

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Welsh Grand Committee

DRAFT WALES BILL

Wednesday 3 February 2016

(Morning)

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*General debate in progress when the Committee adjourned till this day at
Two o'clock.*

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Sunday 7 February 2016

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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chairs: MR DAVID HANSON, †ALBERT OWEN

- | | |
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| † Andrew, Stuart (<i>Pudsey</i>) (Con) | † Irranca-Davies, Huw (<i>Ogmore</i>) (Lab) |
| Bebb, Guto (<i>Aberconwy</i>) (Con) | † Jones, Mr David (<i>Clwyd West</i>) (Con) |
| † Brennan, Kevin (<i>Cardiff West</i>) (Lab) | † Jones, Gerald (<i>Merthyr Tydfil and Rhymney</i>) (Lab) |
| Bryant, Chris (<i>Rhondda</i>) (Lab) | † Jones, Susan Elan (<i>Clwyd South</i>) (Lab) |
| † Cairns, Alun (<i>Parliamentary Under-Secretary of State for Wales</i>) | † Kinnock, Stephen (<i>Aberavon</i>) (Lab) |
| Clwyd, Ann (<i>Cynon Valley</i>) (Lab) | † Lucas, Ian C. (<i>Wrexham</i>) (Lab) |
| † Crabb, Stephen (<i>Secretary of State for Wales</i>) | † Lumley, Karen (<i>Redditch</i>) (Con) |
| † David, Wayne (<i>Caerphilly</i>) (Lab) | Moon, Mrs Madeleine (<i>Bridgend</i>) (Lab) |
| † Davies, Byron (<i>Gower</i>) (Con) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| † Davies, Chris (<i>Brecon and Radnorshire</i>) (Con) | † Morris, David (<i>Morecambe and Lunesdale</i>) (Con) |
| † Davies, David T. C. (<i>Monmouth</i>) (Con) | Rees, Christina (<i>Neath</i>) (Lab) |
| † Davies, Geraint (<i>Swansea West</i>) (Lab/Co-op) | † Sandbach, Antoinette (<i>Eddisbury</i>) (Con) |
| † Davies, Glyn (<i>Montgomeryshire</i>) (Con) | † Saville Roberts, Liz (<i>Dwyfor Meirionnydd</i>) (PC) |
| † Davies, Dr James (<i>Vale of Clwyd</i>) (Con) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| Doughty, Stephen (<i>Cardiff South and Penarth</i>) (Lab/Co-op) | Smith, Owen (<i>Pontypridd</i>) (Lab) |
| † Edwards, Jonathan (<i>Carmarthen East and Dinefwr</i>) (PC) | † Stevens, Jo (<i>Cardiff Central</i>) (Lab) |
| † Evans, Chris (<i>Islwyn</i>) (Lab/Co-op) | Tami, Mark (<i>Alyn and Deeside</i>) (Lab) |
| † Flynn, Paul (<i>Newport West</i>) (Lab) | † Thomas-Symonds, Nick (<i>Torfaen</i>) (Lab) |
| † Griffith, Nia (<i>Llanelli</i>) (Lab) | † Williams, Craig (<i>Cardiff North</i>) (Con) |
| † Harris, Carolyn (<i>Swansea East</i>) (Lab) | † Williams, Hywel (<i>Arfon</i>) (PC) |
| † Hart, Simon (<i>Carmarthen West and South Pembrokeshire</i>) (Con) | † Williams, Mr Mark (<i>Ceredigion</i>) (LD) |
| † Hoare, Simon (<i>North Dorset</i>) (Con) | |
| | Glenn McKee, Liam Laurence Smyth <i>Committee Clerks</i> |
| | † attended the Committee |

Welsh Grand Committee

Wednesday 3 February 2016

(Morning)

[ALBERT OWEN *in the Chair*]

Draft Wales Bill

[Relevant documents: oral evidence taken before the Welsh Affairs Committee on 26 October, 9, 16 and 30 November and 9 December 2015, and written evidence to the Committee, reported to the House on 16, 23 and 30 November and 7 December 2015, on the pre-legislative scrutiny of the draft Wales Bill, HC 449.]

9.30 am

The Chair: Before we start, it might be helpful if I remind Members of the timing of this debate. This session will go until 11.25 am, and we will meet again at 2 pm to debate the motion for a further two hours, until 4 pm. I have no power to limit the length of speeches, but I ask Back Benchers and Front Benchers to appreciate the fact that a number of people are down to speak, many of whom are speaking in their first Grand Committee.

Paul Flynn (Newport West) (Lab): On a point of order, Mr Owen. A fortnight ago, my hon. Friend the Member for Clwyd South raised in the Chamber the issue of the languages permitted in Grand Committee. She rightly pointed out that when this Committee meets in Wales, we can use either of the two beautiful languages of Wales. The Leader of the House said he was unaware that we are confined to one language when we meet in Westminster and said it was a serious point. Have you had any information from the Leader of the House on which languages will be permitted today?

The Chair: The hon. Member knows I have sympathy with the point he raises, but I have had advice that London is not in Wales and the rules have not changed, so the language of this Committee will be English. If Members wish to mention Welsh names or use Welsh phrases, I ask that they do so in English to follow. That is the ruling on the use of the Welsh language.

9.31 am

The Secretary of State for Wales (Stephen Crabb): I beg to move,

That the Committee has considered the matter of the draft Wales Bill.

May I start by welcoming you to the Chair, Mr Owen? It is a particular pleasure to serve under your chairmanship. In the past 18 months, while I have been Secretary of State, I have tried not to burden colleagues with too many of these meetings, after taking soundings from Members from Welsh constituencies. We had organised a meeting of the Welsh Grand Committee for 1 July, with the aim of discussing the Queen's Speech and the Budget statement together, but at the request of the then shadow Secretary of State for Wales, the hon. Member for Pontypridd, that meeting was cancelled.

I am glad we now finally have a chance to meet and to discuss the Bill. Today is an opportunity to update Members on the progress of the draft Wales Bill and for right hon. and hon. Members to make their views known; I look forward to hearing them. The draft Wales Bill is, of course, still undergoing pre-legislative scrutiny by the Select Committee on Welsh Affairs, ably chaired by my hon. Friend the Member for Monmouth, and we await the Committee's report with interest.

Before we get into the real meat of the Bill, I will take a step back to remind Members of what we are doing with the Bill and how we got to this point. It is fair to say that a number of Members—particularly Government Members, myself included—were not initially natural devolutionists, but once it became clear that that was what the people of Wales wanted, we were determined to make Welsh devolution work. In 2011, the coalition Government held the referendum whereby full law-making powers were devolved to the Assembly for the first time.

Following that, the then Wales Office Ministers, my right hon. Friends the Members for Chesham and Amersham (Mrs Gillan) and for Clwyd West, established the Silk Commission to undertake a broad consultation and to make recommendations on the future direction of devolution in Wales. As Members will be aware, the commission's first report made recommendations about fiscal devolution that we then took forward in the Wales Act 2014. The Silk Commission's second report looked more widely at the balance of powers between Westminster and Cardiff and made recommendations on a broad range of areas, from the model of the devolution settlement itself all the way through to specific recommendations about new powers that should be devolved from Westminster to Cardiff.

It is important to note that although the Silk Commission included representatives of the four main political parties in Wales, those representatives had no mandate to bind their parties to the recommendations the commission made. That is why, following the Scottish referendum, I decided to take forward what we called the St David's day process, to identify the recommendations that could command political consensus. The resulting St David's day document set a clear path for the future of devolution in Wales, and in the Conservative party's manifesto last year, we committed to implement the St David's day agreement in full.

All the main political parties in Wales, at Westminster level and Cardiff level, were involved in the St David's day discussions, and it would be wrong of any of the parties represented on this Committee to seek to distance themselves from that process. The fact that we decided not to implement the Silk Commission's recommendations to devolve policing and justice was as much to do with the views of the official Opposition as with ours—the Labour party at the time took a very clear view, as did my party, that we would not take forward those recommendations—and the recommendation in the St David's day package to devolve fracking licensing was as much to do with how hard Plaid Cymru pressed for it to be included. The fingerprints of all the main parties in Wales are on the St David's day document.

Hywel Williams (Arfon) (PC): I agree fully with the Secretary of State's point on policing. Can he explain the status of the St David's day process? Did he see it as determining—defining—what the Bill would be, or was

that, as I and my right hon. Friend Elfyn Llwyd recall, a matter of consultation with the Opposition parties and fully owned by the Government who wrote it?

Stephen Crabb: Of course we own the Bill that we write. The purpose of being a Government is to write legislation. The hon. Gentleman will recall that what was enumerated in the St David's day document was a recommendation about a set of powers that all parties agreed on. We were absolutely clear throughout the process and on the day that the Prime Minister and the then Deputy Prime Minister made the announcement in Cardiff that it was entirely up to other parties to go further than the St David's day recommendations. In fairness to Plaid Cymru, they did that. In fairness to the Liberal Democrats, their manifesto at last year's general election went further than St David's day. St David's day represented a baseline around which the process showed that all parties were in consensus.

Jonathan Edwards (Carmarthen East and Dinefwr) (PC): Does the Secretary of State think that the St David's day process was more comprehensive than the Silk Commission, which took a number of years and consulted widely with the people of Wales and all political parties, whereas the St David's day agreement was a couple of backroom meetings with Westminster politicians?

Stephen Crabb: The hon. Gentleman can caricature the discussions in that way if he wants to, but he will remember that they were a lot more meaningful and substantive than he gives them credit for. The Silk Commission, which my right hon. Friends the Members for Chesham and Amersham and for Clwyd West established, took a broad range of evidence not just from politicians but from stakeholders, who included representative of the parties. If hon. Members read the Silk document, as I have done several times in great detail, they will see that some of the recommendations lack a lot of detail; some of them do not give a precise, clear policy steer. There is a lot of good in the Silk Commission documents, but it is up to elected politicians to decide how to take forward the recommendations, which is why the official Opposition, the Labour party, could not sign up to the recommendations around the devolution of policing and justice.

Mr Mark Williams (Ceredigion) (LD): I think there were rather more than two meetings, and I am not sure they were quite as characterised by my hon. Friend the Member for Carmarthen East and Dinefwr. However, with hindsight and given some of the problems the Secretary of State has encountered since the publication of the draft Bill, does he regret that the St David's day process was not more inclusive of our colleagues in the National Assembly?

Stephen Crabb: The process was inclusive. I had discussions with them in Cardiff Bay as a group; we had discussions in this place with the Cardiff Bay leaders of the parties here; and I met with them all individually as well, so it was a process that encompassed both the Cardiff Bay bit of the Welsh political parties and Westminster.

The Conservative party went into last year's general election with a clear package of new powers that we put to voters and the people of Wales made their decisions at the election. The package included putting in place an historic funding floor in the relative level of Welsh funding, as we committed to do in the St David's day agreement. Members will recall that during Labour's leadership election last year, the right hon. Member for Leigh (Andy Burnham) revealed that when he was Chief Secretary to the Treasury he knew that Wales was being sold short by the Barnett formula but admitted that he could not do anything about it. It took Conservatives in government to do something about the Barnett formula and bring forward an historic funding floor.

The St David's day package also included making further progress on income tax. Hon. Members will know that in his autumn statement the Chancellor announced a decision to remove the referendum requirement for devolving a portion of income tax to Wales. We are doing that in recognition that the debate has moved on from the Wales Act 2014, and because we believe that income tax devolution will help deliver more accountable, responsible devolved government for Wales. Within the mature devolution settlement that the draft Bill will deliver, the Welsh Government simply cannot continue to be a purely spending Department. They need to take responsibility for raising money as well as spending it.

As part of the devolution package, we are also legislating for a new reserved powers model through the Wales Bill. Hon. Members for Welsh constituencies who have been in this House for a number of terms will recall that the call for a reserved powers model has been around for some time. I remember during discussion of the Bill that became the Wales Act 2014 a former Secretary of State, the former Member for Torfaen, saying on the Floor of the House, "Now is the time to move to a reserved powers model." That was, of course, before we took forward the St David's day process. At that time I warned that simply moving to a reserved powers model, in and of itself, is not a panacea. It does not fix all the complexities around the Welsh devolution settlement—in fact, moving to a reserved powers model throws up new complexities. Moving to a reserved powers model is not a quick fix that clarifies Welsh devolution. The detail of the wiring underneath is what matters, and that is where a lot of the controversy around the current Bill lies.

Nick Thomas-Symonds (Torfaen) (Lab): On reserved powers, does the Secretary of State agree that it certainly does not bring clarification if there are 34 pages of reservations in the Bill?

Stephen Crabb: I broadly agree with that sentiment, but looking at the Scottish settlement, the list of reservations is also pretty long in the Scotland Act 1998. The point is to get the reservations right, spelling out which Government is responsible for what. We should not get hung up on how long the list is.

I said in evidence to the Welsh Affairs Committee and to the Welsh Assembly's Constitutional and Legislative Affairs Committee that the list of reservations is one of the things I want to look at, along with the necessity test and ministerial consent, so that we get the detail right as we move from a draft Bill to a full one.

Hywel Williams: A point arose yesterday at the launch of the excellent document, “Challenge and Opportunity: The Draft Wales Bill 2015”, by the Constitution Unit and the Wales Governance Centre, which I recommend to all right hon. and hon. Members. One participant questioned the inclusion of a provision in schedule 1—new schedule 7A, page 34, section B14(54)(a) and (b), which deals with licensing of the provision of entertainment and late night refreshment. I do not want to trip up the Secretary of State—I am sure he is conversant with the reasoning behind all these inclusions—but can he tell me why that provision is in there?

The Chair: Order. Before the Secretary of State responds, interventions should be short. Those intending to speak later are eating into their own time and that of other Members.

Stephen Crabb: It would not be the first time I get tripped up on the subject of night-time entertainment. The whole purpose of publishing a draft Bill is to address issues such as that. When we include a list of reservations in the Bill, what is the balance to be struck around broad drafting of a policy area and being specific so that it is spelled out clearly? The hon. Member for Arfon highlights a very specific example. The less specific we are, the more scope there is for vagueness. If one of the objectives of the Bill is to put far more specificity into the devolution settlement for Wales than there is at the moment, there will be times when we have to spell out in detail what those reservations are. We are looking at all the reservations at the moment.

Pre-legislative scrutiny has shone a spotlight on what I think is becoming a new orthodoxy in Cardiff Bay around Welsh devolution, so I would like to spend a few moments addressing that. On the devolution boundary, there is now a view in Cardiff Bay that the Supreme Court, through the agricultural wages decision, has effectively redrawn the devolution boundary way beyond what Parliament intended for the Welsh devolution settlement, and in some respects way beyond the Scottish devolution settlement. I discussed that with the Presiding Officer of the Welsh Assembly and her team on Monday, asking her specifically, “Do you now regard the Supreme Court as having effectively redrawn that devolution boundary beyond what the Scottish devolution settlement is?” Their response was that, yes, that is their view. That was never the intention of Parliament when Labour Ministers drafted the existing devolution settlement, nor is it this Government’s position. We believe that it is the role of elected politicians to draw the devolution boundary, and not the role of the courts and judges to decide where the devolution boundary is.

An important purpose of the Bill is to make it clear where the boundary lies and to bring an end to the confusion and argument about which Administration, Cardiff or London, is responsible for which areas of policy. Regardless of whether parties in the Assembly or in this place choose to try to block the draft Bill, no one should underestimate the Government’s intention to fix where the devolution boundary lies. We are not willing to carry on with a situation where the boundary is unclear for large swathes of policy and where the settlement is silent on which Administration is responsible for which area.

Geraint Davies (Swansea West) (Lab/Co-op): I hear what the Secretary of State is saying, but does he agree that the Welsh people’s consent was given by the most recent referendum in which they argued that more, not less, devolution should occur? He is now arguing that we should move backwards, behind that battle line, and in fact many laws that have been passed in Wales would not have been passed under the legislation he is now proposing.

Stephen Crabb: The hon. Gentleman’s charge is untrue on so many levels. The Conservative-led coalition Government held the referendum and we recognise that that was a game changer in terms of devolution for Wales. A large majority of people who participated in that referendum voted for full law-making powers in the areas that were devolved. They were never asked to agree that the devolution boundaries should be redrawn. It is the role of elected Governments to make decisions about where the devolution boundary lies.

Carolyn Harris (Swansea East) (Lab): How does the Secretary of State expect the Assembly to function as a law-making body without the ability to change the laws?

Stephen Crabb: We absolutely do want it to be a law-making body. We want it to have the freedom to give expression to its law-making powers. That means having the ability to change the law to enforce its legislation—I think that is the point the hon. Lady is getting at. Nothing in the Bill prevents the devolved Government from doing that. We do not want inhibitions around the Welsh Government making law in the areas that are devolved to them. However, when there are spillover effects from making law the Bill, rightly in my view, raises a safeguard—a boundary, a hurdle—so that those spillover effects are not more than is necessary.

Jonathan Edwards *rose—*

Antoinette Sandbach (Eddisbury) (Con) *rose—*

Huw Irranca-Davies (Ogmore) (Lab) *rose—*

Stephen Crabb: I will give way to the hon. Gentleman who is shortly to be a Member of the Assembly.

Huw Irranca-Davies: Indeed, I have a vested interest in this in more ways than one. The Secretary of State is trying valiantly to play a very difficult hand, but I suspect he is running out of cards. How does he respond to this week’s report that highlighted in depth, with detailed analysis, both fundamental and detailed points of principle that were wrong? The conclusion was that that suggests an unwillingness to take Wales seriously. I ask him, in all seriousness, how he responds to that.

Stephen Crabb: I respond to the hon. Gentleman by saying, in all seriousness, that this Government take Wales very seriously. We take Wales so seriously that we did not do what his Administration did, when he was a Minister in the previous Labour Government, and bury our heads in the sand over the inequities of the Barnett

formula. They have admitted that they were unwilling to address that issue. We are bringing forward the funding floor. This Government took the decision to have a referendum for the people of Wales on having full law-making powers.

Huw Irranca-Davies: This Bill does not do it.

Stephen Crabb: In the details of the report that came out today, and in other academic reports, there are some good and important points. We have taken the report away and are looking at it very closely. The whole point of having pre-legislative scrutiny is to use it as an opportunity to think again and take views from a very broad range of stakeholders.

I have to say, having read some of the evidence presented to the Welsh Affairs Committee and to the Welsh Assembly's Committee, sometimes the people giving that evidence are asking a different question from the question we are asking. The question they are asking is, "How do we craft a piece of legislation that expands the remit of Welsh government and Welsh law-making?" If that is your only question, of course you will find failings and limitations in the Bill. If you are trying to balance that question with the question of how to regulate the interface between the two legitimate Governments for Wales: the UK Government and the Welsh Government—how to ensure clarity about who is responsible for what, how to build in respect for the devolution settlement so that we do not get Governments crossing over one another's boundaries, changing each other's functions without a clear consenting process in place—then you cannot avoid coming up with some of the procedures and mechanisms in the Bill.

Jonathan Edwards: The Secretary of State is a well-known pragmatist; I was hoping he would come to the Chamber this morning with a slightly more flexible approach, but it seems to me as if he is digging a trench around the Bill as it stands. As he knows, even his own party will vote against the Bill in the legislative consent motion when it comes before the Assembly. Will he respect the vote in the National Assembly if his party decides not to support the Bill?

Stephen Crabb: The hon. Gentleman is trying to take me down a road that we are not going down today. On the earlier point of his intervention, as I said to the Welsh Affairs Committee and to the Assembly's Committee, we will be using this process to look again at some of the details and I have listed three broad areas that we are looking at: reservations, ministerial consents and the necessity test. My purpose today is to remind Members from Wales, who perhaps have not participated in the Welsh Affairs Committee proceedings or followed what the Assembly Committee has been saying, of some of the broad principles behind our approach to what is a really complicated and difficult issue.

The second bit of what I regard as a new, emerging orthodoxy in Cardiff Bay is this: they believe that the Welsh Government and the National Assembly should have completely unfettered freedom to legislate in devolved areas. They believe that they should have complete freedom in those policy areas that are clearly the competence of the Welsh Government. That is a proposition I agree

with and am very comfortable with. I want the Welsh Government and Welsh Assembly to exercise their law-making powers freely. What I do not agree with is what they then go on to say about these law-making powers—that when Welsh legislation has spillover effect in terms of affecting reserved matters, in terms of affecting the law as it applies to England or in terms of the way it affects the underlying principles of English and Welsh law—the single jurisdiction—somehow the Welsh Government should have the unfettered ability to make changes in those areas.

