

PETER HAIN AND THE RICHARD COMMISSION

John Osmond discovers that the Secretary of State for Wales, Peter Hain, is likely to find himself arbitrating between Cardiff Bay and Westminster once the Richard Commission on the Assembly's powers reports early next year. He will have to decide whether to prop up existing arrangements or put his support behind the case for change. In the process he will find himself at the heart of a historical Labour dispute – between those in the party, now concentrated amongst Westminster MPs, who are resisting change, and those who want to push devolution forward.

The Richard Commission on the powers and electoral arrangements of the Assembly, which began work in September 2002, has continued to receive evidence with speculation mounting over its likely recommendations.¹ The Westminster Cabinet shake-up, with the establishment of the Department for Constitutional Affairs, means there will be a new political context in which the Commission will report. A further new element is the majority Labour administration in Cardiff following the May election. This changing context, coupled with the amount of evidence collected, has meant the work of the Commission has been extended. It will now report in early 2004 rather than late 2003 as originally planned.

In a speech to an IWA conference on the Commission, held in Cardiff in early July, Professor Robert Hazell, Director of the Constitution Unit at University College, London, set out a prospective timetable. His predictions were based on the Commission recommending powers of primary legislation and an increase in AMs for the National Assembly in its final report. He believes the report will be followed by debates both within the Assembly and the Labour Party itself culminating in a commitment to introduce primary legislative powers in the general election manifesto for 2005, with a new Wales Act emerging in 2006. In this process he cast the Secretary of State for Wales, Peter Hain as playing a key role. He would have to

¹ See the earlier report in this series, *Dragon Takes a Different Route*, IWA, December 2002, pages 19-23. To view the evidence submitted to the Commission visit its website: www.richardcommission.gov.uk

choose between being a “Godfather figure, propping up the existing arrangements” or alternatively:

“... he can be the architect of a new and more enduring settlement. It is a big historical choice, not just for him but for all the people of Wales.”²

Hazell argued that, once the Commission has reported, Hain should use his position to ensure that the British government agrees to its recommendations which will enhance the Assembly’s powers and provide a more durable settlement. Given his potentially pivotal role the two-hour oral session Peter Hain had with the Richard Commission at Westminster in March was particularly important. He stated early on that the Commission should consider providing democratic legitimacy for any major changes it proposed, “bearing in mind that the current settlement was introduced following a general election manifesto endorsement and a referendum”. And he added:

“I am not pronouncing on that myself; this is a matter that I would be interested to hear your views on as to the democratic mandate for any substantial or radical changes. I think it is important there again to especially bear in mind the views of Welsh MPs in this respect since they would be invited to introduce any legislation that was recommended or was agreed.”³

More generally, Hain prefaced his views with the following comment:

“I think it is important to begin with recognising that the existing settlement is working well. I am not saying that it cannot be improved and I look forward to receiving the Commission’s recommendations over areas where we can improve it ... It is important to recognise that the system is quite young and that there really needs to be a very persuasive case put to justify radical change and to underpin the case for even substantial alterations.”⁴

Pressed on problems that might arise if governments of different political persuasions were in power at Westminster and Cardiff, he responded:

“The Secretary of State and the Government in London who was actively at war politically with the Assembly in Cardiff is actually going to find it very difficult to manage Wales and is going to find it very difficult to have Wales effectively in revolt against London, as probably it came quite close to being under John Redwood. I think that the nature of British democracy in parliamentary politics means that in fact you will find that the system adjusts to cope with that situation.”⁵

Responding to one member of the Commission, Ted Rowlands, former Labour MP for Merthyr, commented that the whole history of devolution had been one where

² *Can the Welsh Assembly Government Hold its Course?* Joint IWA and Constitution Unit Conference, 7 July 2003.

³ Peter Hain, Secretary of State for Wales, oral evidence to the Richard Commission 13 March 2003.

⁴ *Ibid*

⁵ *Ibid*.

the burden of proof had been on those who wished to devolve against a very sceptical and reluctant Whitehall/Westminster structure. He then added:

“However, since the creation of an Assembly, do you think that the burden of proof has shifted and that as much now the burden of proof lies with those who want to resist any further form of devolution as opposed to those who want to advocate it?”

PETER HAIN: I think by its very nature, especially for a system so young, it is a process, not an event, and Government in London and Government in Cardiff has been learning together all the time, advancing together. For a lot of the Whitehall departments, that has been a quite steep learning curve, to be perfectly frank ... I personally am very open minded about the case for change. I think it just has to be well made and very persuasive in terms of the practical delivery results in Wales, not just a tidier constitution of settlement to purists but actually what difference it makes in terms of jobs and health service delivery and in school standards and so on. I think that should be uppermost in our minds.”⁶

Asked about the attitude of backbench Welsh MPs at Westminster Hain replied:

“I think my colleagues feel out of the picture as far as what the Assembly is doing. They have to take the consequences including standing at elections for re-election where effectively the voters are voting on things like health and education typically, they feel without really substantially being able to influence a lot of the key decisions whereas Assembly Members might feel, ‘Why don’t we have the primary legislation to do it all on our own?’ So I think there is a process of accommodation that we need to work through rather more substantially there and I do not think particularly those Members of Parliament who were here before 1999 find it as satisfying as it was before then. But then that is inevitable and then I think many are focusing on other things particularly UK level reserved power matters.”⁷

Questioned on the emergence of a distinctive legal system in Wales from England the following exchange took place between the Commission Chairman, Lord Richard, and the Secretary of State:

“PETER HAIN: I have not seen a persuasive case for a separate legal system. Scotland’s history is very different. Obviously it has had its own legal system for 300 years or thereabouts. We have not had that in Wales. This would seem to me to fit perfectly into the category of something that you have to make a very, very convincing case for to even begin to get into that territory.

