

## *Welsh Devolution*

### *The End of the Beginning, and the Beginning of...?*

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The result of the Welsh devolution referendum on 18 September 1997 — a desperately narrow victory for the Yes campaign — has widely, and rightly, been understood as marking the beginning of a new era in Welsh politics. It now seems equally clear that 31 March 2004 heralded what we might term ‘the end of the beginning’. On the latter date, the Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, chaired by Labour peer Lord (Ivor) Richard, published its report.<sup>1</sup>

The report of the Richard Commission has, in many important ways, defined the parameters of Welsh politics ever since. This does not mean that all of the Commission’s (unanimous) recommendations have been accepted and acted upon. To the contrary, and as we detail below, several key elements were subsequently rejected by the Labour UK Government. It was the fact that the Commission (whose membership included representatives of all Wales’ major political parties, plus several distinguished independent figures) recommended radical changes to the devolution ‘settlement’ established by the Government of Wales Act 1998 that proved to be most important. This emboldened devolutionists within the Labour Party to propose — and ultimately secure in the Government of Wales Act 2006 — changes to the legal and institutional structure of Welsh devolution that are, in some respects, even more far-reaching than those proposed by Richard.

Indeed, the terms of the 2006 Act, and in particular Part 4, which allows for the transfer of primary legislative powers to the National Assembly following an affirmative vote in a referendum, provided the common ground upon which Labour would ultimately agree a coalition deal with Plaid Cymru after the May 2007 National Assembly election. Chapter Two of the Coalition agreement, *A Strong and Confident Nation*, binds both parties ‘... to proceed to a successful outcome of a referendum for full law-making powers under Part IV as soon as practicable, at or before the end of the

<sup>1</sup> Commission on the Powers and Electoral Arrangements of the National Assembly for Wales (Richard Commission), *Report of the Richard Commission* (Cardiff: National Assembly for Wales, 2004). The Richard Commission was established in 2002, in accordance with the coalition agreement that brought the Welsh Liberal Democrats into government alongside Labour in the autumn of 2000.

Assembly term.’<sup>2</sup> But whatever the fate of that pledge (and whatever the result of any referendum), Part 3 of the 2006 Act meant that, come what may, extensive Measure-making powers *will* be transferred to the National Assembly through orders in council (and also through primary legislation at Westminster) over the coming years. With Assembly Measures amounting to primary legislation in all but name, the die has been cast. When one also bears in mind that Parts 1 and 2 of the 2006 legislation definitively erased the various elements of local government structures and practices that were incorporated into the 1998 Act (elements that have characterised Labour’s various devolutionary schemes for Wales since the 1960s), the conclusion is clear. The political and constitutional foundations of Welsh devolution may have been shaky, with the 1997 referendum result and the 1998 legislation. But in the aftermath of the Richard Commission report, a more solid, parliamentary edifice is emerging, and emerging much more rapidly than could have been imagined a decade ago. Moreover, as we will detail later, this edifice is emerging with the broad support of the Welsh population as a whole, as well as most—though not all—of the nation’s political class.

In this chapter we will explore the key period in Welsh political and constitutional life, between 2005 and the summer of 2007, when Wales began to move beyond the ‘end of the beginning’. We will do so in five sections. The first two are concerned with the constitutional architecture of devolution. First, we will briefly explore the Labour Party’s response to the Richard Commission report in the period leading up to the 2005 UK general election. Secondly, we will discuss the evolution of the Government of Wales Act 2006, from White Paper to Royal Assent. We then move on to consider other aspects of political life in Wales. The third section focuses on the 2007 election, while the fourth examines the remarkable post-election machinations that led, eventually, to the formation of the Labour-Plaid coalition. Finally, the fifth section examines the development of public attitudes towards devolution over recent years, and what the evidence on public opinion tells us about prospects for the proposed referendum on primary powers.

#### THE RICHARD COMMISSION AND THE LABOUR PARTY

The Richard Commission’s report presented a powerful, evidence-based and well-argued case for its recommendations. For current purposes, they can be simplistically summarised as falling under three headings:

<sup>2</sup> The ‘One Wales Agreement’ is available online at: <http://onewales.blogspot.com/> and at <http://wales.gov.uk/about/strategy/strategypublications/strategypubs/onewales/?lang=en> It is also reproduced as an appendix to John Osmond’s extremely useful account of the extraordinary interregnum that followed the 2007 National Assembly election *Crossing the Rubicon: Coalition politics Welsh style* (Cardiff: Institute of Welsh Affairs, 2007).

- Internal organisation;
- Powers; and
- Electoral arrangements.<sup>3</sup>

Regarding the first, the Commission recommended that full separation of the legislature and the executive should be brought about. The ‘single body corporate’ established in the 1998 Act should be formally abolished, and both the National Assembly as a parliamentary body and the Welsh Assembly Government as the executive established on an appropriate legal basis. To those observers schooled in the British constitutional tradition (or indeed most other constitutional traditions), this recommendation will appear utterly unremarkable — the reassertion of ‘normality’ after a period of idiosyncratic experimentation. But in the context of the historical development of Welsh devolution, the recommendation is far from anodyne. From the mid-1960s through to the 1997 referendum, every devolutionary scheme proposed by the Welsh Labour Party had stressed the ‘local government’ character of the proposed Assembly. In large part this worked to succour sceptics or opponents of devolution that any National Assembly would be secondary in form as well as status to the ‘proper’ parliament, Westminster.

That the Richard Commission could advocate eliminating the local government features of the Assembly’s organisation, less than five years into its life, is striking. That this recommendation met with no serious opposition is equally so. But that this was indeed the case is testimony to two factors. The first is the basic instability of the structures established by the 1998 Act, which at a rather late stage in proceedings had grafted a parliamentary-style cabinet onto the body corporate envisaged in the 1997 pre-referendum White Paper, *A Voice for Wales*.<sup>4</sup> This led to some predictable frustration and confusion among those charged with understanding and operating the structures. The second factor was the shared determination of the Assembly’s Presiding Officer, Lord Elis-Thomas, and First Minister Rhodri Morgan, that devolved governance in Wales develop in a more parliamentary direction, notwithstanding the letter and spirit of the 1998 Act. The impact of their determination was that by the time that Richard reported, a division of powers was already a de facto reality. Rendering that division de jure proved entirely uncontroversial.

<sup>3</sup> For more considered analyses see, *inter alia*, R. Rawlings, ‘Richard’s Radical Recipe,’ *Agenda: Journal of the Institute of Welsh Affairs*, Summer 2004, pp. 27-31 and the various contributions to J. Osmond (ed.), *Welsh Politics Come of Age: Responses to the Richard Commission* (Cardiff: Institute of Welsh Affairs, 2005).

<sup>4</sup> Welsh Office, *A Voice for Wales: The Government’s proposals for a Welsh Assembly* Cm 3718 (London: The Stationery Office, 1997). The definitive analysis of the 1998 Act and the early years of the National Assembly is R. Rawlings, *Delineating Wales: Constitutional, legal and administrative aspects of national devolution* (Cardiff: University of Wales Press, 2003).

In marked contrast, the issue of powers was, and remains, highly controversial. The Richard Commission went much further than most expectations, in recommending the transfer of primary legislative powers to the National Assembly in those areas in which it was already exercising secondary powers. Both inside and outside the Commission, this recommendation was interpreted in terms of ‘adopting the Scottish model’ of devolution — a formulation that rather serves to occlude some subtle but important differences between Scotland and Wales that would persist if and when the primary legislative powers step is eventually taken.<sup>5</sup> The Commission further recommended that primary powers be transferred by 2011, although it made no recommendation as to whether or not such a development would require popular approval through a referendum. In the intervening period before 2011, an interim dispensation was suggested that would allow the National Assembly to develop the necessary competence and experience in drafting and scrutinising legislation. This interim dispensation — later to become known as ‘13.2’ after a Summary Box in the Report text — would involve the development of a ‘new model of framework-legislative devolution’.<sup>6</sup> Specifically, this would mean ‘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. The aim would be to construct broad delegated powers that reflect the democratic mandate and scrutiny powers of the Assembly.’<sup>7</sup>

Finally, on electoral arrangements, the Commission argued that the transfer of primary powers to the Assembly, and concomitant growth in its responsibilities for the proper scrutiny of legislation, would require an increase in the size of the chamber. A total of 80 members (compared with the current 60) were advocated, with the Commission arguing that they should be elected by a version of the single transferable vote system in multi-member constituencies.

