

Scrutinising the scrutiny:

the changing role of
committees in the
National Assembly for Wales

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Foreword

Long gone are the days when the Assembly had the curious and quirky practice of sending Members to meet in Committees on Fridays in village halls and discuss issues over which they had absolutely no power. But thankfully very few of us remember the Regional Committees of the First National Assembly. It's best kept that way.

Indeed, one of the best things about Welsh devolution is the constitutional adaptability of the institution. This isn't the constitutional navel-gazing around Assembly powers that frankly has even begun to bore me, but the way the architecture of the Assembly has been redesigned to adapt to change.

In evolving, the committees of the Assembly have shown they are flexible. Or rather, certain key politicians have shown flexibility in redesigning them to be better suited to role and purpose. Lord Dafydd Elis Thomas AM is particularly noteworthy in this respect, having had the interior of his vehicle redesigned more often than the TARDIS during his long tenure as The Presiding Officer.

Although they have evolved, questions remain as to how much more they need to change. And inevitably this includes the view on whether the Assembly needs to be expanded to include more Members to make the Committees function better.

The second of the Bevan Foundation's Senedd Series of long essays is exactly the right place to examine issues of past, present and future Assembly scrutiny arrangements in the depth they deserve, and I'm glad my colleagues Alun Gruffudd and Naomi Williams have agreed to do so in the second of our essays.

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Plenary sessions may be the main showcase of the National Assembly, but they are not often the most appropriate window. The discourse and confrontation of plenary has seldom set the media or the public alight, and this perspective has not changed dramatically since the Assembly's inception. Not quite reflecting the drama of Westminster, the current centre stage frankly can be repetitive to the extent of seeming like Groundhog Day for those who regularly follow its deliberations with the opposing narrative of the Welsh and UK Governments re-surfacing time and again as the backdrop to all finger-pointing and discontent.

In contrast, it is in the committees where Assembly Members get to demonstrate their true capacity and talents as legislators. The committees, especially in the primary law-making period, have become the engine room. That is where proper democratic scrutiny and debate takes place. It is in this evolving arena that we get to truly test the National Assembly's democratic effectiveness as a counterpoint to government and a forum for real debate on policy, legislation and funding.

Reflecting the perpetually changing devolution settlement, the Assembly's committee infrastructure has not been the same in any of the four Assemblies since devolution. That is not to say that such changes are a bad thing: fourteen years into devolution, the Assembly is still learning and growing from past experiences. This approach is essential and demonstrates that a level of self-appraisal has been undertaken. Because of this managed, self-analytical desire to improve rather than fossilise, it is the committee process which perhaps shows best how far the National Assembly and devolution itself has matured and advanced.

Finding its Way

The story of the First and Second Assembly committees was a story of policy building and a catalyst for government action in certain areas. Given that the National Assembly at the time held no primary legislative powers, it was inevitable that committee activity focussed more on policy scrutiny rather than legislation. The Richard Commission's report on the powers and electoral arrangements of the Assembly showed that only five per cent of committee time was spent on legislation and 39 per cent on inquiries. All of this was rooted in the original structure of the Assembly.

Further, the Government of Wales Act 1998 provided for the set up of Cabinet under the guise of an Executive Committee and, in terms of scrutiny, it allowed for a Subordinate Legislation Committee, an Audit Committee and Regional Committees and also "committees". The subject committees, as the "other committees" became known, had responsibility for policy development, scrutiny of expenditure and administration, and advice on proposed legislation. Although bound by its constitution as a single corporate body responsible for passing all subordinate legislation, the Assembly's committee infrastructure helped it to resemble a parliamentary model, as the committees were where subordinate legislation of note and major policy areas were given a fair airing.

"the Assembly's committee infrastructure helped it to resemble a parliamentary model"

Those who witnessed the earlier years of the National Assembly could justifiably have characterised the subject committees as an information-sharing or joint scrutiny exercise with Ministers. This was of course due in large part to Ministers themselves being members of Committees, rather than witnesses. Outside organisations however, would not have complained at the opportunity to share their policy development ideas in the presence of Ministers, guided by the respective Chairs. They were also effective in triggering wholesale governmental reviews, such as the Townsend Review of resource allocations within the NHS.

The power of individuals sometimes cut through the relatively static and cosy relationships on early Committees. The example of Ron Davies' chairing of the Economic Development Committee in 1999, in his more abrasive, Westminster-style investigation into the Objective One programme funding and the Welsh Assembly Government's economic plans, was undoubtedly one of the reasons why he eventually lost the Chairmanship. Not only did his face no longer fit, but his tone was very much at odds with other chairs, including those from opposition parties.