LORD RICHARD: Yes, but you are answering it in somewhat absolutist terms. You are saying that there is no case for a separate legal system.

PETER HAIN: I am saying that the case has not been made.

⁶ *Ibid*

⁷ *Ibid.*

LORD RICHARD: It is the same point. The fact of the matter is that distinctions are emerging, differences are emerging. Now you have the Court of Appeal sitting in Cardiff, you have an administrative court sitting in Cardiff, you have this whole corpus of Welsh law being administered by Welsh judges in the Welsh context. The automulticity between England and Wales in legal terms is beginning to break down.

PETER HAIN: It is called devolution.

LORD RICHARD: Okay but, in that case, what follows from that is that although you do not set up a separate legal system in Wales, you do not do anything to discourage the trends which are taking place.

PETER HAIN: No, I am not seeking to discourage the trends that are taking place.”⁸

The likely response of backbench MPs and AMs to the Commission’s report was provided by submissions from the ten-strong Group of North Wales Labour MPs, and former Mid and West Wales AM Delyth Evans. Presented in June, the memorandum from the North Wales MPs was overshadowed in the media by the Westminster reshuffle. However, it provided an accurate snapshot of the views of the large majority of Welsh Labour MPs at Westminster and the obstacles with which Peter Hain will have to contend in pushing forward any radical recommendations that are made by the Richard Commission:

1. We believe the present arrangements are working satisfactorily and there is no pressing need to make major changes. By major changes we mean either conferring primary legislative powers on the Assembly for devolved areas, or the transfer to the Assembly of executive/secondary legislative powers in previously reserved areas such as Policing or Criminal Justice. In any event, the onus is on those who advocate major changes to demonstrate that the present arrangements are not working, and to outline why they wish the Assembly to have new powers (and what it would do with them).
2. We do not believe that the case for major change at present has been made, but even if it had, it would require specific endorsement by the people of Wales through a further referendum. In addition, any future commitment to hold a referendum would require endorsement as a manifesto commitment in a General Election. The results of the 2003 National Assembly elections do not show a strong demand for more power for the Assembly.
3. The Assembly has been in existence for barely four years. There was only a very short shadow period. We believe it is far too early to make major changes to the present arrangements. It appears that many of our constituents have little interest in the Assembly. This is reflected in the very low turnouts at the 1997 Referendum and at the 2003 Assembly election - especially in North Wales. This is coupled with a widespread feeling that the Assembly is a South Wales dominated body. This is partly the responsibility of the Welsh Assembly Government, but we hope

⁸ *Ibid.*

- and expect that as the Assembly matures and beds in, these attitudes will change. However we believe that the vast majority of those we represent do not favour any major changes.
4. One aspect of the Government of Wales Act that does cause concern and confusion to constituents is the process of election of additional members to the National Assembly. This causes particular confusion when candidates stand as constituency candidates, fail to secure election and are then elected as additional members. We believe that candidates should stand either as constituency candidates or Party list candidates, not both.
 5. There are concerns both from the Assembly and from MPs from Wales that there is a need to establish a better process for passing legislation for Wales. The Welsh Affairs Select Committee has recommended the trial use of a Special Standing Committee on the next Wales-only Bill or Welsh-only section of a wider Bill, which would allow the Assembly formally to present its opinions. It also favoured an annual joint meeting between the Assembly and the Welsh Grand Committee on legislative priorities. The UK Parliament and the National Assembly for Wales should consider how it could facilitate joint meetings of Members, and must take seriously the rights of backbenchers from both bodies.⁹

In her memorandum Delyth Evans, on the ‘maximalist’ wing of the devolution argument within her party, also urged caution, saying the Assembly had yet to achieve wide support. However, she added that the stability of present arrangements was contingent upon parties of the same colour being in control at Westminster and Cardiff:

“If a government was elected to Westminster that did not support devolution, and if that government pursued policies directly at odds with those pursued by the Assembly Government, serious problems could arise. This seems to me to be the most persuasive case for the transfer of primary powers to the Assembly: as a means of protecting and safeguarding the democratic powers of the Assembly against the possibility of a hostile government at Westminster.”¹⁰

Jon Owen Jones, Labour MP for Cardiff Central told the Commission that the current arrangements were unsustainable. He argued that non-contentious bills were being over scrutinised while controversial matters affecting Wales barely received any scrutiny. He suggested two possible ways of improving the matter. Either the Assembly should get primary law-making powers of its own, or new parliamentary arrangements could be introduced, possibly with joint committees of MPs and AMs but insisted that there was a need for a referendum if increased powers were chosen.¹¹

The First Minister Rhodri Morgan himself gave evidence to the Commission in July and was notably cautious. Following Hain he said that if in the future the Assembly was to acquire greater powers it would be because it had earned them and not because the present powers were not working.¹² This view was reflected in written evidence

⁹ Memorandum to the Commission from the North Wales Group of Labour MPs, June 2003.

¹⁰ Delyth Evans, Evidence to the Richard Commission, 1 July 2003.

¹¹ *Western Mail*, 11 July 2003

¹² Strategy Wales, briefing notes on evidence given to the Richard Commission, 25 July 2003

which emphasised the practical benefits that had accrued from further powers already devolved to the Assembly:

“In each case the decision to seek extra powers has been based on a practical, focused and grounded assessment of what is needed to improve delivery, rather than an abstract argument based on devolved settlements in other parts of the UK, or a desire to withdraw Wales from the UK ... Welsh Labour rejects the argument that the Assembly has been too weak solely because it has not always been able to act without reference to other government institutions. Constraints are a fact of life for all levels of government, including the UK government vis-à-vis the EU.”¹³

¹³, Submission by the Welsh Labour Party, July 2003