Comprehensive accounts of Labour’s response to the Richard Commission have been given elsewhere.<sup>8</sup> What they make clear is that the broad

<sup>5</sup> This important point is briefly flagged in A. Trench, *Better Governance for Wales: An Analysis of the White Paper on Devolution for Wales* Devolution Policy Paper no. 13 (Edinburgh: ESRC Devolution and Constitutional Change programme, 2005). The key difference is that ‘Even if such a change [to primary law-making powers] were to take place, what Wales would end up with would resemble the Scotland Act 1978 more than the Scotland Act 1998... The Assembly would only have the powers to act where it was expressly authorised to do so, unlike the situation for Scotland where the Scottish Parliament may legislate on all matters except those expressly reserved to Westminster’ (para. 2.26). The impact of this would be to ensure that even when fully empowered, the National Assembly will enjoy significantly less freedom of manoeuvre than the Scottish Parliament.

<sup>6</sup> Richard Commission 2004, p. 244.

<sup>7</sup> *Ibid.*, p. 243.

<sup>8</sup> See, in particular, the *Wales Devolution Monitoring Reports* for March 2004, June 2004, September 2004, December 2004, April 2005 and January 2006 (London: The Constitution Unit), all available at [www.ucl.ac.uk/constitution-unit/publications/devolution-monitoring-reports/index.html](http://www.ucl.ac.uk/constitution-unit/publications/devolution-monitoring-reports/index.html) .

thrust of Labour's *initial* response to Richard was far from positive. As already suggested, the proposed changes to the internal organisation of the National Assembly were welcomed and regarded as unobjectionable. But in other respects the reaction was very different. The recommended reforms to the electoral arrangements of the devolved chamber (80 members, and STV) were simply dismissed; indeed, the Labour Party barely engaged with the substantive arguments advanced by the Richard report.

The issue of powers generated more serious engagement. Initially, Rhodri Morgan conceded that a referendum would be necessary for primary powers to be introduced, while making abundantly clear his lack of enthusiasm for any such referendum. At an academic conference in Cardiff in June 2004, Morgan went on to propose the development of a more expansive version of Richard's 13.2 proposal — '13.2-plus' — to allow for the transfer of further powers to the Assembly short of full primary powers. Details on this mechanism were notably vague, but the clear implication of the First Minister's suggestion was that some such arrangement might well be the maximum achievable for the foreseeable future.

Expectations were lowered further when Labour published a party document entitled *Better Governance for Wales* in August 2004. The contrast between the clarity and intellectual rigour of the Richard report, and that of the governing party's formal response to it, could not have been more marked. Several features of that response appeared at the time to be particularly important. The first was a palpable reluctance to consider the expansion of the National Assembly's powers with the issue posed as a choice between primary powers, on the one hand, and Henry VIII powers to amend or repeal existing legislation in areas of Assembly responsibility, on the other.<sup>9</sup> The second was the insistence on the requirement for a *post*-legislative referendum before primary powers could be transferred to Cardiff.<sup>10</sup> The latter requirement had apparently been insisted upon by Welsh Labour MPs, and their success in ensuring that this appeared in the party's formal response was regarded by many — not least the MPs themselves — as a particularly significant victory. To understand why, one must recall the difference between the two devolution referendums in 1979 and 1997. In 1979, a post-legislative referendum followed the comprehensive rubbishing of the UK Government's proposals during an elongated period of parliamentary

and A. Trench, 'Rhodri's Retreat,' *Agenda: Journal of the Institute of Welsh Affairs*, Summer 2004, pp. 40–1.

<sup>9</sup> With regard to the latter, the Labour Party's policy document makes the point 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.' Welsh Labour Party, *Better Governance for Wales* (August 2004), para. 26 (p. 8).

<sup>10</sup> Welsh Labour Party 2004, para. 29 (p. 8).

scrutiny-cum-bloodletting.<sup>11</sup> Eighteen years later, a pre-legislative referendum soon after a sweeping general election victory meant that opponents were given scant opportunity to raise objections to the devolution proposals, whether in their generalities or particulars. In the summer of 2004, it appeared that the MPs had secured a re-run of 1979 rather than 1997, seemingly undermining any realistic prospect of attaining the Richard Report's goal of primary powers for many years to come.

Another element of Labour's response that gained particular notoriety was its attack on 'dual candidacy', the practice whereby individuals could offer themselves as Assembly candidates both in a particular constituency and on the regional list. During the first Assembly, dual candidacy had not been regarded as problematic. Prominent Labour figures, including Rhodri Morgan, had been dual candidates themselves in the first Assembly election, while all four main parties had both constituency and regional list members elected to the Assembly. After the 2003 election, however, the status of regional members became the subject of much hostile comment from Labour AMs; it should perhaps be borne in mind that no Labour members were returned through the regional lists in 2003. In particular, the Clwyd West result was seized upon as highlighting a particularly iniquitous anomaly whereby 'failed constituency candidates' could enter the Assembly through the 'back door' of the regional list (in Clwyd West, three candidates defeated by Labour's Alun Pugh were returned through the North Wales regional list). *Better Governance for Wales* proposed a ban on dual candidacy arguing that the present system was 'both confusing and frustrating for the electorate.'<sup>12</sup>

A special conference of the Welsh Labour Party in September 2004 approved a promise for further legislation to be included in Labour's 2005 UK election manifesto. The contrast between the vagueness of the manifesto's commitment on powers — the Assembly's legislative powers were to be 'enhanced' — contrasted sharply with the specificity of the document's uncompromising stance on dual candidacy. Labour would

prevent candidates from standing on both the list and in a constituency in order to make all candidates genuinely accountable to the electorate, and to end Assembly Members being elected via the backdoor even when they have already been rejected by the voters.<sup>13</sup>

This all served to ensure that few, if any, expectations persisted of any dramatic changes to the 1998 Act. The prevailing mood is captured nicely in the contributions by two shrewd observers of the Welsh political scene in a

<sup>11</sup> On the Wales Act 1978 and subsequent referendum see D. Foulkes, J.B. Jones and R.A. Wilford (eds.), *The Welsh Veto: The Wales Act 1978 and the referendum* (Cardiff: University of Wales Press, 1983).

<sup>12</sup> Welsh Labour Party, *Better Governance for Wales* (August 2004), para. 9, p. 5.

<sup>13</sup> The Labour Party, *Britain Forward Not Back* Wales Labour Party Manifesto, (London: The Labour Party, 2005), p. 108.

previous *State of the Nations* volume. Writing soon after the 2005 UK general election, Alan Trench expressed surprise at the way Rhodri Morgan — ‘hitherto regarded as strongly supporting devolution’ — had reacted to the Commission’s report.<sup>14</sup> Morgan’s reaction, he suggested, had served to ensure

that decisions about Wales’s constitutional future are not to be made in Wales, but principally in Whitehall and Westminster, by the Secretary of State. This is not a friendly setting, as interest in Wales there is limited, and there is considerable hostility toward the Assembly from a number of Welsh Labour MPs to whom Peter Hain looks for support. Securing time for new legislation and the passage of that legislation will not be straightforward, and the position taken by the First Minister...risks further dilution of in the course of the drafting of the White Paper and translating that into legislation...<sup>15</sup>

Meanwhile, John Osmond hypothesised that ‘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 recommendations.’<sup>16</sup> The Richard Commissioners, it appeared, had laboured mightily but to little avail.

#### THE GOVERNMENT OF WALES ACT 2006: FROM WHITE PAPER TO ROYAL ASSENT

Given how the Labour Party had responded to the Richard Commission report, the contents of the June 2005 UK Government White Paper, *Better Governance for Wales*, came as a major surprise.<sup>17</sup> Nothing in the internal Labour Party debate over the proceeding year would have led observers to expect proposals as radical and far-reaching as those contained within the White Paper. The White Paper may have shared the title of Labour’s initial August 2004 response to the Richard Commission, but in fact the two documents could hardly have been more different in tone or ambition.

Such was the wholly unexpected scope of the proposals in the White Paper that the most single striking element of them — that the UK Parliament should legislate immediately for the transfer of primary legislative powers to the National Assembly, those powers to be ‘unlocked’ after an affirmative vote in a referendum, to be held at some unspecified point in the future—was missed almost entirely in initial media reactions.<sup>18</sup> Moreover, by legislating

<sup>14</sup> A. Trench, ‘Introduction: The dynamics of devolution’, in A. Trench (ed.) *The Dynamics of Devolution: State of the Nations 2005* (Exeter: Imprint Academic, 2005), p. 15.

<sup>15</sup> Trench, 2005, p. 17.

<sup>16</sup> J. Osmond, ‘Wales: Towards 2007,’ in Trench *Dynamics of Devolution*, p. 43.

<sup>17</sup> Wales Office *Better Governance for Wales* Cm 6582, (London: The Stationery Office, 2005).

