

Wales after Richard, before the 2007 elections

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Bore da a chyfarchion. I am sorry that I cannot address you in Hungarian, but I shall do my best in my second language! I am very conscious that I am trying to fill the gap left after the late Phil Williams, who was a very good friend of mine, and who was a regular attender here.

As you may know I have retired from the Assembly since 2003, and in fact I am not President of Plaid Cymru – I am Honorary President, which means all sorts of powerless things, but one mercy that I don't have to attend the national executive committee. Since 2003 I have been getting more and more frustrated, and if there is one thing more frustrating than sitting in the Assembly watching paint dry, it is sitting watching television coverage of the Assembly watching paint dry. So I may reinvent myself in 2007 – time will tell. In the meantime, I have been involved with the University of Wales, particularly with the University of Wales, Bangor, and with the S4C television company. Incidentally, S4C produced a film last year, sponsored by the European Union, and it was dubbed into Hungarian, so the link is not entirely wasted.

I am going to say a little bit with regard to the situation in Wales. I am conscious that some of you are totally up to speed with what is happening in Wales, and for some of you, you may be asking the question "Where is Wales?" or, as the late Professor Gwyn Alf Williams asked "When Was Wales?" Wales is still, just about.

I could have been tempted to speak on the economy or on the language or indeed on higher education in Wales, but I was asked to concentrate on the political constitutional developments which I hope will be of some interest to you. For those of you who don't know where Wales is, it is a country to the west of England, and we were once called the Irish who couldn't swim. Wales is a country of some 3million people, 20% Welsh-speaking; it has a per capita GDP level of 80 per cent of the UK, the lowest of any country or region within the UK. It has been amalgamated into England since 1536 by an Act of Union which said that it would be "united, incorporated and annexed". That is why you don't see Wales on the Union Jack. The Union Jack represents England, Scotland and Ireland, because Wales was incorporated into England – as we are reminded in these days of World Cup fever by the flag of St George which is to be seen everywhere in Wales on cars owned by English tourists.

Wales re-emerged as a constitutional nation to some extent from the 1880's onwards. It became a governmental unit in 1964, with the establishment of the Welsh Office, which was, of course, 80 years after the Scottish Office was established. So we are some way behind Scotland - in many ways.

In 1997 there was a referendum which set up the National Assembly for Wales, which came into being in 1999, with more limited powers than the Scottish Parliament. There are 60 members of the National Assembly, and at the last election Labour got

30 seats, Plaid Cymru, my party, 12 seats, the Conservative party got 11, and Liberal Democrats 6 and 1 independent. Since then one Labour member has defected, and we now have a minority government with 29 Labour members. Wales also sends 40 Members of Parliament to Westminster, out of 647.

The National Assembly is, of course, a devolved tier of government, and there is an old saying, “power devolved is power retained”. We are acutely conscious of that at times. But the reality, with the referenda in Northern Ireland, Scotland and Wales, is that we have had a de facto recognition of sovereignty. In Scotland there was the claim of right, asserting Scottish sovereignty. Although theoretically sovereignty remains in Westminster, even John Major, the Conservative Prime Minister, said that if either Scotland or Wales, voted for independence, he would regret it very much but he would acknowledge the right of the people of Scotland and Wales to do so; and likewise with Northern Ireland. The destiny of Northern Ireland is in the hands of the people of Northern Ireland.

That was a tremendous change from the situation in the 1970s, where there was a belief that sovereignty resided in the Houses of Parliament; that God had passed sovereignty to the king or queen; the king or queen had passed a little bit over to the House of Lords, and when they needed to pay for the wars they fought they needed to give a little bit of sovereignty to the House of Commons to raise taxes. Sovereignty came from the top down, not from the bottom up. Consequently, in the United Kingdom, you can't have a referendum which binds Parliament. The people have no right to bind God, via the Queen in Parliament. We therefore live with a sovereign parliament and where the people are “subjects of the Queen”. That is more theoretical, perhaps, than practical.