That is what the necessity test in this Bill is designed to do—not to stop the Assembly enforcing its legislation, but to make clear where the boundaries of their competence lie. However, this test has now become a point of warfare because they do not believe there should be any boundary or safeguard to those powers. When I put the question to them—when I asked the Presiding Officer and Carwyn Jones why the Welsh Assembly should have unfettered ability to make law without having any regard to the impacts on England or on reserved matters—I simply got a shrug of the shoulders in response. That is not a proposition that we can endorse.

The Bill is not designed to serve the agendas of those who believe that the next stage of devolution should be about driving a wedge between England and Wales and creating more separation. The purpose of the Bill is to provide clarity and to ensure that the two legitimate Governments for Wales, the UK Government and the Welsh Government, can work together in clarity so that Ministers in Cardiff Bay and in Westminster understand which areas of policy they are responsible for.

The answer to the complexities around this is not, as the First Minister now suggests, to create a separate legal jurisdiction. A separate jurisdiction would be expensive, unnecessary and, in the words of a partner of a major law firm in Cardiff, would result in a flight of legal talent from Wales. Let us be clear. If the Labour party had won the general election and had taken forward a devolution Bill, it would not be entertaining the creation of a separate jurisdiction.

Nia Griffith (Llanelli) (Lab): On a point of order, Mr Owen. The First Minister has not advocated a separate legal jurisdiction. He has talked of a distinct legal jurisdiction, as indeed have the Constitutional Affairs Committee at the Assembly and all the Members of the Assembly, including all the Conservative Members, and that was backed in a motion at the Assembly.

The Chair: That is not a point of order, but it is very welcome and I am sure the Secretary of State will want to respond.

Stephen Crabb: I will, and I will be very clear. In my discussions with Carwyn Jones, he told me that he regards "distinct" and "separate" as the same thing. They are words. He said that he regards a distinct and separate jurisdiction as amounting in practical terms to the same thing.

What I do believe is that as the body of Welsh-specific law grows, the judicial system will need to take account of the distinctiveness within Wales. I have discussed that with the Lord Chief Justice and the Lord Chancellor here. Work is needed to ensure effective delivery of the

[Stephen Crabb]

justice function in Wales to take account of the growing body of Welsh law, but that does not necessarily lead to a path of separate jurisdiction and splitting the single England and Wales jurisdiction, which has served the people of Wales well for centuries.

Liz Saville Roberts (Dwyfor Meirionnydd) (PC): Surely we need to look more closely at what “separate and distinct” means. “Separate” implies a different legal profession with a whole new set of courts. “Distinct” does not have to mean that. What we are hearing from the Assembly is “distinct”. All the requirements that go alongside that—necessity clauses—are what we would require to make this Bill work.

Stephen Crabb: The hon. Lady, for whom I have huge respect, is very knowledgeable about legal and constitutional matters. If, through the Select Committee of which she is a member or independently, she would like to provide me with details of what she regards as a distinct jurisdiction, we can measure it against what other people are saying they regard as a distinct jurisdiction.

Part of the problem is that no one knows what “distinct jurisdiction” means. We understand what “separate jurisdiction” means, but people are bandying about this term “distinct jurisdiction” as if it is now the answer, in the same way as people used to say, “We need a reserved powers model; that will sort out Welsh devolution” without thinking of the complexity underneath it. People are now saying “separate jurisdiction” or “distinct jurisdiction” without really having thought through what it means.

Hywel Williams: The Secretary of State is being generous with his time. He has conceded that there is a growing body of Welsh law that will need to be responded to and he says he has had discussions with the Lord Chief Justice and the Lord Chancellor. Can he give the Committee an indication of when these considerations will come to fruition, so that we have clarity on the nature of our Welsh law and Welsh jurisdiction, whether distinct, separate or whatever? Does he see this as part of the full Bill when it comes before the House or over the horizon?

Stephen Crabb: The hon. Gentleman asks an important question. We are in the early stages of that work and we are having discussions about it with a view to being clear about what distinctive arrangements Wales needs to make sure there is effective delivery of justice in Wales that takes account of the growing body of Welsh law. We will make some announcements about that in due course, but that work does not need to happen within the context of the Bill. It does not need to be put into legislation to give effect to it. A lot of practical work can just be got on with fairly quickly.

Ministerial consent is another controversial area in the Bill that we are looking at again. Let me put on the record some thoughts about it. Much has been said about the consent requirements in the draft Wales Bill. They are intended to provide flexibility for the Assembly to legislate but with a demarcation of responsibility between the Assembly and the UK Government. It is

only right that the Minister’s consent is required to amend the functions of reserved bodies that are accountable to UK Ministers, just as it is right that the UK Government seek the Assembly’s consent to make changes to the law in devolved areas.

I am told that when making legislation that changes the responsibilities of UK Ministers or the functions or duties of a reserved body—a public body that is the responsibility of a UK Minister—the Welsh Government should have the ability to do that without the relevant UK Minister in Whitehall being able to have any say on that. To any fair-minded Welsh man or woman, that is not a reasonable proposition, because the United Kingdom Government are responsible for those areas of policy. However, this seems to be emerging as the new consensus in Cardiff Bay. We are told that we need to take away the draft Bill and remove the consenting requirements. The threat is that the Bill will be blocked if there is any attempt to make the Welsh Government more responsible in making changes to things that are the responsibility of UK Ministers. We do not believe that is a credible position.

I know from my discussions with business leaders and others in Wales that there is a large body of pragmatic and reasonable opinion on devolution, which does not endorse the rhetoric and criticism of the Bill that is coming out of Cardiff Bay which says the Welsh Government should be able to change the functions of a UK Minister, and change the duties and functions of a UK public body that is the responsibility of a UK Minister, without any consenting requirement. This is about basic respect in the devolution settlement. It is a key principle of ours that we respect the Welsh Government in recognising the areas for which they are responsible. When we make legislation in this place that touches on devolved areas, there is rightly a process of seeking the consent of the Welsh Government. We believe that the principle should work in reverse. I do not think that is an unreasonable proposition.

We have hit a number of major stumbling blocks with the Bill on the differences of viewpoint between how we see the devolution settlement working and how the Cardiff Bay Welsh Government want it to work. They believe that the draft Bill should give legislative effect to the new consensus that they believe in with the expanded devolution boundary that they believe the Supreme Court has given them with the ability to make law unfettered that affects reserved matters or England without any hurdle or boundary or safeguard around that, or any requirement for consent. That is not something that we can go along with.

I appeal to Members of this place and Assembly Members to try to understand the devolution settlement from the viewpoint of the interests of the UK Government, in the same way as I have spent a lot of time trying to understand the devolution settlement from the perspective of Cardiff Bay and the Assembly,

I am going to wrap up there to allow other Members to speak. We have heard language such as “English veto”. There is nothing in the Bill which provides an English veto. When the First Minister uses that phrase, he is talking about the UK Government—the UK Parliament. He is saying that all of us sitting here are English—the hon. Member for Newport West is English, and the hon. Member for Llanelli is English, because they are part of the UK Government. Let us be absolutely

clear—this goes to the core of my approach to the Wales Bill—Wales has two legitimate Governments: the UK Government, who exist for the benefit of all parts of the United Kingdom, including Wales; and the devolved Welsh Government, who exist to create law in devolved areas. The purpose of the legislation is to create clarity and respect about the roles of those Governments. It is not to delegitimise and push back the role of the UK Government and say that Wales has an elected Government in Cardiff Bay who are the primary legitimate Government for Wales.

Mr Mark Williams: The Secretary of State talks about respect and says he hopes our colleagues in the National Assembly will be listening to what he says as much as we are here today. Does that extend now to a meaningful dialogue with the Assembly and the officials at the National Assembly on the core issues he has identified—the necessity test and ministerial consents and reservations? I do not doubt the primacy of this place to make the law, but will a meaningful dialogue remedy those issues with the National Assembly now?

Stephen Crabb: My door is always open. I do not think anybody has tried to bend over backwards and be more pragmatic and flexible on this stuff than I have. I have spent the past 18 months moving the position of the UK Government, compromising on a number of very key areas that have proved controversial. From our perspective, it feels as if we have made all the movements on our side, and we have run into the buffers of stubbornness and a lack of reasonableness.

Ian C. Lucas (Wrexham) (Lab): Would not the Secretary of State's argument carry a great deal more force if he were not the Secretary of State who had colluded in diminishing the rights of Members of Parliament from Wales to have a voice on issues that directly affect our constituents? Is not what he says about English votes for English laws and the lack of consultation that took place with Members an absolute disgrace?

Stephen Crabb: I do not know how to dignify that question with a response. It is a nice try to attempt to confuse the issues before us today.

I will wrap up my remarks after I have reiterated my answer to the hon. Member for Ceredigion. I am determined to get the legislation in a position that not only Assembly Members and the Welsh Government, but Members here are comfortable with—a piece of legislation that strikes the right balance and achieves our aims, which I think most fair-minded people in Wales would agree with. I will not allow this legislation, through the force of criticism from Cardiff Bay, to be changed into a piece of legislation that we are not comfortable with. As I said previously, if the Labour party were in power in the UK Government, its Members would not take forward a Bill that delivers a separate jurisdiction. They would not be doing things that the Welsh Government are calling for.

Kevin Brennan: As my hon. Friend the Member for Wrexham said, these matters are intertwined. For example, 9,000 English students, many of whom are registered to vote in Cardiff, attend Cardiff University. In the recent vote we had in this House on their student maintenance

grants, Welsh Members were effectively denied the opportunity to influence the ultimate outcome of that vote. Those students, who are disfranchised, have no one to vote for them. Their MP cannot represent them in such a vote because the students are registered to vote in Wales. Does the draft Bill do anything to re-enfranchise the people this Government are disfranchising?

Stephen Crabb: If we follow the logic of what the hon. Member for Cardiff West just said, it is an argument against devolution in the first place. Arguments about those kinds of disparities were exactly the kinds of arguments made by people who opposed devolution in the first place. The health service is another example of one of the challenges of devolution. There are English residents who are patients in Wales and Welsh residents who are patients in England. Devolution throws up those complexities. *[Interruption.]*

The Chair: Order.

10.8 am

Nia Griffith: It is a pleasure to serve under your chairmanship, Mr Owen.

The draft Wales Bill has understandably led to lively debate since it was published in October. I asked the Secretary of State to convene this Committee so that Members could be part of that debate, and to scrutinise the draft Bill before a new version is presented to the House. The draft Bill is the end product of some five years of work including the Silk Commission, the St David's day process, and the Government's White Paper. We expected a draft Bill that was worthy of the years of work that led up to it—a landmark constitutional moment giving more powers to Wales. Instead, we have a shambles of a draft Bill that has been criticised by academics, trade unions, lawyers, the Assembly's Presiding Officer, the Church in Wales, the Equality and Human Rights Commission, the Welsh Language Society and every party in the Assembly, including the Welsh Conservatives. In fact, when the Assembly's Constitutional and Legislative Affairs Committee launched its inquiry on the draft Bill, it was left in the unprecedented situation where practically no one supported it.

A new report by University College London and the Wales Governance Centre describes the draft Bill as “constricting, clunky, inequitable and constitutionally short-sighted.”

In plain English, it is junk. The Secretary of State should be ashamed that he has presented such a weak and unworkable draft Bill because the people of Wales deserve better.

Labour Members support a move to a reserved powers model, which Silk recommended, and we support the new powers proposed in the Bill on energy, transport and the Assembly's own affairs. Labour set up the Assembly and gave it greater powers through the Government of Wales Act 2006 and the 2011 referendum. We support the Assembly's having more powers, and that is exactly why we will not support this Bill unless it is radically amended.

Jonathan Edwards: I congratulate the hon. Lady on her appointment as shadow Secretary of State. I am absolutely delighted by that appointment, but can she

[Jonathan Edwards]

explain why, as the Secretary of State said, the biggest roadblock during the St David's day process was the Labour party? I understand that she was not in those negotiations, but is she entirely happy with the position taken by her predecessor?

Nia Griffith: Today's subject is the Bill before us, and we want a Bill that actually works, so that is what we need to scrutinise now; that is what we need to be looking at.

Just last year, the Secretary of State said:

"I want to establish a clear devolution settlement for Wales which stands the test of time."—[*Official Report*, 27 February 2015; Vol. 593, c. 35WS.]

Elsewhere, he referred to

"a clear, robust and lasting devolution settlement".

We have only to take one look at this Bill and it is plain that he has completely failed to do that. The Bill as drafted is not clear. It does not meet the Secretary of State's stated aims. Those are not just my words; they are also those of the Assembly's Constitutional and Legislative Affairs Committee, chaired, incidentally, by a Conservative Assembly Member. Its inquiry heard

"grave concerns about the complexity of the draft Bill"

from the

"overwhelming majority of...consultees and witnesses".

It heard

"a clear, unanimous voice from legal experts and practitioners that the complexities of this Bill will lead to references to the Supreme Court."

This Government have been particularly trigger happy in taking the Assembly to court ever since it has had primary law-making powers. Those cases cost the taxpayer tens of thousands of pounds and lead to long delays before the Assembly's laws come into force.

Antoinette Sandbach: Does the hon. Lady agree that the Agricultural Sector (Wales) Bill decision drove a coach and horses through the Government of Wales Act and in effect conferred a reserved powers model on the Assembly, which requires legislation to address the issues that arose out of that case?

Nia Griffith: An awful lot more cases will go to the Supreme Court if we do not get this Bill correct. That is the problem. The Assembly has passed 14 Bills, parts of which various commentators are suggesting could not have been passed if this legislation had been in place. The fact that they are arguing over that is the reason why we would end up with people—not just the UK Government or the Welsh Government, but any individual—taking things to the Supreme Court, and thousands of pounds would be spent trying to sort that out. That is simply not the way we want to proceed.

Geraint Davies: Does my hon. Friend agree that the logic of English votes for English laws was that there would be Welsh votes for Welsh laws and that the direction of travel of this Bill is in fact English votes for Welsh laws? That will generate all sorts of confusion, some of which has just been alluded to.

Nia Griffith: The issue is, more than anything, the confusion. Everybody wants a clear settlement that will not cause problems. I am not the only one saying this. David Melding, the Conservative Assembly Member for South Wales Central, warns:

"Judicial review could become, if not the norm, then far from the exception. Welsh legislation would be drafted in an atmosphere of profound uncertainty, which itself would curtail its scope and ambition."

Therefore, the Secretary of State has comprehensively failed his first test—clarity.

If the Secretary of State had really wanted to make the devolution settlement clearer, he could easily have reduced the number of tests that the Assembly has to satisfy before it can legislate. Those are the tests that decide whether a Bill is within the Assembly's competence. This Bill increases them from nine to 13. Of course, the most controversial, understandably, are the so-called necessity tests. Quite why those tests were dreamt up is not clear. What is clear is that they will make it significantly harder for the Assembly to legislate. That is not just my view, but that of Paul Davies, the Tory Assembly Member for Preseli Pembrokeshire—a colleague from the same constituency as the Secretary of State. He said that

"it's clear from the evidence...that introducing these tests would restrict the Assembly's competence."

As the Law Society said in its evidence to the Welsh Affairs Committee, "necessity" is not a term that is well understood by lawyers. It does not have an established meaning. In fact, the Assembly's Director of Legal Services has pointed out that there are at least three completely different ways in which the term "necessity" can be understood. Quite frankly, it could mean anything, and the only way to establish what it means will be through reference to the Supreme Court, which is profoundly undemocratic.

Mr David Jones (Clwyd West) (Con): I have considerable sympathy with what the hon. Lady is saying. The word "necessity" is not a term of science nor is it even a term of art. Nevertheless, does she not agree that it is entirely right that the Assembly should not legislate in areas that are beyond its defined competence, so a term has to be arrived at that achieves that?

Nia Griffith: Absolutely. There have to be certain consents and criteria, but our difficulty with the Bill is that it does not provide the clarity that we all want in legislation.

Stephen Crabb: I am interested in what the hon. Lady just said. Is she saying therefore that she supports the retention of some kind of test, whether that is necessity or some other formula, or does she want to remove it altogether?

Nia Griffith: Our worry is that we might turn the clock back to a time pre-2006. The purpose of the Bill is to define powers, but what we have at the moment is confusing. That confusion has arisen for several reasons, but particularly with regard to the non-devolution of certain parts of the law.

Stephen Crabb: I am grateful to the hon. Lady for giving way again. In answer to my right hon. Friend the Member for Clwyd West, she appeared to say that we clearly need some kind of test. Is it her view, and the

view of her party, that, whether it is the necessity test or another formula that commands legal respect, we need some kind of boundary or legal phrasing in the Bill, rather than no test at all?

Nia Griffith: We need a framework that successfully explains to people what it actually is, not one that is confused and suggests, for example, that we might be looking at Bills that have been passed in the Assembly such as the Renting Homes (Wales) Bill.

Stephen Crabb: The hon. Lady has made strong points about the need for clarity by posing a specific question, which she now appears to have muddled. Does she support having some kind of test around the spillover impact when the Welsh Government make law that affects reserved areas, matters affecting England, and civil and criminal law? Does she support having some kind of test within the framework?

Nia Griffith: There has to be some sort of framework to define exactly where the Welsh Government can legislate. What we do not want is a situation where we continually dispute that, as that would not help.

Mr David Jones: I am grateful for the direction of travel that the hon. Lady is taking. Will she perhaps suggest a term that could be used to achieve the clarity that she desires?

Nia Griffith: It is for the Secretary of State to produce a Bill with some form of words that explains exactly how and when the Assembly can legislate. We want to see that in the Bill in a way that will actually work. At the moment, we have turned the clock back, and it looks as if we are asking for many different types of consent. We do not have clarity, but that is what we need. We have a situation where even Bills that have been passed will be contested.

Mr David Jones *rose*—

Nia Griffith: I will not give way any more. It is for the Secretary of State to introduce better legislation. It is simply undemocratic to go continually to the Supreme Court, because it is not for judges to decide this, that or the other about what can be subject to legislation. We want legislation that makes the position clear, rather than having to go to court time after time.

The real problem is the sense that we are going back pre-2006, and rolling back things that have been introduced by the Assembly in the past few years. The Welsh Government have listed no fewer than 14 Acts in this Assembly's term that would require additional permission from Whitehall if the Bill were in force. The Secretary of State has said that this all about respect, but where is the respect in making it harder for the democratically elected Assembly to pass laws? The people of Wales did not vote in 1997 and 2011 for a Welsh Assembly hamstrung by Whitehall, able to legislate but only when UK Ministers allowed it. That completely undermines the autonomy of the Assembly and is a major step backwards. As Conservative Assembly Member David Melding has highlighted, that ends with the constitutionally unacceptable

position of UK Ministers, who are not accountable to Assembly Members, telling the Assembly what it can and cannot do.

Of course, ministerial consent exists under the current system, but if the Secretary of State really wants to clarify and simplify the settlement, he would clear up the consent process. As the Silk Commission recommended, there should be general transfer of ministerial functions in devolved areas from Whitehall to Cardiff Bay, just as happened in the Scotland Act. The Secretary of State has given no good reason why Wales should be treated any worse than Scotland.

The Bill would make the system significantly more complicated, with the effect of rolling back the Assembly's powers. In the words of the Assembly's Constitutional and Legislative Affairs Committee:

"It is clear to us that the cumulative effect of the approach being adopted... is to reduce the Assembly's legislative competence."

Yet again the Bill would fail to deliver a fair and lasting settlement. Instead, it would take powers away from Wales and make it harder for the Assembly to do its job.

Let us turn to the reservations themselves. A primary purpose of the Bill is to introduce a reserved powers model, in order to bring greater clarity to the devolution settlement. The Silk Commission report says:

"In a reserved powers model, the settlement would set out clearly the limits of devolved competence. We would expect law-makers to legislate with greater confidence... rather than being constrained by uncertainty".

Clarity is about the last thing that comes to mind when reading the 34 pages of reservations in the Bill, covering 267 separate powers, on everything from Antarctica to zebra crossings. Everyone agrees that the list is far too long. Indeed, Angela Burns, the Conservative Assembly Member for Carmarthen West and South Pembrokeshire, has described the list as unworkable. She said:

"The reservations, as they stand, will hinder the development of policy, will impact on the coherence and unity of legislation and will, in my view, muddy the waters between legislatures."

Even the Secretary of State has said:

"When I read through the list of reservations I can see for myself that there are things where I think, you know, 'For goodness' sake, why is that being held back as reserved?'"

It is his Bill.

Stephen Crabb: Draft Bill.