<sup>18</sup> It is surely no coincidence that the proposal to legislate immediately for primary powers was dealt with in only one sentence (on page 4) of the 7-page Wales Office press release that accompanied

for primary powers immediately, while simultaneously guaranteeing that a referendum would be required before such powers come into force (and by stating that Wales would not be ready for such a referendum for several years), Welsh Secretary Peter Hain effectively outflanked those Welsh Labour MPs who had regarded the pledge of a *post*-legislative referendum as a major victory for their devolution-sceptic position. The third devolution referendum would be no 1979 redux, and the Richard Commission's proposed end point had survived, after all!

Debate on the desirability or otherwise of primary powers was largely side-stepped during the parliamentary passage of the Government of Wales Bill, on the basis that it was for the Welsh people to decide at some future point. The only point that attracted Parliamentary attention was the fact that wording of the referendum question was to be set out in the order in council for the referendum, and was not set out in the bill. Furthermore, it was clear that the referendum would only be likely to occur at a time when supporters of primary powers believed that it would probably be won. Given that most devolutionists had long-since conceded that a referendum would be necessary before any move to primary powers, Hain's solution was elegant, ingenious and potentially highly favourable to their cause. Though there were some — largely ritualistic — denunciations of the various 'locks' insisted upon before a referendum could be held (the requirement of a two-thirds majority in the Assembly in favour, as well as the agreement of a Secretary of State and the UK Parliament as a whole) there can be no doubting the fact that, on powers, the White Paper was a major victory for devolutionists.<sup>19</sup>

Indeed, in one important respect, the White Paper went further than the Richard proposals. A form of Rhodri Morgan's 13.2-plus mechanism (to transfer powers short of full primary powers to the Assembly) also found its way into the UK Government's legislative proposals. But while Morgan had implied that this mechanism might be a *substitute* for the Richard goal of primary powers, in the White Paper they became the interim dispensation. Moreover, the operation of this dispensation would almost certainly mean that, even if primary powers were rejected at a future referendum, substantial new powers would continue to accrue to Cardiff. These powers would constitute primary law-making powers in all but name — or rather by a

the publication of the White Paper. It is not mentioned at all in press release's bullet point summary of the White Paper proposals (on page 2). See 'White Paper takes forward Welsh devolution,' Wales Office Press Release, 15 June 2005.

<sup>19</sup> The ability of Westminster to refuse an Assembly request for a referendum has raised the ire of devolutionists. And the requirement for an Assembly super-majority represents a *de facto* Labour veto. But as Peter Hain has pointed out, in reality it would very difficult to win a referendum without overwhelming support in the Assembly, as demonstrated by a two-thirds majority. And given popular attitudes in Wales (see final section of this chapter), any decision by Westminster to refuse a referendum request backed by two-thirds of the Assembly would surely increase support for Cardiff at the expense of London. Westminster would have little to gain and much to lose in provoking such a confrontation.

different name, as legislation by the Assembly on this basis would be known as 'Measures' rather than 'Acts'.

The 13.2-plus mechanism finally decided upon was one whereby the Assembly could request Measure-making powers in certain policy areas; if this request was approved by Westminster, powers could be transferred to the Assembly through an Order in Council. As ever, the devil is in the detail. The White Paper's pledge to allow MPs to undertake 'pre-legislative scrutiny' of such requests, remained (and remains) vague, and an obvious potential point of friction. But the potential of such orders (which have subsequently become known as Legislative Competence Orders, or LCOs) to empower the National Assembly is considerable. The LCO mechanism also has clear benefits for those managing parliamentary business at Westminster, as orders demand relatively little parliamentary time, and could potentially reduce the time UK Government departments must spend co-ordinating with the Assembly Government. Indeed, should the use of LCOs prove to be extensive, and if those orders are widely drawn, then any future referendum on primary powers may well be, in practice, largely about confirming what already exists, rather than heralding a major step-change. This would not only represent another significant difference from the two previous devolution referendums, but is also potentially favourable to the devolutionist cause.

Other aspects of the White Paper were much less surprising. The abolition of the body corporate established in the 1998 Act was proposed, with the separation of executive and legislative functions of devolved government in Wales made explicit. The UK Government also proposed to ban dual candidacy in Assembly elections, claiming that dual candidacy 'both devalues the integrity of the electoral system in the eyes of the public and acts as a disincentive to vote'.<sup>20</sup> And, as expected, the White Paper made no serious engagement with the possibility of increasing the numbers of Assembly Members, nor with adopting the single transferable vote electoral system.<sup>21</sup>

The recommendations of the Richard Commission regarding the electoral arrangements for, and size of, the National Assembly are, however, the exception to the rule. These aside, it is evident that the White Paper accepted and attempted to enact the Commission's main proposals. The radical and

<sup>20</sup> Wales Office 2005, p. 29.

<sup>21</sup> With regards the former, and if only for the sake of historical record, it should be noted that in July 2005, Peter Hain publicly suggested that active consideration was being given to incorporating a mechanism in the Bill that would allow an increase in the size of the Assembly at some future point—presumably after the unlocking of primary powers. The occasion was a conference organised by Aberystwyth University's Institute of Welsh Politics. No such mechanism found its way into the published Bill. We may speculatively suggest that the consequential issues of electoral arrangements, as well as the very considerable political difficulties (for Labour) caused by the obvious corollary of the ending of Welsh over-representation at Westminster, served to dissuade Ministers from pursuing this possibility.

ambitious nature of the White Paper, and the stark contrast it offers to the tone of the Labour Party's initial response to the Richard Commission, raises an obvious question. How did such a dramatic change of heart on the part of Labour occur? This story remains, as yet, untold. In a recent interview, however, Peter Hain has spoken of having to overcome opposition at cabinet level:

some arm twisting was required but that's in the nature of government. There's nothing particularly conspiratorial about this, but there were one or two very senior members of the government — one particular senior member of the government — with whom I had to have some serious engagements; and a bit of a kind of stand-off at one point; and a bit of a kind of power struggle. But that person was persuaded in the end and all to the good.<sup>22</sup>

It is also clear that Hain's Wales Office co-operated closely with the Welsh Assembly Government, both in formulating the White Paper proposals and in lobbying for their adoption. A number of well-informed sources have hinted that Rhodri Morgan's influence was particularly important in the latter regard. While these suggestions cannot be confirmed, they are certainly plausible. On the operational level, the bill team was largely seconded from the Assembly Government.

Public and political debate on the White Paper focussed to a substantial extent not on the issue of powers, but the proposed ban on dual candidacy. Unsurprisingly, the other parties attacked the ban as deeply partisan. Adding further spice to the debate was the collapse of successive attempts by the UK Government to construct any form of intellectual case for their position. Having initially claimed that the ban reflected deep public disquiet at the 'Clwyd West' issue, Hain was subsequently forced to admit that there was in fact no public opinion data in Wales that supported this claim.<sup>23</sup> Evidence collected by the Scottish Arbutnott Commission was cited in support, even though that Commission's report explicitly rejected a ban on dual candidacy.<sup>24</sup> Comments by Lord David Steel and even the Electoral Reform Society were invoked to justify the ban — much to their surprise and even indignation.<sup>25</sup> Attempts to justify the ban descended into the farcical by

<sup>22</sup> Interview with Peter Hain conducted by Richard Wyn Jones on 13 July 2007 for the S4C television series *Datganoli*.

<sup>23</sup> See 'Route Map to Power,' Interview with Peter Hain by Richard Wyn Jones in *Agenda: The Journal of the Institute of Welsh Affairs*, Winter 2005/2006, pp. 24-28.

<sup>24</sup> *Ibid.* See also Commission on Boundary Differences and Voting Systems, *Putting Citizens First: Boundaries, Voting and Representation in Scotland* (Edinburgh, The Stationery Office, 2006), paras 4.55-4.61, pp. 42-5.

