grand projet*, the top-down, state-led initiatives beloved of the centralist French state, the Bastille Day decision was projected as the big idea of Labour’s second term.

But unlike a real *grand projet*, which is planned with military precision, the ‘bonfire of the quangos’ was a decision in search of a plan. The lack of preparation, the lack of a ‘route map’, and the lack of consultation with employees became all too clear when the merger process failed to consume the ‘cultural’ quangos and met unforeseen problems in digesting the ‘economic’ quangos.

LEGAL LIMITS AND MERGER PAINS

In August 2004 Sir John Shortridge, the Permanent Secretary, wrote to all the remaining quangos to inform them of the basis on which the Assembly Government would decide whether they, too, would be abolished or 'merged', which is the preferred language of the exercise. Whilst there was a general presumption in favour of incorporation, the letter set out three exceptions, namely:

- Where bodies audit or regulate Assembly Government business or are quasi-judicial.
- Where bodies take decisions that are better kept at arm's length from the Government.
- Where such bodies undertake functions or exercise professional judgements that are clearly non-governmental in character.¹¹⁵

Some of the Royal Charter quangos made the most of the opportunity to defend themselves, an opportunity manifestly denied to the economic quangos. Indeed, it is difficult to imagine more cogent and robust arguments in favour of the arm's length principle that were put in the submissions from the National Library and the Arts Council of Wales.

The National Library, which was created in 1907, was always going to be one of the most difficult to incorporate because of its legal status as a Royal Charter Corporation and a Registered Charity. Among other things the Library argued that incorporation would erode or destroy charitable instincts and the benefits flowing from them; that it would jeopardise long-term planning goals by subjecting them to short-term political aims; and that the effectiveness of the Library and the professionalism of its staff would be threatened.

Not only that, it also recalled the central conclusion of the Quinquennial Review of the Library, published in 2002 and approved by the Assembly Government, which said that support for the arm's length principle was very strong and "there are no compelling arguments for moving away from it."¹¹⁶

¹¹⁵ Sir Jon Shortridge, *ASPB Reform: Circular Letter to Chief Executive Officers, Assembly Sponsored Public Bodies*. 2 August 2004.

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For its part, the Arts Council, another body created by Royal Charter, chose to defend the arm's length principle on the basis of the age-old argument that, in a free and pluralistic society, the arts are fundamentally non-governmental in character, and must remain so to maintain freedom of expression. More pragmatically, it also argued that its role as a lottery distributor could not be incorporated, and that the arts in Wales would be the poorer if these UK funds were compromised.¹¹⁷ But it was also becoming increasingly clear that the Welsh Assembly Government would have a major public relations disaster on its hands if it did abolish the ACW because, in the run up to the November deadline, when the decision was finally due, artists from all over Wales were protesting about the threat to artistic freedom that such a move would imply. For example, Shani Rhys James, the prize-winning painter, went so far as to liken Wales to Bolshevik Russia if politicians assumed direct control of Welsh arts funding.

When the decision finally came, on 30 November 2004, supporters of the 'bonfire' could barely conceal their disappointment. Only three quangos were to be abolished. Why so few? For the simple reason that, as the First Minister said in his plenary statement, "merger would require primary legislation in a complex legal area."¹¹⁸

The Arts Council may have survived on paper but many of its employees felt it had been effectively emasculated as a result of two changes. First, it lost a third of its grant in aid budget because the Assembly Government decided to fund the bigger arts organisations directly, a move that would further politicise the funding of these companies. Secondly, the Arts Council also lost its strategic planning role, a function that was hived off to a new Assembly-controlled Culture Board, a move that effectively cut strategic planning from the local knowledge embodied in Arts Council officers. Time alone will tell whether, under the new arrangements, the Council would be transformed into the cultural analogue of a post-office counter for dispensing small grants to the arts.

In general, however, it was difficult to avoid the feeling that this second round of quango reviews was an immense anti-climax. When measured against the original Bastille Day announcement, in which the First Minister implied that the vast majority of quangos would be culled, this signalled a clear reversal of the *grand projet*.

¹¹⁷ Arts Council of Wales. *Future Arrangements For Supporting the Arts in Wales*. Cardiff:

The opposition parties lost no time in playing on the 'bonfire' analogy, the main theme being that the 'bonfire' had degenerated into something of a 'damp squib'. Perhaps the most intriguing question of all was why the First Minister had left himself open to these predictable charges? Why, in other words, was a review of the legal constraints not undertaken in a low key manner to clarify the position, rather than it being announced so publicly with so much fanfare on Bastille Day? Once again, the manner of the exercise raises serious questions about the calibre of the policy-making process, fuelling fears that policy is being made in an ad hoc fashion to indulge political prejudices, rather than with a genuine concern to raise the quality of public services.

If the smaller quangos survived to fight another day, most Assembly politicians assumed that the WDA, WTB and ELWa, the 'Big 3', were well on their way to being seamlessly merged into the civil service. But nothing could be further from the truth. A confidential merger proposal – from the so-called *Mergers Scoping Project* – was presented to a Cabinet sub-group on 18 November 2004 and it was decisively rejected. The reasons were because it was felt to be weak on delivery and marred by internal navel-gazing. The Mergers Scoping Project was established in August 2004 to assess potential options for merging the 'Big 3' with the relevant departments of the Assembly civil service. The Scoping Project considered two main options:

1. Minimum integration – replacing the Board with the Minister and (potentially) an advisory committee but keeping most of the operational activities, structures and branding of the ASPBs. In this model the chief executive officer would report to a Minister via an Assembly Government Director, providing a single reporting structure. This model is similar to the way that CADW currently operates.
2. An integrated model by 2006 – replacing the Board as above, but allowing for full integration, bringing the ASPBs and their sponsor divisions into a single organisation. This would include a single reporting structure to Ministers. This option also includes an enhanced frontline capacity, moving resources closer to the customer.

Recognising that these were two extremes of a wide range of possible scenarios, and given the up-front costs and risks associated with a full integration model by 2006, a third option was also considered. This was integration by 2007, a model which allowed more gradual change, offering lower risks on the positive side but holding greater uncertainty

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The Scoping Project report - written in the main by WDA staff, but drawing on the discussions of the Coryton Group of senior officials from all the bodies involved - was keen to demonstrate that it was fully alive to the political exigencies of the operation, saying:

“All the options deliver the legal and technical requirements to have wound up the ASPBs, with their responsibilities reporting to Ministers by April 2006, as promised in the First Minister’s statement.”¹¹⁹

Although this report was clearly work-in-progress, its rejection was a disturbing reminder that merging the quangos was easier said than done. The shortcomings of the merger process are manifold, but the most important defects concern the absence of real consultation – either with staff within the quangos or with clients and customers in the outside world. WDA staff, for example, are under the impression that there is no time to lose if the merger process is to be delivered to a political timetable established by politicians who know little or nothing about organisational design and delivery. The lack of consultation is partly a reflection of this fast-track mentality, a mentality which breeds a feeling among staff that ‘getting it right’ is perhaps less important than ‘the quick fix’, a dangerous idea which needs to be addressed if the merger is to be sustainable. As for external stakeholders, it is totally naïve of politicians to claim, as they have done, that it will be ‘business as usual’ for the customers of the ‘Big 3’ quangos. A reorganisation on this scale can take at least two years, and probably three, to ‘bed down’, during which time employees would be less than human if their principal concerns were not job security and career prospects.

Aside from the lack of consultation, another problem that the politicians will need to address as a matter of urgency concerns the role of professional expertise in the post-merger period. Though sometimes decried as self-seeking quangocrats, board members offer a wealth of experience, especially business acumen, and the public sector in Wales is not over-endowed with these skills. The key question is whether these men and women will be willing to commit their time and expertise to organisations which are directly controlled by politicians, where they will have far fewer powers and where there is less scope for them to make a difference.

The Assembly Government has done nothing to enhance its reputation with the business and professional classes of Wales by the way it has managed the 'bonfire' process. This may make it that much harder for it to recruit and retain the expertise it will need if the post-merger bodies are to be commercially focused organisations.

In dealing with these unintended consequences, the Assembly Government has embarked upon a very steep learning curve. In particular it is beginning to learn the difference between making a political decision and putting it into effect. It is also learning that the merged bodies will be judged not by the traditional fare, inputs and processes and the like, but by outcomes for the clients, customers and communities of Wales.

DEEPENING DEVOLUTION OR A NEW CENTRALISM?

Incorporating the cultural quangos on top of the economic quangos would have amounted to an unprecedented centralisation of power within government and, equally disquieting, to a politicisation of civil society that is unique in the European Union. Even the Welsh Local Government Association, otherwise an avid supporter of culling the quangos, recognised that further centralisation of public functions within the Assembly Government could lead to "an unhealthy concentration of power and a weakening of accountability."¹²⁰

The Richard Commission received a number of submissions that suggested widespread disquiet about the increasing level of control being exerted over supposedly arm's length functions, a trend that is set to culminate in total control once they are subsumed within the Assembly. Gareth Davies, chair of the Sports Council for Wales described the changing relationship between his organisation and the Assembly as one in which the "arms are getting shorter."¹²¹ Enid Rowlands, the former chair of ELWa, also drew a distinction between the freedom experienced by the health authorities, one of which she previously chaired, and the "very, very ongoing dialogue that ... the National Council have with the Welsh Assembly Government."¹²²

¹²⁰ Welsh Local Government Association, *The Role of Local Authorities in a Post Quango Wales*. Cardiff: 2004.

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The language used clearly hints at a subtext of concern with the excessive control being exerted over ELWa's functions. With the quango now set to be abolished, these concerns will evolve into another kind of managerial dilemma, namely how to strike a judicious balance between civil service control procedures and commercial focus.

One might argue that the Minister would be directly accountable for everything in his or her department after incorporation, making ministerial accountability simpler and clearer. But there are two weaknesses in this argument. Firstly, the subject committee system would not bring the same level of scrutiny to bear on its enlarged remit because it lacks the time and the expertise of a specialised quango board.

Secondly, it ignores the wider dimensions of accountability. Politicians are wont to interpret accountability in a narrow and self-referential way, meaning accountability to them. But this ignores the wider sense of the term, which involves being accountable to the public forums of civil society – to the boards of specialised professionals, to the glare of the media spotlight and to open and transparent public debate.

On the basis of the evidence to date, it seems that incorporation is being sought not so much for accountability, because that exists in ample form already, as for day-to-day control, the one thing that eludes politicians in the present arm's length system.

Understandably, the Welsh Local Government Association wants to see as many quango functions as possible devolved to its 22 members, with the business support, property, and regeneration functions of the WDA being the primary targets of its shopping list. The WLGA discussion paper on post-quango Wales¹²³ triggered a rare outbreak of unity on the part of the business community. Sinking their differences, the four premier business associations sent an unusually forthright letter to Andrew Davies expressing their:

“... strong opposition to the transfer of significant economic development powers, currently held by the WDA, to local authorities.”¹²⁴

¹²³ WLGA. *on. cit.*

The business leaders claimed that local government had neither the expertise nor the scale to provide economic development services, and such a transfer “would result in twenty-two miniature WDAs – far from the one-stop shop promised by the Assembly.” The genie of institutional upheaval is once again out of the bottle. The Assembly Government faces a more difficult conundrum than it might have imagined when it decided to light a 'bonfire'. Incorporating the guano functions within the Assembly Government will leave it open to the charge, from local government, that it is concentrating power in Cardiff and making a mockery of devolution. Devolving power to 22 local authorities exposes it to the charge, from the business community, that it has balkanised the WDA, making a mockery of the one-stop shop. Furthermore, if better public services are the real goal, then it can only be a matter of time before the 22 local health boards come under scrutiny, along with the 22 community consortia for education and training, and perhaps even the 22 local authorities themselves. If local government cannot rise to the challenges set by joint working, regional partnerships, and purchasing consortia to meet the new ‘value for money’ agenda, another round of structural reform may be inevitable.

For politicians who regard the devolution of power to local government as unwelcome, the polar opposite approach may provide the answer. The Old Labour view of MPs such as Law Smith is that the Assembly should be abolished and its powers repatriated to central government. The animating principle here is the belief that the Assembly panders to a separatist nationalist agenda that fails to best serve the people of Wales. In particular, Smith draws on the class politics of Anuran Bean who, in the 1940s, argued that the problems afflicting the working class in Wales were no different from those affecting the working class throughout Britain. This centralist tradition has a long lineage in the Welsh labour movement, but it is far from being the only tradition.¹²⁵

But does the centralist vision of politicians like Law Smith provide a radical means of addressing the needs of Welsh people in the twenty-first century? In so far as it implies an even greater centralisation of power than is currently underway in the guano abolition project, the answer is a resounding ‘no’. The recognition of shared problems between England and Wales is undoubtedly positive, and it is essential that a macro-scale vision is maintained in the apportioning of funds and suchlike. However, while problems can be conceived in UK-wide terms, the solutions to them are very often local in nature.

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Partly because of this, critics of the Assembly often argue that the local authorities are an adequate means of ensuring both local voice and accountability. Yet the powers of local government are profoundly limited. Consequently, many authorities lack sufficient expertise to interact effectively with, for example, the business community.

Moreover, the somewhat arbitrary boundaries between authorities lead to fragmentation of service delivery. Although the problem of expertise could potentially be solved, in giving local authorities greater power and autonomy the problems of fragmentation would be exacerbated. The National Assembly thus provides a balance between the over-centralisation of power in remote Whitehall and the fragmentation that a local authority governance structure would produce.

Yet, with the abolition of the quangos the reality is that Cardiff Bay and Cathays Park will assume the roles formerly fulfilled by Westminster and Whitehall. In October 2004 Rhodri Morgan set out his vision for the future of public services in Wales. This vision built on his distrust of the market system as a means of public service delivery, and his belief in the benefits of cross-sector working to achieve greater efficiency and effectiveness. As its name suggests, the 'merger' programme aims to support both of these political commitments. However, the danger is that it will destroy the benefits of the quangos – their arm's length nature allowing flexibility and responsiveness, plus the scope for a broadly defined accountability – in favour of a system renowned for being risk-averse, bureaucratic, and notoriously difficult to scrutinise. The centralised London-centric power structure appears to be moving west, as a Cardiff-centric power structure becomes more rather than less likely in Wales after the 'bonfire of the quangos'.

With the functions of the WDA, WTB, and ELWa transferred to the Assembly, it is increasingly important that improved structures for internal scrutiny be put in place. The Richard Commission noted that scrutiny has hitherto been a low priority for the Assembly subject committees. In response it proposed that more time should be allocated to scrutiny, and that AMs should develop a more detailed understanding of the portfolios they are expected to scrutinise. To this end the Commission suggests that turnover of committee membership should be kept to a minimum. Individual AMs should also limit the number of committees on which they sit, to reduce their workload and allow more detailed scrutiny of those quangos for which they remain responsible.

Since the Commission highlighted the lack of a 'culture of scrutiny' in Wales, it is naive and dangerous to assume that the abolition of the quangos is sufficient to improve accountability. To underline this point we need only think about what happened to all the other quangos which were 'merged' into the civil service. Has housing policy become more accountable since Tai Cymru was abolished? Has health policy been more accountable since Health Promotion Wales was merged?

Does the business community feel that Wales Trade International, which was transferred from the WDA to the Assembly, has been rendered more open, transparent and accountable? The answer to all these questions is a resounding 'no' because the debate about accountability in Wales has been framed in the juvenile terms of Assembly-Good, Quangos-Bad. Until we bring citizens, clients, customers and civil society into the frame we will be condemned to live with a narrow and desiccated notion of accountability. But unless the current political culture is changed, there is unlikely to be any benefit in terms of improved scrutiny and accountability from the 'bonfire of the quangos'.

Come what may, these momentous changes deserve to be discussed in a free and frank national debate. Sadly, however, the Assembly Government is perceived to be more interested in frustrating rather than fostering debate given the secretive way in which it has conducted the 'bonfire' process. The incorporation of the quangos could exacerbate this process because every aspect of public life will revolve around the Assembly Government, rendering Wales a more state-centric and less pluralistic country than ever before. Peter Stead argues elsewhere in this volume that post-devolution politics in Wales is not doing us justice: the need for meaningful debate is essential, since "it is impossible to develop first class politics in a vacuum".

The lack of debate on the future of the quangos, in the Assembly and in Wales more generally, is a case in point. Already it seems that fewer and fewer people – in business, the arts, health, and education for example – are willing to speak openly in public for fear of alienating their patrons in the Assembly. The result is that silence is mistaken for tacit support. A country that aspires to be a vibrant democracy, and to develop a flourishing civil society and a dynamic economy can take no pleasure in this state of affairs.

Chapter 7
VIEWS FROM CARDIFF BAY

1. A KEY TO UNLOCK THE FUTURE

Michael German AM

The publication of the Richard Report at the end of March in 2004 should have been a landmark day for Wales. In time, perhaps a historical perspective may yet prove that it was. However, from where we stand now, the opportunity and optimism of the Richard Commission appears to have been squandered. The hopes and aspirations of all those who fed their views in to the report largely evaporated in the months that followed, in no small part due to the inability of Wales' largest political party to accept and adopt its recommendations.

As Deputy First Minister of the partnership government which commissioned the report, I keenly anticipated and warmly welcomed its publication. I still believe that it can prove to be a key in unlocking the tools that the Assembly needs to do the job for the people of Wales. But there are a number of formidable hurdles which litter that path – not least of which is the Labour Party.

What Labour has failed to appreciate, is that the Richard Commission was not a sinister plot hatched by the opposition to cause Labour difficulties. It was one of the outcomes of the first Assembly, the political earthquake of its first elections and the built-in instability in the institution that led to Alun Michael's brief reign as First Secretary (as the post was then known).

The Richard Commission was the answer to the question posed by Labour's inability to secure their traditional dominance of Welsh public life in the first Assembly. It was a response to the realisation that the fudge which emerged from the Government of Wales Act was not a stable mechanism for the future governance of the country.

Labour has little grounds for complaint when it comes to the formation of the Commission. Rhodri Morgan picked the chair, and set the terms of reference. All the main parties were represented on the Commission and the commissioners brought a wide range of experiences and personal qualities to the deliberations. They also agreed their conclusions unanimously. Labour AMs, Government Ministers and MPs all submitted personal evidence, although the party as a whole refused to do so.

It is worth emphasising the unanimity of the Richard Commission's conclusions. This was not an obvious outcome. Indeed, given the broad mixture of political opinions held by the commissioners, such a result is remarkable. It was always my hope, but never taken for granted that ten people with such diverse political experience in academia, local government, parliament, the EU and international diplomacy, could sift all the available evidence and agree a clear and simple way forward. Yet that is exactly what happened.

After two years of taking evidence across all parts of Wales – surely the biggest listening exercise ever undertaken in Welsh politics – the published report weighs in at a comprehensive 308 pages, with thousands of pages of published written evidence behind it. The views of those who work in the Assembly, for the Assembly and with the Assembly were considered fully, alongside those of people who have little or nothing to do with it. All these views were given serious consideration.

Of course, Richard has stopped short of giving the Welsh Liberal Democrats everything we want. Liberal Democrat policy is clear. We agree with Lord Richard that the status quo is unsustainable. But we do not believe that independence is a credible position. Our desire is for a Senedd for Wales: a law making body with tax-raising powers; a parliament on an equal footing with the Scottish Parliament, with 80 members. It can not be right that Scotland's Parliament and Northern Ireland's Assembly can make their own laws, but Wales cannot.

A Senedd wielding full law-making powers requires proper scrutiny of the laws it is creating. That is the role of a parliament – to hold the executive, the government of the day, to account. The current Assembly is sadly lacking in that kind of scrutiny, not least through the Labour Party's arrogant decision to reduce the frequency of committee meetings, and with it, the opportunities to question Ministers in detail on their actions.

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With just 60 AMs – far fewer than either Scotland or Northern Ireland – it would be almost impossible to scrutinise properly. At present, virtually every AM is a spokesman on something, or chair of a committee of some kind. We need backbenchers with time to dig through what the government is doing, or intending to do and to go through the legislation on a line-by-line basis. Richard reaches the same conclusion – saying 60 AMs would not be enough to cope with the demands of primary powers.

Labour has said no to extra AMs, despite the clear need for them to ensure that any new law making powers are used properly. This is in no small part due to the fact that, over time, an increase in representation in Cardiff Bay would logically lead to a reduction in the number of MPs representing Wales at Westminster. This is a natural corollary of granting law-making powers to the devolved institution. This process is already playing itself out in Scotland, where the number of MPs is being reduced from 72 to 59. What is strange though, is that the main opposition to reducing the number of MPs in the long term comes only from Labour MPs who arrogantly assume that they have a divine right to rule. The complaints have not come from Liberal Democrat or even Plaid Cymru MPs who accept that their role within Wales would be diminished if the Assembly could pass its own laws. It is this arrogance that led to the fudge which created the Assembly, and which the Richard Commission was intended to clear up. When will Labour MPs learn that other people can be trusted to govern Wales?

Labour MPs in Wales have loudly established their opposition to any reduction in their numbers. Yet looking objectively at the likeliest rate of progress of devolution, 2015 is the earliest this could reasonably occur. By that time – eleven years down the line – many of the present MPs will have moved on, whether through retirement, ennoblement, defeat at the ballot box or choosing to contribute the experience gained in the mother of all parliaments to a reconstituted and empowered Assembly/Senedd in Cardiff Bay. Few of the current crop of MPs would be personally endangered. The volume of the debate in London, where Labour MPs in general and the so-called Northern Alliance of North Wales-based MPs in particular, have been in full voice is in sharp contrast to that in Cardiff Bay. The timidity of the mostly pro-devolution Labour AMs in standing up to the anti-devolutionists has been notable. AMs Carwyn Jones and John Griffiths have shown more pluck than most, but overall, there has been little public dissent on the Labour benches in the Assembly. This has contributed greatly to a loss of stock in Rhodri Morgan who has

Rhodri Morgan has failed the people of Wales by abrogating his responsibilities as a leader. When the commission was taking evidence he refused to give his views. He passed up countless opportunities to drive the process forward and give public voice to his private desire to see the Assembly given the necessary powers. Not once did he use his position in the Labour Party to influence the debate. Not once did he publicly challenge some of the nonsense being uttered by his former colleagues in Westminster. And not once did he stand up for what he believes in. The overall effect of this inaction has been to weaken his grip on his party, and on the country. How can we trust a man to stand up for his country, when he will not stand up for himself?

Rhodri's belated contribution to the question of how the devolution process moves forward defies credibility in both its form, and its practical application. How does it happen that a man who spends £1 million of taxpayers money on engaging ten of Wales' foremost minds to look at the future of his country's government, receives their report, and then draws up his own plan on the back of an envelope? This in effect is what has happened with his "13.2+" proposal.

Taking section 13.2 of the Richard Report, which outlines a method of gradually increasing the Assembly's powers on the road to full primary powers by 2011, Rhodri has decided that enhancing this could be an end point, rather than a stepping stone. He does this in preference to following the unanimous conclusions of the Richard Commission, chaired by a Labour Peer, and containing other party members. If he truly believes his madcap suggestion could prevent years of instability and talking about devolution, as he has stated in the Assembly, then he really has lost his grip on reality. On the contrary it would only serve to focus more attention on the fact that the Assembly was underpowered and unable to carry out the job with the tools it presently has. And more importantly, it is clear to no-one how exactly his framework legislation proposal would work, either at Westminster, or in Cardiff Bay.