Nia Griffith: As a bare minimum, we should expect the Secretary of State to have confidence in his own draft legislation, not to rush forward with some half-baked set of reservations that not even he supports.

The failure of the Wales Office to challenge Departments to explain what needs to be reserved, not just what they want to have reserved, is quite remarkable. In the words of the Assembly's Constitutional and Legislative Affairs Committee:

"The absence of a principled approach has contributed to the excessive number and complexity of the reservations."

In this week's report by the Wales Governance Centre and University College London, they describe the failure to think rationally about what needs to be reserved as a "fundamental defect" in the Bill.

[*Nia Griffith*]

Perhaps if the Secretary of State and his Department commanded more respect in Whitehall we would not have ended up with a shoddy list of reservations that literally no one supports.

The biggest problem with the reservations is the completely ill-advised decision to reserve the entirety of criminal and civil law. That makes absolutely no sense and is the clearest example of the Bill rolling back the Assembly's powers. The Assembly is a law-making body, so preventing it from having any ability to change the law is both illogical and unacceptable. It reduces the status of the Assembly to a second-class legislature. It is directly contrary to the Silk Commission's warning that the reserved powers model must

"do nothing to restrict the existing and future ability of the National Assembly to create criminal sanctions where it is necessary".

The rationale behind the decision to reserve the entirety of the law is given in the explanatory notes. The Bill seeks to provide

"a general level of protection for the unified legal system of England and Wales, whilst allowing the Assembly some latitude to modify these areas of law".

But the 2011 referendum was about giving the Assembly full powers to legislate in the areas devolved to it, not some latitude to modify the law. So the Secretary of State needs to reconsider this crucial aspect of the Bill. One solution would be to introduce a distinct legal jurisdiction for Wales, as recommended by the Assembly's Constitutional and Legislative Affairs Committee and endorsed unanimously by the Assembly.

Craig Williams (Cardiff North) (Con): Since the hon. Lady is fond of quoting, will she comment on the view of Lord Morris of Aberavon, her predecessor and a Labour Attorney General, who ruled out the single jurisdiction? If she supports that, will she explain what she means by "distinct"? Does she have a simple term for it? What does it mean?

Nia Griffith: The term "distinct" has been used to suggest that we would not need to have separate courts, that lawyers could practice on both sides of the border—we would have, if you like, a separate book, separate legislation, but not a separate court system. As I just said, that is one solution that might be suggested; it is not the only solution. If the Secretary of State can show us what other plans he might have, perhaps he can bring forward something different, but it clearly needs to be looked at. We understand the problem: we have not yet had a solution from the Secretary of State.

The Parliamentary Under-Secretary of State for Wales (Alun Cairns): The hon. Lady has tried to define "distinct legal jurisdiction", but the Presiding Officer in the Assembly, for example, has called for a high court of Wales. Does that fit the "distinct" model?

Nia Griffith: The "distinct" model does not have to have a separate high court: that is the whole point.

Antoinette Sandbach: Will the hon. Lady give way?

Nia Griffith: No; I think I have said enough on this. What we need from the Secretary of State is a solution, a way forward. We need a way to make it possible for

the Assembly to legislate in the areas in which it has competence, which people voted for in 2011, not to make it more difficult. If we remember, the Secretary of State said he was going to deliver,

"the most robust and ambitious package of further devolution to Wales in a generation".

However, it is pretty clear that the consents, the necessity test and the Bill in general would roll back the powers of the Welsh Assembly. The Bill is not robust, ambitious, lasting or clear. In fact, the Secretary of State has failed every one of his own tests. What he has proposed is a second-class settlement, a system that is unduly complex, regressive and unworkable, and we will not support the Bill unless it is radically amended. It is clear that the Secretary of State has badly mismanaged this entire process, including failing miserably to ensure the cross-party consensus that characterised both the Silk and Smith Commissions. In fact, he has not even got consensus within his own party.

Hywel Williams: I am listening to the hon. Lady with great interest. She seems to be batting into the Bill very hard indeed and criticising it. In response to my hon. Friend the Member for Carmarthen East and Dinefwr I think she repudiated the stance taken by her predecessor. Does she think there is a case to be made for reopening discussions between the parties on what the Bill should be, rather than the dog's dinner that we have before us?

Nia Griffith: I would welcome the opportunity to have another look at how the Bill could work, but what I want to hear from the Secretary of State is a willingness to be more open about that, rather than digging this big trench around himself and saying that he is not going to change this, not going to change that, and not going to change the Bill radically.

Stephen Crabb: I hesitate to interrupt the hon. Lady, because I am enjoying her speech a lot, but just to clarify, at no point have I said that I am not going to change this and not going to change that. She has put words in my mouth there. What I have said today is that there are areas of the Bill which we need to look at and change—I have said that very clearly—but also there are fundamental principles behind what we are trying to do, in ensuring the integrity of the UK Government and Parliament and the integrity of the Welsh Government and Assembly.

Nia Griffith: The problem is that we had the hon. Member for Montgomeryshire telling us that he may not even vote for the Bill; he describes it as an abysmal failure. We had the hon. Members for Vale of Clwyd, for Brecon and Radnorshire, for Monmouth, and for Gower—I see he has left his place—and, indeed, the right hon. Member for Clwyd West, all saying publicly that the income tax devolution that will be included in the final Bill is disrespectful to the Welsh people. So there is utter chaos on the Conservative Benches about the Bill. It is a remarkable situation.

Mr David Jones: I need to clarify the hon. Lady's point. I did not say that I would oppose the devolution of taxation powers. What I said was that to impose such powers without a referendum of the Welsh people was, I felt, disrespectful to the people of Wales.

Nia Griffith: That is precisely my point.

Nick Thomas-Symonds: In her excellent speech my hon. Friend gave a series of quotations from Conservative Assembly Members and Conservative Members of Parliament. We certainly need an amended Bill to reduce conflict over the Supreme Court, and we need an amended Bill to reduce conflict in the Conservative party.

Nia Griffith: My hon. Friend put that very well indeed —[*Interruption.*]

The Chair: Order.

Nia Griffith: It is remarkable that we have seen the entire Conservative group in the Assembly, including the leader of the Welsh Conservatives, supporting a series of motions that savage the Secretary of State's Bill. I hope he will take the time to sort out this Bill, but his inability to convince even his own colleagues hardly fills me with confidence.

The Secretary of State said last year that it is vital that we get the Welsh devolution settlement right. For that to happen, the Bill needs a radical rewrite. It is not enough for the Wales Office just to go through the motions and tinker with it at the margins. Yes, we need fewer reservations; yes, we want an end to the necessity test; yes, ministerial consents must follow the Scottish system. But that is not enough to make this shoddy Bill work. Unless it is radically overhauled, Labour MPs will vote against it on Second Reading, not because we do not want the Assembly to have more powers, but for exactly the opposite reason. The Opposition will not vote for a Bill that deliberately rolls back the Assembly's powers, makes it harder to pass laws and will almost certainly lead to thousands of pounds of taxpayers' money being wasted on legal challenges.

The Bill is not the clear and lasting settlement that the Secretary of State promised. It is not what the Welsh public voted for in the 2011 referendum. It is poorly drafted, unduly complicated and unworkable. The people of Wales deserve better.

10.31 am

Liz Saville Roberts: It is a great pleasure to serve under your chairmanship, Mr Owen. After the Scottish independence referendum in 2014, the Prime Minister made a promise to the people of Wales that just as the rights of Scottish voters would be respected, reserved and enhanced, so too would the rights of Welsh voters. He promised that Wales would be at the heart of the devolution debate. Since then, the Wales Office has published a draft Wales Bill and presented it as the UK Government's response to the cross-party Silk Commission. However, it was immediately apparent that the draft Bill has utterly failed to deliver the recommendations of the Commission, which the Tories established. I believe that there are people present in this room who were party to that.

Throughout Wales's devolution journey, Plaid Cymru has consistently sought the best possible deal for everyone who has chosen to make Wales their home. That has and always will be our driving motivation as Wales's national party. We hold true to the principle that the people who live in Wales are best placed to make decisions for Wales.

Jonathan Edwards: Does my hon. Friend accept that it is for people living in Britain to make decisions about what is in Britain's best interests?

Liz Saville Roberts: It was distressing to hear about the students in Cardiff who have no one to speak for them. We recognise, however, that not all parties share this view. That is why we agreed to sign up to the Silk Commission—a cross-party Commission with nominees from each of the four parties represented here and in the Assembly, along with academic experts. It carried out extensive engagement and consultation with the public across all parts of Wales. It was a truly representative Commission.

It was deeply disappointing, therefore, to find the Secretary of State then choosing to forego genuine consensus in favour of a process that can only be described as a means of determining the lowest common denominator. Far from being an agreement, as the Secretary of State likes to call it, "Powers for a Purpose" and the resulting draft Wales Bill that we are discussing today fall well short of the consensus that Silk worked so hard to achieve.

The heavy criticism that the draft Bill has received from all sides, including the Secretary of State's party, is striking when contrasted with the consensus previously evident in Wales. What happened to the consensus that Wales's natural resources should be in the hands of the people of Wales? What happened to the consensus that Wales's Welsh language television channel should be in the hands of the people who use it? We find ourselves with a cherry-picked menu that trusts people in Wales to set their own speed limits, but considers drink-drive limits far too complicated.

Jonathan Edwards: I congratulate my hon. Friend on her passionate speech. Does she agree that perhaps the most revealing aspect of these proceedings is the way the new shadow Secretary of State for Wales is distancing herself from her predecessor's position?

Liz Saville Roberts: I cannot say because I was not here at that time, but that is what I understand.

It is interesting that the menu on offer considers water to be too valuable a resource to be left in the hands of the people of Wales, but—fair play—it gives us control over sewage.

I have many concerns regarding the current list of reserved policy fields and will return to this later in my contribution, but I will start by focusing on the foundations of the draft Bill. I should stress first that Plaid Cymru warmly welcomes the move to a reserved powers model as a matter of principle; that is, to move away from the current model whereby the devolution settlement lists areas where the Assembly can legislate, to a model in which the settlement lists areas where it cannot.

There was an unusual and welcome consensus across all six of Wales's biggest parties on the need to move to a reserved powers model over a number of years. This consensus stems from the frequency with which Welsh legislation is challenged in the Supreme Court and the lack of clarity on where responsibility lies, especially when compared with the Scottish dispensation. Moving to a reserved powers model was also about shifting the mentality and attitudes towards devolution. It should

[Liz Saville Roberts]

put the onus on the UK Government to justify why something should be reserved, rather than justifying why something might be devolved—devolution based on subsidiarity rather than on retention.

However, those principles—the foundations of the argument in favour of a reserved powers model—have been lost, and the result is a Bill that is simply not fit for purpose. We have unfortunately gone from a position as recently as May last year where all four parties represented in this Chamber today, as well as UKIP and the Greens, agreed on a way forward, to a position where, I am sad to say, it appears the Secretary of State is the only person who thinks the Bill delivers a workable settlement.

Stephen Crabb: The hon. Lady is making a good and important speech. Agreeing on moving to a reserved powers model, to use her phrase, is the easy bit. Of course, everybody can sign up to the principle of moving to a reserved powers model. The really hard bit is doing the wiring underneath it. How do you do that in the context of preserving the combined England and Wales jurisdiction? Even if one moves down the road of a distinct or separate jurisdiction, one does not get over the complexities. The hard bit is doing the detailed work to get the wiring right to make the reserved powers more able to work.

Liz Saville Roberts: Perhaps that is why the Presiding Officer of the Assembly has asked for a consolidation of previous Welsh legislation, because we are effectively building on the previous conferred models and trying to build a reserved model out of that. That is part of the problem we face. I will return to distinct legislation anon.

We are facing a draft Bill that claws back the powers for which the people of Wales voted overwhelmingly in favour in 2011; a draft Bill that, had it been implemented in that year would have required 20% of the current Assembly's Acts to seek the consent of UK Government Ministers. We are facing a draft Bill that would allow Welsh legislation to be enacted only if it passes no fewer than 10, or perhaps a debatable number of tests on each provision within the Bill in question—certainly a wide range, a battery, of tests. Incidentally, distinguished legal experts have described the tests as

“a failure of comparative legal method”

and claimed that they

“jar with basic constitutional principle”.

Members of the Welsh Affairs Committee have been warned that this could lead to situations whereby legislators would choose to avoid amending the law—a chilling effect—despite it being the better option, for fear of opening a Pandora's box of debate about what constitutes “necessary”.

Perhaps the most concerning legal aspect of the draft Bill is the reservation of criminal law and private law. These are not policy reservations, they are mechanisms—means—necessary for the enforcement of law. They are what animates the law. They will put policies into effect. They were not discussed as part of the St David's day process, and, as Professor Thomas Glyn Watkin told the Welsh Affairs Committee, the introduction of these restrictions

“appears to deliberately ignore the express decision of the people of Wales regarding their Assembly's legislative powers”.

Placing restrictions on the Assembly's ability to make such modifications to the law not only drastically rows back on the 2011 referendum, but also restricts directly elected Welsh Governments from implementing their policies. It is no wonder that so many people have described the Bill as unworkable.

In fairness, it is proposed that the Assembly should be able to make modifications where such modification is:

“(a) necessary for a devolved purpose or is ancillary...to a provision which has a devolved purpose, and (b) has no greater effect on the general application of the private law than is necessary to give effect to that purpose.”

Simple. I hope Members will have detected that I did not understand what I have just said, although I may have said it with confidence. It asks the question of who is to decide whether a modification to the law is necessary for a devolved purpose or whether a modification has no greater effect than is necessary to give effect to a provision's purpose. This is not a matter of semantics and niceties; it is a lawyers' playground.

Mr David Jones: I agree with the hon. Lady. The word “necessary” is unworkable. Does she have an alternative formulation that would define the boundaries between what is and what is not devolved?

Liz Saville Roberts: I will come to that anon, rather than trying to answer briefly and then repeating myself. As I said, this is a lawyers' playground and, exactly as the Secretary of State said earlier, means that we will end up in the Supreme Court, which is what we do not want.

Stephen Crabb: Nobody has argued more forcibly than Plaid Cymru that the Welsh devolution settlement should mirror the Scottish devolution settlement. However, the necessity test, which the hon. Lady has taken a few minutes to malign and attack, appears in the Scottish devolution settlement.

Liz Saville Roberts: It does appear in the Scottish devolution settlement but it appears three times in the draft Bill. In Scotland, it refers to reserved matters but here, it also refers to criminal and private law. That is the significant question.

I challenge anyone to justify making a Government accountable to a judge rather than to a legislature, as the draft Bill effectively promotes. The report released this week by the Wales governance centre at Cardiff University and the constitution unit at UCL states:

“To restrict the choice of National Assembly members in matters likely to form parts of a great many Assembly Acts may be said to undercut their role as primary legislators, and to deny the institution...proper esteem in ‘the union of the nations of Wales and England’.”

The reasons that these mechanisms are listed as reserved is, according to the Secretary of State,

“to protect the unified legal system of England and Wales”.

All the criticisms that the Secretary of State has faced since the publication of the draft Bill—the cries of “unworkable,” “badly drafted,” “overly complex,” and so on—are a consequence of his blind loyalty to preserving

the unified legal system, which has almost unanimously been described to the Welsh Affairs Committee by the legal profession as unnecessary, damaging and paradoxical.

Plaid Cymru, along with many legal experts, believes that it would be a sensible and—crucially—sustainable solution, to create a separate legal system for Wales and the Welsh legislature. As the Wales governance centre's report says,

“it would bring Wales more into the mainstream of sub-state constitutional arrangements in the common law world”.

It is noteworthy that that is also the long-term aim of the Labour Welsh Government.

We acknowledge that it would have financial and practical implications that would need careful consideration but, if the UK Government are serious about delivering a devolution settlement that stands the test of time, they need to adopt a long-term approach. Although that would be Plaid Cymru's preferred solution, we recognise that not all parties have caught up with our position. The same cannot be said, however, for the creation of a so-called distinct but not separate jurisdiction. The evidence that the Welsh Affairs Committee has heard has been overwhelmingly in favour of this solution, as has that heard by the Constitutional and Legislative Affairs Committee in the National Assembly. I suspect that those who remain sceptical of this solution mistakenly fear the practical and financial implications that a separate jurisdiction might have, and do not fully understand—or perhaps do not want to fully understand—the simplicity of what is actually being proposed.

Creating a distinct jurisdiction need not be any more complicated—perhaps this is the definition that we have been looking for—than simply acknowledging in statute the existence of the law of Wales and the law of England that extend to the territory of Wales and the territory of England respectively.

Antoinette Sandbach: Can the hon. Lady explain why Welsh law does not have that current status and why she feels it needs to be put into statute? Surely it has that status already.

Liz Saville Roberts: Because we are arguing about the leeway and lock model, and the necessity clauses in criminal and private law, and that is creating so much complication. With this acknowledgment, we could move ahead.

Stephen Crabb: The hon. Lady is making an incredibly intelligent speech. I was struck by what she said about the geographical boundary and that moving to a distinct jurisdiction is as simple as that. Would she acknowledge that the Welsh Government, through their law making in the Assembly, have the ability to have impacts on reserved matters and matters affecting England? The draft Bill preserves that, albeit with a necessity test. What she is proposing with that geographically sharp distinction ends their freedom to do that altogether.

Liz Saville Roberts: It does seem to be a way forward in dealing with the necessity clauses, which are such a problem. The territory acknowledgement—

Stephen Crabb: That is rolling back.

Liz Saville Roberts: If I may continue, creating a distinct jurisdiction need not entail establishing a separate system of courts and separate legal professions, and it would evidently avoid the costs associated with doing so. It would, however, provide clarity on the territorial extent of the laws of the National Assembly for Wales, thus avoiding the need for the complex and restrictive drafting in the Bill, which has been the subject of such criticism.

The National Assembly does not want to legislate for England. It wants to legislate for Wales, and a distinct jurisdiction would allow it to do so effectively. In the words of the Lord Chief Justice of England and Wales:

“there is no reason why a unified court system encompassing England and Wales cannot serve two legal jurisdictions”.

The Secretary of State can hardly accuse the Lord Chief Justice of being a “nationalist lawyer”.

Returning to the list of reservations more broadly, the draft Bill is 71 pages long. Some 34 of those pages—half of the Bill—is a list of reservations. Provisions need only “relate to” one of the more than 220 matters in that list, making the Bill all the more problematic. As the report by the Wales governance centre and UCL states:

“Complexity is piled on complexity...The potential for legal challenge casts a long shadow.”

As I have said, the shift to a reserved powers model was supposed to be made in tandem with a shift in mentality to determine what needed to be reserved, rather than what might be devolved. It is clear that the Secretary of State has instead facilitated a Whitehall trawl of powers based on no evident principles. If he is serious about creating a lasting devolution settlement, he cannot simply flip the current settlement from the conferred powers model to the reserved model and then just allow Whitehall to pick and choose what powers it wants. The process must be built on the principles of clarity and workability, coherence and subsidiarity.

The Silk Commission expressed hope that the move to a reserved powers model would be an opportunity to rewrite the settlement to remove the defects of haste and inconsistency that have so far marred legislative devolution in Wales. The list of reservations certainly does not reflect that hope. The authors of the report by the Wales governance centre and UCL go as far as to say that

“it even suggests an unwillingness to take Wales seriously.”

In practical terms—this is only to be regretted—it will undoubtedly lead to even more partisan blame-shifting between Cardiff and London, which is the last thing that the public of Wales want or deserve.

The original report from the Wales governance centre, which was released before the draft Bill was published, offered a list of considerations for identifying functions that should be devolved:

“Is its retention...necessary for the functioning of the UK as a state... Does retention of a particular function make the governance of the UK generally less clear or comprehensible?... Does retention of a particular function undermine the workability, stability or durability of the devolution settlement?”

I will not return to the examples, but it is easy to put the reservations listed in the draft Bill through that test and to come up with some obvious questions. Those are the questions that the Secretary of State should be asking himself for each and every reservation in the Bill. He should

[Liz Saville Roberts]

justify each individual reservation. Simply making hundreds of reservations for no good reason is not acceptable. I welcome his comment that he will shorten the list of reservations in the Bill, but I hope he hears the calls of commentators and those of us in this Room today that all reservations need to be individually justified.