<sup>25</sup> Contrast Peter Hain's Oral Evidence to the House of Commons Welsh Affairs Committee on 10 November 2005, especially Q. 245 (available at [www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/uc551-iv/uc55102.htm](http://www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/uc551-iv/uc55102.htm)) with Lord Steel's intervention in a Lords debate on the Bill (at HL Deb, 22 March 2006, col. 263). Contrast also Peter Hain's comments to the Welsh Grand Committee meeting on 23 June 2005, (HC Deb, 23 June 2005, col. 5) with the submission from the Electoral Reform

January 2006, when research produced by the Bevan Foundation on behalf of a Labour MP was hailed as evidence in support of the UK Government's case.<sup>26</sup> This claim was rapidly discredited. The UK Government also came under almost unprecedented criticism from the Electoral Commission who, along with the current authors, pointed out the rare and highly inauspicious international precedents for the UK Government's proposal (notably the banning of dual candidacy in pre-Orange revolution Ukraine). This all added to the UK Government's discomfort.<sup>27</sup> Unsurprisingly perhaps, given both the second chamber's political composition and Labour's failure to establish any plausible case for the ban on dual candidacy, beyond crude partisan advantage, the House of Lords voted to overturn the ban in April 2006. Ultimately, however, the fact that the ban was specifically trailed in the 2005 manifesto — as well as a notably helpful intervention from Assembly Presiding Officer Lord Elis-Thomas — saw the Lords drop their objection.<sup>28</sup>

The granting of Royal Assent in July 2006 meant that the second major piece of Welsh constitutional legislation in only eight years had been successfully marshalled through Parliament.<sup>29</sup> With the benefit of hindsight, it is evident that the dual candidacy controversy served as a major distraction from the real substance of the Bill. Whether this was by accident or design remains a moot point. But the furore undoubtedly served Peter Hain's wider purposes. It is striking, given the unexpectedly radical nature of the Bill, that it reached the statute book with few if any hostile or unsolicited amendments. Most particularly, Part 4 of the Bill, conferring primary powers on the Assembly subject to an affirmative vote in a referendum, scarcely raised a murmur.<sup>30</sup> The majority of Welsh Labour MPs, who remain largely unreconciled to devolution at all, never mind enhanced powers for the National Assembly, were comprehensively out-manoeuvred.

Welsh Secretary Peter Hain's publicly stated ambition is that, unlike its predecessor, the 2006 Act will last a generation. Only time will tell whether

Society: Electoral Reform Society, *Much Better Governance for Wales*, September 2005 (available at <http://walesoffice.gov.uk/bgfw.html>)

<sup>26</sup> See *Public Attitudes to dual candidacy in the elections to the National Assembly for Wales*, Occasional Paper No. 5, Bevan Foundation, January 2006.

<sup>27</sup> See, respectively, *The Electoral Commission's response*, September 2005 (available at <http://walesoffice.gov.uk/bgfw.html>) and Oral Evidence to the House of Commons Welsh Affairs Committee on 18 October 2005 by Richard Wyn Jones and Roger Scully, especially Q. 61 (available at [www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/uc551-i/uc55102.htm](http://www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/uc551-i/uc55102.htm))

<sup>28</sup> See 'Call to end election 'ping-pong,' BBC News online, 23 June 2006 .

<sup>29</sup> For an analysis of the Act and its implications see A. Trench, 'The Government of Wales Act 2006: the next steps in devolution for Wales', [2006] *Public Law* (winter), pp. 687-96.

<sup>30</sup> A fact that appears even more striking in retrospect now that several Labour MPs have begun to rail against the possibility of proceeding to a referendum on primary law-making powers. See, for example, the remarks by Foreign Office Minister Kim Howells as reported in 'Howells in attack on Plaid pact,' *Western Mail* 4 July 2007

this ambition proves well-founded.<sup>31</sup> But it seems highly unlikely that the issue of the number of Assembly Members (and, therefore, also the method of their election) can be avoided for that long, even though this issue currently elicits palpable and understandable caution among pro-devolutionists. Nevertheless, the sheer inventiveness of the 2006 Act, and the great flexibility inherent within it, may well ensure that it continues to set the broad parameters of government and politics in Wales for many years to come. The fact that such a far-reaching, and constitutionally novel, measure could reach the statute book with such relative ease offers testament to Peter Hain's very considerable political skills.

But the passage of the 2006 Act also testified to another central reality of politics in Wales. It offered confirmation that, although 'one-partyism' has been weakened by devolution, it retained a considerable grip on Welsh politics. The Richard Commission, in the processes it followed and the final report it produced, appeared to embody a new, more pluralistic Welsh politics. But subsequent events — from the publication of that report to the final passage of the Government of Wales Act — demonstrated the resilience of a different and far less inclusive politics. The 2006 Act is, as stated, a major piece of constitutional legislation, one intended to provide the basic building blocks for Welsh political life for a generation. However — notwithstanding all the sound and fury surrounding dual candidacy — the only debates that *really* mattered with regard to the final content of the Act were those held inside the Labour Party. To the extent that they were relevant at all, prominent devolutionists in Wales's other political parties mattered for how they orientated themselves around the divisions within Labour (Lord Elis-Thomas's previously-mentioned intervention being only one of several cases in point). Such behaviour is characteristic of what political scientists term one-party dominant political systems (or sub-systems) — ones where the most important cleavages occur within the dominant party rather than between parties, and where other political actors are required to provide implicit recognition of this state of affairs, orienting their behaviour around shaping the battles occurring within the dominant political force.<sup>32</sup> There remains some distance still to be travelled before a mature and pluralistic democracy may be said to exist in Wales.

The iron grip maintained by Labour on the progress of the Government of Wales Act contrasted sharply with the faltering and undistinguished progress of Labour in government during the National Assembly's second term.

<sup>31</sup> See for example, the Secretary of State's remarks in the Commons second reading debate; HC Deb, 9 January 2006, col. 45.

<sup>32</sup> On one-partyism in Wales see Iain McAllister's still unsurpassed paper 'The Labour Party in Wales: The dynamics of one-partyism,' *Llafur* 3(1) (1980), 79–89. More generally see T.J. Pempel (ed.), *Uncommon Democracies: The one-party dominant regimes* (Ithaca, NY: Cornell University Press, 1990).

Labour was deprived of its Assembly majority by the expulsion of Peter Law, following his decision to stand against the official Labour candidate in Blaenau Gwent in the 2005 UK general election. Labour's candidates were humiliated in the Assembly and Westminster by-elections that followed Law's untimely death in April 2006. Acting as a minority government for its final two years, Labour became highly risk-averse, and did little more than limp over the finishing line at the end of the second term.

The most obvious public sign of the now-minority government's difficulties was the way in which the annual budget process became the subject of protracted — and factious — inter-party haggling in the autumns of 2005 and 2006. In both cases the opposition parties demanded, and won, considerable concessions before a budget was eventually passed. In general, there was little obvious direction to the Welsh Assembly Government's activities. Much Assembly time was taken up with numerous policy reviews, some of which (most notably a review of science policy) led to little substantive action by the government.<sup>33</sup> Even potentially significant constitutional developments such as the empowering of the Assembly in the field of transport — following the 2006 Transport (Wales) Act—had little immediate impact. The Assembly Government's announcement in February 2006 that it intended to renege on its manifesto commitment to eliminate all charges on home care services for disabled on the grounds of 'equity' and cost, served to further undermine its credibility.

Even a much-vaunted 'bonfire of the quangos' proved something of a damp squib. Although the Welsh Development Agency, Welsh Tourist Board and ELWa were brought 'in house' from April 2006, doubts about this policy had increased to the point that the Assembly Government was forced to accept that the Welsh Language Board — initially another target for executive annexation — should be spared this fate. Nor did the announcement in late 2005 that part of Wales would be eligible for significant EU Convergence Fund funding between 2007–13 bring much respite for the government, given that 'failure to achieve sufficient income growth is the reason that the West Wales and Valleys region has qualified again for support.'<sup>34</sup>

The sense of drift was captured in an outburst by the Assembly's Presiding Officer Lord Dafydd Elis-Thomas on 22 May 2006: 'it's very difficult', he proclaimed, 'to point out anything that has happened recently...we are not really loved out there by the Welsh public, they are not getting value for money and therefore we need to do something about it.'<sup>35</sup> Such outbursts by Elis-Thomas have been a regular feature of Welsh public life for more than

<sup>33</sup> See *Wales Devolution Monitoring Reports* (London: The Constitution Unit) for 2005, 2006 and April 2007, and in particular the analyses of 'Public Policy' and 'Economic Development'.

<sup>34</sup> *Wales Devolution Monitoring Report*, January 2006, (London: The Constitution Unit), p. 51.

<sup>35</sup> Cited in *Wales Devolution Monitoring Report*, September 2006 (London: The Constitution Unit), p. 9.

three decades, but it was clear that he was voicing widespread sentiment. Not all the Assembly Government's travails were of its own making. The furore in the first half of 2006, surrounding the Home Office's abortive attempt to force the amalgamation of the Welsh police forces with neither proper consultation nor adequate consideration of the financial and accountability implications of such a move, amounted to what Rhodri Morgan might call (in other circumstances) a 'hospital pass' from the UK Government. But it was a palpably tired Welsh Labour Party that prepared to fight the third National Assembly election in May 2007.