Academic experts, Richard Commissioners and politicians in the Lords, Commons and Assembly have all cast doubt on the workability of 13.2+. Lord Richard himself, in an interview with the BBC, said that it is not workable. Yet "Morgan's Muddle" remains one of the two parts of Labour's post-Richard stitch-up, entitled *Better Governance for Wales*, alongside a referendum and full powers as championed by Peter Hain. It is Hain who has emerged as the coherent voice in the Labour leadership as a result of this inelegant stitch-up which was approved at Labour's

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Neither do we know whether Peter Hain will be wanting to stay in post to finish the job. While Labour seems intent to leave it up to the Secretary of State it is entirely possible that after a General Election, Mr Hain's ambitions would see him moving on in the Labour hierarchy. Would Kim Howells have the same vision for the Assembly's future? Ultimately, Labour's pitch for the next general election is, "We'll do something about devolution, but won't tell you what until you've already voted for us". If applied to health, or education, rather than devolution, such a proposition would surely result in a haemorrhaging of support.

Reform of the voting system was a key element of the Richard Commission's consideration. The present system of 40 first-past-the-post constituency seats and 20 PR regional seats is a step towards a fairer voting system, where every vote counts – but only a small step. It still results in Labour being over-represented, winning 50 per cent of the seats, but with less than 40 per cent of the popular vote.

Notwithstanding these failings, at least for once a measure of proportionality is part of the voting system. It was one of the requirements to secure Welsh Liberal Democrat support and that of Plaid Cymru for the devolution project. Without some form of PR the Assembly would have created an unhealthy one-party state in Wales where Labour, as the largest party, would vacuum up three quarters, or more, of the seats. This kind of one party dominance is not healthy in any democracy.

But the current system is far from ideal. That's why the voting system was a key part of the Richard remit. The obvious answer for Welsh Liberal Democrats, and for the Richard Commissioners, is to introduce STV (Single Transferable Vote) for all 80 proposed seats in a beefed-up Assembly. Ironically, work produced by the Institute of Welsh Politics suggests that Labour would have won the same proportion, if not a larger share, of the seats under STV in the most recent (2003) election. But having a system which properly reflects the support people have for each of the parties would mean the party in government could never relax its guard.

However, the Labour party has another idea. Its AMs fear that PR means an end to the overwhelming power they can enjoy with less than 50 per cent of the popular vote. Instead They want to reduce the number of ways AMs can get elected. Where we compromised on the electoral system at the start, Labour is now behaving at its arrogant worst.

Clwyd West is the buzzword here, and is fast becoming a Welsh alternative to the West Lothian question. The fact that all four leading candidates in the Clwyd West constituency ended up in Cardiff Bay (one as constituency AM, the three runners up via the regional list) is a thorn in Labour's side. As none of their number come from the list in this Assembly, and conveniently forgetting that Alun Michael took advantage of the PR system to parachute in at short notice last time, Labour AMs want to prevent their rivals standing twice. And more importantly, gaining a seat alongside them. Preventing candidates from standing in both ballots was one of the few things Labour were clearly agreed on in their special conference on Richard; possibly the only thing.

This issue is driven purely by spite. Labour wanting to pick and choose who should be in the Assembly alongside them rather than letting the electorate decide. I believe it is healthy, even if not always pleasant, to have an AM opponent breathing down one's neck. This competition should provide a better service for constituents who know they have an alternative if they are unsatisfied with the service they are getting.

So where do we go now? How does the devolution process move forward in the aftermath of the Richard Commission? I refuse to believe that Labour's inability to agree needs to be a barrier to the rest of us. Wales needs a Senedd that can make its own laws, that can create Welsh solutions to Welsh problems, without having to go cap in hand to Westminster every time we want to pass a new law.

The campaign to implement the recommendations of the Richard Commission is being taken forward. *Tomorrow's Wales*, the civil society grouping led by the Archbishop of Wales, the Right Reverend Dr Barry Morgan, is pressing on with its work. While the political classes have largely (with a few notable exceptions) been convinced of the need for further devolution, that appetite is not necessarily shared wholeheartedly by those less closely engaged in public life. There remains a job to do in spreading public understanding of the limits of the Assembly's current powers, and the positive actions that could result from a proper parliament.

The current set-up has allowed us to do some interesting and worthwhile things: introducing free school milk, abolishing tests for seven year olds are examples. But full primary law making powers would open the gates for us to do a lot more. Take free personal care as an example. During the partnership government Labour AMs voted in favour in principle of

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Every year since 1999, the Assembly Government has submitted half a dozen ideas for bills to Westminster at the time of the Queen's speech. This year will be no exception. And every year the First Minister has declared himself content if Westminster grants a single Welsh bill. Yet this state of affairs means that annually, there are four or five proposals – ideas which could improve the lives of people in Wales – which are being lost. Not lost through lack of support in the Assembly, nor through unpopularity with the electorate at large. But lost because there is not sufficient time or inclination in the Labour Government in Westminster to give full consideration to the needs of Wales. And if a Labour government in Wales isn't getting what it wants from a Labour government in Westminster, imagine how much worse the situation could be if a different party were in control at either end of the M4.

Talking about more powers is not an end in itself. It is a means of delivering the best possible governance for Wales, where decisions are made as close to the people as possible. The best interests of Wales have been poorly served by Labour, and there will only ever be a minority who want independence (whatever that means). Curiously, Labour has given that minority a stage to shout on in the present arrangements. In a proper parliament, they would be shown to be a fringe group.

Where we are now is a strange outpost which only serves to stoke up the cause of Nationalism. One way to kill off the Nationalist threat is to balance properly the powers between Wales and Westminster. Then debate could focus on what we should be doing, not what powers we need.

A referendum on Richard is emerging as a possible way forward, although the timescale is not easy to guess. We have always felt a referendum unnecessary. The original referendum which established the Assembly gave a mandate from the people. Since then, the Assembly has taken on a steady trickle of additional powers at regular intervals. Powers over animal health, higher education fees and responsibility for fire authorities have all been devolved to the Assembly. None of these additions have required a referendum.

While we do not seek a referendum on law-making powers, as a party we would take on the challenge to win one wholeheartedly if it was presented. The question of tax-raising powers is more complicated. This was categorically not covered in the previous referendum, and would

With a General Election on the horizon, issues like education, health and crime are likely to squeeze the devolution question out of the headlines. But it is an issue which will strongly colour the background of the election campaign in Wales, given that it is an area where there is a marked difference between the parties. It is not an issue that is going to go away. As for the Welsh Liberal Democrats, we will continue to campaign for what we believe in: a Senedd for Wales.

2. AN ACCEPTABLE COMPROMISE

Helen Mary Jones AM

I originally came to the Richard Commission process as a sceptic. I believed that its establishment was more to do with the internal politics of the coalition governing at the time than with any serious examination of the governance of Wales. I was proved wrong.

The weight of evidence persuaded all the Commissioners, including the Chair who has said himself that he began the process believing that it was too early to consider major change, that the current constitutional settlement is inherently unstable and needs urgent reform. Objective evidence has shown that the current settlement is muddled, blurs lines of accountability, and can only function at all when the same political party is in power in Cardiff Bay and at Westminster.

The evidence taking process served to build the basis of a broad national consensus around the belief that primary law making powers over devolved matters are essential to enable any National Assembly Government to deliver for Wales and that the capacity of the Assembly as a whole to scrutinise the government urgently needs strengthening. There can be almost no one left in Wales who thinks we can carry on for long as we are. Yet we find the process of building a constitution that could really work for Wales stalled because the narrow sectarian concerns of the ruling Labour party are being given precedence over the best interests of the nation.

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Of course, the proposals set out in the Richard Commission report fall short of the proper Parliament outlined in the evidence that Plaid Cymru the Party of Wales gave to the Commission. We suggested, for example, the devolution of additional functions and the power to vary a range of taxes including environmental and corporation taxes. Despite this, we are prepared to give the Commission's recommendations a cautious welcome. If implemented they would represent a substantial step towards effective and accountable governance. It would be then up to us as a nationalist party to work within the new framework to convince the people of Wales that greater autonomy, and ultimately equal status with nations like Malta, Ireland and Luxembourg as an independent member of the European Union, was in their interests. We view the Richard Commission as an acceptable compromise.

It has been at first with bafflement and then a growing sense of anger that I have watched the Labour Party's reaction to the Commission's well thought through reasonable proposals. The outright rejection of the STV fair voting system that would both make everyone's vote count and restore a more direct link between each Assembly Member and the area they represent was disappointing if not totally surprising. The petty, spiteful move to prevent candidates standing in both constituencies and on regional lists is blatantly motivated by party interest alone and has no precedent anywhere where the additional member system is used. The refusal to acknowledge that more Assembly Members would be needed to effectively scrutinise the government of an Assembly with full law making powers flies in the face of the evidence the Commission took, and ignores experience from elsewhere.

The fact is that, ultimately, full law making powers and more Assembly Members would have to mean a reduction in the number of Westminster MPs. The public simply cannot be expected to pay for more and more politicians. Strong representation at Westminster would still be needed under the Commission's proposals because vital matters like benefits and pensions would remain undevolved, but there could be no justification for maintaining the current numbers of MPs. Labour in Wales is simply terrified of the kind of internal strife that has accompanied the reduction of numbers of Westminster MPs from Scotland, and won't countenance any reduction here. This is despite the fact that the Richard timetable allows ample time for adjustments to be sensitively made. This is short termist 'jobs for the boys' politics at its worst, and must be a profound embarrassment to those in the Labour party who truly believe in democracy and devolution.

The proposals endorsed at Labour's September 2004 conference are muddled, half-baked and borderline dishonest. They are all about a position that can hold the Labour Party together in the short term and nothing about how best Wales should be governed. It beggars belief that the governing party is going into a Westminster election without clearly telling voters where they stand on this key issue. Of course, voters' main concerns in the election are likely to be bread and butter issues like health, education, housing and jobs. But whether or not the Assembly has the power deliver effectively on these basic issues is at the heart of the Richard Commission's recommendations. It is at least a great pity, and at worst a disgrace, that the party, which spent £1million on commissioning this vital piece of work, seems bent on ignoring it.

So where do we go from here? Are we to take the Labour Party's position as final, and consign the work of the Richard Commission to the library shelves of political historians? I firmly believe that progress is possible. Those of us who wish to see Wales effectively and accountably governed need to work together to strengthen and deepen the consensus the Richard process began to build. We need to make the practical case time and again, demonstrating why full powers are needed to enable any Assembly government to deliver on health, social care, housing and all the other issues that matter when it comes to improving the quality of peoples' lives.

We must remind people that as it stands the Assembly would be powerless to protect Wales from a right wing Tory government at Westminster. The emphasis needs to be on powers to deliver, not power for its own sake. The evidence gathered by the Commission strongly suggests that public opinion is moving towards the need for equality with Scotland in matters of governance, and there is anecdotal evidence to back this up.

When the Commission's proposals were discussed at a recent meeting of the Assembly's Mid Wales Regional Committee in Powys not a single voice was raised by members of the public, either in favour of the status quo or advocating the reversal of devolution altogether. Instead, numerous examples were put forward by the farming community and voluntary organisations among others, of the unwieldy nature of the current settlement and the need for primary powers. Given the way Powys voted in the 1997 referendum this supports the view that a real shift has taken place. Now is the time to consolidate that shift.

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A growing consensus in favour of the Richard proposals as a package would, of course, strengthen the position of those within the Labour party who do support the case for real sustainable change. But it is no longer true that we have to rely on the Labour party alone to deliver. It would be possible for the Assembly itself to hold a referendum on the Richard Commission's recommendations. Though a yes vote at such a referendum would have no power to force a Westminster government to bring forward a new Government of Wales Act, the moral force of such a vote would be enormous. This option is under active consideration and, though there are barriers to overcome, it may provide a practical way forward.

There is a great deal of work to do. One thing is certain. None of the options currently being proposed by the Labour party – in so far as it is possible to understand them – would address the need for clarity and accountability that the Commission found so lacking in the governance of Wales. The people of Wales deserve better.

3. CONSERVATIVES WILL DELIVER

Glyn Davies AM

During the summer of 1997 the people of Wales considered how their nation was to be governed. There was not as much consideration as there should have been. Only 50 per cent of them turned out to vote in the referendum which followed it. The question that was decided upon in the referendum was whether a National Assembly for Wales should or should not be brought into existence. Wales answered 'Yes' by the narrowest of margins despite the best efforts of the Conservative Party to persuade her otherwise. And so, in May 1999 the National Assembly was established, with the active backing of just 25 per cent of the Welsh people eligible to vote.

I well remember driving home from the Leisure Centre in Llandrindod Wells at about 4.30am in the morning of 19 September 1997 following the referendum count in Powys in a state of deep contemplation. I was reflecting on the implications of the decision that the people of Wales

There would be no choice but to immediately accept the result and become a party committed to making a success of the new arrangements. There would be no choice for us, as there would not be for any other political party concerned with the public interest but to turn our attention to how the new politics should be moulded to serve the people most effectively. I decided that I wanted to be a part of it. I would try to become an AM. Even at that early stage I was convinced that law making powers would eventually be granted to the National Assembly. The question was when. It still is. It is not an easy question to answer.

The road from a policy of fierce opposition to the idea that a National Assembly should be created to becoming a party demanding that it be given law-making powers was always destined to be tortuous and uncertain. It is wise to proceed along such a road with caution. While I may have immediately accepted that an Assembly without law-making powers would result in an unstable British constitution, the Conservative Party's inherent suspicion of constitutional change would mean much soul-searching before this view became party policy.

Regrettably, British politics is going through a period of suffocation caused by an irrational fear of internal party debate. We live in constant fear of being accused of having something called a 'party split'. This modern obsession with 'groupthink' diminishes contemporary politics and generates an aversion to the sort of genuine discussion with which the voters can engage. It is likely that the Conservative Party will decide to wait until after the General Election before debating the proposals of the Richard Commission with the degree of openness and creative thinking that is necessary before we can accept the inevitable, logical conclusion that the National Assembly should be given law making powers.

The Richard Commission was set up in July 2002 to consider the powers and electoral arrangements of the National Assembly. It included a representative chosen by the Conservative Party. The commissioners put forward several proposals, of varying significance. Their report was prepared after two years detailed work and shedloads of evidence. Although the Commission has said that the Report should be judged as a whole it is necessary to consider the five most significant of its proposals in turn. The first is that the existing structure of the Assembly as a corporate body should be reconstituted as a separate legislature and executive. This is not controversial. It has always been my view that the current system of devolved government to Wales is structurally

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A political colleague in the House of Lords has described the idea that the National Assembly should act as a corporate body based on inclusive and consensual decision making as envisaged in the Parliament of Wales Act to be “the triumph of hope over reason”. As so often happens, reason has eventually prevailed. There is now cross party agreement that the traditional British parliamentary model of a ‘government’ confronted by an ‘opposition’ should replace the current complex and unclear arrangement.

The Commission’s second and most important proposal is that the National Assembly should be given primary law making powers. This has turned out to be extremely controversial even though I believe it to be inevitable. It is the subject of much informal debate in the Conservative Party but of very little formal or public debate. There are differing opinions within the Party as there are in almost every group of two or more people throughout Wales.

The strongest argument for giving the National Assembly these new powers is that it would remove confusion between its role and that of the Westminster Parliament. It would greatly increase the accountability of the National Assembly Government to the people of Wales. It would make Assembly elections more meaningful. It would make the law making process as it affects Wales much more easily understood. It would also make the National assembly more accountable to the people of Wales by making it less dependent on Whitehall for the initiation of legislation.

If Wales had primary legislative powers the current First Minister has expressed the opinion that it might pass only between four and five bills per session. The key point flowing from this change would be that there would be less opportunity for an Assembly Government to blame its shortcomings on the Westminster Government. The democratic process in Wales, the observation of which has been compared with watching paint dry, would be invigorated.

Current Conservative Party policy is based on an assertion that “the lack of primary legislative powers does not appear to have prevented the Assembly from functioning satisfactorily”. Notwithstanding this policy position, over the last three years the Conservative Party has suggested ways of making the Assembly more efficient. In particular one route would be to accelerate the powers granted to the Assembly under the Government of Wales framework. For example, we have called for

As the Commission notes in its report, under the present Act proposals of this sort would require the UK government to frame bills so that the Assembly was given the widest possible legislative competence within devolved areas. Most Conservatives have supported this approach. Those of us who would prefer to see the granting of law making powers to the National Assembly welcome this policy as a move in the right direction.

Other possibilities put forward to make the National Assembly more efficient include ideas such as the use of Henry VIII clauses in Bills relating to Wales. A Henry VIII clause gives powers to Ministers to use secondary legislation to amend or repeal primary legislation and the same procedure could apply, in theory, to the National Assembly.

A variation on this has been put forward by the First Minister and the Secretary of State for Wales. Their idea, of doubtful practicality, is that the UK Parliament would be invited to vote on the principle that all Parliamentary legislation on matters devolved to Wales should be of the 'framework' type, with the option that the Assembly could amend or repeal not just future legislation, but past legislation as well. Under this arrangement the National Assembly would not be able to initiate legislation in new areas but it would have the ability to introduce legislative provisions on all devolved matters. It must be highly questionable whether the UK Parliament would give serious consideration to this idea.

All of these options have the common aim of giving the National Assembly de facto legislative powers. Since so many of us are putting forward ideas about how to give the National Assembly new powers or change its current powers in ways which would make it, in effect, a law making body, it would be more sensible, more honest, less convoluted and give greater clarity and accountability if it was granted law making powers as recommended by the Commission. As my colleague, David Melding puts it, "If one wants to travel from Cardiff to Newport there is no point in going through Wrexham."

It is unlikely that the Conservative Party will change its policy dramatically before a General Election. However, I have absolutely no doubt that support for a law making National Assembly will eventually become party policy. Logic must inevitably prevail. I also believe it will be the responsibility of a future Conservative Government at Westminster to deliver this crucial step which is essential if a balanced

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The Labour Party has too many vested interests in maintaining the present arrangement, while the Liberal Democrats and Plaid Cymru are unlikely to be in a position to act within the foreseeable future.

The third proposal of the Commission is that the number of Assembly Members be increased from sixty to eighty. This proposal will not be supported by the Conservative Party. I accept that if law making powers are granted to the National Assembly there is a case to be made for this change. There will be a bigger workload, and a demand that scrutiny is taken more seriously than it has been thus far. The case for eighty Assembly Members is based on it being pro rata to the position in the Scottish Parliament.

However, this argument is weakened by the difference in responsibilities that would remain between Wales and Scotland even if the Commission's proposals were accepted. There is also the matter of public opinion. No serious political party can fly totally in the face of what the people think. Without a balancing reduction in the number of MPs representing Wales at Westminster the people of Wales will not wear another twenty Assembly Members in Cardiff. There is not much public support for yet more politicians. From a strictly partisan perspective the Conservative Party would be advantaged by a reduction of the number of MPs representing Wales at Westminster. This policy, which would be fiercely resisted by Labour, has the added benefit of being entirely the right policy from a non partisan perspective.

The fourth significant proposal put forward by the Commission is that a new system of election should be adopted. This is difficult to respond to because many Conservatives do not much care for election by any form of proportional representation. My reactionary genes cause me to be one of them. We prefer the First-Past-the-Post system of election, even though it could mean the loss of Conservative members in the National Assembly. I could be one of the casualties! We value the direct link between the elector and the elected.

However, I have to accept that we are unlikely to return to my preferred system and realistically the choice before us is what system of proportional representation system we should support. Another Conservative tradition is to stick with the status quo unless there is a strong reason for change. I believe that if the number of AMs remain at 60 the Conservative Party will resist any change from the present system of election.

Conservatives will fiercely resist the Labour Party's declared intentions to amend the current system to prevent an individual standing as a candidate in a constituency election as well as being placed on the regional 'additional member' list. This partisan Labour proposal is illogical and is driven purely by a desire to undermine the other parties. It is one of the worst examples of party self-interest that I have encountered and I have no hesitation in condemning Labour of utterly contemptuous behaviour. It is totally unacceptable that Labour should seek to control the selection process of other parties. Even worse, Labour is proposing a system that ensures that one third of Assembly Members have not asked a voter to support them. Labour's vision is of a national parliament where one third of the representatives are, in effect, political appointees. Labour wants to legislate in order to make 'cronyism' a permanent feature of our democracy in Wales. To date, only Alun Michael has been elected as an Assembly Member without any direct support whatsoever from voters. This proposal, steeped as it is in party self-interest, is an affront to democracy. It is no more than a shabby stunt by the First Minister and the Secretary of State for Wales to find something that Labour can agree on and to divert the public gaze from a total failure to win agreement within the Labour Party for any of the proposals put forward by the Richard Commission.

The Conservative Party will not support the fifth significant proposal made by the Commission. We do not support the granting of tax varying powers to the National Assembly. I accept that the logic that leads me to support law-making powers for the National Assembly leads also to a tax-varying National Assembly. However, the public simply would not accept it. It is interesting to note that although tax-varying powers have been granted to the Scottish Parliament, the Scottish Government has not dared to use them. Even the Richard Commission decided to describe tax-raising powers as desirable rather than essential. I do not know whether the Commission in using the word 'desirable' recognised the futility of making tax varying powers a firm recommendation. They were certainly wise not to make it a key proposal in their report. There is more chance of a Westminster Government bringing back cock fighting than granting tax varying powers to the National Assembly.

Whether and how the people of Wales should be consulted is an important matter for decision. The Conservative Party believes that there should be a referendum before any significant amendment to the Government of Wales Act is made. We accept that referendums are not straightforward instruments. As the Richard Commission has pointed

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There would also be debate about where in the process a referendum should slot in. In addition, the strength of the case for a referendum varies depending on which element of the Richard Commission proposals is being considered. There would be no questioning the need for a referendum if the total Richard Commission package were to be proposed, or if tax varying powers were being considered. There would be no real case for a referendum if the only proposal were to be separation of the legislative and executive functions of the National Assembly. The contentious issue is whether there would have to be a referendum before the National Assembly is given primary powers. The Conservative position is clear that there would.

I accept that there is a case against a referendum on law making powers because the change would, in reality, not be greatly significant. So much about the current status of powers is confused. The difference between primary and secondary legislation is not at all clear and the latter can often be much more significant than the former. Few people fully understand the true extent of the current powers of the Assembly. For example, while the National Assembly can abolish prescription charges or redesign the entire education system, it cannot stop wind turbines being built. The Government itself has brought forward proposals for action only to discover subsequently that the proposed action is outside its competence.

In addition, and irrespective of what is written in the Government of Wales Act, the moral authority carried by a First Minister demanding primary legislation on behalf of the elected National Assembly would in reality be difficult for a Westminster Government to resist if he decided to exercise such authority. And to confuse the position further, there has been put in place a mechanism by which Westminster and Cardiff can jointly consider new bills, thus giving the National Assembly an input into primary legislation already. However, after considering all these arguments the Conservative Party is firm in its demand that a referendum should be held before law making powers are devolved to Wales.

It would be a significant change of policy for the Conservative Party to advocate law-making powers for the National Assembly. It would be unwise to rush or curtail debate on such an important matter. Such a change should be carefully considered and not forced by the need to produce a General Election manifesto. But in the not too distant future we will have to confront the reality that there is no sensible or rational

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The current settlement is fraught with danger for Conservatives. If the Conservative Party were to win the next General Election, the newly formed Conservative Government would be held responsible for every conceivable problem that would henceforth crop up in Wales. There would be unlimited opportunity for a Labour-run Government in Cardiff to undermine the Westminster Government and portray 'English Tories' as frustrating the will of the people of Wales, no matter how unjustified that might be. Such a scenario would do more to undermine the unity of the United Kingdom than anything flowing from full acceptance of the Richard Commission proposals. And it would seriously undermine the efforts of the Conservative Group in the National Assembly who have helped re-establish the Conservative Party in Wales over the last five years.

