

REVIEW: BIRTH OF WELSH DEMOCRACY

Eberhard Bort

John Osmond and J Barry Jones (eds), **Birth of Welsh Democracy: The First Term of the National Assembly for Wales**, Cardiff: Institute of Welsh Affairs/The Welsh Governance Centre, 2003, 314 + xxx pp; pb, £19.99, ISBN 1-871-72694-8.

John Osmond (ed.), **Second Term Challenge: Can the Welsh Assembly Government hold its Course?**, Cardiff and London: Institute of Welsh Affairs/Constitution Unit, 2003, 116 pp, pb, £10, ISBN 0-1970-636400.

Richard Rawlings, **Delineating Wales: Constitutional, Legal and Administrative Aspects of National Devolution**, Cardiff: University of Wales Press, 2003, 644 + xiv pp, pb, £24.99, ISBN 0-7083-1739-1.

'Managing public services in Wales can feel like being in bed with an elephant: you are forever conscious of any movement made by the giant partner alongside you. The Welsh assembly may emphasise the Welshness of its policies, but developments in England continue to impact' (Davies 2003). Thus, although foundation hospitals will not be introduced in Wales, Wales is not exempt from that debate (BBC News Online 20 May 2003). Top-up fees for university students have been ruled out by the Welsh Assembly Government for the present term, but the debate in England is of consequence to Wales (as it is for Scotland). David Warner, the Principal of the Swansea Institute of Higher Education put it this way: 'If the assembly decides not to allow institutions to charge top up fees, then the assembly will have to find money from its hard-pressed budget or students in Wales will suffer' (BBC News Online 26 November 2003).

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But the real problems encountered by Welsh devolution in the first term of the National Assembly point in the opposite direction. As the Assembly has no primary legislative powers, it needs to influence Westminster to legislate on Welsh matters. Yet, as Robert Hazell argues in **Birth of Welsh Democracy**, 'Wales gets short shrift under present arrangements. The Assembly is dependent for all its primary legislation on finding legislative time at Westminster. Yet it has little or no control on when that time will be found, in what legislative vehicle, and with what degree of scrutiny' (p. 27). He compares what he terms the 'best of both worlds' in Scotland with the 'worst of bold worlds' in Wales. While the Scottish Parliament passed 62 bills in its first session, the Welsh Assembly 'managed to squeeze just one Wales-only statute out of Westminster' (p. 30) – the Children's Commissioner for Wales Act 2001.

For a Scottish reader it may come as a surprise how positive the praxis of Scottish devolution is seen when compared with the Welsh experience. Hazell's negative assessment of the Assembly's record must be read as a plea for implementing the Richard Commission proposals which would give Wales primary legislative powers akin to those exercised in Edinburgh.

It complements the much more positive review of the first four years provided by John Osmond in the volume. He charts the astonishing progress of the Assembly in 'transforming itself from an institution subordinate to Westminster into a parliamentary body with the potential, and the intention, of acquiring primary legislative powers' (p. xix). The groundwork, in other words, has been laid, by increasingly separating the Welsh legislature from the Welsh Assembly Government. More than that: the emergence of the National Assembly marks 'the birth of Welsh democratic governance' (p. xix). Despite the fact that, as in Scotland, the first term saw its disruptive setbacks (there the forced resignation of Alun Michael as First Secretary, in Scotland the unforeseeable succession of three First Ministers), the establishment of the institution and its progress over the first four years was, again broadly comparable with Scotland, smooth and relatively conflict-free. Osmond credits this to the fact that throughout the first term the Assembly 'benefited from an ever rising budget' and to the 'stabilising influence ... of Labour-dominated administrations in London and Cardiff' (p. xxii).

Whilst there is, as in Scotland, a degree of disappointment, it is, as Richard Wyn Jones and Roger Scully show in their chapter, actually less accentuated in Wales than in Scotland (due to lower – or perhaps more realistic? –

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expectations). More importantly, when it comes to trust in government, the Welsh Assembly scores well above Westminster. The UK government is trusted 'just about always' by a mere 2%; 'most of the time' by 22%; the National Assembly by 12 and an impressive 48% respectively (p. 272). While only 17% of respondents – all figures for 2001 – think the Assembly is more influential than Westminster (61% regard Westminster as more influential), 54 % say the Assembly should have the biggest influence on policy-making; only 26% would like to see influence primarily resting with Westminster. 'While the respondents are clear, ' conclude the authors, 'that the Assembly lacks influence and power, they believe that it should have such influence and expect it to gain influence over the next ten years' (273). Denis Balsom concurs that 'when and how the Assembly will acquire the essential legislative powers to turn itself into a proper parliament' is the central issue of the devolution process: 'There is a clear majority across the parties in the Assembly for this to happen' (p. 313).

The Liberal Democrats have, indeed, for several years demanded a Welsh Parliament. They were also instrumental in setting up the Richard Commission which reported on the powers of the Assembly in early 2004. Furthermore, the Lib Dem leader in Wales, Mike German, urged the creation of a national convention to campaign for a power increase and to ensure that the Labour government in London and Cardiff will implement the recommendations of Lord Richard's commission.