The draft Bill has come under heavy criticism from all directions: from academia, business experts, legal experts and all four parties, including the Secretary of State's. The workability of the Bill and the legal drafting—including the necessity tests, ministerial consents and the reservation of criminal and private law—stem from the Secretary of State's obsession with maintaining a unified legal jurisdiction. The same unified legal jurisdiction was the excuse for opposing Wales-only legislation in the 1880s and the creation of a Secretary of State for Wales in the last century. Most recently, it was the reason for not giving Wales a reserved powers model from the outset of devolution. It is an unnecessary and damaging block on Welsh devolution that has affected, and continues to affect, the effectiveness of Welsh governance. The Tory party cannot deny the existence of the National Assembly of Wales, which, by existing, makes self-evident the existence of legislation that is distinct to Wales.

As the Wales Governance Centre and UCL report concludes, there is no quick fix to the legal problems in this draft Bill. It is not possible simply to replace the term “necessary” with an alternative such as “appropriate”. The problem is not terminology but the whole model, which the report calls

“the leeway and lock model”

and which is built around the unnecessary preservation of the unified legal system.

I recognise that the Secretary of State wants to hurry this Bill through and get the job done, but this issue is too important to pass legislation on with a nod and a wink. This Bill will be the foundation upon which the Welsh Government will operate for the foreseeable future—how it will govern health, education and economic development. It is in everybody's interest that the Wales Bill makes devolution work better.

I hope that the Secretary of State will please recognise that the criticisms he faces are not merely political attacks. They are criticisms from experts, legal and otherwise, who want to see something that achieves exactly what he himself says he wants to achieve: a clear and lasting devolution settlement. The Bill as it stands will move us further away from achieving that goal.

Members will have read the conclusion of the comprehensive second report from the Wales governance centre and UCL, which recommended that Assembly Members reject the Bill. The opportunity to shape Wales's constitution does not come around very often. This Bill is crucial to all of us who care about the future of our country, and when the time comes to vote, I do not want to be forced to vote against it. There are many things in the Bill that we welcome: powers over fracking; devolving further planning consenting powers over energy; electoral arrangements; and so forth. I should also take this opportunity to say that we welcome and are grateful for the opportunity to discuss a draft Bill. I think we have discussed it very thoroughly.

For Plaid Cymru—the party of Wales, whose primary purpose is to empower the nation and the people of Wales to run their own affairs—to vote against those powers would be a painful decision. I sincerely hope that the Secretary of State will not force me to do so. I urge him to take these criticisms on board in the constructive spirit in which they are intended, and to make the necessary changes before publishing the Bill itself. Finally, I urge him to reflect on the significance of what he is building. I suggest that the task of reshaping Wales's constitution is far more important than keeping a date with a particular time slot in the parliamentary calendar. I am encouraged by his comments that suggest that the Bill will be drastically altered before it is published, as a result of this pre-legislative stage, but the Bill requires reconstruction and not mere tinkering. The Secretary of State needs to pause, to listen to the concerns of everybody around him and—please—to come back with a different Bill.

10.53 am

David T. C. Davies (Monmouth) (Con): I begin by offering a word of support for the point of order that was raised earlier. The Conservative party, as a party that has always prided itself on providing support for the Welsh language, would be quite happy about and would look positively at the possibility of allowing Welsh to be used during Welsh Grand Committees. Why would we not be? After all, I gather that in the last few minutes alone there has been an announcement of extra funding for S4C, the Welsh language television channel, which, of course, was set up by a previous Conservative Government. The Conservative party will always be a huge supporter of the Welsh language.

I find myself in a slightly difficult position in talking about this Bill, because even as we speak, of course, members of the Welsh Affairs Committee are considering their own positions on the draft report, which I hope will be a unanimous report full of recommendations about this Bill. Obviously, as has become clear already, different Members from different parties, and even different Members from the same party, have taken somewhat different positions on this Bill, so talking about it is challenging. In fact, when it comes to trying to get a unanimous Bill through, I think I know how the Prime Minister feels in Europe.

Consequently, I will skirt around some of the issues. I understand the wish of the Government and the Minister to bring some clarity to the devolution settlement—I certainly support that principle. However, I have to put on record my disappointment over the issue of taxation. I have been around long enough to know which way the wind is blowing and I can see what is going to happen. I have to say, with all due respect to the Minister, I personally think it would have been better to have a referendum.

One thing I want to talk about is scrutiny, because regardless of what people have been saying, it is clear to me that this Bill will lead to the Welsh Assembly having significant further powers when it finally goes through, and one issue that has been raised all the way through our Select Committee evidence has been the Welsh Assembly's ability to conduct good scrutiny. It has become even more important that it can do so because of the extra powers that it can have.

There are two areas where the scrutiny process could be improved. The first, of course, is the Assembly Committees. They are the equivalent of our Select Committees. The Select Committee process, ever since the late 1970s, has been one of the great success stories of Parliament, but the reform that happened in 2010, when Select Committee Chairs started to be elected by all Members of the House, was very important. I cannot understand how those of us who were here before that could have tolerated a situation in which party leaders were simply sticking in people who they thought would be compliant and handing out those positions almost as a kind of prize.

That system was totally unacceptable, and nobody would ever go back to it, yet we still have it in the Welsh Assembly, and there have been controversies where leaders of various political parties have allegedly removed people or put people in place as Select Committee Chairs because they held a view that was more likely to be supportive of the political party that they represented. Even the suggestion that that could have happened undermines confidence in the process, so I think that the situation is unacceptable and that somehow we ought to persuade the Welsh Assembly Members of the success of the reforms that have been made in Parliament.

Antoinette Sandbach: That was proposed by Assembly Members, including Lord Elis-Thomas, myself and Nick Ramsay in the current Assembly. Very regrettably, those proposals were not taken up, largely because the party leaders want to hand out the baubles of chairmanships of Committees, and it allows them to control the casting votes in those Committees. It is—

The Chair: Order. Before the democratically elected Chair of the Welsh Affairs Committee continues, I point out that we are talking about this draft Bill in this House, not procedures in the National Assembly.

David T. C. Davies: Thank you, Mr Owen. If I may, I will continue not so much on Select Committees, because that was a side issue, but on the overall issue of scrutiny. A lot of evidence came to us from people who were basically calling for there to be more Welsh Assembly Members, and they included the Speaker of the Assembly. I want to pick up on that, because one thing that I said when I campaigned against the Assembly in the late 1990s was that it would be a case of 60 people doing a job that was previously done by three—then, of course, we had two junior Ministers. In one sense, I got that one wrong, as we all did, because of course in Parliament there are 1,400 people who can scrutinise legislation: Members of the House of Lords and Members of the House of Commons. I think that in the Welsh Assembly there are 13 Ministers and junior Ministers, which leaves 47 people, or thereabouts, who can actually scrutinise legislation. That clearly puts them at a disadvantage, and various people have suggested various solutions to the problem over the years.

One suggested solution was that scrutiny could be conducted by the Welsh Grand Committee or even by the Welsh Affairs Committee. I would not mind putting myself forward for such a role, but in reality it would be completely politically unacceptable for Members of Parliament to scrutinise Welsh Assembly legislation.

Another solution that has been offered is some kind of Ty'r Arglwyddi—a Welsh House of Lords—but again that would be politically very difficult to get through and would involve huge cost, so people have started talking about more Assembly Members. That was the solution put to us in the evidence we took. I believe that Rosemary Butler mentioned a figure of 80 to 100 Assembly Members—I do not want to put words in her mouth. David Melding said something similar. We were definitely being told by one witness after another that we needed between 80 and 120 Assembly Members to do the job, rather than 60, but I think all of them recognised that that would be a very difficult sell to the public, so respectfully I want to put forward an alternative solution, based on the thought that, assuming this Bill goes through in some form, the Assembly will have the extra powers and there will be a need for a much higher level of scrutiny than there is currently.

I think there is an obvious solution. We have 22 local authorities. I believe that those local authorities could easily send four members, based on some sort of party balance, to sit in the chamber of the Welsh Assembly—perhaps on one day a month. They could carry out good scrutiny of the legislation that is being passed. They would have a democratic mandate to do that because they would all be elected. They would have the expertise to do it because local authority members often carry out the functions of legislation passed by the Welsh Assembly, particularly in education and social services, and they will clearly be in a position to know what will work and what will not work. I am not suggesting for one moment that local councillors should be able to block or overturn legislation, but they could have a role in forcing the Assembly to think again and add amendments.

Geraint Davies: Does the hon. Gentleman accept that in such a model there would be a tendency for more money to go towards local authorities and for less money to go towards health?

David T. C. Davies: There would clearly be pressure from local authority members to reconsider the local government funding formula, and I assume that members from areas such as Brecon and Monmouth would want to do that because, despite the Minister giving extra money to the Welsh Assembly, areas such as Monmouthshire are seeing a huge cut in funding, and there is absolutely no reason for that. Brecon is even worse, because I believe that about 4%—

The Chair: Order. The hon. Gentleman is drifting slightly from the Bill. I would expect him, as Chairman of the Select Committee on Welsh Affairs, to be succinct in both time and subject matter.

David T. C. Davies: I can take a hint. There is a good argument from local government members for allowing such a committee to take place.

I hear some of the criticisms of the Bill, and I hear criticisms of the English votes for English laws mechanism. I say to the hon. Member for Wrexham, who raised the criticism, that we were making those arguments in the 1990s. We—that is to say I—lost that argument. There is a recognition that Wales will be able to do things in

[David T. C. Davies]

health and education and that England will have no part in that. It is not unfair or inconsistent to say that the English should be able to take the same decisions. Of course people will be affected by that. There always have been and always will be people who have their health treatment, or who go to school or university, on one side of the border but who live on the other side. That was the case in the 1990s, when the Welsh Assembly was set up. All the Government have done is to bring a slightly consistent view to it. If it discourages Members of the Welsh Assembly from asking for yet more powers because they are afraid that their party colleagues might lose control over other things, such as policing, then as a Unionist I am pleased for it. It is a good thing and a step forward.

Kevin Brennan: Disgrace.

David T. C. Davies: It is not a disgrace. It is no more of a disgrace than the Welsh Assembly in the first place, which I argued strongly against.

Kevin Brennan: The Welsh Assembly was established—the hon. Gentleman knows this well, because he and I were on opposite sides of the argument back in the late 1990s—after a long debate, after a referendum and after considerable parliamentary time and scrutiny was devoted to it. His party made Members, including himself, second-class MPs by using the mechanism of the Standing Orders of this House. It is a constitutional aberration and a disgrace.

David T. C. Davies: It was a manifesto commitment, and people voted for a Conservative Government because of that express manifesto commitment. If the hon. Gentleman went down to the streets of England and said, “Do you think that Welsh MPs, who are not allowed to have any say over what happens to the health service in Wales, should be able to tell the English what to do?”, I know what the answer would be. The Government are carrying out a manifesto commitment that was democratically voted for, and it is completely consistent with what Opposition Members have done. [Interruption.]

The Chair: Order. The hon. Gentleman is absolutely right that there was a Conservative commitment. We have also had long debates on it in the past. It is not the purpose of this Grand Committee to continue those debates. I ask him to bring his remarks to a close.

David T. C. Davies: Thank you, Mr Owen. I would simply say one last thing: as somebody who was opposed to the Welsh Assembly, I completely accept that it is there forever. I hope that we will not constantly see more powers handed over to it. I see powers as being not a one-way street but possibly a two-way street, but there will be people voting at the next Assembly elections in May who were barely born when it was set up, so the idea that we can somehow scrap it has now long gone. Opposition Members have said that matters affecting Wales should be decided in Wales, which is an interesting principle. I would like to see matters affecting Britain being decided in Great Britain, which is why I will be

joining the Vote Leave campaign at some point this afternoon. I look forward to the support of Plaid Cymru Members.

11.5 am

Ian C. Lucas: I am interested by that characteristically reflective speech from the Chairman of the Welsh Affairs Committee. I am pleased to follow it and will pursue some of the points he raised.

Academics do not generally favour demolitions, but anyone who attended yesterday evening’s briefing on the draft Wales Bill by the Wales governance centre at Cardiff University and the constitution unit at University College London saw an exception to the rule. It exposed the incoherence of the draft Bill that we are considering today, and it is clear that, unloved and unsupported as it is, it will effectively proceed no further in its present form. It is yet another example of constitutional vandalism, fraying the edges of the United Kingdom’s constitution while diminishing the governance of the UK as a whole. As Vernon Bogdanor, professor of government at King’s College London, argued in a lecture in the House of Lords last night, we need a constitutional convention to address the long-term future of constitutional arrangements in the UK.

Almost unseen, this Secretary of State for Wales has presided over the sidelining of Welsh MPs on issues that directly affect the people whom we represent. Representatives are elected from north Wales to play a part in the governance of foundation hospitals in England but, under the EVEL proposals, MPs from Wales will be excluded from stages of legislation affecting those hospitals. The reality is that the Conservative position is illogical and does not in any way reflect the position on the ground. Moreover, the Conservatives have refused to apply the EVEL principles to Wales. There are no Welsh votes for Welsh laws and no Scots votes for Scots laws. Even though there are devolved institutions, some issues that directly affect Wales are not devolved to the National Assembly. S4C is one example. Issues relating to S4C, which is precious to Wales, could be decided by a majority of English MPs, overriding the views of Welsh MPs. The rules for English MPs do not apply to Welsh MPs.

Jonathan Edwards: Going back to the hon. Gentleman’s point about a constitutional convention, does he support the comments of the former right hon. Member for Neath, who now sits in the other place? He made the case for a confederal model, whereby the historic nations would decide what powers they wanted to be held in their part of the state and then an agreement would be made at the UK level, as opposed to the current model, whereby the UK decides what is devolved down to the historic nations.

Ian C. Lucas: I do not think that I can deal with the constitutional question in response to an intervention, but I welcome any consideration or detailed assessment of the constitution as a whole. I want to get away from the principle of trying to deal with such issues piecemeal across the United Kingdom, which is a massive mistake.

Alun Cairns *rose*—

Ian C. Lucas: I am not going to give way to those on the Front Bench, because they have had far too many interventions.

Craig Williams: Will the hon. Gentleman give way to me?

Ian C. Lucas: I will give way to the Back Bencher opposite.

Craig Williams: The hon. Gentleman touched on S4C. Does he welcome the fantastic announcement that its budget will be protected by this Parliament and this Government?

Ian C. Lucas: I do welcome that. I tabled parliamentary questions on that very issue earlier this week. I am pleased that Welsh MPs across the Chamber have had a strong voice in the matter.

Hywel Williams: Will the hon. Gentleman give way?

Ian C. Lucas: I will make a little progress, because I am conscious that others want to speak.

I want to turn to the Chairman of the Welsh Affairs Committee's comments. The EVEL proposals, appalling as they are, actually contain a kernel of something that could take constitutional considerations further. In general, I welcome the introduction of geographical Committees in the UK Parliament, because the public do not want more politicians. At the heart of Tony Blair's defeat on his proposals for a north-east regional assembly was the powerful image of such an institution being a white elephant. Basically, for the general public it was unacceptable to have yet more politicians—the very problem that the hon. Member for Monmouth mentioned earlier. The creation of an English Grand Committee made up of MPs who are already elected creates a body capable of scrutiny with no additional costly elected members. It is a possible model for the scrutiny of legislation and budgets not only in England but throughout the UK.

As an MP from Wales, I am conscious of the differentiation of roles created by the devolution settlement across the UK. Some political roles are devolved to the Welsh Government, the most prominent of which is health, yet my constituents have a limited appreciation of the level of government that deals with their issues. Frankly, they do not care. They think that if they have a problem that is of sufficient importance for them to go to their MP about it, he should deal with it. That view extends not only to matters devolved to the Welsh Government. Barely a weekly surgery goes by without an issue being brought to me that is the responsibility of the local council. I deal with such issues, and I know that my parliamentary colleagues in England do exactly the same, yet the parliamentary process makes little concession to either the devolution settlement or the developed role of MPs as constituency advocates.

Politicians at different levels of governance operate as if they were on different floors of an office block that governs: local government on the ground floor; devolved jurisdictions, Members of the Scottish Parliament, Assembly Members or Members of the Legislative Assembly on the second floor; Members of Parliament on the third floor; and Members of the European Parliament on the floor above them. The time is right, in appropriate cases, to put those representatives on the same floor to scrutinise together in the interests of our constituents. The EVEL proposals, which suggest the creation of a

separate parliamentary Committee to deal with appropriate legislation on a geographical basis, give an indication of how to achieve that.

For many years, as an MP from Wales I have advocated MPs and AMs working together on joint Committees for the benefit of our constituents. That should be considered further in the draft Bill. The health issues I have set out are examples of issues that need joint work to reflect the reality of NHS provision to my constituents. There has been great resistance to this proposal. Some see it as undermining the principle of devolution, but devolution is not separatism. It is incumbent on those of us who want devolution to work to work together, not separately, to make it work in practice. We must leave separatism to the nationalists.

Parliament needs to recognise in its procedures the role of devolved institutions by incorporating them into the scrutiny process. It must also recognise that, in England, that will mean MPs working in joint Committees with local government. Such Committees must, of necessity, be constituted on a regional basis. Just as the Conservatives propose creating a Committee of MPs in England in their EVEL proposals, Labour should go one step further and create Committees of MPs on a regional basis within England to scrutinise matters relating to that region. In England, that will mean extending Committee membership to local government leaders. In Wales and Scotland, it will mean Scottish Parliament and Welsh Assembly Committees admitting MPs, and parliamentary Committees admitting MSPs and AMs, as well as, where appropriate, local government leaders.

In appropriate cases, such Committees could extend across national boundaries, so that they could deal with issues that transcend boundaries, reflecting the reality of the situation on the ground for, for example, constituents in the part of the cross-border region of England and Wales that I represent. Such Committees would more accurately reflect the present governance of the UK. Governance is a process that integrates different levels of government, and such Committees would do the same.

Mr David Jones: I have a great deal of sympathy with what the hon. Gentleman is suggesting. Does he agree that the issue is not simply one for parliamentarians but for Government Ministers—the Executive—as well? There should be far more discussion of the alignment of policies between Governments.

Ian C. Lucas: I agree with that entirely. I do not pretend that what I have said this morning is a solution, but it is a starting point for a debate. The right hon. Gentleman knows that there is an appetite for cross-border working in Parliament, as shown by the recent establishment of the all-party parliamentary group for the Mersey-Dee and north Wales region.

The concept of regional representation in Government and in Parliament is neither novel nor past. As Prime Minister, Gordon Brown introduced regional Ministers. They were abolished by the coalition Government in 2010, but they were very effective. I dealt with them when I was a Minister in the Department for Business, Innovation and Skills. The Conservative Government have now created a Minister for the northern powerhouse. We should have a Committee to hold such people to

[*Ian C. Lucas*]

account. Bit by bit, the Government are adopting the model through their proposals for regional devolution. To develop regional institutions within Government, we need the parliamentary equivalents. To work with other organisations, we need local government and devolved institutions to take matters forward. The move should be against the separatism that the Government have promulgated through EVEL. We should establish a Committee of elected representatives—MPs, AMs and councillors—who can hold the institutions of Government to account and more properly reflect the situation on the ground.

The tragedy of far too much of the constitutional reform since 1999 is that it has tinkered in a piecemeal way with our constitution, and the draft Bill is another example. Unfortunately, the Government are unlikely any time soon to consider an overall constitutional convention, which is what we need. Those of us who dearly love the United Kingdom need to agree to create such a convention to regularise the rules that we have. Until that happens, the proposal for a regional Committee, which can, if necessary, transcend boundaries, is a good way of taking forward a more accountable and effective governance structure that would address the needs of the people whom we represent.

11.17 am

Mr David Jones (Clwyd West) (Con): It is a huge pleasure to serve under your chairmanship, Mr Owen. May I commence by congratulating the hon. Member for Llanelli on calling for this Welsh Grand Committee today? I have often felt that this Committee contributes more than is frequently recognised to the political life of Wales, and I am glad that we are sitting here again. I also congratulate the hon. Member for Dwyfor Meirionnydd on an excellent contribution to the debate.

This forum is important for Welsh MPs. I am pleased that we have the opportunity today to discuss the draft Wales Bill, which is the latest in an increasingly long line of measures put forward by successive Secretaries of State to address devolution in Wales. Our principal problem is that the devolution settlement as originally implemented was grossly defective. It was put in place in a hurry by the Blair Administration, and successive Governments since have had to make attempts to repair the damage done to the constitution of the United Kingdom as a consequence.

Like the Secretary of State, I started my journey as an avowed devo-sceptic. I have since become, as has the Lord Murphy of Torfaen, a devo-realist, because it is clear that devolution will be a feature of the constitution of this country, at least for the foreseeable future. I congratulate the Secretary of State on attempting to put right what is in my view a defective settlement. However, I have huge concerns about this draft Bill, which I shall touch on later. Many have called for a move from a conferred powers model of devolution to a reserved powers model. The view that I have always taken, as has my right hon. Friend, is that simply to do that is not a panacea. We can have the same issues, but in mirror image, so to speak.