There remains a significant, though decreasing, number of Conservatives who advocate a policy of scrapping the Assembly altogether. Although this is a logical option there is not the slightest possibility of it happening. There is more chance of Wales winning the next rugby world cup. Another group of Conservatives want to draw a line in the sand and are not prepared to allow a Labour Assembly Government any greater opportunity to inflict its damaging statist policies on Wales. This policy also has logic, even if it is depressingly defeatist. Their assessment of Labour is accurate enough but the approach will not achieve its objective. The process of devolution is not going to stop. It would simply proceed without Conservative input. This negativity towards the National Assembly is fuelled by an unjustifiably defeatist presumption that Conservatives cannot win power in the National Assembly. This attitude is damaging and misplaced. We have a duty to offer the Welsh people an alternative to the centralist, free provision, Sir Humphrey-knows-best culture of the three other parties in Wales. The Conservative Party can and should be much more optimistic. It is but 20 years since the Conservative Party led by Mrs Thatcher was within a whisker of becoming the largest party in Wales.

I have no doubt whatsoever that Conservatives can recover a position of real power in Wales. But first we must change the way in which the people of Wales perceive us. The key to our recovery is reassuring them that Conservatives are fully engaged with the Welsh nation and with Welsh issues. Voters in the Valleys and the Welsh language heartlands must know that they matter every bit as much as voters anywhere else in Wales. We will never win power if we act as if we believe we never can. A policy of supporting law-making powers for the National

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The strongest argument against supporting the Richard Commission proposals is that it is too soon to change an act that is just over five years old. This argument was implicitly accepted and addressed by the Commission in that it proposed a timetable that meant primary powers not being granted before 2011. In my opinion the structural defects in the current Act are so serious and such a threat to the integrity of the United Kingdom that the Conservative Party should decide to back law making powers as soon as practically possible.

It will take courage and leadership to inspire our Party into accepting the main thrust of the Richard Commission proposals. There may be some risk but rarely in politics has electoral success been achieved without such courage. And we have so much to gain by taking control of the devolution agenda through adopting a visionary rather than a reactionary approach to devolution.

Throughout the last two centuries Conservatives have often accepted the reality of change, even unwelcome change, although admittedly not always with great enthusiasm. Sometimes we have shocked our opponents by the sheer audacity of our adaptation to new circumstances. This is why the Conservative Party has succeeded in being such a durable political force. Making sense of devolution is today's biggest challenge. I have no doubt that we will rise to it. It will be the Conservative Party that will deliver on the Richard Commission Report.

4. ENHANCED POWERS WITHIN THE RICHARD TIME-SCALE

Leighton Andrews AM

Under Labour's plans for future devolution to Wales, the National Assembly could have law-making powers well within the time-scale envisaged by the Richard Commission, if the people of Wales agree. Contrary to the myths pedalled in many quarters about Labour's plans, the Assembly is on course to get increased powers, through the route-
... adopted by the Party at its special conference in September 2000

The Labour Party will ensure that the National Assembly gets enhanced powers well within the time-scale established by the Richard Commission. If a third-term Labour Government is elected, Labour will move swiftly to approve the principle that legislation for devolved matters in Wales would be of the framework type recommended by Lord Richard in paragraph 13.2 of his report, to extend the Assembly's secondary legislation powers. The Labour Government will then publish a White Paper outlining the terms of a Government of Wales (Amendment) Act. This Act would achieve three objectives:

1. Develop further enhanced legislative powers.
2. Reform the electoral system.
3. Change the Assembly's 'corporate body' status.

There is no reason why this Act could not be on the statute-book well within the Richard Commission's 2011 time-scale. The White Paper will state an intention to enhance the legislative powers of the Assembly, and could set out the options for achieving it. One of those options would be the devolution of primary law-making powers to the Assembly, subject to a referendum following the passage of the Government of Wales (Amendment) Act. All of this could be achieved during the next Parliament: in other words, assuming a 2005 election, by 2010 at the latest. The National Assembly elected in 2011 could, therefore, have law-making powers.

I have supported devolution all my life. The first vote I ever cast was in the 1979 referendum. I lived in Bangor at the time. I remember that dreadful day in March 1979 as the votes came in, when Wales voted four to one against devolution. The key question when it comes to the future of the National Assembly is legitimacy. The Assembly has to have legitimacy with the people of Wales. That is why I believed that there had to be a referendum in 1997. Wales had to vote to erase the memories of 1979.

Unlike other parties who approached the Richard Commission report with their minds already made up, Welsh Labour has been prepared to debate the issues openly and frankly. Our discussion has been intelligent and well-informed - far from the caricatures given it by the opposition parties and some parts of the media. In my own constituency party in the Rhondda there were spirited exchanges, not so much about whether devolution should progress further, but rather whether the time had yet come for the Assembly to be given primary legislative powers in

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In my experience that debate reflects the mood amongst people in Wales more widely. Of course, there are some who continue to oppose devolution. But for most people, the argument now is about the pace of further devolution of powers to the Assembly. The essential debate is between those who believe the time has come for the extension of primary powers and those who believe it is too early. The typical caricature of Labour's debate has suggested that Welsh Labour Assembly Members are arrayed against Welsh Labour MPs in some kind of grand struggle over whether devolution should be extended. That is not my experience. Most Welsh Labour MPs to whom I have talked - and I have discussed the issue with many of them - are committed to the extension of devolution. Like the rest of Welsh society, there is an honest debate about whether the time is right to extend primary powers to the Assembly. The role of Members of Parliament is critical. They have the task of passing new Assembly powers into legislation. MPs speaking at Labour's Special Conference in September 2004 were overwhelmingly supportive of devolution, as were constituency party members, and the representatives of the trades unions. The only speaker really hostile to devolution was an MP who is about to retire.

As the Richard Commission concluded:

“The Assembly's powers could be strengthened within the current settlement by including in future primary legislation new framework provisions designed to allow the Assembly to, for example, make through secondary legislation any changes it wished within the field covered by the Act.”¹²⁶

This proposal was summarised in box 13.2 of the Richard Commission and is now known as 13.2. Labour's routemap comments:

“Under this proposal, in drafting England and Wales primary legislation in the existing devolved areas, the UK Government would delegate to the Assembly maximum discretion in making its own provisions in Wales, using the Assembly's secondary legislation powers.”¹²⁷

And as the document continues, this could be done speedily in principle through a parliamentary vote after the General Election, and would build on progress already made in granting the Assembly additional powers.

Labour would deal with the corporate body status of the Assembly, ensuring that there is a clear legal distinction between the Assembly Government and the Assembly as a whole. This would make it clearer to the public the roles and responsibilities of Ministers, backbenchers, and Opposition parties. It should also clarify the roles of committees and their relationship to Ministers. This would require primary legislation in a Government of Wales (Amendment) Act.

Labour proposes to make one change to the electoral system. In future, candidates for the Assembly would have to choose whether to stand in the constituency section or the regional list section. The system has been called into question by the way in which constituency 'losers' become winners. Currently 90 per cent of the regional list members were defeated in constituency contests.

In the Clwyd West seat, only the Labour candidate, Alun Pugh, did not know on election day whether he would be elected. The Conservative, Liberal Democrat and Plaid Cymru candidates were all top of their party list and guaranteed Assembly seats whatever the outcome.

Although this is not explicitly stated in Labour's plans, we should also end the obscenity whereby tax-payers pay for regional list AMs to campaign to unseat particular constituency AMs. The Scottish Parliament's code of conduct on relationships between constituency and regional list MSPs should also be adopted in Wales.

Labour does not accept the case for an expansion in the number of Assembly Members to 80. I have to say that the day after the Richard Commission report was published, I found little enthusiasm in Treorchy Market for another twenty politicians in Wales. I suspect that this is a widespread feeling in the country.

However, I have no doubt that we will need to look carefully at how we organise ourselves in the Assembly as we take on additional powers. We will need to organise our time in Cardiff Bay better. We will need additional committee support.

We will also need to look at the size of Committee membership. Of course, once a decision has been taken that additional Assembly Members are not needed, then the argument for fundamental changes to the electoral system, beyond that outlined above, falls away.

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Two possible options for extending the Assembly's powers are outlined in the Welsh Labour route-map. The first, commonly known as 13.2-plus, is the option proposed by the First Minister shortly after Richard reported. The First Minister had every right to look at options which could give the Assembly the necessary tools to do the job as soon as possible. He made his proposal in the spirit of seeking an approach which could deliver greater powers without the need for legislation. The First Minister has been right to point out that increasingly the division between primary and secondary legislation has been harder to draw. The essence of the First Minister's proposal is that the Assembly could be granted enhanced Order-making powers to make new legal provision for Wales in defined fields within the responsibilities currently devolved to it, including a power to amend or repeal relevant earlier legislation in this field.¹²⁸

This would apply the principle of framework legislation retrospectively, which is why it has been given the nickname '13.2-plus'. There are still legal questions to be resolved in relation to this proposition. It would mean extending the existing 200-plus 'Henry VIII' powers which the Assembly currently has.¹²⁹

Doubts have been raised as to whether this proposal would get the support of the House of Lords.¹³⁰ Personally I have found little support for it in Westminster. The question also arises, if Labour is going to seek a new Government of Wales (Amendment) Act to address the issue of corporate body status and of the electoral system, it would seem strange not to use that mechanism to achieve primary powers at the same time. For my part I believe that the National Assembly does need primary law-making powers in the areas for which it has responsibility, for four main reasons:

1. It will make for a better Assembly. At present our plenary sessions too often have the flavour of party conference debates. Short sharp speeches for and against amendments and motions without the opportunity to engage in the detailed scrutiny of legislation.
2. It will make for legislative efficiency. It will avoid the duplication of scrutiny at Westminster and Cardiff levels.

¹²⁸ Welsh Labour, *ibid.*, paragraph 26.

¹²⁹ Written answer from Rt Hon Rhodri Morgan AM to Leighton Andrews AM, Assembly Record. 5 April 2004.

3. It will allow for swifter legislation, closer to the people of Wales. It will relieve the congestion on Westminster's legislative conveyor-belt.
4. It would be more transparent, making it clearer where responsibility for decisions lies.

While supporting primary powers, I also support a referendum. The key question when it comes to the future of the National Assembly is legitimacy. The Assembly has to have legitimacy with the people of Wales. There is nothing dishonourable, unprincipled or reactionary about the belief that further extensions of devolution require their advocates to take the people of Wales with them.

I do not think a referendum on primary powers is obligatory. The 1997 White Paper *A Voice for Wales* said that the Assembly would "help to create the body of law which governs Wales." However, I believe that a referendum would be useful: we could take the case for greater powers to the people in a referendum campaign. Also, a positive vote in the referendum would help entrench the next stage of devolution and morally would make it harder for any future right-wing government to reverse. What Parliament grants, Parliament can take away. Power devolved is in that sense power retained. The only way to entrench the Assembly, and to make it unlikely that it can be swept away, is to ensure that it has the endorsement of the people of Wales.

Once primary legislation in the shape of a Government of Wales Act has been embarked upon, changes could be introduced to the Bill by amendment both in the Commons and in the Lords, where Labour does not have a majority. A referendum option might be added into any new Government of Wales Bill. In the 1970s the supporters of devolution were put on the defensive because of their failure to support a referendum from the outset. As J. Barry Jones has written of the seventies experience:

"The debate on whether or not a referendum should be held generated such political heat that the devolution issue itself was almost completely overshadowed. Those opposed to the referendum, who largely comprised the pro-devolutionists, were increasingly portrayed as anti-democratic, unwilling to permit the people to make their decision and fearful of the electorate's opinion."¹³¹

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The pro-devolutionists consequently found themselves occupying an increasingly untenable position. That is why it is better for those supporting law-making powers to confront the debate on a referendum before the legislation is embarked upon. There is no point in ruling it out only to have it resurrected when legislation is before Parliament, through a Parliamentary ambush by Tories in the House of Lords. To repeat the seventies experience would be a disaster for devolution and for Wales. However, I would myself have preferred a referendum on the principle of support for law-making powers, before legislation, rather than having a referendum after legislation. Achieving a winning coalition is a simpler task when you are working on broad principles.

One area where Welsh Labour has already agreed to go further than Richard is in the area of the quangos. As I said in the Assembly's debate on the Richard Commission report in April, I was slightly surprised that there is so little in the report's conclusion on the future of quangos.¹³² A lot is said in chapter 6, but there are few real recommendations. However, at the end of July 2004, the First Minister announced plans to bring the WDA, WTB and ELWa within the Assembly Government, and discussion is underway on the future of other quangos. This will address many of the issues of concern to people in Wales, including the complicated public service accountability issues which were a feature of ASPB Boards accountable to Ministers but having their own corporate responsibility, empire-building and contradictory agendas. As the route-map states, "Welsh Labour brought about devolution in part to secure the greater democratisation and accountability of the quango state."¹³³ This is now under way.

In its relations with Westminster Welsh Labour is a unionist party, not a nationalist party. We support the union of Wales with the rest of the United Kingdom just as we do the European Union, believing that we are stronger together. There will be a continuing need for co-operation with Westminster. Both Richard and the Welsh Labour document recognise the likely continuing need for England and Wales legislation and for Sewel-type legislation. Joint working between the Assembly and Westminster will remain important. If we achieve primary powers, it is still likely, as is the case with Scotland, that there will be occasions when legislation for Wales will be made in Westminster. Therefore, our ability to have a dialogue with our Westminster colleagues, and to improve and deepen that dialogue, is important.

We will need a better understanding of devolution within Westminster Government departments. Concordats need to be revised and adhered to. The 'Rawlings' Principles' need to be followed through.¹³⁴ Another issue that we need to consider in deliberating on the future of the Assembly and its relationship with Whitehall and Westminster, not least on non-devolved matters, is section 30 of the Government of Wales Act 1998, which has not yet been implemented. It relates to ensuring that Ministers at Whitehall consult the Assembly on particular kinds of appointment. For this section of the Act to be implemented, it must be brought in through an Order in Council, which has not been done. Some of the issues have been dealt with in the concordats, but I hope that we will see the implementation of that section in future. We also need better channels for communication of Welsh interests on non-devolved areas where UK legislation is pending, such as broadcasting.¹³⁵

The National Assembly for Wales is heading for stronger powers. Welsh Labour has firmly embraced the deepening of devolution and in some areas is moving faster and further than Richard. But Welsh Labour is committed to taking the people of Wales with us when it comes to further change. We believe devolution is a means to an end, to a modern Wales based on social justice and prosperity for all. The argument for further devolution won, we need next to make the case more strongly for Wales within the United Kingdom: the case for unionism, that is based on socialist principles of solidarity. Too often that case has gone by default in post-Assembly Wales.

¹³⁴ Richard Commission, op. cit., p151.

¹³⁵ Richard Commission, op. cit., Chapter 5, paragraphs 67-70, p. 99-100; Leighton Andrews AM, *Finding its Voice - the National Assembly for Wales and Broadcasting policy 1999-2003*. Paper for the Conference on Communications in Wales after the Communications Act

Chapter 8

VIEWS FROM WESTMINSTER

1. STILL EARLY MORNING AFTER THE DEVOLUTION DAWN

Gareth Thomas MP

The first thing to be said in relation to the title given this chapter is that Welsh Members of the Westminster Parliament are as much part of the political scene and democratic life in Wales as Assembly Members. Accordingly, this is not merely a perspective from Westminster but the view of an MP who represents a marginal constituency in north Wales and who has been, and remains, a supporter of devolution.

I have taken the opportunity to read what I said during the Second Reading Debate of the Government of Wales Bill on 9 December 1997, in which I recalled the night of the referendum:

“Around 3am, my seven-year-old daughter, on her way to bed, asked "Ydi'r bobol Na am ennill?" which means "Are the No people going to win?" At that stage, the fate of Wales hung in the balance, because it was not clear whether or not we were going to win ... When my daughter awoke the following morning, I was pleased to be able to announce that there was a new dawn - the Yes people had won.”¹³⁶

I still feel emotional as I read that passage, describing as it does what many devolution supporters would agree was an ‘existentialist’ moment in modern Welsh history. And it’s a metaphor for Wales perhaps that although I helped lead the Yes campaign in north Wales I couldn’t make it to the party in the Park (Thistle) Hotel in Cardiff that night because it was too far to travel! However, we campaign in poetry but govern in prose, and we must be hard headed about the far reaching proposals before us.

What I will try to do during the course of this chapter is firstly to make some observations about the report. Following that I want to provide a pretty frank account of the state of opinion in Westminster, by which I mean both the House of Commons and the second chamber. It should be borne in mind that experience tells us that the views of the House of Lords, where Labour does not enjoy a majority, are crucial, particularly in respect of legislation dealing with the constitution. I will also make a stab at predicting the outcome of the current lively debate within the Labour Party and what we may end up with in practice some years down the line.

The Richard Commission report will make a major contribution to an informed debate. We never had the sort of constitutional convention which Scotland had prior to the Scotland Act. This failing has been redressed by Lord Richard and his Commission. Theirs is a well written report and by the standards of these documents almost a racy read.

I was particularly impressed by the analysis in Chapter 2 of the historical and international context, although it has a rather too deterministic flavour for my taste. Institutions such as the Assembly are likely to seek further powers. The current settlement allowed for that. But there is no inevitability about the progress towards a Welsh Parliament. Incidentally, I was struck by the report's description in Chapter 2, paragraphs 63 and 64, of the trend towards greater central government involvement in federal states in the important areas of social policy where there is a case for national convergence and uniformity:

“For example, in Australia, responsibility for education is formally with the states, but in practice the federal government is a major player because of the strategic importance of the subject. The general picture is one of federal government becoming increasingly involved, through funding or other levers, in state responsibilities in ways which were not foreseen when the constitutions were drawn up:

For the most part the founding fathers never foresaw the massive expansion of the welfare state... In most federal systems, particularly Australia and the US, and I believe the Canadian system too, in practice almost all spheres of activity that the states are involved in involve a great deal of overlapping and very complex lines of responsibility.

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The expansion of social policy, and aspirations to national standards, creates pressure for greater uniformity in some federal systems which contrasts with the move towards greater diversity in unitary states where central government has been devolved:

*“The themes in those countries [US and Australia] in the post war period have been, broadly speaking, a general trend towards greater centralisation whereas... we are seeing this country in a sense going in a different direction.”*¹³⁷

That is a live issue when we look at disparities of performance between the NHS in Wales and England and the difficult cross border issues which make the “geo-political concept of England and Wales”, to use Professor Rawlings’ wonderful phrase, so “uniquely powerful”.¹³⁸ I am not against primary powers in principle but the principled case against an extension of powers to the National Assembly for Wales would be based upon that ‘geo-political’ relationship between Wales and England. We have a porous land border and cross border patterns of economic activity and service provision. The report acknowledges that there is close integration between UK departments and Assembly departments and Wales would lose influence in Whitehall if primary powers were given.

The description of the way in which devolution is currently working (Chapters 4 and 5) is also impressive as is the report’s insightful description of the Wales/Whitehall Wales/Westminster relationships (Chapter 7 and 8). Significantly I cannot find any reference in the report to the failure of the present system. The evidence given by Assembly Ministers was quite the opposite.

I was less impressed by Chapter 3 in which the Commission makes conclusions about the state of public opinion on the current arrangements. I have no doubt that the Commission has endeavoured to reach evidence-based conclusions. However, we should bear in mind that the vast majority of oral evidence was from people who were involved in the political process: NGOs, Quangos and what might be described as the ‘Chattering Classes’.

¹³⁷ Richard Commission report. Chapter 2. paragraphs 63 and 64. The quotations are from the

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It was very difficult for the Commission to gauge grass roots opinion and the Report does concede that there was an element of 'self selection' as far as the public meetings were concerned. By this I mean the Plaid Cymru member from Cardiff may have been rather more prepared to attend than the man or woman in the Cross Keys, Llanfwrog, near Ruthin. With the greatest respect I am not terribly impressed by the quality of the public opinion research contained within the report presented by the Institute for Welsh Politics. Of course, it depends how you ask the question. What I know from my constituency surgeries and my post-bag is that no-one has complained to me about insufficient powers, although plenty have grumbled about the state of Welsh hospital waiting lists, and the size of their council tax bills.

I am also less impressed about Chapters 13 and 14 in which the Commission reaches its conclusions that essentially there should be an 80 member Assembly elected by STV with full legislative powers in devolved areas. I think the evidence could have equally justified a conclusion that the present arrangements are working well. There are some problems, there are jagged edges and there is scope for development, but without the need at this stage to 'supplant the current settlement' which we know was designed to allow the Assembly to develop organically.

However, I do give the Commission credit for its efforts to formulate an integrated package based on the elements of size, powers and the electoral arrangements. It is a package and those who on the one hand heap praises on this report whilst on the other attempt to cherry pick it, do the Commission a disservice.

It's a rather obvious point to make, but if there is going to be a major change to the Government of Wales Act it would have to be done at Westminster and realistically speaking it would be a Labour Government which would implement Richards if it came to it.

Labour MP's have no monopoly of wisdom but they will be key players. My assessment of the current state of opinion in the Welsh Parliamentary Labour Party is that we have moved a long way from the ambivalence, if not down-right hostility to the concept of devolution which was a feature of the Labour Party in Westminster in the last quarter of the last century. I respect those who have consistently rejected devolution but they are in the minority. There is also a minority who have no problem about accepting Richard's recommendations as

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However, I think it is accurate to say that the majority do not support 'Richard'. I would say most of my colleagues would support the sentiments of the Ted Rowlands, a respected Welsh Parliamentarian and it is worth quoting the reservations articulated in his letter distancing himself from the conclusions of the Report:

"I do not believe that the experience and evidence of just four years of the devolution settlement justifies concluding at this stage that it should be supplanted by an alternative model. However the experience of operating the settlement over the coming years may justify such a change."

At the same time, he went on to say that:

".. the report offers the public a coherent alternative model for a legislative Assembly which if supported by the Welsh people in a referendum could form the basis for further constitutional change."¹³⁹

With respect to the noble Lord Richard, who has stressed that this is an agreed report, I cannot see how it can be described in this way given the reservations expressed here by Ted Rowlands. I share his view and so do the majority of my Welsh Labour colleagues in the Commons.

It is fair to say, too, that there is a degree of irritation amongst my colleagues, firstly, about the way in which the contents of the report were 'spun' beforehand - ruling out tax varying powers, which were never really on the agenda, and so it was suggested obviating the need for a referendum. There is irritation, too, at what is seen as a disingenuous attempt to 'bounce' the Labour Party, and to attribute Welsh MP's scepticism to self-interest. I don't believe that any MP, particularly one in a marginal seat like mine, would feel that they had a job for life.

However, *party* political self-interest is an issue. I make no apology for believing that the interests of the people of Wales are best served by a Labour Government at Westminster, the sort of Labour Government we have, providing massive extra expenditure on public services. In a lean year Labour needs as many Welsh MPs and Scottish MPs as possible to retain power, given that the majority of them will be Labour MPs – that is the political reality.

The Scotland Act contained a provision on the face of the Act requiring there to be a reduction in the number of Scottish MP's. The Scottish Parliament (Constituencies Bill 2003) decrees that the number of Westminster seats will be reduced from 72 to 59 at the next general election. Political strategists at the highest level of the Party acknowledge that this has raised the bar and will have an effect on the size of Labour's majority at the next Parliament. I am not surprised that the Secretary of State for Wales has publicly stated that he would wish to avoid this outcome and that a reduction in the number of Welsh MPs in Westminster is a red-line issue.

I have the highest admiration for the Secretary of State and I know from having worked closely with him during the referendum campaign in 1997 that he played a crucial role in the ultimate success of that campaign (albeit by a hair's breadth). However, I am afraid he may have impaled himself on the horns of a dilemma. If his bottom line is that there should be no reduction in the number of Welsh MPs at Westminster, then I cannot see how he can advocate the extension of primary legislative powers to the Assembly - whether it be a 60 member Assembly or an 80 member Assembly. The historical justification for the relative over-representation of Wales in Westminster was recognition of Wales' national status and the need to have Welsh MPs to enact Welsh legislation.