When Wales got its National Assembly from 1999 onwards it was a bit of a shock to the system, because Wales is a nation of rebels. We are against everything, and we are never entirely sure what we are for. There is a story of the Welshman who was marooned on a desert island for ten years, and when a boat eventually picked him up, he insisted on taking the captain on a tour round the island, and showing what he had done. He had built a chapel here, and another chapel there. As he was the only person on the island, the captain asked “why have you built two chapels?” He said “That is the one I go to, and that is the one I don't go to”

So, as a nation of rebels, having to start to do things for ourselves, by virtue of our National Assembly, was a little bit of a shock, and we had to start asking questions like “why are we here, and what are we trying to do?” If we really do have the right to govern ourselves, there is a question - given the background of the change in the perception of sovereignty, a real question - of how much of it do we want? If we are told “you can have as much as you want” then suddenly people start thinking “what do we really want to do with any sovereignty?” It was traumatic. You had nationalists asking the questions “do we really want to run a Welsh army, navy and air force?” and you had non-nationalists waking up and saying “well, yes, if Ireland can do as well as they have been doing, why not Wales?” Some socialists started asking - given Wales' left-leaning politics - why shouldn't we be maximising power within Wales and get a socialist state in Britain?” And you have Conservatives within Wales starting to think “yes, here is a chance for Wales to take on responsibility and start doing things for ourselves”. The whole perception started changing. There has been

quite an ironic political re-juxtapositioning since devolution - the most obvious with the Conservative party, which has changed from being totally anti-devolution to being a quite pro-devolution party. In the debates in the House of Lords on the Bill I shall be referring to in a moment, Tory ex-minister after Tory ex-minister – Crickhowell, Baker of Baker-day fame in the education sector, Lord Roberts – all start queuing up to say that what Wales needs is a real law-making parliament. A real change.

The Assembly is currently elected by first past the post for 40 seats, and 20 PR members are added. The responsibility areas are those which used to be under the Secretary of State for Wales and the Welsh Office, in other words the home-rule-type functions – health, education, housing, roads, town and country planning, local government, social services, agriculture, environment, economic development, arts and culture, the Welsh language, sport and tourism. There is no responsibility for social security, home office functions – law and order, police and prisons, foreign affairs, defence, broad economic policy, broadcasting, trade, the monarchy, and the courts.

The extent of the power of the National Assembly for Wales, at present, is that it has administrative, executive and secondary legislative power, but, unlike Scotland, no primary law-making power. That is about to change. It has no powers of taxation – in fact a community council has greater tax-raising powers than the National Assembly. It is dependent on what is called the Barnett Block for its money. To all intents and purposes this is the same as the Scottish Parliament, although they do have limited tax-raising powers which have not actually been used, as yet. The Barnett formula distributes money from the Treasury in London.

The Assembly has no right to represent Wales overseas. The current set-up is that of a body corporate, so that there is no split between the executive and the legislature, and that is an unsatisfactory situation. This, again, is about to change. There is a dependency, at present, on a committee structure, committees which include ministers for that portfolio in a policy development function, so that there is a mishmash of a committee partly scrutinising a minister, partly working with the minister on development of policy, and that is not working well. It is about to change.

So, since the Assembly was established, we have been governed from 1999 to 2000 by a minority Labour government; then from 2000 – 2003 by a Labour and Liberal-Democrat coalition, and from 2003 onwards again by a Labour minority government. There have been frustrations with the present set-up of the Assembly. The powers are unclear; the committee system is a fudge; the degree of responsibility between the government as an executive, and the Assembly as a whole is not understood in the country; and the relationship with the House of Commons and central government departments in Whitehall can be frustrating and tense. This has led to the establishment, in 2002, by the Assembly Government, of the Richard Commission. Ivor Richard was, in fact, an European Union Commissioner, and is a former Labour MP at Westminster. He and his commission were asked to consider the scope of the Assembly's powers; whether they were adequate to meet the needs of Wales; and to consider the number of members of the National Assembly of Wales and the method of election.

