THE INVISIBLE CONSTITUTION: THE IMPACT OF DEVOLUTION ON UK CONSTITUTIONAL DYNAMICS – INSTITUTIONAL DEVELOPMENTS IN WALES

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by

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ABSTRACT

The National Assembly for Wales was established in 1999, as a body corporate, with no legal distinction between its executive and legislative functions, and with only limited executive powers, previously exercised by the Secretary of State for Wales. Following a review of procedures (2000-2001), a series of internal adjustments and a very comprehensive external inquiry into its powers and electoral arrangements, conducted by the Richard Commission between 2002 and 2004, the Assembly moved *de facto* to operating more like a traditional parliamentary structure,. However, its operation was constrained by the legislative framework provided by the Government of Wales Act 1998. The publication of the *Better Governance for Wales* White Paper in June 2005, proposing the formal separation of the legislative and executive branches, enhanced legislative powers to the Assembly, and a ban on dual candidacy, triggered an intense process of institutional change and re configuration.

This thesis explores the theoretical and practical issues raised by the process of institutional re-configuration of the National Assembly between 2005 and 2007. Its addresses a series of questions prompted by the process of separation between the parliamentary and executive branches of the Assembly, and by the planning for the third Assembly. First, the thesis explores how the various *loci* of power centres within the Assembly evolved during the separation process, what alliances were formed in the process of negotiations and bargaining over resources, and what role personalities and political leadership played in the process. Secondly, the thesis provides an institutional insight into what extent institutional rules, norms and practices shaped the individual actors' behaviour in the process of change, what form institutional resistance took, and what changes took place at the ideational and cultural level during the separation. Finally, this

thesis explores the extent to which the National Assembly for Wales played a pivotal role in shaping the next phase of constitutional design.

Drawing upon theoretical assumptions of the new institutionalism, principal/agent theories and complexity theory, this thesis proposes a multi-layered conceptualisation linking institutional change with constitutional development and constitutional theory. The thesis employed a mixed methodology, semi-ethnographic in nature, benefitting from a high level of access to the National Assembly's day to day operation, to staff and politicians. Participant observation, semi-structure elite interviews and heavy documentary research were the principal techniques employed in order to collect data.

The findings produced by this investigation highlight the complex nature of institutional change, which is an interplay of institutional as well as personality and contextual factors. The thesis also emphasises the limits of institutional design in the realm of politics, which is affected by short-termism and is often a result of the bargaining and negotiations between the various political actors' own agendas. This research shows that institutional change in the National Assembly between 2005 and 2007 presents a mix pattern of radical change, innovation and path-dependency. It also highlights a certain lag between constitutional theory in the UK and the rapid development of new constitutional practices in the devolved territories, suggesting that the theorisation of the process of devolution is still underdeveloped and an area for further exploration.

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GLOSSARY AND ABBREVIATIONS

APS / Assembly Parliamentary Service. A corporate body serving the Assembly as whole, providing support for Assembly Members, Committees and Plenary.

Assembly / National Assembly /National Assembly for Wales. The democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

Assembly Commission. Responsible for ensuring the property, staff and services are provided for the Assembly, as stipulated by the Government of Wales Act 2006, ss. 27.

Clerk. Top administrative rank within the parliamentary organisation, at officials' level. Since 2006/2007, the position was rebranded as Chief-Executive / Clerk.

CSO / Committee on the Standing Orders. An Assembly advisory committee set up in May 2006 with the view to produce a new set of procedures for the third Assembly.

GWA 1998/2006 / Government of Wales Act 1998 2006/ 1998 Act/ 2006 Act. Framework legislation enacted by the UK Parliament in 1998 and 2006

LCO / Legislative Competence Order. An Order in Council under section 95 of Government of Wales Act 2006.

MRCS / Members Research and Committee Services. A division within the Assembly Parliamentary Service that offers support for committees and Members.

NAAG / National Assembly Advisory Group. An advisory body set up in 1997 by the former Welsh Secretary of State, Ron Davies, to debate the internal operation of the National Assembly and prepare recommendations for the Standing Orders Commission.

PO/Presiding Officer. The lead political figure in the National Assembly for Wales whose role is similar to that of the Speaker of the House in other parliamentary institutions.

Separation. Between 2005 and 2007, it was also known as the 'Planning for the third Assembly Programme. It consisted of task-and-finish groups jointly from the National Assembly and the Welsh Assembly Government negotiating the terms of separation of the two institutions.

Shadow Commission. Commission established by a vote in Plenary on 17th May 2006 with the view to plan for the matters within the responsibility of the future Assembly Commission.

Standing Orders. The rules of procedure that regulate the internal operation of a parliamentary institution.

WAG / Welsh Assembly Government. The executive arm of the National Assembly for Wales in the first two terms. Under the 2006 Act, the Welsh Assembly Government is a separate institution from the National Assembly for Wales, and is responsible for Wales' economy, health, education, and local government.

WP / White Paper. UK's Government 1997 *A Voice for Wales* White Paper, or the 2005 *Better Governance for Wales* White Paper.

Chapter 1

INTRODUCTION

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account. (The National Assembly's 'positioning statement', according to Lord Dafydd Elis-Thomas (2009), Presiding Officer of the Assembly)

The National Assembly for Wales was established in 1999, following the Government of Wales Act 1998 and the narrowly won Referendum (50.3% in favour). The 1998 Act conferred on the Assembly only limited executive powers, previously exercised by the Secretary of State for Wales, and set up the Assembly as a body corporate, with no distinction between the executive and legislative functions. The powers of the Assembly, as well as its internal structure and operation have been subject to important reviews (Assembly Review of Procedures [ARP] 2001; Richard Commission 2004) and changes.

This thesis explores the theoretical and practical issues raised by the unfolding of the devolution process in Wales. It provides an analysis of the institutional re-structuring undergone by the National Assembly between 2005 - after the publication of the *Better Governance for Wales* White Paper - and 2007, in readiness for the implementation of the Government of Wales Act 2006. This was a period of critical change for the Assembly, with several important developments taking place concurrently: the acceleration and the legal confirmation of the administrative separation between the legislative and the executive arms of the Assembly, which had

occurred *de facto* in the first Assembly term following a major review of procedures between 2000 and 2001; the writing of a new set of standing orders by the Assembly Committee on Standing Orders [CSO]; and the institutional re-organisation and the strategic planning for the third Assembly undertaken by the Shadow Commission.

The unfolding of these processes has prompted a set of questions around which the thesis is structured. First, the legal separation of the executive and legislative functions of the Assembly, brought about by the Government of Wales Act 2006, triggered a series of institutional re-adjustments that sought to re-distribute power and influence at an organisational, as well as a political level. This thesis explores

- how the various *loci* of power centres within the Assembly evolved during the separation process;
- what alliances were formed in the process of negotiations and bargaining over resources (estates, ICT, financial and human resources);
- and what role personalities and political leadership played in the process.

Secondly, the thesis provides an institutional insight into the internal operation of the Assembly at a time of critical change. It addresses

- to what extent did institutional rules, norms and practices shape the individual actors' behaviour in the process of change;
- what form did institutional resistance take;
- and what changes took place at the ideational and cultural level during the separation?

Finally, it explores the extent to which the National Assembly for Wales played a pivotal role in shaping the next phase of constitutional design.

Using the author's experience of two research placements at the National Assembly for Wales, first in June 2006 for three weeks, and second from November 2006 to April 2007, this thesis examines the process of institutional change locating it within the broader literature on institutional design and constitutionalism. The thesis identifies the gap between constitutional theory and institutional practices in the UK, and explores the issues raised by the emerging constitutions in the Celtic nations.

The author used a semi-ethnographic approach, having conducted snapshot ethnographies into the Assembly's operation. Thus, the thesis brings individual and collective behaviour of the political and administrative leaders, as well as internal institutional processes, to the forefront of this analysis. It explores the manner in which individual behaviour, institutional rules and practices, and the political context combine in shaping institutional change.

1.1. Background to the topic

The British constitutional landscape has changed significantly over the last three decades. First, a wave of parliamentary reforms aimed at strengthening the role of Parliament led to the establishment of departmental select committees in the 1979, against the backdrop of increasing concern that Parliament was weakening in the face of an ever growing executive (Crick 1968; Baines 1989; Norton 1990; Jorgest 1993). Secondly, Britain's membership of the European Union saw many policy competencies transferred to Brussels, adding another level of governance in Britain (Bamforth and Leyland 2003) and challenging some of the constitutional principles that sit at the heart of its political system, namely the sovereignty of Parliament. Thirdly, the rise of regionalism in Europe and calls to address the democratic deficit in the Celtic nations created an

impetus for devolving power to the level of constituent nations (Bogdanor 2001; Rawlings 2003), thus bringing government closer to the citizens (Burrows 2000).

1.1.1. New Labour and constitutional reform

New Labour's ambitious constitutional reform programme launched in 1997 included, among others, self government for Scotland, Wales and Northern Ireland, reforming the House of Lords and incorporating the European Charter of Human Rights into national legislation. Famously called the 'year of the constitution', 1998 saw a number of constitutional Acts, including three devolution Acts, passing through the Westminster Parliament (Maer *et al.* 2004). This marked the beginning of a process of piecemeal reforms which later included freedom of information (Freedom of Information Act 2000), a major reform in local government (Local Government Act 2000), and the establishment of the Greater London Assembly in 2000.

The political landscape of the UK is in 2009 much more diverse than it was two decades ago. No less than four different electoral systems are used to elect representatives at local (the Single Transferable Vote is used in Scotland), regional (the Additional Member System is used in Scotland and Wales), national (First-Past-the-Post) and European (regional lists) levels. Minority and coalition governments have become the norm rather than the exception in Scotland and Wales, where nationalist parties are now in government (SNP in Scotland), or in coalition (Plaid Cymru and Labour in Wales) (Seyd 2004; McAllister 2007; Osmond 2007). Furthermore, public policy in Britain has undergone some diversification due to devolution (Adams and Robinson 2002; Adams and Schmuecker 2006; Keating 2003, 2005; Keating and McEwan 2006), the policies of devolved governments often departing from the Whitehall policy line (for

example on tuition fees in Scotland and Wales, free prescriptions and bus travel in Wales, free personal care for the elderly in Scotland).

Despite significant advances since 1997, constitutional reform is high on the agenda, with some added impetus - this time, not motivated by territorial issues but prompted by the negative media exposure the Westminster Parliament has been subject to. The MPs expenses scandal opened a Pandora's Box that exposed some core issues affecting the British's constitutional system (Hansard Society 2009; Russell 2009). First, the system is deemed to be built on arcane practices and principles and, despite incremental change and adaptation, has failed to fully absorb the more dynamic pace of change in British society. Political engagement has dropped to alarming levels in recent years, only 19% of the population believing that the Parliament works for them (Kalitowski 2008). This figure is alarming especially measured against recent public attitude surveys in devolved territories indicating continuous support for the devolved institutions (Wyn Jones and Scully 2004, 2008a; Curtice 2006; Institute of Welsh Politics 2008). The UK constitution is the product of hundreds of years of growth and adaptation (Ridley 1988), and its foundations traditionally lie on conflict, whether we talk about the conflict between nobility and the monarch, or the conflict between its constituent nations (Johnson 2004). The accommodation of these inherent 'conflicts' has been achieved through incrementalism, institutional adaptation, and reliance on conventions (Johnson 2004). Constitutional upheavals, such as the Glorious Revolution in 1688-89, and the secession of Ireland in the 1920s, were rare, and punctuated a path-dependent continuum of gradual accumulation of norms, conventions and precedents, some codified in constitutional documents, some not. The more recent landmarks in British constitutional history (membership of the EU in 1973; devolution in 1997) have forced the British constitution to absorb a series of elements which it

had only limited institutional capacity to accommodate, leading to the layering of the constitution even further (Bamforth and Leyland 2003).

Secondly, the British constitution has been slow to respond to the rapid growth and complexity of executive power (Flinders 2002). This raises theoretical and practical questions about the 'parliamentary sovereignty' doctrine (Judge 1988; Norton 1993; Beetham and Weir 1999; Hazell and Sinclair 1999; Flinders 2002; Forman 2002; Paterson 2002; Elliott 2002, 2004; Oliver 2003; Jowell and Oliver 2004; Gamble 2006), and about the concept of restrained government which is core to modern constitutionalism (Schedler *et al.* 19990. There have been various and sustained efforts to strengthen the Westminster Parliament and its committees in recent years, both internal (Liaison Committee 2000, 2001; Modernisation Committee 2002a, 2002b, 2007), and external (Hansard Society Commission 2001). Nevertheless, in the absence of a thorough and wide debate on holistic constitutional reform, and, given the British inclination for 'cherry picking' and incrementalism, policy advocates see themselves presenting their 'updated' recommendations for reform time and time again (Hansard Society 2001, 2009; Russell and Paun 2007; Hazell et al. 2007; Hazell (ed.) 2009).

Thirdly, the debates around the financial aspects of elected and non-elected politicians' activity (Hansard Society 2009, Russell 2009; Roger Jones IRP Report 2009) have brought proportional representation, reform of the House of Lords, and reform of the House of Commons to the political agenda, whilst unveiling significant differences in the way the institutions in Wales and Scotland dealt with the issue of expenses, as opposed to Westminster.

This confirms devolution's experimentation and innovation capacity (McAllister and Stirbu 2007a). However, the questions that arise are to

what extent the new institutions are more capable of reforming themselves rapidly and significantly, to what extent they prevent crisis such as this from happening, and to what extent their set-up has triggered a significant shift in the political culture?

1.1.2. Devolution and institutional change in Wales

In terms of all facets of Labour's constitutional agenda, devolution has probably made most impact: five devolution Acts were passed in total for Scotland, Wales (two), Northern Ireland and the Greater London Authority between 1998 and 2006; successful referenda were held in Scotland and Wales in 1997; one unsuccessful referendum was held in the north-east of England on the issue of expanding devolution to the English regions; and democratically elected institutions are now in their first decade of operation in the Celtic nations.

The National Assembly for Wales was set up as a body corporate serving the Crown as a single legal entity (GWA 1998 ss. 1(2) and 1(3)), and had only limited executive powers, previously exercised by the Secretary of State for Wales. The Assembly comprises 60 members elected through the hybrid Additional Member System: 40 constituency members and 20 regional members (GWA 1998, ss. 2). Its internal operational architecture featured a cross between a Westminster type cabinet model and a committee structure resembling local government practice (Rawlings 1998, 2003; McAllister 1999). The Assembly's committee structure included Subject Committees that mirrored and scrutinised the executive committee' portfolios, whilst the executive committee's members were also members of their respective portfolios.

Devolution in Wales was accompanied by a rhetoric of openness, transparency, inclusiveness and the desire to create a new kind of politics in Wales (McAllister 2000). Nonetheless, this rhetoric was over-shadowed

by flaws in the original design: the National Assembly for Wales was set up as a body corporate, with no legal distinction between its legislative and executive functions. Although criticised by many academics as not respecting any constitutional logic (Rawlings 1998, 2003), the corporate body model was arguably the appropriate model for 1998 (Welsh Affairs Committee 2005), given that no legislative functions had been vested in the Assembly at the time.

Wales' constitutional settlement was perhaps the least clear and settled of all devolution schemes (Richard Commission 2004, Rawlings 2005). The National Assembly for Wales has undergone a significant process of rapid change, shifting from its original design as a peculiar and operationally complex corporate body (as enshrined in the Government of Wales Act 1998), to a more traditional, but complex parliamentary structure as prescribed by the Government of Wales Act 2006.

The operational difficulties that led to the 'virtual' separation of the executive and parliamentary sides of the Assembly post 1999 stemmed partly from confusion about accountability and the scrutiny process (Rawlings 2003; Osmond 2005). Major internal and external reviews of the settlement (see the Assembly Review of Procedures 2001-2002 and Richard Commission 2002-2004), consolidated the view that the corporate body system was unsustainable (Richard Commission 2004; McAllister and Stirbu 2007b). In response, the UK Government published the *Better Governance for Wales* White Paper in June 2005, outlining its proposals to take Welsh devolution a step further (Wales Office 2005). The proposals were given effect a year later by the Government of Wales Act 2006, which formalised the legal separation between the executive and legislative arms of the Assembly and enhanced its legislative powers. The Act introduces a controversial ban on dual candidacy, preventing candidates

from standing both on constituency and regional lists. It also made provision for a potential referendum on full primary legislative powers.

In response to the White Paper and the 2006 Act, the Assembly triggered another wave of internal reviews and administrative reforms that provided for the administrative separation of resources, finance, staff and procedures. The history of the National Assembly's development is therefore one of essential fluidity, continuous change and rapid pace of learning and adaptation (Stirbu 2009 forthcoming)

1.1.3 Conceptualisations of constitutions

At the theoretical level, the discussion over the role and nature of the constitutions is multi-faceted. Normative perspectives, stemming from the political thinking of Rousseau, Montesquieu, Hobbes and Locke, emphasise principles such as separation of powers, restraint on power and hierarchy of law (Ackerman 2000; Ville 1967; Duchacek 1987; Ridley 1988; Ratnapala 2000). Thus, the constitution is a type of law which is superior to any other law, representing the *acte constitutif* of the system of government (Ridley 1988, Thompson 1993). Descriptive perspectives, derived in part from British constitutionalist thinkers such as Bagehot and Jennings, emphasise functionalist and utilitarian views which suggest that the constitution is the practice of governments (Blondel 1969; Strong 1972; Griffith 1979; Hood-Phillips and Jackson 1987; Barendt 1997, 1998).

Looked at from an institutional perspective, constitutions are "stable, valued, recurring patterns of behaviour" (Hungtinton 1968: 12). Within the British context, this interpretation is particularly relevant, since the evolution of the British constitution is linked with a long history of adaptation of its political institutions (Johnson 2004).

1.2. Research problems

The unfolding of the constitutional reform programme initiated by Labour in 1997, generally and around devolution, in particular, reveals several problems at a theoretical level. The process of devolution has significantly altered the constitutional landscape of the UK. Of the three nations that gained devolved powers, Wales was the odd one out in terms of the original set of powers and structure of the National Assembly for Wales. Arguably, because the powers were so limited and the structure so peculiar, Welsh devolution has been extremely fluid and dynamic, with the National Assembly undergoing a series of adjustments and re-adjustments, stretching the constitutional framework set by the Government of Wales Act 1998. This prompts questions about the role of political institutions in the constitutional process (Rawlings 2005; Trench 2008b), and about the territorialisation of constitutional practices in the UK (Bradbury 2006).

There is a discrepancy between modern British governance practice - highly complex, dynamic, fluid and operating at multiple levels of government - and the concept of the constitution - viewed as monolithic, customary and archaic. At the theoretical level, the question arises of whether or not modern constitutional theory in Britain reflects these idiosyncrasies appropriately. It is widely acknowledged that lacking single codified document, the British constitution is best understood as the 'practice' of government. But theory describes the constitution in the context of the practice of government in the era of Bagehot and Dicey, rather than the current practice of government. Many authors have already emphasised the gap between constitutional theory and practice in Britain (Mount 1992; Marshall 1971). This begs the question how, with no written constitution, does one keep track of the subtle changes in constitutional discourse?

1.2.1. Research questions

This thesis addresses a series of research questions stemming out of the application of new institutionalist theories to the process of constitutional change in Wales between 2005 and 2007, during the writing of the third Assembly's standing orders. The case-study investigation at institutional level also raises questions at the theoretical and conceptual level. The existing gap between constitutional theory and practice in the UK, between rhetoric and reality prompted questions about how the traditional constitutional principles upon which the British constitution is founded fit in with the new governance practices in the UK. Moreover, this thesis explores how some of the new features of UK constitutional practice, mainly the development of emerging territorial constitutions in the Celtic regions, impacts on the overall constitution.

First, it investigates the various patterns of institutional change during this period: assessing whether the change was radical or merely an incremental adaptation of existing practices. It evaluates the underlying negotiations and identifies the rationales that led to a particular course of action.

Secondly, the thesis research examines how power was re-distributed during the separation process among the various actors. It evaluates the role that personalities and political leadership played in the process, and assesses how institutional rules and practices shaped or limited the behaviour of the political actors involved.

Thirdly, the thesis investigates the extent to which institutional rules, norms and practices shape the individual actors' behaviour in the process of change; what form institutional resistance took at the time; and what changes took place at ideational and cultural level during the separation stages.

Fourthly, this thesis is interested in determining what factors ultimately shaped the design of the third Assembly. It investigates the driving factors that influenced the strategic thinking of the institutional designers.

1.3. Theoretical and methodological approach

The approach taken to address the aforementioned questions starts from the perspective of new institutionalist theories, which put institutional structures of meaning and behaviour at the forefront in the analysis of social and political life (March and Olsen 2006). Scholars claim that these systems of meanings and behaviour are institutionalised through rules, roles, routines, and scripts that define the culture and operation of the institution (Scott 1994). Rules are enforceable through formal or informal regulatory mechanisms that limit and shape the behaviour of political actors. Institutions are therefore seen as arenas of constant struggle where individual actors and interest groups negotiate and bargain for power and influence (Thelen 1999).

The profound institutional changes within the Assembly between 2005 and 2007 are analysed within the context of institutional rules and norms, of formal and informal practices, and of organisational culture. The research also employs theoretical assumptions derived from the principal/agent theories, most valuable in the context of parliamentary reform, especially when the focus lies on scrutiny (Strøm 1995, 2000). The evolution of various centres of power and influence throughout the process of institutional change will reveal some of the intrinsic complexities of the Welsh system.

Having identified the institutional level as the appropriate level of analysis of the process that led to the design and set up of the third Assembly, the methods employed here aim to capture the process of institutional change.

The approach adopted throughout this research was to study change as it was happening. The author used two research placements to shadow the work of the Committee on Standing Orders, first in June 2006, for three weeks, and second, from November 2006 until April 2007. The committee was set up in May 2006 with the aim to drafting a new set of standing orders for the third Assembly that would secure a two thirds majority in plenary, in readiness for the Government of Wales Act 2006. The committee reported in February 2007 and was a major player throughout the process of institutional re-configuration. The author benefitted from a high degree of access to many aspects of the institution's life, having had access to meetings, internal operational documents, parliamentary and government officials, as well the politicians. A series of 30 formal interviews were conducted with politicians and officials between 2006 and 2009. These were supplemented by informal chats and by observational work, as well as by documentary research of the internal operational documents the author had access to during the research placements.

1.4. Outline of the thesis

This thesis is structured around three sections. The first part provides the contextual analysis of the development of territorial constitutional dynamics in Wales, where the National Assembly for Wales has witnessed a significant degree of change and adaptation. This part emphasises the impact devolution has made on the British constitution in practice, and the only limited resonance devolution practice has found at theoretical level in the British constitution (King 2007). Chapter Two presents the particular

case of institutional and constitutional development of the National Assembly since 1999. It outlines the distinctive background of devolution in Wales, and the peculiar constitutional arrangements put in place by the Government of Wales Act 1998. The chapter focuses the internal adjustments and readjustments undergone by the National Assembly, which led to the 'virtual' separation of its legislative and executive arms and, subsequently to the legal split, formalised by the Government of Wales Act 2006. Chapter Three reviews the concept of the constitution focusing on the features of the British system. It critically assesses the traditional principles upon which the foundations of the constitution are laid, against the recent developments and challenges posed by modern, pluralist, multi-level governance in Britain. The chapter focuses mainly on the impact of devolution on the constitutional landscape in the UK and raises further questions as to how British constitutional theory might incorporate the changes at the practical level of governance in the UK.

Part II outlines the author's approach to addressing the research questions set out earlier. Chapter Four explores various theoretical approaches to the study of political institutions and provides the theoretical lens to explore the process of constitutional development in Wales. The focus is on emphasising the theoretical links existing between institutional change and adaptation and the constitutional process. The chapter outlines core assumptions underpinning new institutionalist theories and other competing theories that shaped this research, from which this thesis' research questions have stemmed. Chapter Five details the methodology employed in this study. It highlights the interdisciplinary nature of the research as well as the fact that it was conducted as events were unfolding. The use of mixed-methods (snapshot ethnographies, elite interviews, and documentary research) was chosen so that data collection could capture the complexities of the dynamic and contemporary nature of the subject

matter. The chapter concludes with a brief account of the ethical and confidentiality issues raised by this study and outlines some of the challenges faced throughout.

Part III presents the empirical findings of this research and provides an analytical discussion of these findings in the theoretical context framed in Part II. Chapter Six uses the case study to present how the Assembly's rules, procedures, and organisational structure have changed between 2005 and 2007, as a response to the *Better Governance for Wales* White Paper 2005 and the Government of Wales Act 2005. The chapter offers an institutional insight into how negotiations were conducted, how particular decisions were made in relation to the future shape of the organisation, and to its future operational parameters, and what individuals' perceptions were. This chapter presents the evidence drawn mainly from participant observation, but also from the interviews conducted with politicians and officials, and from documentary research of the Assembly's internal operational documents. Chapter Seven discusses the factors shaping the institutional design of the third Assembly. It focuses on three key elements: the importance of the political context, the constraints posed by the corporate body and the influence of privileged groups over the process. The chapter investigates whether the theoretical claims that institutional rules and practices shape and limit the behaviour of political actors find applicability in institutional practice.

Chapter Eight concludes with an analysis that bridges the theoretical and institutional concerns explored throughout and provides answers to the core research questions identified here. It summarises the findings of this research, by outlining the patterns of institutional change in the Assembly's constitutional recasting and the unintended consequences of institutional design.

PART I

LITERATURE REVIEW

Chapter 2

WELSH DEVOLUTION AND INSTITUTIONAL CHANGE

This chapter explores the institutional and constitutional development of the National Assembly from its establishment in 1999 until the end of its second term, in 2007. It outlines the distinctive background to devolution in Wales, placing it in the context of the 1997 constitutional reform initiated by the UK Labour Government. The chapter analyses the peculiar constitutional arrangements put in place by the Government of Wales Act 1998, and highlights the operational difficulties encountered in the first two terms by the National Assembly. It focuses on its subsequent institutional re-organisation and re-structuring, in readiness for the implementation of the Government of Wales Act 2006. The chapter concludes with an evaluation of the impact devolution generally, and devolution in Wales in particular, has had on the British constitutional practice.

2.1. Devolution and territorial politics in the UK

Devolution is essentially about the transfer of powers from a higher to a lower, democratically elected tier of government (Rawlings 1998; Hazell and O'Leary 1999; Bogdanor 2001; Hopkins 2002; O'Neill 2004; Deacon and Pilkington 2006; Guibernau 2006; McDonald 2007). Burrows (2000), coming from a constitutional law perspective, defines devolution as "the recognition in law of the national identities and the national boundaries that exist inside the nation state that happens to be called the United Kingdom" (p. 189).

Academic literature highlights the complexity of the concept of devolution, which carries not only political and constitutional meaning, but has deep

social, cultural and economic implications as well (Bogdanor 2001; Hopkins 2002; Rawlings 2003; O'Neill 2004).

2.1.1. Devolution's history

The academic debate on the history and rationale of devolution links it with the nineteenth century desire for Home Rule all round (Burrows 2000). The asymmetry in the making of the Union is reflected both in the pathway to devolution in each historic nation, as well as in the devolution arrangements post 1998 (Bogdanor 2001; Rawlings 2003). The conviction and power of Home Rule calls were different in Ireland and Scotland than in Wales, where long centuries of English assimilation shaped the discourse around preserving Welsh cultural, religious and linguistic identity, rather than around seeking independence or autonomy (Osmond 1988; Bogdanor 2001).

The administrative decentralisation and the establishment of the Scottish Office in 1885 and of the Wales Office in 1964 signalled that the need for territorial considerations in policy making and implementation had finally been recognised (Burrows 2000; Bogdanor 2001; Oliver 2003). Keating and Elcock (1998) argue devolution is merely a typically British response to periodic constitutional crisis in the Celtic periphery, post Irish secession in 1922. This suggests that devolution has never been part of a coherent constitutional vision (Rawlings 2003) but an adaptation of the existing practices of decentralised government in Scotland and Wales.

The more contemporary arguments for devolution encompass the rhetoric of the Labour Party's modernisation agenda of restoring people's confidence in public institutions, strengthening democracy, addressing the democratic deficit and providing for accountability (Labour Party 1997; Burrows 2000). Some scholars trace this rhetoric to the 1960s and 1970s criticisms surrounding the over-centralisation of power (Rawlings 1998;

Oliver 2003), and to the perceived democratic deficit in the Celtic regions during the years of successive Conservative rule (McAllister 1998; Kay 2003; Burrows 2000; Morgan and Mugham 2000; Bogdanor 2001) which created some electoral momentum for the nationalist parties in Scotland (in the 1945 by-election in Motherwell and Wishaw) and Wales (in the 1966 by elections in Carmarthern). Wyn Jones (2001) draws attention to the fact that devolution architects in 1997, especially in Wales, justified devolution on the grounds of 'better government' and more efficient governance, as opposed to a recognition of a distinctive national identity. Wyn Jones (2001) claims that one of the significant 'unintended consequences' of the devolution was the "new prominence and role that national identity has acquired in Welsh politics" since devolution (p. 35). Later studies, linking national identity with constitutional preference in Wales and Scotland (Wyn Jones and Scully 2004, 2008; Sculy *et al.* 2004; Curtice 2006) reveal a stronger support for the National Assembly for Wales and the Scottish Parliament, whilst identification with Scottish or Welsh identity remains stronger than prior to devolution.

The Royal Commission on the Constitution established in 1969 to look at constitutional options for the future governance of the UK failed to produce a unanimous report (Kilbrandon Commission 1973a). The main controversy revolved around the options of regional and devolved governance: the main report recommending devolved legislatures for Scotland and Wales (of 100 members each) elected via proportional representation (Kilbrandon Commission Report 1973a). No legislative devolution for England or any of the English regions was favoured in the main Commission report. Nonetheless, Lord Crowther-Hunt and Professor Alan Peacock produced a Memorandum of Dissent where they argued for a holistic regional assemblies approach (including Scotland and Wales) and

for reform of the House of Commons to reflect this near federal governance structure (Kilbrandon Commission Commission 1973b).

The 1978 devolution proposals (legislative assemblies for Scotland and Wales with limited executive powers for Wales and some legislative powers for Scotland), put forward by the Callaghan Government, failed to appeal to the larger public, or to the Labour Party in Wales, many of whom campaigned against, and the two devolution referenda held in 1979 were unsuccessful. Critics highlight the importance of some contextual factors in explaining the failed devolution referenda of 1979: namely the massive unpopularity of the Callaghan government and the economic concerns taking precedence over territorial constitutional matters (Bochel *et al.* 1981; Foulkes *et al.* 1983; McAllister 1998; Wyn Jones and Trystan 1999; Wyn Jones and Lewis 1999). Others emphasise that that the limited scope of the devolution proposals for Wales (Trench 2008b) and the referenda rules which required validation by at least 40% of the Scottish electorate acted as in-built obstructing factors (Bogdanor 1979). Despite a narrow 'Yes' majority, the referendum fell short of the 40% requirement, whilst in Wales there was an overwhelming 'No' vote. Nonetheless, it is widely accepted that the deliberation in the 1970s on the constitution set the ground for future debates on territorial constitutional matters (Andrews 1999).

The rationale for devolution has also been linked with Labour's 'hidden' agenda of silencing nationalist demands in Scotland and Wales (Burrows 2000). The positive electoral swings witnessed by the nationalist parties in Scotland and Wales, as well as intensified nationalist campaigns in the 1970s and 1980s in both Scotland and Wales (Cymdeithas yr Iaith Gymraeg (The Welsh Language Society), The Society of the Convenant of the Free Wales), and Meibion Glindwr (The Sons of Glyndwr), Mudiad Amddiffyn Cymru (Movement of Defence of Wales), The Scottish

National Liberation Army and the Siol nan Gaidheal (Seed of Gaels)), raised some political concerns both for Labour and the Conservative Party. The subsequent unfolding of devolution in Scotland and Wales, where nationalist parties are in government, following the 2007 Elections, implies that Labour's plan of silencing nationalist demands did not fully succeed. On the contrary, it can be argued that it provided the nationalist parties with a better arena to pursue their agendas, both in terms of their overall political representation, as well as in terms of recognition for Wales and Scotland in the United Kingdom.

Similarly, Labour's constitutional recasting attempt did not necessarily produce a settled arrangement that addressed the Celtic fringe problem, but merely moved the issue to England (Mitchell 2006b, 2008). England's options for better governance are still under debate given the long unanswered West Lothian question (Hazell 2006). Devolution triggered a chain of territorial constitutional reactions, of which the Conservative Assembly Member David Melding's is particularly significant in arguing for a federal Britain as a way of preserving the United Kingdom and as a means of ensuring good governance (Melding 2009).