Whatever the outcome of the present debate, the price of getting the legislation through both the Commons and the Lords would be a requirement on the face of the Bill that there should be a boundary review to adjust Welsh representation at Westminster and I would anticipate that Wales would lose seven seats. The failure to be 'up front' about this has been a source of irritation and tension. At least half-a-dozen other factors have coloured the debate:

- A strong feeling that it is far too early to carry out this sort of step change.
- The need to recognise that the 1997 referendum victory was extremely narrow which should engender, as one of my colleagues recently put it to me, a certain "sense of humility".
- The low turnout in elections to the National Assembly for Wales.
- Widespread antipathy to the Assembly in large parts of Wales, particularly the north east and south east of Wales (my own constituency recorded a 'no' vote as was the case in most constituencies in north Wales).

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Moreover, speaking for myself as a somebody who is an unashamed moderniser, there is a left-right dimension underlying the debate. It also has to be said that many party members (not to say members of the public) see the report as a distraction from the real issues – health, education, policing and jobs. And the report is seen as the product of a discredited coalition. The announcement of a referendum on the European Constitution will also colour the debate as to whether there should also be a referendum in Wales on Richard.

Turning to the other political parties, the Conservative position, with which I agree, is that it is far too early to make this sort of step change and that there should be a referendum. I am no expert on the Conservative Party but I feel that predictions that the Tories would favour an acceleration of the pace of devolution are ill-founded. There may be one or two Tory Assembly Members who are relaxed about this prospect, but I strongly suspect that their view will not prevail. The views of the Liberal Democrats and Plaid Cymru are well known. What is more interesting about the approach of these parties, is that although they see no need for a referendum, would they be happy with a 60 member Assembly in the light of Richard's strong observations on the Assembly's present lack of capacity? And what would be their position on PR?

Turning to the House of Lords, again I'm not qualified to express a strong view. However, it would seem that leading Welsh Peers are far more receptive to Richard's conclusions than those Members of Parliament who have constituencies. I would expect they would insist upon an 80 member Assembly and they would place great emphasis on the need for greater scrutiny.

I hope efforts will be made to avoid a collision between Westminster and Cardiff. A possible compromise can be built on the Rawlings principles and greater use of Henry VIII powers.¹⁴⁰ Primary powers should not be seen as a totem. At the same time we need to build robustness into the present settlement which would make the Assembly less dependent on good will and better able to withstand changes of government. There is huge hostility within Labour against the present PR system but realistically there is no way that the Assembly can revert to 'first past the post'. The result is that in our published response to the Richard report, approved at the special conference held in Cardiff in September 2004, we rejected its STV proposals, but advocated retaining the Regional List System amended so as to preclude dual-candidacy – the Clwyd West question.

In my view if we are to have what is to all intents and purposes a Welsh Parliament, the membership must be increased to 80 in order to create a credible body, with capacity to scrutinise and legislate. If there is a 60 member proposal I am afraid it would be another 'back-of-the envelope' fudge. It would be wishful thinking to believe that keeping the membership down to 60 AMs would preclude the necessity to reduce Welsh representation at Westminster. The Lords would still insist upon it as the price of getting the legislation through. The Lords are also likely to require a referendum which, in any event, was conceded in Labour's response.

At the opening I referred to the new dawn many of us felt had broken on referendum night in September 1997. In my view it is still early morning and too early to embark upon further major change. Public opinion must be respected and we should make the most of the current settlement.

2. ANOTHER STEP DOWN THE SEPARATIST ROAD

Llew Smith MP

The Richard Commission on the future powers of the National Assembly for Wales was agreed in typical Rhodri Morgan style: with the Liberal Democrats, behind closed doors, and without any consultation with the Labour Movement. The Commission – whose conclusions they hoped would form the basis of Labour's policies on this issue - was made up of representatives of the opposition parties. Its one prominent Labour member, excluding the Chairman, failed to endorse many of its conclusions.

How can Labour policies be based on the collective views of the Tories, Liberal Democrats and Nationalists: a novel way of making policy in the Labour Party? Put another way, would the other political parties - should they ever be in the unlikely situation of governing in Wales- then ask the Labour Party to determine their policies? I think we all know the answer.

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In the referendum of 18 September 1997 I faced the charge of introducing the threat of nationalism into the debate. I willingly pleaded guilty. I can understand why some wished to dispel this fear, knowing that there was little support for the separatists' agenda. Indeed, senior Labour politicians argued that an Assembly would kill off the Nationalists. Even an author of such distinction as Dannie Abse wrote at the time of the referendum that, "A 'no' vote to an assembly . . . could lead to a greater and increasing velocity of suppressed nationalism."¹⁴¹ A Welsh Assembly would therefore destroy the nationalists and their separatist aspirations. They would become prisoners of their own making.

What is more likely to kill off the Nationalists is their commitment to a Wales separated from the rest of the United Kingdom, together with the anti-English sentiments, which are held by many of their members. Indeed, this showed itself in their recent poor election results. Yet Labour is in danger of adopting a nationalist programme just as the voting public are further rejecting it.

Are we expected to believe that the Nationalists would have supported an Assembly if it meant signing their own death warrant? Were we expected to be so naïve to believe, that they would be satisfied with an Assembly, a half-way house? Surely, it should have been recognised, as I stated in my evidence to the Richard Commission, that while celebrating the arrival of an Assembly, they would still press for a Parliament and their ultimate goal of separatism from the rest of the United Kingdom, as they agreed to do in their 2003 Conference. That is why the Nationalists will support the proposals of the Richard Commission, recognising it as another major step down the separatist road. One of the first to express support for the conclusions of the Richard Commission, was the former Nationalist leader, Dafydd Wigley.

I am not arguing that all those who supported an Assembly, or who are now demanding a Parliament are nationalists. What I do believe is their demands are taking us - step by step - down the separatist road. This can be seen in so many submissions to the Richard Commission. It is hardly surprising that a Commission whose chairman was appointed by Rhodri Morgan, and which proceeded to appoint most members, would come up with a demand for more power. Nobody should be surprised that the conclusions of this Commission would reflect the main ideas of its originator.

To justify this move towards a Welsh Parliament, we are told that it is an insult to Wales for it to be given fewer powers than the Scottish Parliament. This is once again a nationalist argument. While I am still not sympathetic to an Assembly, I remain of the opinion that its powers should be based on the most effective form of decision-making. What we want is good government, not nationalism. Are we so unsure of ourselves in Wales that we have to copy the Scots, when we were informed that one of the reasons for devolution was that were different from the rest of the United Kingdom?

Yet at the time of the referendum, many of these very same people were extolling the virtues of an Assembly. They informed us that it involved a miracle cure for all our economic, social and constitutional ills. You name it, the Assembly would cure it. No explanation was provided as to how this would happen. The mere existence of an Assembly would be sufficient. So-called serious politicians from all the major pro-Assembly parties were willing to peddle this nonsense, and nonsense it is. It panders to a form of nationalism that has no intellectual base and insults the intelligence of the people it purports to represent.

Ron Davies, who spent months extolling the virtues of the Assembly proposals, as he steered the legislation through Parliament, was, soon after the Referendum campaign, rubbishing his own proposals. The case for further powers for the Assembly is “unanswerable”, he argued.¹⁴² He repeated these views some months later, saying that “More constitutional powers for Wales are inevitable,” and adding that he wanted a “full Parliament for Wales.”¹⁴³ This seems remarkably similar to the rhetoric of Thatcher’s “no alternative”.

Nor is Ron the only (now former) Labour politician to advocate more powers for the Assembly. In a speech at the University of Glamorgan in 2001, Clwyd West AM Alun Pugh – now Secretary for Culture and Sport - set out a case for the Assembly taking responsibility for primary law-making powers. The public interest and support for this proposal was demonstrated with just three people turning up for this well-publicised lecture. And even more recently we have witnessed Carwyn Jones, AM for Bridgend and Secretary for Environment, Planning and the Countryside, publish a pamphlet arguing the case for more primary law-making powers for the Assembly, because, in his judgment, the current arrangements are holding back the Assembly.¹⁴⁴

¹⁴² Welsh Mirror. 17 January 2000.

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The *Western Mail* reported that Carwyn's intervention is aimed at persuading grassroots Labour members in Wales that the devolution project must be taken further.¹⁴⁵ Anyone following Carwyn's lead ought to be aware he sometimes has difficulties with the facts. For example, in an article in he wrote in April 2004 he asserted that "in England, Scotland and Northern Ireland, national bodies can make laws in their own right."¹⁴⁶ This is simply wrong. Laws which apply to England are made in the UK Parliament, and voted on by all MPs. And the Northern Ireland Assembly is presently suspended - and was so when Carwyn wrote his own article - so legislation for the province is also made in Westminster.

As only one-in-four of the population voted for an Assembly, this does not show great faith in the institution, yet it was still recognised that a referendum was necessary to establish this body. A referendum would therefore also be necessary to create a Parliament, which is a totally different body – although this call was not supported by the Richard Commission. If in the future there should be such a referendum on the proposal to establish a Welsh Parliament, then I also believe an additional question should be added to the ballot paper to scrap this institution altogether. As more than one referendum was necessary to obtain a Welsh Assembly, there should be no objection to an opportunity being provided through another referendum, to abolish this institution.

In my opinion, a substantial proportion who voted "Yes" did so out of loyalty to a Labour Government and a reluctance to "rock the boat" after eighteen years of Tory rule. Obviously, I still accept that some voted "Yes" for other reasons, including the commitment to "make a bonfire of the quangos". I have not experienced any pressure from the electorate for additional powers, which seems to reflect the viewpoint of Peter Hain, who admitted in an answer to a written Parliamentary question of mine in May 2003 that, "during the election campaign, I regularly met members of the public and discussed a range of issues. However, I do not recall anyone raising increased powers for the Assembly."¹⁴⁷

Were we also expected to believe that the Liberal Democrats would be satisfied with an Assembly, when they too were committed to a Parliament? And were we expected to believe that the vast majority of Labour AMs would be satisfied with an Assembly?

¹⁴⁵ *Western Mail*. 7 May 2003.

Amongst other reasons, in their quest for more status and to be taken more seriously, it was obvious that they too would demand additional powers, as did so many who were elected to the European Parliament, whilst totally opposing that institution.

Nye Bevan never failed to highlight the nonsense of examining the problems of Wales in isolation from the rest of the UK, or pretending that there were any major differences between them. Addressing the House of Commons in 1944 he elaborated on this point in the following manner:

“There is no Welsh coal problem. There is a low proportion of Welsh exports but that is also the case in Fife. It is not only Wales, and why, therefore should we deceive the people by this deplorable humbug that there is anything like a Welsh mining problem? We heard today of a Welsh agriculture problem. What is the Welsh agriculture problem? There are sheep on the mountains, and there are sheep on the mountains of Westmoreland and in Scotland, but I do not know the difference between a Welsh sheep, a Westmoreland sheep, and a Scottish sheep. It is called ‘Welsh lamb’ because it grows in Wales, but as far as my knowledge of agriculture goes, it is exactly the same problem to grow sheep in Scotland’s mountains, as it is on Welsh mountains. Why cannot we put things in their proper place and discuss them intelligently away from blah, blah, blah?”¹⁴⁸

Nye never failed to emphasise the common bonds which unite us. Leo Abse reminded us of this in a Parliamentary debate in 1976:

“[Aneurin Bevan] believed, as I believe, that a miner is a miner, whether he works in Durham or Glamorgan, that a steelworker is a steelworker, whether he works in Ebbw Vale, Llanwern, Scunthorpe or Sheffield and that a fibre worker is a fibre worker, whether he works in Pontypool or Harrogate.”¹⁴⁹

So a miner’s nationality was irrelevant. If one moved from Durham to Glamorgan, this did not weaken the community, but he and his family became a part of it, no matter what language they chose to speak. Leo also warned us not to ignore another lesson, which he learned in his youth, when he marched under banners in Wales calling upon the workers of the world to unite. As he put it:

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“I certainly do not intend, however, at this stage in my political life, to spend my time calling on the workers in Scotland, England and Wales to disunite.”¹⁵⁰

If Leo or Nye were in Parliament today, they would remind us that not only did this argument apply to those in work, but also to the very same people who are now on the dole. Leo was obviously highlighting Nye's belief in the politics of class, not nations and nationalism. A similar point was made, explaining the class nature of society and the irrelevance of nationalism by the author, Kate Roberts in the early 1920s. This before she joined Plaid Cymru and her conversion to nationalism. She declared she was “a Socialist” and saw:

“... no difference between doffing one's cap to an English merchant and doffing one's cap to our old Welsh Princes.”¹⁵¹

I agree, and this is still as relevant today, unlike her later rejection of these ideas and conversion to Nationalism. The justification for the Assembly was that Wales was increasingly run by quangos and this process had to be reversed, although this fact does not seem to have been recognised to any great extent by the Richard Commission. In the referendum the “Yes” campaign was not arguing that just some of the quangos, or even their boards, would be abolished. Rather, their commitment was to make a “bonfire of the quangos”. Earlier, in the mid 1990s, Ron Davies argued that:

“... this unaccountable and over-bureaucratic system must end. There are currently 117 public bodies, on which 1,300 are personal appointees of the Secretary of State for Wales, and which administer £2.1bn – over one-third of the entire Welsh Office budget.”¹⁵²

However, their abolition did not require the creation of a Welsh Assembly. It could have been achieved through a one-sentence Bill in Parliament, specifically on this subject. Labour's Llanelli MP Denzil Davies, accused Ron Davies of backing off his commitment to make a “bonfire of the quangos”:

¹⁵⁰ *Ibid.*

¹⁵¹ Correspondence between Kate Roberts and H. R. Jones. quoted in Hvwel Davies. *A Call*

“I do not know why he has run away ... Sadly, and unfortunately, the Welsh establishment – I shall not call it the chattering classes – still has its bottom firmly on the Consolidated fund of quangos, drawing its money.”¹⁵³

This criticism is equally relevant when directed at the present Assembly leadership, who have failed to return the powers of the quangos to local authorities, as was promised. Indeed they initially learned to love the ‘Quango State’, allowing instead an increase in the number and role of these bodies, and the amalgamation of several to create even more powerful ones.

The fact that their original commitment to scrap *all* the quangos has been shown to be a publicity stunt, does not seem to concern them – or the Richard Commission - at all. I assume this is what the “Yes” Campaign meant when they promised a new style of politics with the setting up of a Welsh Assembly. Indeed, Ron Davies has since disassociated himself from his commitment to make a “bonfire of the quangos,” now describing it as merely a “colourful phrase”. This climbdown is mirrored by all the other political parties who campaigned for a “Yes” vote.

In its chapter on quangos, the Richard Commission, far from criticising the failure of the Assembly to fulfil the promise made to the people of Wales to dismantle them, goes in the opposite direction. Bizarrely it praises the quangos, saying they play “a major role in delivering the policies of the Welsh Assembly Government.” Not only that, it provides a fig leaf of justification for their lack of democratic accountability:

“The political authority of the Assembly, together with its roles in appointing many ASPB board members and providing the bulk of their funding, are the most powerful levers in securing their participation in delivering the Assembly Government’s priorities.”¹⁵⁴

Indeed, the Richard Report quotes Professor Kevin Morgan from the Department of City and Regional Planning at Cardiff University as telling them that:

¹⁵³ Hansard. 25 July 1997.

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“With respect to the Labour Party, I think there is no doubt that the issue which resonated most for both the party officials and for members was the issue of democratising the Welsh Office and holding quangos to account. Nothing really compared with the forcefulness of that issue [in the referendum campaign].”¹⁵⁵

Professor Morgan is guilty of attempting to re-write history, when arguing that the issue was “democratising the Welsh Office and holding quangos to account” rather than the abolition of these bodies. I note the Richard Commission’s uncritical coverage of the attempt by Professor Morgan to re-write history, while failing to mention my own critical comments on quangos, when I reminded them that the actual commitment made was one in favour of a “bonfire.”

Meanwhile, John Osmond, of the *Institute of Welsh Affairs*, expressed the opinion that the “Welsh National Assembly had a big impact on the former Welsh quangos:

“There is a sense that they are being corralled and disciplined, becoming more like state departments along Whitehall lines than free-standing, arms-length organisations.”¹⁵⁶

However, it is about time that the original commitment was not to “corralling and disciplining” the quangos, but to abolishing them. The “impact” of the Assembly on this promise has not been “big”. Rather, it has been a total failure and commentators at the Institute of Welsh Affairs should be honest enough to admit it. For the commitment was not just to a “bonfire of the quangos,” but also to transfer their powers to local authorities and the Welsh Assembly. Local people making policies through their local authorities would be a practical example of devolution in action. Richard ignores this possibility, while the Assembly Government leadership confines another one of its policies to the dustbin. As I told the Richard Commission in my own submission in June 2003, no Commission is being set up by the Assembly to examine how this transfer of responsibilities to local authorities could be achieved.¹⁵⁷

¹⁵⁵ *Ibid.*, page 127.

¹⁵⁶ John Osmond, ‘The Emergence of the Assembly Government’ in J. Barry Jones and John Osmond (Eds.) *Building a Civic Culture: Institutional Change. Policy Development and*

This highlights what I have always believed, that the Assembly Government is only in favour of devolution of powers when it is the beneficiary. It also demonstrates that the creation of the Welsh Assembly was more about nationalism and not the best way of devolving power. In his oral evidence before the Commission on 26 July 2003, Rhodri Morgan said:

“If, at some stage in the future, the Assembly was to acquire greater powers, it would be because it had earned them and not because the present powers are not working.”¹⁵⁸

Quite what Rhodri Morgan meant by “earned them” is not clear. What is clear is that the Welsh Assembly has held powers to dissolve ASPBs in the promised ‘bonfire of the quangos’ – but so far has only proposed the abolition of a few. In connection with a pamphlet which I wrote some time ago on *Quangos in Wales*, I recorded the fact that to end the quango state in Wales, all that was necessary was to enact a one sentence Bill in the United Kingdom Parliament, or through the Privy Council’s use of the Royal Assent.

Indeed I wrote to both the Prime Minister and The Leader of the House of Commons (then Robin Cook) asking if either had been requested by the Assembly to initiate such procedures to dissolve the Welsh quangos; both wrote back saying no. This demonstrates not only that the Assembly has not only failed to use the powers it has, it has not even tried to persuade the Labour Government to abolish those quangos which are not under Assembly control. It is not more powers that are needed, but proper use of the Assembly’s and the UK Government’s existing powers.

Instead the Assembly Government devised an NHS Wales reorganisation plan, that, instead of creating a “bonfire” actually increases the number of health quangos to 37, almost a 100 per cent increase. Heath minister Jane Hutt told a recent Assembly debate on NHS reorganization (held on 18 May 2004) that:

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“Achieving consensus is key to service reconfiguration, which has taken place.”¹⁵⁹

However, it is not clear that the people of Wales support this “consensus”. In fact, the way the NHS in Wales has been reformed and re-organised is a good example of how the promise to remove the quangos has resulted in an increase of these non-elected bodies. It is worth noting that Jane Hutt told the Richard Commission that the health and social services portfolio is the largest in expenditure terms, covering about one third of the Assembly’s budget. The Richard report itself provides details of how the NHS Wales reforms will be carried out:

“There is a direct relationship between the Assembly and NHS Trusts and Local Health Boards, including performance management and support through the Assembly’s three NHS regional offices. The Minister appoints NHS Trust and Local Health Board chairs, and the accounting officers of these organisations are formally accountable for their expenditure to the Director of NHS Wales, who is in turn accountable to the Minister. The Assembly Government sets standards, targets and policies for the NHS, and each health community’s performance is regularly monitored against an annual service and financial framework agreed with the Assembly Government – the Minister, Jane Hutt AM, viewed this system as ‘absolutely critical to improved delivery’.”¹⁶⁰

However, what the report does not say is that all these health management and delivery bodies are themselves quangos, covered by the Health Bill. Richard describes the Health (Wales) Bill as “uncontroversial”.¹⁶¹ Yet, this depends on whether the Assembly Government is judged to have delivered for Wales what Welsh residents said they wanted, which was the removal of quangos. This Bill could have done so: controversially, it did not. Richard only addresses reform, not removal, of the quangos. In this connection the *South Wales Argus* stated that:

“... paying the chairmen and women of Wales’s new Local Health Boards will cost three times the amount for employing those in the same posts at the five existing Health Authorities ...

¹⁵⁹ Assembly Record. 18 May 2004.

The difference casts doubt on the assertion by Assembly Health and Social Services Minister, Jane Hutt, and NHS Wales Director, Anne Lloyd, that the controversial restructuring of the service in Wales would be cost-neutral ... But Mrs Lloyd admitted, during these wranglings, that the restructuring had not been accurately costed.”¹⁶²

It is ironic that within days of this silence on health quangos at the Assembly, the Health Secretary responsible for the English health service, Dr John Reid, announced a “bonfire” of English health service quangos, with 21 of the 42 NHS quangos to be abolished or merged. Of course, what is really needed in England - as in Wales - is the return of quango functions to locally elected bodies, not their centralisation into bigger and more powerful ones, which is what John Reid plans to do in England too.

A classic example highlighting the need for such a change, was in a campaign in which myself and others were involved with the Arts Council of Wales, over their new drama strategy. Amongst other things, this would have entailed the closure of Gwent Theatre in Education. In attempting to oppose this decision, we were faced by a wall of secrecy, refusal to supply minutes of meetings, of marks received by each company, criterias benefiting particular companies, an inadequate complaints and appeals procedure and a refusal to account to the public for their decision.

The situation was worsened, when the Welsh Assembly Government refused to insist the decision be suspended, to lift the secrecy surrounding the scandal, or even to address public meetings to explain their plans. The Assembly Committee whose task it was to scrutinise these decisions, also failed to intervene to reverse this obvious injustice. It was left to others to get the decision reversed.

So it was under pressure to demonstrate he was making progress with the promise to abolish the quangos, that Rhodri made his dramatic intervention in July 2004, announcing “ the end of the quango state as we have known it”.¹⁶³ As he told the Assembly:

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“I wish to outline to the Assembly our vision for the shape of governance in Wales, starting with the announcement that we intend to incorporate the major executive quangos directly into the Assembly Government. The Welsh Development Agency, the Wales Tourist Board and the National Council - ELWa - will cease to be quangos by 1 April 2006. Their jobs and work will, of course, continue, but the accountability for that work will fall to the relevant Minister, not their executive boards.”¹⁶⁴

This was a centralising decision. Pointedly, Rhodri Morgan did not say he was transferring many of the powers to local government or local community control, as had been promised by the “Yes” campaign in the referendum. The following day the *Western Mail* ran the banner headline across its front page: *BONFIRE OF THE QUANGOS*. It was, the paper said, a “bolt out of the blue for business” , with its editorial opinion column commenting:

“There are fears that (as a result of the decision) it will take longer to make crucial decisions once the quangos are absorbed within the Assembly, and that initiative will be stifled.” It added “It is essential that steps are taken to ensure these fears do not match reality...ministers who in the past have been able to hide behind the quango structure that allowed them to pass the buck when things went wrong will now have to take direct responsibility.”¹⁶⁵

All of which was correct. However, true to form, the paper went on to spoil it by concluding, “We hope he [Rhodri Morgan] follows this up by showing greater determination to get the Assembly primary law-making powers it needs to do its job effectively.” It made no case for proper devolution of political power down to local authorities.