The establishment of the Richard Commission was probably a sop to the Liberal-Democrats, who were part of the government coalition at that time, and there was much misgiving at Westminster that a commission like this should have been set up at all. It was regarded as usurping the powers of Westminster to even ask the question of what should be the authority of the Assembly. But there we are, although some Welsh MPs noses were out of joint, the Richard Commission did its job. The Report was regarded, widely, as a first-class report. The Commission had members of all political parties on it, as well as some non-party people, and the report was unanimous, which was quite a remarkable achievement. Its report, published in 2004, recommended that the Assembly should have full law-making powers by 2011 or sooner, but that that should be subject to a referendum. It should increase in size from 60 to 80 members; it should be elected by an STV system of proportionality, with multi-member seats, 4-6 members for each constituency; there should be a separation of the executive from the legislature; there should be tax-varying powers – they were desirable but not essential, according to the Commission. In the interim, until the law-making powers were fully brought on board, there should be a system of framework delegated legislation; that is a right for the National Assembly to have delegated by Westminster powers to amend legislation that is going through Westminster at that time. There was an opinion survey undertaken by the Richard Commission, which indicated that while in 1997, 40% of the people of Wales wanted no Assembly at all and only 20% wanted a full parliament, by 2003 only 20% wanted no Assembly or parliament at all, and 40% wanted a full law-making parliament. So that there had been that switch over the period since the Assembly came into existence. Incidentally, 60% of the respondents to that survey trusted the Assembly more than Westminster to safeguard the interests of Wales.

The response to the report was positive; all parties were in favour of its general direction, including the Tories; Labour in the Assembly were very supportive, although Labour MPs in the House of Commons were divided – understandably, because they perceived, rightly or wrongly, that if there were law-making powers then the number of Welsh seats at Westminster would be reduced, as has happened in Scotland (72 to 59). Wales would probably go down from 40 to 32, and of course, turkeys don't issue a clarion call for Christmas! There was a similar reluctance amongst Labour MPs. Incidentally, Wales has never had a majority of Conservative MPs. There have been several elections where there hasn't been a single Conservative MP elected in Wales – that was true in 1905 and 1997, and again in 2001. At present, the Conservatives have 3 of the 40 MPs in Wales. So that gives you an idea how the spectrum runs – it is generally to the left of centre.

In response to the Richard Report, Peter Hain, the Secretary of State for Wales, brought forward a White Paper "Better Governance for Wales", in June of last year, in which he formulated three stages for changes. The first stage was that there should be general framework powers, mentioned as an interim proposal by Richard, so that whenever an UK Act of Parliament went through which affected the devolved subjects, such as health or education, then automatically there would be powers for the National Assembly to fine-tune, at the very least, how the provisions of that legislation at Westminster should be applied to Wales. That is not quite the same thing as saying that we might not want those provisions at all. At present, of course, we have a Labour government in Westminster and a Labour government in Cardiff, and a Labour-led coalition in Edinburgh, so there is a reasonable prospect of harmony

between the devolved governments and Westminster. If we have different coloured governments then we might start getting tensions. This framework system is already happening to some extent. For example the Transport Act which went through Parliament recently, gives a wide range of powers for Wales to develop its own transport structure.

Those Stage One proposals of the White Paper could be achieved without primary legislation. Stage 2 in the White Paper needs a new Government of Wales Act, to provide the separation of the executive from the legislature, and for the establishment of the right of the Assembly to request powers to legislate in devolved areas, which Westminster would grant by order. These are described as Henry V111 powers. King Henry V111 – although he was of Welsh descent, was not the greatest democrat – he had a system whereby he could give orders and parliament did the legislating in line with the orders. The National Assembly will be able to pass legislation on subjects permitted by orders from Westminster.

The White Paper proposed a change in the electoral system, banning dual candidacy so that individuals could not stand in both individual constituencies and also on the regional list, as has been happening and as happens in Scotland. There is not, as far as I know, any move to change this in Scotland. In fact the Arburthnot Report has specifically recommended no such change – an interesting situation. The White Paper proposed the provision of Deputy Ministers, and the creation of an office of Counsel-General in the National Assembly, and for the civil service to work solely for the Government of Wales. This is interesting because up until now the civil service has worked for the Assembly as a whole. That was one of the great differences which I found. As an MP at Westminster, I couldn't get anywhere near the civil servants. They were not allowed to talk to me – there had to be a minister there as a chaperone. But in the Assembly, if I had a problem in my constituency, I could pick up a phone and get a civil servant to tell me about it. That is in danger of being lost. That was an advantage, because you could actually get to grips with the real problem, as opposed to playing politics.