The proposed reserved powers model addresses some issues of concern, most importantly those of the silent subjects, which proved so problematic in the Agricultural

Wages Board case. However, it is perfectly clear from today's contributions in this Chamber and externally from experienced commentators that what is now proposed does not go far enough.

I do not want to deal with the specific provisions of the Bill at great length. However, I applaud my right hon. Friend for the reservation of policing from the devolution settlement. Policing is one of the three great public services. From a pragmatic point of view, it is perfectly clear that the Assembly has not so far proved successful in their stewardship of either health or education. I believe to confer competence for policing would be a step too far.

Jonathan Edwards: Is it the right hon. Gentleman's position that policing should be re-reserved in the case of Scotland and Northern Ireland?

Mr Jones: I believe that is correct in the case of Wales. England and Wales, as we have heard at length today, is a conjoined jurisdiction. It makes far more sense for such an important public service as policing to be reserved. Furthermore, from a pragmatic point of view, let me say quite bluntly that I do not believe the Welsh Government would be able to handle policing. I think it would be beyond them.

I also have concerns about the proposed devolution of competence for harbours. Harbours are an important part of our economy. Again, I have concerns about the capacity of the Assembly to deal with them. On what may appear to be a minor matter, I think that the proposal to devolve competence for speed limits is, quite frankly, potty.

The problem with the draft Bill is not what is devolved and what is reserved. Those are matters for discussion, negotiation and rethought. The principal problems lie in schedule 2. This has been the subject of much discussion this morning. The core of the problem lies in the use of the word "necessary". To decide the limits of devolution by an interpretation of the word "necessary" is a positive invitation for many more references to the Supreme Court.

It should be possible to arrive at a terminology. I had hoped that, when I intervened on the Shadow Secretary of State, she might have given thought to this matter and have a formulation herself, but it would appear not. Nevertheless, I suggest to my right hon. Friend the Secretary of State that considerable further thought needs to be given to the use of the word "necessary". Otherwise, we will see many more cases referred to the Supreme Court, which is the last thing that anyone in this Chamber wants.

On the expression "reserved authority", I see the need to refer to it. Increasingly, legislation emanating from the Assembly has imposed greater and greater burdens on non-devolved authorities and Ministries of State. It is quite right that those burdens should not be imposed and I believe, therefore, that they should be constrained. The expression "leeway and lock" has been used by the Wales governance centre in its recent paper. "Leeway and lock" sounds like the opening words of the 1951 test match. Nevertheless, I believe that it is important to define the area of competence wherein the Assembly operates and it is absolutely right that it

should not be passing legislation that has unforeseen consequences on the reserved authorities referred to in the draft Bill.

It is right that, before any such burdens are imposed, the consent of the relevant Minister should be sought. It is, after all, the flipside of the provision that provides that where the Assembly's competence is being invaded, the legislative consent motion should be sought. This can also be addressed by making provisions for a timescale

within which consent can be given, or, as I think the Wales governance centre suggested, by a presumption in favour of a consent, unless consent is withheld within a certain time.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Welsh Grand Committee

DRAFT WALES BILL

Wednesday 3 February 2016

(Afternoon)

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Draft Wales Bill

Resumption of general debate.

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Sunday 7 February 2016

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The Committee consisted of the following Members:

Chairs: †MR DAVID HANSON, ALBERT OWEN

Andrew, Stuart (*Pudsey*) (Con)
 Bebb, Guto (*Aberconwy*) (Con)
 Brennan, Kevin (*Cardiff West*) (Lab)
 Bryant, Chris (*Rhondda*) (Lab)
 † Cairns, Alun (*Parliamentary Under-Secretary of State for Wales*)
 Clwyd, Ann (*Cynon Valley*) (Lab)
 † Crabb, Stephen (*Secretary of State for Wales*)
 † David, Wayne (*Caerphilly*) (Lab)
 † Davies, Byron (*Gower*) (Con)
 † Davies, Chris (*Brecon and Radnorshire*) (Con)
 † Davies, David T. C. (*Monmouth*) (Con)
 Davies, Geraint (*Swansea West*) (Lab/Co-op)
 † Davies, Glyn (*Montgomeryshire*) (Con)
 † Davies, Dr James (*Vale of Clwyd*) (Con)
 Doughty, Stephen (*Cardiff South and Penarth*) (Lab/Co-op)
 † Edwards, Jonathan (*Carmarthen East and Dinefwr*) (PC)
 Evans, Chris (*Islwyn*) (Lab/Co-op)
 Flynn, Paul (*Newport West*) (Lab)
 † Griffith, Nia (*Llanelli*) (Lab)
 † Harris, Carolyn (*Swansea East*) (Lab)
 Hart, Simon (*Carmarthen West and South Pembrokeshire*) (Con)
 † Hoare, Simon (*North Dorset*) (Con)

Irranca-Davies, Huw (*Ogmore*) (Lab)
 † Jones, Mr David (*Clwyd West*) (Con)
 † Jones, Gerald (*Merthyr Tydfil and Rhymney*) (Lab)
 † Jones, Susan Elan (*Clwyd South*) (Lab)
 † Kinnock, Stephen (*Aberavon*) (Lab)
 † Lucas, Ian C. (*Wrexham*) (Lab)
 Lumley, Karen (*Redditch*) (Con)
 Moon, Mrs Madeleine (*Bridgend*) (Lab)
 † Morden, Jessica (*Newport East*) (Lab)
 † Morris, David (*Morecambe and Lunesdale*) (Con)
 † Rees, Christina (*Neath*) (Lab)
 Sandbach, Antoinette (*Eddisbury*) (Con)
 † Saville Roberts, Liz (*Dwyfor Meirionnydd*) (PC)
 Smith, Nick (*Blaenau Gwent*) (Lab)
 Smith, Owen (*Pontypridd*) (Lab)
 † Stevens, Jo (*Cardiff Central*) (Lab)
 Tami, Mark (*Alyn and Deeside*) (Lab)
 † Thomas-Symonds, Nick (*Torfaen*) (Lab)
 † Williams, Craig (*Cardiff North*) (Con)
 † Williams, Hywel (*Arfon*) (PC)
 † Williams, Mr Mark (*Ceredigion*) (LD)

Glenn McKee, Liam Laurence Smyth, *Committee Clerks*

† **attended the Committee**

Welsh Grand Committee

Wednesday 3 February 2016

(Afternoon)

[MR DAVID HANSON *in the Chair*]

Draft Wales Bill

[Relevant documents: oral evidence taken before the Welsh Affairs Committee on 26 October, 9, 16 and 30 November and 9 December 2015, and written evidence to the Committee, reported to the House on 16, 23 and 30 November and 7 December 2015, on the pre-legislative scrutiny of the draft Wales Bill, HC 449.]

2 pm

Question again proposed,

That the Committee has considered the matter of the draft Wales Bill.

The Chair: I advise hon. Members that about nine hon. Members are seeking to catch my eye before the end of the debate. I intend to call the winding-up speeches from 3.30 pm. The right hon. Member for Clwyd West was on his feet.

Mr David Jones (Clwyd West) (Con): Welcome to the Chair, Mr Hanson.

Before we adjourned, I was expressing both support for what the Wales Office is seeking to do via the Bill and concern about whether the Bill is the best vehicle for achieving that. The difficulty we have in this country is that, as other hon. Members have said, we have experienced piecemeal devolution over many years, going back to the original defective settlement imposed in 1999. We have asymmetric devolution, which that is not necessarily a bad thing. One of the strengths of this country is the inherent flexibility of its institutions, so I do not think that the asymmetry is the problem. I think that having had years of piecemeal devolution, we are continuing the process and keep tinkering with the devolution settlement. We are trying to fix the big end when what we need is a completely new engine.

I commend to members of the Grand Committee the work being carried out by the Public Administration and Constitutional Affairs Committee, of which I am a member, as are the hon. Members for Merthyr Tydfil and Rhymney and for Newport West. That Committee is carrying out an extensive inquiry into the British constitution, and evidence we have heard in recent weeks follows a pattern, which is that progress of further devolution is proceeding too quickly, with too little thought and, frankly, not in a holistic manner.

For example, we visited the Welsh Assembly some weeks ago and were told by Dame Rosemary Butler, the Presiding Officer, that changes to the devolution settlement are being rushed. Only yesterday we heard evidence from Lords Forsyth and Lang, former Scottish Secretaries, who expressed the same concern; and that concern was echoed in the report by the Wales Governance Centre published yesterday. I know there is anxiety and keenness within the Government that the Bill should proceed as quickly as possible, but I ask my right hon. Friend the Secretary of State to give careful consideration to the

evidence that is emerging, not only from the Public Administration and Constitutional Affairs Committee, but from external sources, that if we carry on at this pace of reform, we are going to make an even bigger mess.

Suggestions have been made, for example by the First Minister, that there should be a constitutional convention. That suggestion has been echoed to a certain extent by Lord Norton of Louth, who has called for a constitutional convocation. There have also been suggestions that a high commission on the constitution should be established. There is merit in giving consideration to all those suggestions.

What we are all seeking is a constitutional settlement that ultimately will settle the question of devolution. I remember when I arrived in this House in 2005 being told by Lord Hain, who was then Secretary of State, that the Bill that became the Government of Wales Act 2006 would settle the issue of devolution for Wales for a generation, and here we are talking about it again. There has to be a terminus to this process and it has to be a terminus that is fair and reflects all the interests of all the people of this country. I do not believe that the bolt-on approach represented by the Bill is the right approach.

I entreat my right hon. Friend the Secretary of State not to proceed at such great speed. I know that, from the point of view of the press, there is tremendous attraction in a Wales Bill being introduced to the House on 1 March—the St David's day Bill. We need something much more substantial than that. While fully applauding my right hon. Friend's desire to put right the mess that we inherited from previous Parliaments, I ask him to think about pausing the process. I ask him to give the whole process more time, to listen to the interested parties who are now increasingly making their voices heard, and to consider with his colleagues in Government putting in place a process that gives the people of this country the opportunity to have a devolution settlement that endures, not one that—God forbid—we have to revisit in five years' time.

2.5 pm

Nick Thomas-Symonds (Torfaen) (Lab): It is a pleasure to serve under your chairmanship for my first Welsh Grand Committee, Mr Hanson.

Our starting point has to be what the Secretary of State for Wales says in the foreword to the draft Wales Bill:

“We are determined to ensure the people of Wales have a clear and lasting devolution settlement... For too long Welsh politics has been dominated by constitutional debates about what is and is not devolved.”

I fear that, as it is, the draft Wales Bill is likely to create more and more debate, much of which will end up before the UK Supreme Court unless stringent and significant changes are made to the Bill. I shall give a few examples, starting with the issue of ministerial consent.

The provisions on ministerial consent on page 73 of the draft Bill mean that if the Assembly wants to legislate in a way that affects the power of a UK Government Minister, it must first ask for consent. In and of itself, that creates great uncertainty, because the powers of UK Government Ministers are set out in hundreds of statutes. Let me give one example of the kind of absurd consequences that could arise and why the provisions are an example of devolution being rolled back, not forward:

the Control of Horses (Wales) Act 2014. Reservation 184 in the draft Bill is about arbitration. Section 7 of the 2014 Act contains a dispute resolution procedure to resolve disagreements between horse owners and local authorities. Under the draft Bill, that Act would have to be subject to ministerial consent. There we have it: horses in Wales having to be subject to a UK Government Minister in London. I do not know the Secretary of State's view on horses, but no doubt we will have to find out if the draft Bill becomes a permanent fixture.

The Silk Commission said that one way to resolve uncertainties would be to transfer the powers in the devolved areas. I urge the Secretary of State to look at ministerial consents to see whether there can be such a simplification. Otherwise, we will simply be piling up work for the UK Supreme Court.

In an intervention on the Secretary of State this morning, I raised the issue of reserved powers. Yes, of course, a reserved powers model can work extremely well. I think the right hon. Member for Clwyd West pointed out that my predecessor as MP for Torfaen, who was twice Secretary of State for Wales, had spoken about the reserved powers model. There is nothing wrong with the model. The problem is that, first, it has to be pretty clear and, secondly, the number of powers that are and are not reserved has to be in line with the expectations of the Welsh people.

Conservative Assembly Member David Melding said of the reserved powers in the draft Bill:

"They are numerous. Quite literally, they cannot be counted, although most who have attempted enumeration put the figure somewhere above 250. This is ominous."

The Secretary of State really should take that into account as he looks at how he can redraft the Bill. Dame Rosemary Butler put it this way:

"there is significant roll-back in the reservations themselves. A large number of matters which are not exceptions from the Assembly's current competence have been made into reserved matters in the draft Bill."

That is devolution being rolled back.

The Secretary of State for Wales (Stephen Crabb):

The hon. Gentleman highlights an important point and refers to comments by the Presiding Officer of the Welsh Assembly. Does he agree with the Presiding Officer's presumption that all of those silent subjects were intended to be devolved, and therefore the Supreme Court judgment on the Agricultural Sector (Wales) Bill effectively makes all of those subjects devolved now if they can be linked in some way to a devolved purpose? Alternatively, does he agree with me that we should go back and understand Parliament's intentions in making the existing devolution settlement and then extend the devolution boundary by a political process, rather than rely on the courts?

Nick Thomas-Symonds: With the greatest of respect to the Secretary of State, I do not think he has quite picked up the point I am making, which is this: the Assembly has already legislated on a number of matters that, under this Bill, it will have to seek his consent to legislate on. Another example of where his consent would have been required is the Human Transplantation (Wales) Act 2013. I am sure he is a generous man with his consent, but the reality of the situation is that where the Assembly has been able to legislate, the Bill now requires his consent to do it. That is a roll-back of devolution; it is as simple as that.

Stephen Crabb: The hon. Gentleman is getting confused. Under the existing settlement, the Act to which he just referred required ministerial consent. That consent was given, with no problem at all. Under the new settlement, because that Act has an impact on reserved matters or functions of a UK Minister of the Crown, it would still require consent. We should not see consents as some great problem. We need a way of regulating the interface between the UK Government and the Welsh Government.

Nick Thomas-Symonds: With respect, the Secretary of State has to understand that simplicity is the most important thing. The Silk Commission said—this is what the Presiding Officer of the Welsh Assembly was also referring to—that there must be scope for the situation where consent is not required in the 20 devolved areas. I cannot understand why the Secretary of State cannot see that. The roll-back of the devolution process is the danger of the Bill.

Stephen Crabb: Confused.

Nick Thomas-Symonds: If we want to talk about confusion, let us move on to necessity, because we will have some fun on that with the Secretary of State.

Let us be clear what the test of necessity actually means. The Assembly has to be convinced that Acts are necessary before it can act—that is what the necessity test says. There are plenty of examples in the Bill; there is one on page 69, if Members want to look at it. Let me tell the Secretary of State what the Wales Governance Centre at Cardiff University said:

"The concept of necessity-testing in the draft Bill represents a failure of comparative legal method... The use of necessity-testing in the draft Bill jars with basic constitutional principle."

Why does it say that? It says that because necessity-testing is a concept that has essentially been taken from Scottish law, but in Scottish law it would refer only to cases where the law has to be modified in a very narrow, consequential way in relation to reserved matters, and not in the very broad sense that it is being attempted to include in the Bill. That is the central problem.

This morning, the right hon. Member for Clwyd West kept asking, "What do you replace necessity with?" It is true that we could use a different word. We could use "reasonable" or "sufficient" if we wanted to, but none of that would deal with the basic problem, which is that that would ultimately have to be a subject of interpretation by the judiciary. The real problem is that the Secretary of State has to revisit the framework in which the necessity test arises; it has to be about the overall framework.

I practised in the courts in England and Wales for many years, and one problem is that the necessity test could end up before the criminal courts and the civil courts on a daily basis. That is what the Law Society of England and Wales has said about the extraordinary worry that there is about the Wales Bill. We could have the law being challenged on an almost daily basis, which certainly cannot be what the Secretary of State intends.

Further to those confusions, David Melding AM—my new favourite Conservative—said on 13 January:

"Judicial review could become, if not the norm, then far from the exception. Welsh legislation would be drafted in an atmosphere of profound uncertainty, which itself would curtail its scope and ambition. Taken to extremes, the very exercise of the legislative function could be compromised."

[Nick Thomas-Symonds]

My hon. Friend the shadow Secretary of State also referred to that pretty stinging criticism. With all this stuff floating around, I certainly would not mind being a fly on the wall at the next meeting between the Conservative AMs and MPs.

The Secretary of State now has an opportunity to take another look at the Bill. He has previously said, and I take him at his word, that he is in listening mode. I hope that he is still in listening mode and that he is willing to go back and look at the Bill. The organic growth of devolution went from the Government of Wales Act 1998 to the 2006 Act and the referendum, and we are moving another step forward on the journey. We certainly do not want—to change the metaphor—the devolution car to go into reverse. Since the first Welsh Secretary of State took office in 1964, he is the only one under whose tenure the powers of Welsh Members of Parliament have been taken away. Not one of the previous Secretaries of State—

Stephen Crabb: Nonsense.

Nick Thomas-Symonds: Well, find me an example under a previous Secretary of State of English votes for English laws. You will not find one. Secretary of State, do not make a disastrous devolution Bill your second contribution to history.

2.16 pm

Dr James Davies (Vale of Clwyd) (Con): It is a pleasure to serve under your chairmanship, Mr Hanson, as it is to speak in my first Welsh Grand Committee since being elected in May. I am a member of the Welsh Affairs Committee and we have all enjoyed the pre-legislative scrutiny over recent weeks, so I do not intend to speak at length about the issues covered by the Committee, but I do have a few points to make.

The Bill's key feature is delivering a reserved powers model, in theory to create additional clarity and reduce legal challenges, about which we have had some discussion today. We heard from a multitude of witnesses in our Select Committee and received conflicting legal advice from various quarters. I am a doctor, not a lawyer, but the list of reservations must as a starting point accurately reflect what the UK Government intended in their conferred model when the last piece of devolution legislation was passed. The length of the list is not what is important.

Elements of the draft Bill also constitute the delivery of further powers to Cardiff Bay, the basis for which is the St David's day agreement. For those of us in Wales who believe strongly in the United Kingdom, as I believe the vast majority do, the level of government where powers are based should be rooted in common sense and the potential to achieve the best outcomes for the people of Wales, not on the simple expectation of a continual one-way transfer of powers from Westminster to Cardiff.

The general public and, it is fair to say, many politicians are often unaware of where powers are currently held in Wales. We need greater clarity, which will help accountability. The best way of achieving clarity is to ensure, as I said, that constitutional decisions on devolution are based on a strong underlying rationale. The draft Bill contains a few examples of new powers arising from the St David's day agreement of which I would urge further study.

The first is fracking. It is proposed to devolve the licensing powers of the Oil and Gas Authority to the Assembly, but not the licensing powers of the Coal Authority. That is interesting because the Coal Authority licenses underground coal gasification, which, as you will know, Mr Hanson, is the type of unconventional gas extraction of most interest to our part of north Wales. In my opinion, energy production and security is best managed at a UK level, but I am led to believe that some of the decisions made in the St David's day agreement might have been based more on what was in the headlines at the time, and prominent issues of the day, than on the overall picture.

The second issue is speed limits. Local authorities and the Assembly Government control the speed limits that are put in place to increase safety. Unless I am mistaken, what is suggested now is the devolution of the national limits—in other words, the largely un-signposted 30 mph limit in built-up areas, the 60 mph limit and the motorway limit of 70 mph. As we all know, many roads cross the England-Wales border; in fact, people often have no notification that they are moving from England to Wales or vice versa, so is the proposal workable? Is it in any way desirable? Are the cars in use in Wales or the safety of the roads so significantly different that there should be a different policy on a national speed limit? I very much doubt it, and I think the issue should remain reserved. If the powers will not be used anyway, why on earth would we want to devolve them?

The third issue to mention is voting systems. I have no issue with the Assembly having a greater say over its voting system, but do we want confused voters to be faced with a second set of electoral boundaries, a different voting age and so forth? I come back to accountability—there is a risk that politicians will become less accountable.

We have heard voices advocating more separatism in this debate, and that does not reflect the views that I hear in my part of Wales. People are concerned about the success of the local economy and the quality of local services. When services have been devolved, such as in the health service and education, there is often great concern about their performance in Wales.