Interestingly, there had been no advance warning that his announcement was to be made. Only a week earlier Rhodri Morgan had appeared before the UK Government-appointed *Committee on Standards in Public Life*, at a hearing it held in Cardiff on appointments to quangos. He said there was not enough experience in Wales to properly populate the quangos, while the top civil servant at the Assembly, Permanent Secretary Sir Jon Shortridge, suggested that people lacked faith in quango appointments. At the same time Shortridge said:

“My impression is that we have succeeded over the last four years in making appointments on merit.”¹⁶⁶

However, neither hinted that the semi-cull of the big quangos was barely a week ahead. Three months later, speaking on BBC Wales' *Dragon's Eye* programme, Rhodri Morgan defended his decision, saying the functions of the soon-to-be abolished quangos would be carried out more effectively after the re-organisation:

"The issue is whether a one-stop shop can be more effective than a two or three-stop shop."¹⁶⁷

Subsequently, in a statement to the Assembly at the end of November he was unable to abolish four prominent Welsh quangos: the Arts Council of Wales, the Sports Council of Wales, the National Library and the National Museum and Galleries.¹⁶⁸ This was because their charter status prevented their abolition. Some other quangos, such as the Welsh Language Board, were brought under the direct control of the Assembly, and a new semi-quango, the Culture Board, was established under the direction of Culture Minister Alun Pugh. This was not the 'bonfire' that we had been promised.

Ironically, on the same *Dragon's Eye* programme we had the sight of Professor Kevin Morgan, one of the leaders of the “Yes” Campaign – which, it should be recalled, had made the abolition of the quangos a key plank in its campaign propaganda – arguing that a lack of consultation on the scheme was a mistake.

He also claimed that people were afraid to speak out against the plans to abolish the quangos. Professor Morgan was taking his cue from none other than the political architect of the Assembly itself, Ron Davies. A few months earlier he had attacked Rhodri Morgan over his handling of the quango decision. In particular, he argued that moves to bring "cultural" quangos under Assembly control could result in serious damage to the nation's creativity. He said conditions were not right for the "bonfire" as he envisaged it, and warned that the process could end in disaster.¹⁶⁹

¹⁶⁶ Sir Jon Shortridge, evidence to Committee on Standards in Public Life, 7 July, 2002. <http://www.public-standards.gov.uk/10thinquiry/transcripts/07-07-04am.doc>

¹⁶⁷ BBC Wales *On Line*. 'Morgan confirms quango job losses'. 14 October. 2004.

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Yet, as pointed out earlier, at the time of the 1997 referendum it was Ron Davies who had led the “Yes” campaign whose chosen rallying cry was a “bonfire of the quangos”. Up to the point of the quango abolition announcement, the only changes were with quangos like Cardiff Bay Corporation, whose demise had nothing to do with the Assembly, but merely meeting its planned ending.

Finally, the costs of the Assembly have also become increasingly controversial. In pushing for an assembly, Ron Davies went as far (once again supported by the “Yes” campaign) as to claim the £26m spent on Board Members and Administrative costs for the ten largest quangos “would fund a democratically elected and accountable Welsh Assembly, with a lot to spare.”¹⁷⁰ Later, he claimed that this could be achieved with just £20m savings from these bodies. The ridiculous claim that £20m would fund the Welsh Assembly was highlighted by Jim Pickard in the *Financial Times* in 2002, when he revealed that:

“Government Officials have admitted that the annual running costs of the Welsh Assembly are now £148m, more than double the £72m spent in the last year of the Welsh Office... The revelation makes a mockery of New Labour’s claim in 1997 that Welsh devolution would only cost an extra £15-20m a year... In 1997, Ron Davies, then Welsh Secretary, said these increased costs would be made up for by a re-organisation of the Welsh quangos... Given that one quango – the Cardiff Bay Development Corporation – has been wound up, it could be argued that quango running costs have barely fallen in real terms... Kevin Morgan, the Cardiff Professor, who ran the “Yes” Campaign for devolution, admitted that the increase had not been predicted.”¹⁷¹

It is also unsurprising but politically unacceptable to note the revelation that the construction and fitting out costs of the new Assembly building will be nearly £60m.¹⁷² In 2003 the Assembly Government said it had fixed the building contract for the building at £40.9m. But in a statement quietly released in November 2004, Finance Minister Sue Essex said the Cardiff Bay project, scheduled for completion in March 2005, would cost £59.56m - or nearly £1m per AM.

¹⁷⁰ Cited in Ilew Smith. *Quangos: not so much a bonfire. more a damp sauib.* 2003.

The media often give the impression that there is nothing the people of Wales want more than a beefed-up Welsh Assembly with more money and more powers. Questions need to be asked about the independence of much of the mainstream media in Wales, in what is clearly a biased coverage of the Assembly's status in Wales. Amazingly, when the people of Wales are allowed to speak for themselves, a different message is given. Here are two views expressed at a public meeting in Cardiff organised by the Richard Commission in July 2003:

- "I voted for the National Assembly for Wales, give us another vote and I would vote to do away with the National Assembly for Wales. It is a waste of money. If we are unable to, then cut the number of AMs down to 44 - 2 per District Council Area - 22 District Councils. There is no need to build a £50m glasshouse. Use the money on social services in Wales."
- "When the referendum was held to find whether the people of Wales wanted a separate Assembly to Westminster, my immediate thought was why? I already had to vote for four separate layers of government (Community Council, County Council, House of Commons, and European Parliament) so why add a fifth? It would just be another layer of bureaucracy, bringing with it more cost, more confusion and more tiresome politicians to listen to while they do very little. Clearly the majority of people thought the same as me, as less than 25% of those able to vote in the referendum actually supported the idea...."¹⁷³

On the day the Richard Commission report was published, *BBC Wales on-line* ran a web-log of comments.¹⁷⁴ The following selection strikes me as much more representative of the opinions of the people of Wales than those reported by the Richard Commission:

"I've always found it amusing that AMs interpret low turnout in assembly elections as the public believing the assembly 'needs more powers'. The reality is that the low turnout is at least partly due to the slow, bureaucratic nature of the assembly's current inhabitants. For a nation as suffocated as Wales is by red-tape, to create ever more tiers of government is like some sort of bad joke.

¹⁷³ Richard Commission 'Record of written questions and opinions'

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The assembly perpetuates the unfortunate Welsh tradition of self-serving, self-centred quangos, albeit on a huge scale. New powers are the very last thing these people should be given.” - **Mark, Cardiff**

“I agree with the recommendations in this report but my only concern is that with 20 more AM's required, who foots the bill for this? The tax payer will once again have to put more monies into the assembly when that money could be better spent on services, hospitals, schools, etc throughout Wales.” - **Stewart Hey, Llannon**

“NO, the assembly is a total waste of money. Return all control to Westminster ASAP.” - **Steve, Powys**

“The answer is 'no'. It should never have been set up in the first place.” - **Arthur Williams, Cwmbran**

Here we have the other side of the debate which the Richard Commission chose not to record, or else ignored or marginalised in its assessment of popular opinion on the Assembly. The question has to be posed, how was it that the Richard Commission reached the definitive conclusion that the people of Wales want greater powers for the Assembly? The answer lies in the composition of the Commission itself. It was set up by someone with the pre-conceived idea of some form of Welsh Parliament. This misunderstanding of what the people want is strikingly similar to the misjudgement of Ministers in believing the people of the North East of England wanted an Assembly. However, the referendum in November 2004 saw it rejected by a three to one majority.

The Richard Commission recommendations take us down the road to separatism without addressing the dangers and cost. I can highlight some of these using information from the Treasury table on the following page. In order for public expenditure to be directed where the need is greatest, a previous Labour Government introduced the ‘Barnett formula’. If one examines Table 1, the Barnett formula would generally cover the figures shown, excluding social security and agriculture. The figure per resident for England is £3,119 compared to £3,576 for Wales. The figures relating to total government expenditure, which includes all services, shows an even greater subsidy to Wales of £5,882 per resident, compared to just £5,012 for England.

Table 1: Identifiable expenditure on services, by country, 2001–02 (£million)

Function		England	Scotland	Wales	Northern Ireland	UK
All	£ per resident	5005	6324	5874	6616	5207
Services	% of UK	96	121	113	127	100
Excluding social security and agriculture	£ per resident	3120	3972	3577	4014	3240
	% of UK	96%	123%	110%	124%	100%

Source: HM Treasury PESA 2003, Table 8.6a Identifiable expenditure on services, by country, 2001–02 £ million (percentages included by author)

In June 1999 - and updated in January 2004 - the independent House of Commons Library Research Service, provided me with the following figures and comments on the related matters of tax revenues and public expenditure in Wales, which reinforces the above points. The Library said that official estimates of public revenues in Wales, and hence the fiscal deficit, are not published on a regular basis. The Welsh Office published studies relating to 1993/94 and 1994/95 in 1996 and 1997 respectively. However, that exercise has not been repeated more recently.

In December 2002, a Treasury written reply to Ian Lucas, MP for Wrexham, gave some figures for income from taxes (including income tax, capital gains and VAT) collected in Wales in the 2000-01 financial year. These amounted to £5.740bn. Commenting on these figures, for 2000-01, the Library qualified them, stating that they were:

“... estimates for certain Inland Revenue taxes only; the total cited excludes a number of other forms of tax that are difficult - either practically or conceptually - to allocate to Wales. Some of the larger categories include social security contributions, local taxes (non-domestic rates and council tax), as well as duties from fuel, alcohol and tobacco.

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A report using a similar methodology to that used in the 1997 Welsh Office report suggests that the categories included in this PQ amount to just over 40% of estimated total revenue in Scotland.”¹⁷⁵

Meanwhile, the Treasury PESA document (see above) stated that identifiable expenditure (that is, that which is incurred on behalf of a particular population, in this case in Wales), was £17.077bn. Whether one looks at general government expenditure, or that specifically arising from the Barnett formula, it is obvious that we are being heavily subsidised from England.

It is not surprising that English MPs are increasingly demanding to know why Nationalists and their sympathisers who are demanding self-government (that is, independence) are not willing to accept the financial responsibility which goes with it, by also demanding a stop to the subsidy they receive from the English. The relevant figures for expenditure by economic and social sector in Wales, under the control of the National Assembly are shown in Table 2:

Table 2: Original Expenditure Plans for Wales 2002-03 (£ms)

Health And Social Services	3,748,641
Local Government	2,994,809
Housing	506,960
Communities	79,302
Environment, Planning And Transport	916,559
Agriculture and Rural Development	227,460
Economic Development	535,827
Education And Lifelong Learning	1,072,402
Culture, Sport And The Welsh Language	75,189
Estyn	
Auditor General For Wales	
Welsh Administration Ombudsman	600
Forestry	31,200
Office Of The Presiding Officer	24,532
Central Administration	143,667
Other Assembly Services	2,333
Total Assembly Expenditure	10,514,334

Indeed, while the government is providing match funding for Objective 1 money, the Nationalists are still demanding more. As the redskin would say of the paleface, they “speak with forked tongue”. They want money from England, but do not wish to be a part of a United Kingdom.

In contrast, Labour sees the United Kingdom as one, and therefore we have every right to argue that money should go where the need is greatest. This means match funding for parts of Wales, as it does for other parts of the United Kingdom.

So the Nationalists are willing to take the money from their enemy, who they describe as the “London Government”. Although wrong, at least Saunders Lewis - one of the founding fathers of the Welsh Nationalist Party - argued for refusing the blood money from the English he so despised. Professor Dai Smith has written that, in the 1930s, Lewis ‘told an audience in Aberdare, one of those valley communities where unemployment was over 30 per cent of the insured population, that: “English money should be rejected and ‘Welsh self-help’ embraced instead . . . ’”¹⁷⁶

Unfortunately, the shortcomings of the Nationalist argument are not just because they fail to recognise that Wales is heavily subsidised by England, but are also a refusal to recognise that the latter are also victims of poverty. In London in particular, where they, like Dick Whittington, seem to believe the pavements are paved with gold. Yet the latest statistics, in the Index of Multiple Deprivation, highlight the fact that the poorest borough in the United Kingdom is Tower Hamlets in London, with Hackney not far behind.

What they also fail to recognise, is that poor people in London and elsewhere have more in common with someone equally poor in Wales, than does a millionaire and a pauper, who may reside in the same country. While it may not be fashionable to admit, it is a question of class, not nationality, which was also Nye Bevan’s argument. Whether the Nationalists like it or not, our economy is integrated more with the UK, in terms of jobs and trade, than with the rest of the European Union.

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In May 2004 the Welsh Economy Research Unit at Cardiff Business School produced unofficial Welsh input-output tables. According to these estimates for the year 2000, the Welsh economy exported goods and services valued at some £23.55 billion. Of these, just over £16 billion were sold to the rest of the UK, and nearly £7.5 billion to the rest of the world. (Assuming the production-function for the year 2000 was broadly similar to 1995, then these sales to the rest of the UK would support some 230,000 full-time jobs in Wales, or around one quarter of total employment.)

On a related matter, the money now being received from Objective I funding, also takes away one of the arguments for an “independent” Wales. We were consistently told that the failure to achieve “independence”, was preventing additional European money, such as Objective I being allocated to large areas of Wales. Yet without ‘independence’, the so-called ‘London Government’ negotiates substantial money from this European Union fund, by persuading them to accept new boundaries within Wales on which to base our application. The Treasury are also “match-funding” this money which is allocated to us from the EU. The so-called “London Government” or more accurately, the Labour Government of 1999, was remarkably successful in getting the European Union to respond to problems in Wales, as was a previous Labour Government in deciding to introduce the Barnett formula.

Yet, while the Nationalists argue that the Barnett formula is outdated and that more public money needs to come to Wales, they seem to forget that if their demand of separatism was ever achieved, this subsidy from England would end, and Wales would have to stand on its own economic feet.

In summary in response to the devolution process, we did not require any new tier of Government, because we already had the appropriate vehicles in place. They are called local authorities. We should introduce real devolution, restoring the powers removed from local authorities by the Conservatives, and scrapping the Cabinet-style local authorities that have been developed over recent years. We should go back to Councils that had a genuine closeness to the people, and were much more open in their decision-making processes. Nationalists in Wales, both in and out of the Labour Movement, are demanding that we dump our shared geography with the rest of the United Kingdom, common struggles and the philosophy of international socialism and replace it by a narrow nationalism, based on bigotry and prejudice, where the economic

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Is this the kind of philosophy we want our children to inherit? I suspect not. As a Labour Movement, we have a proud tradition and we would not be forgiven, if we ignored that, and instead went down the Nationalist road of seeing the Assembly transformed into a Parliament and Wales a separatist State.

Chapter 9

WHAT DO THE PEOPLE WANT?

Richard Wyn Jones and Roger Scully

The Richard Commission report is an impressive document for many reasons. One of these is the thoroughness of the research on which it is based. In the case of public opinion, the Commission weighed up the evidence so judiciously that its account in the third chapter of the report reads as a highly authoritative summary of public attitudes towards devolution in Wales. Here we seek to complement rather than compete with the account provided by the Richard Commission. We do so by considering three central questions:

1. What evidence exists about public attitudes towards devolved government in Wales?
2. How reliable is this evidence?
3. Most importantly, what does the evidence tell us?

After considering each of these questions in turn, and given the strong likelihood that the Richard proposals will require endorsement in a referendum before they can ever be implemented, we conclude by briefly discussing the implications of our findings for such a plebiscite. As part of this discussion, we will examine evidence that has been produced since the publication of the Report.

HOW MUCH DO WE KNOW?

There is a considerable amount of good evidence on public attitudes in Wales towards devolved government. Four detailed social attitudes surveys of the Welsh electorate have been undertaken since 1997¹⁷⁷:

- *The 1997 Welsh Referendum Survey*: fieldwork was conducted in the immediate aftermath of the referendum; this survey has a sample size of approximately 700.

¹⁷⁷ All have been conducted by the Institute of Welsh Politics at Aberystwyth in collaboration

- *The Welsh National Assembly Election Survey 1999*: fieldwork was conducted in the immediate aftermath of the first Assembly election; sample size approximately 1,250.
- *The Welsh Life and Times Survey 2001*: Fieldwork conducted in the immediate aftermath of the UK general election; sample size approximately 1,100.
- *Welsh Life and Times Survey 2003*: Fieldwork conducted in the immediate aftermath of the second Assembly election; sample size approximately 1,000.

Qualitative research into attitudes towards devolution has also been undertaken. In 2002 the Electoral Commission commissioned research on the attitudes of non-voters across Wales. This work was undertaken by the Aberystwyth team in partnership with NOP, with findings subsequently published by the Electoral Commission in *Wales Votes? Public Attitudes towards Assembly Elections* (2002). A series of public meetings were also held by the Richard Commission throughout the country the results of which are contained in its report. Thus, qualitative evidence both about the politically engaged and the more apathetic exists to complement the representative samples in the quantitative surveys.

HOW RELIABLE IS THE EVIDENCE?

The short answer is – very reliable. Of course, even when they are carried out well all research techniques have their imperfections. It is for this reason that, as Robert Putnam has shrewdly observed, “The prudent social scientist, like the wise investor, must rely on diversification to magnify the strengths, and to offset the weaknesses, of any single instrument.”¹⁷⁸ Where evidence from a variety of sources of data converge on the same conclusions one can be fairly confident that the picture emerging is not ‘measurement error’ or the artefact of some other methodological quirk, but a pretty accurate reflection of the reality one is seeking to capture.

The evidence on public attitudes towards devolution in Wales yields precisely this sort of ‘triangulation’ between different sources of data. Thus, while it would be very easy to dismiss the evidence collected by the Richard Commission in its public meetings.

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The participants were obviously self-selecting, and disproportionately likely to be the kind of people that Peter Hain has recently taken to terming ‘constitutional anoraks’ – it is striking that what the Commission heard is very similar to the opinions voiced in the Electoral Commission’s research. This last focused on those least likely to vote, never mind participate in a public meeting. And these two independent sources of qualitative evidence yield, in turn, very similar findings to that of our quantitative survey-based research.

The attitudes surveys themselves are far more than ‘bog-standard’ opinion polls, with both the survey design (which questions we ask) and sampling (who we put the questions to) techniques being of a far higher standard than that to which commercial opinion pollsters can generally aspire. The sampling framework, and the actual conduct of the surveys was conducted by an organisation – the National Centre for Social Research – widely considered to be a world leader in the field. Survey design, much of which was undertaken in collaboration with leading researchers in England, Scotland and Northern Ireland working together under the auspices of the Centre for Research into Elections and Social Trends, was also of the highest standard.

The details of the sampling and surveying techniques need not detain us. Suffice it to say that the 1997, 2001 and 2003 surveys were all conducted via face-to-face interviews.¹⁷⁹ The 1999 survey combined a face-to-face component with a methodological experiment designed to test the efficacy of using telephones to conduct social attitudes surveys.¹⁸⁰ All the data sets are publicly available with full documentation from the UK Data Archive at the University of Essex.¹⁸¹

However, one issue that should briefly be discussed is the relationship of sample size to the reliability of survey evidence. An unfortunate tendency among some politicians, which appears particularly prevalent among Welsh politicians, is to pour scorn on inconvenient or unwelcome survey findings by claiming that ‘the sample size is too small’. While this behaviour may function quite effectively for these politicians as a coping strategy for dealing with cognitive dissonance, it does not represent a remotely serious understanding of the issues at stake.

¹⁷⁹ A lay introduction to the technical details of the 1997 survey, all of which hold true for the 2001 and 2003 surveys, can be found in Taylor, B. and Thomson, K. (Eds.), *Scotland and Wales: Nations Again?* Cardiff, University of Wales Press, 1999, pages 237-45.

¹⁸⁰ For a full description see Nicolaas, G., Thomson, K. and Lynn, P., *The Feasibility of Conducting Electoral Surveys in the UK by the Telephone*. London: National Centre for

Sample size, *per se*, tells us little about the reliability of any social attitudes data. Unrepresentative samples, or even representative ones that ask poor or misleading questions, can still yield hopelessly unreliable data. Conversely, relatively small samples can provide extremely reliable data, provided that the sample is well drawn and the survey questions are properly thought out.

The best illustration of this point is the U.S. National Election Survey (<http://www.umich.edu/~nes/>). This survey is designed to explore the electoral habits of a country with a population of around 280 million, and is by a considerable distance the most expensive election survey conducted anywhere in the world. Yet this expense does not, for the most part, derive from the size of the sample. American NES samples comprise around 3,000 respondents for each survey – and are only this large because researchers typically over-sample African-Americans to allow for particular investigation of this group. The vast majority of the immense resources of the NES are devoted to ensuring that the survey and sampling techniques are of high quality.

In the Welsh case, the samples utilised in the 1997, 2001 and 2003 surveys and the face-to-face component of the 1999 survey were drawn via the Postal Address File (PAF) system. This is an elaborate procedure that ensures that the responses are as representative as possible of the target population, in our case the population of Wales.¹⁸² Confidence is further underpinned by the fact that the response rates for surveys in Wales tends to be good in comparison with the response rates achieved in the other component parts of the UK.

In sum, the reliability of the evidence is such that we can be very confident in claiming that we know the attitudes of Welsh electorate as *an aggregate* towards the institutions by which they are governed, and in particular the National Assembly for Wales. We can also reliably trace how those perceptions and attitudes have altered since the devolution referendum of 1997.

That said, there are clear limits to what we can say with confidence about regional patterns within Wales. Our surveys were designed to study attitudes across Wales rather than to allow fine-grained analyses of attitudes in different parts of the country. Such analysis is possible, but the smaller the population units we try to analyse, the less reliable the findings become.

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However, as will be seen below, we have conducted some tentative analysis of attitudes in different parts of Wales for the purposes of this chapter. As we have specified rather large regions for the task we can be reasonably confident of the robustness of these findings as well.

WHAT DO WE KNOW?

Surveying the evidence on public attitudes in Wales confronts one with a situation that, at first glance at least, appears paradoxical. The Welsh electorate appear distinctly under-whelmed by the experience of devolution so far, although that statement will be qualified in some important respects. Nonetheless, support for the principal of devolution has increased substantially since 1997. The Welsh electorate is now markedly more trusting of the National Assembly than of the Westminster level of government, for example. Moreover the Welsh electorate have developed an appetite for more devolution rather than less, with the plurality of voters now supporting a more powerful parliament with legislative and tax-varying powers. Devolution is now the 'settled will' of the Welsh electorate. What remains at issue is the form devolution should take.

TABLE 1: IMPACT OF THE ASSEMBLY ON THE STANDARD OF LIVING (%)

Response	1997	1999	2001	2003
Improve	31	28	35	38
No Difference	56	66	57	55
Reduce	13	6	8	8
<i>Weighted N</i>	630	1185	1028	926

Tables 1, 2 and 3 show how the public view the Assembly's performance in three key area of public policy: the economy, education and health.

TABLE 2: IMPACT OF THE ASSEMBLY ON EDUCATION

Response	1997	1999	2001	2003
Improve	55	45	25	31
No Difference	40	51	71	62
Reduce	5	3	4	7
<i>Weighted N</i>	627	1175	964	848

TABLE 3: IMPACT OF THE ASSEMBLY ON HEALTH

Response	2001	2003
Improve	31	43
No Difference	64	48
Reduce	5	9
<i>Weighted N</i>	1042	929

The 1997 and 1999 surveys asked people about their expectations of the Assembly in these areas, while the 2001 and 2003 surveys asked whether people believed that the National Assembly for Wales *had* improved things in these areas. Three features stand out from these tables:

1. The first is a significant non-finding: few people believe that the Assembly has made things worse.
2. But secondly, in all three policy areas at least a plurality believes that the National Assembly has made no difference – for education and the economy, a clear majority are in this camp.
3. Thirdly, the data suggests that while initial expectations were disappointed in the Assembly’s first two years of existence, there was some progress between 2001 and 2003; particularly, and perhaps counter-intuitively, in the area of health.

Tables 4 and 5 show strong support for the idea that the National Assembly is more concerned with some parts of Wales than others, with the perceived ‘bias’ operating to the benefit of south Wales and, in particular, Cardiff. Indeed, it seems that the belief that Cardiff is benefiting disproportionately from devolution extends from Castell Coch to Cemaes Bay. Slightly facetiously, one might even claim that the view that Cardiff benefits disproportionately from the new political dispensation is one of the few things that now unites Wales!