A third stage of the White Paper was for the Assembly to become a law-making parliament in its own right, just like Scotland, if sanctioned by a referendum. A referendum could be held if two-thirds of the members of the National Assembly called for it. It was, however, subject to a veto by the Secretary of State for Wales – that went down very well! Peter Hain flagged up that he didn't expect such a referendum for some considerable time, which was interpreted as being anything between 5 and 10 years.

The legislative provisions to change the Assembly into a parliament would be included in a Bill which would be considered in the following parliamentary year. The White Paper refused to act on some of the Richard recommendations; it refused to increase the number of members from 60 to 80; it refused to change to a STV voting system; and it refused to ensure that the changes would be in force by 2011, as recommended by Richard. What it did do, by barring candidates for the Assembly from standing on both a regional list and for individual constituencies, was to cause a storm of controversy. Labour has no list members in Wales at the moment. Parties which are in government are unlikely to pick up list seats. So these changes were seen as affecting the opposition parties, but not affecting the governing Labour party.

There was a fair amount of debate in Wales about the White Paper, but not in the depth which one would hope, and that is regrettable. I shall touch upon that again before I finish. The Bill, as I say, was published last December. It had a second reading in the House of Commons on January 9th, passed by 341 votes to 161; the Conservatives in Westminster voted against it, although the Conservatives in Cardiff are quite keen to see it happening. Quite interesting! It went through the House of Commons with very little change. It came to the House of Lords on March 22 and had an unopposed second reading there – that is a tradition in the House of Lords if a Bill is a manifesto commitment. The Government have in fact been defeated four times in the House of Lords on specific aspects of their legislation, including the ban on dual candidacy. The Bill comes up for its third reading in the Lords on July 13th. It then goes back to the House of Commons. The Commons will have the choice of either accepting the Lords amendments, or saying “no” – in which case the Bill may ping-pong backwards and forwards with the risk of not reaching the Statute Book before the summer break, which could cause problematic delay. Three other defeats were suffered by the Government. One was on proportionality in committees, to reflect the proportionality of members in the Assembly. Another was with regard to the proposed National Assembly Commission, reflecting party balance.

There was quite a stir last week when the Presiding Officer of the National Assembly, Dafydd Elis Thomas, called on the House of Lords to accept the government’s policy in order to get the Bill through in time. This reflected his own needs as Presiding Officer, to ensure that he could then get on with preparing for the 2007 election.

So where does that leave us with regard to the post-2007 National Assembly election? There are three areas which I would like to address very briefly. With regard to the powers, the Assembly will, after 2007 have the power to make new laws for Wales, in the devolved subjects, provided that Westminster has sanctioned such legislation on a case by case basis. Secondly, the Government of Wales will have potentially much greater strategic control over policy areas; will be able to amend Acts of Parliament with regard to, say, education or the Welsh language, or local government, or housing, or health, in order to ensure that policy initiatives can be rolled out with the support of law. It has been a great frustration in Wales over the last seven years that the government has been unclear as to its powers. It could not be certain whether it could, fulfil what it was committed to in its manifesto.

The powers which are being devolved, to allow the Assembly to change primary legislation will be subject, theoretically, to a Westminster veto. How that works out in practice I don’t know. If Westminster starts vetoing what the elected government of Wales wants, it is immediately building up tensions. That may not be something it would want to do.

The Assembly will have greater powers over its own procedures, and it will have the right to call a referendum to turn the Assembly into a fully fledged parliament. In the Bill going through Parliament now, part is actually the legislation to set up such a Parliament. So when this reaches the Statute Book, either later this month or in October, we will have legislation on the Statute Book to provide a Parliament in our own right. All that will be needed to trigger the change will be a referendum. The provisions for the referendum are also included in this legislation. All that needs to

happen will be for an order, supported in the National Assembly by two-thirds of its members, and the referendum will take place. This is quite a remarkable piece of legislation, which includes several options for the future constitution of Wales, and an ability to move from one to the other, within one piece of legislation.

As far as the operating pattern of the Assembly is concerned, it is worth giving a little time to consider the mechanism by which the Assembly's new law-making powers, from 2007 onwards (and which will be known as Part III powers) are expected to roll out. It is, in fact, quite a mess.