Some critics argue that the devolution project was also facilitated by the territorialisation of the party system in the UK - Labour having been forced out in the periphery in the 1970s and 1980s - which allegedly played a major role in shaping Labour's pluralist and decentralist 1997 Manifesto (Keating and Elcock 1998).

Nevertheless, pressures for devolution were not solely felt from inside the union. Developing trends in the European Union post-Maastricht, emphasised the principle of subsidiarity and a new focus on the regions in the context of the EU's cohesion policy (Bulmer *et al.* 2006). The principle of subsidiarity has spurred some debates about its meaning and application

(Duff 1993; Toth 1994), especially since it conveys different understandings for euro-enthusiasts and for inter-governmentalists. The principle, in its 'substantive' understanding (Scott *et al.*1994), claims that the most appropriate level of decision making in the EU should be as close to citizens as possible (Maastricht Treaty 1992, Article A) Nonetheless, the British government understood the principle as a 'repatriation' of decision making to the UK government (Leicester 1998), not as a justification for power sharing with the regional and local levels of government. The links between devolution in the UK and the EU subsidiarity principle have been explored by many scholars, who emphasise the tensions and compromise in accommodating its substantive and procedural meanings within the British governance context (Henig 2002; Bulmer *et al.* 2006).

In many respects, the 'asymmetric devolution' in the UK (Bogdanor 2001; Rawlings 2003) reflects the same cautionary principles as the 'multi-speed' and 'flexible' Europe (Hazell 1999).

2.1.2. Institutional implications of devolution

Devolution was hailed by the Labour Party in their 1997 party manifesto as a major constitutional reform (Labour Party 1997). In practice, it resulted in the establishment of democratically elected institutions in Wales, Scotland and Northern Ireland, although it took different forms in the three historic regions of the United Kingdom. This unavoidable asymmetry mirrors in fact the asymmetry in the making of the Union (Bogdanor 2001). At the heart of the devolution process sit two important constitutional processes: *legitimation* (via referenda) and *legal codification* via three Acts of Parliament in 1998-1999 (the Scotland Act 1998, the Government of Wales Act 1998 and the Northern Ireland Act 1999), and another Government of Wales Act in 2006. Interestingly, devolution was not enacted through a single constitutional document reflecting the asymmetry of the process (Bogdanor 2001). Both legitimation and

codification are constitutional devices not often used in the history of British politics. Legitimation of constitutional change via popular consent was sought eight times by the UK Government in the last four decades and only on matters of territorial politics (1972, 1979, 1997, 1998, and 2004) and membership of the European Economic Community (1975). Additionally, the devolution acts are supplemented, in truly British manner, by numerous conventions, concordats and agreements that regulate most of the intergovernmental relations between the constituent nations and the centre (Burrows 2000; Laffin *et al.* 2000; Poirier 2001; Trench 2004b, 2007b).

The British constitution may have been reformed in the sense that another level of complexity has been added to it. Nonetheless it still lacks a formal regulatory system, and continues to operate on the basis of conventions and practices inter and intra the different levels of government. On this account, what in 1997 was hailed to be a constitutional 'revolution' (Hazell and Sinclair 1999), departs little from the majoritarian, conventional and pragmatic politics that characterizes the British context (Flinders 2005)

2.1.3. A process, not a theory

Literature on UK devolution has been concerned with theoretical considerations of the constitutional implications of devolution, or more likely, with the lack of a solid theoretical framework around the process of devolution (Rawlings 2003). Marinetto (2001) claims that devolution cannot be understood unless it is theoretically anchored in theories of territorial politics (Bulpitt 1983). Nevertheless, the attempts to theorise devolution in the UK have been limited, Bradbury's (2006) re-conceptualisation of Bulpitt's 'territorial politics' framework, being a notable contribution. Similarly, Palmer (2008) places asymmetric devolution in the UK within the broader context of multi-level governance in the European Union.

Most of the academic discourse around devolution revolves around a strict delineation of devolution from federalism (Henig 2002), making the constitutional argument that sub-state legislatures in federal systems are constitutionally protected (Elazar 1987). Devolution does not offer any constitutional guarantees other than entrenchment, since the establishment of the devolved legislatures received people's consent thus making it almost inconceivable that the devolution process could be reversed (Hazell 2007).

Other authors recognize that the concepts are very slippery and that, in practice, there is a degree of overlap between them, Westminster delegating significant political and legislative authority to the devolved nations (Rawlings 2003). Some coined the term 'quasi-federalism' for the constitutional arrangements in the UK post devolution (Bogdanor 2001; Laffin and Thomas 1999; Laffin 2000), stretching somehow the concept of federalism to its limits. Irrespective of the terminology used, the major difference between the two concepts lies in the fact that, whilst federalism is a form of organisation of the state, deeply rooted in constitutionalist theory, devolution is merely a process without a strong anchor in the theories of the state.

Hazell (2006) suggests, that the post-devolution United Kingdom "works in practice but not in theory" (p. 37). Devolution, as a theoretical concept, leaps onto multi-level governance (Hooghe and Mark 2001, 2003; Bache and Flinders 2004) , territorial politics (Bulpitt 1983; Bradbury 2006) and multi-level constitutionalism (Pernice 2002), but is not fully explained by any of these theoretical perspectives.

2.1.4. The lexicon of devolution

Devolution has certainly generated an interesting terminology. Ron Davies' (1999) famous statement: "Devolution is a process. It is not an event and neither is it a journey with a fixed end-point" (p.15) has become "the *ex cathedra* assumption of contemporary Welsh politics" for example (Kay 2003: 52), and bears relevance to the whole of the UK. Academics have since interpreted the meaning of the former Secretary of State for Wales' statement. Some believe that this assertion conveys the true potential of devolution in unleashing unprecedented constitutional dynamics in the devolved territories (Marinetto 2001). Others are of the view that Ron Davies merely wanted to tone down the criticisms surrounding the limited and peculiar scheme of devolution adopted in Wales or simply to suggest he understood change was imminent (Rawlings 2003).

Devolution has spurred mixed feelings from academics and politicians alike. Constitutional lawyers have characterized the process as haphazard (Burrows 2000), and lacking constitutional vision (Rawlings 1998). Political scientists too emphasised the lack of coherent design, and the piecemeal approach (Keating and Elcock 1998; Mitchell 1999) that characterised this piece of constitutional re-engineering (McAllister 1999, 2000; Wyn Jones 2001).

The asymmetric nature of British devolution also generated some debate and polemic (Bogdanor 2001). Some authors identify various levels of asymmetry in the devolutionary settlement in the UK (Johnson 2004). First, the powers and legislative competencies devolved to the territorial level vary: Scotland and Northern Ireland had primary legislative powers since the outset of devolution, whereas Wales had only secondary legislative competences until May 2007. Secondly, there is also asymmetry in the way the intergovernmental relations between the centre and the

devolved nations are conducted, as well as internal asymmetry in the way each institution is designed (committee structure, organisation of business, procedures etc) (Oliver 2003). Nevertheless, literature also highlights the common features presented by the devolutionary settlements such as the acceptance of a degree of proportional representation in the electoral systems (Johnson 2004), some far more than others, given that Wales and Scotland operate the Additional Member System whilst Northern Ireland the Single Transferable Vote system. Additionally, the sovereignty of Westminster in theory in unaffected and so remains the territorial representation in the Westminster Parliament to date. Moreover, financing devolution is done through the block grant allocation via the Barnett formula, with only Scotland having some degree of fiscal powers.

The asymmetry in institutional design in the devolved territories has prompted some critics to label devolution as Labour's strange constitutional design (Ward 2000). Alarmists from the anti-devolutionist camp hailed the death and the break-up of the Union (Redwood 1999; Berger 2000; Bort 2001), accusing Labour of constitutional vandalism (Hitchens 1999; Sutherland and Beloff (eds.) 2002). Others critics of the devolution project claimed that it brought only cosmetic changes to the British constitution (Nairn 1999).

Notwithstanding these criticisms, devolution has bedded-in rapidly in the UK, many of the constitutional issues embodied in the process being hardly visible in the short term (Jeffery 2007; Trench 2008b). Nevertheless, the devolution's flux triggered an important constitutional 'revolution' in the UK (Gable 2006), with none of the territorial constitutions in Scotland, Wales and Northern Ireland, being yet 'settled'. Devolution was re-launched in Northern Ireland in 2007 after five years of stagnation. Wales has been re-adjusting to a new settlement since May 2007. The *All Wales Convention* set-up by the Labour-Plaid Cymru

coalition government to seek advice with regard to a future referendum on primary powers, as set out in part IV of the 2006 Act) suggests that the constitutional question is far from being put to bed, as Peter Hain, former Secretary of State for Wales suggested after the publication of the Government of Wales Act 2006. Another development with significant constitutional implications is the work of the Holtham Commission (Holtham Commission 2009). The Commission was set up by the Welsh Assembly Government in 2008 with the aim of evaluating the current funding scheme for Welsh devolution and of identifying possible alternative funding mechanisms for Wales (WAG press release, 8 July 2008). The Commission produced its first report in July 2009, highlighting that the current funding system is overdue for reform, thus prompting the potential changes in the Welsh devolution arrangements (Holtham Commission 2009).

In Scotland, there were two parallel public debates over the constitutional future of Scotland were launched after the 2007 elections. The first was the *National Conversation* launched by the SNP Government in August 2007 (Scottish Government 2007) in the hope of pushing for the case for independence (Stirbu 2009). As a response, the Scottish Parliament, with initiative coming from the three major UK-wide parties, established the Calman Commission, with the aim of revisiting the Scottish settlement within the constitutional framework of the UK (Stirbu 2009). The Calman Commission reported in June 2009 recommending that the Scottish Parliament should be granted greater control on raising revenues but rejected the idea of full fiscal autonomy (Calman Commission 2009).

2.2. Wales' first constitutional settlement: aspirations and failures

Devolution in Wales, as well as in Scotland, did not happen in a complete ideological and political vacuum. Despite heavy cultural and institutional assimilation with England from the 13th century onwards, Welsh identity survived through its linguistic distinctiveness and religious non-conformism (Williams 1977; Osmond 1988; Morgan and Mungham 2000; Deacon and Pilkington 2006). Despite the use of Welsh language in public affairs being banned by the Acts of Union of 1536 and 1542, it was still used in churches especially after the Reformation with the translation of the Scriptures and the Prayer Book into Welsh in 1567 and 1588.

Towards the end of the 19th century and the beginning of the 20th century, calls for Home Rule all around certainly influenced Lloyd George's campaign for a Welsh Parliament prior to the first World War (Beasely 2003). Against a backdrop of linguistic, religious and cultural resistance to full assimilation, various policy concessions were granted to Wales by the British (see the Welsh Sunday Closing Act in 1881; the Welsh Language Acts of 1967 and 1993).

Rawlings (1998, 2003), paraphrasing Anderson's (1991) famous 'imagined political community' concept, described Wales as the most 'imagined' community of all. Anderson (1991) defines a political nation, as an 'imagined' rather than an actual community, since, he argues, its members hold only mental images of the affinities that keep them bound together. The nationalist impetus in Wales was primarily motivated by cultural and socio-demographic rather than political factors (Morgan and Mungham 2000; McAllister 2001; Trench 2008b).

The establishment of the Welsh Office in 1964, despite stubborn resistance from Whitehall officials (Rawlands 2004), institutionalised the recognition of Wales' distinctive identity and needs - something that had already been

acknowledged at the policy level (Keating and Elcock 1998). The thirty odd years of administrative decentralisation in Wales paved the way for political devolution in Wales (Rawlings 1998; McAllister 1999; Trench 2008b).

Additionally, Plaid Cymru, initially established in 1925 to campaign for the preservation of the Welsh language and culture within a self-governing Wales, slowly emerged as a fully-fledged political party, registering its first electoral win in a major election in the 1966 Carmarthen by-election when Gwynfor Evans was elected as Member of Parliament (McAllister 2001). Its representation thereafter in the Westminster Parliament meant that Wales had gained a stronger voice within the UK that did not depend on the ideology of the UK-wide national parties. Plaid Cymru's political discourse has featured a series of constitutional options as well, ranging from dominion status for Wales, to independence, and, in most recent times, to self-government within Europe (McAllister 1999).

The dominating discourse in Europe in the 1980s and 1990s revolved around the principle of subsidiarity, redressing the democratic deficit by reducing centralisation and by empowering regions, and accommodating diversity within the Union (Keating 1998). Hazell (1999) warns that the influence of Europe should not be underestimated when analysing devolution in the UK and, implicitly, in Wales. Similarly, Rawlings (1998) suggests that the Welsh Office embraced the distinctive 'national' identity discourse in the early 1990s with the aim of capitalising on the opportunities presented by the UK's membership of the European Union, namely the structural funding.

2.2.1. Devolution rhetoric in Wales: process and principles

The Labour Government's renewed proposals for devolution in Wales in 1997 were encapsulated in the White Paper *A Voice for Wales*, and were a year later translated into detailed provisions in the Government of Wales Act 1998. The proposal was for a 60 member four years fixed term Assembly, with executive powers and no fiscal authority. Critics argue that the heavy legacy of the 1979 referendum defeat was felt both in the way devolution debates were held and in the actual proposals (McAllister 1999; Andrews 2003).

First, some argue that discussing devolution in Wales was silenced between 1979 and 1997 (Beasley 2003). By contrast, others highlight the contribution of the *Campaign for a Welsh Assembly* (set up in 1987), and rebranded as the *Parliament for Wales Campaign* in 1993, made to keep devolution talks alive (McAllister 1999). Nonetheless, the scale and outreach of these cross-party campaigns (Welsh Conservatives not included) was incomparably smaller than the one achieved by the Scottish Constitutional Convention (Rawlings 1998; Bradbury and Mitchell 2005). Essentially, the debate over the Welsh devolution proposals of 1997 was confined to the Labour Party political elites (McAllister 1999; Andrews 1999; Trench 2008b) and was the product of strife and heavy compromise among the pro and anti devolutionists within the Labour Party (McAllister 1999; Wyn Jones 2001; Andrews 2003).

Secondly, although the 1997 proposals differ from those of 1978 - see the PR element in the electoral system - they also bear some striking resemblances - the executive form of devolution for instance (McAllister 1999). Critics argue that *A Voice for Wales* White Paper, published in 1997, and the subsequent Government for Wales Act 1998, were the result of hasty planning and mere dusting off of the old proposals, lacking any real constitutional vision (Rawlings 2003). Others suggest that the outlook

and content of the White Paper were pragmatically designed to secure a 'Yes' vote in a referendum (Andrews 1999; Beasley 2003).

McAllister (1999) coined the term constitutional 'engineering' instead of reform, as better representing both the process by which devolution was brought about in Wales, and the content of the proposals. Interestingly, this rhetoric echoes some of the discourse of the post 1979 devolution attempts, which claimed that the devolution proposals of 1978 were the product of "disharmony of motives and imprecision of aim" (Foulkes *et al.* 1983).

The very narrow referendum win (only 50.3% in favour) left the architects of Welsh devolution with the enormous task of ensuring and securing the legitimacy of the future institution. The task was made considerably harder by the complexity and the utter unintelligibility of the constitutional framework created by the Government of Wales Act 1998 (Rawlings 2003).

2.2.2. A framework for democracy

The 1998 Act gave effect to the White Paper proposals and established the National Assembly for Wales as a body corporate serving the Crown as a single legal entity (GWA 1998, ss. 1(2)) - a constitutional abnormality that put Wales outside usual constitutional practice (Rawlings 2003). The Assembly comprises of 60 members elected through the hybrid Additional Member System: 40 constituency members and 20 regional members (GWA 1998, ss. 2). This constituted a major departure from the initial proposal featuring 80 members (McAllister 1999), and was allegedly a trade-off that Ron Davies, the former Secretary of State for Wales, accepted in exchange for including an element of proportional representation [PR] in the electoral system (Andrews 1999).

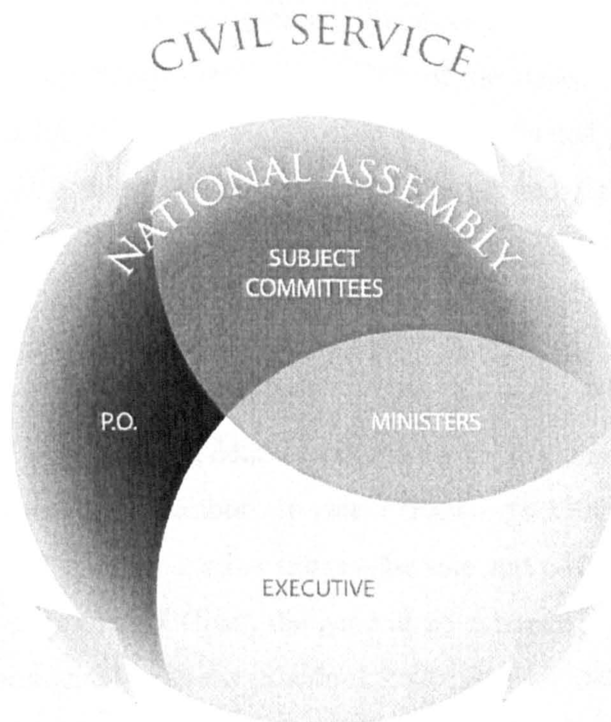
Another unusual characteristic of the Act was the Assembly's internal operational architecture, featuring a cross between a Westminster type cabinet model and a committee structure resembling local government practice (Rawlings 1998, 2003; McAllister 1999). The executive functions were delegated to an Executive Committee (later to become known as the Welsh Assembly Government), led by the Assembly's First Secretary (First Minister since October 2000) (GWA 1998, ss. 56). Allegedly, this too was a compromise Ron Davies had conceded to Labour MPs who feared any delegation of power to someone other than an executive committee (Andrews 1999).

The Assembly's committee structure included Subject Committees that mirrored the executive committee' portfolios, and a series of standing committees, such as Audit, Secondary Legislation and Regional Committees. Just like in Scotland, the committees were set up to combine policy development and scrutiny roles (GWA 1998, ss. 57). This combination of scrutiny and policy roles was not much of a constitutional novelty in parliamentary practice elsewhere - most unicameral legislatures in the Nordic Countries take the same approach (Arter 2004, 2004; Raunio 2004; McAllister and Stirbu 2007b). Nevertheless, within the British constitutional framework, this dual role for committees in Scotland and Wales represented an important constitutional experiment (Rawlings 2003).

One of the most criticised aspects of the 1998 Act, apart from the limited powers it confers to the Assembly, was the provision for ministerial membership in subject committees. Some critics referred to this as a 'constitutional abnormality' (Rawlings 2003), whilst others highlighted how this set-up prevented the Assembly from developing a strong scrutiny culture (Lang and Storer 2001; George and Crompton 2004; Richard Commission 2004; Sherlock 2000, 2004; McAllister and Stirbu 2007b).

In terms of power allocation, the 1998 Act established a heavily executive (civil service) dominated Assembly. Diagram 1 offers a graphic presentation of the internal architecture of the National Assembly, and identifies the main important power and resource centres within the system. The issue is relevant since it is these formal and informal power and influence structures that have undergone the most significant changes and have shaped the development of the institution.

Diagram 1 – The 'corporate body'



The constitutional framework created by the Government of Wales Act 1998 envisaged that the executive power vested in the Assembly would

then be delegated to the executive committee. The civil service machinery supporting the executive committee was represented by the staff previously employed by the Wales Office (McAllister 1999; Sherlock 2000; Cole *et al.* 2003). The focus of these peculiar constitutional arrangements was not on a clear separation between the backbenchers and the executive committee, but on collective decision making, in line with the consensual politics model advocated by devolution's architects. Rawlings (2003) coined the term 'Wales Office+' for a limited scheme of executive devolution in Wales.

Early assessments of the Welsh devolution scheme highlight the fact that constitutional change does not necessarily produce a change in the political culture (McAllister 2000). Later assessments of the Assembly's operation emphasize that the scheme is highly executive dominated preventing the development of a solid scrutiny culture (George and Crompton 2004; Osmond 2004; Sherlock 2004; Richard Commission 2004; Stirbu 2004; McAllister and Stirbu 2007b).

The 1998 Act was also criticised on the grounds of being overly prescriptive at times, making detailed provisions for the committees system (Regional Committees, membership rules) (Rawlings 1998; 2003), whilst leaving gaps and silences at other times - the role and powers of the office supporting the Presiding Officer, the general governance of the institution, and intergovernmental relations (Sherlock 2000; Beasley 2003).

Despite many operational shortcomings, the Government of Wales Act 1998 contained some significant provisions that were likely to instigate important advances towards a more participatory democracy in Wales. The Assembly had a statutory duty to work in partnership with its social partners: voluntary sector, local government and businesses (GWA 1998, ss. 113-115). The extent to which this culture of 'inclusiveness' (Chaney *et*

al. 2001) has made Wales' new democracy more participatory is still disputable and has been subject to some academic attention (Chaney *et al.* 2000; Chaney and Fevre 2001, 2004; Chaney and Hall 2002; Chaney 2004; Royles 2006, 2007). Despite the broad and innovative consultation culture promoted by the Welsh Assembly government and the Assembly committees' in the first two terms, some voluntary organisations expressed dissatisfaction with the manner of the consultation process, as well as with the impact they felt they had had on policy outcomes (Chaney 2004).

2.2.3. Early operational difficulties: failure by design?

The National Assembly Advisory Group [NAAG] was set up in December 1997 to make recommendations on the future operational procedures of the new institution, namely that is:

> *democratic, effective, efficient, and inclusive; learns from experience and develops to meet evolving needs and circumstances; and commands the support of people in Wales and the respect of people outside Wales (NAAG Report 1998: 20).*

Met with a degree of scepticism by some critics, these "lofty ambitions" were still to pass the test of time (McAllister 1999: 640). The ulterior evolution and development of the Assembly has proven that these principles became deeply enshrined in the ethos and values of the institution - all major subsequent institutional re-castings adhering to these founding principles (see the Assembly Review of Procedures 2001; Richard Commission 2004; SOC 2006).

The NAAG's (1998) recommendations often challenged traditional British political practice (McAllister 1999) and were to large extent reflected in the Assembly's first Standing Orders (1999). However, Trench (2008b) suggests that in practical terms, the NAAG had only a limited impact,

given that it was just completing the details of a framework that had, in fact, been decided elsewhere.

Nevertheless, early operational difficulties within the Assembly, as well as 'dramatic' political events, suggested that the standing orders were untested, confusing and lacking prescription in parts. First their lack of clear prescription with regard to no confidence votes did not help in the row over the EU structural funds match funding which brought about a no-confidence debate in the Assembly, and subsequently saw the then First Secretary, Alun Michael, forced to resign (IWA 2000a; Sherlock 2000; Rawlings 2003; Jones and Osmond (eds.) 2001, 2002; Trench 2008b;).

Secondly, the heated arguments between Alun Michael, the then First Secretary of the Assembly and the Presiding Officer revealed some important constitutional issues that neither the Act nor the standing orders addressed, namely the independence of the Office of the Presiding Officer (IWA 2000a; Sherlock 2000). At the heart of the problem was the impartiality of the advice received by the Presiding Officer who in effect was supported by civil servants directly accountable to the Permanent Secretary, hence the executive (IWA 2000a). This issue continued to act as a constant institutional irritant within the corporate body framework. Successive assessments of the National Assembly's institutional development asserted that despite the rise of the office of the Presiding Officer, and the 'virtual' separation, the status of the officials supporting the parliamentary side, especially of the legal advisers, remained unclear (Osmond 2002; Stirbu 2009b forthcoming). This lack of clarity of in the standing orders prompted some Assembly Members to consider revisiting them (IWA 2000a; Sherlock 2000; Beasley 2003; Rawlings 2003).

Thirdly, another aspect of the devolution's design that revealed operational problems was the mechanism by which powers were handed over to the

Assembly. The 1999 Transfer of Functions Order [TFO] was a substantial document which identified "some 350 parent Acts in date order; but not, as had been assumed would be the case, by reference to the subject matter of Schedule 2 fields" (Miers 2003:37). This on going statute by statute, and section by section transfer, was a recipe for 'constitutional unintelligibility' and, consequently, required great input from lawyers (Rawlings 1998, 2003). Leaving unintelligibility apart, Beasley (2003) warns that the Assembly's functions "are neither clear nor logically set-out on the face of either the 1999 TFO or in most post-devolution Acts" (227). Silk (1998) had already highlighted the 'ratchet effect' as a potential problem noting that:

> *primary legislation could be drafted to give English ministers wide powers to make secondary legislation while the Assembly is given more circumscribed powers (p.76).*

The arbitrary distinction between primary and secondary legislation, together with the on-going allocation or repealing of functions, would make devolution work not to the benefit of the Assembly but to its detriment (Cole and Storer 2002). However, the counterargument is that the lack of prescription regarding the allocation of powers provided an opportunity for the Assembly to adopt a maximalist approach to how it used the powers it had.

In summary, the initial devolution scheme for Wales was characterised by high ambitions and aspirations but also by criticism and profound disappointments. In terms of the process by which powers was devolved and the Assembly began to undertake its work, it has often been criticised as patchy, and lacking clarity and vision as a result of heavy political compromise (Rawlings 1998, 2003; Silk 1998; McAllister 1999; Wyn Jones 2001; Beasley 2003). Devolution in Wales, as constitutional

‘engineering’, is keeping with the British approach to constitutional change: incremental and providing pragmatic solutions on a trial and error basis. In terms of structural allocation of powers, the role and influence of the ‘executives’ (by this meaning the Secretary of State, the Permanent Secretary and the executive arm of the Assembly) were exacerbated.

The other, brighter, side of the argument is that the rhetoric surrounding the set-up of the National Assembly for Wales was essentially different from Westminster, encouraging and legitimising a different style of politics in Wales, one that was seeking to be more democratic, effective and inclusive (NAAG 1998, McAllister 1999, 2000). That proponents of Welsh devolution wanted to bring the government closer to the people is reflected in some of the operational parameters set for the new institution: family friendly hours, a more informal style of address in plenary and in committees, and the extensive use of modern technology (McAllister 1999).

Furthermore devolution, whilst not starting with a blank-slate as the Wales Office offered an important legacy, did allow for more room to manoeuvre in terms of innovation and experimentation in a new political space (McAllister and Stirbu 2007a). In Wales it hailed the opening of doors to constitutional innovation and experimentation (Rawlings 1998), thus challenging the arcane practices of the British constitution. Nonetheless, most of this innovation and experimentation was not necessarily planned but the result of sheer pragmatism, thus forcing the new institution to find ways (some innovative) to adjust to what was an essentially flawed constitutional set up.

2.3. In-house constitutional development

New institutions, as well as established institutions suffering significant reform, are likely to undergo a process of adaptation, adjustment and re-adjustment to their new environment, functions and operations (March and Olsen 2006). One of the key dynamics in the process of institutional change is the distribution and re-distribution of power (Strøm 1995, 2000).

2.3.1. The rise of the 'virtual' parliament

Despite the 1998 Act having established the Assembly as a body corporate, the main locus of power was the executive committee and the civil service that supported it. Neither the Act nor the 1999 Standing Orders made sufficient reference to the office supporting the work of the Presiding Officer, or to the general governance and administration of the institution (IWA 2000b; Rawlings 2003). In reality there was no 'institution' behind the position of the Presiding Officer. The legal status of the Assembly and the gradual emergence of a separate 'parliamentary identity' brought about some administrative issues concerning the status of the civil servants working within the Office of the Presiding Officer (Rawlings 2003).

The process of internal development and transformation gathered pace after Alun Michael's resignation in February 2000, and was given further impetus by the emergence of the coalition government between the Liberal Democrats and Labour (Rawlings 2003, IWA 2000b). Two important developments in terms of power distribution and re-distribution happened almost concurrently: first, a coalition government emerged, with a clear and more coherent governing plan (IWA 2000b; Lang and Storer 2003; Beasley 2003). The later re-branding of the executive committee as the Welsh Assembly Government [WAG] bears symbolic capital in the process of constitutional development in Wales, marking the official

polarisation of power in two distinct entities, the cabinet and the parliamentary arm (Osmond 2002; Rawlings 2003; Trench 2008b).

There was increasing recognition that there needed be serious checks on executive power by the Assembly's parliamentary arm, especially in light of WAG's emergence as a strong and well resourced separate identity (Osmond 2002; Betts 2003). Rawlings (2003) claims that the most important step towards separation was the rise of the Office of the Presiding Officer (later known as the Presiding Office and more recently as the Assembly Parliamentary Service [APS]). The independence of the office was secured in October 2000 when the Assembly in plenary passed a Standing Order establishing the House Committee, with a role to advise the Presiding Officer, and drew a separate budget for the parliamentary side (IWA 2000b; Rawlings 2003; Richard Commission 2004). The constitutional implications of this move are significant since it created a solid power base for the Presiding Officer to push for further separation between the executive and the legislative arms of the Assembly (IWA 2000b).

The coalition partnership agreement between Labour and the Liberal Democrats maintained Rhodri Morgan's earlier commitment to undertake a review of the Assembly's procedures (IWA 2000b; Beasley 2003). More importantly, this review was to be undertaken under the auspices of the Presiding Office (IWA 2000b: 18). The coalition partners also re-iterated their commitment to secure the independence of the Office of the Presiding Officer and the civil service supporting it. Ieuan Wyn Jones, the Plaid leader in the Assembly, characterised this as an "historic step forward" (IWA 2000b).

Interestingly, the expansion in scope and power of the Presiding Office happened in parallel with the Assembly's review of procedures [ARP]

(Rawlings 2003; Trench 2008b). This signalled that senior figures on the parliamentary side, the Presiding Officer and the Clerk of the Assembly, were seizing the window of opportunity presented to them. Despite numerous transformations within the office of the Presiding Officer "no evidence was presented [...] in favour of retrenchment" during the long review of procedures (Rawlings 2003: 135). The Assembly Review of Procedure Report (ARP 2002) was characterised by a remarkable level of consensus, revealing the flaws in the initial design, and stating shared aspirations towards achieving maximum and clear separation of the executive and legislative functions of the Assembly within the boundaries of the Government of Wales Act 1998 (Jones and Osmond 2002; ARP 2002; Rawlings 2003, George and Crompton 2004; Sherlock 2004).

The objective of strengthening the parliamentary side, despite benefitting from cross-party political support across the Assembly, met some resistance from senior civil servants on the executive side, especially from the Permanent Secretary, John Shortridge. Monitoring reports on devolution highlight sporadic tensions between the Presiding Officer and the Permanent Secretary: for example, arguments about the Presiding Officer's ruling to allow Members to question the secretary of State for Wales; and disputes about resolutions and motions approved by the Assembly but ignored or challenged by the administration (IWA 2000b)

Another important milestone in the process of 'virtual separation' was the appointment of a new Clerk of the Assembly in 2001 after an open competition. Paul Silk, a long-standing servant of the House of Commons, replaced John Lloyd, one of the most respected civil servants in Wales, indicating that parliamentary expertise won rather than the official civil service expertise (Rawlings 2003). Therefore, institutional developments within the Assembly in the first term were marked by polarisation of power around two centres: the rebranded Welsh Assembly Government - legal,

financial and human resources, control over policy agenda - and the Assembly's parliamentary side, supported by the Assembly Parliamentary Service [APS] (former Office of the Presiding Officer) - the Assembly business, its internal operation, resources available to Assembly Members, corporate services. This polarisation and incipient separation of powers and resources was marked by general political consensus across the Assembly, with some resistance from the top level civil service supporting the executive side. The 'virtual' parliament, as this stage has been labelled by the critics (Rawlings 2003; Osmond 2005), constitutes Wales' interim constitution (McAllister and Stirbu 2008) and marks an important autochthonous dynamic in its constitutional development.