Table 4: Views on ‘Bias’ of National Assembly

Response (‘Would You say that the National Assembly...’)	%
Looks After Interests of all Parts of Wales equally	18
Looks After Some Parts More than Others	76
Neither/Both	6
<i>Weighted N</i>	924

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TABLE 5: WHO NATIONAL ASSEMBLY SEEN AS BIASED TOWARDS

Response	%
Cardiff	56
South Wales as a whole	39
Rest of Wales	2
Somewhere Else	3
<i>Weighted N</i>	979

Yet despite this, support for the principal of devolution is substantial and apparently growing. When respondents were asked in 2003 what their reaction would be to the abolition of the National Assembly (Table 6), only 18 per cent of voters said that they would be 'pleased', with just over twice that proportion reporting that they would feel 'sorry' (although a plurality express indifference).

TABLE 6: OPINIONS IN EVENT OF ABOLITION OF ASSEMBLY, 2003

Response	%
Pleased	18
Sorry	29
Neither Pleased nor Sorry	43
<i>Weighted N</i>	969

Even more strikingly, it is clear that the Welsh electorate are significantly more likely to trust the National Assembly, rather than the UK government, 'to act in Wales' best interests.' Indeed, our evidence suggests that the divergence between public perceptions of the two levels is actually increasing – see Table 7.

TABLE 7: TRUST IN UK GOVERNMENT / NATIONAL ASSEMBLY TO 'ACT IN WALES' BEST INTERESTS' (%)

Response	2001		2003	
	UK Govt	NAW	UK Govt	NAW
Just about always	2	12	2	12
Most of the time	22	49	21	56
Trust at least most of the time	24	61	23	68
Only some of the time	59	32	58	26
Almost never	17	7	19	6
<i>Weighted N</i>	1058	1047	975	967

Even if the National Assembly is not held in particularly high esteem, Westminster seems to fare substantially worse. When these data are read in the light of the very hostile reaction that the Richard Commission recommendations have engendered among most Welsh Labour MPs, it becomes difficult to avoid the thought that some of them might better spend their time pondering the very low esteem in which ‘their’ institution is held, rather than passing condescending judgements on the Assembly.

The relative standing of the two levels of government is even more dramatically underscored by the data presented in Table 8, a table that combines the responses to two questions. The first of these asks respondents to identify which of the four levels of government identified – the European, UK, Welsh and local – **has** the most influence over ‘the way Wales is run’. The second asks respondents to state which of the four levels they believe **should have** the most influence. For the purposes of the table, responses that cite the European and the local levels have been removed as the numbers are involved are relatively small. The main interest of the data is rather the stark contrast in fortunes between the UK and the Welsh levels over both questions. In both 2001 and 2003, while a clear majority see London has having most influence over the way Wales is run, the proportion that believes that the National Assembly should be the most powerful body is almost equally large.

TABLE 8: MOST INFLUENCE OVER ‘THE WAY WALES IS RUN’ (%)

<i>Response</i>	<i>2001</i>		<i>2003</i>	
	<i>Does Influence</i>	<i>Ought to Influence</i>	<i>Does Influence</i>	<i>Ought to Influence</i>
NAW	17	56	22	56
UK Govt.	64	26	58	29
Local Councils	16	17	15	14
European Union	3	1	5	1
<i>Weighted N</i>	1033	1047	917	943

So, given these findings, how do the Welsh electorate view the constitutional future of their nation? All the surveys undertaken since 1997 have asked respondents to choose between four possible options: independence, a parliament with tax-varying and legislative powers, an Assembly with secondary law-making powers, and no devolution at all.

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While none of these exactly mirror the Richard Commission recommendations, the responses do offer some very interesting insights into the trajectory of public opinion since the referendum - see Table 9.

TABLE 9: CONSTITUTIONAL PREFERENCES (%) IN WALES, 1997-2003

Constitutional Preference	1997	1999	2001	2003
Independence	14	10	12	14
Parliament	20	30	39	38
Assembly	27	35	26	27
No elected body	40	25	24	21
<i>Weighted N</i>	641	1173	1044	935

First, support for a return to the pre-1999 situation of no directly elected devolved government fell dramatically between 1997 and 1999, with most of this change occurring between the time of the referendum and the first Assembly election. Since the Richard Commission report was published we have been able to conduct more research into the nature of this shift. The evidence indicates that the change reflects a process in which Wales has become more united in terms of views of devolution. In 1997 different patterns of national identity in Wales were closely related to attitudes towards devolution. This is described in Figure 1 that adopts the so-called Moreno Scale for defining over-lapping senses of national identity.¹⁸³

Using the scale respondents are asked to locate themselves on a five-point scale: Welsh not British, More Welsh than British, Equally Welsh and British, More British than Welsh, British not Welsh. In 1997 it was found that opposition to devolution was most closely associated with a predominantly British sense of identity, that is among members of the electorate who identified themselves as 'British not Welsh' or 'More British than Welsh'. However, by 2003 there was much more unanimity across the various identity groups. Denis Balsom's now seminal 'Three Wales model' provides another way of exploring the political impact of the varying patterns of national identity that occur in Wales.¹⁸⁴

¹⁸³ See also R. Wyn Jones and D. Trystan, 'The Welsh Devolution Referendum', in B. Taylor and K. Thomson (Eds.), *Scotland and Wales: Nations Again?* University of Wales Press, 1999. pp. 65-93.

Balsom differentiated between three different areas on the basis of the different patterns prevailing there, with 'Y Fro Gymraeg' roughly corresponding with the western seaboard minus Pembrokeshire (south of the Landsker); 'Welsh Wales' with the south Wales Valleys; and 'British Wales' with north east Wales, Powys and south east Wales. As can be seen clearly from Figure 2, the clear differences in opposition to devolution that existed across these areas in 1997 had all but evaporated by 2003.

Secondly, and relatedly, with Independence continuing to attract only relatively modest support, almost two-thirds of the Welsh electorate now favour some form of devolution within the UK. There have been significant changes, however, in the type of devolution preferred. By 2003 a more powerful parliament for Wales was supported by a plurality.

The wording of the Parliament option in the survey questions is not exactly analogous with the Richard recommendations. This is because the Commissioners disaggregated tax-varying powers from primary law-making powers, judging the former to be 'desirable but not essential' for a revamped Assembly.¹⁸⁵ Nevertheless, as the survey question may be interpreted as 'going further' than Richard, these findings do seem to suggest an appetite for a strengthening the Assembly along the lines suggested by the Commission.

Similarly, an opinion poll conducted by NOP for ITV Wales in June 2004 found a majority of two to one agreeing that the 'Welsh Assembly should be given greater law-making powers' (see Table 10 on page 149). While this wording is again not identical to the Richard 'package', the findings serve once more to suggest that an appetite for more devolution exists in Wales. Put more simply, the principal of devolution is now the increasingly settled will of the Welsh people, but the question of what form devolution should take remains at stake. The evidence strongly suggests that a more powerful 'parliament' style body is now the most popular option. Consequently, it is not unreasonable to suggest that the Richard Commission recommendations should find significant favour among the Welsh electorate. That said however, we still lack direct evidence of public attitudes towards the specifics of the proposals.

¹⁸⁵ Report of the Richard Commission, page 258.

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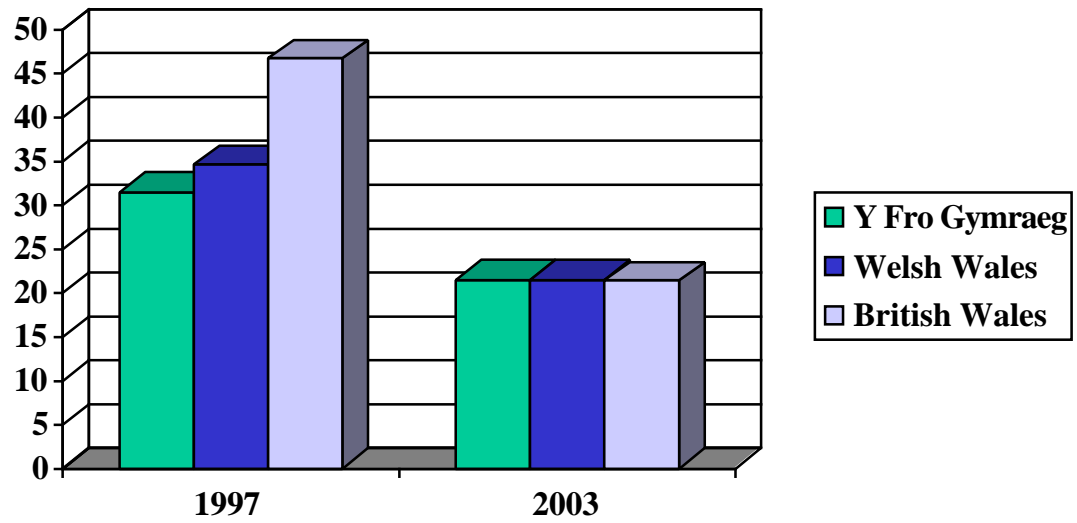
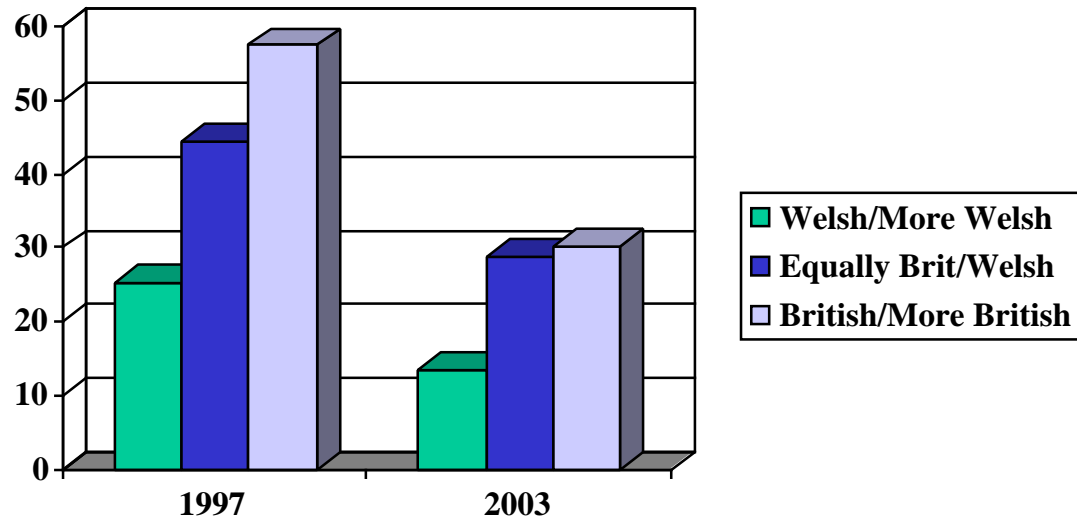


TABLE 10: AGREE OR DISAGREE THAT THE WELSH ASSEMBLY SHOULD BE GIVEN GREATER LAW-MAKING POWERS – 2004

	%
Agree	60
Neither Agree or Disagree	6
Disagree	28
Don't know	5
<i>Weighted N</i>	1436

The position is broadly similar with regards another of the key Richard recommendations, namely the adoption of the Single Transferable Vote (STV) system as part of a move towards an 80 member Assembly. Survey evidence shows clear evidence of support for the principle of proportional representation, with over 40 per cent agreeing that the electoral system used in Assembly elections is fairer than that used for Westminster polls, as compared to the 17 per cent that disagree with that proposition, as shown in Table 11.

Table 11: Voting System for NAW Elections Fairer? – 2003

Response	%
Strongly Agree	7
Agree	34
Neither Agree nor Disagree	42
Disagree	13
Strongly Disagree	4
<i>Weighted N</i>	582

Indeed, a clear majority agree that proportional representation should also be adopted for Westminster and local government elections, as shown in Table 12.

Table 12: Should Be Elected via PR? (%) – 2003

Response	Westminster	NAW	Local Govt.
Strongly Agree	20	19	19
Agree	34	39	38
Neither Agree nor Disagree	31	28	28
Disagree	11	10	11
Strongly Disagree	5	4	4
<i>Weighted N</i>	780	781	783

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That said, we have no direct evidence on public perceptions of STV *per se*, or if indeed the public has any understanding of how STV might work. It will be recalled that the Commission chose to say very little about how STV might be made to work in Wales.¹⁸⁶ Neither have we any evidence of how the Welsh electorate view the proposal to increase the Assembly's size from 60 to 80 members.

In summary, therefore, while the Richard Commission proposals for the future powers and electoral arrangements certainly seem to chime with those of a significant and apparently increasing proportion of the Welsh electorate, we currently lack specific data on how the various specific elements of those proposals – or indeed the counter-proposals subsequently put forward by the Wales Labour Party – are viewed.

TOWARDS A THIRD REFERENDUM?

Referendums rarely if ever deliver a wholly considered view of the issue that is the putative subject of the poll. For example, in 1992 the result of the French referendum on ratification of the Maastricht Treaty was shaped not only by French attitudes towards European integration, but also by the fact that much of the electorate was thoroughly fed-up with President Mitterrand. And while devolution would almost certainly have been rejected by Welsh voters in 1979, the sheer, pulverizing scale of defeat suffered by the pro-devolution camp was almost certainly a reflection of the impact of the 'Winter of Discontent' and the slow, painful death of the Callaghan administration. By contrast, the slipstream effect of Labour's stunning General Election victory helped drag the Yes camp to a very narrow victory in the 1997 devolution referendum. Thus, it would be foolhardy to predict the outcome of any referendum on the Richard Commission proposals given that much would depend on the political context of the time at which that referendum were held.

Nevertheless, we can confidently predict that those proposals will not be enacted without having first being subject to a referendum. For, whatever their drawbacks as a way of determining the popular will may be, referendums have now become an established part of that strange, misshapen beast, the British constitution. The public now expects them.

¹⁸⁶ For an analysis see Wyn Jones, R. and Scully, R. (2004) *STV in Wales. How it could Be made to work (easily), and what it would mean?/STV yng Nghymru. Sut y gellid ei weithredu (yn syml), a beth fyddai'r canlyniadau?* ERSC Devolution and Constitutional Change Briefing Note No. 9, June 2004.

The available evidence drawn from an NOP poll in June 2004 clearly demonstrates that this is the certainly the case with regards any move to give the Assembly greater powers, as shown in Table 13. Moreover, those politicians that seek to oppose a referendum on a particular issue seem to be destined to find themselves on the defensive: rightly or wrongly, to oppose a popular vote is to be perceived as anti-democratic. So what can our findings tell us about the prospect for any referendum?

Table 13: Should any decision concerning greater powers to the Assembly be conditional on a referendum of the people of Wales

	%
Yes, Referendum	76
No	15
Don't know	9
<i>Weighted N</i>	1436

Perhaps the best place to start is with the apparent paradox identified at the start of the previous section. This is the apparent disjuncture between the clear growth in support for the principle of devolution and a much more muted appreciation of the Assembly's efforts in particular policy areas.

Two points need to be emphasised. First of all, we cannot make sense of the public standing of the National Assembly if we view this question in isolation from the broader question of the relative standing of other levels of government.

So, while the Welsh public may not consider the National Assembly to have covered itself in glory since its founding, they seem to take an even dimmer view of the performance of the Westminster level. Seen in this light, the apparent disjuncture between perceptions of Assembly performance in particular policy areas and increased support for the principle of devolved government becomes rather less surprising or apparently 'irrational'.

This in turn may suggest that the Welsh electorate may be disposed to supporting more powers for the Welsh level at the expense of Westminster. However, given that politics and politicians in general are held in such low regard, it would be unwise for proponents of the Richard report to invest too much faith in this.

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Secondly, our findings suggest that a rather reassuringly normal development has taken place in Wales whereby Welsh voters have been able to differentiate between the Assembly *qua* level of government and the particular actions of the Assembly. This is despite all the undoubted confusion that exist over powers, spheres of responsibility, and the highly opaque nature of the division in Wales between Executive and Legislative arms of devolved government (much of which the Richard recommendations are designed to clarify).

Without necessarily approving of particular actions of 'the Assembly', increasing numbers of the electorate nevertheless support the existence of the level of government itself. In other words, most of the Welsh electorate now seems to view the Welsh level of government in the same sort of light as the majority of them view the UK level of government, differentiating between the actual policies pursued and the broader legitimacy of the level of government itself. In political science parlance, the National Assembly enjoys *diffuse support* even when *specific support* for particular actions is weak or even absent. As has already been indicated, this is pretty normal state of affairs in democratic polities. Perhaps the only surprising thing is that this diffuse support has developed so rapidly given the closeness of the result in the 1997 referendum.

This in turn underscores a fact that has already clearly emerged from the preceding discussion. Welsh views on devolution have been transformed even in the relatively short period of time that has elapsed since 1997. Depending on the political circumstances pertaining at the time and nature of the 'Yes' campaign – and these are, of course, crucial qualifications – a referendum on the Richard proposals is certainly winnable. The Wales of 2005 is not the Wales of 1997, let alone the Wales of 1979.

Chapter 10

THE POLITICAL CULTURE OF 21st CENTURY WALES

Peter Stead

In Wales we have every reason to be proud of the way in which the Richard Commission went about its business and presented its recommendations. The nation had been well served by a broadly representative panel that had consulted widely and reflected at length before skilfully ensuring that its significant conclusions were made public in a clear, reasoned and decidedly non-partisan manner. The impression was of a mature society doing everything possible to resolve constitutional matters practically, intelligently, academically and empirically. There was now a reasonable expectation that the public could be invited to discuss the Commission's recommendations precisely on those terms and in that manner.

Following the publication of the report, BBC Wales immediately assembled a studio panel of politicians to discuss the recommendations. When the Labour MP for Caerphilly was asked to predict what the way forward would be, the screen was filled by the broadest smirk in the history of broadcasting and eventually the comment made was, "We shall see". At once viewers knew that normalcy had been restored. We were back in the favoured 'nudge, nudge: wink, wink' mode of Welsh politics.

We knew that the Richard Commissioners were to receive no thanks for their efforts and, in particular, for the pains they had taken to be dispassionate. One sensed that this was going to be yet another of those 'turning points' in Welsh History when 'history failed to turn'. For many of our politicians these recommendations were indeed 'academic', but only in the pejorative sense. A report conceived and compiled in committee rooms was about to be tossed into the real world of what passes for Welsh political discourse. At the very moment of that smirk I knew that Richard did not have a chance when pitted against the sheer conservatism, apathy, sectionalism, selfish materialism and preference for tabloid oversimplification which many Welsh voters and activists have moulded into a political culture.

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To gauge the state of things in Wales it is nearly always worth turning to the words of the *Western Mail's* Mario Basini. At the time when Labour Party delegates assembled in Cardiff to discuss the Richard Commission report and to consider their course of action the columnist reflected on how all the Welsh optimism so apparent at the century's end had subsequently 'evaporated'. This, he explained, was almost entirely due, first, to the "toothless and impotent" nature of the Assembly, and secondly, to the way in which, following the Alun Michael fiasco, the Labour Party had been "intent on regarding the Assembly as part of its fiefdom" to be treated "with proprietorial disdain". Surely here Basini was speaking for many of us who had joined in those Ron Davies-led celebrations at the College of Music and Drama and the Park Hotel on that memorable night in 1997 when History had seemed to turn so decisively.

We are now well into both the new century and the new Welsh political dispensation. In 2004 it was clear that the time had come for the people of Wales to review and possibly refine their constitutional arrangements. Indeed, it could be argued that there was both an urgent necessity and moral obligation for this task to be undertaken, given that the 1997 settlement had been hastily and opportunistically cobbled together by a new élite group in British politics who, at that stage, had no experience of office and who, in any case, were largely concerned with buying off Scotland. We need to honestly accept the fact that the new constitutional status and attendant powers were conceded to Wales fortuitously and almost entirely as a result of external circumstances.

Cynics might have thought that we were being bought off cheaply and possibly meaninglessly, but realists could sense that, in effect, Westminster had given up on Wales. What Welsh devolution really amounted to was an invitation to assume responsibility for our own mess. The coal and steel had gone. We were now being told that "if you want a Wales, do what you like with it". In the Wales of 1997 there were not many people capable of appreciating that, above all, devolution reflected London's lack of interest in Wales, and consequently there was a failure to appreciate the extent to which Welsh constitutional speculation and ambition had been legitimised, if only by default. But if the politically insensitive had missed the subtext of 1997, then the fact that, in England, Tony Blair continued to tinker with the British Constitution in the most personal, opportunistic, cynical, ad hoc and unthought-out way surely must have made the point blindingly obvious. The message of 2004 is quite simply that it is all up to us. Everything is in our hands.

Hitherto, of course, everything has essentially been in the hands of the Labour Party, and that, according to Basini, is precisely the problem. And in Wales, we all know, Labour is split. Future historians are sure to point to divisions over Europe as they attempt to explain the demise of the Conservative Party. Similarly they will point those generation-long splits in the Welsh Labour Party as they attempt to explain why the country failed to swiftly maximise the opportunities presented by Tony Blair's improvised deal.

Within Labour circles the traditional Bevanite opponents of devolution have always claimed the ideological high ground. Their argument has always been that a coal miner in the Rhondda has more in common with a coal miner in Scotland than he has with someone in the Rhondda who is not a miner, and that the economic case for all working class groups was best made from a position of aggregate strength. Quite apart from the fact that we no longer have miners, the whole strategic logic of that position has disappeared and the fight for wages and, more relevantly now, resources are determined within a whole new logic. The Bevanites also liked to claim the moral high ground as they outlined their hostility to what they thought of as creeping nationalism and linguistic aggression. In this respect they failed to appreciate the extent to which their own playing down of the Welsh dimension only served to legitimise their opponents' case, not least by adding to their sense of injustice.

There was always going to be an increased Welsh dimension both in politics and popular culture and the bravest course of action would have been for the Labour Party to ensure that they were fully in control of, or at least fully appraised of, the rapid process of cultural change. As they sat around claiming their cosmopolitan high ground, these traditional elements in the Labour Party were outmanoeuvred by far more determined energetic Welsh language campaigners. In politics, and of late the Labour Party in Wales has forgotten this truth: victory nearly always goes to the energetic.

Labour did not understand the times in which they were living and it was for that reason that, when devolution came, it was on Tony Blair's improvised terms rather than as a result of mature reflection by a political party utterly sure of the society and culture it sought to represent. We are currently paying the price of Labour's earlier slow and belated acceptance of the Welsh dimension. Yet, even now there are important elements in that party whose age-old prejudices and somewhat pathetic fears rule them out as active and creative participants in the new politics of Wales.

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For some years now Labour has been afraid of moving too far ahead of their traditional supporters on constitutional matters. As a result it has failed to appreciate how many political activists and young people, who were not totally unsympathetic to the party's social aspirations, were waiting for a firm lead on the question of identity. And, of course, ultimately, as Labour was slow to appreciate, devolution was a question of identity. One only had to look at the crowds attending any national sporting event at the Millennium Stadium, or indeed listen to any conversation in the schools, clubs and colleges of Wales to sense that young people were crying out for their need of a Welsh identity to be explained and filled out.

Why has Labour in Wales been so timid in its reaction to this new phenomenon? Why hasn't it punched its weight in these broader cultural matters? I would like to come back to this point, but suffice it say here that much of the frustration and tetchiness that have characterised 21st century Welsh politics can be attributed to the Labour Party's irritation that Wales is an issue and to its fear of discussing it openly and honestly. Labour will protest, if only to argue that it should not carry all the blame for the decline of enthusiasm since 1997. Maybe not, but it behoves Labour to confront its own role in contributing to some of the other factors that have recently militated against the emergence of a fully mature political culture in Wales.