In the first place the Assembly will request permission from Westminster to introduce a specific Welsh Assembly measure (i.e. a Bill, in Westminster terminology). Such a measure could be to amend existing legislation or to introduce brand new legislation – but restricted to those subject areas that have been devolved to the Assembly.

Then a preliminary draft Order-in-Council will be prepared, after discussions between the Welsh Assembly government, the relevant Whitehall department, and the Wales Office in London.

The preliminary draft order will be submitted to pre-legislative scrutiny – probably by a joint session of the relevant Assembly subject committee meeting with the Select Committee on Welsh Affairs from the House of Commons – but possibly involving all Welsh MPs in a special meeting of the Welsh Grand Committee, and even drawing in Welsh peers from the House of Lords. How this is going to work in practice, goodness only knows.

The pre-legislative scrutiny is inevitably going to be a fairly limited operation. The preliminary draft order will not be a detailed document – it will merely set out the scope of the powers being requested by the Assembly. It will, however, be accompanied by an explanatory memorandum, setting out in greater detail the Assembly's intentions in such legislation – but it is unclear as to how great that detail will be. In any case, it will not be a comment which will be open to formal amendment.

Following pre-legislative scrutiny, a final draft order will need to be approved by the Assembly as a whole, and then submitted to the Secretary of State for Wales – taking into account any amendments that may have arisen from the scrutiny process.

The Secretary of State must, within 60 days, either lay a draft order before both Houses of Parliament, in order to set the ball rolling for the granting of permission to the Assembly to legislate in that subject area; or, alternatively, the Secretary of State must give the First Minister reasons why he is not intending to do so. In other words, the Secretary of State, again, has a veto!

The Standing Orders of the Assembly will provide for a procedure for dealing with primary legislation, which will involve the equivalent of a general debate on the principle of the bill, analogous to a Second Reading in the House of Commons; a committee stage in the Assembly which scrutinises the legislation on a word-by-word and line-by-line basis; and then a final approval debate, equivalent to a Third Reading. It is worth noting that the Assembly scrutiny process involves just a simple

committee stage, whereas at Westminster there is a committee stage and a report stage in the House of Commons, where amendments can be tabled and debated; and a further committee stage and report stage in the House of Lords. This begs a very serious question, therefore, as to whether the Assembly will be giving sufficient attention in scrupulous detail to the contents of the proposed legislation.

The Counsel General of the National Assembly – a new post being created as part of this legislation – or the Attorney General may refer the legislation to the supreme court, if they believe that any questions arise as to the Assembly acting in an ultra-vires fashion.

At the end of this process, the Secretary of State for Wales will have the power to intervene, blocking a measure from going forward for Royal Assent, if it falls into one of a number of categories which are unacceptable to London – including, incredibly, that if the bill “threatens water supplies in England”. (Section 100 of the bill deals with this) -yet another example of a Welsh Secretary having a veto over the Assembly.

When the measure has completed scrutiny, and has finally been approved by the Assembly, and assuming that it is not blocked by the Secretary of State, it goes to the Queen for approval “in council”, and it becomes law, and as binding as any law passed at Westminster.

However, it would appear that the power to legislate in that subject area will not “die” with the Royal Assent to the legislation, but will remain in force. This means that over a period of time there will be a cumulative body of transferred powers, which, in due course, will give the Assembly a wide range of areas in which it can legislate without having to go back to seek further approval.

It is fair to say, however, that Part III is cumbersome, complex and opaque. Some consider it is a deliberate botch, in order to facilitate faster progress towards the Part IV powers – in other words, the conversion of the Assembly into a real parliament, with primary law-making powers in its own right.

The bill currently going through Parliament also contains a number of significant features, including:

- Changes to the nature of the committee system in the Assembly, making them more akin to committees in the House of Commons;
- The formal provision of Deputy Ministers as part of the constitution;
- The Presiding Officer’s department will be more independent of government;
- The civil service will serve ministers, but not the Assembly Members;
- The Secretary of State will be entitled to participate in Assembly procedures but not to vote:

- The Counsel General may also be allowed to participate in proceedings, but not to vote;
- The Welsh and English languages will have treated on a basis of equality;
- The Bill allows for the calling of an extraordinary general election, in a period shorter than the statutory four-year cycle;
- The Act establishes a Welsh consolidated fund (in part v);
- There is a facility to add new subject areas, such as the Home Office, to the Assembly's competence, and for this to be done by order (provided in section 94 of the Bill).