#### THE 2007 ASSEMBLY ELECTION

As the third election to the National Assembly approached, there were a number of reasons to expect that Labour would struggle to sustain the position it had held four years previously. The first was simply the 'time for a change' factor. By May 2007, Labour had been in power in London for ten years, and in Cardiff for eight. As many political scientists have shown, there is generally an electoral cost from being in power; it was plausible to expect that Labour would have to pay some of this price. Labour had also lost a particular advantage it had enjoyed in 2003, when it had possessed — in Tony Blair and Rhodri Morgan — the two most popular political leaders in Wales. Four years on, both men enjoyed far lower levels of popular support. Finally, there had been growing evidence that the Labour Party machine in Wales was in significant decline. Declining party membership and activism levels were problems for Labour across the UK. So also was a sharp decline in the financial resources available to the party. But the party's electoral results since 2003 also indicated that public support for Labour was slipping. In the 2005 UK general election, Labour in Wales saw its vote share fall by 5.9 per cent to 42.7 per cent, a decline that translated into a loss of five Parliamentary seats in Wales. While Labour remained the dominant party in terms of parliamentary representation, its vote share in Wales was its second lowest at a general election (only just beating its result in 1983) since the mid-1920s. Moreover, the Blaenau Gwent by-elections — where, in a historic party bastion, two lavishly-resourced Labour candidates were decisively beaten by two inexperienced and poorly-resourced independents — pointed to particular troubles in the traditional Labour heartlands.

The only feature of the electoral landscape that seemed unambiguously encouraging for the Labour Party was the opposition that they would have to face. Plaid Cymru had been deeply disappointed by their 2003 election performance, with the party's overall share of the vote falling dramatically in comparison to 1999, and its number of seats in the Assembly reduced from 17 to 12 in 2003. The reasons for this decline in electoral fortunes have been

discussed elsewhere.<sup>36</sup> As a consequence of this poor performance, however, the party was embroiled in internal strife over leadership, strategy and policy for most of the Assembly's second term. By 2007, some key lessons had been learned. Plaid's election campaigning had been substantially up-dated, encompassing a more effective targeting of key seats and use of voter identification software, a new party logo and much improved leaflets and advertising materials, and an election manifesto with more appealing policies. Other lessons, however, had not been taken on board. In particular, Plaid retained as their leader Ieuan Wyn Jones—a man who, whatever his other qualities, had shown in previous elections that he lacked widespread voter appeal.

The Conservative Party entered the 2007 campaign with realistic expectations of making some ground. Their Assembly Members had generally performed effectively during the 2003–07 term, while the party was experiencing growing popularity across the UK. However, the Welsh Conservatives were also fighting against a history of weak electoral performances (relative to their counterparts in England) that stretches back at least to the 1880s, and against a deep-rooted perception in much of Wales that they are an essentially English party. The Liberal Democrats had some hopes of gaining an additional Assembly seat in the election. However, they were campaigning against the background both of a generally lacklustre performance during the Assembly's second term and the modest poll ratings of the Britain-wide party under the uninspiring leadership of Sir Menzies Campbell.

The election campaign itself offered further signs of devolution in Wales maturing. The election campaign was more intellectually serious than in 1999 and 2003; all four main parties produced manifestos that displayed at least some aspects of a distinctly Welsh policy agenda. In other respects, the quality of the party campaigns varied substantially. The Labour Party fought a poor campaign. Welsh Labour were hardly helped by the fortunes of the UK-wide party (fighting an election in the dog days of the Blair government, and with issues like Iraq and the 'Cash for Honours' affair continuing to rumble in the background). Nonetheless, expectations were absurdly over-inflated, with Labour continuing to insist until polling day that they might win an Assembly majority when this was never a serious proposition. The central coordination of the campaign was also weak, and the essentially nostalgic central message of the campaign seems to have fallen on largely fallow ground. The 'Welsh Labour' brand appealed to 'classic Labour' values. This *may* have helped shore up the party's traditional base in the Valleys constituencies, but its broader resonance appears both geographically and socially limited. Furthermore, though the Valleys loom large

<sup>36</sup> R. Wyn Jones and R. Scully, 'Minor Tremor but Several Casualties: the 2003 Welsh Election', *British Elections and Parties Review* (2004) 14; 191–210. See also J. Osmond 'Nation Building and the Assembly: The emergence of a Welsh civic consciousness' in A. Trench (ed.) *Has Devolution Made a Difference? The State of the Nations 2004* (Exeter: Imprint Academic, 2004).

symbolically — for both Labour partisans and their Plaid Cymru opponents — their real importance is limited and declining.

Plaid Cymru had most reason to congratulate itself on its election campaign. Most observers considered that Plaid (notably election co-ordinator Adam Price MP, and outgoing chief executive Dafydd Trystan) ran the best campaign at both national and local levels. With strong financial support from a buoyant UK party, the Welsh Tories also ran strong local campaigns in key constituencies, although their national campaign never quite matched the slickness of Plaid Cymru. The Liberal Democrats' national campaign was generally unexciting, but the party did place great effort into its key target constituency seat of Ceredigion, having captured the Westminster seat from Plaid Cymru in 2005.

Welsh-specific opinion polls are rare. However, two polls published a week before the election were broadly in line with the picture painted by private polling conducted by some of the parties for several months prior to the election.<sup>37</sup> The final polls showed Labour averaging 34 per cent on the constituency vote, and 34.5 per cent for the second (regional list) vote. Plaid Cymru were on 26 per cent for the constituency vote and 25 per cent for the list vote. The Conservatives scored 19 per cent for both votes, while the Liberal Democrats averaged 14 per cent and 13.5 per cent respectively. Applied uniformly across Wales this suggested that Labour might win 26 seats, Plaid 15, the Conservatives 10 and the Liberal Democrats 7.<sup>38</sup> However, previous elections had indicated a tendency for polls to underestimate the Conservative vote in Wales, and the Tories remained optimistic of challenging Plaid for second place in both votes and seats.

**Table 3.1: Vote Shares and Seats (Change from 2003), 2007 Election**

| Party                   | 1st Vote (%) | 2nd Vote (%) | Seats   |
|-------------------------|--------------|--------------|---------|
| Labour                  | 32.2 (-7.8)  | 29.6 (-7.0)  | 26 (-4) |
| Plaid Cymru             | 22.4 (+1.2)  | 21.0 (+1.3)  | 15 (+3) |
| Conservatives           | 22.4 (+2.5)  | 21.5 (+2.3)  | 12 (+1) |
| Lib. Dems               | 14.8 (+0.7)  | 11.7 (-1.0)  | 6 (-)   |
| Others                  | 8.3 (+3.6)   | 16.3 (+4.5)  | 1 (-)   |
| Turnout = 43.5% (+5.3%) |              |              |         |

<sup>37</sup> The two polls were both telephone polls—conducted, respectively, by NOP for ITV-Wales and Beaufort Research for the Western Mail. The authors have also seen, on a confidential basis, results from private polling from several of the parties, conducted over several months leading up to the election.

<sup>38</sup> The final two seats were expected to be retained by the independents, Trish Law in Blaenau Gwent and John Marek in Wrexham. In the event, while Law won comfortably, Marek was defeated in what was the Labour Party's sole constituency gain of the election.

The aggregate results of the election are presented in Table 3.1. They show that the Labour Party comfortably retained its position as the largest party in the National Assembly. However, the party fell well short of the majority which Rhodri Morgan had insisted throughout the campaign was Labour's realistic goal. Plaid Cymru and the Conservatives both made some advance in vote share and in seats, while the Liberal Democrats' position as only the fourth party in Wales was reinforced as they failed to make any gains whatever.

One feature of the election result, from which most participants and observers drew some comfort, was the rise in turnout. The increase was only modest, and still left voter participation rates in devolved elections well below those for UK general elections. Turnout is particularly disappointing given both the fact that Welsh voters have traditionally participated at slightly higher rates than the rest of Britain in other elections, and also that democratic renewal was a stated objective of Welsh devolution.<sup>39</sup> But even a modest rise was better than further decline, and survey evidence also indicated that the perceived importance of the devolved institution had increased significantly during that period.<sup>40</sup>

That Labour made a net loss of only 4 seats on 2003, and remained much the largest party, might cause many to fail to recognise the scale of the electoral setback experienced by the party. The Labour Party in Wales is used to dominance, even hegemony, to a greater extent than just about anywhere else in the UK. But Labour's vote share in 2007 fell back sufficiently for the result to constitute the party's worst performance at any Westminster or devolved election in Wales since the general election of 1918.<sup>41</sup> Although Labour held onto many constituencies, its decline in support left many of its Assembly Members looking vulnerable; of the 12 most marginal constituency seats in the new Assembly, 10 were held by Labour AMs. This was a new and highly uncomfortable position for many in the party.