Diagram 2 – The 'virtual parliament'

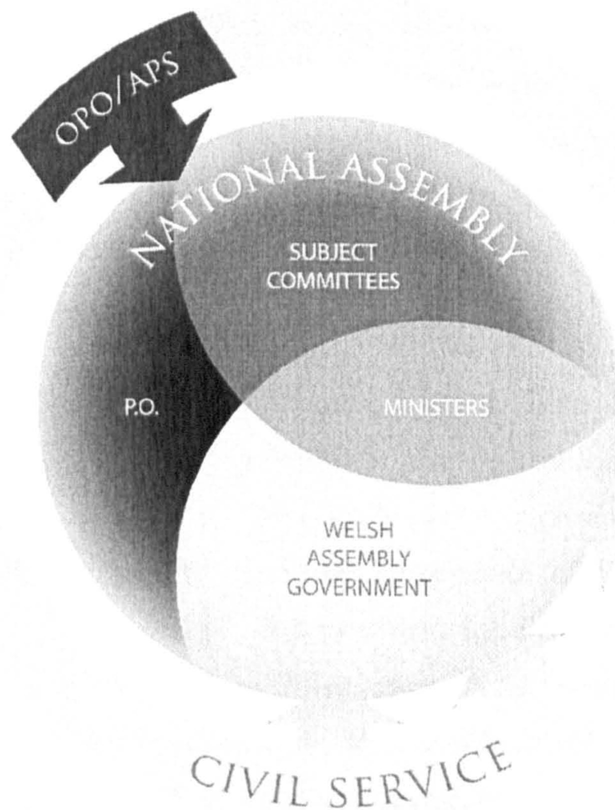


Diagram 2 shows this re-distribution of functions, powers and resources within the Assembly, emphasising the emergence of a separate identity within the core civil service - the parliamentary officials supporting the office of the Presiding Officer, later known as the Assembly Parliamentary Service [APS]. It also draws attention to the main power centres according to the practical reality of the first two Assembly terms: ministers were members of the subject committees, exerting an important degree of influence over the committees' agendas (McAllister and Stirbu 2007b); the role of the Presiding Officer and its office becomes ever more distinct within the corporate body; and the majority of resources (staff support) were focused on supporting the work of the Welsh Assembly Government.

2.3.2. The Richard Commission's constitutional blueprint for Wales

Developments outside the Assembly paved the way for significant constitutional change too. The Welsh Assembly Government set up the Richard Commission in 2002 to look into the powers and electoral arrangements of the National Assembly for Wales. The Commission reported in March 2004, recommending primary legislative powers for the Assembly, a change to Single Transferable Vote [STV] in the electoral system and a twenty member increase in the size of the Assembly (Richard Commission 2004).

The significance of the Commission's work has been subject to much analysis, and received positive feedback from various academics. First, it was agreed by many that the Commission's report offered a clear constitutional blueprint for the future governance of Wales (Rawlings 2004, 2005; Trench 2004c; Bradbury and Mitchell 2005; McAllister 2005a, 2005b; Jeffery 2005; Wyn Jones 2005). Secondly, given its independent status, its unanimous report, and its open and inclusive working methods, it contributed to legitimising the constitutional debate in Wales by taking it away from the political party elites, to the level of

individual citizens, organisations, and communities (McAllister and Stirbu 2008). The Commission was seen, in part, as a Welsh substitute for the Scottish Constitutional Convention (McAllister 2005a, 2005b; McAllister and Cole 2008; McAllister and Stirbu 2008).

It also collected an important body of evidence (McAllister 2005a, 2005b) that is open and accessible to the general public, thus contributing to informing opinions about Welsh devolution. To date, the Richard Commission Report remains the benchmark against which any developments likely to occur in the Welsh constitutional settlement will be assessed. McAllister and Stirbu (2008) emphasize the so called Richard 'consequentials', namely: the size of the Assembly, Wales' representation at Westminster, the referendum on primary powers for Wales, the electoral system and the financing of devolution. All these are likely to shape the next phase of devolution for Wales and the signs are that they are coming on to the political agenda. The *All Wales Convention*, looking at the best timing for a possible referendum, is under way. And inquiries into the financing of devolution have already produced initial reports both at the centre (House of Lords 2009), and in the devolved administrations (see the Calman Commission 2009 in Scotland and the Holtham 2009 Commission in Wales).

However, some critics drew attention to the fact that the Commission was naïve in terms of the delivery of its recommendations, not taking account of the political realities within the Labour Party and what the Labour Party would be prepared to accept (Rawlings 2005). Bradbury and Mitchell (2005) assert that the clear and coherent constitutional road map provided by Richard was too much for Labour. At the report's launch, the First Minister Rhodri Morgan described it as a "red letter day for Wales" (Rhodri Morgan, AM, BBC News 31 March 2004). However, the more sceptical voices within his party and at Westminster had a more tempered

reaction. The then Secretary of State for Wales, the Rt. Hon. Peter Hain, M.P. described the report as a "comprehensive piece of work containing plenty of food for thought" (Rt. Hon. Peter Hain, MP, BBC News 31 March 2004) but swiftly drew attention to the fact that the Commission's recommendations had to secure the full support of both the Westminster and Cardiff governments.

The other main political parties in Wales generally welcomed the constitutional blueprint produced by Richard with different degree of enthusiasm: Plaid expressed disappointment at a "missed an opportunity to be even more radical in its approach" (Plaid Cymru BBC News 31 March, 2004); whilst the Liberal Democrats praised it for "making a clear case for change" (Mike German AM BBC News 31 March, 2004). The Conservatives remained convinced that "any moves towards giving the institution legislative powers must be endorsed by the Welsh public" through a referendum (Nick Bourne AM BBC News 31 March 2004).

2.3.3. Institutional considerations in academic literature

Summing up, operational difficulties arising from the flawed design of the Assembly have led the institution to move, *de facto*, towards a more comprehensible operational framework resulting in the Assembly's second interim constitution: the 'virtual' parliament (Rawlings 2003; Osmond 2005; Elis-Thomas 2006; McAllister and Stirbu 2008).

The fluid Welsh devolution process has been subject to some academic interest. There is a vast body of literature concerned with descriptive and historical accounts of devolution (Osmond 1998; Morgan 1999; Wyn Jones and Lewis 1999; Morgan and Mungham 2000; Wyn Jones and Trystan 1999), and with assessing devolution's impact on various aspects of political life: the policy process (Greer 2004; Adams and Robinson 2002; Adams and Schmuecker 2006); the electoral arrangements and the

electoral behaviour of Welsh people in Assembly elections (Wyn Jones and Trystan 2000; Trystan et al. 2003; McAllister 2004a; Scully 2004; Scully *et al.* 2004; Wyn Jones and Scully 2006; McAllister and Cole 2007; Scully and Elias 2008) the evolution of public perceptions towards devolution (Wyn Jones 2001; Cole *et al.* 2002; Wyn Jones and Scully 2003, 2008a, 2008b; Institute of Welsh Politics 2008); and engagement with the civic society (Royles 2006, 2007; Wyn Jones 2008b).

Nevertheless, institutional insight into the Assembly's operation is rather limited. Some scholars have stimulated a robust institutional analysis, focusing on the constitutional impact and the sustainability of the arrangements in Wales (Rawlings 1998, 2003, 2004; 2005; McAllister 1999, 2000, 2008; Sherlock 2000, 2004; Beasley 2003; George and Crompton 2004; McAllister and Stirbu 2007a, 2007b, 2008; Chaney *et al.* 2007; Wyn Jones 2001; Wyn Jones and Scully 2008b; Trench 2008b; Stirbu 2009b forthcoming).

Others focus on on-going monitoring and evaluation of the institution's development (see the Osmond (ed.) 1998; UCL/IWA Devolution Monitoring reports 1999-2005; IWA 2006-2007; Jones and Osmond (eds.) 2001, 2002; ARP 2002; Osmond and Jones (eds.) 2003; Richard Commission 2004; Trench (ed.) 2001, 2004a, 2005b, 2007a). Some concentrate on evaluating the complex and dynamic nature of the Assembly's legislative powers (Sherlock 2000; Laffin *et al.* 2003; Trench 2005a, 2006, 2008b; Lambert 2002, 2007; Lambert and Navarro 2007), or on debating the future of devolution in Wales (Jeffery 2005; McAllister 2008; Trench 2008a; Wyn Jones 2008a).

2.4. **Constitutional re-engineering mark II: Government of Wales Act 2006**

Labour's official response to the Richard Commission from the Labour Government at Westminster was the *Better Governance for Wales* White Paper (Wales Office 2005), which set out Labour's vision for the future of devolution in Wales. The subsequent Government of Wales Bill was introduced in the UK Parliament on 8th December 2005, and the resulting Government of Wales Act 2006 received Royal Assent on 25th July 2006, marking the next phase of Welsh devolution.

2.4.1. The 'Better Governance for Wales' White Paper: two steps forward, one step back?

The White Paper addressed the 'underlying problem' of the corporate body, the future legislative competences of the Assembly, and the electoral system. First, it proposed the formal separation of the corporate body and the creation of two separate institutions: the National Assembly for Wales as a legislative body, and the Welsh Assembly Government as the executive (Wales Office 2005, para.1.18). Secondly, it proposed a process by which the Assembly would acquire new legislative competencies and be able to legislate in the areas where it already had powers to do so (Wales Office 2005, para. 1.24-1.26). Thus far, the White Paper follows largely the Richard Commission' trajectory (McAllister and Stirbu 2008). However, it also proposed a ban on dual candidacy, preventing candidates from standing both on constituency lists and on regional lists (Wales Office 2005, para. 1.30). This was to address the perceived 'considerable dissatisfaction' with the electoral system which allows for candidates rejected in the constituency ballot to be elected via the regional party lists (Wales Office 2005, para. 1.29).

It is here that the White Paper and the Richard Commission depart decisively. Some argue that the decision to introduce the ban was

motivated by political imperatives rather than by concrete intellectual arguments, as there was generally little solid evidence to justify the move (Wyn Jones, evidence to the Welsh Affairs Committee Report on the *Better Governance for Wales* White Paper 2005; McAllister and Stirbu 2008). There have been some evaluations of the different profiles and workloads of the constituency and regional elected members in Scotland and Wales (Bradbury and Mitchell 2007; Russell and Bradbury 2007). However, some academics drew attention to the fact that the ban could have unintended consequences, potentially altering the pool of talent available to the Assembly (Wyn Jones, evidence in the Welsh Affairs Committee Report (2005) on the *Better Governance for Wales* White Paper).

The White Paper received considerable criticism from academics. Rawlings (2005) criticised the dual candidacy ban and characterised Labour's approach as an example of how evidence-based policy-making is *not* made, describing the new proposed settlement as "[...] pushing [...] the limits of British constitutional practice" (p. 839). Whilst applauding the authors of the White Paper for their legal inventiveness and extraordinary political skill (Rawlings 2005), critics seriously questioned the sustainability and stability of the framework with regards to the way the Assembly would get enhanced legislative powers (Trench 2004c, 2005a; Cox 2005). On this account, the White Paper merely proposes another 'interim' constitution for Wales (Rawlings 2005; Elis-Thomas 2006; McAllister and Stirbu 2007a), rather than settling the constitutional question in Wales as Peter Hain, the then Secretary of State for Wales, suggested during the Bill's second reading in the House of Commons (IWA 2006a). Former members of the Richard Commission, unsurprisingly, met the proposals only with 'one and a half cheers' (McAllister and Wheeler Booth 2005).

2.4.2. The Government of Wales Act 2006: interim constitution mark II?

The passage of the Bill through Parliament was marked by some interesting academic debates highlighting its pragmatic nature, and the need for pragmatism in constitution making in Wales.

Some had already accepted that the corporate body model represented some progress from administrative decentralisation (McAllister and Cole 2007), and that, at the time, it was an 'adequate' choice for Wales (Welsh Affairs Committee 2005). Nevertheless, the corporate body was not only a political compromise, but also essentially compromised (McAllister and Cole 2007), being unlikely to sustain and absorb the amount of operational changes imminent to the functioning of democracy in Wales (Laffin *et al.* 2003).

The debates at Westminster, echoed these descriptions: it represented "ground breaking" constitutional development for Wales (P. Hain during the Bill's 2nd reading in the House of Commons, cited in IWA 2006a: 6); but it was yet another "complex piece of legislation" (Constitution Unit 2006a: 8) that exhibited signs of the same type of executive dominance as its predecessor:

> *government proposals provide for executives (in the UK case, the Secretary of State) rather than the legislatures to deal with matters that relate to legislative matters, such as the Assembly's standing orders and the extent of the Assembly's legislative powers (cited in the Constitution Unit 2006a: 54).*

Some voiced concerns about the Bill creating the ground for the Assembly to acquire primary powers through the back door (IWA 2006a). The more fierce debates (both in the Westminster parliament and on the Welsh political scene) on the dual candidacy ban were tempered by the

pragmatism of the Assembly's Presiding Officer, Lord Dafydd Elis-Thomas, who urged that effort should rather be concentrated on getting the Bill through (IWA 2006b).

The 2006 Act redresses some of the systemic flaws of the first constitutional arrangement. Seen as a substantial political achievement for the Secretary of State Peter Hain (Constitution Unit 2006c), the Act formalises the legal separation of the National Assembly for Wales (as legislative branch) and the Welsh Assembly Government (as the executive branch) (GWA 2006, Part I). Most of the executive functions previously exercised by the corporate body would be transferred to the WAG and any new executive function would be vested directly in Welsh Ministers (GWA 2006, s. 48).

The Act also enhances the Assembly's legislative powers, via an innovative process of Orders in Council, by which the Westminster Parliament grants powers on specific 'matters' in the devolved areas ('fields'). The Assembly's request (a Legislative Competence Order [LCO]), needs to pass successfully through the Assembly and through both House of Parliament (MRS 2006). Following a successful referendum (Part IV), the Assembly would acquire primary powers.

Unlike its predecessor, the Act is clearer with regard to the administration and the governance of the National Assembly. The Act requires the Assembly to set-up an Assembly Commission that will be responsible for the Assembly's property, staff and services (GWA 2006, s. 27). However, the Act is considerably less prescriptive with regard to the committee system, prescribing just one statutory committee - the Audit Committee (GWA 2006, s. 30).

The criticised d'Hondt formula (it works with big numbers rather than small numbers and the Assembly's size is only 60 AMs) for determining the committees' membership (Trench 2005a; 2006) was a matter of dispute during the Bill's passage through the Parliament and it was maintained in the Act, but remains unused, more as a fall-back mechanism in the event that Assembly does not reach consensus on the matter (MRS 2006).

Despite making remarkable progress for devolution in Wales (Constitution Unit 2006c), the 2006 Act falls short of Richard's clear constitutional road-map, leaving room for interpretation and potential future fluidity of the scheme (McAllister and Stirbu 2008). It is also heavily reliant on good will and co-operation between Cardiff and London - a scenario highly untested and potentially problematic in the likely event of a change of government in London (Elis-Thomas 2009). Following the enactment of the 2006 Act and the early operation of the Presiding Officer, Lord Dafydd Elis-Thomas, suggested that the Act is potentially enhancing the Assembly's powers even sooner than the Richard Commission recommendations would have allowed it to (Elis-Thomas 2009)

2.4.3. The Standing Orders of the Assembly 2007: changing the nature of the relationship

The 2006 Act provides only the broad framework of the new constitutional settlement, much of the operational details of Wales' new democracy being left to the new Assembly Standing Orders. The new set of standing orders (Standing Orders 2007) is the result of nine-months work by the Committee on Standing Orders [CSO]. They bring into effect the provisions made by the Act and regulate most of the internal operation of the Assembly.

The most important parameters set by the new standing orders refer to a new executive-legislative relations, new legislative processes, new

committee structure, a new relationship between regional and constituency Assembly Members, and the general governance of the parliamentary institution. For the purpose of this chapter, a brief discussion is provided on the changing nature of the relationship between the executive and the legislature and the new committee system.

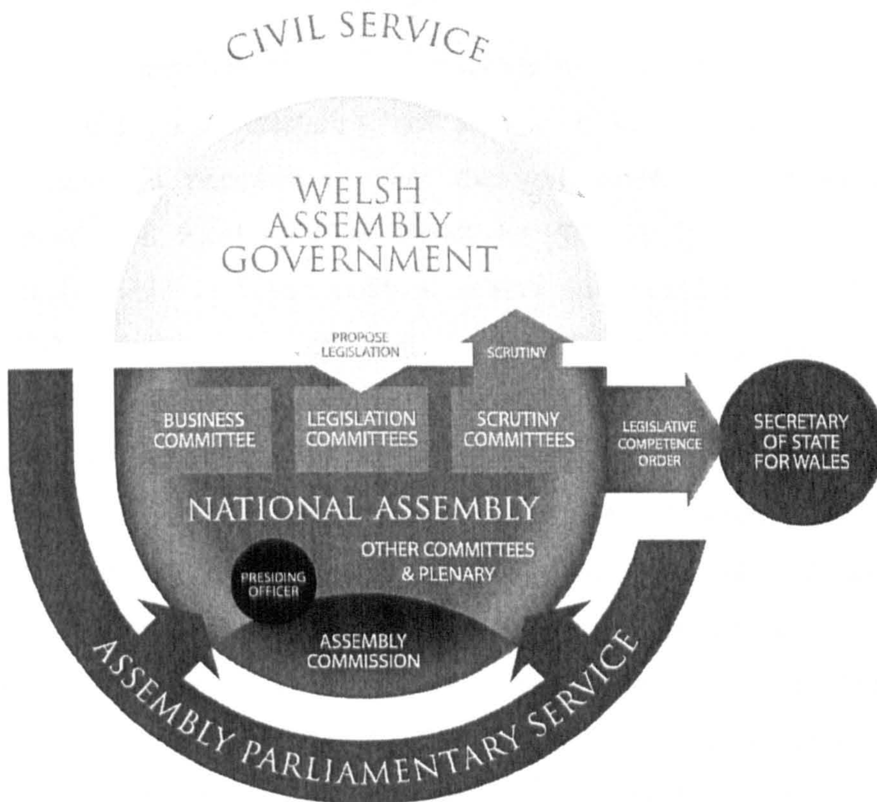
The new tone of the relationship between the executive and the legislative branches is reflected in some important changes in the standing orders: first the Assembly only nominates the First Minister, not elects him/her (Standing Orders 2007, SO: 46, 47). Secondly, Assembly business is significantly changed by the recasting of the Business Committee (Standing Orders 2007, SO 11) operating under a weighted voting system. Instead of a vote on the business statement (Standing Orders 2005, SO 5 and 6), the plenary time is divided on a 3:2 basis between government business and non-government business (Standing Orders 2007, SO7). This new relationship reflects not only a change from the previous operation of the Assembly but from Westminster practice as well, having more in common with how parliamentary business is organised elsewhere (Scotland and New Zealand for instance) (Russell and Paun 2007).

Diagram 3 summarises the new distribution of power and influences under the Government of Wales Act 2006 and the 2007 Standing Orders.

The Committee system has changed dramatically: separate legislation and scrutiny committees replace the dual-function subject committees (Standing Orders 2007: SO12 and SO21). Critics have warned about the dangers of this move towards a Westminster style committee system, claiming that the best practice developed and the policy contribution of the former subject committees could be lost (McAllister 2005, evidence to the National Assembly *Better Governance for Wales* White Paper Scrutiny Committee). By contrast, the Presiding Officer Lord Dafydd Elis-Thomas

welcomed the move, arguing for the better and sharper scrutiny practice that would be required by the new constitutional framework (Elis-Thomas 2006; Eurig 2007).

Diagram 3 – The 'Second Constitution'



It is widely accepted that in parliamentary democracies, one of the most important roles of parliaments is cabinet formation and control of the government (Norton 1990, 1993; Olson 1994; De Winter 1995; Strøm 1995, 2000). The regulation of the executive-legislature relationship is seen as the 'critical link' in the democratic chain of command (Strøm 1995). In most countries, these rules of the game are enshrined to varying degrees of prescription and detail in their written constitutions and in the rules of

procedure of the parliamentary institution. Within the British context much is down to tradition and convention (i.e. that the Monarch appoints the Prime Minister from the party with the majority in the House of Commons for instance), or is evolving through the new territorial constitutional settlements in Wales and Scotland.

2.5. Conclusions: plus ca change, or viva la revolution?

Devolution's goal of creating a 'new kind of politics' in Wales, based on consensus and negotiation rather than on adversarial confrontation (Osmond 1998; Rawlings 1998; McAllister 1999, 2000) is yet to produce that major shift in Welsh political culture that would re-ignite Welsh people's engagement with their local and national politics. Early evaluations of the Assembly's operation suggested that devolution's practice was rather disappointing, in that what was hailed as 'new' politics, turned out to be just normal politics away from the centre (McAllister 2000; Bradbury and Mitchell 2001, 2005). Similar scepticism featured in early evaluations of the policy distinctiveness arena, where 'clear red water' between Cardiff and London was expected from the National Assembly (Osmond and Jones (eds.) 2002). The first two terms of the Assembly were marked by constraints that systematically impeded the Assembly's overall performance (see the limited powers, the 'peculiar' internal architecture) (Richard Commission 2004).

However, emphasising the imperative for radical change and seizing the window of opportunity presented by the Government of Wales Act 2006, the Presiding Officer Lord Dafydd Elis-Thomas urged the Assembly Members to raise their game in the third term (cited in the Western Mail 19[t] July 2006).

Nevertheless, some important advances that Welsh devolution did happen (Elis-Thomas 2006, 2009). First, in terms of political process, Welsh devolution has delivered if not 'new politics' then at least different and distinctive politics (McAllister and Cole 2008). Coalition politics in Wales is likely to become the norm rather than the exception (Osmond 2007). Wales, though still constrained by the Westminster two-party system, has definitely become more in tune with other European systems: virtually all of the four main parties being able to at least negotiate coalitions (McAllister 2007, *The Western Mail* 7 July).

Secondly, there were important advancements in the political representation of women (McAllister and Stirbu 2007a; Chaney *et al.* 2007; Chaney 2008). Nonetheless McAllister (2009) and warns that debate on the role and the impact of women in Welsh society needs to be kept alive and loud in order to sustain the advances made by devolution.

Thirdly, despite being left with the most limited of all three devolution settlements, Wales has been the most un-settled of all nations, pushing the boundaries of British constitutional practice (Rawlings 2005). This is due, in part, to systemic failures that necessitated gradual operational adjustment, and to a stubborn desire to differ from Westminster and reject the status-quo. The Assembly has proven to be extremely innovative both in terms of policy output (paradoxically, much more that Scotland some would argue (Bradbury and Mitchell 2005)), and in terms of constitutional engineering and re-engineering (McAllister 1999, 2005a). Rawlings (2005) argues that, "busy producing their own constitutional artefact" (p. 825), the Welsh Labour Party in particular demonstrated "no little political skill in reconciling competitive view and concerns" (p. 851).

Despite an impressive body of literature on devolution identified here, the actual details of the internal restructuring of the Assembly between 2005

and 2007, arguably one of the most significant constitutional processes the Assembly witnessed, remain surrounded in mystery. It is not clear how the centres of power existing within the Assembly at the time (parliamentary and government sides, the Presiding Officer, political parties etc) redefined their strategies and what alliances they formed in order to seize the window of opportunity offered by this legislative change. The official publications of the Committee on Standing Orders and of the Shadow Commission reveal only limited details about the administrative changes that were made both at the Assembly and the Welsh Assembly Government level to accommodate and facilitate the formal political debate over the separation.

Similarly, there is little institutional insight into how the civil service and the parliamentary officials acted during the process. The officials' side is extremely important in this case since most of the separation's details involved structural and administrative decisions at the official level.

Moreover, the outlook of the National Assembly after the 2007 Elections seems fundamentally different. There is now a Chief Executive/Clerk position different to that of the Clerk of the Assembly in the previous two terms, an Assembly Commission in charge of administering the internal operation of the Assembly, a visible mission statement (vision) and a strategy that promises a modern democratic institution that engages meaningfully with the people of Wales; the institution shows more commitment to reaching out to communities (Assembly Commission 2007; Elis-Thomas 2009). All these are, undoubtedly, developments of the third Assembly, hence not necessarily the remit of this thesis. However, most of these advancements are based on structural, operational and ideational changes debated during the separation stages.

This thesis provides an institutional insight into a critical period of significant constitutional change for Wales, by exploring the process of

separation, thus making a rare, to this date, contribution to the literature on Welsh devolution. Whilst part of this change was triggered and took place outside the institution (see the Richard Commission 2002-2004; the White Paper in 2005, the passage of the Bill in Parliament and the enactment of the Government of Wales Act), a significant part of the Assembly's constitutional re-casting took place within its institutional boundaries. The operation of the 'virtual' parliament and the Richard Commission's deliberations between 2002 and 2004 represent significant autochthonous constitutional developments that informed and influenced the *Better Governance for Wales* White Paper. More significantly the 'in-house' re-drafting of the standing orders, the process of administrative and political separation prior to May 2007, as well as the re-organisation of the parliamentary side played an important role in reshaping the third Assembly's operation. This thesis brings a useful and novel insight into Welsh devolution by focusing on internal institutional dynamics rather than on the output and outcome. It also offers a unique perspective on a process as it happened for the research captured essential elements of change as they were unfolding at the time.

Chapter 3

CONSTITUTIONS, INSTITUTIONS AND DEVOLUTION'S CHALLENGE TO THE UK: THEORY AND PRACTICE

This chapter reviews the notion of constitutionalism focusing mainly on the features of the British system. The chapter discusses normative values of modern constitutionalism, exploring different meanings of and the practical applicability of concepts such as the constitution, separation of powers and the rule of law. With reference to the UK system, this chapter critically assesses the traditional principles underpinning the British constitution, and reviews recent developments, highlighting the challenges posed by modern, pluralist, multi-level governance in Britain. The chapter outlines the impact the process of devolution has had on the British constitutional system at practical and theoretical level.

For the purpose of this thesis the author takes the view that constitutions represent "various types of imposed norms", and "create structures which may or may not embody the norms" thus shaping the "actual organisation of the polity" (Blondel cited in Wolf-Philips, 1972:8). This broad definition, whilst stretching the concept of constitution in the normative sense, conveys the high status of constitutions within the social and political institutions of society. The key is that it allows for an institutionalist interpretation of constitutional dynamics. On this account, Johnson emphasises:

> *Thanks to the long history of institutional adaptation and of skill in the accommodation of the existing political orders to new demands expressed in society the British constitution survived down to the*

present time as the leading and almost unique example of informal and unwritten constitution" (Johnson 2004:13).

Therefore, it is the institutional adaptation that essentially shaped the British constitution throughout time. This thesis is particularly interested in exploring constitutional change and development via adaptation of the political institutions in the UK, emphasising their role in shaping the constitution.

3.1. Constitutionalism: theory and application

Constitutionalism denotes both a theoretical and normative perspective on democratic design, and a practical and pragmatic approach to state governance (Wheeler 1975). Modern liberal constitutionalism emerged from political developments in England in the seventeenth century (Johnson, 2004). In its modern understanding, liberal constitutionalism implies the idea that in any legitimate political order the exercise of power should be restrained and regulated in a system operating under the rule of law, with respect for human rights (Sartori 1962; Wheeler 1975; Bellamy and Castiglione 1997; Ratnapala 2000; Loughlin 2003; Ward 2005).

3.1.1. Restraint and separation of powers

There is a wide recognition that constitutions are concerned with power and the exercise of power (Duchacek 1987). The issue of restrained government has captured the attention of many scholars in the field of political science and constitutionalism from Montesquieu, Locke and John Stuart Mill, to Ackerman (2000) and Vile (1967). Separation of powers among the most important state institutions is one way to look at the issue of restraint and, for centuries, it has arguably been one of the most influential doctrines in the theory and practice of government (Vile 1967).

In its widely accepted understanding, separation of powers implies that there are three intrinsically distinct functions of government - executive, legislative, and judicial - that should be exercised by distinct institutions, which should be constitutionally equal and mutually independent (Vile 1967; Marshall 1971).

The discussion on separation of powers is relevant to the present thesis since, in the context of Wales, it investigates the separation of the executive and legislative arms of the National Assembly. This separation, as the previous chapter emphasised, bears special significance given that it re-configured the power balance between the Welsh Assembly Government and the National Assembly for Wales, thus redefining the terms of the Welsh constitutional framework.

Literature differentiates between the early constitutionalist practice in seventeenth century England, which inspired Montesquieu's *Esprit des Lois* (1748), and the later federal interpretations of the concept, or the form that it took in France (Vile 1967). Based on a particular interpretation of the English Constitution (Marshall 1971; Mount 1992), Montesquieu provides a theorisation of the separation of powers principle, delineating between the legislature, the executive and the judiciary (Norton 1990). In its pure form, the three branches of government have a co-ordinate status and do not interfere in the others' realm - self-regulation being done through internal redress mechanisms (Marshall 1971). Nevertheless, the applicability of the 'pure' separation of powers doctrine is rather limited in practice.

Only France has operated this 'pure' form until recently. To illustrate this, the legality of the executive is controlled by an administrative council (*Conseil d'Etat*) and not by ordinary courts (Barendt 1998); the judicial power does not interfere with the executive power. However, under the

1958 Fifth Republic Constitution, the *Conseil Constitutionnel* (Constitutional Court) rules on the constitutionality of legislation before it is promulgated (Barendt 1998), thus altering the pure theoretical basis of the principle by creating a hierarchy among various powers. In the United States, separation of powers is achieved via a system of external checks and balances among the three branches of government. New theoretical interpretations of the separation of powers doctrine reject both the American and British approaches and "proffer the model of constrained parliamentarianism as the most promising framework for future development of the separation of powers" (Ackerman 2000: 640). Ackerman's proposal emphasises an enhanced role for and the independence of the Supreme Court in the Unites States.

In reality, some overlapping in the exercise of government's functions exists even in most federal constitutions (Marshall 1971; Barendt 1998; Ackerman 2000). The practice of delegation of functions from the legislature to the executive is one example (Marshall 1971). British constitutionalist thinkers (see Bagehot, Bryce or Dicey) were generally reluctant to accept the principle of separation of powers (Mount 1992) since the Westminster model operates, according to Bagehot's interpretation of the constitution, a system based on the idea of fused government, with the executive being drawn from the legislature, (Harlow 1985) and to which ministerial responsibility is key. Bagehot (in Norton 1990) famously described ministerial responsibility as the buckle that holds the executive and the legislature together. Within British constitutional practice restraint on the exercise of power is political and moral rather than institutional (Johnson 2004). It is acknowledged that British governments have long practiced self-restraint, or auto-limitation. It is argued that self restraint comes from a rational choice and pragmatic approach, anchored in

the political actors' belief that it is in their own interest not to abuse the system (McAuslan and McEldowney 1985; Schedler *et. al.* 1999).

3.1.2. Classification

The last two hundred years of constitutional theory and practice have marked a clear distinction between the American inspired and Westminster type constitutionalism. Built on Madison's Calvinist interpretation of the human nature, "where there is an interest and power to do wrong, wrong will generally be done" (Madison, cited in Edward 2005) American constitutionalism advocates the principle of separation of powers and restraint. It emphasises the need to avoid monopoly of and restrain the exercise of power, and to ensure proper checks and balances on the exercise of power. The ideological foundations of American constitutionalism, and to an extent of continental Europe, have their roots in Montesquieu and Locke's philosophy of restricted government and separation of powers (Marshall 1971, Mount 1992, Ward 2005). Montesquieu justified the separation of powers principle arguing that "constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go" (in Norton 1990: 24).

The Westminster model is built around the English constitutional doctrine of parliamentary sovereignty and fusion of powers, with ideological roots in Hobbes and in the works of Bagehot and Dicey (Marshall 1971; Ridley 1988; Norton 1990; Madgwick and Woodhouse 1995). The emphasis is on 'strong' government and political 'stability', which comes naturally as a result of the executive being drawn from the legislature and being collectively responsible in front of it (Ridley 1988).

These ideological but also practical distinctions are also reflected in the way constitutional theorists classify constitutions. The usual distinction is made between written and unwritten constitutions (Fabbrini 2004), or

customary and codified constitutions (Johnson 2004). Customary constitutions are based on tradition and conventions; they represent accepted norms (most of them unwritten) of political behaviour, which are fundamental to the political system (Johnsons 2004). As opposed to customary, the codified constitutions benefit from rules and norms having been written down in a constitutional document, usually regarded as the highest legal document in a political system. Some distinguish between unitary and federal constitutions, according to whether they concentrate or dissipate power (Thompson 1993; Lijphart 1999; Kahn 2003). Bryce acknowledges the superiority of rigid over flexible constitutions, also emphasising the importance of law and history in the interpretation of constitutional rules (Wolf-Phillips 1972; Edward 2005).

The next two sections review normative and descriptive perspectives on constitutions, emphasising what constitutions *should do* and what they *actually do*, thus delineating between the theory and the practice of constitutions. The references to the British constitutional system made in these sections act as signposts for what the British constitution *is not*, rather than what *it is*. The British constitution is not spelled with capital 'C' (Oliver 2003); nor is it a 'paramount law', superior to all laws within the political system (Ratnapala 2000). The British constitution emerged from a series of statutes, from the judicial interpretation of common law and, most importantly, from customary practices (especially parliamentary) (Madgwick and Woodhouse 1995). In addition, although Britain does operate a system of restrained and limited government, this is not based on the separation of powers principle but on fusion of power. Restraint is thus internal, political and moral rather that an in-built institutional constitutional mechanism (Madgwick and Woodhouse 1985).