After 2007 a lot will depend, of course, on the party political balance. In 2003 it was Labour 30, Plaid Cymru 12, Tories 11, Liberal Democrats 6, and 1 Independent. Then one member, Peter Law, left the Labour party and crossed the floor, so Labour have been governing with 29 seats out of 60, which has been difficult. Following Peter Law's sad death there was a by-election last Thursday when Labour hoped to regain his seat. They didn't. Peter Law's widow was elected to the Assembly. So we are back in a situation where Labour does not have a majority. It is not easy for any government under those circumstances.

After the 2007 election, who knows what can happen – a week is a long time in politics. Labour could lose some seats because of the swing – Blair is not all that popular at the moment. Labour might lose four or five seats and go down to 24 or 25 AMs. So there is almost certainly a question of a coalition government. If Labour wishes to rule, as in Scotland, it might be Labour + the Liberal Democrats and/or Plaid. That would be seen by some as an unholy alliance, perhaps more palatable in Wales than the equivalent in Scotland. The alternative – a partnership government between Plaid Cymru, the Liberal Democrats and the Conservatives might be seen as an even more unholy alliance!

So I am looking forward to the 2007 – 2009 period with interest. In 2009, if there is a general election at Westminster, we might well get a Conservative government for the UK. That will really lead to interesting times for both the Scottish parliament and the National Assembly. It may well be that immediately after the Conservatives have won a Westminster election, suddenly a two-thirds majority in the Assembly demand a referendum, to turn the Assembly into a Parliament, so that we minimize the effect on domestic policy in Wales of the Conservatives at Westminster.

So the first issue arising now relates to the competence and capacity of the Assembly to deal with law-making. Do we have the right number of members – Richard has said 80, and do they have the right quality experience? Do we have an adequate competence in our civil service, who do not have the same background as those in Scotland of dealing with Scots law? We have a problem of Welsh civil society, that we don't have the range of media that they have in Scotland. There is an ability in Scotland to discuss these issues amongst themselves in a way which does not happen in Wales.

The second issue arising is the working of what is called the Part III Powers, the interim settlement proposed in the Bill. There is uncertainty – will the MPs and the Lords agree to allow the Assembly to have its orders? Will generic orders be brought forward where there is one omnibus order for the whole of the Welsh Government’s annual programme, equivalent to the Queen’s speech, saying, for example, “we want these seven bills passed during the coming year”? That remains to be seen.

Do the changes strengthen the executive against the legislature, and possibly over-strengthen the executive, moving too much power to it. Is the method of funding, the Barnett formula, sustainable? Wales has lost over £1,000m since 1999, in relation to what we would have had if we had enjoyed the same proportionate increase in expenditure as has happened in England. This is a matter, across party boundaries, of considerable controversy. Will the present proportional representation system survive or not? Will the English backlash lead to a cut-back in the numbers of Welsh MPs or their powers of voting at Westminster? Will there be a move to strengthen the direct links between Wales and Europe?

And in that European context there are a couple of closing thoughts: Wales, like most countries of the UK, has had an influx of immigrants from Eastern Europe in recent months. This is an opportunity, as well as being perceived by some as a threat. It is an opportunity in cultural as well as economic terms. The Welsh language is still growing in strength, but it still doesn’t have adequate European recognition. We certainly are aware of the need to rethink European regulation and competition rules. We have experience of structural funds over the last six years and we have another seven years of structural funds coming from January 1st next year until 2013. There needs to be some sorting out so that the European competition rules don’t frustrate us in getting the best benefit out of them. There is a question of guaranteeing the additionality of European funding coming to Wales. There is a need for a stronger lead from Brussels on sustainability policies. The National Assembly has a commitment to sustainability and very often the European back-up does not appear to be there. And we don’t see, at the moment, the prospects of the UK coming into the Euro-zone. That obviously has repercussions.

I touched on a number of the implications of between Richard and 2007 – I haven’t touched on them all, but I hope that this has been of some help to you. We live in interesting times, and we must wait to see how the dust settles.