Another notable feature of the election result was the high degree of uniformity in Labour's performance. Prior to the elections, most observers had anticipated a 'patchwork quilt' of results, with no very clear patterns emerging. Yet for the Labour Party at least, this was not true. Labour's vote share fell back in all five regions of Wales on the second vote, and in 39 of

<sup>39</sup> See discussion in R. Scully, R. Wyn Jones and D. Trystan, 'Turnout, Participation and Legitimacy in Post-Devolution Wales', *British Journal of Political Science* 34 (2004): 519–37.

<sup>40</sup> A telephone poll conducted by ICM for the BBC prior to the election, which replicated a question used in previous academic surveys, found the highest-ever level of respondents (35 per cent) choosing the 'National Assembly for Wales' when asked which level of government 'has most influence over the way Wales is run'. (The other alternatives offered were the European Union, the UK Government in London, and local councils).

<sup>41</sup> Indeed, given that — partly due to the peculiar circumstances of the 1918 UK election — Labour did not stand candidates in one quarter of all the Welsh seats, 2007 was in reality Labour's worst ever result in a devolved or parliamentary election in Wales. 2007 was also the first year that Labour's vote share in Wales had not been higher than its vote share in Scotland at a devolved or UK election since 1924.

the 40 constituencies on the first vote.<sup>42</sup> Wales has long been a country renowned for its internal divisions and differences. But on one thing at least, in 2007, it was united. Across the north and the south, the east and the west, in both urban and rural parts of Wales, Labour was in decline.

Why did Labour's decline not produce an even worse final result for the party? Put simply, Labour was saved from far worse by the lack of a credible and appealing alternative. Both the Conservatives and Plaid Cymru made moderate gains. The Conservatives continued on the trajectory of modest progress that they have set since their nadir in the UK general election of 1997, while Plaid Cymru managed to recuperate some of the losses of 2003. Both parties also effectively targeted certain constituency seats. But both Plaid and the Conservatives fell well short of a serious breakthrough across Wales. Neither was strong enough to turn evident dissatisfaction with Labour into significant gains for themselves.

Although 2007 brought some undoubted electoral successes for Plaid Cymru, it would be realistic to describe these as important tactical victories amidst an accompanying strategic failure. Plaid succeeded in almost all its key target seats, and fought particularly effective defensive campaigns where its representatives faced possible difficulties. Among the latter cases, Labour was pulverised in the (redrawn) Arfon constituency, while in Ceredigion, Plaid's overwhelming defeat of a strong Liberal Democrat candidate undoubtedly contributed to the latter's post-election trauma. But the successes of the party's campaign should not mask its broader strategic failure — of failing to find a political message that could translate widespread dissatisfaction with the Labour Party into support for Plaid candidates. Despite the heavy fall in Labour support, across Wales Plaid only saw a modest rise in its vote. The contrast with Plaid's Scottish sister party is stark, as the Scottish National Party largely defined the agenda in Scotland's devolved election. Plaid benefited from Labour's difficulties, but could not dominate the Welsh election in the same way. While devolution has changed many things, the party's decades-old conundrum remains unresolved; how to advance a programme that appeals throughout Wales?

The Conservatives were very close to having a very good result. Conservative challengers lost to Labour AMs by 83 votes in Vale of Glamorgan, 92 in Vale of Clwyd, 511 in Delyn, 1,119 in Clwyd South, and 1,192 in Gower. Although disappointment will persist at the failure to increase the party's representation in the National Assembly by more than one seat, or to displace Plaid as the second largest party, wiser heads will surely point to the party's overall progress in a country that has historically been difficult territory for Conservatism. The Tories' image as the English party in Wales has very deep roots, and it will not easily or quickly be displaced.

<sup>42</sup> The only seat where Labour's vote share increased was Cardiff Central, where it rose by 2.0 per cent.

Despite a strong local candidate and campaign, the Liberal Democrats were comprehensively defeated in their key target seat of Ceredigion, and by a margin sufficient to indicate that the party may struggle to retain the Westminster seat at the next UK general election. For all the party's confident noises in the months prior to the election, the Lib Dem performance in Wrexham and Swansea was ultimately disappointing. But even more alarming was exposure of the party's chronic weakness across much of Wales. In Ynys Môn, for example, the British National Party won more list votes than the Liberal Democrats. Indeed, across Wales increasing numbers of voters turned towards independent candidates and to the political fringes. An independent candidate finished in the first four (thus beating at least one main party candidate) in five constituencies in 2003, but in eleven in 2007. And the share of the list vote going to 'Others' rose substantially, with the far-right BNP — which, like many extremist parties often serves as an outlet for protest votes — gaining 5.1 per cent of the list vote.

A further noteworthy consequence of the pattern of results was a significant rise in the disproportionality of the final outcome. The National Assembly is elected under a system that might be described as semi-proportional representation, as although the allocation of list seats via the d'Hondt formula does take account of the number of constituency seats won by each party in that region, the fact that only one-third of AMs are elected via the list means that the system cannot be guaranteed to provide a high degree of proportionality. This not only provides a high effective threshold for the representation of minor parties, which would have to win seven per cent or more across a region to stand a realistic chance of winning a seat. It also creates a situation in which, with only four list AMs per region, the allocation of such seats cannot wholly compensate for significant disproportionalities in the constituency results in particular regions. In the three south Wales regions (South Wales West, South Wales Central, and South Wales East), Labour won 19 of the 23 constituency seats in 2007, from just over 38 per cent of the vote. The 12 list seats across these regions were all won by the three main opposition parties, but even this was not remotely sufficient to provide them with proportionate compensation for the very high — one might reasonably say grotesque—disproportionality of the constituency results. It is thus unsurprising that the overall outcome of the NAW election produced a Gallagher Index of Disproportionality figure of 9.9 — up from 8.7 in 2003, and very high by international standards for countries operating 'proportional representation'.<sup>43</sup>

<sup>43</sup> The Gallagher Index is the standard political science index for the calculation of the disproportionality of parliamentary elections results: that is, the disparity between the proportion of votes cast for parties and the proportion of seats they gain.

## THE CONSEQUENCES OF THE 2007 ELECTION

The period following the election revealed that, while devolution in Wales is now well-established and broadly accepted, the political parties and much of the broader political class still have much to learn about the politics that follows from devolution. The failure of the election to produce a majority party led to several weeks of confusion about which parties would take power. A minority Labour administration took office in late May, but this was almost universally expected to be in office for only a short period of time. The main alternatives to emerge were a 'Red-Green' coalition between Labour and Plaid Cymru, or a 'Rainbow' coalition encompassing Plaid, the Conservatives and the Liberal Democrats. But while the outcome of coalition negotiations remained unclear, several things were strikingly clear to most observers in the weeks after the election. Leading politicians in a number of parties — and in particular, paradoxically, in those parties with most invested in the current settlement — appeared notably unprepared for managing the difficulties imposed by the politics of coalition negotiations. It was also evident that many in the small community of political journalists in Wales were largely ignorant about a type of politics which may be relatively unfamiliar in recent UK experience but which would be regarded as wholly unexceptional 'normal politics' in a great proportion of the democratic world.

Labour's election campaign was poor, but its performance during the post-election interregnum often bordered on the inept. It seems extraordinary that a party long privately conceding defeat in key constituencies (such as Cardiff North and Clwyd West) had not done more to prepare the ground for a post-election situation in which it had fallen far short of an overall majority. But this is precisely what occurred. It is also extraordinary that leading Labour figures saw fit to insult potential coalition partners in the immediate aftermath of the election (describing Plaid and the Lib Dems as 'inedible', and 'unpalatable'), and then to ignore them, through Rhodri Morgan going on a post-election break. And it is inexplicable that Labour did not do more immediately after the election to try to secure a coalition with the Liberal Democrats, before the prospect of a Rainbow coalition involving the other three main parties began to solidify.<sup>44</sup>

In defence of Rhodri Morgan, however, it may be suggested that much of Welsh Labour's problem is cultural, even psychological. Labour has long been the hegemonic party in Welsh politics, its dominance in terms of votes being underpinned and reinforced by innately disproportional electoral

<sup>44</sup> Osmond 2007 provides a detailed account of the processes by which a Labour-Lib Dem coalition crept onto the agenda, was superseded by the Rainbow coalition, and then the Red-Green coalition came to be agreed.

systems.<sup>45</sup> Large and influential sections of the Welsh Labour Party remain resolutely ‘in denial’ about the implications of devolution and its semi-proportional electoral system. Working with this sort of party behind him, Morgan would have found it difficult to have moved faster even had he attempted to. Only when faced with the realistic prospect of losing power did his party accept, reluctantly, the necessity of compromising with erstwhile enemies.