Jonathan Edwards (Carmarthen East and Dinefwr) (PC): My position is that Wales should be an independent country. Is the hon. Gentleman's position that the National Assembly should be scrapped?

Dr Davies: I respect the view of the people of Wales. I was too young to vote in the devolution referendum, but I would not have supported devolution had I had that choice.

Jonathan Edwards: In 2011?

Dr Davies: No, when the Assembly was first formed.

Local people want to see true devolution to localities, as the UK Government are pursuing, for instance the devolution of business rates in England and planning powers over many offshore wind farms. Sadly, in Wales, all too often we see the centralisation of powers in Cardiff. I urge both the UK and Welsh Governments to devolve to local communities in Wales, and particularly north Wales. They need to empower local authorities and others in north Wales to pursue the issues that are particular to the region, which largely relate to our strong links to the north-west of England.

There is, of course, an economic sub-region spanning north Wales and north-west England, with 50,000 cross-border commutes daily, equating to about 1 million a month. Earlier today I met the North Wales Business Council, which emphasised the need for the North Wales Economic Ambition Board to be allowed to develop into a body with powers analogous to a local enterprise partnership. That would assist the development of a much needed growth deal in partnership with the Cheshire and Warrington LEP.

North Wales clearly has a key opportunity to be part of the northern powerhouse, especially through the upgrading of transport infrastructure. That would be an important way to address deprivation and unemployment in my part of the world. Parts of north Wales have untapped workforce availability, and therefore, an associated cost to the taxpayer through out-of-work benefits. Better links would help the strategic and united growth of the north Wales and north-west region, and the political barriers that have developed post-devolution could be addressed through true devolution—not along the M4 to a very distant Cardiff, but out to the communities of Wales.

2.23 pm

Mr Mark Williams (Ceredigion) (LD): It is a privilege to serve under your chairmanship this afternoon, Mr Hanson. Whether you are calling me to speak from the Liberal Democrat Front Bench or the Liberal Democrat Back Bench, I do not suppose it matters much these days—[*Interruption.*] It is a Bench, that's right.

It is a great pleasure to follow the hon. Member for Vale of Clwyd. He used the word “enjoy” liberally as he reflected on our deliberations and pre-legislative scrutiny in the Welsh Affairs Committee. With no disrespect to our Chairman over there—the hon. Member for Monmouth—it has not exactly been enjoyable, but none the less, the process we have been undertaking is incredibly worthwhile and important.

To respond to a point made by the hon. Member for Vale of Clwyd, is the draft Wales Bill the great talking point in the aisles of Morrisons in Aberystwyth or in the mart in Tregaron? I suspect not. However, the heart of our democracy involves clarity and coherence. People need to know who to go to—whether it is their Assembly Member or Member of Parliament—and what powers such people have. The Secretary of State is right to seek a much clearer devolution settlement through the Bill, and, on those grounds alone it is important that it proceeds.

Many of the points that have been made today are ones that I and my colleagues in the Welsh Assembly have made since the draft Bill was published. There are genuine concerns about the Bill, and the Secretary of State has been big enough and realistic enough to acknowledge that there are challenges. It is a draft Bill, and as part of the process we want it to morph into something more substantive. We will have Second Reading in the Chamber to address many of our concerns.

The draft Bill has a fair number of Liberal fingerprints on it. Its origins were in the coalition Government with the creation of the Silk Commission I and II, the referendum and the St David's day agreement. I was privileged to be part of those discussions. However, it would be difficult for me as a Liberal Democrat to support the draft Bill. We are where we are and part of the process of pre-legislative scrutiny is to seek remedies

to the problems and for the Secretary of State to listen to the overwhelming evidence that expresses those concerns, which has certainly been heard by the Select Committee.

The Secretary of State candidly talked about his history, and his journey to being a devo-pragmatist. I, too, remember those early days on the Select Committee when he did not always have the views he has now. I celebrate that movement towards devolution, whatever the motivation behind it. He has given us a challenge to get a Bill that is right.

As the Select Committee deliberated, it was sometimes quite hard. We had discussions about what really underpins the Bill. Is it an attempt to remedy a failing system based on existing legislation? The right hon. Member for Clwyd West described it as a “bolt-on” and I think he is right in that analysis. It is certainly there to alleviate problems. Is it simply seeking to import a model from Scotland? Maybe parts of it, yes, and there are failings there, because Scotland has a very different system from what we need and require in Wales. If we could start again, I would like to see the principle of subsidiarity embedded in the legislation far more clearly: the notion that powers are best exercised at different levels of government, as close as possible to the people we serve.

The Secretary of State has wisely said that the list of reservations must be diminished, and diminished it must be. I will quickly go through the list of issues controlled by London, not all 267 of them, I hasten to add: hovercraft; knives; pedlars and street trading; dangerous dogs; gender recognition; sports ground safety; driving instruction; auctions and mock auctions; hallmarking; gun-barrel proofing; regulation for the carriage of animals on aircraft; fire safety; pedestrian crossings; traffic signs; exemptions from speed limits; insurance of motor vehicles; coal; the sale and supply of alcohol; misuse or dealing in drugs or psychoactive substances; the classification of film and video recording; licensing and the provision of entertainment and late-night refreshment; betting, gaming and lotteries; Sunday trading; railway services; the Boundary Commission for Wales; the regulation of estate agents; timeshares and package travel and package holidays; the regulation of unsolicited goods and services and trading schemes; railway heritage.

Hon. Members: Hooray!

Mr David Jones: I do not know if the hon. Gentleman is suggesting that all those issues should be devolved to Wales. I notice he mentioned gender recognition. Would that mean that someone could be a man in England and a woman in Wales?

Mr Mark Williams: I thank the right hon. Gentleman, if only because he has given me a chance to catch my breath. Would seeing those powers controlled in Wales mean the unravelling of our constitution and the end of the Union? Should we have not started from the principle that what is devolved to Scotland and Northern Ireland should be devolved to Wales? Better still, if one believes in subsidiarity, should we have not started with the principle that all powers are devolved, and it is for the Secretary of State and Westminster to argue the case for reserving them to Westminster?

However, we are where we are and we have this Bill. The hon. Member for Wrexham, who is not in his place, talked about the need for a constitutional convention and the right hon. Member for Clwyd West said he was

[Mr Mark Williams]

open to the case for that. He described the Bill as a “bolt-on”. That and the devolutionary drift in other parts of the UK points to the need to look at such matters in the round. My party has always believed in a federal Britain, with home rule for Wales, and we need a constitutional convention to look into that.

Some have asserted that there should be a pause and, on balance, I agree. Too many concerns have been expressed, as the Select Committee will reveal at some point in the future. The question is: how much of a pause should there be? If a pause means that we lose a legislative slot for the Wales Bill to carry forward devolution, I would be immensely concerned. However, the issues on which the Secretary of State has openly reflected, such as looking again at the necessity test, or whatever form of words we use for that, ministerial consents and the scale of the list of reservations, are a big body of work that needs to be done urgently.

I would not say that the Secretary of State was disdainful when I talked about the need for robust dialogue with Assembly colleagues, but that dialogue needs to happen. I was privy to discussions between Westminster MPs representing the four parties and our Assembly colleagues and given the level of concern expressed since the draft Bill was published, that needs addressing. There are rumours of delays to the suspected date of Second Reading. I do not expect to get a date at the end of the Committee, but we need to be mindful of that and of the work that needs to be done.

The Secretary of State said that he wants the matters to be settled. The issue of a distinct jurisdiction has gained much traction in discussions, with various questions fired around the Committee today asking people to define what that means. I am not a lawyer—perhaps that is obvious—so I cannot give that definition.

Craig Williams (Cardiff North) (Con): Will the hon. Gentleman give way?

Mr Mark Williams: I will carry on. I hope that the hon. Gentleman will forgive me.

Craig Williams: I hope he answers my question anyway.

Mr Mark Williams: I know his question, but I am not going to give him an answer because he tried it on the hon. Member for Llanelli. A debate is going on about the question of a distinct—not separate—jurisdiction. The genie is out of the bottle and if the Secretary of State wants a resolution—I know he is sincere about that—that issue must be addressed and I think it should be addressed in the Bill.

Sir Paul Silk said that politicians should be open to a review between the Assembly Government and the Westminster Government and a time period of 10 years was referred to, which is probably too long, given the debate that we have had. That issue will not go away. Hon. Members still here in a few years’ time—I hope to be—will have to revisit the Welsh jurisdiction issue unless it is dealt with soon.

Stephen Crabb: The hon. Gentleman is making a good speech. I urge a bit of caution in the discussion about distinct and separate jurisdiction, because I fear

that history is slightly repeating itself. Two or three years ago in Welsh Grand Committee and on the Floor of the House people were saying, “We need the reserved powers model,” but simply to say that we will move to a distinct jurisdiction would not tackle the problems of the complexities of consenting that we have been talking about. It does not tackle the complexities around the spillover effects of the Welsh Government making law that affects reserved matters or has an impact in England. All those really difficult and contentious issues still need to be addressed, whether we are maintaining the joint jurisdiction or somehow moving to a distinct or separate jurisdiction.

Mr Mark Williams: Of course, the Secretary of State is right. That is the difference between the draft Bill and the final Bill that he will present before us in due course. He partially answers my point. He is right that three or four years ago people were talking about a reserved system. That is what is being proposed now. My point is that unless the issue of a distinct jurisdiction is dealt with, he or his successors will have to deal with it in a few years’ time.

I will end in the same way as the hon. Member for Dwyfor Meirionnydd, my neighbour in west Wales, ended her speech. I want to vote for the Bill. I want the march to devolution—in my party’s case, to home rule—to continue. I want to vote for the Bill on Second Reading, but I can only do so if certain changes are made. The Secretary of State is making very encouraging noises about listening to people. He needs to address the concerns that we and others in Wales right across the board in civil society, as well as our colleagues in the National Assembly, have raised. He needs to make those changes.

2.36 pm

Glyn Davies (Montgomeryshire) (Con): I apologise for not having been here for the opening speech today, Mr Hanson. It was impossible for me to be here. It is a pleasure to serve under your chairmanship and to follow a very thoughtful speech by the hon. Member for Ceredigion.

I congratulate the Secretary of State on the draft Bill. We need change and reform, and publishing the Bill in draft form gives us the opportunity to comment on it and to speak as we are speaking today in this forum and as we have been able to speak for some time, and to give other organisations a chance to comment on it. For the main Bill then to be brought forward taking into account what everybody has said is a very good way to proceed.

We all have the same objective: we all want a stronger, fairer, more stable devolution settlement. In 1997, I was not in favour of establishing the National Assembly for Wales—I campaigned and voted against it. But when such a body is established, the purpose of a party is to do everything possible to make it successful. The steps we have taken since then have been steps on the road to make it successful, but there is one more step to take, and I congratulate the Secretary of State on delivering that.

We have looked at broadcasting and I wanted to make the briefest of references to today’s S4C agreement, which is brilliant news, and to congratulate my hon. Friends the Members for Carmarthen West and South Pembrokeshire and for Aberconwy on the sterling work they put in. Though unsung, they were like a couple of Rottweilers.

I will move on to the subject under discussion. I want to speak in general terms, not on the details of the Bill, because it is a large Bill and some of the details will change, but on two hugely important issues. I want to speak positively about the Bill. Many of the comments I have heard have been quite negative. Some people have been quite negative about the Bill today, without saying what should go in its place. I thought the presentation of the report from academics and constitutional experts that came out this week was incredibly negative and was not at all helpful. I have massive respect for a member of the group who talked about the recommendation that Assembly Members should not approve the Bill because there had been absolutely no change from the draft Bill, but that will not be the position. It provided a meaningless headline and gave a negative feel to the response to the Bill, when it is something that we can all build on and make something we want of it. I think the negative response was a mistake.

I want to touch on two major changes. The first is the move from a conferred model to a reserved powers model. That was never going to be easy. I have always favoured it since the Assembly were established. During my period in the Assembly as chairman of the legislative Committee, I always thought a reserved model was right. But it is a hugely difficult step to take. Not only that, it will not remove the legal arguments about what is devolved and what is not—those will continue—but I think it is the right step to take.

A list has been produced, which has caused a great deal of entertainment and amusement as people list what seems inappropriate, but the Secretary of State has made it clear to me that he will look at this list and we will have a different list. So it may cause amusement to talk about unlikely things that should be reserved, but we should not set aside how important it is to move to a reserved powers model. It changes the nature of devolution, it is the biggest step in the Bill and we should welcome it and congratulate the Secretary of State on bringing it forward. It should have been there in the beginning.

The second big issue is income tax powers. There are divisions over this issue, of course, even on my side. I remember speaking in favour of income tax powers in the main Chamber, when there had been no referendum. I felt I was alone at the time, but I must say that that has changed. I thought that a referendum was no more, in many people's minds, than a blocking mechanism. I suspect that my friends on the Opposition Benches will do everything they can to avoid having the financial responsibility that comes with income tax powers. A Parliament does not grow up until it is responsible for both sides of the ledger—what it spends on the one hand and what it raises on the other. If we had a referendum on that, the arguments would be completely different—it would be simply a blocking mechanism.

The Bill is an incredibly courageous step by the Secretary of State to introduce the change that is desperately needed to make devolution grow up and become a proper Parliament, which is what it should be, and give the people that chance. The people voted for us knowing that that was the position, and we should go forward and include it in the Bill.

The background to where we are has for ages been the Barnett formula. Again, I do not want just to pass by on the Barnett formula. For ages, that dominated

discussion: in a debate like this, it was all that was talked about. What we now find is that Government spending in Wales has reached a level that the Barnett formula would deliver, so it is not an issue. We should congratulate the Government on funding Wales and continuing that funding throughout this Parliament at a level that meets the requirements that critics have argued for over many years. It is a major step forward.

Another background issue is the debate about the police. It is recommended that policing should be devolved. I am not against that—I never have been—but it has to be on the basis of an understanding that policing will be improved. We could be satisfied if policing would be improved, but I do not think we have ever seen that. Policing is something that is a bit different; we should look not just at the devolution aspect, but at how effective it is. If policing can be devolved and be as effective as it is now, it is something that a lot of us could live with.

The point is that no one will agree with everything in a draft Wales Bill—dispute and disagreement will inevitably occur. I am going to have to bite the bullet of devolving greater energy powers, knowing full well that the present Welsh Government are intent on granting permissions that will destroy mid-Wales. That is what they want to do. Also, it is a hugely centralising Government. Only last week they took power to themselves to deal with energy projects over 10 MW: those are small energy powers but the Welsh Government want to take them. It is an anti-localism strategy and I very much hope that leaving power to the people becomes a feature of the debate in the Welsh Assembly election.

Devolution is not just about transferring power to Cardiff, it is about transferring power to the people, and the Welsh Government are accumulating power to themselves every chance they get. There is a lot of talk about wanting a pause. I am sure that the Secretary of State will consider that we do not want a pause just because it is too difficult to confront. A pause has to be for a genuine reason, not because there are some tough decisions to take before an election so you pause to avoid taking them. That is just not good enough.

There is much talk about a constitutional convention. That may well be sensible, but I cannot help but feel that my Opposition friends are very keen on a constitutional convention because it is the ultimate in long grass—they think, “We will not have to take any of these decisions; we can just talk about them forever and a day.”

2.45 pm

Carolyn Harris (Swansea East) (Lab): May I say what a pleasure it is to serve under your excellent stewardship for the second time this week, Mr Hanson, for my very first Welsh Grand Committee?

As members of the party that was the architect of devolution, my colleagues and I would naturally support a Bill that moved to elevate the Assembly to a reserved powers model, but the draft Bill we have been presented with is, in reality, an instrument to roll back the powers of the Assembly and make its ability to govern effectively restrictive and cumbersome.

As a member of the Welsh Affairs Committee, I have spent many long hours pondering the Bill and hearing substantial evidence on it. The conclusion I have reached is that the Bill is, at best, fragmented, patchwork and arguably a complete shambles. Throughout the evidence

[Carolyn Harris]

sessions of the Committee, we repeatedly heard widespread condemnation of the draft Bill from the legal profession and noted academics. We read in the press that there has also been condemnation from within the Conservative party itself.

I will touch on two areas today: energy and the necessity test. I welcome the initiative to allow the Welsh Assembly to have authority over onshore oil and gas extraction, including fracking. I also welcome the move to allow the Welsh Assembly to grant planning consent for energy projects of a capacity of up to 350 MW. However, I am sure that large renewable investors in Wales will be disappointed with that limit.

It could be argued that if the renewables industry in Wales is to survive, companies need to be confident that they have a guaranteed price for energy—a so-called subsidy-free contract for difference. They need confidence in planning decisions for both developments and the associated grid, so the draft Wales Bill should allow planning decisions on both those things to be made in Cardiff, not in Westminster. The renewable energy industry needs that boost; it needs the confidence to allow it to continue to attract investors.

Craig Williams: Does the hon. Lady welcome, in the spirit of the Bill and localism, the fact that the power she succinctly puts forward is coming to local authorities in Wales through the Energy Bill? Local authorities will be able to grant that power.

Carolyn Harris: I can only speak for those in the industry who have lobbied me, who feel that the Wales Bill will give them no confidence to attract investors. The current provisions are not sufficient.

The Government of Wales Act 2006, which governs how the Assembly currently operates, contains basic tests that the Assembly must meet before it can legislate. However, the draft Bill increases the number of tests from nine to 13. The Assembly's own Presiding Officer and others have pointed out that that will make the work of the Assembly far more complicated.

There is much controversy around the necessity test. The remit of the test is that the Assembly must be convinced the Act to be passed is necessary. The draft Wales Bill is littered with references to the necessity test. For example, the Welsh Assembly will only be able to modify the law if it is convinced that that will have "no greater effect on the general application of the private...law than is necessary".

Even "necessity" has various definitions. The Assembly's director of legal services agreed with that point and referred to necessity's several different meanings in law. As a consequence, more cases could end up in the Supreme Court to decide what necessity means in each particular context. That will only cause confusion, slow down the Assembly's work and ultimately cost the taxpayer significant money.

The Law Society of England and Wales, as my hon. Friend the Member for Torfaen mentioned, also warned that the necessity tests are drafted in such a way that they could be challenged in the course of ordinary civil or criminal cases. Surely the Assembly, as an elected body, should be allowed to make decisions on the policy areas that are devolved to it. There should be no demand

on it to justify a policy it wants to implement as necessary. It would be in the interests of all if the necessity test were entirely removed from the Wales Bill.

I would like to thank the Secretary of State and his officials for all their hard work but I suggest they go away, sleep on it and come back with a completely different draft Bill.

2.50 pm

Craig Williams: May I say what a pleasure it is to serve under your chairmanship, Mr Hanson, and to take part in my first Welsh Grand Committee? I would say that I will be brief, but along with many words we have spoken today, it seems that in the Grand Committee, the word "brief" does not quite mean what I thought it did. I hope to contain my remarks.

As a Member of the Welsh Affairs Committee, I would like to pay tribute to our Chairman. He has brought Members within and across parties together on many of these issues.

My hon. Friend the Member for Swansea East is the only Member I know who could get away with claiming the architecture of devolution and then go on in the same breath to complain how complex it is. It amuses me no end but she carried it off with her usual charm.

I support the process in which the Bill has come forward. I had to pinch myself on a couple of occasions during the debate to remind myself that we are discussing the draft Bill. We are not discussing the end Bill, which I am sure will dominate the Welsh Affairs Committee and the normal legislative process in the House once we get it. This is a draft Bill and that is the way I have approached it, with the constructive criticism that a lot of people from all parties have brought to the Wales Office. It is not just that. It seems to have taken Welsh academia and the Welsh Governance Centre by surprise that we are talking about constitutional issues and are again seeking to empower Wales a little bit more.

I was 12 years old at the time of the 1997 referendum and I have no doubt that when my grandchildren are 12 they will still be talking about a separate jurisdiction. The genie is out of the bottle. I pay tribute to the hon. Member for Dwyfor Meirionnydd for the way that she approaches the issue in a clear and concise manner, and I understand completely where Plaid Cymru comes from, although I disagree fundamentally with her on most of the points she has made in Committee and, more broadly, in the Chamber. We need to understand as Welsh politicians that it is okay to disagree and to disagree forever. I cannot see how we think we are all going to get round a table and finally agree forever on Welsh devolution. That is simply never going to happen and is an aspiration that none of us should share. As a proud Welshman and a Welsh MP, I love Committees. I love joining Committees, I love serving on Committees and I love setting up Committees. I just think we need to be mindful of this constitutional journey we are on. There will be no terminus, no end, but there will be significant movements, and this is one the most significant that I have seen and studied.

