

15

**The Constitution Unit**

**Commentary on the Welsh White Paper**

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# Constitution Unit commentary on the Welsh White Paper

## The political background

The Government's White Paper *A Voice for Wales* (Cm 3718) was published at the end of July and is to be put to a referendum on 18 September 1997. It is an extension of the policy documents published by the Wales Labour Party in opposition (*Shaping the Vision*, May 1995; *Preparing for a New Wales*, May 1996; *Representing Wales*, March 1997). It offers what Ron Davies has called a 'gentler form of devolution' from the proposed Scottish Parliament: the Welsh Assembly will have no legislative power, and no power to vary taxes. This half way house represents a carefully constructed compromise between those in the Wales Labour Party still opposed to any form of devolution (who include a small number of Labour MPs), and those who want a more powerful assembly similar to the Scottish Parliament (who have come together in a group called Wales Labour Action).

The Government's proposals can only be understood in the context of this internal battle within the Wales Labour Party.<sup>1</sup> They do not represent a properly thought out logical position, nor a particularly practical set of proposals; nor do they command wide assent outside the Labour Party. The Wales Liberal Democrats and Plaid Cymru both want the Welsh Assembly to have powers similar to the Scottish Parliament; and the Welsh when polled have consistently shown that those in favour of an assembly want it to have limited legislative and tax-raising powers.<sup>2</sup>

The two devolution White Papers are very different in style as well as substance. *A Voice for Wales* is more superficial (five chapters instead of twelve), short on detail, and more of a public relations document than a coherent and strongly argued set of proposals. The main flaws lie in the weakness and instability of executive devolution; the strong and continuing role for the Secretary of State; the absence of fiscal responsibility; the local government model chosen for the Assembly; the 'bonfire of the quangos'; no corresponding changes at Westminster; and no room for flexibility or development.

## The weakness of executive devolution

The Welsh Assembly will have no law-making power, but will take over the executive responsibilities currently exercised by the Secretary of State for Wales (health, education, local government, transport, agriculture, industry and training etc.). In these policy areas the Assembly will operate within a legislative framework set by Westminster. Within this framework it will have power to make rules and regulations by secondary legislation. For example, Westminster can prescribe that there should be a National Curriculum; the Welsh Assembly could then settle the details of the school curriculum in Wales. It could not decide that there should be no National Curriculum; and Welsh Office ministers are disingenuous when they say that the Welsh Assembly could have resisted the poll tax or the introduction of nursery vouchers through refusing to make the necessary implementation Orders. Once the rates had been abolished by Westminster a Welsh Assembly would have had to introduce the poll tax: unlike the Scottish Parliament, it would have had no choice. If Wales is to have the freedom to develop distinctive policies for Wales, or to resist national initiatives from London, it must have legislative power.

Executive devolution is unlikely to be stable or long lasting, because it is so heavily dependent on co-operation between Cardiff and Westminster:

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<sup>1</sup> Robert Hazell: *Watching Wales*, *Prospect* August 1997.

<sup>2</sup> Denis Balsom: *Polling ahead of the Game*, *Institute of Welsh Affairs Agenda* Summer 1997 pp. 12-13

- a well intentioned Westminster Parliament might confer broad delegated powers; a different Parliament (perhaps controlled by a different party) might leave no room for local discretion or choice
- Welsh bills risk losing their place in the intense Whitehall competition for legislative time, when the UK government may have a different agenda and other priorities
- in future Welsh committees in the Westminster Parliament can still be packed with non-Welsh MPs (as happened under the previous government) in order to get the government's legislation through
- schemes for Welsh legislation will be prepared in Whitehall by officials who no longer share responsibility for their implementation in Wales: the crucial link - and feedback - between administration and legislation will be broken.<sup>3</sup>

### **Continuation of the Secretary of State**

The White Paper says "the Secretary of State will need to work closely with the Assembly and be informed, though not bound, by its views. The Secretary of State will represent Wales - with the benefit of having had the democratic voice of the Assembly - in policy formulation and resource decisions" (para 1.17). The Secretary of State thus has an important supervisory and supportive role: because the Assembly has no legislative power the Secretary of State will be needed to try to ensure that laws passed at Westminster meet the needs of Wales. He will have to work closely with the Assembly, holding regular meetings with its executive; and the White Paper says that (unlike his Scottish counterpart) he will be able to attend the Assembly and participate in its debates. The Scottish Secretary may be little more than a go between; but the Welsh Secretary will be more like a governor general.