By this time, Plaid Cymru was the only available partner. The agreement reached with Plaid was strongly endorsed at a specially-convened party conference, a result which represented an unambiguous victory for Labour’s devolutionist wing. But while the constitutional balance of power between UK and Welsh devolved government remains as it is, and different electoral systems remain in place at both levels, the internal party tensions of the past few weeks and months are likely to be recurring feature of Welsh Labour Party politics. The many Welsh Labour parliamentarians who remain utterly unreconciled either to coalition with Plaid or to devolution retain a significant capacity for mischief-making. Rhodri Morgan’s health problems in the summer of 2009 added another potentially destabilising element to this already-combustible mixture.

The contrast between Plaid and Labour’s post-election behaviour could not have been more marked. Plaid’s leadership was determined to keep as many options as possible on the table. The only possibility that had been explicitly disavowed prior to the election was Plaid serving in government under a Conservative First Minister, but this formulation still permitted Tory-Plaid cooperation in various forms. The stance of the leadership — along with the behaviour of the other parties — made Plaid central to all coalition negotiations, and ultimately enabled Plaid to make the choice between alternative coalition agreements. Both agreements allowed for the implementation of large parts of the party’s election manifesto, and, more generally, bore the stamp of the party’s strong negotiating team. (According to one close observer, Plaid greatly benefited from the experience of leader Ieuan Wyn Jones in the negotiations at Westminster surrounding Parliamentary ratification of the Maastricht Treaty in the early 1990s.)

Whether the party made the right choice in opting for the role of junior partner in a Labour-led government, rather than leading a Rainbow government, will be debated by Plaid activists for many years to come. The party leadership’s ultimate decision to go for the ‘Red-Green’ deal was endorsed overwhelmingly by activists in a special conference. But this does not mean that no reservations persist within the party. For instance, the former leader, Dafydd Wigley, used a high-profile speech at the National Eisteddfod in

<sup>45</sup> Labour has won at least a plurality of the vote in Wales at every election since the general election of 1922.

August to voice concerns about the extent to which the commitments of the coalition agreement were deliverable. More generally, party members and supporters at all levels will have to adjust their ways of thinking and operating substantially now that Plaid is, for the first time in its more than 80-year existence, a party of government.

**Table 3.2: Members of the Labour-Plaid Cymru Cabinet, formed July 2007**

| <b>Minister</b>         | <b>Portfolio</b>   | <b>Party</b> |
|-------------------------|--|--------------|
| Rhodri Morgan AM        | First Minister   | Labour       |
| Ieuan Wyn Jones AM      | Deputy First Minister and Minister for the Economy and Transport | Plaid Cymru  |
| Jane Davidson AM        | Minister for Environment, Sustainability and Housing             | Labour       |
| Andrew Davies AM        | Minister for Finance and Public Service Delivery                 | Labour       |
| Dr. Brian Gibbons AM    | Minister for Social Justice and Local Government                 | Labour       |
| Edwina Hart MBE AM      | Minister for Health and Social Services                          | Labour       |
| Jane Hutt AM            | Minister for Children, Education, Lifelong Learning and Skills   | Labour       |
| Carwyn Jones AM         | Counsel General and Leader of the House                          | Labour       |
| Elin Jones AM           | Minister for Rural Affairs                                       | Plaid Cymru  |
| Rhodri Glyn Thomas AM   | Minister for Heritage  | Plaid Cymru  |
| <b>Deputy Ministers</b> |  |              |
| Leighton Andrews AM     | Deputy Minister for Regeneration                                 | Labour       |
| Jocelyn Davies AM       | Deputy Minister for Housing                                      | Plaid Cymru  |
| John Griffiths AM       | Deputy Minister for Skills                                       | Labour       |
| Gwenda Thomas AM        | Deputy Minister for Social Services                              | Labour       |

In the post-election horse-trading, the Conservatives were both canny and lucky. They were canny in playing their hand well. Past efforts to maintain

cordial relations with their potential coalition partners in Plaid Cymru and the Liberal Democrats were continued, with the Tories contributing positively towards the negotiation of the 'Rainbow' deal between the three parties. But they were also lucky that the deal collapsed for reasons that could not be blamed on them. Holding power in Wales alongside Plaid Cymru—indeed, under the leadership of a Plaid Cymru First Minister—would surely have created substantial and public divisions in the Conservative Party, significant sections of which remain unreconciled to devolution. As matters transpired, the Conservatives emerged from the coalition negotiations in a stronger formal position (as the official opposition in the National Assembly), and being able credibly to claim that they had worked in good faith for an alternative, non-Labour government.

However, the Conservatives' luck may run out. The party leadership has managed to paper over persisting internal divisions on devolution in recent years. But a referendum on enacting Part 4 of the Government of Wales Act 2006 would be likely to bring Tory divisions fully into the open. Given the party leadership's strident and fundamental criticism of the status quo, any decision by the party to oppose further constitutional change would inevitably open the party to ridicule. But could the party really stomach campaigning for primary legislative powers for Wales, given the persistent opposition to devolution among a significant group of party activists as well as the party's three Welsh MPs? While media speculation has inevitably focused on the divisions a referendum could open up within Labour, its repercussions for the Welsh Conservatives might be equally momentous. Not the least of those is that any outbreak of public hostilities on the devolution issue would inevitably undermine the entire political strategy of the Welsh Conservatives under Bourne's leadership, namely to present the party in a more 'Welsh' light. The party clearly faces some very difficult choices in the months and years ahead.

Of the four main parties, the Lib Dems have been the most damaged, even discredited, by the coalition negotiations. For the party apparently to reject the Rainbow deal that had been negotiated by its leadership made the Lib Dems look merely silly; for them then to try to reverse their position, and resurrect the Rainbow deal once it was too late, smacked of a particularly highly-developed brand of incompetence. Perhaps most worrying for the party's future prospects that, in the absence of commanding leadership in the Welsh (or indeed UK-wide) party, the Welsh Liberal Democrats appear to be behaving as an increasingly loose collection of local parties rather than a coherent national force. Attitudes towards the prospective coalition deal seem to have been almost wholly determined by local electoral circumstances, rather than issues of principle or policy. Forcing Plaid into bed with Labour was the earnest hope of Ceredigion Liberals looking to the next

Westminster election, while most Brecon and Radnor Liberals seem to have concluded that a deal with the Conservatives would have made it more difficult for them to squeeze the constituency's residual Labour vote in subsequent elections, and so on. No party is immune from such considerations, of course, and differences of opinion within parties are axiomatic. But with the same old faces returned to the Assembly, the party's MPs wholly unable to offer leadership, and little to distinguish the party programmatically in the crowded centre-left of Welsh politics, it is very difficult to see where the party goes next. It is not an exaggeration to suggest that the Welsh Liberal Democrats face an existential crisis.

#### PUBLIC ATTITUDES IN WALES

A central foundation for the conclusions and recommendations of the Richard Commission was the evidence presented to them of a substantial shift in public attitudes in the years following the 1997 referendum. This evidence showed that opposition to devolution in Wales fell substantially between the referendum and the end of the National Assembly's first term, and also offered a significant indication of a public appetite for taking devolution further.<sup>46</sup> In the years since publication of the Richard Report these trends have been reinforced and even extended further.

A main measure of public attitudes on devolution is a question on 'Constitutional Preferences' that has been used consistently in every major survey in Wales since 1997.<sup>47</sup> This question asks respondents to choose between four broad options: 'Independence', 'a Parliament with substantial law-making and some tax powers', 'an Assembly with only limited law-making powers', and 'No Devolution'. As can be seen from Table 3.2, over the decade since the referendum, there has been no significant trend in support for 'Independence' for Wales, or in support for the 'Assembly' option. However, the proportion of respondents choosing the 'No Devolution' option has fallen by more than half — down to well under 20 per cent from nearly 40 per cent within the span of a decade. Alongside this change, support for the 'Parliament' option has more than doubled, comfortably topping 40 per cent in 2007.

<sup>46</sup> Much of this evidence is presented and discussed in Chapter 3 of the Richard Commission report.

<sup>47</sup> The Institute of Welsh Politics at Aberystwyth, working with the National Centre for Social Research, conducted a detailed academic survey of public attitudes immediately after the 1997 referendum, and after the 1999, 2001, 2003 and 2007 elections. These surveys were all supported by grants from the Economic and Social Research Council of the United Kingdom. The Electoral Commission also convened a detailed survey of public attitudes (fieldwork conducted by GfK NOP). All figures on public attitudes cited in this section of the chapter come from these surveys.