During this period, the committee structure attempted to grapple with the collection of powers that were transferred in a piecemeal fashion to the Assembly through a number of Acts and transfer of functions orders. Towards the mid-point of the First Assembly, some 30 per cent of statutory instruments were significantly different to their English equivalent or were unique to Wales. A democratic and specifically Welsh tone to legislation began to take shape. Furthermore, were it not for the stewardship of people such as Mike German as Chair of the Subordinate Legislation Committee, the perception of the National Assembly as no more than a rubber stamp for government regulations, without proper scrutiny, under the binds of the body corporate might have prevailed.

Lessons were also learned. It must be argued that the Regional Committees, with their noble intention of bringing the Assembly to the people in different parts of Wales, were in hindsight a rather ineffectual concept. Great in theory, they were patchy and intermittent in practice. They found few defenders when their effectiveness was questioned, and already feel like constitutional curios from a dim and distant past. Arguably, the Regional Committees can be seen as more of a PR stunt than anything else in large part to placate those who felt the Assembly as a Cardiff-centric beast, far removed from the rest of Wales, particularly the North.

A Proper Legislature

The story of the committee system as a critical friend of government changed dramatically with the advent of the Third Assembly in 2007. A second Government of Wales Act set out new powers and responsibilities and for the first time proper legislative scrutiny was enshrined under the provisions of the 2006 Government of Wales Act. The new Legislative Competence Order (LCO) system enabled the Assembly to circumvent the UK parliamentary legislative programme, permitting legislation in devolved areas in a way that was constitutionally unique in the world, although not uniquely popular with anyone who had to navigate it.

To accommodate the LCOs, the Assembly adopted a new system of committees that became more akin to the Westminster model. Unlike the previous subject committees, the new Scrutiny Committees acted much more like Westminster's Select Committees, with Ministers being excluded. The hybrid of a single Committee representing an

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“Assembly” comprising both legislature and government was ended.

Given the widespread scepticism at the time, it was quite a feat that the Assembly adapted so well. Over four years it was able to work through fifteen Legislative Competence Orders. Given that the process involved a minimum six steps of scrutiny and both Houses of Parliament, this was a far bigger output than many thought possible.

Looking back, it is also a testament to the capacity of the National Assembly of 60 Members that the Presiding Officer opted for permanent legislative committees on top of the standing and scrutiny committees to help facilitate the demands that the legislative programme made of the legislature.

All of this was achieved during a period when just six of the Assembly’s nineteen committees were remitted with the responsibility for scrutinising legislation, yet these six saw oversight of the passing of 39 pieces of legislation.

Streamlining and focusing

New legislative powers gained by the Welsh Government following the 2011 referendum and the experience of the Third Assembly made the move towards a more streamlined committee structure understandable.

In theory, the move to dual scrutiny and legislative committees (inspired by the Scottish Parliament model) should equate to more coherent approach to holding the Welsh Government to account, allowing for closer public engagement in the scrutiny process and flexibility in the way committees deal with new legislation.

the 2013 reshuffle of Labour membership of Assembly committees raised some important questions

The Assembly’s new legislative powers required greater scrutiny and democratic accountability than ever before. Indeed, . The swapping of Ann Jones and Christine Chapman as Committee Chairs, and the exiling of some other members of the Children and Young People’s Committee to other subject committees has been said to be a reaction to that Committee’s views on smacking children. Certainly the reshuffle was more than just cosmetic, and the way it was conducted says much about the ability of Welsh Government to influence and undermine the scrutiny process and also about the level of scrutiny of the Committee process itself.

How can the Welsh Government and legislation be scrutinised and amended when they can essentially change the membership of that committee to avoid dissent by party backbenchers? The Government of Wales Act 2006 may have formally separated the Assembly from the Welsh Government in structural terms, but in reality it is still the Welsh Government which controls the Labour elements of the change.

Even more concerning is the lack of prominence given to the legislative process as a whole, although there have been exceptions such as efforts to raise the public debate on presumed consent on organ donation in the Fourth Assembly in particular. It is no surprise that this is an ongoing and active concern for the current Presiding Officer, who has recently held conferences on the democratic deficit and to gather perspectives on what needs to happen to encourage more people to become active citizens.

To this extent, it may be that the referral of completed Welsh Government legislation to the Supreme Court by the Secretary of State for Wales might not necessarily be a negative action as it adds another level of scrutiny to the legislative process. It could be argued that even the previous LCO system, as arduous as it was, provided deeper scrutiny than the current set up allows.