It is questionable whether there is room for two politicians who both claim to represent and speak for the interests of Wales, especially if they are drawn from governments of different political parties. Here too the Welsh proposals are dependent on a high degree of good will between the administrations in London and Cardiff, which may only arise if they are under the control of the same party. Given the significant powers retained by the Secretary of State, it is difficult to imagine executive devolution in Wales working satisfactorily if (say) John Redwood were still the Secretary of State and trying to work with a Labour controlled Assembly in Cardiff.

### **Finance**

The Welsh Assembly will have no revenue raising power. It will be solely dependent on the block grant from London, currently some £7bn. Changes to the budget will be tied to changes in comparable spending programmes in England, under the Barnett Formula (Annex D of the White Paper).

This currently gives Wales levels of public spending some 16% higher than in England, when Wales' needs were assessed twenty years ago by the Treasury as requiring expenditure some 9% higher. Post-devolution the favoured treatment of Scotland and Wales will be much more exposed and may not last indefinitely. Scotland is more exposed, because it enjoys levels of public spending 25% higher than in England. It is wealthier than Wales, and so its relative needs may be less; and its population is declining. But if the Barnett formula is reviewed Scotland will have the cushion of its revenue varying power; the Welsh Assembly will have none.

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<sup>3</sup> Keith Patchett: *Power and politics*, Institute of Welsh Affairs *Agenda* Winter 1996/7 pp. 16-17

If the Assembly's budget is squeezed, it could in turn squeeze revenue support grant to local authorities, and rely on their capacity to increase levels of council tax to make up the difference. The capacity to do this may be limited because of the high gearing involved; and because central government may retain reserve powers to control increases in council tax (White Paper para 3.9). But this does not invalidate the general point that the Welsh Assembly could levy taxes by proxy through the council tax by cutting its grant to local authorities. Without any revenue under its own control this would represent its only variable source of revenue.

The only other variable source of revenue would be non-domestic rates. If these were returned to local authority control - as local government has demanded - there would be a greater capacity for the Welsh Assembly to precept because local authorities would have a stronger revenue base. If non-domestic rates remain determined at the centre (as now) the Welsh Assembly could itself decide to increase business rates to compensate local authorities for a reduction in grant support. Here too there will be only limited room for manoeuvre: the Government is reviewing the operation of the non-domestic rate system, and the role of the Assembly will depend on the outcome of this review (White Paper para 3.10).

As with law making powers, the real issue behind revenue-raising power is one of autonomy. This was brought out clearly by the Institute for Fiscal Studies, *Financing Regional Government in Britain* (March 1996). That study concluded that if the principal purpose behind devolution is the more efficient administration of policies determined by central government, then it is appropriate for the Welsh Assembly to continue to be funded entirely through block funding. But if the Assembly is to have responsibility for making real choices about the level and nature of public spending in Wales it will need power to raise some of its own revenue. Without such power the Assembly will have no fiscal accountability to the Welsh people.

### **Local government model**

The Assembly will be based on the local government model, with executive powers being vested in the Assembly and in its subject committees, and not in a separate cabinet. Standing Orders will regulate the delegation of power within the Assembly, within certain requirements specified in the legislation establishing the Assembly (White Paper paras. 4.12-13, 4.17). The Assembly will determine the number of committees and their size: the legislation will require that each subject committee reflects the party composition of the Assembly as a whole. Overall political direction for the Assembly will be provided by its leader, who will be elected by the whole Assembly, and an executive committee drawn from members of the majority party which can meet in private (White Paper para 4.15).

This is the local government model with one important variation, in recognising the Executive Committee. That is an improvement on the shadowy status of the ruling party group found in many local authorities; but there is a risk that the local government model will import many undesirable local government practices. A series of official reports - Maud (1967), Bains (1972) and Widdicombe (1986) - have mounted a sustained critique of the local government committee system as a relic from the nineteenth century. The system is cumbersome, with the potential for the same issue to be referred to several different committees; power is diffused, so that it is difficult to see where accountability lies; and there is a blurring of the executive and representative roles, to the disadvantage of both. Even the apparent openness and power sharing suggested by the multi-party committees is a bit of a smoke screen, since if a single party has a majority, the real decisions are often taken at party meetings held behind closed doors, and then forced through the committees with little serious discussion, and no chance that they will be altered.