3.1.3. Constitutions as norm

Early theorisations, stemming from the political philosophy of Rousseau, Montensquieu, Hobbes and Locke emphasise the normative nature of constitutions and focus on what constitutes a 'good' organisation of the state. Some point to the regulatory nature of constitutions: they should "regulate the allocation of functions, powers and duties among various agencies and offices of government, and define the relationships between these and the public" (Finer 1979: 15). This is almost a mechanical interpretation of the concept that resonates in part with Griffith's view of constitutions as "descriptions of equilibrium" (1979: 1). Thomas Paine argues that a constitution is a "thing antecedent to a government", receiving authorisation from the people, limiting the powers of a government and defining basic principles of political conduct (in Thompson 1993). The emphasis here is on the superior nature of constitutions, as the source of all powers (Oliver 2003), their intrinsic legitimacy, and the restraints they impose on governments (Sartori 1962; Schedler 1999; Ratnapala 2000).

Along similar lines, Ridley identifies *L'Act Constitutif* (the constituent act), the *Pouvoir Constituant* (the constituent power), hierarchy of law and entrenchment as the most important features of constitutions (1988). The constitution represents *l'acte constitutif* of a political system. That is, a constitution *creates* a comprehensive system of government, it does not merely *describe* what happens in practice (Thompson 1993). Not surprisingly, most of the British constitutional thought in the Bagehotian and Diceyan tradition disregards the subtle idea of *acte constitutif*, and insists instead on descriptive accounts of the most important institutions of the British political system: the Crown; Parliament; and the courts. (Ridley 1988).

Madgwick and Woodhouse (1995) advance the following definition: a constitution "is a higher or more fundamental statement or structure of rules to which action or behaviour should conform" (p. 4). Therefore a constitutional text has the force to prevail over all ordinary laws (Ratnapala 2000). These definitions reveal two important dimensions: first, they imply that a constitution represents the most significant social and political institution of a society. Alongside concepts such as family and language, all representing "stable, valued, recurring patterns of behaviour" (Huntington 1968: 12), constitutions can be regarded as abstract institutions but fundamental to the functioning of a society. They are essential instruments for the organisation of the polity and of all aspects of a democracy; they provide the framework for codifying the legal process; and they ensure certain fundamental rights for the citizens (Madgwick and Woodhouse 1995; Ratnapala 2000)

Secondly, the definitions aforementioned emphasise the highly legalistic nature of constitutions, especially in the American context. Nevertheless, a question still lingers. In most modern democracies, the 'Constitution' is usually a capital 'C' constitution (Oliver 2003) and represents the highest law to which all other law (common law, conventions, custom and practice) must account (Sartori 1962; Ridley 1988, 1991; Thompson 1993; Madgwick and Woodhouse1995; Ratnapala 2000).

A common feature of systems operating within a framework of 'hierarchy of law', in which the 'Constitution' is paramount, is that independent or semi-independent bodies, such as a Supreme Court in the United States, a *Conseil d'Etat* in France, or a Federal Constitutional Court in Germany, are established to protect and enforce the constitution, even on the executive or legislative branches of the government (Oliver 2003).

Thirdly, entrenchment suggests that constitutional provisions can be amended or repealed only if special procedures are followed (Thompson 1993). The procedures of amendment are usually very difficult and in some cases (see the German *Basic Law,* the Romanian Constitution) there are unamendable provisions in the constitutional acts (Marshall 1971).

Nevertheless there are numerous on-going debates about the limits and the legitimacy of judicial review. The features of constitutionalism presented here (restricted government hierarchy of law, entrenchment) have prompted some scholars to question the theoretical ambiguity of constitutional democracy (Bellamy and Castiglione 1997; Barendt 1998). On the one hand, in practice, constitutions are simple artefacts of democracy and protect the democratic process. They ring-fence some aspects of the social and political life, such as human rights, from the abuse of power holders, irrespective of the political context of the day. On this account, it can be argued that constitutions protect rights intrinsic to democracy (Bellamy and Castiglione 1997). On the other hand, practical features of constitutions, such as rigidity of amendment and entrenchment, raise some issues, binding future generations to principles and values of the past, thus creating theoretical and conceptual anomalies and contradictions.

3.1.4. The practice of constitutions

The normative perspectives on constitutions impose certain analytical limitations since constitutions are not just the result of philosophers' armchair speculation on the nature of human kind and on how it might best be governed. Most constitutions emerge from active and deliberative processes that mark important moments in the history of a country (Johnson 2004). Examples include: Britain's reform Acts in nineteenth century; the social and political upheavals in eighteenth and nineteen century France; the American Revolution; the national movements at the

end of the nineteenth century in Europe; the post-war and post-colonial emancipation of nation states; and the more recent collapse of regimes in the former communist countries (Elster 1991; Bellamy and Castiglione 1997; Slinn 2004). These historical landmarks represent sources of both constitutional change and development.

From an institutional and organisational perspective, a constitution is a "written document which contains the rules for the operation of an organisation", making practical provisions for the management of offices, for the distribution of powers, and for the duties and responsibilities of those in position of power (Thompson 1993: 3).

Arguably, defining constitutions is an easier task in countries where there is a codified written document that represents the main constitutional reference (Madgwick and Woodhouse 1995). The *American Constitution*, the German *Basic Law*, the *Constitution of the Fifth Republic* in France are obvious examples and represent the first source of information about the countries' system of government. Conversely, no reference to a specific constitutional document as such can be made in the case of the United Kingdom, or Israel.

In the British context, for instance, one must define the constitution not as 'paramount law', enshrined in a codified text, but as 'practice of government' taking into account historical and political factors underpinning the work of the institutions vested with power and authority (Johnson 2004). This approach emphasises the living and organic nature of constitutions, outlining the actual system of government rather than the normative principles underpinning the government of a country (Ratnapala 2000).

Critics emphasise the dangers in confining the study of constitutions to the study of the written constitutional texts (Ratnapala 2000). First,

constitutional texts, insofar as describing the practice of government, can never be completely accurate or comprehensive enough (Ratnapala 2000). In most countries, constitutional practice is completed by judicial procedure, conventions and traditions (Marshall 1984; Thompson 1993; Ratnapala 2000). By means of illustration, constitutional practice in the United States relies heavily on a precedent created by the Supreme Court when it claimed the right to conduct constitutionality reviews over all legislation (Thompson 1993). Similarly, in the Netherlands, a convention emerged that any new coalition formation has to be ratified by the people through the dissolution of Parliament and new elections (Strøm 2000).

Secondly, constitutions can hardly be isolated from their historical, institutional and cultural history (Griffith 1979; Bogdanor 2001; Johnson 2004). This is relevant when referring to Westminster model constitutions, since many of them leave important constitutional provisions to conventions (Ratnapala 2000). Constitutional conventions are "non-legal rules of constitutional behaviour" (Marshall 1984: 3), which are politically rather than legally enforceable (Barendt 1998). The British constitution relies heavily upon such conventions: the powers of the Crown; the relationship between the two Houses of Parliament; the relationship between the Prime Minister and the Cabinet and between Ministers and the Civil Service, are all regulated by conventions (Marshall 1984). Similarly, in Australia, the constitution is largely silent with regard to the position of the Prime Minister (Ratnapala 2000).

Literature on the British constitution, whether it is the work of constitutional lawyers or political scientists, presents two important trends. One is the traditional Bagehotian and Diceyan school, found in many of the textbooks on constitutional law and political science (Marshall 1971; Hood Phillips and Jackson 1987; Thomson 1993; Barendt 1998). The tendency is to present the British constitution as it is, to outline the practice of

government, describing the formal institutions of government and their historical development (Brazier 1999, 2002).

Another strand focuses its attention on questioning some of the underlying principles of the British constitution: parliamentary democracy, rule of law, fusion of powers and the heavy reliance on constitutional conventions (Crick 1964; McAuslan and McEldowney 1985; Dearlove 1989; Mount 1992; Norton 1989, 1990, 1993; Beetham and Weir 1999; Flinders 2002, 2005; Feldman 2005; Kelly 2005), by placing the British constitution in comparative context (Ridley 1988, 1991; Madgwick and Woodhose 1995; Edward 2005). Others are particularly concerned with the impact of the reforms of the last two decades on the constitution (Morison 1998; Hazell 1999, 2007a, 2007b; Bogdanor 2005; Flinders and Curry 2008; Dorey 2008; Glover and Hazell 2009). Suggestions for a written constitution in the UK have found both critics (Barber 2008) and supporters (Bryant (ed.) 2007), attracting some academic attention (Bogdanor and Vogenauer 2008). Federal solutions for the UK have also been the centre of academic and political investigation (Fazal 1997; Laffin and Thomas 1999; Henig 2006; Melding 2009).

3.2. The British constitutional triptych: rhetoric and practice

Some of the features of the British constitution have already been emphasised; unwritten, based on custom and tradition, and highly political. It is widely accepted that British constitutionalism relies on a set of principles and doctrines that can be traced to the works of Bagehot (in Norton 1990) and Dicey (McEldowney 1985), such as: parliamentary sovereignty, ministerial responsibility and rule of law. To date, parliamentary sovereignty remains the fundamental doctrine defining the British constitution context, and is still invoked by many theorists, whilst

heavily questioned, criticised and contested by others, including Dicey himself (Barendt 1997, 1998; Norton 1989; Ridley 1991).

This section critically reviews the rhetoric surrounding the founding principles and the practice of the British constitution, and explores the debates surrounding the latest constitutional developments in the UK. The dissonance between the theory and the practice of the constitution has been exposed by many constitutional theorists and political scientists (Mount 1992; Madgwick and Woodhouse 1995; Beetham and Weir 1999; Bamforth and Leyland 2003; Gable 2006).

Despite 'parliamentary sovereignty' implying the supremacy of Parliament, numerous studies have been concerned with the decline of parliamentary government and make a strong case for shifting the balance between the executive and the legislature (Crick 1968; Mount 1992; Norton 1993; HC Liaison Committee 2000; Hansard Society 2001; Flinders 2002; Tomkins 2003; Kelso 2009). Thus, the concept of parliamentary sovereignty, insofar as it is heralded as the most important doctrine underpinning the UK constitution has long been contested and questioned (Ridley 1988, Mount 1992).

Other concerns have been expressed with regards to the real applicability of the rule of law principle (Beetham and Weir 1999), and the unitary nature of the British constitution (Bogdanor 2001; Rawlings 2003; Bradbury 2006; Mitchell 2008; Glover and Hazell 2009).

3.2.1. Constitutionalism in British perspective

de Tocqeville, talking about the British constitution famously stated that "elle n'existe point" (it has no real existence) (cited in Mount 1992). Indeed, British constitutionalism is characterised by the lack of a single document that codifies the rules of government and political conduct

(Bogdanor 2005). Nonetheless, to say that Britain does not have a constitution would be to neglect an important and challenging aspect of constitutional theory. Johnson (2004) asserts that

> *If having a constitution means having a notion of limited government under law to which most or at least many of their people have given their consent directly or indirectly, then the UK does have a constitution (p. 1).*

Johnson emphasises the informal and customary nature of the British constitution, although 'having a notion of limited government' under Common Law, which can be repealed by a government, is subtly different from the idea of 'paramount law' that is above any other law and cannot be easily repealed by governments unless special amendment procedures are followed.

Within the British context, functionalist and utilitarian views of the constitution are frequent, some authors attempting to define the concept by means of identifying its utility and purpose (Blondel 1969; Strong 1972). Some suggest that the British constitution refers to "rules, conventions and practices which describe, regulate or qualify the organisation and operation of government", to the institutions of the government, and to "ideas, doctrines and organising principles which have influenced or inspired the rules and practices of the constitutions" (Turpin 1990: 354). Others offer a general definition that views the constitution as "a body of laws, customs and conventions" that shape and govern the institutional architecture of the state and its relationship with the citizens (Hood Phillips and Jackson 1987: 5). These broad definitions seem to neglect the unique and superior theoretical character of the constitution - the fact that, in most common understanding, the concept refers to a single codified document that serves as the ultimate superior law of a polity. The term constitution often denotes "the written document or text which outlines the powers of its [country]

parliament, government, courts and other important national institutions" (Barendt 1998: 1).

Bryce (in Madgwick and Woodhouse 1985) suggests that constitutions serve three purposes: they establish and maintain a framework of government; they provide security for the rights of the individuals; and they hold the state together. Whether these purposes are achieved via a written document, or via a collection of established legal rules or respected conventions, is irrelevant in the British context, where such a codified document does not exist. Similarly, Sir Kenneth Wheare, defines the constitution as "a selection of the legal rules which govern the government of a country and which have been embodied in a document" (cited in Wolf-Philips, 1972:7).

A variety of written constitutional documents do exist in Britain: the Magna Carta of 1215; the Bill of Rights of 1689; the Acts of Union of 1707 and 1801; the Parliament Act of 1911, to name just a few. More recent constitutional documents, such as the EU Treaties and the devolution Acts (in 1998 and 2006), complete the jigsaw of the British constitution. Individually, these documents are not the *acte constitutif*, as antecedent to a government, of the British polity. All these constitutional acts are the creation of various governments in different social, historical and political settings, reflecting the outcome of long struggles among the most important institutions in Britain: the Monarch, the Lords, the Commons and the judiciary (Johnson 2004). The sources of the British constitution are diverse: statute and common law; conventions; parliamentary custom and traditions; treaties and laws of the European Union; and the authoritative interpretations of the likes of Bagehot, Bryce, Dicey and Jennings (Thompson 1993; Madgwick and Woodhouse 1995; Johnson 2004).

Nevertheless, do these documents account for a 'Constitution' in the normative sense? Some authors assert that having a codified constitutional text is a matter of self-respect and a sign of constitutional emancipation (Ridley 1988, 1991; Madgwick and Woodhouse 1995). Others warn that stretching out the concept of 'constitution' so that it tolerates the English constitutional exceptionalism (Mount 1992) may be a 'dangerous case of Emperor's clothes' (Ridley 1988). To assume that constitutions merely describe the organisation and practice of governments is to strip the concept of its most symbolic and powerful values (Ridley 1988).

3.2.2. Parliamentary sovereignty

Ridley (1991) suggests that the British constitution could simply be codified in two words: parliamentary sovereignty. Along similar lines, Barendt (1998) suggests that within the British political context, parliamentary sovereignty is "as important as a written constitution" (p. 88). The source of Parliament's supremacy is traced to the British judges and courts' long recognition of Parliament's authority in legislative matters (Barendt 1998: 87).

The doctrine of parliamentary sovereignty featured as the sacred centre-piece of A. V. Dicey's (1915) seminal work *Introduction to the Study of the Law of the Constitution*. Some argue that Dicey's work is perhaps the only constitution that Britain has (Mount 1992). In Dicey's own words,

> *The principle of parliamentary sovereignty means neither more nor less than this, namely that the Parliament thus defined [Monarch, House of Commons and House of Lords] has, under the English constitution, the right to make or unmake any law whatsoever; and, further, that no person or body is recognised by the law of England as having the right to override or set aside the legislation of Parliament" (cited in Madgwick and Woodhouse 1995: 21).*

This definition unveils several important aspects of the British political and constitutional system. First, of symbolic relevance, British constitutionalism has essentially been substituted for English constitutionalism as the idea of Parliament, and Crown in Parliament are essentially of English provenance. The Welsh, the Irish and to lesser extent the Scots have had, until recently, little input into British constitutionalism apart from their periodic territorial struggles (Johnson 2004). This point is relevant in the context of devolution in Scotland and Wales post 1997 and, more importantly, in the context of autochthonous constitutional developments in the devolved territories (Rawlings 2005; Trench 2008b).

Secondly, this definition conveys the 'illimitability and indivisibility' of the sovereignty doctrine (Marshall 1971). In theory, Parliament may pass any law, irrespective of whether it inflicts harm on citizens or whether it creates injustice. This has worried a series of critics who pointed to the absurdity underlying the illimitability of the sovereignty doctrine questioning how a supreme legal authority can be legally subject to its own rules (Marshall 1971; Mount 1992; Barendt 1997). Nevertheless, Dicey himself seems to resolve this conflict by delineating between the legal and political aspects of the sovereignty doctrine (Barendt 1998). The Parliament enjoys absolute legal omnipotence in theory (Mount 1992). In practice, the despite its supreme legislative power, Parliament is subject to political limitations (Mount 1992). Therefore, the British constitution is not balanced not through an effective system of checks and balances on the exercise of power, but through the fine distinction and balance between the legal and political aspects of the constitutional process.

Britain's membership of the European Economic Community and the relationship between domestic Common Law and EU law, also raise issues for theoretical and practical consideration in what parliamentary sovereignty is concerned (Barendt 1998; Johnson 2004).

Some scholars identify the strength of the British constitutional system as originating from this very omnipotence and sovereignty of Parliament (Mount 1992). More importantly, Johnson (2004) suggests that Dicey's sovereignty doctrine also implies the sovereignty of the people through the election of their representative to the House of Commons. Other critics suggest that in fact, the sovereignty doctrine is at odds with democracy and popular consent (Bogdanor 1997). Barendt (1998) asserts that the use of the term 'sovereignty' can be misleading and he coins the term 'legislative supremacy of the Parliament' as being more appropriate to describe the principle.

Dicey's interpretation of the customary constitutional practice from which the doctrine of parliamentary sovereignty is drawn served as legal argument against the nineteenth century Irish claims of Home Rule (Edward 2005). Dicey himself was a Unionist and a political activist who strongly opposed the idea of devolving power to the constituent nations. This centralist and unionist line of argument is relevant here since some of the relatively recent constitutional reforms in the UK, namely membership of the European Economic Community and the process of devolution have put the doctrine of parliamentary sovereignty under serious strain (Judge 1988; Dickinson and Lynch (eds.) 2000; Elliot 2002, 2004; Bogdanor 2005).

Nevertheless, the decline of the parliamentary sovereignty doctrine is not new and is not the apocalyptic outcome of membership of the European Economic Community. Nor has it been the sole result of the wave of constitutional reforms after 1997, of which devolution is the most significant for the purpose of this thesis.

3.2.3. Rule of law

The rhetoric on the British constitution is augmented by the importance given to the rule of law, Dicey himself being amongst those enlisting the principle as one of the main features of the British constitution (McEldowney 1985). Other authors include the Bagehotian principle of ministerial responsibility and fusion of powers among the pillars of the constitution (Barendt 1998). Nevertheless, one must delineate between what constitutes fundamental constitutional principle and what is in fact constitutional practice or merely features of a constitution.

On this account, the rule of law is a widely accepted constitutional principle, underpinning the foundations and the functioning of modern democracies (Stimson 2006). Some authors relate to it in terms of 'cultural practice' (Kahn 2003), whilst others suggest that it emphasises the philosophical dimension of constitutional government (Ratnapala 2000). The fundamental prescription of the principle is that people are not at the mercy of the momentary political dispositions of its rulers (Ratnapala 2000). Therefore, most modern liberal constitutions are concerned with the idea of fundamental rights and the protection of those rights against any abuse of power (Johnson 2004). Nonetheless, the concept is equally contested on the grounds that its meaning has been fundamentally thinned by usage in contexts that can hardly be described as democratic (Shklar, in Stimson 2006).

In Britain, the rule of law has been coined by Dicey in his early writings as a fundamental constitutional principle, which implies the idea of "limited government in accordance with law" (in Johnson 2004: 23). Early written aspects of the constitution emphasised the idea of limited government and protection of civil rights against the temporary disposition of the Monarch. As mean of illustration the Magna Carta of 1215 imposes limitations on the powers of the Monarch and introduces the notion of consent of Parliament.

More importantly, later developments brought in by the Glorious Revolution in the seventeenth century affirm the notion of the rule of law: an independent judiciary, and interpretation of the now recognised Common Law (Norton 1989; Johnson 2004).

As with the doctrine of parliamentary sovereignty, the principle of the rule of law was questioned on constitutional grounds. The thrust of the arguments revolve around the same systemic issues created by the uncontrolled and unchecked growth of the political parties in the context of majoritarian and unbalanced institutions, such as the Parliament (Hirst and Barnett 1993). There is an argument that the practice of the last few decades which marked a shift in how the UK's government deals with constitutional issues - namely the use of referenda on continued EEC membership in 1975, on devolution in 1979 and 1997, and on elected mayors in some areas - is at odds with the rule of law principle, because referenda are initiated at the discretion of the governing party of the day and not regulated by clear constitutional provisions (Beetham and Weir 1999).

3.2.4. Conventions

Constitutional conventions complete the triptych of the British constitution. The customary nature of the UK constitution emphasises their important role in setting the unwritten rules of the political game. Conventions represent non-legal rules of constitutional behaviour (Marshall 1984: 3) that regulate the power relationship between different branches of government and dictate the rules of conduct (Barendt 1998). Within the British context conventions are mostly concerned with the exercise of the Crown's prerogatives, and the relationship between various institutions of government: the Prime Minster and the Cabinet, Ministers and the Civil Service, the two Houses of Parliament. Conventions also regulate various aspects of post-colonial politics, such as the relationship between the UK

and Commonwealth countries (Marshal 1984) or, more recently, between the UK government and the devolved territories in the UK (Poirrier 2001; House of Lords (2002); Horgan 2003; Trench 2004b, 2007b; 2008a).

Sir Ivor Jennings defines conventions as "the flesh that clothes the dry bones of the law" (cited in Barendt 1998: 41). This definition unveils one of the most important and long standing debates on the role of conventions in British politics: their enforceability and weight (Marshall 1984; Mount 1992; Barendt 1998). Some suggest that conventions are not legally binding but politically enforceable, constituting the rules of constitutional morality and appropriate behaviour (Barendt 1998). The point is relevant in the context of constitutional and institutional change. There is a widely held assumption that due to its reliance on conventions, the British constitution is flexible (Wolf-Phillips 1972; Barendt 1998). Hence the assumption that constitutional amendment is easier than in countries with a written constitution (Madgwick and Woodhouse 1999).

Nevertheless, other critics draw attention to the fact that reliance on conventions obstructs and limits the opportunities for radical change and reform of the constitution (Hazell 2001; Johnson 2004; Norton 2006). In addition, conventions are established and carried out by those operating within the political system, thus leaving little scope for open deliberation outside the closed political system (Flinders 2002). Despite the fact that conventions tend to reflect the prevailing political and constitutional values of the time (Barendt 1988), constitutional amendment and change becomes an informal, non-transparent and non-deliberative process.

Despite the heavy reliance on conventions and informality in the British constitution (Griffiths 1979; Johnson 2004), somehow paradoxically, it is a matter for the Courts and judges - formal and judicial aspects of the constitution - to determine when a convention exists. On this account,

judicial interpretation of constitutional matters is as important in Britain as it is in any country with a codified constitution (Johnson 2004). Hence a significant or radical change of the constitution in Britain is not only a matter of political revolution but of legal revolution as well.

The judification of the British constitution, especially after 1997, has been subject to some academic debate. Some authors highlight the increasing role of the British Courts in decision making, thus narrowing the scope of the democratic political process as a result of the Human Rights Act 1998 and the Constitutional Reform Act 2005 (Bevir 2008, 2009; Masterman 2004, 2009). Similarly, the increasingly territorial and multi-level nature of the British constitution, and the impact of European Law are all putting a strain on the existing 'conventional' practice of the British constitution and call for a more juridified political and administrative process (Norton 1989; Oliver 2003).

3.3. Constitutional reform in the UK: parliamentary democracy in decline?

Academic literature emphasises the fact the British constitution has constantly transformed, adapted and grown (Ridley 1988; Johnson 2004). Constitutional reform has been incremental, not revolutionary, responding pragmatically to political pressures of the day (Ridley, 1991; Norton 2006; Keating and Elcock 1998). Constitutional 'earthquakes' have been rare, with the notable exception of the Irish secession in 1920s. Most reforms were concerned with the powers and the operation of formal political institutions: balance of powers between the Monarch and the Parliament, the powers and the operation of the two Houses (Parliament Act 1911 and 1946).

Other sets of reforms concentrated on the scope of civil rights: Magna Carta 1215, Bill of Rights 1689. Additionally, territorial issues have always been at the forefront of the British imperialist and colonial constitutionalist history: the incorporation of Wales in 1536, the Acts of Union with Scotland and Ireland in 1707 and 1801, the secession of Ireland in 1920, and the devolution acts of 1998 and 2006, granting the historic nations various degrees of self government, without ceding sovereignty from Westminster (Ward 2000; Bogdanor 2001; Pilkington 2003; Johnson 2004; O'Neill 2000, 2004, Deacon and Pilkington 2006).

The most recent set of reforms initiated in 1997 through Labour's constitutional modernisation programme included, among others: reform of the House of Lords, a clearer separation of the judicial powers, the incorporation of the European Charter of the Human Rights into national legislation (Human Rights Acts 1998), freedom of information (Freedom of Information Act 2000), devolution (see devolution Acts in 1998 and 2006), and reform of the local government (Local Government Act 2000) to name just a few. Bogdanor (2005) refers to Labour's constitutional reform programme as a 'quiet revolution', suggesting that despite having been piecemeal and incremental, the reforms are quite radical in essence.

Nevertheless, the balance between the executive and the legislative powers in the UK remain an endemic problem of the British constitutional system, at the centre. This section reviews academic debates surrounding the balance between the executive and the legislature, and about the challenges faced by the parliamentary supremacy doctrine. A discussion on the strength of the parliamentary system, and the balance of powers between state institutions, is relevant in the context of this thesis because it sets the constitutional context within which new political institutions were established and developed post 1997 when the devolution process was re-ignited. The devolved institutions, although essentially different in their

set-up, powers and operation, face similar challenges related to the adequate balance of power within a multi-layered parliamentary democracy model; just as the Westminster Parliament has faced during its long history.

3.3.1. Executive - legislature relations: a tale of constitutional imbalance?

Academic literature abounds in comparative evaluations of the role and formal powers of legislatures (Lijphart 1999; Mezey 1979; Polsby 1975; Norton 1990; Crick 1968; Arter 2004; Blondel 1970; Damgaard and Jensen 2006; King 1976), highlighting the declining role of parliaments and the rise of strong executives (Norton 1990, 1993; Mezey 1979; Polsby 1975). Mezey's (1979) study of the impact of legislatures on policy making differentiates between 'active' and 'reactive' legislatures, and categorises Westminster as a re-active parliament lacking formal powers and support to drive the policy-making agenda. Norton (1990, 1993) differentiates between policy-making and policy-influencing legislatures, of which Westminster is the latter.

Others, such as Polsby (1975) suggest another typology: legislatures as 'transformative' and legislatures as 'arenas'. On this account, King (2007) claims that the House of Commons is 'the archetypical arena assembly'. Where the legislative process is concerned, the British parliamentary system has been characterised as "influence, not direct power; advice, not command; criticism, not obstruction; scrutiny, not initiation" (Crick 1968: 80).

The balance (or rather, imbalance) between the executive and legislative powers in the UK has been the central theme of constitutional reformers, academics and policy advocates (Crick 1968; Norton 1990, 1993; Beetham and Weir 1999; Flinders 2002, 2005, 2008; Brazier *et al.* 2005; Hansard

Society 2009; King 2007; Liaison Committee 2000, 2001; Modernisation Committee 2002, 2007). Within the British constitutional context, the executive is seen as over dominant (Crick 1968; Norton 1990, 1993; Flinders 2002; Brazier *et al.* 2005; Kelso 2009).

Critics argue that the failure of constitutional reforms in the UK to address this imbalance lies in the customary adaptation of the constitution which did not take into account the growth of political parties (Flinders 2002). As some emphasise, political parties have been largely left out of the constitution until recently (Bogdanor 2004). The rise of party discipline and party interest has been highlighted by many as the principal cause of the erosion of the norms of political self-restraint and the decline of parliamentary democracy in Britain (Norton 1990; Beetham and Weir 1999; Flinders 2002; Johnson 2004).

Others identify the excessive unchecked power of the executive as a major constitutional flaw and threat to British democracy (Beetham and Weir 1999; Hirst and Barnett 1993; Brazier *et al.* 2005; Flinders 2006). More recently some academics and think tanks have suggested that the selective incrementalism (Norton 2006) and 'cherry-picking' hitherto inherent in constitutional reform are no longer sustainable options; they advocate a holistic approach to constitutional reform and radicalism (Conford 1993; Hansard Society 2009).

3.3.2. In defence of parliamentary sovereignty

The second line of argument in the weak/strong dichotomy is not that UK Parliament is strong but that it is not as weak as some claim. Norton (1989) suggests that the doctrine of parliamentary sovereignty is as important as ever, despite claims that modern British governance does not fit within the Diceyan framework (McEldowney 1985). In defence of the concept of parliamentary supremacy, Norton (1989, 1993) points out that, ultimately,

the Courts will enforce Acts of Parliament. Hence, in terms of its output, Parliament is still the ultimately sovereign actor (Norton 1989, 1993). The impact of Parliament on policy outputs has been emphasised via the government's defeats in the House of Lords (Sciara and Russell 2006; Russell 2009), and via various back-bench rebellions in the House of Commons (Cowley 2005). Other studies focus on the influence that Parliament is able to assert during the legislative process (Flinders 2008; Hansard Society 2008). The departmental select committees are also seen as key to redressing the power imbalance between the executive and legislature (Liaison Committee 2000, 2001; Modernisation Committee 2002a, 2002b; Maer and Sandford 2004).

The reform of the justice system is perhaps one of the most important constitutional developments in the UK, although the removal of the Law Lords from the House of Lords and the imminent creation of a Supreme Court attracted only limited attention from media and academics (Masterman 2004).

3.3.3. Impact in theory and practice

It has been argued that Labour's 1997 reforms, focus primarily on the periphery of the constitutional landscape (territorial aspects, civil rights and liberties) rather than tackle the issues of the UK's political system at the centre (Beetham and Weir 1999). Devolution was introduced with the aim of democratising and legitimising the governance of Scotland, Wales and Northern Ireland (Burrows 2000; Morgan and Mungham 2000; Bogdanor 2001). Nevertheless, England, with the exception of the Greater London Authority, is left outside constitutional modernisation and re-adjustment programme, raising questions about the legitimacy and the sustainability of the current arrangements (Hazell 2006; Trench (ed.) 2004a, 2005, 2007a).

Claims that post 1997 the British constitution has become less monolithic, centralised and political (Bamforth and Leyland 2003) have been countered by the fact that constitutional theory in the United Kingdom is somehow jet-lagged and trapped in arcane doctrines and traditional constitutional principles. Constitutional theory has been generally slow in absorbing the changes in constitutional practice. Similarly, despite some incremental change and adaptation, political institutions in the UK (such as Parliament for example) still operate on practices and conventions and prove extremely resilient to radical change (Hansard Society 2009; Kelso 2009)

For constitutional theorists, the British constitution is still very much about the practice of government and, from a theoretical perspective, it is anchored in the doctrine of parliamentary sovereignty (Marshall 1971,;Mount 1992; Ridley 1988; Beetham and Weir 1999; Norton 1989). At the political and academic level, there are voices that call for some degree of radicalism and a holistic approach in constitutional and parliamentary reform (Conford 1993; Hansard Society Commission 2001; Hansard Society 2009).

3.4. The territorial challenge and the impact on the theory of UK constitution

The unfolding of the devolution process in the UK raises some questions at the theoretical and practical level. Political scientists, and to a lesser extent constitutional lawyers, are increasingly challenging the 'unitary' view of the British constitution, suggesting that recent developments and reforms within the British polity, including membership of the European Union and devolution, have significantly altered its unitary nature (Bamforth and Leyland 2003; Gable 2006). The starting point of this argument is that although the UK has had a highly centralised, unitary constitution for more than two centuries, the British state has never been unitary (Bogdanor

2001; Gamble 2006). A long history of institutional arrangements that tolerated the distinctiveness of the Scottish legal system for instance, and allowed for a certain degree of autonomy and decentralisation of power, implies that, in practice, the territorial dimension of the British constitution has been more prominent than the standard textbooks on UK constitutional law suggest.

The idea of a territorial constitution has been subject to debate in various contexts, being linked with the concept of 'territorial politics', as defined by Bulpitt (1983) and re-conceptualised by Bradbury (2006). Some authors claim that post 1997, the British constitution has become less centralised, giving way to a multi-layered constitution, with distinctive territorial dynamics (Bamforth and Leyland 2003; Gamble 2006).

The extent to which the 1997 reforms in the Celtic regions have reverberated at UK level is still debatable. Similarly, it is still not clear how much of the practice of devolution, has actually impacted on the British constitutional theory as a whole.

