PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Welsh Grand Committee

DRAFT WALES BILL

Wednesday 3 February 2016

(Morning)

CONTENTS

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Sunday 7 February 2016

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

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

(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 that 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 had 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 consensus among all parties.

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; and I met 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. It 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. 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 Committee 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. I do not agree with what they then go on to say about these law-making powers—that when Welsh legislation has a spillover effect in affecting reserved matters, in affecting the law as it applies to England or in 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 justice function in Wales to take account of the growing

[Stephen Crabb]

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" mean. "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 for 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 for 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 pragmatic and flexible on this stuff more 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, 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 (Cardiff West) (Lab): 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 explain why, as the Secretary of State said, the biggest

[Jonathan Edwards]

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 muddied. Does she support having some kind of test around the spillover impact when the Welsh Government make law that affects reserved areas, 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 is 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 practise 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.

David T.C. Davies (Monmouth) (Con): Does the hon. Lady 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 forgo 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 forcefully 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, of 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 for 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: 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 about 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: 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 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.