Whether the Welsh Assembly will develop in this way will depend on its Standing Orders, but as importantly on its first members and their previous political experience. The Welsh Assembly is likely to be dominated by Labour. If a majority of its members come from local government they are likely to bring with them the habits and practices followed in Labour-controlled local authorities, many of which in South Wales have been under one party control for a long time. It is worth heeding the warning of the independent Commission for Local Democracy which said: “[The local government model] is seriously inadequate to meet the demands of a mature democracy. It obscures and distorts what should be open and lively political activity for the majority of citizens and it fails to provide clear lines of local accountability. The system encourages political parties to continue private informal management of councils and grant them inordinate power.”<sup>4</sup>

In one respect the White Paper does not follow the local government model. It states that members of the Assembly will receive a salary, because their job will be demanding and full time (para 4.46). This is asserted without argument. But in Australia and Canada the smaller provincial parliaments comparable to the Welsh Assembly sit for only 50 to 60 days a year; and membership is not a full time occupation. Nor should it necessarily be full time in Wales. Membership should certainly be salaried; but in terms of time, the question has to be which is likely to attract higher calibre members - a full time occupation, which restricts membership to career politicians; or part time, which would enable people to combine membership of the Assembly with another career?

### **Bonfire of the quangos**

The White Paper reflects mounting concern in Wales about the proliferation of quangos and their lack of public accountability. Before the Assembly is elected, the Government will reduce the number of executive quangos in Wales from 19 to 14. The Assembly will be able to review most remaining Welsh bodies and will have power to reduce their number further, to merge them, to perform their functions itself, or to delegate functions to local authorities (White Paper paras. 3.12-27).

The risk here is one of over-reaction. Concern about quangos in Wales has been triggered by scandals in a few high profile executive bodies like the Welsh Development Agency; but it has turned into questioning about the need for quangos generally. The Government risks turning the clock back too far, and ignoring the reasons why many quangos were established in the first place. Labour governments have hived off functions to independent bodies just as much as the Conservatives, and for the same range of reasons: to bring in specialist expertise, to confer greater operational freedom, to remove the function from local authority or party political control, to develop partnerships with the private and voluntary sectors, or simply to deliver programmes in a different way. It is right to leave the final judgement about different forms of service delivery with the Welsh Assembly; but it is going counter to current wisdom to encourage the Assembly to bring too many public services under its own control, when recent experience in local and central government points to the Assembly having a strategic and co-ordinating rather than a service delivery role.

Another respect in which public expectations are being unduly raised is the suggestion that the Assembly can be paid for by cutting the costs of the quangos<sup>5</sup>. This looks suspiciously like creative accounting. The net saving from abolishing a quango lies only in the costs of supporting

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<sup>4</sup> “Taking charge: the rebirth of local democracy”, *Municipal Journal* 1995

<sup>5</sup> Peter Hain *Week In Week Out*, BBC TV Wales 9 September 1997

the board members. If the function is retained, the operating budgets and administrative costs of providing the service will remain the same; unless significant savings can be made in administrative costs (e.g. by merger) with no reduction in the quality of service. The total governance costs of all the quango boards in Wales amount to some £1-2m a year. The White Paper estimates the annual running costs of the Assembly to be between £15m and £20m a year.

### **Corresponding changes at Westminster**

The White Paper says that MPs “will continue to be involved in considering new legislation that applies to Wales, and to represent their constituents on all matters. Setting up the Assembly will not reduce Wales’s representation in Parliament”. This is in contrast to the Scottish White Paper, which states that the number of Scottish seats will be reviewed by the Parliamentary Boundary Commissions at their next review.

The Scottish White Paper sees things in the round: devolution does require re-balancing at the centre. Both Scotland and Wales are over-represented at the Westminster Parliament. Wales has 40 MPs, when in population terms its quota should be 33. Scotland has 72 seats when a *pro rata* allocation would give it 59. In neither case can the over-representation be justified even under the present system: it has arisen as a result of historical accident and political fix, not for any reason of principle.<sup>6</sup> It is even less justifiable post-devolution. The number of Welsh seats at Westminster will have to be reviewed at the same time as the review of Scottish representation.

### **Need for flexibility and room to develop**

Ron Davies has always said that devolution is a process and not an event. Executive devolution cannot offer a stable or long lasting settlement: it can only make sense as a first step on the devolution road. But further steps will require fresh primary legislation: the Welsh White Paper contains no room for further development. The Scottish White Paper is more forward looking, and contains sensible proposals to adjust the devolution settlement by providing for the transfer of powers (both to and from Westminster) by Order subject to the approval of both parliaments. The Welsh legislation should do the same, and follow the example of the Northern Ireland Constitution Act 1973, which provided for the further transfer of executive and legislative power in stages, to be made by Order in Council. The 1973 Act was never implemented; but it shows how a scheme of phased devolution might operate, with parliamentary checks (but without the need for primary legislation) at each subsequent transfer of power.

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<sup>6</sup> Iain Maclean “Are Scotland and Wales over-represented in the House of Commons?” *Political Quarterly*, October 1995