The academic debates around devolution have gone beyond the habitual theoretical dispute over independence, federalism, and unionism (Nairn 1981; Mount 1992; Keating 1998; Laffin and Thomas 1999; Mitchell 2000; Hopkins 2002; Paterson 2002; Johnson 2004; Nam-Kook 2005; Melding 2009). They bring to the fore the importance of institutional design (Elazar 1987; Lijphart 1999; Betham and Weir 1999; Parry 2008). The constitutional profile of the devolved territories is extremely complex: they are now subject to their own written and publicly ratified *Acte Constitutif*, to the invisible, customary British Constitution, and to EU law, suggesting the idea of multi-layered constitutionalism (Bamforth and Leyland 2003).

Moreover, at the practical level, devolution impacted on national identity, and the electoral preferences of the people in Scotland and Wales (Trystan *et al.* 2003; Scully *et al.* 2004; Wyn Jones and Scully 2006; Curtice 2006; McAllister and Cole 2007). National identity surveys based on the forced choice of national identity reveal that post-devolution there is a stronger sense of national identity in Scotland and Wales (Wyn Jones 2001; Curtice 2006; Wyn Jones and Scully 2008a). This has had profound implications for the concept of Britishness and, interestingly, for the English identity, figures showing an increase in the English identity (Curtice 2006).

Government proposals, dating from 2007, regarding the next phase of constitutional reform in the UK envisage tackling the decline in Britishness, and renewing democracy (Governance of Britain 2007). Despite the ambitious goals set by Gordon Brown with regards to revitalising democracy in Britain and regenerating the sense of a unified British national identity, some criticise Brown's 'common British values and symbols' approach in that it was lacking an institutional focus (Hazell 2008).

Additionally the proportional element in the electoral systems in Scotland and Wales has broadened the spectrum of political parties and individuals represented in their national legislatures (McAllister 2004a; McAllister and Cole 2007; Wyn Jones and Scully 2006; Stirbu 2009; Osmond 2007). In ten years of devolution coalition and minority governments have become the norm rather than the odd exception in Scotland and Wales. Some authors go so far as to claim that this is in fact a 'normalisation of politics', in a global sense, where coalitions are routine and where bargaining and negotiation over cabinet formation is not an implicit process but subject to deliberation, consensus seeking and political compromise (McAllister 2007, *The Western Mail* 7 July). The multi-party system now forces parties into coalition or minority governments, into negotiations and bargaining in

decision making, thus challenging the core of British politics: its majoritarian nature.

The other significant effect of the proportional element in the electoral systems in Scotland and Wales is that it enhances the chances of women being elected into office (Chaney *et al.* 2007; Chaney 2008). Coupled with active pre-devolution campaigns on women's representation in Scotland and Wales, and with some of the political parties positive action strategies (Chaney *et al.* 2007), the electoral systems in the devolved legislatures have produced better representation of women, in descriptive terms, especially in Wales. In 2006, after the May by-election in Blaenau Gwent, the National Assembly for Wales became the first and only legislative Assembly in the world with more women representatives than men. The implication of better descriptive representation for women in the devolved institutions are far reaching: from soft impacts such as the tone of the debates, the way politicians conduct themselves, to more substantive impact on policy and legislation (Mackay 2004; McAllister and Stirbu 2007a; McAllister 2006; Chaney *et al.* 2007; Chaney 2008).

Devolution has also changed the nature and the dynamic of intergovernmental relations. Hitherto it had been dominated by a top-down approach, with the Secretary of State (often lacking democratic legitimacy) for the respective nations, being the link between the centre and the periphery. There is wide agreement that intergovernmental relations have become extremely complex post-devolution (Horgan 2003; Trench 2007b). Some authors highlight the conventional nature of such arrangements (the Memorandum of Understanding between the centre and the devolved nations, the JMS, the various concordats) (Poirier 2001; Trench 2004b).

There is also an emphasis on the fact that inter-governmental relations remain highly untested so long as there is political congruence between

Cardiff, Edinburgh and London (Laffin *et al.* 2000; Rawlings 2003; Trench 2004b, 2007b). Other authors draw attention to the changing relations at the civil service level, claiming that Whitehall departments' have been slow to adapt to devolution (Rawlings 2003). Some departments do not show a great deal of awareness about the policy and procedural implications of devolution. The most recent constitutional developments in Wales have also put a strain on intergovernmental relations, given the complexity of the legislative process prescribed by the Government of Wales Act 2006, which forces joint working between the administration in Cardiff, the Secretary of State for Wales and Whitehall departments, as well as between the National Assembly and Westminster (GWA 2006, Welsh Affairs Committee 2008; House of Lords 2009).

The policy impact of devolution (Adams and Robinson (eds.) 2002; Trench (eds.) 2004a; Adams and Schmuecker (eds.) 2006) is also relevant. Some authors link devolution with the concept of 'laboratories for democracy' (McAllister and Stirbu 2007a), usually floated around in federal contexts. Some highlight the importance of policy divergence (Keating 2003, 2005) but also the dangers of a lack of policy co-ordination in the UK (see the anomalies created by the Scottish policy of tuitions fees). Nevertheless, there is not enough evidence to suggest that policy diversification has led to significant policy transfer and policy learning (Greer 2004; 2006, 2007, 2008). Despite devolution being surrounded by a rhetoric of inclusiveness and participation, with an enhanced role for the social partners, some authors are sceptical about the meaningfulness of devolution's participatory mode.

Devolution has certainly constituted a 'shock' for the British political system since it was surrounded by a rhetoric promoting principles such as openness, transparency, and responsive governments (Burrows 2000; Gable 2006). Nonetheless, the extent to which the new institutional

practices triggered by devolution reverberated in the theory of the British constitution is debatable. The constitutional questions raised by devolution are of the practical rather than theoretical nature: will there be a referendum on Scottish independence? Will there be a referendum on Part IV of the Government of Wales Act? Will they be successful? If so, what will the impact on the British constitution be? What solution is there for England, if England does indeed have a constitutional problem? All these are questions that stem primarily from the unfolding of the devolution process in the UK.

PART II

THEORETICAL AND METHODOLOGICAL MODELLING

Chapter 4

THEORETICAL CONTEXT: UNPACKING INSTITUTIONS

This chapter explores various theoretical approaches to the study of political institutions and provides an analytical framework for the process of constitutional development in Wales. It focuses on the role institutional change and adaptation plays in shaping and institutionalising constitutional provisions. The chapter starts by offering a brief theoretical context for the study of political institutions, and by explaining the institutional focus adopted here. It then outlines the core assumptions underpinning the new institutionalism and their relevance for the study of how institutions emerge and change over time. The chapter continues by briefly presenting other competing theories that shaped this research and concludes with an exploration of theoretical links between the various levels of understanding the constitutional change process.

4.1. Approaches to the study of political processes

Numerous accounts of the discipline of political science reveal that it has become extremely multi-faceted, complex and cosmopolitan in recent years (Almond 1990; Goodin and Klingemann 1996). Scholarship in political science has become *de facto* pluralist (Marsh and Stoker 2002) and interdisciplinary approaches, underpinned by an eclectic blend of theories and by mixed methodologies have become the norm in studying social and political phenomena (Powell and DiMaggio 1991). This is contrary to the expectations of some who were hoping that a scientific revolution in political science would at last provide a unified theory and method (Weisberg 1996: 4). Notwithstanding, the long theoretical pursuit for a unified theory and method in social science research, this has always

been of a utopian nature and highly unlikely to fully happen (Marsh and Stoker 2002).

There are as many classifications of the approaches to the study of social and political processes as there are people interested in this form of theorisation. Some distinguish between the rational actor perspective, the cultural community perspective and the institutionalist perspective (March and Olsen 2006: 4). The rational actor or rational choice perspectives emphasise the exchange among self-interested actors in the game of politics (North 1990). Distinctly, in a cultural community approach attention is paid to the values and world views shared by various communities of common culture, experiences and vision (March and Olsen 2006: 4). The institutionalist perspective claims that it is institutions that sit at the heart of political life. On this account, it is the organisation of political life that makes a difference and captures the attention (see March and Olsen 2006).

Other authors use other classifications to differentiate among various approaches to political science. Marsh and Stoker (2002) use the foundationalist vs. anti-foundationalist ontological divide to mark a clear separation in the social scientists' philosophical position. Behaviourism and rational choice, although two very different theoretical approaches, share a common ground in that political action is seen as the result of self-interested actors (Norton 1990; Arthur 1994). They explain political phenomena via general laws and by focusing on individuals' behaviour, claiming values such as neutrality and detachment of the researcher from the practice of politics (Marsh and Stoker 2002: 6-7). Institutionalism on the other hand, anti-foundationalist in essence, is concerned with how institutions shape and influence the political process. Other approaches, such as feminism and Marxism, reject the merits of neutrality (Marsh and Stoker 2002:6-7). Instead, they assert the merits of standpoint in political

science, where engagement and activism in the political struggle are extremely important (Randall 1991; Squires 1999; Marsh 2002). Interpretative theory, purely anti-foundationalist as well, regards politics as a narrative and claims that understanding the social world is very different from understanding the physical world, primarily because the social world is socially and discursively constructed (Bevir and Rhodes 1999). Hence, social and political phenomena do not exist independently and cannot be objectively analysed. Social and political science should therefore develop narratives, not theories (Bevir and Rhodes 2003).

4.1.1. Institutionalism in political science

The institutionalist school of thought is arguably the oldest approach to the study of politics (Goodin 1996). Some authors go as far as claiming that until the 1950s, "institutionalism was political science" (Lowdens 2002: 92). Institutionalists were concerned with the formal-legalistic aspects of political institutions, such as: constitutions and whole systems of government (Finer 1932; Blondel 1969; Ridley 1988, 1991); legislatures and their functions (Polsby 1975; Mezey 1979; Norton 1990; Olson 1994; Lijphart 1999; Arter 2006); or the structure and operation of bureaucracies (Ridley 1966). Then, static and structuralist views on institutions focused generally on continuity rather than on change, and held that institutions, once established, produce elements of order and predictability that enable political actors to act. Eckstein (1979) observes that institutionalist scholars in the old tradition were "silent about all of their suppositions" (pp. 2). They were largely disinterested in theoretical and methodological rigour (Lowdens 2002), preferring to use intelligent observation in seeking to "describe and understand the political world" (Peters 2005: 2), which exposed them to serious criticism and subsequent attack from those with positivist ontological positions.

The behavioural revolution in social sciences in the mid 1960s, and the flourishing of rational choice theories over-shadowed institutionalism for quite some time. Instead of taking the functions of political institutions at face value, the behaviouralists changed the focus from institutions to the individuals acting within them. The focus shifted from describing systems of government to explaining how and why political actors behave in social and political contexts (Lowdens 2002). Rational choice theorists also sidelined political institutions and focused their attention on the interplay of self-interested actors (Goodin and Klingemann 1996: 11). It was the perceived failure of rational choice and behaviourism in fully explaining political phenomena that brought the focus back on political institutions.

4.1.2. Theorising political institutions

The concept of 'institution' is surrounded by great definitional diversity, given the many theoretical perspectives one can look at it from. One of the broadest definitions, coming mainly from a sociological context, asserts that institutions are "stable, valued, recurring patterns of behaviour" (Huntington 1968: 12). Goodin identifies spheres of social institutions such as: family and kinship; education; economics; politics; cultural institutions and stratification (1996). In the realm of politics, Ridley asserts that institutions are "invented, deliberately established and ordered", having a "rational and formal base" (1975: 249). The common element shared by these social spheres is 'institutionalisation' - "the process by which organisations and procedures acquire value and stability" (Huntington 1968: 12). Powell and DiMaggio (1991) call this 'institutional diffusion': the process by which new ideas, values and goals will be translated into new procedures, norms and practices. In the sphere of politics, this diffusion is essential for the democratic process since:

institutionalisation, acceptance and internalisation of new ideas will be a prerequisite for the proper political functioning of the policies flowing from the new norm set (Flockhart 2005: 259).

In the sphere of economics, institutions are regulatory systems of 'nested rules' that help reduce "the costs associated with uncertainty across time" (Goodin 1996: 23). For the purposes of this thesis, the author focuses here on the political interpretation of institutions derived mainly from new institutionalism. Nevertheless, other competing theories will be critically reviewed.

4.2. The 'new institutionalism' and democratic design

March and Olsen's resuscitation of the institutionalist perspective (1984, 1989) tends to confirm the strong belief of many that "you only need to sit still, it all comes round again" (Rhodes 1995: 57). The 'new institutionalism' forms the back-bone of a new epistemological perspective that helps understanding social and political phenomena (March and Olsen 2006). Political life is thus organised around the interpretation of life and the development of meaning, purpose and direction (March and Olsen 2006).

4.2.1. New institutionalism in perspective: core assumptions

Departing from the utilitarian view of politics stating that political action is the result of self-interested actors, new institutionalism claims instead that "individual agents and groups pursue their respective projects in a context that is collectively constrained" (Goodin 1996: 20). This constitutes the most important return to the fundamental assumptions in institutionalist scholarship.

The new paradigm was embraced by political science (see March and Olsen 1989, 2006; Goodin 1996; Peters 2005), but also in organisational sociology (Powell and DiMaggio 1991) and economics (see North 1990). The core assumption is that the organisation of political life can explain social and political phenomena (March and Olsen 1989; Powell and DiMaggio 1991; Goodin 1996; Peters 2005). Scholars have sought to counteract the shortcomings of behaviourist and rational choice approaches in political science, rejecting the claims that collective political action is merely an aggregate or consequence of the individual actors' rational choices (Powell and DiMaggio 1991; Peters 2005; March and Olsen 2006). Instead, it is institutions that shape politics because they are instrumental in shaping actors' identities, power and in determining their strategies (Putnam 1993).

New institutionalism also departs from the traditional institutional approach on a number of points. Although not a unified theory itself, new institutionalism encourages an eclectic use of theoretical perspectives and mixed methods, that have as the basic units of analysis the rules, routines, norms, and identities of an institution. This new focus marks an important departure - political institutions become more than simple political organisations (Fox and Miller 1995: 92; Lowdens 2002). The constraints imposed on the collective and individual behaviour of political actors take the form of institutions - as organised patterns of rules and behaviours (Goodin 1999: 19). At the conceptual level as well, there has been a shift in focus, from a static to a dynamic concept of institutions. New institutionalists are not concerned only with formal institutions as elements of stability and predictability, but with institutions as processes that create and sustain "islands of imperfect organisation in potentially inchoate political worlds" (March and Olsen 1989: 16). In their dynamic

conception, institutions are also shaped by history embodying historical trajectories and turning points (Putnam 1993).

Another point of departure is new institutionalisms' rejection of institutional holism and independence. Instead of describing systems of government as a whole, new institutionalists now focus on analysing the architecture and official procedures, as well as the unwritten norms, practices and conventions, underpinning important component institutions of political life (Lowdens 2002). These are not necessarily expressed as formal political organisations but as processes: electoral systems, constitutional change, executive-legislative relations (Peters 2005).

Granovetter (1985) emphasises political institutions' 'embeddedness' in particular social, historic and economic contexts, thus resisting old institutionalists' claims that institutions are independent entities. On this account, social rules, norms and ideas that define institutional frameworks, also influence (by shaping or constraining) the social behaviour of actors (North 1990; Putnam 1993).

4.2.2. Strands within the new institutionalist school

New institutionalism is not a unified theory but a body of theoretical strands that propose slightly different, yet not entirely contradictory, interpretations of institutions, institutional design and institutional change. Some authors propose a differentiation based on the normative and rational choice cleavage in this body of theory (Lowdens 2002). Others identify up to seven different strains of new institutionalism: normative, rational choice, historical, empirical, international sociological and network institutionalism (Peters 2005). This research draws mostly on the premises and interpretations of normative and historical institutionalism, but acknowledges the merits of rational choice explanations as well.

Normative institutionalism focuses on how institutional rules and values shape the behaviour of political actors (March and Olsen 1989). Historical institutionalism is often associated with the traditional institutional approach. The fundamental assumption made by historical institutionalists is that early choices made in the institution's life will determine its future choices (Steimo *et al.* 1992; Hall and Taylor 1996; Pierson and Skocpol 2002). Rational choice institutionalists maintain their individualistic bias but acknowledge that most political life takes places within institutions (Tsebelis 1990). Institutions are indeed collections of rules that shape individual behaviour, but the ultimate driver for individual behaviour within the confined institutional environments is utility maximisation - institutional rules and norms acting as a set of incentives and constraints (Peters 2005).

Next, this chapter explores the definitional diversity of the concept of institutions and outline the main perspectives on institutional design and change.

4.2.3. Defining political institutions

New institutionalism defines political institutions in terms of their formal and informal features, in terms of their norms, practices and conventions (March and Olsen 1989, 2006). In the normative perspective, institutions are "collections of interrelated rules and routines that define appropriate actions" (March and Olsen 1989: 21). Hence the assumption that institutions are endowed with the 'logic of appropriateness', as opposed to the 'logic of consequentiality' (Peter 2005). The impact on individual behaviour is paramount here: if institutional values are assumed by all members, they will make decisions according to what they think is "appropriate" in institutional terms. This is the critical and seemingly irreconcilable departure from the rational choice model, which implies that individuals are likely to use the consequentiality logic to either maximise

their profit or to reduce their transaction costs (North 1990; Keman 1997; Scharpf 1997).

Political institutions are also defined in terms of their durability in the face of change. They are collections of "rules and practices embedded in structures of meaning and resources", generally "invariant in the face of turn-over of individuals, and relatively resilient to the idiosyncratic preferences and expectations of individuals and to the changing external circumstances" (March and Olsen 2006: 3).

There are key prompters in this definition that help understand the nature of political institutions in the normative approach, and that direct the course and methodology of institutionalist investigation. First, the focus is on rules and practices that are 'organized' and 'embedded' in the institutional structure. This helps isolate those meaningful behavioural patterns (formal and informal) that, having been sufficiently institutionalised, "possess an almost inherent legitimacy" that commits individuals to behave in 'appropriate' ways (March and Olsen 1989: 22-3).

Secondly, the structures of meaning and resources are 'invariant', independent from the individuals that enter and leave the institutional environment. This represents an element of stability and durability. The normative approach implied that institutions are resilient to external change and, more importantly, to the individual preferences of their members, confining them to operate within clearly defined institutional boundaries. This is criticised by the scholars of the rational choice strand, who ultimately believe that individuals will pursue utility maximisation even within a confined framework (North 1990; Scharpf 1997). Some go as far as to claim that individuals may actually be interested in some form of constraint, as this will affect other members as well - potential competitors for instance (Colomer 2000).

Rational choice theorists from the new institutionalist paradigm are not overly driven in providing sophisticated definitions (Peters 2005). Kiser and Ostrom (1982) view institutions as:

> *rules used by individuals for determining who and what are included in decision situations, how information is structured, what actions can be taken and in what sequence, and how individual actions will be aggregated into collective decisions (p. 179).*

The centrality of the individual is clear. Institutions provide only the rules of the game for self-interested actors to pursue their agendas (Tsebelis 1990). This interpretation differs starkly with that of historical institutionalism, which uses definition by example: institutions are formal government structures, legal structures (electoral law) or social structures (social class) (Thelen and Steimo 1992: 2-4). Some theorists in this strand also emphasise the importance of ideas in defining public policies for instance (Immergut 1990; Hall 1992).

There are, undoubtedly, many gaps and even contradictions in new institutionalism. None of the strands offer particularly satisfactory explanations about the formation of institutions. March and Olsen (1989) see their origin as deriving from their structures of meaning and their logic appropriateness, from the society in which they are formed (p. 17-19). However, this does not fully explain what drives social forces to create a particular set of institutional frameworks. Some authors, drawing partly on organisational studies, argue that institutions emerge when organisations are infused with values that give meaning to structures and create loyalties among their members (in Peters 2005).

4.2.4. Theoretical relevance of new institutionalism for Welsh devolution

Devolution in Wales lends itself well to institutionalist perspectives, given the degree of institutionalisation associated with the process. The Assembly's peculiar internal architecture, its complex yet limited powers and electoral arrangements have already attracted the attention of those with an interest in devolution and constitutional change in the UK (Rawlings 1998, 2003, 2004a, 2004b, 2005; McAllister 1999, 2000, 2004a; 2005a, 2005b; 2008; Wyn Jones 2001, 2005, 2008a; 2008b; Laffin 2002; Laffin *et al.* 2003; Trench 2004c, 2006; 2008b; Hazell and Rawlings 2005; Ap Gwilym 2006; McAllister and Stirbu 2007a, 2007b; McAllister and Cole 2007; Lambert and Navarro 2007). Its functions and operation have been subject to constant exploration and monitoring (Osmond 1998; Morgan and Mungham 2000; Laffin and Thomas 2000; Constitution Unit 1999-2005; Jones and Osmond (eds.) 2002; Osmond and Jones (eds.) 2003; Trench (ed.) State of the Nations 2001-2007; Wyn Jones and Scully 2006-2008).

From utilitarian and functionalist perspectives questions arise as to the practical impact of devolution on the social and political arena in Wales (Royles 2006, 2007; Chaney 2004; Chaney and Fevre 2001, 2004; Greer 2003). Devolution's impact on new electoral politics, electoral arrangements and on public perceptions has also been under scrutiny (McAllister 2000, 2003; Wyn Jones and Scully 2002, 2004, 2006; 2007, 2008c ; Scully *et al.* 2006; McAllister and Cole 2007).

New institutionalists however, irrespective of the strand they come from, will be more interested in how the Assembly has challenged its constitution and functions throughout the corporate body years - a rejection coming from operational difficulties as well as from the higher expectations of its members. It has already been acknowledged that the Assembly has

developed novel structures of behaviour and meaning, and a distinctive institutional culture since its establishment (McAllister and Stirbu 2007a).

4.3. Competing theories

There are a variety of other theoretical approaches used to explore political process such as parliamentary democracy, constitutionalism and constitutional change and governance. The focus here is on complex systems, complexity and agency theories. These theories have been employed by scholars in order to make a case for evolutionary constitutionalism for instance (Ratnapala 2000), or to explain the dynamics of parliamentary democracy (Matson and Strøm; Strøm 1995, 2000). Central to these remain the concept of institutions.

4.3.1. Complexity and complex systems theories

Deeply rooted in the evolution of cybernetics and biology, complex systems theory advocates that social entities should be studied as non-linear, dynamic and adaptive systems (Burns 2005). The basic assumption of the complex systems theory is that disequilibrium is necessary for complex systems to grow, whilst the presence of simple rules of behaviour prevents them from collapse (Gould 1989). Hence, the key to survival for complex systems is their capacity to develop rules that keeps them operating at the edge of chaos (Stacey 2001, 2003).

The theoretical applicability of this set of assumptions is mostly found in complexity theories. Meant to provide a theoretical framework that simplifies complex systems (Manson 2001), complexity theories are concerned with explaining the emergence of order in ever-changing complex social and natural environments (Burnes 2005). Their practical applicability is to be found especially in organisational studies, in explaining organisational change (Pettigrew 1990; Pettigrew and Whipp

1993; Brown and Eisenhardt 1997) and resistance to change (Mabin *et al.* 2001).

In political science, systems theory has been employed by a number of scholars attempting to develop theoretical models for political and constitutional system (Easton 1979; Ratnapala 2000; Peters 2005). Complexity and systems theory have been invoked in making sense of the development of constitutionalism and constitutional orders (Ratnapala 2000). The argument put forth is that complex social and political order can be sustained only by a handful of simple laws (Hayek 1973). On this account, a handful of simple and straightforward constitutional principles sit at the heart of modern liberal democracy: separation of powers and checks and balances, rule of law, independence of judicial review, limitations on government powers and protection of individual rights (Ratnapala 2000). The absence of such simple laws leads to chaos or political anarchy, whilst an abundance of complex laws makes political systems inadaptive to changing environments (Hayek 1973). This point is relevant in the context of designing or fundamentally changing political orders. The establishment of the National Assembly for Wales can be regarded a major landmark in the evolution of the Welsh social and political sphere. Hence, the recent constitutional developments in Wales are part of an adaptive process, governed by a handful of constitutional rules.

Complexity and systems theories are also relevant to this research because of the way they theorise the process of organisational change and the way they explain resistance to change. Complexity theorists, especially from the organisational studies perspective, have developed a range of models for explaining the process of change in complex systems. These range, for example, from the planned change model, which sees change as a rational and deliberate choice of the decision makers (Burnes 2004), to the

processual model (Pettigrew and Whipp 1993), and to the punctuated equilibrium change model (Gould 1989; Gersick 1991; Romanelli and Tushman 1994; March and Olsen 2006). The former suggests that change is continuous, highly unpredictable and political (Pettigrew and Whipp 1993), whilst the latter asserts that periods of incremental change are punctuated by moments of rapid and fundamental change (Gersick 1991; March and Olsen 2006). The application of these theoretical approaches is examined later in this chapter.

4.3.2. Agency theory and institutional design

Democratic design, parliamentary democracy and institutional change have also been subject to exploration through the lens of agency theories. Agency theories address the specific issues raised by situations in which a party, the agent, is performing a task on behalf on someone else, the principal, through the means of delegation (Eisenhardt 1989; Lupia and McCubbins 2000). The key assumption of agency theory is that the relationship between the principal and the agent should "reflect efficient organisation of information and risk-bearing costs" (Eisenhardt 1989). Hence, in the context of parliamentary democracy, the most important aspect of democratic design is how to define and institutionalise this principal-agent relationship so that effective accountability is in place.

The notion of parliamentary government or parliamentary democracy (they are often used interchangeably) implies a set of arrangements by which executive power is accountable to the parliamentary majority (Strøm 1997, 2000). On this account, the principal-agent relationship is translated through the process of delegation and accountability. Strøm identifies the democratic chain of delegation as operating on four different levels: from voters to elected representatives; from legislators to the Prime Minster; from the head of government to other ministers; and from ministers to the civil servants (Strøm 1995, 1997, 2000). Hence, in the context of

constitutional design, the parliament is the principal, which delegates most of its functions to the executive, regarded here as the agent.

The principal-agent theory is significant for the present research because it provides a theoretical structure for the study of power relations between the different branches of government and among various institutional actors and levels of government. More importantly, in the context of Welsh devolution, things are complicated by the fact that by design, the relationship between the executive and the legislative power was blurred by the corporate body status of the National Assembly. The constitutional reconfiguration between 2005 and 2007 envisaged the reshaping of this chain of delegation and accountability according to traditional parliamentary democracy principles.

Nevertheless, the limitations of this theoretical approach have been highlighted by literature (Perrow 1986). In terms of offering an explanation for how political systems emerge and function, the traditional chain of delegation and accountability has been questioned on a number of grounds by political scientists who draw attention to the impact of public management reforms and of the emergence of networks and multi-level governance (Hooghe and Mark 2001, 2003).

4.4. Institutional change

In spite of their stability, institutions will react to pressures coming from the external environment, but also from inside. There is great diversity in the way academics theorise the process of change - the different perspectives being not necessarily contradictory but complementing each other. Some in the institutionalist tradition emphasize the continuous transformative nature of institutions (Polsby 1975), others tend to equate institutional change with the actual formation and re-formation of

institutions (Peters and Pierre 1998). March and Olsen focus on the fact that in the face of change, the structures of resources and capabilities, as well as the institutional rules, norms and conventions form an effective regulatory machinery, helping institutions in the process of incremental change and adaptation. Regulation, Pitkin (1967) argues, is shaped by constructive interpretation and forms the base for institutional legitimacy. This focus on the internal institutional regulatory system will help explain some of the dynamics within the Assembly during the separation (power struggles, resistance to change, tensions).

Irrespective of the label attached to the process (whether it is change or formation of new entities), institutional and agency theorists identify several drivers for change. Goodin (1996) draws attention to the fact that the dynamic of change includes design, competitive selection and external shocks. Strøm reveals (1997, 2000) the importance of the principal-agent relationship in the process of legislative organisation. Kiewiet and McCubbins (1991) identify several mechanisms through which the problems arising from this relationship can be solved: contract design, screening and selection mechanisms, monitoring and reporting requirements and institutional checks.

Others focus their attention on a four-fold categorisation of the process of change: single actor design, conflict design, learning and competitive selection (March and Olsen 2006). The single-actor design sees single individuals or collections of individuals, usually in a position of power, making decisions about the future of the institution and, in line with rational choice theorists, trying to maximise their utility (North 1990). For this to happen, however, it is necessary to satisfy two conditions: the power should be centralised, and the holder of that position of power should be endowed with strong leadership.

The conflict design model sees multiple actors pursuing conflicting interests, and the outcome of this power struggle will determine the future shape and vision of the institution (Peters 2005). This is particularly relevant to the present research, which investigates bargaining and negotiation among various loci of power within the Assembly during the separation stages.

4.4.1. Learning

An important body of new institutionalist scholarship, especially in the normative tradition, focuses extensively on the process of learning as a means to achieve institutional adaptation (Levinthal and March 1994; Olsen and Peters 1996). Changes in the environment are regarded by these scholars as both opportunities for and threats to institutional life. March and Olsen (2006) distinguish between learning via 'exploitation' and 'exploration'. Exploitation implies that institutions use existing knowledge and resources in order to inform and model institutional transformation; whereas exploration refers to the institutions' desire to look for best practice and learn from others outside their own boundaries. In practice, as March and Olsen (2006) claim, there should be a balancing between the two approaches. The established structure of rules, norms and routines, acting as 'repertoires' of solutions to institutional dilemmas, are in fact carriers of knowledge that can be used in the transformative process. Some actors may in fact learn from past events and, thus, "act differently when launching new initiatives" (Pierson 2000: 493). Nonetheless, institutions cannot rely solely on their internal resources and knowledge is infused from outside through the process of exploration (March and Olsen 2006).

Pierson points out the limitations of institutional learning in political environments. The argument put forward is that political institutions are particularly change resistant and exhibit path-dependent tendencies (Pierson 2000).

4.4.2. Competitive selection model

The competitive selection model is linked with the idea of 'organisational Darwinism' (Peters and Pierre 1998). Institutional arrangements compete for survival and reproduction. This resonates with Thelen's (1999) view of institutions, as places of constant struggle where competing structures norms and ideas come to collide (Pierson and Skocpol 2002) at moments of change. The winning set of ideas must then be internalised and accepted by the institution. Powel and DiMaggio (1991) refer to this as the process of institutional diffusion, by which new ideas, values and goals will be translated into new procedures, norms and practices. This diffusion is essential for the democratic process, since the

> *institutionalisation, acceptance and internalisation of a new ideas set will be a prerequisite for the proper political functioning of the policies flowing from the new norm set (Flockhart, 2005: 259).*

Nonetheless, there are those who question, yet do not refute entirely, the competitive selection model as a plausible explanation for institutional enhancement. Pierson (2000) argues instead that

> *political institutions are not really subject to direct competition at all. Instead, single institutional arrangements, or sets of rules, often have a monopoly over a particular part of the political terrain (p. 488).*

The need for institutional change is therefore often brought about by 'dramatic ideational change' (Flockhart 2005) instead of a natural selection process. Yet, there is likely to be a delay between this and the change it triggers in institutional norms. Institutions will seek to redefine their logic of appropriateness so that the gap between the ideational and the practical aspect of institutional life is reduced (Flockhart 2005). Marcussen's (2000)

ideational life-cycle suggests that a 'common destabilizing shock' may change even the most deeply institutionalised ideas, leaving the institution in an ideational vacuum that can facilitate the emergence of competing ideas, new values and visions for the institution.

Peters and Pierre (1998) go as far as questioning whether institutions actually change or whether new ones are actually formed, given that there is "a new logic that guides behaviour" (p. 596).

4.4.3. Punctuated equilibrium

In the functionalist perspective, however, it is suggested that institutions emerge and are designed according to the functions they need to fulfil for the system or for the actors involved. Trying to explain the relative enduring nature of institutions, as well as their continuity and resistance to change, path-dependent perspectives, embraced by historical institutionalism, suggest the importance of history: early choices made in an institution's life will dictate its subsequent development (Mahoney 2000; Pierson and Skocpol 2002). Arthur's (1994) deterministic path-dependence theorem claims that once an institution is established and a certain pathway is chosen, self-reinforcing processes will produce the lock-in phenomenon, which implies the stabilisation of the path, thus creating path-dependency. The institution, having invested in the dominant path, will be reluctant to invest in a new one, regardless of whether it is more efficient.