Of course, this is the beginning of the process and it is always interesting to hear calls for people to pause at the beginning of anything, but during this draft stage it is very welcome. I do accept the premise of my right hon. Friend the Member for Clwyd West about the piecemeal

nature of devolution. Is it where we want to be? I do not think so; it is not where I want to be as a proud Welshman in terms of protecting the Union forever. The United Kingdom has a glorious unwritten constitution which has worked for a couple of years, and I suppose we are just seeing the nations in this Union coming together now and stapling. I recognise where the constant call is coming from with Plaid Cymru but I am bemused and confused at the noises—

Stephen Kinnock (Aberavon) (Lab): I am very interested in the hon. Gentleman's comment about being uncomfortable with the piecemeal nature of devolution. He must surely then support the idea of constitutional convention.

Craig Williams: I do not at this moment. I can see the argument for looking holistically at the Union, at the four nations and how to draw this together within our glorious unwritten constitution, but the political calls for that being made at the moment are tied to the Bill and efforts to pause it, and not for good reasons. I understand the broader opinion about protecting the Union—I take it that the hon. Gentleman is a proud Unionist, as I am—but I do not accept that we should link that to the Bill and further powers for Wales. This is an important juncture for Welsh politics and the Assembly, and we should crack on and take a pragmatic approach.

The Wales Governance Centre and academia have commented on the Bill, but what are we going to do as a nation if we cannot draw together? It seems to me that the Government come up with ideas, happily produce them for public scrutiny, take it all on the chin, then everyone reacts. There is never a response along the lines of, "This is what we as a Welsh nation, academics and legal experts have come up with after consideration." It should not take anyone by surprise that we are in this position. The onus is on those people to come up with more practical solutions—or just some solutions, not constant entirely negative feedback.

Briefly—I have fallen into my own trap straightaway, as I am not very brief—in this regard, my Labour fan, since we are picking fans from alternative parties, is Lord Morris of Aberavon. His clear view on the single jurisdiction is out there. The starkness of what the First Minister has said—and is saying—is not apparent to me. I do not know why we keep referring to the single jurisdiction. What does the shadow Secretary of State mean by "distinct jurisdiction"? I did not get clear and concise answer—she requested one from the Secretary of State—and I am more than happy to give way if she has come up with a meaning.

That is the nub of the issue. What on earth is a distinct jurisdiction? If it is a different jurisdiction, we have that in housing in Wales. The Assembly has cracked on and, in layman's terms, we have a distinct jurisdiction on housing law as it comes through the Assembly and as it develops. We are talking about only 3% of UK—England and Wales—laws; 3% are effected by the Assembly. Why on earth are we looking at getting that 97% down to the Assembly? It simply does not make sense to think about a separate jurisdiction, and it does not make sense to go for a distinct jurisdiction. It sounds like a political soundbite in the run-up to the Assembly elections. I get the political sentiment behind the proposal, but I do not get any sense of a legal rationale.

Liz Saville Roberts (Dwyfor Meirionnydd) (PC): Have we not been told that we cannot even consider a distinct legal jurisdiction? We have not even got to the position where we discuss maturely what this actually means. That surely is something that we should look at and go into greater detail, but we have not had the room to discuss it properly.

Craig Williams: I have never known Plaid Cymru to wait for permission to discuss or look at something. If the hon. Lady is suggesting that she should seek our permission before exploring anything, I welcome that due deference, but I do not think that that is the case. If someone had a clear definition of "distinct jurisdiction" it would have been published and it would be out there. There would be a clear answer, but no one in the Committee can answer the question of what a distinct jurisdiction is.

Liz Saville Roberts: To be fair, there are three models in the Bill.

Craig Williams: At least. The hon. Lady emphasises my point for me. She is asking for clarity in the draft Bill, and this is the panacea that people come up with. There are already three models. If we want clarity, "distinct jurisdiction" does not solve the problem. I think that in many areas of law Wales already has it, so I do not see why we need to make reference beyond this practical solution. I accept what the Secretary of State said about protocol and looking at the way in which our legal system operates. That is a separate issue—a distinct issue—from what we are talking about, but there is bit of maturity in Welsh politics and where the Assembly is at. We should recognise that it now has the power to effect laws, and it has, for the sake of argument, a distinct jurisdiction, but I still hold my hands up, as I have no idea what that means.

On reserved matters, we have seen some welcome movement by the Secretary of State and the Wales Office, but I see the complications. Space is an obvious one. Why on earth is that in the Bill? I wholly welcome the spaceport—it should of course go to north Wales. The industry, the sector and the technology are developing and they need to be future-proofed. The Bill should be future-proofed, and space should be a reserved matter—but we could argue at length about hovercraft.

To conclude, there is a clash between political reality and academia. I find completely bemusing the emotive terms that some academics and Welsh politicians have used when discussing the Bill. I can see how people can get emotional about a Commonwealth games bid from Wales and about the city deal for Cardiff and the transformational effect on south Wales, but I cannot see how people can get so emotive about the deep constitutional debates that we are having at the moment. Of course, the onus is on us to get excited about it, because if we do not get excited, I do not think anyone in Morrisons in Aberystwyth, or in Tesco or Asda in Cardiff, will be getting excited at all. I call for a mature, pragmatic approach to the Bill, which is a huge step for Wales. I welcome the responsibility that the Bill would bring to Wales with income tax devolution—true responsibility for the Welsh Government.

3.1 pm

Stephen Kinnock (Aberavon) (Lab): It is pleasure to serve under your chairmanship, Mr Hanson. It is also a pleasure to participate in my first Welsh Grand Committee.

[Stephen Kinnock]

I want to engage in a spirit of pragmatism and problem solving, which is needed particularly when we are dealing with what are often relatively technical issues. To an extent, there is an opportunity to take some of the politics out of this and to adopt a positive, problem-solving approach, and it is in that spirit that I make my speech. I also defer to colleagues who have been involved for far longer than I in some of these areas, so I am not going to dive down into the weeds of some of the issues.

The benefit of being a relative newcomer is that one is perhaps more able to apply a common-sense test, and that is where the red lights start to flash for me. I see a real risk of what I would call constitutional red tape. I know that the Conservative party is a great enemy of red tape and is passionately committed to removing it whenever it possibly can, so let us examine some of the red tape of the Bill, which contains a 34-page list of 267 powers. I feel convinced that if someone in the Department for Business, Innovation and Skills came forward with a new proposal for regulating business in this country and it consisted of 34 pages of 267 new sets of regulations, the Secretary of State for Wales would be jumping up and down and ringing alarm bells. The Bill really does not pass the test for which we are looking: streamlined, well co-ordinated, smooth and effective government.

Jo Stevens (Cardiff Central) (Lab): Never mind our test, that clearly fails the test of the Secretary of State for Business, Innovation and Skills of one rule in, two rules out.

Stephen Kinnock: I agree absolutely with my hon. Friend. It is an issue of clarity, common sense and making progress. The message that the Secretary of State for Wales has received from both sides of the Committee, and from our very own favourite AM, Mr David Melding, will be heard loud and clear. The critical point is to ensure that the Bill is not made in London, but is developed in collaboration with Wales. I welcome all the feedback that has been given today.

The lack of clarity also means that we run the risk of the Bill being questioned from the point of view of politicising the approach. For example, clauses 13 to 16 state that Westminster will retain control of ports with a turnover of £14.3 million. Lo and behold, that means that Milford Haven would remain under UK Government control. To my knowledge, the Secretary of the State has not made it entirely clear—it is not clear from the Bill—why it is necessary for Milford Haven to remain under Westminster's jurisdiction. I am sure that the right hon. Gentleman would want to make that clear in the Bill and to dismiss any damaging speculation that it might be because the Government are preparing to privatise the port.

Stephen Crabb: The hon. Gentleman is making a thoughtful and interesting speech. May I allay his fears on this point? One of the voices that has not had enough air time in this whole constitutional debate is that of the business community. However, on the issue of ports, and especially a large, strategic energy port such as Milford Haven, the voice of the business community came through loud and clear. This is entirely to do with UK strategic issues, despite any scaremongering that we might hear from the hon. Gentleman or his political colleagues regarding potential privatisation.

Stephen Kinnock: I thank the Secretary of State for his intervention and welcome the clarity that it brings. I am trying to make a broader point: when there are gaps, loopholes or a lack of understanding, they open up the risk of speculation about the motives behind a policy. That is why clarity is so important and I cite that example simply to illustrate that risk.

The necessity test is another prime example of how the Bill risks creating uncertainty and ambiguity. We must take with the utmost seriousness the quote by our favourite Assembly Member, Mr David Melding, about the possibility of legislative gridlock, or the very basis of legislative function being compromised.

All hon. Members in the room will recognise the broader point that politics and politicians are not always and universally held in the highest regard by the public. Anything that looks as if it might mean more and more Committee meetings, more and more bureaucracy and more and more legislative ping-pong between Westminster and Cardiff has the potential to bring the Assembly and this place into disrepute. I am sure that all Members would not want that to happen. Although the hon. Member for Cardiff North has told us how much he enjoys sitting endlessly in Committees, I am sure that he agrees with that point.

My final specific concern is about ministerial consent and the risk that this process is seen as tantamount to an English veto. We must be absolutely clear that the direction of travel for devolution is more devolution and more decentralisation. The referendum in Wales in 2011 made that clear and we need to recognise the democratic voice of the people of Wales in that context. Anything that looks as if it may be a way—even through the back door—of pulling powers back from Cardiff to London must be treated very carefully indeed and could again create concerns, with some speculating about a possible hidden agenda.

I conclude with the broader point that I sympathise with the Secretary of State for Wales because I feel that he has been asked to take on the task of creating something that is very important, even though, as hon. Members have said, it might not be what gets the average constituent of Aberavon out of bed in the morning. It is very important because it is about saving the United Kingdom. I am proud to be Welsh and I am very, very proud to be British. I believe passionately in the integrity of the United Kingdom. In a rapidly globalising world, with huge challenges coming at us from all angles, the last thing that we should be doing is diminishing the role, power and influence of the United Kingdom on the global stage.

The draft Bill must be seen in that context. We are not talking in isolation about reserved powers, the necessity test and the question of distinct or separate. We are talking about the architecture of the United Kingdom. The debate around the Scottish referendum was, of course, very passionate, but it demonstrated that the constitutional foundations upon which this country is built are cracking beneath our feet. The main reason why they are cracking beneath our feet is because we have had this piecemeal, sticking-plaster, botch-it-and-scarper approach to building our constitution over the years. That is why we need a constitutional convention—so that the things we are discussing today can be discussed within a broader context.

I know that the Secretary of State for Wales is an avid fan of rugby, our favourite and national sport. In some ways, he has been asked to define the rules at the breakdown of the ruck without having any sense of the broader rules of the game of rugby—the offside rule, passing backwards, the knock on, or whatever it might be. So many issues are in the framework of what we are talking about today, and they are the broader debate within which this debate must exist. The result of a lack of clarity is the kind of constitutional red tape to which I referred.

In conclusion, this plea for a constitutional convention is not at all about what the hon. Member for Montgomeryshire, who is no longer in the room, said with regard to kicking this into the long grass. It is not at all about wanting a pause and a broader discussion because we do not want to take the hard decisions—quite the opposite. Labour Members want to take the hard decisions because we wish to save the integrity of the future of the United Kingdom. If we do not adopt the radical, bold solution of a constitutional convention that leads to a full—and, in my view, written—constitution, with a clear definition of powers that defines where the English regions fit in with Scotland, Wales and Northern Ireland, we will find, in 20 years, that this great United Kingdom will no longer exist.

3.12 pm

Byron Davies (Gower) (Con): It is a great privilege to serve under your chairmanship, Mr Hanson. I apologise that I am suffering from terrible flu at the moment, so I hope that you can hear me okay.

I was recently a Member of the National Assembly for Wales, of course, and I think I am unique among Welsh Conservatives here in having been a Member of the National Assembly for Wales and a Westminster MP. I have seen the Welsh Government working at first hand and I have several concerns about the way they operate.

My first concern is that while I get the fact that we need to have tax devolution, and that the Government need to show competence and to be answerable for the money that they raise and how they spend it, the Welsh Government in Cardiff Bay have recently overseen an appalling piece of financial mismanagement—the regeneration investment fund for Wales. Tens of millions of pounds are being wasted, so it is worrying to think that we will suddenly hand down to Wales tax-raising powers. There is a certain arrogance about the Welsh Government's response to the loss of those millions of pounds, so I am really concerned that, should we give them tax devolution and these tax-raising powers, they will follow the same sort of path. I cannot say how much I feel for the people of Wales if they are to suffer such mismanagement.

Stephen Crabb: My hon. Friend makes an important point. I understand his long-held, strong views about our being careful about devolving taxes to Cardiff Bay. He highlights the scandal of that sale of land and the loss to the taxpayer, but until and unless the Welsh Government become a more responsible body by being accountable for the money that they raise as well as how they spend it—as long as they carry on as a big spending Department—we will get more of these scandals and more of that careless use of public money.

Byron Davies: I understand the Secretary of State's point. We have to realise that the scandal, as he calls it, of the regeneration investment fund for Wales was examined by the Wales Audit Office, which produced a damning report, and by the Welsh Assembly's Public Accounts Committee, whose damning report was published only last week. I hope that I can have some faith in his suggestion that if we give the Welsh Government this responsibility, they will grow into a more responsible—

Mr David Jones: Does my hon. Friend agree that while it is all well and good to give the Assembly Government the responsibility for accounting for the money that they spend, tax-varying powers should not be conferred without the acquiescence of the Welsh people, as was the case with the Scottish people in 1997, and that therefore a referendum should be held on the issue?

Byron Davies: It is well known that I think that the people of Wales should have had a referendum on that issue, and it is in the public domain that I have made that known to the Government.

Jonathan Edwards: Since the hon. Gentleman has been elected, he has voted for the devolution of full income tax powers for Scotland and for devolving corporation tax in its entirety to Northern Ireland, so why is he so opposed to empowering the people of Wales with fiscal powers?

Byron Davies: I have just answered that point. After seeing at first hand the Welsh Government at work, I do not have faith in their competency—it is that simple.

My final point is about policing, an area in which I have some experience. I am delighted that we will not devolve policing to Wales, because it is a very complex matter. It is about complex intelligence systems and cross-border complexities. I have always been of the opinion that bigger is better in policing. I am in favour of regional policing and we need to consider that issue in another forum, but I am delighted that it is not being considered in the Bill.

3.17 pm

Gerald Jones (Merthyr Tydfil and Rhymney) (Lab): Last, but not least, Mr Hanson; it is a pleasure to serve under your chairmanship. This is a double pleasure because, as is the case for many other Members, this is the first Welsh Grand Committee that I have attended.

As other right hon. and hon. Members have said, the draft Bill does not have much support from academics, lawyers and even the Secretary of State's party colleagues in the Welsh Assembly. Indeed, many of those who have given evidence to the Welsh Affairs Committee have outlined concerns about the Bill, particularly regarding whether it takes us forward. As our party established the Welsh Assembly, Labour Members support the additional powers for Wales proposed in the Bill, but we have significant concerns about how the powers of the Assembly would be rolled back by its other provisions.

The Secretary of State says that he wants the Bill to provide a clear and lasting settlement, but I am deeply concerned that it would take devolution backwards and not provide anything like the stable solution that he is seeking. In fact, I agree with the view that the Bill may

[Gerald Jones]

be unworkable. We know that existing legislation sets out basic tests that the Assembly must meet before it can legislate—it must abide by EU law and the European convention on human rights. It is regrettable that the Bill increases the number of tests from nine to 13. It is clear to most people that that will make the work of the National Assembly more complicated and increase bureaucracy.

There is much wrong with the Bill, but I shall focus on the necessity tests. They appear throughout the Bill, but several legal experts have made the point that “necessity” has an array of different meanings in law. The unfortunate result of the necessity test would be that many more cases could end up in the Supreme Court to decide what “necessity” means. Clearly, that would slow down the Assembly’s work and would cost the taxpayer hugely. The reality would be the bizarre situation of the Supreme Court, rather than the elected National Assembly for Wales, deciding whether a law is necessary.

Chris Davies (Brecon and Radnorshire) (Con): Although I have missed some of this afternoon’s debate, for which I apologise, I have heard a lot about various legal jurisdictions—separate or whatever—and constant calls from Labour Members for a different jurisdiction. My hon. Friend the Member for Cardiff North, who has now disappeared from the room, spoke of how much time he has spent sitting in Committees, as have I. Those of us on the Select Committee heard from lawyers, academics and legal experts who constantly wanted a new jurisdiction in Wales, although they seem to be the only ones calling for it. We have heard from the Secretary of State that the senior legal people in this country do not recommend that. The general public in Aberavon and Brecon and Radnorshire do not want it, either.

The Chair: Order. The hon. Gentleman’s intervention is too long. He will have an opportunity to make a speech after Mr Jones has finished, should he so wish. Interventions should be short sentences.

Gerald Jones: I am not sure where the hon. Member for Brecon and Radnorshire was going with that. Clearly, we want a system that works and that provides a framework for moving the Assembly and devolution forward.

The Assembly’s Constitutional and Legislative Affairs Committee’s report on the draft Bill says:

“The necessity tests have elicited considerable reaction amongst those who have provided us with evidence and it is fair to say that these tests have received very little support.”

We should accept the principle that the Assembly should be able to legislate freely in the areas devolved to it without having to prove that its actions are necessary.

Stephen Crabb: There is nothing in the draft Bill that makes the Welsh Assembly consider whether legislating in a devolved area is necessary. This is about a spill-over effect in reserved areas impacting on England and the underlying principles of civil and criminal law. There is freedom to act as long as it can be satisfied that the impact is no greater than necessary. There is nothing about satisfying an overall test of whether legislating in a devolved area is necessary.

Gerald Jones: There are necessity tests throughout the Bill. Many existing Acts of the Assembly would not have been possible if the draft Bill had been in force. We should accept the principle that the Assembly should legislate freely in those areas that are devolved.

The Bill would be much easier to implement if the necessity test was taken out of it—I ask the Secretary of State to consider that—but, unfortunately, I am not filled with much confidence that that will happen. However, to be fair, the Secretary of State has indicated that this is a draft Bill and that he is listening to comments during pre-legislative scrutiny. After listening to the deliberations of not only the Welsh Affairs Committee, but those in all aspects of Welsh life, as my hon. Friend the Member for Llanelli mentioned, I hope that the Secretary of State will act accordingly.

3.24 pm

Hywel Williams (Arfon) (PC): It is a pleasure to serve under your chairmanship, Mr Hanson. I apologise to you and the Committee for my slightly late arrival; I was detained by the Prime Minister’s statement.

I thank the Secretary of State for allowing us this pre-legislative stage for discussion. The Bill has sparked some vigorous debates about what Wales’s constitutional position should look like, not just among politicians but in civil society, although possibly not for the people on the streets of Aberavon. I hope that we will have sufficient time to think about and discuss the draft and the responses to it, not least by bodies such as the Wales Governance Centre. I would like to thank the centre for its excellent and useful report that was launched in Parliament last night. I also look forward to the report by the Welsh Affairs Committee. The discussions will take place not only today and tomorrow, but through the next weeks and months, so that parliamentarians and, more importantly, the people of Wales can come to a considered view, not subject to the time constraints of a party or parties facing difficult Assembly elections.

While I am glad that legal issues around workability and drafting are under the spotlight before the Bill is published in full, we have not had adequate time to scrutinise in debate the policy areas in the list of reservations. Members have mentioned the lack of a guiding principle in the list, and that absence is fairly clear. As far as I know, little effort has been made to justify the reservations as a group and the principle behind them. However, they do need to be justified.

I will give a small and obscure example. Members will recall that this morning I asked the Secretary of State for the justification for retaining alcohol and entertainment licences, and I referred to schedule 1 referring to schedule 7A, and so on. I would like to tell the Committee a very brief story about the debates around the Licensing Act. At that time, a number of local licensees told me that they would like to apply for their licences in Welsh. I asked the Secretary of State for Culture, Media and Sport at the time whether application forms could be made available in Welsh. The Secretary of State, now safely ensconced in the upper echelons of the BBC—I think that is today’s equivalent of running away to sea—was embarrassed because he had no answer. He countered by offering me a meeting. At the meeting, I suggested the names of a number of translation companies, which could turn the forms around in a day. Inevitably, he said it was not as simple as that. It was

not a mere matter of translation. Eventually, Welsh forms turned up, some 18 months later, long after the aforementioned licensees had despaired, and had applied for and been granted the licences in English.