Politics in Wales would seem to be operating on at least three levels. A visitor to our country who possessed any interest in current affairs would soon note that all kinds of political and professional groups are attempting to fully avail themselves of the opportunities presented in the new Wales. Not everybody can sustain the degree of interest in the new possibilities displayed by the Institute of Welsh Affairs. However, if one takes into consideration all the civil servants, local authority representatives, quango members, lawyers, planners, lobbyists, interest group members, protestors, academics and broadcasters who daily concern themselves with public life in Wales then plainly we already have a distinctive national politics.

On some days it seems as if representatives of all these groups are attempting to gain access to the Welsh Assembly building at the same time. Willy-nilly we have created the framework of a Welsh politics. As yet, however, we have not begun to understand it and, apart from academic debate and occasional professional day schools, we have done little to promote any sense of this daily round of activity in the general Welsh consciousness.

There can be few democracies in the world that take their whole defining political process so much for granted. All the while we play into the hands of conservatives and cynics by relegating our politics to this clandestine level.

As opposed to activism there is the level of Welsh apathy. We all refer to this and bemoan it, but again we fail to fully to contextualise it. In every democracy in the world there is growing apathy and we must now accept this as an inevitable characteristic of a post-industrial society in which the politics of the workplace has been replaced by the satisfaction offered by consumption, music and popular culture, television and the internet. Of course apathy must be tackled, but even more vitally it must never be used as an excuse.

There are, of course, many different kinds of apathy and the starting point of tackling it must always be the degree to which we are prepared to abandon our own prejudices, shibboleths and idioms. Nearly every élite group can broaden its appeal by changing its style and learning to listen, but in the Wales of today the true possibilities and potential of our politics are not being realised because we are giving up too easily in this respect. Certainly, if we want to broaden our political culture, move it beyond the interaction of élites and, in so doing, legitimise our demand for a more powerful Assembly, then a wider public interest, not least amongst the young, needs to be mobilised. However, a mistake we make is to exclusively blame politicians for both promoting and failing to respond to apathy. The truth is that nearly always apathy is culturally rather than politically induced. If our politicians in Wales are culpable, then so too are our cultural leaders.

In a mature democracy politics have to be culturally mediated. In this respect we have failed miserably. Some may choose to argue that we are faced here with a chicken and egg situation. A dull, mediocre politics is a difficult dish to serve up warm, but it may well be that our politicians are lack lustre because there is no urgent contemporary debate to attract better minds into the public arena. Most of us who have an intellectual base to our politics have as an ideal the European Revolutions of 1848 when in many countries, not least Germany, the liberal cause was championed by professors, philosophers and lawyers. A similar situation occurred in the Central America of the 1960s and 70s. "Why," asked Salmon Rushdie whilst on the barricades in Nicaragua, "are there so many poets in the Cabinet?" "Well", came the reply, "in a revolution, who has time to write a novel?"

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These examples readily came to mind in the Wales of 1997 as at that time one came across supporters of devolution whose image of what the new Assembly would be like was largely based on their sense of the Senior Common Room of Aberystwyth University. One remembers their disappointment that the new body seemed like nothing so much as 'the old Glamorgan County Council in a bad year', a patronising judgement that tells us most about the extent to which we demeaned what had once been a magnificently democratic and powerful local government structure until it was emaciated by the Treasury in Westminster and botched by crudely improvised reorganisations. In truth the quality of any elected assembly will fairly accurately reflect the degree to which a society sustains a meaningful political debate. Obviously the more powerful the Assembly, the more likely it is to attract able and ambitious men and women. An even surer way to elevate a politics is by identifying and supporting politicians who have something to say.

The trouble with Wales at present is that too many of our politicians do not want to openly debate and embrace major issues. Too many activists seem content with clandestine lobbying as a wholly desirable political norm. In this latter respect it is incredible how many prominent public figures in Wales take pains in private conversation to distance themselves from Labour and then spend all working day, not to mention their 'happy hours', cavorting with Ministers. It is also worth noting here that all too often the best discussions of the Welsh economy (and the same is true of education, tourism and other fields) comes in easily disposable newspaper supplements cobbled together to bring in advertising revenue rather than being aimed at starting debate.

Things are exacerbated, however, by how the media respond to what amounts to this conspiracy to downgrade the public dimension of politics. Rather than blasting open the deliberately contrived and mundane status quo, the media approach politics on their own terms. In effect, they are implying that if the politicians are not going to give them value for money, then they are free to derive entertainment from Welsh affairs in their own idiom. And that idiom, as we know, rests on a limited vocabulary, one in which 'scandal', 'row' and 'personality' loom large. Our understanding of politics in Wales has become essentially tabloid.

That 'evaporation' of enthusiasm to which Mario Basini referred is totally understandable given the sustained barrage of personality-driven so-called 'crises' that are reported in print or on air by screaming headlines or their broadcast equivalents. It's all a question of how millions have been misspent or unclaimed, and of whether a particular Minister is 'up to it' or Rhodri 'past it'.

How much of the reality of that day-to-day calendar of committees and meetings to which I alluded is ever conveyed in the coverage of Welsh politics? The current state of affairs was best epitomised by the first day cover of the new tabloid 'compact' *Western Mail* in which an all-too-convenient, and not particularly well substantiated story of a plot against Rhodri Morgan was accompanied by a gun target superimposed on a profile of the First Minister's head. I heard many describe this as an instance of 'bad taste'. It is more usefully thought of, not only as an assassination of the Welsh political process, but as a gross insult to the cultural intelligence of Wales as a whole.

It is not only our political reporters who are to blame for every aspect of Welsh life being reported in the same way. Whether it be the arts, science or even employment and economic development, the recurring themes are celebrity, personality, failure and crisis. The Wales I know is one full of aspiring artists, writers, scientists, business people and very talented students, and yet you would have to look hard to find any sustained analyses or celebration of their achievements in Wales. Why do so many young people want to be actors? What exactly are we singing? Why are trying so hard to make Welsh films? How good are our legion of writers? What are the economic consequences of scientific and technological research? Who is determining what we teach in our schools and colleges? And who precisely is determining the look of buildings and towns in Wales?

It is only when we are able to sustain a meaningful debate on all these issues that the narrower political debate will blossom. We must tease out the answers to all these questions as a prelude to tackling the big issues of whether we can afford a national health service and whether we have it in us to be naturally and enthusiastically entrepreneurial. It is impossible to develop first class politics in a vacuum. The starting point must be a culture in which every single person is treated as an adult, and the fulfilment of every individual life is a goal.

At present Wales does not have public life sufficiently focussed on these targets. The time has come for Wales to grow up. Our politics is not doing us justice. Never mind the hopelessly apathetic, there are thousands of energetic and able people in Wales crying out to be welcomed into a fuller sense of Wales. Inevitably the Labour Party will be at the centre of affairs and it now urgently needs to find a new voice as it learns the lesson that voters respond as much to cultural identification and encouragement as they do to straightforward promises of material improvement.

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Labour should learn not to be afraid of debate and not to mistrust democracy. We should consider whether political opposition in Wales is too fragmented; the time for playing politics is over. Too much of our politics is clandestine, too many of our leaders are either posturing or defining their zone of responsibility far too narrowly. Meanwhile, as a nation we have gone soft under the pressures of consumerism and political correctness. Voters, and young people in particular, have every right to argue that the only reason why they should embrace a Welsh dimension is that it guarantees quality. We must ensure that as a brand the name of our nation implies excellence.

The challenge is one facing all of us who belong to this generation. Inevitably, however, it is our politicians who will have to take the lead and ultimately carry the can. That, of course, is the nature of the territory. Wales expects. As a matter of urgency they must 'go for it'. The Richard recommendations are as good as any place to start.

Chapter 11
TOWARDS 2007

John Osmond

The Richard Commission set an agenda for the future development of Welsh politics that may well have unforeseen consequences. Certainly, given the history of Welsh devolution it was extraordinary that representatives nominated by each of the four parties could agree, not only on the Assembly becoming a legislative parliament, but that its members should be increased from 60 to 80 and elected by the single transferable vote proportional system. As Lord Richard himself declared, "I didn't expect that the political representatives would be able to come to an agreed understanding. The reason they did was because they looked at the evidence."¹⁸⁷

In coming up with a coherent case for extending the Assembly's powers the Richard Commission report may well have the unintended consequence of altering the course of Welsh politics in more than just a constitutional sense. Due to its impact on the opposition parties, and especially leading Conservatives, the report had the immediate effect of throwing into sharp relief the realities of coalition politics in Wales. Put simply, these are:

- (i) Proportional voting for the Assembly makes coalition government more likely than not; and
- (ii) If there is ever to be an Assembly Government other than one dominated by the Labour Party, then the other parties will need to co-operate.

And, indeed, altering the political governance of Wales so as to remove the Labour Party from its dominant position may prove to be a necessary precursor for full implementation of the Richard Commission's recommendations. If a democracy is to function its electorate needs to be able to effect a change of government. Welsh politics will come of age when the Welsh electorate have lived through the experience of changing their government.

¹⁸⁷ Speech at a 'Responding to Richard' conference', IWA, Cardiff, 23 April.

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Labour held on to power in the National Assembly as a result of winning just half the 60 seats in the May 2003 election.¹⁸⁸ Labour is unlikely to improve on this position at the 2007 election; rather, it is more likely to have fewer seats, an assertion that is explored below. In these circumstances, to continue in office Labour will have little recourse but to revisit the coalition with the Liberal Democrats that sustained it through much of the Assembly's first term. Whether the Liberal Democrats would oblige is a key question for any assessment of forthcoming political events.

More immediately, however, the question underlines the realities of coalition administration that now define the essential condition of Welsh political culture. All the parties have been slow to come to terms with, or even understand, this reality. However, the process through which the Richard Commission made them examine the limitations of the Assembly's present operation, has also led them to address how, and under whose leadership, improvement might be brought about. As Plaid Cymru's former leader, Dafydd Wigley, asked:

“Do the pro-devolution forces in most – perhaps by now all – the parties of Wales, have the vision to co-operate to ensure that the historic opportunity provided by the Richard Commission report is not lost to Wales?”¹⁸⁹

Speaking to a party gathering in Llandudno in September 2004, the Welsh Conservative leader in the Assembly, Nick Bourne, declared:

“Examining ways to increase co-operation with our opposition parties in the Assembly is vital both to hold Labour to account and to fight off continuous Labour government in Wales.”¹⁹⁰

Just over a week later, at the Conservative UK conference in Bournemouth, Nick Bourne returned to the theme, acknowledging the difficulties but insisting that mutual antipathy to Labour made co-operation a necessary goal and a possibility:

¹⁸⁸ It is allowed to behave as though it is a majority administration because two opposition members, Lord Elis-Thomas, of Plaid Cymru, and John Marek, of Forward Wales, respectively occupy the positions of the Presiding Officer and Deputy Presiding Officer.

¹⁸⁹ Dafydd Wigley, 'A charter for wreckers', IWA, *Agenda*, Autumn 2004.

¹⁹⁰ *Western Mail*, 26 September 2004.

“Co-operation with other parties has been largely born out of Labour arrogance. Policy differences are marked. We make an unlikely line-up. But in the face of one-party rule, it would be failing the people of Wales not to examine the potential for agreements and search for different ways ahead.”¹⁹¹

To judge the likelihood of the opposition parties in the Assembly collaborating in the way suggested here it will be necessary to examine their internal pathologies. What are the chances of the “unlikely line up” referred to by Nick Bourne finding common cause? Before that, however, we need to address two prior questions. How likely is it that the outcome of the 2007 elections will provide the opposition parties with a position where they can co-operate in an alternative administration? Secondly, how likely are the opposition parties to be able to agree on the Richard Commission recommendations, a necessary requirement for them collaborating in government?

THE 2007 ASSEMBLY ELECTION

The 2003 election provided close to optimum conditions for Welsh Labour. They had delivered on the first term, had produced a strong and high profile leader in Rhodri Morgan, and through him developed the ‘clear red water’ approach to policy delivery that gave the party a coherent message, at least in the short term.

In contrast the opposition parties were in disarray. The Welsh Conservatives were handicapped by the position and image of their party on the UK stage, while Plaid Cymru had a new, low profile and untested leadership which failed to develop a sufficiently clear and contrasting position to Welsh Labour.

In these conditions Welsh Labour only managed to secure half the seats in the Assembly. Its position rested on a handful of votes in key marginal seats such as Llanelli and Conwy. This suggests that, in a different election year when less favourable conditions apply, Welsh Labour will find it extremely difficult to sustain this position. Figure 1 lists six factors that are likely to work to the party’s disadvantage in the May 2007 election that were not present in 2003.

¹⁹¹ *Western Mail*, 4 October 2004.

Figure 1: Factors working against Labour in the 2007 Assembly election

1. Welsh Labour will have been in power in Wales for two terms and many voters will be looking for a change.
2. At the UK level Labour will likely be mid-way through its third term with frustration and disillusion mounting.
3. The economic climate is unlikely to be as propitious – that is to say, in 2003 Labour benefited from a full term of stable growth, rising public expenditure and low interest rates. It will be difficult for this combination to be replicated in the period leading up to May 2007.
4. The boundary reconfiguration in north Wales, with a redistribution between Meirionnydd Nant Conwy, Caernarfon, and Conwy is likely to work to Labour's disadvantage – that is to say, Conwy will be made more marginal in Plaid Cymru's favour.
5. In the forthcoming UK general election Conservatives can expect to pick up a number of seats in Wales: Monmouth, Clwyd West and perhaps Cardiff North. As a result they will be well-placed to sustain the significant advance they made in the 2003 Assembly elections.
6. The Welsh Liberal Democrats can be expected to at least sustain their overall share of the vote while Plaid Cymru has an opportunity to recover some of the losses it sustained in 2003.

For all these reasons the 2007 election is likely to result in Labour losing a number of seats to both Plaid Cymru and the Welsh Conservatives:

- Llanelli, Conwy and perhaps Carmarthen West to Plaid.
- Clwyd West and perhaps Cardiff North to the Welsh Conservatives.

While winning first past the post constituencies can produce losses on the list, the overall result is likely to result in Labour falling back to between 26 and 29 seats, thereby losing its overall majority. In these circumstances there will be an opportunity to create an alternative coalition government to a Labour or Labour-Liberal Democrat formation.

WELSH LABOUR

Welsh Labour's response to the Richard Commission, published in August 2004, demonstrated why it will be an unlikely coalition partner in the event of it failing to win a majority at the 2007 elections. Set up as a result of Labour's coalition agreement with the Liberal Democrats in late 2000, the Commission contained representatives from all four parties in the Assembly. As already stated, the fact that it achieved broad agreement was a remarkable development in Welsh politics. The First Minister Rhodri Morgan himself observed that it reflected a maturing of civic society in Wales:

“All of us involved in political life in Wales know just how contentious the remit provided to the Commission was capable of becoming.”¹⁹²

The recommendations certainly proved contentious for the Welsh Labour Party. Faced with implacable hostility from its backbench Westminster MPs it was first forced to concede a referendum, and then to delay reaching any definitive position until after the 2005 general election. Its document *Better Governance for Wales*, was only approved reluctantly at a special conference in Cardiff in September 2004. As one key player, Jim Hancock, the Wales Secretary of the Transport and General Workers Union, put it:

“This document offers one small step forward. It is not the major stride forward my union and many others had been hoping for. But we know that it is all we're going to achieve at this stage, with an election looming, without having a bloody war in the party.”¹⁹³

However, the document was certainly not calculated to appeal to the Welsh Liberal Democrats, Labour's future potential coalition partner. At one point it refers to their “federalist fantasies and constitutional wish lists”, and at another declares, “Unlike the Lib Dems, Labour does not believe the establishment of democratic devolution was the end in itself.”¹⁹⁴ For his part Welsh Liberal Democrat Assembly leader Mike German was uncompromising:

¹⁹² Assembly *Record*, 31 March 2004.

¹⁹³ Speech to Welsh Labour Special Conference, Cardiff, 11 September 2004.

¹⁹⁴ Welsh Labour Party, *Better Governance for Wales*, August 2004, paras.41 and 2.

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“My reading of this policy document is that the Labour Party in Wales is handing over to the UK Cabinet the power to do as it pleases about the future government of Wales after the next general election. This amounts to a shameful abdication of responsibility by a party that is offering no leadership to our nation and which is prepared to surrender to the so-called Northern Alliance of North Wales MPs who oppose devolution.”¹⁹⁵

The clear recommendations in the document have a direct appeal to Labour rather than the opposition parties, especially the Liberal Democrats. For example, it rejects without argument the Richard Commission’s proposal to adopt the STV proportional representation system. On the other hand, it advocates a change to the voting system to prevent candidates from standing for election in both a constituency and on a regional list – a hostile move aimed at the opposition parties. It also rules out tax varying powers and any reduction in the number of Welsh MPs at Westminster. Assuming it wins the 2005 General Election Labour will publish a White Paper that will set out two broad options for enhancing the legislative powers of the Assembly:

- Primary law making powers following a post-legislative referendum.
- Allowing the Assembly to amend or repeal existing legislation in those areas of policy for which it already has responsibility.

The option of widening the Assembly’s secondary legislative powers had already been advocated by Rhodri Morgan as a compromise solution at the end of June. It is described in *Better Governance for Wales* in the following terms:

“One option would be to grant the Assembly enhanced Order-making powers to make new legal provision for Wales in defined fields within the responsibilities currently devolved to it, including a power to amend or repeal relevant earlier legislation in these fields. This would in effect apply the principle of framework legislation retrospectively. Parliament would continue to be the appropriate body to pass Wales-only primary legislation outside the areas covered by these Order-making powers (for example, the proposed Bill to create an older People’s Commissioner for

¹⁹⁵ *The Western Mail*, 9 August 2004.

Wales) and Sewel-type measures¹⁹⁶ on an England and Wales basis. As with the ending of corporate body status, this option would require a Government of Wales (Amendment) Act. This sort of Order making powers could be extended gradually over the devolved fields, or related to specific pieces of legislation.”¹⁹⁷

However, in the wake of Labour’s conference Lord Richard said this compromise would have great difficulty in being accepted in Westminster

“The House of Lords doesn't like 'Henry VIII' powers, which gives somebody the power to amend Acts of Parliament by delegated legislation, statutory instruments - people don't like that. I think you can pretend for the sake of unity in the party before the general election that this is going to be the permanent solution. I don't think it could be permanent and you could only pretend for so long.”¹⁹⁸

In a newspaper interview in late August, the Secretary of State Peter Hain, also appeared to rule out the approach. As he put it:

“In the next term (after the general election), a White Paper could consider options. But there may be only one option by the time the White Paper is put together. Rhodri’s option, as he has made perfectly clear, has still to be ‘bottomed out’.”¹⁹⁹

What we are left with is Welsh Labour broadly in favour of extending the Assembly’s legislative powers, but keeping its options open, able to move in various directions depending on political circumstances and, in particular, views at Westminster. While this pragmatic approach is understandable in a governing party that is internally divided on the pace of change, it is not one calculated to appeal to the opposition parties in the Assembly. Developing a frame of mind and taking into account the compromises that have to be made in any approach to coalition politics does not come naturally to the Labour Party. Indeed, the opposite is the case.

¹⁹⁶ As the document explains, “The Sewel Convention’ is named after Lord Sewel, a Labour Government Minister responsible for helping to take the Government of Scotland Bill through the House of Lords in 1998. Sewel motions allow the UK Parliament to pass primary legislation in devolved areas on behalf of the Scottish Parliament. This is done at the request, or with the express consent, of the Scottish Parliament.”

¹⁹⁷ Welsh Labour Party, *Better Governance for Wales*, Para 26, August 2004.

¹⁹⁸ BBC Wales news online, 13 September 2004.

¹⁹⁹ *Western Mail*, 18 August 2004.

WELSH LIBERAL DEMOCRATS

On the other hand, by virtue of their commitment to proportional representation, and also their experience of devolution – both in Wales and Scotland – Liberal Democrats are predisposed towards coalition politics. The question for the argument being pursued here is what are the circumstances that would persuade them to participate in a coalition which Plaid Cymru and the Conservatives, rather than coalescing once more with the Welsh Labour Party. A number of considerations are likely to be influential in helping persuade the Liberal Democrats that they should make this choice:

In the first place, if such a choice was possible it would mean that in a definable sense Labour had lost the election. That is to say their number of seats would have fallen, and probably their overall vote as well. The greater the fall the more salient would be the impression that Labour had lost. In any event, in 2007 though Labour will still be the largest party in the Assembly its position is likely to be considerably weakened. Would the Liberal Democrats feel justified in giving the party a third successive term in office in these circumstances?

A second consideration is the Liberal Democrats' experience of their coalition with the Welsh Labour Party during the first term. The record is mixed. On the one hand, the partnership agreement that signalled the formation of the coalition between Labour and the Liberal Democrats in October 2000 contained a large number of Liberal Democrat policies. Also, Rhodri Morgan remained consistently loyal to Mike German during the year-long period when the Liberal Democrat leader had to temporarily step down from the Cabinet in order to defend himself against accusations about his conduct during a previous period when he worked for the examining body, the WJEC.

On the other hand, the most significant long-term commitment in the coalition agreement - to take the devolution process forward through the establishment of a Constitutional Commission - was ultimately reneged upon by the Labour Party. That is to say, it has now set its face against the unified recommendations of the Richard Commission. And, indeed, in relation to Liberal Democrat constitutional aspirations, Labour's most recent policy paper described them as "federalist fantasies and constitutional wish lists."²⁰⁰

²⁰⁰ Wales Labour Party, *Better Governance for Wales* [response to the Richard Commission], August 2004, para. 41.

Linked to the second consideration is the reality that, unlike its counterpart in Scotland, Welsh Labour has also set its face against extending or improving the proportionality of the electoral system. It sidelined the report of the Sunderland Commission which recommended STV for local elections in Wales. And as for the National Assembly, the Welsh Labour Party is unequivocal:

“We reject the Richard Commission proposal for the use of the proportional representation system of Single Transferable Vote with a boundary reorganisation, and constituencies of four to six members.”²⁰¹

This rejection was baldly stated without any engagement with the arguments that the Richard Commission put forward. On the other hand Plaid Cymru favours the adoption of STV and there is no sign that the Welsh Conservatives will have any fundamental difficulty with its adoption.

There seems little reason why a package of measures cannot be agreed with the Liberal Democrats sufficient for them to claim that they will have at least as much influence upon a Plaid Cymru-led coalition as with one led by the Labour Party. The involvement of the Conservatives would be of assistance in a more general way, since it would ameliorate attacks that the Liberal Democrats were supporting a party whose ultimate aim is ‘independence’ or ‘separation’ of Wales from the rest of the UK. Rather, the position would be that they were engaged in a single term commitment, built around a limited but achievable set of objectives that more closely reflected the wishes of the people of Wales as expressed in the 2007 election.

WELSH CONSERVATIVES

Welsh Conservatives have emerged as perhaps the most professional group of politicians within the National Assembly. It is certainly the case that as a party they have benefited most from devolution. In the first place, and as a result of the degree of proportionality allowed to elections for the Assembly, they have achieved representation. This compares with their experience in the 1997 election when they were removed from every Westminster constituency in Wales.

²⁰¹ *Ibid.*, para. 7.

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Under the leadership of Nick Bourne the Conservative Group in the Assembly resolved to take a constructive approach to their opposition role. Early on, some members of the group – in particular David Melding and Glyn Davies – decided that devolution offered Welsh Conservatives an opportunity to re-position their role in Welsh politics. First, they should become more ‘Welsh’ by adopting a positive approach to the Welsh language.

Secondly, they should embrace the devolution process through advocating legislative powers (albeit arguing that this would strengthen the unity of the United Kingdom by providing a stable constitutional settlement). These views were endorsed by such influential personalities outside the Assembly as Lord Roberts of Conwy and Lord Griffiths of Fforestfach, and to a lesser extent Jonathan Evans MEP.