Hall and Taylor (1996) highlight that the forces that ensure the persistence of institutions may differ from the founding rationale at their establishment. Silent path departures may happen during periods of institutional stability and continuity via a re-interpretation of the rules, norms and internal practices. In time, these gradual changes may lead to important transformations and re-orientations of institutions (Pierson

2000). These junctures are difficult to explain since they involve the departure from the cessation of the stabilised path. Stinchcombe (1965) links critical junctures with new windows of opportunity that occur and free-up societal resources.

The path-dependence vs. critical junctures dichotomy is not helpful in explaining institutional change if used in isolation. Path-dependency may offer an explanation for the continuity of the power of the powerful but fails to explain the dynamic and complex nature of changing power relations within institutions and why they often survive critical junctures, when radical change occurs (Thelen, 1999). Similarly, a focus on critical junctures in order to explain institutional change is prone to underestimate the importance of internal, gradual change that can produce transformative outcomes (Streeck and Thelen, 2005).

March and Olsen's (2006) standard model of punctuated equilibrium proposes a balanced approach to the study of institutional order and change. Change is seen as discontinuous: long periods of institutional continuity, adaptation and stability are punctuated by critical junctures, when radical change occurs (March and Olsen 2006). The model thus proposes two main conditions for change. One sees the internal pressures for gradual change and adaptation of norms and procedures as the means by which the gap between institutional ideals and practices is filled. The other condition for change is the massive failure of the system (March and Olsen 2006) there is either a clash between institutional goals and practices, or external factors push for a rapid functional re-orientation of the institution.

Another perspective on institutional change is linked with systems theory and complexity theory. Open systems theory, which found a certain degree of sympathy in political science (Easton 1979), assumes that change is

intrinsic to the nature of the political system. The argument lies in the fact that systems are naturally prone to growth and equilibrium. Shepsle (1989) refers to institutions as creating structures of induced equilibrium. The gradual accrual of rules, behaviour and meaning create a certain institutional 'growth' that may be conducive to either institutional failure or crisis/imbalance, or to a natural transformation, where institutional arrangements are dropped and the surviving ones take over (March and Olsen 1984).

4.5. Strands of analysis

This research crosses interdisciplinary boundaries as well embodies multiple theoretical perspectives: agency theory; complexity; institutionalism. Nonetheless, its fundamental theoretical assumptions are mainly derived mainly from new institutionalism. First, in order to understand political processes underpinning devolution in Wales, it is not enough to study the behaviour of political actors. An examination of the bargaining and negotiations within the Labour Party prior to devolution would only partly explain why the Assembly was set up in the way it was (Morgan and Mungham 2000). From a functionalist perspective, one could focus on the utility and impact of institutions (Williamson 1975; Moe 1984). The problem faced by functionalists is that they use their theoretical arguments as an end point rather than starting point for investigation (Pierson 2000). The functionalist perspective would be helpful, assuming that the Assembly was established as a corporate body solely as a result of its designers' efforts to reduce the transaction costs of devolution. Nonetheless, this explanation has only temporary applicability since it does not help understand the Assembly's subsequent development. Nor does it explain the later acceptance of the design failures associated with the corporate body (see the *Better Governance for Wales* White Paper 2005,

and other public records on the unsustainability of the corporate body (Richard Commission 2004).

None of these approaches, used in isolation, can fully explain the Assembly's internal restructuring and re-organisation in the first two terms. This thesis, whilst focusing on the institutional development of the institution is also informed by the other theoretical perspectives discussed in this chapter: principal/agency theories, complexity theories and multi-level governance.

Secondly, given the complexity of the constitutional arrangements in Wales, the legislative-executive relations constitute the main institutional focus. The third Assembly was created by the Government of Wales Act 2006 which formally ended the corporate body, and the process bears features of both rational design and incremental institutional change. The problem with relying too heavily on the rationality of institutional design is that political actors are not always motivated by what would be effective, but by what is appropriate (March and Olsen 1989; Powell and DiMaggio 1991; Hall and Taylor 1996). Hall and Taylor (1996) talk about institutions as being

> *culturally-specific practices, akin to the myths and ceremonies devised by many societies, and assimilated into organisations, not necessarily to enhance their formal mean-end efficiency, but as a result of the kind of processes associated with the transmission of cultural practices more generally (p. 946-947).*

In the context of Welsh devolution, one could make the argument that political actors were ultimately motivated by what was pragmatically achievable at the time devolution was on agenda. Nonetheless, following the logic of appropriateness (March and Olsen 2006) the initial design of

the Assembly reflected a set of cultural, social and political factors: little public appetite for devolution in Wales; lack of thorough constitutional deliberation prior to 1997; as well as the urgency of keeping pace with Scotland (Mitchell 1999).

The limits of rational design will be further explored when looking at various aspects of the planning of the third Assembly. In institutionalist terms, the short-term thinking of 1997 generated long-term institutional consequences that the Assembly had to address. The small size of the Assembly and the difficulties associated with scrutiny in the corporate body are by products of short term political reasoning. This thesis explores whether a similar pattern was followed in planning for the third Assembly. The main units of analysis are the formal rules, norms and procedures, as well as the informal practices and routines that shape individuals' behaviour and, ultimately, the outcome of the political process. Conducting the analysis at this level provides an insight into intimate institutional dynamics that will consequently aid understanding of the 'rationality' or 'irrationality' of the process underpinning Welsh devolution.

Thirdly, this thesis also assumes that institutions are carriers of values and identity (March and Olsen 2006). In studying the re-design of the third Assembly, this thesis explores some of the institutional values that sit at the heart of the design, as well as the power struggles that underpinned institutional change during the separation period. This links Thelen's (1999) conceptualisation of institutions as 'arenas of constant struggle' with the institutional values and identification of its members, as a possible explanation for institutional learning and resistance to change. Institutionalist scholars draw attention to a certain 'institutional stickiness' and path-dependence in politics, which render political institutions hard to change (Goodin 1996; Pierson 2000). The National Assembly provides a

provocative case study taking into account the rapid pace of change undertaken in its short but extremely fluid existence to date.

This summarises the approach taken to this study and opens the gate to a further conceptualisation on constitutional change and the role of political institutions in the process.

4.6. Conceptualising the study of constitutional development

The definitional diversity explored earlier in this chapter focused mainly on political interpretations of institutions. A more abstract definition of institutions regards them as "stable, valued, recurring patterns of behaviour" (Huntington 1968: 12). Constitutions, as well as family, or language, can be regarded as abstract institutions. Here the author makes the case for a multi-layered approach to conceptualising and studying constitutions.

Scott (1994) proposes a layered theoretical model for studying institutional environments and organisations. In his view the three-level conceptualisation corresponds to: the systems of meaning and the related patterns of behaviour; the symbolic level, including representational, constitutive and normative components; and the regulatory process level, at which these symbols are enforced (Scott 1994: 56).

Institutionalists also embrace 'structures of meaning and behaviour' as being central to their analysis of social and political life (March and Olsen 2006). Institutions are seen as "cultural rules giving collective meaning and value to particular entities and activities, integrating them into larger schemes" (Meyer, Boli and Thomas 1987: 13). These systems of meanings and behaviour are then institutionalised through rules that define the nature of actors and decide upon the appropriate actions of these actors: roles, routines, scripts (Scott 1994: 63). These rules are enforceable through

regulatory mechanisms, either formally or informally designed (Scott 1994). This theorisation is used here as indicative of a multi-level approach in the conceptualisation of institutions.

At the conceptual level, constitutions are 'stable, valued, and recurring patterns of behaviour'. They are stable in the sense that, by their own nature they are enduring, and contain special provisions about their amendment, usually requiring large majorities or extraordinary circumstances of the *pouvoir constituant* to be altered (Ridley 1988; Goodin 1996). This is true with unwritten and flexible constitutions, such as the British constitution. Although in theory it allows scope for incremental change, this is never that dramatic given the enduring nature of informal precedents, conventions and traditions shaping it (Johnson 2004).

Constitutions are valued in the sense that they contain and promote societal values that inhabitants of modern democracies relate to tacitly. Questions arise as to why successive generations should feel bound to values, rights and obligations imposed on them by their predecessors (Ackerman 1991). Goodin (1996) claims that the answer lies in "the value that we all derive from having our own activities constrained in precisely the ways enduring constitutions do" (p. 23).

Marshall (1971) distinguishes multiple levels at which constitutional discourse is used: theoretical, judicial and practical/institutional level. Constitutional theory provides the representational, constitutive and normative components for the study of constitutions (Scott 1994). The institutional level describes the practice and reality of constitutions: how the system of government operates; how political institutions emerge and how they operate; how they change in time; and the balance of powers between political them.

Part I of this thesis highlighted some of the changes at the more practical, institutional level, such as devolution. The scale and pace of the institutional dynamics triggered by devolution in Wales are particularly relevant. Nonetheless, the impact of the practice of devolution in the Celtic nations has yet to fully reverberate on the British constitutional theory. The literature review addressed a series of questions: what the main institutional and constitutional dynamics in Wales were, what the constitutional implications of the process of devolution are; what features the territorial constitutions bear in comparison with the traditional British constitutional norms, values and principles; and how recent social, cultural, political factors and modern governance influenced the Diceyan constitutional framework in which the UK has operated;.

This thesis is concerned with this practical level of the constitution: the practical operation of a political institution, namely the National Assembly for Wales. The focus is on the structures of rules, norms and routines that have undergone important changes, especially since 2005. This transformative process was dictated by the need to adapt to changes in the external environment (see the Richard Commission Report in 2004 and the *Better Governance for Wales* White Paper 2005). There was also a dramatic 'ideational' shift within the Assembly itself - the *de facto* schism between the executive and legislative arms of the Assembly did not only come from difficulties in operation but also from the greater expectations (ideational) of its members (see this subtly conveyed in Ron Davies' (1999) statement that "devolution is a process, not an event").

The next chapter presents the methods employed to conduct the investigation on the Assembly's constitutional and institutional adaptation.

Chapter 5

METHODS

This research adopted a case-study approach, focused on in-depth analysis of the institutional change and adaptation process in the National Assembly for Wales following the publication of the *Better Governance for Wales White Paper* in June 2005 and the passing of the 2006 Act by the Westminster Parliament. It employed a series of methods, associated with ethnographic research (Geertz 1973; Marsh and Furlong 2002; Brewer 2004) including a hybrid form of participant observation, semi-structured elite interviews with politicians and officials, documentary research, and a high degree of analysis and reflexivity.

This chapter presents the research strategy and outlines the individual research techniques used in order to collect and analyse data. It begins by emphasising some important features that shaped the methodological approach to this study. It then continues by outlining the main research stages and goes on by exploring the principal methods used to collect and analyse data emphasising the different challenges I had to overcome during the course of research. The chapter concludes with a brief account of the ethical and confidentiality issues raised by this study.

5.1. Interdisciplinary, complex, dynamic

This study advances questions that stem from a range of other disciplines other than political science and constitutional theory. It crosses the paths of rational choice and behavioural studies by investigating political actors' motivation in alliance formation or in negotiating institutional conflicts

(March and Olsen 2006). It also explores the complexity of institutional design stepping into the realm of organisational behaviour (Huczynsky and Buchanan 2007). This research also sees the reform of political institutions as a major interplay among contextual factors: political and social climate; and historical background. More importantly, institutional reform is determined by party politics and institutional factors such as: rules; norms; procedures; resources; ideologies; culture; and values (March and Olsen 1989, 2006). This thesis draws on complexity and open systems theory (Easton 1979) in order to evaluate the impact the Welsh constitutional arrangements had on the development of the National Assembly.

Social science research has become increasingly interdisciplinary in recent years (Delanty 1997) inviting researchers to use a wide range of mixed methodologies (Tashakkori and Teddie 2003). This poses some challenges in terms of theoretical modelling, and requires great rigour in terms of data collection, analysis and validation (Powell and DiMaggio 1991).

The complexity underpinning the research environment stems from a series of factors. First, political and social institutions, such as the National Assembly for Wales, are not homogenous systems but rather a series of nested, interrelated sub-systems (Granovetter 1985). Political parties, the civil service, the institution of the Presiding Officer, the Assembly committees, to name just a few, are such mini institutions acting within the broader institutional framework of the Assembly. Secondly, the Assembly's legal status - corporate body -, and its *de facto* operation as two separate institutions (Osmond 2002, 2005; Rawlings 2003, 2005) added another level of complexity since the various units of analysis were difficult to isolate. To illustrate this, the legal status of the parliamentary staff was that of civil servants. However, this research treats them as a separate entity, with a distinctive identity, and following the rules and norms and values of a parliamentary organisation. For the purpose of

clarification, the terminology used henceforth differentiates between the two branches of the National Assembly for Wales. When presenting the findings of this research the author will use the term 'Assembly' in order to refer solely to the 'parliamentary side', whereas the term 'National Assembly', or 'National Assembly for Wales', will be used in reference to the corporate body as a whole.

The other prominent feature of this research is its 'real time' dimension: Welsh devolution was unfolding as the research was happening. Prior to and following the publication of the Richard Commission Report in 2004, the Welsh political scene was animated by debates around Richard's recommendations (Rawlings 2003; 2004a, 2004b; Trench 2004c, 2006 BBC News 2004; Navarro and Lambert 2005; McAllister 2004, 2005a, 2005b; McAllister and Stirbu 2008). When this research was initiated, in September 2005, the *Better Governance for Wales White Paper* [the White Paper] had just been launched, signalling the UK government's vision for the constitutional future of Wales (Wales Office 2005). One of the most important proposals was to formally end the National Assembly's corporate body status and to mould it around a more traditional parliamentary model, with a separation between the legislative and the executive powers. Preparations for administrative separation commenced immediately after. The research progressed as the Government of Wales Bill was introduced in and passed through the Westminster Parliament, and as the administrative separation gathered momentum in Cardiff Bay. In May 2006, nine months from the start of the research and just two months away from the Government of Wales Act receiving Royal Assent, the National Assembly established the Committee on Standing Orders [CSO] and the Shadow Commission in order to draft a new set of Standing Orders and, respectively, to plan for the Assembly's future organisation and operation.

The research strategy was planned around the unfolding of these important events, although a certain degree of uncertainty existed. As matter of illustration, the tense political climate and the departure of a senior official with whom the author's access was negotiated in June 2006 led to a re-negotiation, in September and October 2006, of the access and of the terms and conditions of the second research placement with the National Assembly. Moreover, the unfolding of events in the National Assembly triggered a continuous re-consideration and refinement of the research questions, the initial themes of interest being narrowed down subsequently, whilst the data collection process became more focused in time, through a reflexive filtering of the data and information gathered.

5.2. Research strategy

Whilst the interdisciplinary nature of this study called for a mixed-methods approach, its dynamism and possible unpredictability called for flexibility and versatility. Given the many 'unknowns' that underpinned the Welsh constitutional process at that time, the research strategy had to be loosely framed. Some claim that researchers get the best out of their case studies by concentrating on a small number of things, whilst being open and ready to absorb unanticipated happenings potentially relevant to the case (Silverman). The focus of the case-study is the re-organisation of the Assembly, prompted by the legislative changes enshrined in the 2006 Act, the main units of analysis being: rules and procedures, informal practices, organisational values, organisational structures in position of power and influence, and individual behaviour. These prompters stemmed from the theoretical interest in institutional design and change, acting as important directional factors as the events unfolded. The drafting of the Assembly standing orders by the Committee on Standing Orders and the internal restructuring of the Assembly (including the separation, the re-writing of

the standing orders and the planning for the third Assembly) may seem separate processes, inviting a multiple case-study approach (Hartley 2004). Nonetheless, in practice they are components of the same institutional reform programme and could not be treated in isolation.

In social science research, case studies are a useful research strategy used in order to conduct a detailed investigation "over a period of time, of phenomena, in their context" (Hartley 2004: 323). Hence the in-depth examination of the Assembly's operational and structural restructuring was conducted over a period of three years. The research design was also mindful of the political context in which the process of institutional change occurred and the author sought to balance the views of individuals, with evidence from operational documents, and from participant observation.

The research strategy was planned in three stages and was designed so that observational work would be complemented by in-depth interviews and documentary research. Reflection and analysis featured alongside data collection in all three stages.

Stage one (June 2006) included a three week research placement in the Assembly and acted as general orientation as well as collection of first data in the field. The short placement with the Members Research and Committee Services [MRCS] in the Assembly Parliamentary Service [APS] focused on negotiating access to information and logistics and on establishing relevant points of contact within the Assembly Parliamentary Service and the Welsh Assembly Government. During this first stage, the author of this thesis participated in many of the APS day to day activities, and interviewed members of the Committee on Standing Orders and parliamentary officials, who became regular points of contact throughout the duration of this research. This snapshot into the Assembly's internal

life at a crucial moment in time was extremely helpful in directing the future stages of this research.

Stage two, from November 2006 to April 2007, was arguably the most important phase in data collection. The five month placement in the Assembly involved observing the final stages of the re-writing of the new rules of procedure, conducting interviews with parliamentary officials and conducting an in-depth analysis of internal and operational documents. This stage also marked further refining of the research questions as well as some methodological adjustment. In analysing the process of institutional change it became obvious that focusing entirely on the parliamentary side and on the re-drafting of the new standing orders alone did not provide the full picture of the process of institutional change. Therefore, the author sought the opinions of others actors involved in the process, such as government officials working on the separation project and on the standing orders, and other individuals working closely with the Shadow Commission and the separation project. The documentary research also expanded to include operational documents of the Shadow Commission and of the Constitutional Affairs Unit in the Welsh Assembly Government. Nevertheless, this methodological adjustment was intended to broaden the perspective over institutional change in the Assembly rather than shift the focus from the parliamentary re-organisation process altogether.

Stage three focused mainly on data analysis; however further data collection, in line with the methodological adjustment aforementioned, and validation was conducted in September 2007, July 2008 and January 2009 through a series of interviews with officials, politicians, and members of the CSO. These round-up interviews, conducted several months after the new set of standing orders of the National Assembly came into effect, aimed at assessing the implications of the changes undergone by the Assembly, thus bringing the research full circle. This stage was particularly

important because it brought in the actors' reflective process. All interviewees were asked to reflect back upon the process of change, their role within this process, and how the new settlement works at present.

These three stages should not be considered separately nor as purely data collection stages as industrious documentary research and analysis was conducted throughout the process.

5.3. Capturing change as it happens: data collection

The methods employed by this study aimed at taking full advantage of the generous terms and conditions negotiated for my access to the Assembly's internal operations. For the duration of the research the author had access to most of the APS operations and resources, and benefitted from having cultivated a good relationship with the Assembly officials. This relationship and the access to the Assembly were facilitated by the author's supervisor, who has long conducted research in the field and has had an excellent relationship with the National Assembly as well.

Throughout the field work (the two research placements) the author was based within the Procedures Unit of the MRCS division of the APS, and had access to all the Assembly's facilities, including offices and the ICT system, the Assembly library and research services. The library constituted a very useful and focused resource for my in-depth documentary research on constitutional reform, devolution and Assembly proceedings. The APS staff also acted as a valuable source, facilitating access to internal and operational documents, and providing important focused and specialised information that was not available in the public domain or in the Assembly's library. To illustrate this, during the second placement it became clear to that there was no formal documented procedural record in

the Assembly available for consultation. Thus, understanding how the Assembly's first set of standing orders changed over time, and how precedents and plenary rulings emerged would have required significant documentary research of all Assembly proceedings. Nevertheless, a useful document did exist: an informal procedural record had been kept by the former Clerk of the Assembly. Following discussion with several members of staff, the author was presented with other such informal but extremely useful documents.

Furthermore, the author was added to the general APS e-mail list and thus received all internal operational e-mails. This was another significant resource that helped a better understanding of the Assembly's internal life. During the second research placement the author was also added to a special mailing list and attended two staff meetings dedicated to a Bill shadowing exercise, carried out by two MRCS team in conjunction with relevant counterparts from Scotland.

5.3.1. Institutional snapshots

In its narrow understanding, ethnography refers to a research strategy that evolved from anthropology. It focuses on getting access to people's meanings and activities within their social context and seeks to understand and describe the culture of an organisation from the insider's perspective (Brewer 2004). In a broader understanding, more relevant to modern social science, ethnographic research is defined as:

> *the study of people in naturally occurring settings or 'fields' by means of methods which capture their social meanings and ordinary activities, involving the researcher participating directly in the setting, if not also in the activities, in order to collect data in a systematic manner but without meaning being imposed on them externally (in Brewer 2004: 312)*

That said, this research does not claim to be an ethnographic study on the evolution of the National Assembly. Rather, it employs some methods usually associated with ethnographic research and, more importantly, it adopts an ethnographic 'style' in that it recognises the value of investigating meanings of people and processes in their context and by close involvement in the research field (Brewer 2004).

The field work took the form of 'institutional snapshots' into the Assembly's operation, obtained relying on a very focused form of participant observation. These snapshots were condensed in two periods of time spent in the field capturing various aspects of institutional change through participant observation, informal discussions with staff and documentary research. The debate on what constitutes a lengthy or a condensed period of time is relative. However, the common understanding, stemming from the use of ethnographic approaches in early anthropological studies of cultures (see Malinowski, Mead in the 1920s, Powermaker the 1960s), is that the researcher "depends upon relatively long-term relationships with informants" (Lofland and Lofland 1985, cited in Devine 2002: 198). Long term this means from a year to several years spent in the field. In this case, the author spent only several months in the field.

Participant observation involves "social interaction between the researcher and informants in the milieu of the latter" (Taylor and Bogdan 1984, cited in Waddington 2004, p.154). During the two research placements the author attended staff meetings and committee meetings, observed plenary proceedings, and attended various taskforce groups meetings. The author was permanently in contact with APS staff working in the MRCS division, holding informal conversations and observing day to day life in the APS. For the duration of my research placements the author immersed herself in the field without concealing her intentions. Within Burgess' (1984)

typology of participant observers (complete participant, participant-as-observer, observer-as-participant and complete observer, the author's status was that of a participant-as-observer: the research intentions were fully disclosed to the main informants, and the author formed and maintained close relationships with the staff throughout the placements.

The main challenge faced by researchers conducting participant observation is maintaining the right balance between being an 'insider' and an 'outsider', thus avoiding 'going native' and losing their critical eye (Brewer 2004). Some authors refer to this as maintaining the status of an "acceptable incompetent" (in Waddington 2004:155). In order to avoid 'going native' the author chose to punctuate the five month research placement with short periods of leave (five to seven days every four or five weeks) from the research field. During these absences the author usually tried to either critically evaluate the data collected and their own performance and behaviour in the field, or to just distance from the research completely. A routine developed in the course of the five months spent in the Assembly, by which with every re-entering of the field, informal 'catch-up' discussions with the main informants were held, thus encouraging them to objectively distance themselves from the process and reflect upon the meanings they attributed to events, behaviours and decisions.

There are advantages and disadvantages in using this hybrid form of observation. It could be argued that these in-and-out of the research field snapshots do not satisfy the rigour of pure (anthropological) ethnographic research: the total immersion in the field. Nonetheless, the advantage of this approach was that the author avoided the dangers of going native in the field. Given that the focus of this study was quite narrow and that the author worked in a relatively small team, there was a danger of developing a certain bias and of limiting the perspective on the research subject. It

could also be argued that these snapshots are not structured and thorough enough to be labelled participant observation. Waddington (2004) highlights highly comprehensive and rigorous features of participant observation: "it is common for the observers to devote up to six hours of writing up for every hour spent in the field" (p. 156). Nevertheless, the case-study approach requires being extremely focused on the process of change, hence great attention was paid to events, behaviours, decisions, structural and contextual factors influencing change. In addition, the use of multiple methods to collect data during this research placement meant that more time was spent on interpolation and triangulation of data (Waddington 2004) rather than on keeping long descriptive research notes.

The case-study provides an invaluable insight into the intimate working of an institution and the choice of methods is justified by the fact that they represented the most appropriate means to get the required level of insight into the Assembly's operation. The advantage in using this in-depth observation approach lies in the fact that it allows the researcher to capture a wide range of aspects, whilst being reflexive and focused on a particular topic. It also recognises that institutional life is extremely repetitive and anchored in routine. Hence, observation was concentrated in shorter periods of time and was complemented by 'catch up interviews' that completed the picture of the Assembly's institutional development.

5.3.2. Small talk

One of the most useful techniques used during this research placements were the informal discussions and the day to day chats and interactions that took place with a few of my main informants (staff staff and officials involved in the writing of the standing orders or in the separation project). Informal interviews are a useful tool used in social science research in order to elicit more information about the institutional context and its members (Bailey 1996). Moreover, they represent an important mechanism

to build relationships in the research field, and establish a level of trust between the researcher and the informants (Bailey 1996; Waddington 2004). In the process of getting clarification on specific areas of interest, informal discussions with staff were held quite frequently. The main advantage of using 'small talk' is that it generally requires less formal preparation and takes the form of a dialogue (Bailey 1996) in which both the researcher and the interviewee engage voluntarily. The other advantage is that the usual formal interview hierarchy and structure are blurred, and the participants engage in "talking and mutual discovery" (Neuman 1991, cited in Bailey 1996: 73), thus not feeing censored or inhibited to express their opinions and personal views.

The obvious shortcoming of such a form of interaction as a tool for data collection is that these informal conversations often lack the analytical insight of other forms of interviewing (Bailey 1996). Hence they were used to inform and direct the other, more formal, semi-structured interviews that the author conducted. Given the sensitivity of the political context, and the lack of access to the informal meetings of the Committee on Standing Orders, the informal discussions held with staff supporting the committee were instrumental in guiding the formal interviews with politicians, government officials and other parliamentary officials. What was 'informal' and often 'off the record' information, became formal and public when elicited from the politicians.

None of these conversations were recorded and most of the time only mental notes were taken, which were later recorded in a written log. Despite this, at the start of this research placements group emails were sent to all Assembly staff informing them of the author's presence in the field. Moreover, the author would always remind the informants that these informal discussions were part of the research. This soon became a form of unwritten protocol agreed on a one-to-one basis and most members of staff

the author came in contact with always proved to be willing to provide further evidence and clarification, or to suggest and facilitate contact with other relevant people.

The topics followed by these informal chats were not at all standardised; the specifics always depending on the informants' profile and, more significantly, on the recent developments affecting the Assembly's existence. Nonetheless, the records reflect certain recurring themes such as: the subjects' involvement in various aspects of institutional change; whether they felt as though they were taking part in the process or they felt that change was out of their control; their personal views on the way the institution was evolving, their fears and concerns with regards to the institution's future and their career prospects; and their personal views on the Assembly's political climate.

5.3.3. Semi-structured interviews

Interviews represent one of the most important tools for conducting qualitative research and are used in order to elicit depth and details about a particular area of interest (Rubin and Rubin 2005). Some authors distinguish broadly between open-ended vs. semi-structured interviews (Merton *et al.* 1990). Others use the researcher's epistemological stand to differentiate between realist, phenomenological and social constructionist interviews (King 2004: 12-13). Rubin and Rubin (2005) add another dimension according to the purpose qualitative interviews serve: to elicit understanding or to describe specific events and processes. Irrespective of which category they fall in, there is general agreement in the literature that every interview is unique in requiring the interviewer to match the interview approach to the person interviewed (King 2004; Rubin and Rubin 2005).

This research, qualitative in nature, has employed semi-structured interviews, purposeful conversations loosely steered by the researcher in order to gain understanding of events and processes. In designing the interviews, one of the most important challenges was to ensure that the variety of perspectives reflected the complexity of political phenomena unfolding within the confines of the institutional context (Rubin and Rubin 2005). Consequently, the interview sample aforementioned contains a wide range of individuals, coming from different parts of the organisation and having different direct or indirect experience of this significant process of change. Nonetheless, it was also critical that the interviewees provided an informed account of processes and events. Hence the majority of them were involved in various areas of organisational restructuring (either on the standing orders, on the separation project, or on the political decision making-side).

In total, throughout the four years of this research, the author conducted thirty semi-structured interviews with parliamentary and government officials and politicians. These interviews were aimed at eliciting detailed information and insight into the process of institutional change, as experienced by the interviewees. The interview protocol involved sending an advance letter to the interviewees with a brief outline of the topics to be discussed (Appendix 1), as well as the notes from the interviews requesting permission to quote.

The interview sample included three Assembly Members, who were chosen given their close involvement with the institutional change process in the National Assembly, as members of the Committee on Standing Orders. In addition, the author interviewed four senior Welsh Assembly Government officials involved in the drafting of the *Better Governance for Wales* White Paper and of the Bill, as well as in negotiations on the Standing Orders and the separation project. Moreover, thirteen APS

officials, who acted as important points of contact in the Assembly were formally interviewed. Some of these officials were involved in the writing of the standing orders, others in the separation project or in various other activities related to separation and reorganisation. It is noteworthy that all these individuals experienced the process of change differently and the planning and structuring of the in-depth interviews was therefore mindful of that.

Some of the subjects were interviewed several times. Jenny Randerson AM, who chaired the CSO, was interviewed twice, in June 2006, at the outset of the CSO's work, and again in January 2007, immediately after the Committee finalised redrafting the standing orders. Jocelyn Davies, the Plaid Cymru representative in the CSO, was also interviewed in two stages. First, informally, in October 2006, when Plaid was the major opposition party in Wales, and in July 2008 in a more formal setting and in a different political context, with Plaid as Labour's coalition partner in government. Regular informants from the APS and from the Welsh Assembly government were also interviewed during the process of separation and writing of the standing orders and almost a year after the new arrangements were put in place. The rationale behind this is that it induced a high degree of reflection and self-criticism on the interviewees' part. It also helped in the process of validating data as transcripts of old interviews were compared with the new ones, highlighting changes of opinion where these had occurred.

The interviews were conducted face to face, with the exception of three of them that were conducted over the telephone, given that practical arrangements could not be made for a face to face conversation. They usually lasted from thirty to ninety minutes and took place in the interviewees' offices or in a specially designated meeting room in the Assembly and the Welsh Assembly Government buildings. These semi-

structured interviews required advanced preparation and planning. Some interviewees wanted to see a list of topics in advance, others were happy without one. The formal interview protocol required that the participants agreed on the issues of ethics and confidentiality before the start of the interview.

Even though the professional profiles of the interviewees were different, methodological rigour required that an interviewing template (Appendix 2), outlining the main lines of questioning, should be followed (Rubin and Rubin 2005). The core interview guide covered areas such as: the subjects' role in the process of change, their opinions regarding recent developments in the Welsh constitutional arena and their personal views on the constitutional future of Wales, their opinion on institutional developments within the Assembly, their critical appraisal of the process, and their normative stance on how the Assembly should operate. Despite addressing the same theme, the interviews proved to be unique conversations and unique experiences in their own right.

When interviewing politicians, the author tape-recorded the interviews after asking permission to do so. Three government officials also agreed to be tape-recorded but required that their identity be protected. Given the more informal professional relationship with the parliamentary officials, the author chose to take interview notes instead of recording them. Some officials suggested that they would offer a more 'candid' version in the absence of a tape-recorder. At the end of the interviews with parliamentary officials, the author wrote extensive notes, which were usually referred back to the interviewees for feed-back and further explanation and clarification. The quotes that are here attributed generically to 'officials' (including parliamentary staff) were subject to interviewees' approval. In the case of the APS staff, the interview notes referred to the interviewees contained a formal request for a statement on a particular issue, for which

the author asked permission to quote, but protecting the identity of the individuals.

The author would have liked to interview more political actors involved in the process of separation, notably the Presiding Officer, Lord Dafydd Elis-Thomas, the Deputy Presiding Officer, John Marek and the Business Minister, Jane Hutt. Unfortunately, not interviews could be arranged with these individuals. However, the author tried to counterbalance this with interviews that were conducted with officials, or advisers working closely to these political actors.

5.3.4. Documentary research

Another tool used to investigate this case study was the examination of internal operational documents of the Assembly, records of proceedings, committee transcripts, thematic group emails, and electronic discussion boards. This documentary research featured prominently throughout the entire research and benefitted from unlimited access to the Assembly's internal operational documents and to the Assembly's Intranet services. The Assembly Library was extremely helpful as it provided a very structured resource, focused on devolution and on internal developments within the National Assembly. Throughout the two research placements the author also had access to several confidential materials that informed and directed my subsequent investigation. For reasons of confidentiality, these documents cannot be fully referenced here.

5.4. A Reflexive and analytical process: making sense of data

Analysing data collected through a variety of methods "is seldom a one-shot process" (Waddington 2004: 156). Spencer *et al.* (2003) emphasise the non-linear character of the analytical process. Once the major themes and concepts are generated and meaning is assigned to them, data is then

assigned to the themes and concepts identified. However, with the detection of emerging patterns, the researcher will refine and redefine more abstract concepts, which help develop explanations and enhance understanding (see Spencer *et al.* 2003: 212). Spencer *et al.* (2003) sees the analytical hierarchy - the process of transforming raw data into meaningful explanations, concepts and understandings - as a conceptual scaffolding ranging from data management, to descriptive accounts and explanatory accounts. In the process of making sense of the data, the researcher will move back and forth between various levels of abstraction, analysing and synthesising data, identifying and establishing typologies of meaning and detecting recurring patterns and attempting generalisation (Spencer *et al.* 2003).