I doubt that the Cardiff Government would be remiss in the first place, but if they were, they would get their skates on. Yet now, apparently, alcohol and entertainment licences must be retained here, although licensing is a local authority function and local authorities work through the Welsh, not the UK, Government, in general. I do not why it is in the list unless it is because DCMS insists that it is.

When I asked the Secretary of State all those years ago why he had not ensured that Welsh forms were available, he eventually confessed that a mere 13 years after the advent of the Welsh Language Act 1993, after 13 years of apparently serving the people of Wales well, his Department—the Department for culture, for heaven's sake—still had no Welsh language plan. Is this the same Department that now insists that it retain the power over Welsh entertainment and alcohol licences, let alone S4C—I, of course, welcomed the announcement made today—or is the decision for our own Secretary of State?

There are many other points to be made. I will not repeat the words of my hon. Friend the Member for Dwyfor Meirionnydd about the true consensus that we achieved with Silk versus the Bill that is now before us, which has been called the lowest common denominator. However, I think it is clear that the erosion of the work of the Silk Commission has hampered the Secretary of State in his stated aim of achieving a long-term settlement.

Reference has been made to policing, and I note the concerns of the right hon. Member for Clwyd West. Policing was also referred to by the hon. Member for Montgomeryshire, who is no longer in his place. Policing is devolved in Scotland and in Northern Ireland, but it is reserved in Wales—I am not quite sure why. What makes it necessary to reserve policing in Wales when it is not necessary to do so elsewhere in the UK?

The hon. Member for Gower referred to the complexities of cross-border considerations. I just want to say that it would be for the Secretary of State to argue the case for reserving, and it is not for me to argue why that should not be. I would point out that the police forces themselves support the devolution of policing. The former chief constable of Gwent Police highlighted in her evidence to the Silk Commission the fact that the Home Office develops initiatives based on the English Partnerships landscape without considering the different landscapes in Wales. That intra-Wales issue could be addressed by the devolution of policing.

The crime priorities in Wales are different. England has a knife crime problem that has not affected Wales in the same way, but that dictates the priorities of the Welsh police forces regardless. Those police forces are unique within the UK because they are non-devolved bodies operating within a largely devolved public service landscape. In the usual way, it is a case of follow the money, and where does the money for the police come from? It tends to come, as we all know, from the Assembly itself.

The police are required to follow the agendas of two Governments—currently of a different political hue. To reserve policing prevents us from achieving greater clarity and efficiency by uniting devolved responsibilities such as community services, drugs prevention and safety

partnerships with those currently held by UK Government. In my view, that is linked to the question of legal jurisdiction. I will not rehearse the argument made by my hon. Friend the Member for Dwyfor Meirionnydd this morning, but the unified jurisdiction has been a block on progress.

I should like to consider briefly the reservations that we have about energy. Plaid Cymru compromised during the Silk Commission. We believe that full responsibility should be transferred to the Welsh Government, just as it is in Scotland, but in the interests of compromise, we agreed to support an arbitrary limit of 350 MW. We compromised on that in return for compromises elsewhere, but given that the report has been cherry-picked our compromise is now meaningless. We gave in, but we do not seem to be getting back. Under the current proposal, the Swansea bay tidal lagoon would fall within the remit of the National Assembly, but the proposed Cardiff and Colwyn bay lagoons would be a matter for this place.

Stephen Crabb: I find the point that the hon. Gentleman has made fascinating, because this is the first time that I have heard anyone who was involved with the Silk Commission describe a process of fudge and political compromise. I thought from previous contributions to the debate that the commission was characterised by high-minded principle, but the hon. Gentleman is saying that it was all a bunch of trade-offs to achieve consensus, which did not have the buy-in of Her Majesty's Government or of the official Opposition, so there was no great Silk consensus based on principle.

Hywel Williams: The principles of the Silk Commission and its recommendations are quite clear—further devolution—however, as the Secretary of State knows better than I, in the process of discussion people take positions on the basis of what is before them. We decided to compromise on our long-held belief that there should be no limits. There is an interesting case that illustrates why this might be so. In the village near the town where I live, near Caernarfon, there is a hydro-electric scheme. It was initially going to generate 49 MW, because at 50 MW it would have to come to the attention of the Department of Energy and Climate Change in Whitehall. When the limit was mooted to be 350 MW, the proposed capacity was immediately raised. What we have here is an example of legislation preventing economic development that we would all want to see—the production of green electricity—because of an arbitrary limit. That is one of the reasons why we did not want such an arbitrary limit, but it is now 350 MW, which we have agreed to.

I will not refer in any detail to the contribution of my hon. Friend the Member for Dwyfor Meirionnydd, excellent as it was. It was a model for first speeches in a Welsh Grand Committee and I am sure that it will repay close reading. She said that there was little shift in mentality. There has been a change, but not a change in the world view. We heard contributions from the hon. Members for Monmouth and for Wrexham, who discussed English votes for English laws. That is a problem. I raised a point of order in the Chamber when we were debating the student issue, asking how I would represent the thousands of English students who live in Bangor, many of whom voted for me, and who will be affected by that decision. They would be unrepresented, especially if the vote went a different way. That issue needs to be addressed.

[Hywel Williams]

I am suspicious about the suggestion from the hon. Member for Wrexham that we have a joint committee of Assembly Members and Members of Parliament, along with local councils in both Wales and in England. That would be a camel by design, but perhaps we could meet in Ludlow, as the Council of Wales and the Marches used to do. There are some excellent restaurants there, I am told, but even that could not attract me to the proposal.

The right hon. Member for Clwyd West said, quite rightly, that the powers model is not a panacea and needs to be discussed. I certainly agree about that. He did not believe, as I have said, that the Welsh Government should handle policing, and there is a debate to be had about that. The hon. Member for Torfaen made an interesting reference to horses—not camels—and he made a good point that there would be legal challenges daily, which is something that animates everyone on the Committee. We want a proper solution that would not be subject to the attention of the courts.

The hon. Member for Vale of Clwyd suggested that decisions made during the St David's day process were directed by what was in the press on that day. As a long-term politician, God forbid that we take any notice of the press at all. The hon. Member for Ceredigion said that clarity was at the heart of democracy, and I agree with him entirely, as I do on many matters. He also addressed the issue of a distinct jurisdiction. The hon. Member for Montgomeryshire decried the negative tone of the discussion. In last night's meeting to launch the report by the Welsh Governance Centre direct reference was made to the negative tone of the coverage of that report. Given that the press are not here, I might say that there was a direct reference to the *Western Mail's* completely negative coverage.

The Chair: Order. I am sorry to interrupt the hon. Gentleman. He will know that time is pressing, so I hope that he will conclude his speech shortly.

Hywel Williams: Thank you, Mr Hanson. I certainly needed that note of caution.

We heard contributions from the hon. Members for Swansea East, for Cardiff North, for Aberconwy, for Gower, and for Merthyr Tydfil and Rhymney, all of which will surely repay close attention.

Finally, there is a saying in Welsh, *tri chynnig i Gymro*—three chances or opportunities for a Welshman or, I might say, for a Welsh woman. Well, this is the fourth attempt at getting devolution right, and I am quite happy to allow a fifth. Wales must have an Assembly based on a fuller, clearer and more workable set of powers to make decisions for the people of Wales. The Secretary of State could call for a pause, and I think that I reflect the view of the Committee in saying that.

3.39 pm

Susan Elan Jones (Clwyd South) (Lab): It is a great pleasure to serve under your chairmanship, Mr Hanson.

It is fair to say that we have heard a range of insightful contributions from hon. Members, and it is quite clear that the Bill, as drafted, is flawed. All the contributions that we heard are worthy of serious consideration. The hon. Member for Dwyfor Meirionnydd spoke of the

Bill as a lawyers' playground, which is an alarming thought. The right hon. Member for Clwyd West decried the Bill's bolt-on approach and made some very serious points concerning the necessity test in schedule 2, describing it as a positive invitation to make more reference to the Supreme Court, which is very worrying. My hon. Friend the Member for Wrexham spoke in great detail about the whole dilemma of English votes for English laws, especially for Welsh Members of Parliament serving border constituencies. He also spoke of the need for a constitutional convention.

My hon. Friend the Member for Torfaen spoke of the many anomalies in the draft Bill, the possible dilemma concerning horses and the apparent threat to the United Kingdom. The hon. Member for Vale of Clwyd called for greater clarity about where powers are held. The last Liberal standing, the hon. Member for Ceredigion, spoke of the importance of clarity, of subsidiarity and, again, of the need for a constitutional convention. The hon. Member for Montgomeryshire, in a wide-ranging speech, urged the Secretary of State to look at a different list of reservations, but not, we hope, at more reservations.

My hon. Friend the Member for Swansea East, who serves on the Welsh Affairs Committee, spoke of many matters, including the necessity test. My hon. Friend the Member for Aberavon decried red tape—a view with which we would all agree—and spoke of many constitutional issues. The hon. Member for Gower requested fewer powers. My hon. Friend the Member for Merthyr Tydfil and Rhymney spoke of the fear of increased bureaucracy. The hon. Member for Cardiff North said that he was not excited about constitutional issues but volunteered to be on committees, which I think would make him an excellent representative, should we ever get to a constitutional convention. Finally, the Chair of the Welsh Affairs Committee, the hon. Member for Monmouth said that the idea that we can somehow scrap the Welsh Assembly is “long gone”, which I think, by his own standards, makes him *devo-philic*.

To be serious, however, today's debate has shown that the draft Bill is nowhere near commanding consensus. Before it was published there was cross-party agreement on the need to give greater powers to the Welsh Assembly. Indeed, before May's elections, all the main parties in Wales were agreed that we should move to a reserved powers model of devolution. As we have heard, the model proposed in this Bill is unclear, unworkable and unacceptable in that it rolls back the Assembly's powers. Many hon. Members have referred to the evidence of the Assembly's Constitutional and Legislative Affairs Committee. Its report is pretty incisive and damning, saying that

“the draft Bill neither meets the Secretary of State's aims of a stronger, clearer and fairer devolution settlement for Wales that will stand the test of time, nor the view expressed in his evidence to us that ‘the new reserved powers model provides the clarity the current model lacks.’”

The Bill seems to fail every test the Secretary of State has set. It will not make the settlement stronger because it takes power away from the Welsh Assembly.

As many witnesses said in their evidence to the Committee, this is a ridiculously long list of reservations that amounts to a power grab. It is pure Gilbert and Sullivan because they are on a list, and it would not be so bad if it were a little list, but it is ginormous: 34 pages of reservations and 267 separate powers. Therein lies

the problem. The Secretary of State failed to stand up to Departments to ensure a rational basis to the reservations. As a consequence, if the Bill were passed, the Assembly would end up with fewer powers than it currently has. The Bill will not make the settlement clearer either, because, as Members have highlighted today, the so-called necessity tests introduce serious complexity that could be resolved only by the Supreme Court. It would be time-consuming; it would be costly to the taxpayer, and it would lead to the unacceptable situation whereby judges, as opposed to the democratically elected Assembly Members, are deciding whether Acts of the Assembly are necessary. The tests amount to a significant roll-back of the Assembly's powers, and hardly anybody is prepared to defend them.

The Bill will not make the settlement fairer, for, as well as depriving the Assembly of many important powers that it already has, it introduces a wide-ranging English veto on Welsh laws. Ministers in Whitehall will be able to block legislation that they do not agree with, even if it relates only incidentally to a Minister of the Crown's powers.

The Bill as drafted will not stand the test of time. Indeed, it has not even stood up to the scrutiny we have given it today. We all agree that we need a lasting settlement that provides certainty about the Assembly's powers, but this is not it. The Bill is so fatally flawed that if it were passed in anything like its current form, there would undoubtedly be a need for another Bill in the very near future, which takes us back to "The Mikado".

Today's debate has not only highlighted the serious flaws in the Bill, but spelled out the changes that must be made for it have cross-party support—which is what we want—both here and in the Assembly. As my hon. Friend the shadow Secretary of State said this morning, we will not support the Bill unless it is radically amended. We cannot support it in its current form, because we believe in an Assembly with greater powers. Our party created the Welsh Office in the 1960s and established the Welsh Assembly and gave it greater powers through the 2006 Act, so we will not vote for a Bill that leaves the Assembly with fewer powers than it has at present. The people of Wales will not stand for that, and neither will we.

I thank everyone who has contributed to the debate.

Jonathan Edwards: I hope you will forgive me, Mr Hanson, but in my old age my approach to politics is getting cynical. I think that what really concerns the Labour party is not the roll-back of powers, but the possible inclusion of fiscal powers—income tax sharing powers—in the Bill. Will the hon. Lady make a commitment that, if the Secretary of State moves on some of the rolled-back powers, the Labour party will support a Wales Bill that proposes more fiscal powers for Wales?

Susan Elan Jones: Let me be clear: the Labour party in Wales has always supported a fair funding settlement for Wales. We will not settle for rhetoric—[*Interruption.*]

The Chair: Order.

Susan Elan Jones: We will not settle for rhetoric when what we want is fair funding for the people of Wales and proper funding for services. We will not vote for a Bill that leaves the Assembly with fewer powers than it has at present, because that is not acceptable.

Wrth orffen, hoffwn fynegi fy siom mai Saesneg yw'r unig iaith a ganiatawyd yn y Pwyllgor yma heddiw. In finishing, I would like to express my disappointment that English is still the only language permissible in this Committee. I have raised the issue with the Leader of the House and have written to the Chair of the Procedure Committee. It is not acceptable in this day and age, when Wales has two official languages, that we are allowed to use only the English language in our proceedings here.

3.48 pm

The Parliamentary Under-Secretary of State for Wales (Alun Cairns): Thank you, Mr Hanson, for chairing this Welsh Grand Committee so ably, and I echo the comments that have been made about Mr Owen, who chaired this morning's sitting. I thank right hon. and hon. Members for their contributions and for the largely positive way in which the debate has been conducted. We have had the odd tense moment, but there has been a remarkable change in the culture of the Welsh Grand Committee, certainly compared with some of the sittings I attended in the past.

As the Secretary of State said at the outset, we want a constructive debate about the draft Wales Bill, to inform the improvements we will make before the Bill is introduced. The Committee has certainly agreed about the principle involved, but there has been some disagreement about the detail and the wiring, to use a phrase used by the Secretary of State. That only underlines how complex and difficult this process is. Some of the suggestions we have heard—I will come to them in a moment—are flawed.

According to many members, the answer is to call for a constitutional convention. My hon. Friend the Member for Montgomeryshire said that that could well be a method of kicking the matter into the long grass. There is only one example in modern history of a convention or a commission to examine the UK settlement: the Kilbrandon Commission. It was set up by Harold Wilson in April 1969 and it reported in October 1973. It had 16 volumes, 10 research papers and it ended inconclusively. That is a warning that some hon. Members may wish to bear that in mind when they call for a constitutional convention. It does not address the fundamental issues that we are trying to resolve.

Stephen Kinnock: I agree that we cannot just press "pause" on the world and wait for a constitutional convention. However, there is no reason why such a convention could not be started while we deal with some of the urgent issues that need to be tackled. The argument that, because something may not have worked in the past, it should not be tried in the present is deeply reactionary. I hoped that a more progressive point of view would be expressed.

Alun Cairns: I am grateful for that point, which I accept in the spirit that the hon. Gentleman intended. I intended partly to give a light-hearted example of a constitutional convention, and partly to probe the motives of some who call for such a convention to ascertain whether they really want a Bill.

Mr David Jones: I fully appreciate my hon. Friend's point. We do not want a talking shop that goes on for years. I also understand his possible suspicion of Members of other parties, such as the First Minister of Wales. However, given that Lord Norton of Louth, who is a

[Mr David Jones]

well-respected Conservative peer, is calling for a constitutional convocation, should not the Wales Office at least consider that?

Alun Cairns: Certainly, the Wales Office and the Government will listen to all the points that are expressed, but I was merely highlighting the one example that we have in modern history of a constitutional convention and how complicated that became to give a context for the difficulty of trying to resolve some of those issues.

I remind people who have been extremely critical of the draft Bill, the St David's day agreement and the process that the Secretary of State undertook, of the Richard Commission and the amount of time that that spent, only to be rejected by the Government of the day. That left us with a complex situation and the LCO mechanism. How many of us remember how complicated that was, whether we were in the Assembly or in Westminster? It is therefore a bit rich for some people to suggest that there is a simple and straightforward way of resolving the issues. We are keen to listen to and develop the debate, and the draft Bill was published in that spirit.

To underline the points that were made at the outset, there is a lot of rhetoric and misunderstanding. Some comments that have been made in Committee are simply inaccurate. I will pick up on some of them shortly, including those made by the hon. Member for Clwyd South. The draft Bill is ambitious and extends significant amounts of new powers to the Assembly. Matters that have been raised—be it the necessity test or the consents—are not about limiting Assembly powers. There is no Machiavellian plot to clip the Assembly's wings. It is about giving the Assembly the powers, with two Governments that have responsibility for matters that relate to Wales: the legitimate Welsh Government, who will have legitimate powers over devolved matters, and the UK Government. Who knows? In the long-term future, there may be a Labour Administration, although I do not expect that to happen for at least another two or three general elections. However, in future, Opposition Members in this Committee Room, who may be Ministers in such an Administration, could be grateful for the powers that the Bill will grant to marry the interface between Wales and the UK Government.

Not unexpectedly, several Members raised the necessity test, and I will not have time to go round all those who mentioned it. Let me clear up the misunderstanding that exists. The necessity test applies only when the Assembly seeks to legislate in relation to England, in relation to reserved matters and in relation to underlying principles of criminal and private law. It has nothing to do with the Welsh Government legislating in Wales on a devolved matter. The necessity test is about when something touches reserved matters and matters that could be deemed to be the responsibility of the UK Government.

I will give a practical, straightforward example relating to the education of a child with special educational needs. If that child, from Wales, is being educated in a school in England, Estyn would naturally have the responsibility for inspecting the provision for that child in the school in England. It would not have the authority to close the school in England, because that would be a matter for the UK Government, but it would have the power to go to that school in England. The necessity test is about making the Welsh legislation effective when

it crosses the English border. That is one practical example: there are a whole host of higher education institutions that have bases in England. The necessity test is about making the Welsh legislation effective as it applies to England. That is the scope and the scale of the necessity test. It is about enforcing legislation made by the Assembly.

Nick Thomas-Symonds: Can the Minister confirm that that necessity test is taken from Scots law, where it is used in far narrower circumstances? Ministers are trying to massively broaden it in the Welsh context. Will he confirm that that is the case? Because it is.

Alun Cairns: I am grateful to the hon. Member for Torfaen. The reason I highlighted that practical example was to reject completely some of the accusations that have been made in a number of speeches about not granting the Welsh Government the powers to act in those devolved areas. The hon. Member for Torfaen made a point about legislation relating to horses. That is absolute nonsense as the Bill is drafted.

Nick Thomas-Symonds: Will the Minister give way?

Alun Cairns: I would like to give way, but in the limited time I have left I will not. I will happily write to the hon. Gentleman and share with any other interested hon. Member why the example relating to horses is not relevant. I apologise, but I have two minutes left and I want to talk very briefly about the "separate" and "distinct" jurisdictions.

The hon. Member for Dwyfor Meirionnydd came forward with the very practical suggestion of having the "distinct" jurisdiction governed by the geographical border. However, that in itself curtails the powers of the Assembly when it is enacting legislation in relation to England. That is an example of the complexity here: should we pursue the model presented by the hon. Member for Dwyfor Meirionnydd, we would roll back powers. This complexity explains why we are trying to tease out these issues, so that we can bring forward amendments that will work for Wales, but will also work for the UK Government.

In the minutes that remain, I want to talk about the Crown consents, the so-called English veto. I absolutely reject the accusations and the phrase. More than 50 legislative consent motions have been agreed between the UK Government and the Welsh Government over the past five years when the UK Government have touched devolved responsibilities. That is the responsibility of a mature Administration. If the Welsh Government want to act on non-devolved responsibilities, quite clearly a Crown consent would be the mature, natural approach to follow. If it works, and legislative consent motions have worked well over the past five years, in a mature debate, why cannot that work in the other way? The suggestions of rejecting and opposing them would be to grant the Welsh Government powers extending well beyond any other settlement. I do not think that that is what the Labour party wants and it is certainly not what the Conservative party wants. Plaid Cymru might want that, but it has a respected position, which is to seek independence. I do not think it is what the Labour party or the Government want.

The Chair: Order. Time has beaten us.

4 pm

Committee adjourned without Question put (Standing Order No. 116(5)).