Speaking to the Institute of Welsh Politics in 2002 Lord Griffiths argued that to have a future in Wales the Conservative Party must be seen as a Welsh party, not as an English party operating in Wales. He concluded that as a result Conservatives should fully engage with devolution. He linked this with an ideological commitment to subsidiarity, a principle – now enshrined in the European Constitution - that allows the greatest freedom of action to the individual and the community.²⁰² In another publication, written near the same time, Jonathan Evans argued for a more autonomous organization for the Welsh Conservative Party.²⁰³

However, it is David Melding AM who has developed the most cogent view of the future for Welsh brand of Conservatism based on a centre-right position that could offer a strong appeal to a significant segment of the Welsh electorate. For instance, reflecting on his experience campaigning in the 2001 UK general election in Wales he observed:

“It struck me when campaigning that what the people of Wales want is a light blue and genuinely Welsh Conservative Party. The spirit of one nation conservatism has attracted strong support in Wales in the past and could do so again. Given that there are now three left-of-centre parties in Wales, there is plenty of room for a moderate centre right party ...

²⁰² Lord Griffiths of Fforestfach, *A Conservative Agenda for Wales*, Institute of Welsh Politics Annual Lecture, University of Wales Aberystwyth, November 2002.

²⁰³ In *The Future of Welsh Conservatism*, IWA, 2002.

Perhaps our task is similar to that of the Anglican church in 1920. Seen by many as a church for English brewers and landowners, Anglicans were somehow not authentically Welsh. However, after the shock of disestablishment, the Church in Wales became a successful Welsh institution. While holding true to its Anglican identity and remaining in full communion with the Church in England, it managed its own affairs and prospered. The Welsh Conservative Party must undergo its own disestablishment so it can rebut all accusations of being an English party.”²⁰⁴

Melding has also adopted a pragmatic attitude towards the potential for Welsh Conservatives participating in coalition politics. Acknowledging that proportional representation makes it difficult for any one of the parties in the Assembly to achieve an outright majority, he remarked in early 2003:

“We take the view that it is a question of thirds in our own Manifesto: a third that we must have in any deal, a third that would be highly desirable, and a third that could be jettisoned. The same I guess applies to the other parties. For my part I regard the Conservatives as a natural party of government not opposition. Our aim should be to reach a position of being strong enough numerically as a group to have these discussions on potential coalitions within eight years.”²⁰⁵

These views were expressed ahead of the 2003 Assembly election when Welsh Conservatives were not expecting to do as well they did. In the event they increased their share of the poll from 16 to 20 per cent on the first vote, and their representation from nine to 11 seats. As a result they firmly established their position as a key potential coalition player. It therefore becomes relevant to ask what might be the ‘third’ part of their programme that they would insist upon? Leaving the constitutional question to one side it should not be too difficult to find elements that would be palatable to both Plaid Cymru and the Liberal Democrats. The May 2003 Welsh Conservative contains around 50 commitments, including the following:

- Establish an independent all-Wales health authority free of political interference, with the Assembly restricting itself to setting strategic objectives for the NHS.

²⁰⁴ Quoted in *The Rebirth of Welsh Democracy*, IWA 2003, page 209.

²⁰⁵ *Ibid.*, page 208.

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- Fully fund a children's hospital for Wales
- Abolish tuition fees for Welsh students
- Target resources for Welsh medium teaching at pre-school and primary levels.
- Limit increases for business rates to give a competitive edge to SMEs operating in Wales.
- Improve the A470 between north and south Wales.
- Establish a National Art Gallery for Wales.

Many of these commitments would be attractive, not only to other parties, but to voters. The key area where some negotiation and common understanding would need to be achieved would be in health. In any coalition they participated in the Conservatives would need to hold at least one major portfolio, and health might be one they would advance. Here they would want the opportunity to bring what they would regard as an entrepreneurial and innovative approach to the public sector, perhaps along the lines that New Labour is attempting in England. Greater use of private sector investment and some variation upon Foundation Hospitals might be prime candidates. Undoubtedly there would be difficulties here for both Plaid Cymru and, to a lesser extent, for the Liberal Democrats.

However, there should be scope for developing a distinctive Welsh approach in this area that sustains the fundamental commitment to a free health service at the point of delivery and greater equality of provision across Wales, while allowing some innovative new approaches, especially with regard to reducing waiting times and lists. This has been a key area of failure of the Assembly Government in the first two terms, one which any third-term Government would have to have as a major policy priority.

Of course, Welsh Conservatives have a fundamental problem in that many of their grassroots activists, and certainly much of their core support, remain unreconciled, if not actively hostile to the devolution process. From a Welsh national point of view, an overwhelming benefit of Welsh Conservatives operating successfully within a coalition government would be to encourage their supporters to embrace the devolution project more wholeheartedly.

PLAID CYMRU

There is a paradox, and not a little irony, that the party that has found it most difficult to adjust to the coming of the National Assembly is Plaid Cymru. Some of the problems it faced were not of its own making. A major difficulty was the nature of the National Assembly within which it had to work. As a party Plaid was strongly identified with the 'devolution project' and this was reflected in its success at the 1999 election. On the other hand it had to operate within a flawed institution, the result of the compromises Ron Davies had to make with his own party in delivering it. Plaid Cymru's dilemmas have been analysed in the following terms:

"Was its priority to make the thing work or, conversely, to test the devolution settlement by creating difficulties for the minority Labour administration? Was it possible to conduct these two roles simultaneously? This debate within Plaid was also informed by an awareness of its role in a common drive to boost the public's fragile confidence in devolution, indicated by the wafer-thin referendum vote and a turn-out of just 46 per cent in the first elections. In some ways, Plaid had no choice. This was Wales's first democratically elected institution and, for all its limitations, the project was intrinsically linked with Plaid's longer-term goal of full national status within the European Union. Quite simply, Plaid could not afford for it to be labelled a failure. It had to work with the Labour administration, whilst simultaneously pressing the case for a more muscular Assembly to deliver the distinctive public policies it claimed Wales needed. This meant it had to perform as an effective opposition to Labour in Cardiff Bay, whilst studiously avoiding undermining the concept and legitimacy of the Assembly."²⁰⁶

Other issues the party faced during the first term revolved around personalities, and in particular the loss of Dafydd Wigley from the front rank of politics due to illness. At the same time, the party faced two, more fundamental and underlying structural problems which have been endemic since its foundation. These are, first the difficulty it has had in coming to terms with its precise role as a political party; and secondly, a more subtle psychological failure to break free of the British context of political thought and behaviour. This last has been characterised by its symbiotic relationship with the Labour Party. Both issues need to be resolved if Plaid Cymru is to make itself fit for the new era of national political life in Wales.

²⁰⁶ Laura McAllister, 'Plaid Cymru', in *Birth of Welsh Democracy*, IWA, 2003, pages 211-212.

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However, a major problem for the party is that it has first to understand these dilemmas if they are to be addressed. It needs to appreciate that during the National Assembly's first term, and certainly as the May 2003 election approached, these two characteristics re-emerged to frustrate Plaid Cymru's efforts to project itself to the electorate, either clearly or convincingly. In terms of political strategy the party endeavoured to present itself as the alternative party of government in the Assembly. Indeed, this had been the approach from the start. Perhaps Plaid Cymru was beguiled by its success in the 1999 election, in particular its apparent breakthrough in Labour's Valleys strongholds of Rhondda and Islwyn. However, the reality was, and continues, that no party in the Assembly can confidently plan on the basis of being a party of government on its own account, not even Labour. Instead, proportional representation requires that parties think in terms of coalition politics and plan their strategies and programmes accordingly. To do otherwise not only presents an ultimately unconvincing case to the electorate, but inevitably also leads to a sense of false consciousness or, perhaps more accurately a sense of denial, within the party itself.

This, then was Plaid Cymru's political failure during the first term. Indeed, it is one that continues since, as yet, there is no indication that the party is actively engaging with or debating the discipline that coalition politics would impose on its policies and strategy.

Plaid Cymru's second, related and more psychological problem in the first term was its failure to develop a distinctive enough policy profile to distinguish itself from the Labour Party. Instead, it remained enthralled and corralled within the same broad agenda, pushing leftwards at the edges to be sure, but failing to strike an innovative or loud enough note to mark out a distinctive position. The essential argument turned around the effectiveness of service delivery in the two key areas of the National Assembly's responsibility and budget, health and education. In both the Labour-led Assembly Government itself recorded striking failures in the first term and the present Labour Assembly Government continues to do so.

In the Welsh health service, despite large increases in expenditure, soaring waiting lists testify to the Assembly Government's lack of competence and coherence. For, instead of focusing on this central problem it chose to embark upon a diversionary, and ultimately sterile reorganization of the health service structure, replacing the five health authorities with 22 local health boards.

In contesting this disastrous approach the Conservatives proved a more effective opposition during the first term. Plaid Cymru certainly opposed the thrust of the Assembly Government's line. However, it failed to articulate how it would deal with the waiting lists issue, a problem so immediately apparent to the Welsh electorate that its continuance is like a running sore that threatens to derail the whole devolution project itself.

In education the Assembly Government's failure was more diffuse. Three broad areas of concern revealed themselves by the end of the first term:

- (i) The emergence of early years education as the key arena in which policy intervention could be most effective.
- (ii) A need to bring coherence to 14-18 education in terms of the shape of the curriculum and the distribution of its delivery between schools and colleges.
- (iii) The importance of developing innovative approaches in the higher education sector in at least three key areas: (i) to produce a more coherent student funding strategy; (ii) to encourage more Welsh students to study at Welsh institutions; and (iii) to develop higher education's third mission economic role.

In some of these areas the first-term Labour-led Assembly Government showed signs of responding in a progressive way. With early years it began to put together an innovative approach. As far as higher education's role in developing the so-called knowledge economy was concerned it produced some declaratory policy papers. However, in the 14-18 arena it got lost in the quagmire of ELWa's creation and in piloting a deeply flawed Welsh baccalaureate qualification.

Yet, in the run-up to the May 2003 election there was little sign that Plaid Cymru had clearly identified these three priorities, and even less that it had come up with a coherent policy approach to address them. Instead, the party was left to argue a case that it should be relied upon to divert more resources and deliver health and education services in broadly the same, but generally more effective way than Labour.

Consequently the way was left clear for Labour to articulate what sounded a more convincing case, and one that was certainly more elegant. This emerged in Rhodri Morgan's 'clear red water' intervention in November 2002. In it he drew attention to a philosophical distinctiveness between Welsh and New Labour:

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“Our commitment to equality leads directly to a model of the relationship between the government and the individual as a citizen rather than as a consumer. Approaches which prioritise choice over equality of outcome rest, in the end, upon a market approach to public services, in which individual economic actors pursue their own best interests with little regard for wider considerations.”²⁰⁷

Rhodri Morgan argued that a key theme in the first four years of the Assembly had been the creation of a new set of citizenship rights which, as far as possible, were free at the point of use, universal and unconditional. He then listed five examples where the Assembly Government had produced free services to provide individuals with an enhanced sense that they were stakeholders in society:

- Free school milk for the youngest children.
- A free nursery place for every three-year old.
- Free prescriptions for young people in the age range 16 to 25.
- Free entry to museums and galleries for all.
- Free bus travel for pensioners and the disabled.

Services that were reserved for the poor, he added, very quickly became poor services. Two further symbolic commitments appeared in Labour’s May 2003 election manifesto. These were the abolition of prescription charges for all and the provision of free breakfasts for children in primary schools.

This philosophy and approach only sounded radical in contradistinction to the Blairite New Labour philosophy in England. New Labour is now in effect following a mainstream continental Christian Democracy programme. Rhodri Morgan was merely articulating a traditional social democratic case that in terms of Welsh politics is hardly original. Moreover, the fact that Labour was simultaneously articulating such divergent philosophical approaches suggested at the very least a split personality. At the end of the day which one would prevail? Despite Welsh Labour’s attempt to carve out a distinctive position more amenable to the Welsh electorate, it is New Labour in London that holds the purse strings.

²⁰⁷ Speech to the National Centre for Public Policy, University of Wales, Swansea, 11 December 2002.

Not only that, some of Rhodri Morgan's specific recommendations were highly dubious when subjected to the cold light of day. For example, more than 80 per cent of prescriptions are already free. It is doubtful whether extending them to the remaining 20 per cent, for people who can well afford to pay, is a wise use of resources.

However, Rhodri Morgan was allowed a free run to make his case through the six months leading up to the May 2003 election. Though vulnerable on key areas of delivery failure, specifically waiting lists in the health service, Plaid Cymru failed to mount an effective attack. On his 'clear red water' position Plaid Cymru could only limply say that he had stolen its policy, for example on free prescriptions.

So, to reiterate, during the first five years of Assembly politics Plaid Cymru failed on two fronts:

- (i) To sufficiently commit to a political as opposed to a protest role, and thereby develop a sufficiently robust strategy to address the realities of coalition politics.
- (ii) To develop innovative and credible policy positions sufficiently distinctive from those of the Welsh Labour Party.

It is not surprising that this has been the case since these two matters have run like threads through the party's history. This was made plain by Dr John Davies in his lecture to commemorate the 75th anniversary of Plaid Cymru, delivered at the Llanelli National Eisteddfod in 2000. Among the many themes he explored two stand out from the point of view of the analysis being explored in this chapter. The first was a continuing tension over whether Plaid should be more a political party or more a movement in defence of the language. Davies notes that this question came to a head during the campaign around the drowning of the Tryweryn Valley in Meirionnydd between 1956 and 1962. Despite a good deal of pressure the party, led by Gwynfor Evans, resisted the temptation to undertake a further symbolic act such as the burning of the bombing school in 1936. Saunders Lewis wrote in a letter to Gwynfor Evans in 1962, "The Executive Committee of Plaid Cymru betrayed the cause of Tryweryn. I cannot forget that."

However, as Davies records, the main reason the party undertook no direct action on behalf of Tryweryn was because of the attitude of its executive committee in Meirionnydd which at that time was the most winnable constituency in Wales. He quotes from a letter sent by the Meirionnydd constituency party to the national executive in 1961:

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“It should be clearly borne in mind that the Party in Meirion was never in favour of acting outside the law. On the contrary; our considered opinion was that any such action would be a hindrance and a stumbling block to a growing political party ... Direct action, while not saving Tryweryn, would kill the nation’s faith in, and support of the Party, even if such action stilled the consciences of a few.”

As Davies remarks, the key words here are ‘a growing political party’:

“By the 1960s, that is precisely what Plaid Cymru was determined to be ... It is possible to discern a fundamental shift in the thinking of party leaders in the late 1950s and the early 1960s, a shift which led them to decide to lead a political party rather than a protest group.”

The second of John Davies’ themes that resonate for the argument being developed in this paper is Plaid Cymru’s relationship with the Labour Party. This is the way the “internal rhythms” of Labour and Plaid Cymru seem to march in step. That is to say, when Labour is doing well so often is Plaid Cymru; when Labour is facing vicissitudes and internal divisions, so often is Plaid. Plaid Cymru emerged as a serious political party in the 1960s, a time when Labour was in power for most of the decade. In the 1970s Labour’s splits over Europe were matched by those in Plaid.

During the early 1980s Labour made a leftward lurch and spent much energy on internal divisions and disputes. In Plaid Cymru, the National Left (*Y Chwith Genedlaethol*) was established in 1980, a group that included elements of the hard left. Similar arguments divided Plaid Cymru members to those that were being fought over in the Labour Party. By 1980 the National Left had a majority on the party’s National Executive. Arguably, all of this is but a further expression of Wales’s quasi-colonial relationship with, and dependency upon, England. That it should be played out within the ranks of Wales’ national party is a reflection of how deeps these roots of dependency go and, consequently, how difficult they are to eradicate.

Of course, by the 1990s the Labour Party had concluded that it could never hope to win power by moving further to the left. Whether it needed to move so far to the right under Blair is another matter. In any event, in his lecture John Davies notes that some in Plaid Cymru, notably Dafydd Elis Thomas, had earlier reached a similar conclusion.

In its early days he was closely associated with the National Left and, indeed, was President of the party for much of the time. However, by 1985 he was writing in *Radical Wales* “of the ‘gamble’ of 1981, of the public’s inability to grasp ‘an excessively abstract’ strategy and of the confusion which could arise if Plaid Cymru’s image did not differ from that of the Labour Party.”

The continuing presence of these tendencies within Plaid Cymru - struggles over its development as a political party and difficulties in discovering a distinctive policy position – were for a while concealed from view by the success of the 1999 Assembly election. Yet, hindsight now reveals that a good deal of this success was the result of a combination of unique circumstances. These included the fact that it was the first ‘Welsh’ election in which voters were prepared to respond to a Welsh approach. As a naturally ‘Welsh’ party Plaid Cymru benefited from that. On the other hand Labour failed to appreciate the importance of stressing such a profile and was also damaged by its internal divisions, especially the perceived imposition of Alun Michael as leader in the wake of the Ron Davies affair.

However, the results of the May 2003 election and its aftermath have demonstrated that the party’s twin dilemmas have still to be resolved in a way that can make Plaid Cymru fit for participating effectively in the politics of 21st Century Wales. This is likely to prove extremely difficult for the party to address. The first requirement is for it to understand and acknowledge the challenge. Yet even the late Phil Williams, one of the most strategic thinkers Plaid Cymru has produced, did not identify the re-emergence of these underlying problems in the immediate aftermath of the election. He concluded that the result of the May 2003 election was in effect a return to normality. That is to say, the outcome was what the party had expected to achieve in 1999. That this is not the case has been persuasively argued by Richard Wyn Jones and Roger Scully:

“Our analysis suggests that the electoral defeat suffered by Plaid Cymru in May 2003 was not about Welsh politics returning to ‘business as usual’ following the ‘aberration’ of 1999. Labour’s 2003 vote was little higher than four years previously, and Labour continues to attract much lower levels of support in Wales for National Assembly elections than Westminster ones. The more significant change was the collapse in support for Plaid Cymru. This defeat was not inevitable, but largely the consequence of three factors:

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- (i) Plaid was hurt by the change in Labour leadership, and the efforts of Welsh Labour to re-brand itself and campaign more aggressively in the key seats. This was something largely outside the control of Plaid Cymru.
- (ii) For much of the electorate Plaid's image was also damaged by the attacks from the Welsh Mirror and others. These attacks came from outside Plaid but the party might potentially have responded to them much more effectively than it did.
- (iii) Finally, Plaid was damaged by the replacement of a popular leader, Dafydd Wigley, with a new party leader, Ieuan Wyn Jones, who was and is singularly lacking in electoral appeal. This was largely a self-inflicted wound for which Plaid Cymru had really only itself to blame.²⁰⁸

However, the analysis undertaken here demonstrates that far more than the personality of the leadership is at stake if Plaid Cymru is to turn its fortunes around. There has to be a fundamental reappraisal of the seriousness of the party as a *political* party in the sense of seeking a government rather than an opposition role.

Following on from this, the party needs to undertake a fundamental review of its policy commitments, to make them more fitting for the needs of contemporary Welsh society and the realities of coalition governance. The scale of the changes required can be gauged from the lack of ambition revealed by the late Phil Williams in his last assessment of the role of Plaid Cymru:

“Within the Party of Wales there is a recurring debate as to whether an essential pre-requisite for self-government is that Plaid Cymru replaces the Labour Party as the mainstream, dominant party in Wales. Alternatively, is it possible for a single-minded and uncompromising Plaid Cymru to create the conditions whereby other parties deliver self-government, albeit step-by-step and with some reluctance. Progress over the past forty years, and especially the establishment of the National Assembly, point to the latter strategy.”²⁰⁹

²⁰⁸ ‘Must Plaid Lose?’ *Agenda*, Summer 2004, IWA, page 62.

²⁰⁹ Phil Williams, *The Psychology of Distance*, IWA, 2003, page 41.

The reference to the 'past forty years' is the critical qualification that should accompany this assessment. For the recurring debate Phil Williams described is one that looks back to the latter half of the 20th Century. At the beginning of the 21st Century Plaid Cymru faces a new debate: how seriously it takes its role as a political party in the life of Wales, and the strategy and policies that should flow from the answer it gives that question?

TOWARDS 2007

It has been argued here that the key question for the future of Welsh politics revolves around coalitions. If presented with the opportunity following the 2007 election, can Plaid Cymru, the Welsh Conservatives and the Welsh Liberal Democrats find common cause sufficient to form a coalition administration with an agreed programme?

If this were to happen it would represent a decisive break with the past and, indeed, a seismic shift in Welsh politics. Arguably such a course is necessary both to advance the full agenda of the Richard Commission recommendations, and in the process to anchor devolution securely in the territory of Welsh politics. To assess the accuracy of this last judgement, consider the two crucial conditions that would have been fulfilled if that eventuality arose:

1. In elections to the National Assembly the people of Wales would have exercised a real choice, not just between parties and candidates, but in producing an alternative government.
2. The political parties participating in the new coalition government would have unambiguously accepted that the National Assembly should become an effective body along the lines recommended by the Richard Commission, and declared they would campaign for this in a referendum.

So, finally, how likely is this scenario? In electoral terms, as has been argued, the outcome of the 2007 election is more likely than not to deliver the conditions in which the opposition parties will be able to co-operate. How likely are they to seize the opportunity?

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The first answer to this question is that in local politics across much of Wales they have already done so. As a result of the May 2003 elections coalitions now rule in eight of the 22 Welsh counties, with informal coalitions in two others. Although Labour held on to its core Valley councils, it lost political control of a swathe of others across north and south Wales to administrations now run by combinations of the other parties. Swansea and Bridgend are now run by a coalition of Liberal Democrats, Conservatives and Independents. The Conservatives control the Vale of Glamorgan, with informal support from Plaid Cymru and the Independents. Cardiff is run by a minority Liberal Democrat administration, again with tacit support from the Conservatives and Plaid Cymru. In north Wales Conwy is the outstanding example of the pattern of anti-Labour coalitions, with the council being run by a combination of Independents, Conservatives, Plaid Cymru and Liberal Democrats. In much of Wales the main political message emanating from the local elections was: “anything but Labour”.

A second answer revolves around the question whether a coalition in the National Assembly could find enough common ground in policy terms. Enough should have been said in this chapter to suggest that this should not be too difficult. The health service might seem to offer most problems, but there should be enough common purpose in addressing the waiting lists issue to satisfy the demands of one four year term. Other areas where the parties might find a good deal in common include:

- Using the Assembly Government’s large public expenditure programmes to promote private sector developments, especially in health, housing and education.
- Identifying a small number of community development zones in rural Wales to check the outward migration of young people and underpin the language and culture.
- Investing more aggressively in a renewable energy programme.
- Developing a more integrated and distinctive 14 to 19 education programme.
- Discovering a fresh approach to the problems of the south Wales Valleys, perhaps in the form of promoting a Development Corporation.
- Improving north south communications.

Of course, a coalition along the lines speculated upon here will not emerge without political leadership. First the notion has to be floated and the parties convinced that it is necessary, desirable and possible. Secondly a figure has to emerge who has the capability and personality to make the case and reach out across the parties and to the wider electorate. In describing these required qualifications it should not be too difficult to identify potential candidates.

NOTES ON CONTRIBUTORS

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Llew Smith MP was elected to Parliament for Blaenau Gwent in May 1992. Born in Newbridge, Gwent, in 1944 he was educated at Greenfield Secondary School before working first as a labourer, then as a computer operator. He studied as a mature student at Coleg Harlech and the University of Wales, Cardiff, gaining a degree in industrial relations. He was South Wales organiser for the Workers educational Association from 1970 until his election as MEP for South Wales East in 1984. He retires as MP for Blaenau Gwent at the 2005 general election.

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