However, there are also examples where scrutiny has added value to the legislative process, or brought innovation or enhancement to legislative proposals. This is certainly the case in the “Stage 2”, or line-by-line, scrutiny of Bills, where the meat is placed on the bones of legislation. As a result, we have sometimes seen significant changes to legislation. In the School Reorganisation Bill, Plaid Cymru, Conservative and Liberal Democrat amendments were adopted in relation to making local authorities responsible for determining school organisation proposals and meeting demands for Welsh medium education. We can also recall that in the Third Assembly, the Government had adopted amendments such as that offering a more transparent and more democratic approach to Ministerial interventions in Local Authorities within the Local Government Measure.

“scrutiny has added value to the legislative process, brought innovation or enhanced legislative proposals”

Big Fish and Big Ideas

We cannot either forget that personalities also contribute to the level and direction of scrutiny. Recent examples include Mark Drakeford AM, as Chair of the Health Committee (before becoming the Minister for Health), with his command of the priorities for the policy. It was also Ann Jones AM’s personal interest in and crusade to improve Wales’ football fortunes that introduced the

inquiry into the Welsh Premier Leagues, with some robust strategic outcomes by the Government.

One of the big successes of the Assembly as a Parliamentary body has undoubtedly been the Petitions system, where those introduced to the dedicated Petitions Committee have prompted wide debate. There are umpteen instances where thousands of signatories have led directly to widespread discussion, further scrutiny and transformational legislation. One needs to look no further than the example of the Human Transplantation (Wales) Bill, when it came to its legislative conclusion. The legislative intent behind this Bill will see the sixth anniversary of the introduction of Kidney Wales Foundation's petition on presumed consent. Another prominent example has been the Sustrans petition which eventually led to the Active Travel (Wales) Act 2013, which places statutory duties on local authorities to develop cycle paths and walkways.

Future Trends

The National Assembly's engine room of the committee system has played the prominent yet unsung role in the successes of the institution and its growth as a Parliament. In the era of constitutional change, and with the Silk Commission's deliberations over future powers, things are bound to continue to evolve. Tax powers, if they come, will require committees to give an even greater focus on spending to mirror their increased responsibility for legislation.

"it is in respect of committee structures rather than plenary that size matters most"

Indeed, it is in respect of committee structures rather than plenary that size matters most. Anyone who watches the deliberations of committees must surely recognise that there are simply not enough Assembly Members involved in the process to maximise their effectiveness. This is particularly pertinent following the Assembly Commission's recent review of support for Committees. There are two key messages we can take from its report. The first is the performance of the Members and Chair. This is not only true of scrutiny but also as a counterpoint to Government. Given the size of the current Welsh Government (one fifth of the whole Assembly) only 42 Members undertake the work of the Assembly's twelve committees. This poses great challenges in terms of real political autonomy - not only to lead inquiries but also to set challenging recommendations to Government.

The Commission review also drew out a second message, which is the importance of a relationship with Government “which recognises the need for openness, respect and a balance of constructive engagement and independence”. We have seen that a meaningful consensus can be achieved in looking at a future vision for policy in the recent example of the *Inquiry into the Wales & Borders Franchise*, and also in the way in which the Deputy Minister for Social Services engaged not only with her own backbenchers but also with the opposition in the development of the *Social Services and Wellbeing (Wales) Bill*. This approach was exemplified by the sheer number of amendments brought forward during the committee stages and not unsubstantial concessions on key issues.

But Welsh democracy cannot let itself be dependent on a balance of personalities and how they view the democratic process. If we look at the committee perspective alone for a moment, there is a strong case that the still-fledgling legislature could well do with a big shot in the arm by increasing its capacity to 80 Members, or even more as others have argued.

Perhaps then we will see parliamentary democracy truly mature in Wales. As the current Presiding Officer has put it:

Given the weight of responsibility resting with the Institution, and the unavoidable scale of the workload faced by Members, I am in no doubt that the number of Assembly Members should be increased from 60 to 80. Even then, we would still remain the smallest national legislature in the United Kingdom. Nearly a decade ago, the Richard Commission on the Powers and Electoral Arrangements of the National Assembly made a similar recommendation. In a unicameral Assembly with primary legislative powers, Richard felt that such an increase was essential if the Assembly was to discharge of its roles of holding the Government to account, representing the people of Wales and making laws for Wales effectively.

She is correct in this observation, and will be even more so if the Assembly gains the tax-raising powers that Silk recommends.

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