**Table 3.3: Constitutional Preferences in Wales, 1997–2007<sup>48</sup>**

| Constitutional Preference (per cent) | 1997 | 1999 | 2001 | 2003 | 2006 | 2007 |
|--------------------------------------|------|------|------|------|------|------|
| Independence                         | 14.1 | 9.6  | 12.3 | 13.9 | 11.5 | 12.2 |
| Parliament                           | 19.6 | 29.9 | 38.8 | 37.8 | 42.1 | 43.8 |
| Assembly                             | 26.8 | 35.3 | 25.5 | 27.1 | 25.0 | 27.5 |
| No elected body                      | 39.5 | 25.3 | 24.0 | 21.2 | 21.3 | 16.5 |
| Weighted N of respondents            | 641  | 1173 | 1044 | 935  | 955  | 837  |

Opposition to devolution has actually fallen more substantially in Wales over the last decade than it has in Scotland, and opposition in Wales is now lower than it was in 1997 in Scotland.<sup>49</sup> This decline has been most noticeable among groups who were most likely to oppose devolution in the referendum. This includes those who see themselves as primarily British (rather than Welsh) in terms of national identification, and also women. The latter were significantly more likely to oppose devolution in 1997. But by 2006, research for the Electoral Commission was showing women about 5 per cent *less* likely to do so.<sup>50</sup>

Our conclusions about public attitudes do not rely merely on answers to one question on Constitutional Preferences. Answers to a number of other questions, over several surveys, all point in the same direction. Particularly interesting responses have come from a pair of questions asked in several recent surveys. These questions ask about which level of government (local councils, the National Assembly, Westminster, or the EU) firstly ‘Have the Most Influence over Governing Wales’, and secondly which ‘*Should* Have the Most Influence over Governing Wales’. As is shown in Table 3.3, perceptions of the actual importance of the Assembly have been steadily rising. Nonetheless, there remains a stark disparity between how people think things are and how they would like them to be.

<sup>48</sup> Source: Institute of Welsh Politics/National Centre for Social Research surveys; see note 47 for details.

<sup>49</sup> In Scotland, the proportion of respondents choosing the No Devolution option in the standard constitutional preference question was 18.1 per cent in their 1997 post-referendum survey; by 2006 (the most recent year for which figures were available, this had declined to 9.0 per cent).

<sup>50</sup> The reasons why attitudes to devolution may have moved more rapidly among women than men have yet to be explored seriously. Obvious potential candidates for an explanation include the symbolic impact of the large number of female AMs and ministers in the National Assembly (something that stands in stark contrast to the heavily male-dominated history of politics in Wales), and the impact of specific policies of the devolved administration in areas like health and education.

It is relatively easy to show that there has been a substantial shift in public attitudes to devolution over the last ten years. It is more difficult to explain precisely *why* there has been such a change. However, we can rule out some possible factors, and identify others that are of some relevance.

First, seems fairly clear that support has *not* risen because devolution has helped to revitalise democracy in Wales. That may have been the stated ambition of the 1997 White Paper.<sup>51</sup> However, there are few, if any, signs of democratic renewal—whether one looks at electoral turnout, or other indices of political interest and participation among the public. Secondly, support for devolution has not risen because of widespread perceptions of great policy successes in the major areas of public policy. Public perceptions in areas like health, education and the standard of living are, at best, only modestly positive.<sup>52</sup>

**Table 3.4: ‘Most Influence over How Wales is Run’<sup>53</sup>**

| <i>A: Has Most Influence</i> |             |             |             |
|------------------------------|-------------|-------------|-------------|
| <b>Response (per cent)</b>   | <b>2001</b> | <b>2003</b> | <b>2007</b> |
| National Assembly for Wales  | 17.0        | 22.4        | 35.6        |
| UK Government                | 64.4        | 57.9        | 53.2        |
| Local councils               | 15.5        | 15.0        | 5.4         |
| European Union               | 3.2         | 4.7         | 5.9         |
| Weighted N of respondents    | 1033        | 917         | 827         |

  

| <i>B. ‘Ought to Have Most Influence’</i> |             |             |             |
|--|-------------|-------------|-------------|
| <b>Response (per cent)</b>               | <b>2001</b> | <b>2003</b> | <b>2007</b> |
| National Assembly for Wales              | 56.2        | 56.0        | 74.3        |
| UK Government                            | 26.3        | 29.1        | 17.7        |
| Local councils                           | 16.5        | 13.8        | 7.7         |
| European Union                           | 1.0         | 1.2         | 0.2         |
| Weighted N of respondents                | 1033        | 917         | 857         |

<sup>51</sup> Welsh Office 1997.

<sup>52</sup> For further details, see R. Wyn Jones and R. Scully, ‘Y Farn Gyhoeddus/Public Opinion’, paper presented to conference on *A Decade of Devolution*, Cardiff, 2007.

<sup>53</sup> Sources: Institute of Welsh Politics/National Centre for Social Research surveys; see note 47 for details.

So what has happened? Devolution has not lived up to the worst fears that were raised in 1997. In the Parliamentary debates prior to the Scottish and Welsh referendums, the Conservative spokesman, Michael Ancram warned of ‘the dark, cold night’ that would follow ‘Yes’ votes. But few people in Wales (or Scotland for that matter) believe that devolution has actually delivered the dark, cold night. And while government in Cardiff is not generally viewed as a fantastic success, neither for that matter is government in London. Where the two levels of government are viewed as distinct, however, is in their relative degree of concern with the interests of Wales. As is shown in Table 3.4, in this regard the level of trust in the devolved body is much higher. It may also be because of this disparity in trust that there is also a disparity in attributions for policy outcomes; voters are disproportionately likely to attribute policy successes to the National Assembly and the Assembly Government, and failures to London.<sup>54</sup>

**Table 3.5: ‘Trust to Govern in Wales’ Best Interests’, 2007<sup>55</sup>**

| <b>Response (per cent)</b> | <b>UK Govt</b> | <b>Welsh Assembly Govt</b> |
|----------------------------|----------------|----------------------------|
| Just about always          | 4.2            | 19.5                       |
| Most of the time           | 31.9           | 53.0                       |
| Only some of the time      | 51.5           | 24.2                       |
| Almost never               | 12.5           | 3.2                        |
| Weighted N of respondents  | 872            | 872                        |

To summarise, there has been a substantial change in public attitudes to devolution in Wales over the last decade. There is no longer any serious question over whether the majority of the Welsh people support some degree of self-government. They do. If devolution was the ‘settled will’ of the Scottish people in 1997, it certainly is so for the Welsh ten years on. What remains at issue is how much more self-government the public would be willing to support.

Does this evidence have direct implications for a referendum on primary legislative powers for the National Assembly? A substantial body of research on referendums around the world shows that opinions on the matter

<sup>54</sup> For instance, in our 2007 survey, slightly more than 60 per cent of those perceiving improvements in the NHS attributed this to the National Assembly/Assembly Government, compared to only one-quarter attributing this to the UK government. However, of those who thought things had become worse, almost half blamed the UK Government and only about 15 per cent attributed blame to Cardiff! Very similar figures also apply for the policy areas of education and the economy.

<sup>55</sup> Source: Institute of Welsh Politics/National Centre for Social Research surveys; see note 47 for details.

ostensibly at stake are far from the only thing that influences referendum results. The circumstances of the campaign can also have a huge impact. The evidence on changes in public attitudes does indicate that a referendum on primary powers would be *winnable*. But in the absence of prior knowledge as to the context of such a referendum, we cannot say for certain that it would be won.

#### CONCLUSION

Devolution in Wales has, over the past decade, been developing in a very different way than in Scotland. In Scotland, the formal establishment of devolution was preceded by the existence of a substantial Scottish civil society and distinct Scottish institutions. The referendum itself followed years of work in developing a broad-ranging consensus on the matter among social and political elites, and within the Scottish public. In Wales, the process has worked almost in reverse. Rather than *following* years of preparatory work, and delivering formal recognition of a distinct political sub-system that largely already existed, in Wales formal devolution has largely been the spur for such things. The last decade has seen—from a rather low base—rapid development of political and governmental institutions, as well as of a more distinctive Welsh civil society. *Avant la lettre*, devolution has also become the settled will of the Welsh public. And the Richard Commission offered the closest thing that Wales has seen, thus far, to Scotland's Constitutional Convention.

The last few years have seen the 'end of the beginning' of devolution in Wales, and the beginning of something rather different. This something includes the establishment of a more solid institutional basis for substantial self-government for Wales. It also shows every sign of including the gradual erosion of one-party dominance, so long a feature of Welsh political life, and the development of a more internationally normal type of partisan politics. Above all, Wales is now moving into an era in which the *fact* of devolution is no longer of great interest. What is of interest, increasingly, is its character and form, and what is done with self-government for the people of Wales.

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