Plaid Cymru, committed to an 'independent' Wales, has backed such a convention. But while Peter Hain is on record that he 'would look sympathetically at calls for more powers for the Welsh assembly' (BBC News Online 20 June 2003), First Minister Rhodri Morgan would only go as far as to advise senior Labour members to be 'open minded' over the question of increased Assembly powers: 'There are many alternative models which would allow us to continue the momentum of devolution,' he said in an address to a Progress Conference in Cardiff (BBC News Online 22 November 2003), adding that it was a mistake to assume the Scottish Parliament model was the only way forward for Wales (BBC News Online 24 November 2003). Ron Davies meanwhile, the architect of Welsh devolution, is not sitting on any fence. He is clearly in favour of a Scottish-style parliament: 'I think we have moved on from where we were in 1997, and now is the time to have a far more expansive parliament here in Wales' (BBC News Online 24 November 2003).

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In their reaction to the Queen's speech in November 2003, the Welsh Conservatives demanded that much more attention be given to Wales: major Bills should have Welsh-only versions (BBC News Online 26 November 2003). Supporting extra powers for the Assembly, though, is not official party policy; but Tory 'dissident' David Melding AM has called for a 'Welsh Parliament with the same powers as the Scottish version' (BBC News Online 27 October 2003).

The argument and the comparison with Scotland is continued and expanded in **Second Term Challenge: Can the Welsh Assembly Government hold its Course?**. Despite considerable achievements in building civic culture, transforming institutions and re-focusing public debate around the National Assembly, the overall view of the practicalities of the present devolution settlement remains critical. Phil Cooke makes the point that Wales's relatively weak devolution settlement has left it unable to formulate innovative policies to deal with the loss of manufacturing jobs. He also warns that the Welsh set-up in its present form would be a poor model for the English regions to follow. 'Weak devolution (of the kind that may also be expected for the English regions) is a poor option for dynamic, experimental policy making. This is exacerbated where a weak lower tier, as in Wales, is faced with strong constraints from both the nation state and supranational levels of the multi-level governance structure' (p. 25). Professor Cooke concludes that the stronger powers given to the Scottish Parliament have enabled its Executive to be more adventurous in policy making: 'Scotland's stronger settlement and more autonomous Parliament give its functionaries greater confidence. In turn this enables them to focus on a clear strategy and push measures through against vested interests to achieve agreed policy objectives regarding economic development' (p. 41).

Robert Hazell speculates on how Labour will deal with the recommendations that were likely to (and did) come from the Richard Commission on the Assembly's powers. Again, the outcome will depend on the elephant – Labour will have to legislate at Westminster. The definition of a distinct Welsh polity continues. In the run-up to and now beyond the Commission's Report, both books provide timely ammunition for the growing debate on the powers of the National Assembly for Wales.

But the most substantial and impressive volume on Welsh devolution to date is **Delineating Wales** from the pen of Richard Rawlings, a constitutional lawyer. His title is intentional – governance in and of Wales is not settled, not

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delineated yet, it is in the process of being defined. Rawlings takes an analytical look at the administration of public services in Wales, the role of the civil service (for whose coping with the changing framework of operation he shows great respect), institutional and constitutional design (*sui generis* – without precedent in other established systems), the actual functioning of the Assembly, its procedures, committees and law making.

From a 'three-face model' of the Assembly – 'Welsh office plus', 'Corporate/Collaborative' and 'Parliamentary' – Rawlings develops a dynamic view of the process of the Assembly 'Towards a Parliament': the rise of OPO (the Office of the Prising Officer) into an independent body with its own budget; the proclamation of a Welsh Assembly Government on St David's Day 2002 with 'ministers, not Assembly Secretaries; a cabinet, not an executive committee.' 'One does not have to be a French philosopher,' he comments, 'to appreciate the symbolism of the change in language. The National Assembly – a virtual parliament: such is the condition of Wales.' (p. 157)

Two chapters in **Delineating Wales** deal with the 'Closeness of Wales'. One of these looks at the internal institutional 'closeness', i.e. bringing government closer to the people, and focuses on the relationship between the Assembly and local government. Multi-level governance deserves particular attention inside the Welsh territory, 'in view of the historical legacy of fragmentation and limited development of a "national" polity.' And if this chapter conveys 'a sense of ambiguity and complexity,' the author wryly remarks, 'then it has the considerable merit of accuracy' (p. 352). The other chapter looks at the evolving relationship between the assembly and other players in Welsh civil society.

Rawling's analysis of Anglo-Welsh intergovernmental relationships draws on contrasts between Wales and Scotland in the constitutional set-up, which emphasises the 'need for close working relations with many central government departments.' The 'added potential for executive domination from the centre' completes the 'double bind' of the Welsh constitutional situation' (p. 424).

'In the cause of the Dragon,' Rawlings concludes, the dragons of 'Welsh office plus' and 'corporate body' had to be slain. Like the authors in the other volumes, he sees Wales well en route to a 'devolution settlement worthy of the name.' The main tenets are a 'secure system of parliamentary government

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for national devolution; a set of institutions which in view of the conditions of small-country governance is sufficiently accessible and responsive; and also serves to enhance the voice of Wales in the United Kingdom in Europe' (p. 546).

In its comprehensive detail and its depth of analysis, **Delineating Wales** is a landmark publication, invaluable in its charting of the first four years of the evolution journey in Wales and indispensable for anyone interested in the politics and the polity of Wales and the evolution of devolution. Sadly, we have nothing like it in Scotland.

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