Throughout this research, the non-linear character of data analysis was prevalent. Analysis started with the first data that was recorded in the field notes. From a personal perspective, writing field notes represented an analytical and reflexive undertaking. The major themes (institutional design, institutional change, learning, power relations, and institutional context) emerging from the data were also prompted by the theoretical framework. As the research progressed, data analysis was deeply embedded with data collection especially throughout the second placement. As a means of clarification, when planning new interviews, the author sought not only to elicit more information from the participants but also to explore the more abstract concepts and themes that had already been recurring. Interviews conducted in 2006 for example were focused on information gathering, descriptions of processes and on interviewees' perceptions. Later interviews, in 2007, 2008 and 2009, set the discussion at a more abstract level, exploring issues such as: the limits of institutional design, weak and strong institutions, power struggles, and strategies for

negotiating change. The preparation for each interview involved a degree of data analysis and validation.

5.4.1 Recording and filtering data

In the initial stages of this research, note-taking was a very laborious and often unstructured exercise. The author would record almost everything, from the format of the meetings, whether the tone of discussion was a formal or informal one, the structure of the agenda, whether people spoke passionately or not, and whether they openly discussed their fears regarding future changes in the Assembly. Following informal chats with people the author would write conversation notes, highlighting issues that needed to be explored further in formal interviews. Nonetheless, as the research progressed, the more analytical and reflexive engagement with the research field led to a more streamlined and structured process of recording data. Some degree of analysis and reflection was conducted throughout the data collection stages given that the author's role in the field was perceived as to make sense of the environment and understand political phenomena and not solely to record data for further analysis.

The field notes consisted of: jotted activity notes taken during various meetings, general workspace observation notes, informal conversations notes taken during informal chats with staff, and a research log (Appendix 3). The log contained descriptions of all weekly activities undertaken, the main points arising from those activities, and suggestions for further follow up on particular matters. These documents, alongside with the formal interview transcripts and notes and various official operational documents, constituted the raw data for analysis and interpretation.

5.4.2. Moving up on the abstraction ladder

Further analysis of the full data set (observation notes, formal interview notes and documents) was influenced by the fact that data came from various sources and was collected through different methods. The combination of different methods is generally associated with the concept of triangulation and is used especially in the context of validating or extending the inferences drawn from data collected through a variety of methods (Ritchie 2003). Denzin (1970) distinguishes between: 'triangulation between methods', where qualitative and quantitative methods are mixed; and 'triangulation within methods', where more qualitative are mixed, for instance (in Ritchie 2003). Brewer (2004) suggests that triangulation is a built-in feature of ethnographic research since the latter often implies using multiple qualitative methods for data collection (p. 313).

The challenges posed by using mixed qualitative methods should not be underestimated. First, Brewer (2004) emphasises the interpolation of method and methodology. In theory, the philosophical, theoretical and epistemological grounds underpinning data collection should match the epistemological foundations of the entire study (Brewer 2004; Ritchie 2003). This research, employing an ethnographic research style in investigating the case study on institutional change used a combination of data collection techniques: participant observation, interviews, and documentary research. In designing the data collection strategy the author was mindful of the theoretical and epistemological foundations of this study.

Anchored in interpretative epistemology, this research acknowledges the importance of the "perspective of conscious actors who attach subjective meaning to their actions and interpret their own situation and that of others" (Devine 2002: 201). Therefore, the ethnographic style and the use

of qualitative methods used here are in line with the interpretative paradigm (Devine 2002). Similarly, the core theoretical assumption underpinning this study is that the study of social and political institutions facilitates an understanding of political and social phenomena. Hence, the research focus was on *understanding* how institutions emerge, how they change over time and how they operate. The case-study approach allowed an in-depth analysis of formal and informal aspects of institutional life (Hartley 2004).

Secondly, data collected through different methods needs to be validated. The author was mindful at all times that data from small talk with officials, for example, needed to be validated in formal interviews or through documentary research. To illustrate this, when entering the field, the first notes and perceptions related to institutional climate indicated that there was a lot of tension surrounding areas such as the writing of the Standing Orders and the organisational restructuring of the Assembly. The day to day interaction with officials also hinted at frustrations and concerns. In formal interviews, the topic of the 'institutional context/climate' was extensively covered. Themes such as clash of personalities, diverging agendas, power struggles, different visions over the Assembly's future, frustrations regarding the imbalance in access to resources and influence of some occurred in the formal interviews. Moreover, some of these themes also occurred in various documents consulted such as: records of plenary proceedings; formal statements; and media coverage. Throughout this research and particularly throughout the data analysis, triangulation of sources was used to validate and make sense of data. This process involved comparing data (not in raw form) from observations of the field, from informal and informal interviews, and from documents.

5.6. Ethical and confidentiality issues

This research is concerned with matters related to politics, institutional politics, decision making in politically sensitive organisations, balance of powers between various branches of government, and with the individual behaviour of actors operating with institutions. The researcher entered a field that was not only politically tense but that was rapidly changing. Hence the ethical considerations raised by this research are very important. Here, the author outlines issues of informed consent, confidentiality and protection of participants from harm (Lewis 2003).

Following access negotiation, which was facilitated by the supervisor and was agreed by a senior official in the APS, the author's entry in the research field was brought to the attention of all APS staff via a group email. Hence the APS staff were 'informed about the author's presence and research interest. The observational work was overt and staff generally seemed willing to engage both formally and informally.

Given the relatively small size of the teams from APS and WAG involved in drafting the new standing orders in the separation project and the reorganisation of the Assembly, protecting officials' identity was paramount. For ethical and confidentiality reasons, throughout this thesis, no direct reference is made to officials, or to whether they are Assembly or WAG officials. The narrative of this thesis will not differentiate between Assembly or Welsh Assembly Government officials as they will be easily identifiable. A generic term, 'official', will be used throughout. In addition, no exact date of the interviews will be provided, just the month and the year of the interviews.

Notwithstanding politicians agreeing to be tape-recorded and quoted with no restrictions, the author deliberately chose to use the same anonimised

generic referencing (Assembly Member). The rationale for this exceeds the logic of consistency and relates to the political sensitivity of some of the issues explored here.

References to most of the confidential documents consulted will not be made in this thesis. Throughout this research the author had access to many such materials and they were used in order to understand various aspects of the decision making process in the Assembly during the timeframe studied. Where this was possible the author tried to use these materials in order to guide and direct the investigation further.

During the field research the author was also aware of the need to protect the best interests of the 'informants'. Given that the author interacted with officials and politicians that were sometimes on different sides of the negotiating table it was important not only to maintain the status of the impartial researcher, but also not to give away some of the sources of information. In the very few cases when interviewees attempted to elicit information about the views of others, the author had to steer the conversation away and remain vague without jeopardising the relationship with the interviewee.

5.7. Concluding remarks

This chapter presented the research strategy designed for this study and the methods employed in order to collect and analyse data. The research strategy was designed around the theoretical context explored in the previous chapter, which set the main strands of analysis and articulated the main research interests of this thesis. The case-study that forms the centre of the present investigation is focused on the process of institutional change undergone by the Assembly after the publication of the *Better*

Governance for Wales White Paper. Data collection employed a range of techniques including participant observation, unstructured informal interviews, semi-structured interviews, and documentary research. These methods have not been used in isolation. Rather, they facilitated a holistic snapshot of the Assembly's life, capturing behaviours, exploring the role of institutional values and culture in shaping behaviour, and exposing tensions, conflicts and power struggles among the various actors involved in the process of change. The design of the research strategy ensured that a deeply reflective process featured throughout. Therefore, analysis and reflection were embedded in every stage, directing the research by narrowing down or by shifting the focus of the research questions or by analytically filtering the data collection as the research progressed.

Although qualitative methods have been used extensively in political science, in-depth observations of processes underway in central governments have been rare given the secretive nature of such institutions (Devine 2002). The National Assembly for Wales is a new political institution whose establishment and operation is surrounded by a discourse of openness and transparency. Having said this, despite of the high level of access to the internal operations of the Assembly, the issues of ethics and confidentiality were extremely important.

PART III

DISCUSSION AND FINDINGS

Chapter 6

CASE STUDY: PARLIAMENTARY RE-ORGANISATION IN THE NATIONAL ASSEMBLY FOR WALES (2005-2007)

This chapter uses a case study to present the Assembly's institutional recasting, focusing on how its rules and procedures have changed between 2005 and 2007, as a response to the *Better Governance for Wales* White Paper 2005 and the Government of Wales Act 2005, and how a new organisational structure was put in place. It offers insight into how the negotiations were conducted, how particular decisions were made, and what individuals' perceptions were. This chapter draws on evidence from participant observation, mainly from the author's experience in shadowing the work of the Committee on Standing Orders [CSO], but also from interviews conducted with politicians and officials from 2006 to 2009.

6.1. Inside the black box: introduction to the separation project

The institutional processes taking place within the Assembly are generally known as the 'separation'. The concept of separation became a strong ideational factor in shaping the operation of the Assembly (see ARP 2002; Richard Commission 2004). The legislative change envisaged by the *Better Governance for Wales* White Paper and brought into effect by the 2006 Act formalised what the Assembly, at a practical and ideational level, had already achieved to a certain degree: the separation between the executive and legislative powers of the Assembly (McAllister and Stirbu 2008).

The publication of the White Paper in 2005 triggered significant institutional dynamics within the National Assembly: scrutiny of the White Paper and the Bill and administrative preparations for the imminent

separation. The latter targeted two important areas: the revision of the standing orders and the internal re-organisation of the institution (Stirbu 2009 forthcoming).

In May 2006, in response to provisions in the Government of Wales Bill, the Assembly established the Shadow Commission with the view to "plan for matters within the responsibility of the future Assembly Commission" (MRS 2006: 80) and to oversee the final stages of administrative separation between the Assembly and the Welsh Assembly Government (Shadow Commission 2006a). The Shadow Commission gradually took over the responsibilities of the House Committee in the separation (House Committee Annual Report 2006)

At the same time the Assembly established the Committee on Standing Orders with the view to "recommend new standing orders, which are capable of securing a two thirds majority approval by plenary" (CSO 2006). There were some expectations that this major recasting of the National Assembly (the new standing orders in particular) would be subject to open public debate and consultation (Lambert 2006). However, most of the meetings of the CSO were held in private, just as the Shadow Commission's had been.

The establishment of these structures represented a major landmark in the process of institutional change, which until then had had a purely administrative dimension. Some of the internal tensions generated by the dramatic re-structuring of the organisation have surfaced in the media (*the Western Mail* 9 September 2006, 24 October 2006, 1 September 2006, 29 September 2006, 15 November 2006, 2 September 2006), but have been subject to only limited academic analysis (McAllister 2006; IWA Reports 2006/2007).

6.2. New operational framework

The 2006 Act provides a minimal framework regulating the relationship between the two new legal entities: the National Assembly for Wales (as the legislative branch), and the Welsh Assembly Government (as the executive branch). The Act is less prescriptive than its predecessor with regard to the internal structure of the Assembly (its committees) and its *modus operandi*, leaving much of the detailed operation for the standing orders to decide. Hence, the redrafting of the third Assembly standing orders represents one of the most significant aspects in the recasting of the Welsh constitutional 'settlement'.

The Committee on Standing Orders [CSO] was set up in May 2006 with view to produce a new set of procedures that would secure a two thirds majority in plenary (CSO 2006). Its membership reflected the party balance in the Assembly, with four Labour Assembly Members, one of which was the Business Minister Jane Hutt, and one from each of the other parties (Plaid Cymru, Lib Dems and the Conservatives). The all-women committee was chaired by the Liberal Democrat Assembly Member, Jenny Randerson one of the only two Members that had experienced both government and opposition.

The committees' nine months work resulted in a new set of standing orders that were debated in Plenary on the 7 February 2007, and secured a unanimous vote (NAfW Record of Proceedings, 7 February 2007). The new standing orders provide for a dramatically changed committee system, a novel legislative process dealing with Legislative Competence Orders [LCOs] and with Assembly Measures [Measures], and a new way to conduct and organise the Assembly business in light of the separation of the executive and legislative functions.

Notably, the CSO did not start with a blank slate as it had to write new procedures within the framework of the 2006 Act. Moreover, the committee had to accommodate a series of other factors and circumstances such as: the tight time-scale and pressure to reach consensus; the high stakes in the re-distribution of powers between the Assembly and the Welsh Assembly Government; and the lack of institutional precedents for the legislative process. Nevertheless, it can be argued that the Government of Wales Act 2006 did provide the committee with plenty of scope for innovation and experimentation, being significantly less prescriptive than its predecessor.

The committee's work reflects three dominant tendencies in the way the new standing orders were re-drafted: experimentation and radical change on the background of the semi blank slate; exploitation of existing practices and institutional memory; and path-dependent adaptation. Its work was underpinned by a set of principles that were set out from its inception and that are reflected in the final output.

6.2.1. Rhetoric and reality in making the standing orders

The design and modernisation of political institutions are usually surrounded by a rhetoric reflecting the political aspirations of those driving the change (Flockhart 2005). Such was the rhetoric of devolution, emphasising principles such as inclusiveness, openness, and increased accountability to the people (Rawlings 1998; Osmond 1998; Burrows 2000; Bogdanor 2000; McAllister 1999, 2000). These principles informed the recommendations of the National Assembly Advisory Group [NAAG] (NAAG 1998) and of the previous major review of procedures between 2001 and 2002 (ARP 2002).

Nevertheless, the complexity of institutional design poses serious challenges to the agents of change, with regards to how much of this

rhetoric they can turn into reality. The practicalities behind the ideational dimension of institutional design and change often lie in detailed legalistic and procedural work, and in *inter* and *intra* political parties negotiations. Evidence from the redrafting of the standing orders supports the claim that there is a gap between the ideational level of political and constitutional reforms and the reality of implementation, which can get tangled in legalistic and procedural complexities.

The few voices from academic circles (Lambert 2006, in Minutes of the Shadow Commission 2006; Trench 2005a) calling for a thorough and open public deliberation over the future standing orders of the third Assembly were met by the committee's pragmatism. Given the pressures on the CSO to deliver a new set of procedures in a limited timeframe (nine months), pragmatism was recognised as a guiding principle in the writing of the new Assembly's procedures: "We propose that existing Standing Orders should be retained where appropriate " (CSO 03-06 (P1)). One official mentioned that "we do not have time to reinvent the wheel" (Interview with Official, June 2006).

Signalling a clear departure from the previous set of standing orders, the CSO agreed on the principles of clarity and flexibility guiding the future standing orders (CSO 03-06 (P1)). This comes to address criticisms of constitutional unintelligibility in Wales, which was undermining the very goals of devolution (Rawlings 2003). Nonetheless, the principle of clarity posed some challenges to those drafting the standing orders. One official mentioned that they often found it hard to phrase complex legal provisions in "simple and clear language". One politician also emphasised this aspect:

> *I think the process [drafting the standing orders] was characterised by two things: one was that it had to be minute attention to detail in*

terms of the interpretation of the Act and traditional parliamentary process. So we were in a situation where "could" or "should" or "might" would be an important choice of words and for the officials to translate all that into simple comprehensible paragraphs that was a huge task. (Interview with Assembly Member, January 2007)

Another important aspect for committee consideration was the degree of prescription in the standing orders. The 1998 Act and the first set of standing orders were deemed as being overly prescriptive (Rawlings 2003; Richard Commission 2004), limiting the Assembly's capacity to adjust its operation according to its practical needs (see here the provisions on committees' structure and composition for instance). The CSO opted for a more flexible approach, endorsing one of the recommendations made to the *Better Governance for Wales* White Paper Scrutiny Committee that some "space should be left between the lines" (CSO 03-06 (P1)). This 'space' would allow the next Assembly to interpret the new rules more broadly and make decisions as and when it saw fit.

Nevertheless, this goal was impeded by some statutory requirements made by the 2006 Act. The d'Hondt formula, initially proposed as the method of allocating committee membership was seriously criticised during its passage through the Lords and was only retained in the Act as a fall back mechanism. Consequently, the standing orders had to reflect that. One politician explained that

the d'Hondt formula is another bash shadow, but that was put in deliberately [...] Now we thought of ways round it but only in so much that the Assembly agrees. That's an issue that could face us time and again and if you have a difficult situation such as we have here, with a minority government, you could well find a situation

when we will rely, well, we'd have to rely on the d'Hondt formula. And that means that we'd be setting up committees of 13 which is a complete practical nonsense in an organisation with only 60 members. (Interview with Assembly Member, January 2007)

The argument behind the degree of prescription and the flexibility of the standing orders is two-fold. On the one hand much of the committees' work dealt with unknown variables: the future arithmetic of the Assembly, the new competencies, and new organisational structure of the Assembly. The other side of the argument was to let the political reality of the next Assembly decide on the details of its operation (CSO 03-06 (p1)). In practice this was also a mechanism to avoid dealing with more contentious matters:

I think it [flexibility] allows interpretation afterwards for situations that we can only guess now, that we can't know. And also it allows us to avoid certain points of discussion. [...] If you start to be too prescriptive then we will all disagree. And we will probably disagree in the next Assembly as well but then the electoral mathematics will probably sort it out for us. So, don't have a fight today that you can put off till tomorrow in the hope that you won't have to fight it anyway. (Interview with Assembly Member, June 2006).

The pressure to achieve consensus on the standing orders was great and failure to produce a set of standing orders that would secure a two thirds majority vote in the plenary, would have reflected extremely badly not only upon the committee but on the Assembly as a whole (Interview with Assembly Member, November 2006). Writing the standing orders more flexibly, by leaving some details up for the next Assembly to decide, represented a sensible pragmatic approach.

Pragmatism was key throughout negotiations given the stakes involved in the process. Evidence reveals that striking a deal on a particular order was not always easy. Several officials commented that the negotiations were 'nasty' at times, or 'extremely fiery'. The criticisms addressed at the CSO about the lack of transparency of its operations (most committee meetings were held in private) were watered down by pragmatic arguments. One politician, a member of the committee noted:

> *I did not want those meetings to be informal [...] but after I'd stormed out of a meeting I was very glad they were informal because they were not pleasant. (Interview, July 2008).*

The committee's decision to conduct most of the detailed deliberation, discussion and negotiation behind the closed doors was prompted by the Business Minister's suggestion made in the first formal committee meeting:

> *I think it would be helpful if we could look at the questions in a more informal meeting, because we need time to consider. [...] There is quite a lot we need to consider, really, but we could move into an informal session at whenever time to go into the detailed questions. (Jane Hutt, CSO Committee Transcript, 6 June 2006)*

Following this suggestion an informal practice emerged: at administrative level, government and parliamentary officials met in advance trying to reach agreement on various items; subsequently, in informal meetings these proposals would be presented to politicians for discussion. Once political agreement was reached, the items would be formally agreed in a formal meeting.

Several officials agreed that the informal nature of negotiations was in fact instrumental in fulfilling the committee's task. This is illustrative of how

informal institutional rules and practices may shape political outcome. However, this is not a case of informal institutional arrangements shaping the behaviour of political actors *per se*, but of institutions providing the appropriate environment for politically sensitive negotiations and bargaining, which ultimately influenced the outcome of the political process.

The other significant aspect of the CSO's discourse was the holistic approach to redrafting the standing orders. The committee's work represented a unique (in the British constitutional context) case of a comprehensive and wholesale revision of parliamentary procedure. One politician commented that

> *We regard this as a huge opportunity. Certainly the process isn't a luxury. But I think that to a certain extent we are lucky. If you take Scotland for example, their procedures committee reviews their standing orders on a regular basis but they don't do it in the same comprehensive manner, it's rather incremental. (Interview with Assembly Member, June 2006)*

This alludes to an opportunity for radical change, where institutional 'stickiness' (Pierson 2000) and entrenchment can be tackled by innovative and creative approaches. The CSO's work denotes a combination of these: innovation (legislative process), radical change (committee system divided between legislation and scrutiny committees) and holding on to the past (survival of some standing committees).

Summing up, the discussion on the principles and practices in the redrafting of the standing orders revealed some of the difficulties that agents of change face in the process of implementing their ideational aspirations. First, the intrinsic complexity of political institutions, whose

internal operations often need to be translated in legalistic procedures, hinders the goal of clarity in designing new political orders. Secondly, institutional constraints imposed on designers (broader legislative framework) are likely to create overly prescriptive frameworks. Thirdly, pragmatism, an important feature of British politics, was an important feature of the committee's work.

6.2.2. Radical change and innovation

Theory highlights the importance of balancing existing knowledge and best practice from within the institution ('exploitation'), and exploring new knowledge by looking outside the institution's boundaries, in the process of decision making (March and Olsen 1991). Institutional change needs to reflect both 'exploration', which often leads to a significant organisational renewal, and 'exploitation', which ensures the continuity of the institution.

Evidence reveals that radical change did occur in the standing orders; most significant being the way the committee system was set up. The CSO, drawing from its own experience as well as from exploration of options from outside institutional boundaries (Scotland and Westminster), chose to change the committee structure quite significantly. Westminster style committees, dealing separately with scrutiny of the legislation and scrutiny of the administration, were preferred to the existing dual-role subject committees system. The operation of the old committee system had spurred both criticism regarding their scrutiny function (Richard Commission 2004; McAllister and Stirbu 2007b), and positive comments with regard to their innovative approaches to policy development (McAllister and Stirbu 2007b).

The committee was aware of evidence presented to the Committee on Scrutiny of the *Better Governance for Wales* White Paper by a former member of the Richard Commission, who warned about the dangers of

"throwing the baby out with the bath water" (McAllister 2005). Nevertheless, in the process of competitive selection of options, the committee members looked more pragmatically at the likely challenges posed by the new legislative competencies on scrutiny. One committee member noted that:

> *We did not follow Scotland mainly because the message we got from there was that given the amount of the legislation they have to deal with they never get the chance to scrutinise the Minister. That seemed a very uneven approach, especially because there are only a few of us and relatively speaking the Ministers are a large proportion of the Assembly. (Interview with Assembly Member, January 2007)*

Hence, the decision to change the committee system reflects the obvious trade-off that the CSO had to carefully negotiate: how to ensure the thoroughness of the scrutiny process in the context of enhanced legislative competencies, but still limited scrutiny capacity, given the Assembly's small size.

Innovation was also facilitated by the lack of institutional precedent with regard to drafting and passing legislation. On this account the committee benefitted from a certain blank slate in designing the new legislative process. The 2006 Act sets only the main framework by which the Assembly, via Legislative Competence Orders [LCOs] process, can solicit more competences in devolved areas ('fields') from the Westminster Parliament. Following approval by the Assembly, and by the two Houses, Schedule 5 of the Act could be amended by adding new 'matters' in the devolved 'fields'. Furthermore, the Act allows the Assembly to make Measures on matters where it had already been empowered (MRS 2006).

This constitutes a significant step in Assembly's quest for primary legislative powers (MRS 2006). The second stage devolution designers for Wales made sure that 'safeguards' were put in place for Whitehall and Westminster in order to overview and scrutinise the process.

The standing orders thus devise one of the most through and complex legislation scrutiny processes within the British constitutional framework. For an LCO to come to effect it needs to pass through a three stage consideration process in the Assembly (general principles, scrutiny by committee, and vote in plenary), and through a two stage process at Westminster (committee and final approval by the two Houses); it also needs to get the Secretary of State's approval before being laid in front of both House of Parliament for approval; and, finally it is submitted for Royal Assent (MRS 2007).

The committee was, again, extremely pragmatic, not attempting to 'reinvent the wheel', despite the lack of precedent for such process, but learning from Scotland and Westminster. On this account the 'Bill shadowing exercises' were organised at officials' level, involving clerks from the APS following the passage of certain bills through the Scottish parliament and through Westminster.

The major difficulty encountered in drafting the standing orders regarding the legislation process, was not necessarily the lack of institutional precedent, but the sheer constitutional complexity of the LCO process, which involved other institutional actors apart from the Welsh Assembly Government and the National Assembly, namely the Secretary of State for Wales and the two Houses of Parliament. One official admitted that

One of the things we weren't sure how it would work out was this LCOs system and the joint scrutiny with Westminster [...](Interview with Assembly Member, July 2008)

Evidence shows that those involved in the process were particularly aware that they were devising untested procedures. The question for the committee at that time was how to create a basic and balanced process that prevented possible dominance over the legislation, and reduced the possibility of legislative stalemate to a minimum. This, in effect, is the same question that institutionalist theory (especially applied in the context on legislatures) tries to address at theoretical level: how to adopt stable choices in the face of limitless opportunities for instability (Strøm 1995).

The legislative process was bound to pose many problems in terms of avoiding stalemate between Cardiff and London. Parallel or joint scrutiny of the LCOs in committee stage in the Assembly and at Westminster, was likely to pose major operational problems in reality. The standing orders do not make any provisions about how the LCOs are scrutinised outside the National Assembly, but had to take into account Westminster practices in order to align the two parallel scrutiny processes (Interview with official November 2006).

The LCO process creates a novel constitutional practice in the UK because it forces co-operation between the Westminster Parliament and the National Assembly for Wales on an on-going procedural basis. This differs significantly from the Scottish devolution settlement, which allows the Scottish Parliament to permit Westminster to legislate in Scottish domestic matters (the Sewell Convention).

6.2.3. Path-dependence and institutional stickiness

Theory, especially from the historical institutionalist perspective, draws attention to path-dependent tendencies in the process of institutional change (Pierson 2002). Designers are either institutionally confined, or pragmatically driven to stick to or to alter previous arrangements just minimally.

Despite the less prescriptive nature of the 2006 Act with regards to statutory committees, the new standing orders remain rather dense on this matter. Apart from the Audit Committee, which is required by the Act (GWA 2006, ss.), the standing orders retain previous committees such as: Standards of Conduct, Equality of Opportunity, European and External Affairs, Scrutiny of the First Minister (Standing Orders 2007, SO16, SO17, SO18, SO19). Moreover, they create a new Finance Committee (Standing Orders 2007, SO14) whose remit is to scrutinise departmental budget proposals and any other business concerning the expenditure of the Welsh Assembly Government (MRS2007).

The new outlook of the mandatory committee structure is illustrative of what institutionalist theory calls 'institutional stickiness' (Pierson 2000). This refers to the entrenchment of institutional practices and the difficulty of changing them. The debates surrounding the mandatory committees were dominated by a conflicting rhetoric. On the one hand, most of the interviewees appreciated that the 2006 Act presented an important window of opportunity to produce a more streamlined committee structure than the existing one. On the other hand, as one politician suggested, "some member are very fond of their committees and are not willing to let go" (Interview with Assembly Member, October 2006). Along similar lines, another member of the committee clarifies:

There were some debates whether to keep the equality committee or not, but equality has been such a buzzword, and there is obligation on equality, we decided to have that. And there was a committee for the scrutiny of the First Minister but I think there was very little enthusiasm for it. But the opposition wasn't going to give it up because it is a way of scrutinising the government, so we decided to keep that too. (Interview with Assembly Member, March 2007)

Institutional 'stickiness' usually means "institutional arrangements in politics are typically hard to change" (Pierson 2000:490). The idea stems from the theory of 'nested rules' (i.e. statutory frameworks, organisational culture, and members' identification with institutional norms and values) that become entrenched in the institutional life (Goodin, 1996). Path-dependent theories also claim that once an institution is established and a certain pathway is chosen - in this case having certain committees that symbolically suggest the Assembly's equality duties - self-reinforcing processes will produce the lock-in phenomenon, which implies the stabilisation of the path, thus creating path-dependency (Arthur 1994). The institution, having invested in the dominant path, will be reluctant to invest in new one, regardless of whether they are efficient or inefficient (Arthur 1994). Despite the opportunity provided to produce the 'critical' juncture, the CSO chose to invest in yet another heavy loaded committee structure.

This path-dependent tendency met some resistance at the officials' level, revealing that the officials on the parliamentary side shared a different vision about what was logically appropriate for the committee structure. One official believed that the committee system was "unrealistic", posing serious problems of workload both on politicians and on the officials supporting these committees. Officials generally criticised the survival of old statutory committees (on equality, European Union Affairs, scrutiny of the First Minister). Another official expressed disappointment that there

would not be a Procedures Committee, given the procedural challenges that might face the Assembly in the next term, when it would have to operate untested procedures (especially on the legislative process).

This conflict of visions could also reveal diverging self-interests of the actors involved. A heavy loaded committee structure implies a heavy load for the officials to cope with, but also opportunity for power and influence for Assembly Members (as chairs of committees, for instance).

Despite path-dependent tendencies, a set of winning new ideas did emerge. The provisions to establish a Finance Committee signalled an important shift in the approach to scrutiny and an important win for the parliamentary side in their attempt to strengthen the control over the executive. One politician noted that

> *We had a choice about a Finance Committee, and we decided to have a finance committee. I was the one who pushed that one because I was so impressed with what they do in Scotland and because I think the budgetary process in this setting has been poorly and what I am hoping is that we would have quite senior and experienced people sitting in it. I think that it would be a heavyweight committee which will improve our budgetary scrutiny of the government. (Interview with Assembly Member, January 2007)*

Along the same lines, one official singled out the Finance Committee as one of the important outcomes of the negotiations between the parliamentary side and government side (at the officials' level). It is also an example of how, through the process of 'exploration', new ideas emerge and become options for reform. At the political level, the committee had the support of the committee members and was surrounded by a positive

rhetoric. Scrutiny had long been one of the most criticised aspects of the Assembly, hence the relevance and the high expectations attached to such committee.

6.2.4. Patterns of change in committee structure

Summing up, the recasting of the Assembly's committee structure and the design of the new legislative process reveals some significant patterns of institutional change, which are presented below in tabular form:

Table 1 – Patterns of institutional change

Item	Level of change from the status-quo	How change happened
Separate legislation and scrutiny committees	Radical change	'exploration' and 'exploitation' competitive selection with dual role committees learning from others
Finance Committee Legislative process	Innovation	Competitive selection with a possible Procedures Committee learning from others
Mandatory committees	Path-dependence and stickiness	competitive selection with having significantly fewer mandatory committees

The scope for significant or radical change was exploited through a process of competitive selection between ideas (see separate legislation and scrutiny committee as opposed to dual role committees), and through the process of institutional learning. Some ideas got the backing of various actors: establishing a procedures committee found support especially among the officials; the Finance Committee got wide ranging support, whilst other committees such as the old equality committee benefitted largely from institutional entrenchment

'Institutional stickiness' favoured some committees to survive this major recasting. Interestingly, some survived and some did not (see the Regional

Committees), depending on the ideational baggage that they possessed. The new standing orders do not directly establish any regional committee, but make provisions they could be established if members from a particular region wanted to in the next Assembly (MRS 2007).

6.3. Shaping the new executive-legislative relations

As already mentioned in the previous section, the CSO's work and the behind the scene deliberations over the future standing orders were heavily disputed between, on the one side: government and parliamentary officials; and, on the other side, the opposition parties and the Business Minister. One of the reasons lies in the fact that the standing orders were about to re-distribute the power and influence in the Assembly, in the light of the separation of its two branches: the executive and the legislature. The analysis in this section focuses on the executive-legislative relations and concentrates on three aspects: the principles of separations, the organisation of Assembly business, and the CSO's approach to scrutiny.

6.3.1 Understanding the principles of separation

The standing orders of most parliamentary institutions make provisions about the formation/appointment of the cabinet, about how the government manages its business in association with the legislature, and about the mechanisms of control and monitoring of the executive. Revising this framework in the light of the separation was particularly challenging, provoking tough bargaining between actors.

The formal split of the corporate body, although *de facto* already in operation, implied a 'dramatic ideational change' -the separation of executive and legislative function. Yet, as some scholars suggest there is likely to be a delay between this and the change it triggers in institutional

norms, practices and in the behaviour of its members (Flockhart 2005). Change must be internalised and accepted by the institution. Powel and DiMaggio (1991) refer to this as the process of institutional diffusion, by which new ideas, values and goals will be translated in new procedures, norms and practices.

Evidence suggests that such a lag between 'ideational' change and practice did exist. First, the principles of separation were understood differently by the actors involved in the redrafting of the standing orders, namely parliamentary and government officials, and the committee members.

Secondly, actors came from different positions of power and influence and had different self-interested agendas. On the one side, government officials were concerned with streamlining the process and making sure that the government's agenda would get through smoothly. On the parliamentary side, the concern was to ensure adequate checks and balances on the government's operation. Similarly, at political level, parties were concerned with not "signing a blank cheque" in advance, as one member of the CSO recalled (Interview with Assembly Member, July 2008). Given the electoral arithmetic of the third Assembly was still unknown at the time of the standing orders redrafting, it was important that a balance was established to deal with future eventualities.

The corporate body framework made it difficult for many of the actors involved in the standing orders' redrafting to fully grasp the implications of the imminent separation. One politician exposed the fundamental issue that needed to be addressed:

> *We seem to have this fundamental divide between government, and that including government back-benchers, who wanted to cut anyone other than government out of all the action and wanted to*

pay lip-surgery to the idea of a parliament. So we have this versus the opposition wanting to ensure that with separation, we would have massive safeguards, by increasing the role of the Assembly in certain way. (Interview with Assembly Member, January 2007)

Allegedly, the Labour party representatives in the committee, as well as government officials felt frustrated with the opposition parties' approach to negotiations. There was a feeling that the opposition parties (committee members) believed that the Assembly should still impose obligations on the Welsh Assembly Government (Interview with official, July 2008). As illustration, the Business Minister, Jane Hutt AM insisted that the Assembly was no longer in the position to impose obligations on the government post separation, since this would be a separate organisation with its own rules and norms. The opposition committee members were initially reluctant to give up on means of control over the government they previously possessed, such as formal requirements for the First Minister to announce any changes in the cabinet or the vote on the Business statement.

To illustrate the rhetoric of the debates, one AM expressed concerns over the checks and balances the Assembly would be able to place on the government:

There was a potential issue of the whole legislative process because government was of the view that speed was important, therefore scrutiny should not be as important and it should not be as thorough. Actually we've gone for very thorough scrutiny in the end. It is probably the most thorough scrutiny process in the world in terms of we're going to go around it twice. [...] But good scrutiny makes good legislation so they gave in on that one. (Interview with Assembly Member, January 2007)

Grasping the full implications of separation was not an easy process and it required a certain process of unlearning. One official claims that

> *Once the general principles of the separation were agreed and understood, once we all admitted that you can't obstruct the government to get its agenda through, the negotiations for the standing orders became less confrontational (Interview with official, July 2008).*

The negotiations over the way the Assembly business would be conducted reflect the idiosyncrasies of the corporate body as well as the process of institutional 'unlearning'.

6.3.2. Organising Assembly Business

The organisation and operation of parliamentary institutions is acknowledged as complex and multi-faceted. Various actors (political parties, committees, party leaders etc) are often engaged in struggles for power and influence, each having different access to different types of resources. In parliamentary business, such resources could be: time in plenary; procedures to raise motions; votes of no confidence; allotted time for questions to Ministers; follow-up questions; rules of amendment; and the possibility to initiate legislation (Strøm 1995, 2000).

In shaping a new executive-legislative relationship, the aforementioned mechanisms are important items on the negotiating agenda. Governments would seek to maximise their chances to have their business considered, as well as pass their agenda with minimum amendments. Therefore, allotted time in plenary and the business statement are extremely important items up for debate in parliamentary reform. Conversely, backbenchers and parliamentary officials would seek to ensure that proper scrutiny is conducted. For this, allotted time in plenary, motions, amendments, powers

to summon witness and call for evidence in committees represent key devices through which the legislature can exert its control over the executive.

The new standing orders provided for a significantly changed relationship between the executive and the legislature. The Assembly can no longer obstruct government business through a vote on the business statement in plenary (Standing Orders 2005, SO5 and SO6). The Assembly, via a Business Committee (Standing orders 2007, SO11) can only decide on the organisation of non-government business (MRS 2007). The major novelty in the current arrangement is the categorisation of business (in government and non-government), and the allocation of time in plenary split 60:40 between the Welsh Assembly Government and non-Government business (MRS 2007). This model has more to do with the way parliamentary business is organised in countries like New Zealand or Scotland (see Russell 2006) than with Westminster, revealing the fact that exploration and learning have been key to institutional change since the committee has taken evidence from Scotland and Westminster.

Nonetheless, with the concept of separation still unclear for many of the actors involved in CSO negotiations, agreeing on things such as whether or not there should be a vote on the Business Statement, or on the time allocation for government and non-government business seemed to be insurmountable obstacles. Retrospectively, most of these tensions were regarded as "futile battles over silly things" (Interview with Assembly Member, March 2007).

Evidence shows that the political context during the negotiations (minority Labour government, between June 2006 and May 2007) was extremely important in setting the agenda for the government side in particular. The business statement was often defeated on the floor of the Assembly. Hence,

for the government side, the objective was "to get government's business considered", irrespective of the political arithmetic of the next Assembly (Interview with official, March 2007). The opposition parties however wanted to ensure there is enough scope for them to control and scrutinise the government. One politician reflected on this:

> *In terms of giving up the business statement I could see a very good sense in giving it up and in return secure more debating time for the Assembly. (Interview with Assembly Member, July 2008)*

The rationale for this was that more debating time for the opposition would create more opportunities for scrutiny of the government. Hence, the allocation of time was a battle long fought in the CSO and the parliamentary side -opposition parties and the APS officials- saw it as a worthy trade off for the vote on the business statement.

6.3.3. The Business Committee

The recasting of the Business Committee signals another important change in the executive-legislative relations ensuring the representation of independents and small political parties and a new weighted voting system on non-government business which takes into account backbench representation only (Assembly Standing Orders 2007, SO 11).

The Business Committee represents an important power base in the Assembly as it has broad ranging responsibilities over, organising non-government business and Assembly business in plenary, deciding the size and membership of committees, and considering proposed LCOs and measures (MRS 2007). The set-up and functions of the business committee reflects some of the parliamentary practice elsewhere –New Zealand, Scotland and even Germany (see Russell and Paun 2006).

The negotiations for the Business committee were conducted in the broader context of negotiating the Assembly business (allocation of time in plenary, business statement). These were surrounded by a degree of tension and confrontation. Nevertheless, once the deal on government and non-government time was struck, the details on the functioning of the Business Committee became less contentious (Interview with official January 2007). Most of the interviewees alluded to a wide ranging support for a strong Business Committee where the views of all parties (including independents and smaller parties) were represented.

Nevertheless, there is a point of departure from the international practice of business committees (see Russell and Paun 2006) in that the Business Committee still retains competence over procedural matters, being the one suggesting changes to the standing orders (MRCS2007). Other parliaments have specialised committees (Procedures Committee) that deal with monitoring the operation of the standing orders. Despite a suggestion for a Procedures Committee was floated around during the negotiations, it did not gain enough support to pass the process of competitive selection that shaped much of the decision making process in the CSO.

Summing up, the way the Assembly business was thought out represents a major shift from the status-quo indicating a normalisation of parliamentary practice in Wales. As the evidence presented here shows, most of the tensions were linked to how different actors understood the principles of separation -the future executive-legislature relations. Once these principles were understood, negotiations became less confrontational.

6.4. *Divide et Impera (divide and conquer):* the new organisational structure of the Assembly

The procedural changes prompted by work of the CSO represents just one dimension of the Assembly's constitutional recasting. Administrative separation of assets, human resources, finance, as well setting up the new Assembly's organisational structure were the other important aspects of this process.

At administrative level, the Third Assembly Programme (commonly known the 'separation project') was launched in January 2005, following the publication of the Richard Commission Report in March 2004, and in anticipation of the Secretary of State for Wales' proposals for further devolution (APS Third Assembly Programme Closure report 2007). The programme started as an administrative initiative of the APS and WAG officials. On the parliamentary side, the APS established the APS Structural Change Programme Board in January 2005, with a mandate to agree details of the separation with their WAG counterparts (APS Third Assembly Programme Closure report 2007).

On the government side the Constitution Affairs Unit [CAU] was set up in summer 2005 to assist with the White Paper and the Government of Wales Bill, by providing policy and then legal advice to the Parliamentary Counsel in London for drafting the legislation. The other responsibilities of CAU were to work together with the APS officials in order to achieve maximum administrative separation by March 2007 (Interview with official March 2007).

The separation targeted all administrative systems and processes that were supporting the corporate body as a whole. The programme initially reported to the national Assembly's House Committee, until the summer of 2006, when the newly established Shadow Commission took over.

The Shadow Commission was established by the Assembly in May 2006, in response to provisions in the Government of Wales Bill regarding the future Assembly Commission. The remit of Shadow Commission was to "plan for matters within the responsibility of the future Assembly Commission" (MRS 2006: 80) and to oversee the final stages of administrative separation between the Assembly and the Welsh Assembly Government (Shadow Commission 2006a).

6.4.1. Administrative separation

One major stumbling point was to actually separate the Assembly's assets between the Welsh Assembly Government and the parliamentary side. Internal documents (APS Third Assembly Programme - Closure Report, September 2007) reveal the complexity and the level of detail that separation process had to achieve. Despite plenty of bi-lateral service agreements having already been established between the parliamentary and the government side, there were still plenty of services, assets and operations shared by the two sides.

Physical assets, such as buildings, were easier to deal with. The Welsh Assembly Government was located in Cathays Park, whereas the parliamentary side (the future Assembly Commission) was to take over the offices in Cardiff Bay (including the new Senedd building). However, administrative separation caused serious "frictions", as one official put it, over most matters: access to WAG and Assembly buildings in Cathays Park and Cardiff Bay; the shuttle bus that connected the offices in Cardiff Bay (parliamentary side) and Cathays Park (government side); the shared ICT system.

To illustrate this, one official recalls that there was a question of whether the fifth floor in the Ty Hywel (formerly known as Crickhowell House), where the Ministers' offices in the Bay were located, should be rented to

the government side or whether Ministers should be still entitled to use those premises free of charge (Interview with official, September 2006).

Non-physical assets (i.e. the ICT system, the security and access of personnel) were developed into integrated corporate services that were very difficult to separate. There is a very deep and symbolic value in this battle for resources. As one official admits, the stakes were higher for the parliamentary side - allegedly the smaller and weaker side in terms of numbers of staff and resources (especially legal) - which was breaking up from the resourceful corporate body dominated both in terms of numbers, power and resources by the Welsh Assembly Government:

> *Most of the burden of separation fell on the APS as it was the parliamentary arm that was separating itself from the corporate body (Interview with official, 2008)*

For the parliamentary side it was essential that the new institution secured adequate resources and negotiate its power base carefully. In this sense the separation represented an important window of opportunity for a radical change in the way the organisation is structured and run.

6.4.2. The third Assembly's future outlook: new organisational structure

One of the first signs of a significant change, not merely of a process of gradually adapting to a new legislative framework, came when the Shadow Commission publicised the specifications for the new (rebranded) position of a Chief Executive/Clerk of the Assembly (Shadow Commission Minutes 14 June 2006). The former Clerk himself perceived this as a fairly decisive signal that the Shadow Commission wanted "someone with a different skill set" from the existing post holder and hence did not apply for the position (Paul Silk, former Clerk of the Assembly, cited in Western Mail, 2 September, 2006). Others perceived this as a sign that the Commission's

vision for the third Assembly was slightly different from the status-quo, moving away from the traditional procedural focus towards a more managerial, corporate governance focus (Interviews with officials, November 2006, December 2006, January 2007).

The re-branding of the administrative leadership position of the Assembly revealed some tensions underpinning the re-organisation of the Assembly. John Marek, the then Deputy Presiding Officer, who was not involved in either the redrafting of the standing order, nor the re-organisation of the third Assembly, accused the Presiding Officer of plotting against the former Clerk and claimed that the Shadow Commission's behind the closed doors policy was responsible for the departure of a few senior officials from the APS (Western Mail, 2 September 2006). These tensions will be explored in Chapter 7, when discussing the overall organisational climate in which the restructuring of the Assembly took place.

In designing the new organisational structure and the new operation of the Assembly, the Shadow Commission used a series of outside organisations and expert advisers. Internal documents reveal the fact that on budgetary matters and corporate governance it sought advice from a Wales Audit Office official on secondment to the Shadow Commission; in terms of organisational design PA Consultancy were used extensively throughout the process. Another external consultant (Reputation Management) was brought in to present a strategy for the strategic repositioning of the Assembly post 2007 Elections.

The Shadow Commission explored various proposals about the internal re-organisation of the Assembly, taking into account various scenarios about the potential future workload post May 2007 (Shadow Commission Minutes, 7 November 2006), and recommendations made by the external consultants. With the new Chief Executive / Clerk in post, commencing

January 2007, the new organisational structure of the third Assembly crystallised (Shadow Commission Minutes, 16 January 2007, 13 February 2007, 27 February 2007). In consultation with the Shadow Commission, and using the external consultants' reports[1] as illustrative, the new Chief Executive Clerk of the Assembly assumed leadership in designing the new operational structure. She outlined that the new organisation will be designed according to several key principles, envisaging: "encouraging participation; broad leadership at senior level; efficient decision making and that there shouldn't be too many layers" (Shadow Commission Minutes 16 January 2007).

The new structure of the third Assembly, as proposed by the Chief Executive/Clerk, consisted in Assembly Business, Legal Services and Chief Operation Officer, supported by a Corporate Unit (Shadow Commission Minutes 13 February 2007). Following the May 2007 elections, the Assembly Commission, with a new organisation structure, published a strategic intent for the future of the assembly, which includes five goals: promoting and widening devolution; proving leadership in constitutional change; delivering good governance; working sustainably; and providing professional and effective services for the Assembly Members (Assembly Commission 2008).

The major change here is visible: from an organisation focused on delivering for its members (parliamentary services), the new Assembly Commission is to become more outward looking, the parliamentary business being just another aspect of the institution's *raison d'etre*. This ideational shift met some resistance from various parts of the organisation (especially at administrative level) that thought a great deal of focus on the parliamentary business and a great deal of procedural expertise would be

[1] For the purpose of confidentiality full reference to these materials cannot be made.

lost. Some of the APS staff emphasised that they believed they belonged to an "organisation that promoted strong and traditional parliamentary values and culture" (Interview with official, July 2008) and some feared that the new organisation would depart from this.

6.4.3. Staff matters: resistance to change

The fact that the Shadow Commission favoured outsiders (consultancy firms and external consultants) in the evaluation and planning for the thirds Assembly caused some concerns and some reluctance among the APS senior staff. Several officials questioned whether these outside organisations could make informed recommendations about the future of the parliamentary organisation (Interview with officials, November 2006, December 2006, July 2008).

At individual behaviour level, organisational change brings along fear of the unknown, which becomes an important factor in causing resistance to change. In terms of organisational behaviour, most of the Assembly staff were faced with a set of unknown variables. First, according to the 2006 Act, APS staff were to lose their civil service status, becoming employees of the Assembly Commission (GWA 2006, ss. 27). This might have an impact on their future career prospects and on opportunities for structured career development. For some, the civil service represented the more privileged and secure pathway offering both tenure and opportunities for career development (Interview with official, June 2006).

Evidence from informal discussions with officials, indicates some unrest among the staff. Several members of staff said that they were actively looking for opportunities to move to the Welsh Assembly Government where the security of their positions would be ensured given the civil servant status. The trade unions in the Assembly also expressed their concerns to the Shadow Commission regarding the future terms and

conditions for the APS staff that chose to stay with the parliamentary side (Shadow Commission Minutes, 18 August 2006).

However, some important safety nets were put in place for the APS staff: they had twelve months in which they could opt to return to the civil service in the WAG; pension rights were similar to the civil service ones; and a new Learning Strategy was developed with opportunities for career development.

The majority of the staff interviewed admitted that the change in their legal status was in fact challenging. For some, the new legislative competences and the new committee structure of the Assembly represented symbolic incentives to stay and work for the parliamentary side. One official mentioned that they take pride in "supporting the parliamentary process" (Interview with official, July 2008). The APS conducted a *Staff Preference Exercise* in order to assess and prepare for the future staff losses. The results showed that a turnover of around 20% was expected (Interview with official, March 2007). Asked whether a bigger rate of turnover would pose any difficulties to the APS, one official appreciated that this could actually be seen as an opportunity to:

> *infuse some new blood in the organisation. You have to look at it from a positive perspective: those choosing to stay here are doing so because they feel very strongly about working in a parliamentary institution. It's about vocation. (Interview with Official, December 2006)*

Evidence reveals that in terms of turnover, from May 2006 until July 2008, almost 18 months into the third term, circa 40 people chose to go back to the Welsh Assembly Government. Considering the size of the organisation

(around 350 people), a turnover of slightly over ten percent is not at all critical (Sullivan 2009).

Another official explained that given the scale of structural, operational and cultural change, the Assembly proved to be less resistant to change than other institutions, such as the Civil Service, or the Westminster Parliament. Part of the explanation was found in the turnover of individuals working for the Assembly:

> *There are a few factors that have made the Assembly less resistant to change. First, we have change that was driven by legislation and legislation is powerful, requiring changes to be made. Then, we must not forget that the Assembly is used to change. It has been evolving at a rapid pace since its setup. And finally, new people have joined the organisation and they want, expect and help to drive change. More importantly, staff had the option to leave and go back to WAG after a year. The fact that most of them stayed reflects that they have now signed up to working in this particular, dynamic environment (Interview with official, July 2008)*

Theory highlights the fact that 'critical' moments in an institution's life open windows of opportunities for a more radical change in structure, operation and culture (Cortell and Peterson 1999). These illustrations also allude to the importance of members' loyalty and identification with the institution, which, in March and Olsen's view, sustain the organisation through moments of critical change, thus ensuring the relatively enduring nature of institutions (1989).

Summing up, the re-organisation of the internal operation of the Assembly represents a major change from the status-quo. The competitive selection of rules (see the Clerk vs. Chief Executive/Clerk roles), and the various

options explored for the new organisational structure (Assembly officials were seconded at the Scottish Parliament and in Westminster whilst the Assembly received members of staff from the Holyrood for instance; shadowing bills exercises were set-up for clerks to learn about the legislative process) was, once more, the mechanism that informed decision making.

The 'winning' set of ideas, envisaged a more 'effective management' and 'external communications' oriented institution, rather than a tradition parliamentary organisation focused on delivering exclusively for the legislative process.

6.5. Evaluation

The evidence presented here exposes some of the features underpinning the process of institutional change in the Assembly. First, the Assembly's internal re-organisation was not a matter of starting with a blank sheet of paper:

> *The writing of the standing orders was not a case of starting fresh, with a blank sheet of paper; it was part blank sheet –we hadn't had a proper legislative process in place before; part holding on to things from the previous Assembly that Members liked, and part cherry picking from other institutions, mainly Scotland and Westminster (Interview with official, July 2008).*

In fact, blank slate is difficult to come across in the design of political institutions. Even in the aftermath of major social and political upheavals such as the fall of the communist regimes in Easter Europe, constitutional and institutional designers' choice is usually a combination of building on existing structures, changing existing structures and building new structures where institutional precedents do not exist.

In the case of redrafting the new Assembly's rules of procedure, the CSO exhibited similar tendencies: it exploited the relative blank slate with regard to the legislative process, which represented a constitutional novelty not only for Wales but for the whole British constitutional system; it used 'exploration' and learning from others to back some radical reforms (see the committee system); whilst, at the same time it was limited by path-dependency in sticking to the status-quo.

Another important finding stemming from the evidence presented here is that the formal separation of the Welsh Assembly Government and the Assembly has led to polarisation of power and to a clearer separation between the executive and legislative powers.

Within the British constitutional context the issues of separation of power are of key relevance. Traditionally, the UK constitutional system operates a parliamentary government system where powers are fused rather that clearly separated. Nonetheless, recent constitutional reforms (the separation of the Law Lords from the House of Lords and the establishment of the Supreme Court) suggest that even at UK level, the trend is towards a clearer separation of functions, and a better system of checks and balances between the executive and the legislative powers (see the on-going debates about strengthening the select committees)

Finally, a question that still lingers is whether the deliberations for the new Assembly organisational structure and its new rules of procedure were short-time or long-time oriented. The distinction is important given that the new standing orders, as well as the new organisational structure, are likely to shape the Assembly's future parliamentary profile and its power relation to the executive branch but also with the Westminster Parliament. Donnering et al (1995) make a case for how the organisation of parliamentary government, including here the organisation and operation

of legislatures impact on legislative output, thus influencing the overall performance of parliamentary institutions.

Evidence presented here suggests pragmatism in writing the standing orders, and more strategic approach to planning for the third Assembly. The CSO did not have the luxury of time and lengthy deliberations to consider the long-term effects of the new rules of procedure. Rather, the 'space between the lines' left scope for the future Assembly to consider the details of its operation; however, it also implied a reactive approach: let political realities of the day dictate the operation of the institution.

Chapter 7

FACTORS SHAPING INSTITUTIONAL DESIGN

This chapter explores various factors that influenced the process of institutional design and change between 2005 and 2007. It explores contextual factors such as: political climate, expectations of the actors involved, and the rhetoric surrounding the process of institutional reform. It then assesses the influence of institutional factors such as: rules; norms; informal practices; organisational culture; institutional identity; and members' loyalty in the process. It also highlights the interplay between different personality factors in the process of the Assembly's restructuring.

Plenty of structural and operational changes had already taken place within the Assembly and the dismantling of the corporate body had begun to happen long before the 2005 White Paper was published. Nevertheless, the new legislative framework provided an important window of opportunity for a major institutional reform that went beyond procedural and administrative restructuring (mainly done via the work of the CSO and the separation project), and tackled the ideational and strategic level of the institution (mainly through the work of the Shadow Commission).

7.1. Institutional climate

New institutionalist theory makes an important step in broadening the view of institutionalism, which traditionally looked at institutions in terms of their formal structures and rules that were governing their operations (Peters 1996). March and Olsen (2006) claim that 'soft' aspects of institutions are equally important in understanding political life: the expectations of the insiders; the institutional 'climate'; the informal

practices and relationships among members; and members' loyalty and shared values.

7.1.1. The rhetoric of inclusiveness and consultation

The process of organisational and procedural restructuring of the Assembly revealed a gap between the rhetoric of devolution - which had been translated in institutional values and principles of inclusiveness, participation, consultation, transparency - and the reality of institutional reform.

The majority of APS staff interviewed between 2006 and 2008 expressed either suspicion or frustration with regards to the work of the Shadow Commission, whose work was perceived as 'behind the closed doors' and not taking into account the staff's view (Interview with officials, September 2006, November 2006, December 2006). There were doubts as to the competence of the people involved in planning for the next Assembly, namely the consultancy firms brought in by the Shadow Commission. One official was

> *not sure at the time that the Shadow Commission had enough grasp of whatever was happening in the APS in order to make adequate decisions for the future* (Interview with official, July 2008).

The trade unions also expressed their concern that "decisions were being made without consulting the staff" (Shadow Commission Minutes, 18 August 2006). However, in their first meeting, the Shadow Commission shadow had agreed a 'communication plan' which included: the set-up of an Intranet page that would communicate the role and remit of the Commission as well as the minutes of their meetings; the set-up of an email box to encourage the staff to express their views; and a bulletin informing the APS staff of key developments (Shadow Commission

Minutes, 8 June 2006). The key word here is 'communication' as opposed to 'consultation': the Shadow Commission would "communicate" the progress made whilst the members of staff would be able to "communicate" their concerns.

Staff concerns about the lack of transparency and inclusiveness in the process of re-designing the institution may be a reflection on the devolution's rhetoric of openness and inclusiveness that had been more or less institutionalized within the Assembly (see McAllister and Stirbu 2007; Chaney 2001, 2004; Royles 2007). If the Assembly was expected to promote an open and inclusive approach when dealing with its social partners, the same was to be expected by its members when it came to its own internal operation and re-organisation. For an organisation that had been on a steep learning curve in promoting openness and inclusivity (McAllister and Stirbu 2007a), the amount of consultations, and engagement of all stakeholders in the process of re-designing the internal organisation and operation of the Assembly fell short of the mark.

7.1.2. Antagonism APS/Shadow Commission/CSO

In the process of institutional reform, agents of change are often seen as threatening the organisational norms, values and culture. The Assembly exhibited less institutional 'resistance' than other similar organisations, since there was a general consensus on the necessity for change, both at political and at administrative level. What impacted on the process was a certain 'deterioration' of the relationship between the principal agents of change: the Shadow Commission; the Committee on Standing Orders and the APS staff (especially at top level). This deterioration was the result of the perceived mistrust of the APS from the Commission's side, the Commission's handling of senior staffing matters, and the lack of transparency and communication between the Commission and the staff,

and between the Shadow Commission and the Committee on Standing Orders.

It is worthy of mention here that the vast majority of the Assembly Members were not actively involved in the process and had only tangential contact with the Committee on Standing Orders, and the Shadow Commission's work. Nevertheless, the members of staff (APS) were generally much closer to the process and were likely to be affected directly by the new changes.

The Shadow Commission's work suggests a clear antagonism with the top level of APS, spurred initially by the manner in which the Shadow Commission was set up (behind the closed doors) and by the fact that the secretariat of the Shadow Commission was seconded from the Welsh Assembly Government instead of APS.

Official and public records remain largely silent about the decision to have a WAG secretariat for the Shadow Commission. The minutes of the first meeting of the Shadow Commission reveal that the decision had been taken behind the closed doors in a prior informal meeting, and was agreed by the Permanent Secretary (Shadow Commission Minutes, 8 June 2006). Several officials speculated that it was all part of a deal that the Presiding Officer had struck with the Labour Party in order to ensure his tenure of his position in the third Assembly (Interviews with officials, September 2006; November 2006).

Another official suggested a possible link with the tensions between the PO and DPO (see the Western Mail, 2 September, 29 September, 24 October, 15 November 2006); the decision to have a WAG seconded official to support the Shadow Commission was meant to strengthen the

Commission's side and to weaken the House Committee (Interview with official, July 2008).

The more official version comes from the office of the PO. Following the separation project's report on the readiness for separation, presented in January 2006, it was felt that the APS was not showing enough urgency to the separation process and that the House Committee did not assume enough leadership in the process. In the view of one expert consultant, there was not enough realisation at APS level of the impact of separation (Interview, January 2009).

On the APS side, there were some concerns about the politicisation of reorganisation process, as well as about the handling of senior level staffing matters. The future position of Chief Executive/Clerk spurred an unprecedented display of public 'disaffection' between the Presiding Officer and his Deputy (Western Mail, 2 September, 29 September, 24 October, 15 November 2006).

The full context for this is that in the final stages of separation the Assembly had lost five top senior officials, including: the former Clerk who did not apply for the newly re-branded position advertised by the Shadow Commission; the head of Members Research and Committee Services; and the APS top legal adviser. All these losses were bound to deepen the expertise deficit that the Assembly was already experiencing. The loss in procedural expertise (the former Clerk) was acknowledged by many, especially by officials but also by several politicians. The Clerk's contribution to the standing orders, led one politician, a member of the CSO, to admit that

> *I don't think we would have done it without Paul because he very quietly always had a solution. He would usually wait for us*

[politicians] to ask him if he had a solution but his experience was tremendous. (Interview with Assembly Member, January 2007)

As the most important resource of parliamentary practice and procedural expertise available to the CSO, the former Clerk was instrumental in providing the necessary counterbalance to the government side in the negotiations for the new Assembly rules of procedures, considering that the Business Minister was advised by two senior officials who had previously been involved in the drafting of the White Paper and of the Bill, and by several government lawyers.

These series of events left some members of staff feeling vulnerable and suspicious about future political interference in their jobs. One official noted that

If you want to disarm an organisation you create fear among the senior management. (Interview with official, July 2008)

To what extent this was indeed 'fear' of political interference of just an apprehension about significant change is difficult to assess given the tense climate within the institution that exacerbated some of the tensions and events.

The uneasy relationship between the three main agents of change is also revealed by internal operational documents of the Commission and of the CSO. In the first two meetings of the Commission there was no senior APS staff in attendance, in spite of their involvement with the separation project, from which the Commission had taken over to an extent. Moreover, there is no evidence to show that either the Presiding Officer, or his Deputy, responded to the CSO's invitation to give evidence regarding the new Assembly Standing Orders. According to one politician, a member of CSO, the message coming from the DPO was that he thought his views

would not be taken into account, whereas the PO did not reply at all (Interview with AM, July 2008).

7.1.3. Insiders vs. outsiders

During periods of change it is often the case that institutional values and identity come under scrutiny from inside as well as from outside. These moments usually prompt insiders to defend the institution and the outsiders to question or validate it (March and Olsen 2006). As mentioned in the previous chapter, the Shadow Commission brought in a series of external consultants to support its work and to undertake a quality assurance check of the different elements of the separation project (Shadow Commission Minutes, 8 June 2006). After a week of desk research, PA Consultancy recommended a clarification of roles, responsibilities and accountability with the Shadow Commission "developing the vision and strategy for the new organisation and the Separation Projects undertaking the detailed work in line with the vision and strategy" (Shadow Commission Minutes, 14 June 2006). In their final report, presented on 28 of June 2006, PA Consultancy recommended better communication between the Commission and the Separation Project (Shadow Commission Minute, 28 June 2006).

Hence, it was an outside organisation (PA Consultancy) that validated the work of the separation project (seen here as the insiders) in front of the Shadow Commission. And it was after this external validation that regular communication and contact between the Shadow Commission and the APS staff was established. Internal operational documents of the Shadow Commission as well as from various APS units show that senior APS officials were thereafter invited to attend the Commission's meetings on a more regular basis, usually to present the progress on separation.

Nonetheless, this did not ease the tensions between the APS and the Shadow Commission. In October 2006, after hearing from GW Consulting who had conducted an APS staff survey, the Commission

> *expressed concerns that the APS staff are not fully engaged in preparing for the new organisation and highlighted the need to increase awareness of the Third Assembly Programme and establishment of the work of the Shadow Commission (Shadow Commission Minutes, 3 October 2006).*

Apart from being an admission that its own work had not managed to reach out to the members of the organisation, the Shadow Commission's statement also conveys the fact that the mistrust still existed between the two sides. Interviews with several Assembly officials in September 2006, when the APS staff survey was in progress, also reveal the resistance of some members of staff towards the Shadow Commission's work. One official commented that they [APS] felt as if the Presiding Officer does not trust them with the big changes coming ahead (Interview with official, September 2006). Another official expressed their disappointment that the PO and the Shadow Commission were seeking the views of external consultants and organisations instead of those of the Assembly staff (Interview with official September 2006).

Another factor determining the working climate within the Assembly was the tight timescale that the CSO, as well as the separation project and the Shadow Commission had to work within. The CSO had only nine months to deliver a new set of Standing orders that would get the support of two thirds of the Assembly, hence the pressure to achieve consensus within the committee was enormous.

Summing up, the evidence presented here comes to support claims that at moments of critical junctures institutions become "arenas of constant struggle" (Thelen 1999). The institutional climate underpinning the process of institutional change was marked by a clear antagonism between the main agents of change. This antagonism also contributed to fuelling a sensitive political climate, and was reflected not only the conflict of visions between the actors but also the different stakes that motivated the sometimes self-interested actors.

The illustrations used here come to support evidence about the inherent institutional tensions existing in political contexts. With the establishment of the Shadow Commission and of the Committee on Standing Orders, the existing tensions at administrative level (between APS and WAG officials who were negotiating the terms of separation) were exacerbated by the political element coming strongly into play. Most of these tensions were felt on the parliamentary side, the one most affected by the separation, and the one that was about to undergo a significant transformation in its internal organisation, strategic intent, powers and operation.

More importantly, the general mistrust between the APS and the Shadow Commission contributed to tense climate. Members of staff saw their loyalties tested when senior officials left the organisation. The trade unions questioned the lack of transparency, communication and consultation with the staff in the decision making process, whilst the Shadow Commission (the Presiding Officer) held the view that the staff were not sufficiently attuned to the scale of constitutional change that the Assembly was going through.

7.2. Institutional constraints

One of the most significant claims made by the institutionalist theory is that institutions (via rules, norms, practices) shape or limit the behaviour of political actors, thus influencing the output of the political process (March and Olsen 1989, 1995, 2006). The operation of the corporate body had long been marked by an endemic conflict between the executive and the legislative arms of the Assembly.

Whilst appreciating the merits of the corporate model (inclusiveness was one of them), critics have also argued that the operation of the Assembly was characterised by executive dominance: ministers driving the policy agenda, ministers being members of the subject committees, limited committee powers of summoning witnesses and calling for evidence (Rawlings 2003; Jenkins 2003; Bates 2003; Richard Commission 2004; McAllister and Stirbu 2007). This hindered the thoroughness of the scrutiny process, raising doubts about the Assembly's capacity to hold the government to account (Rawlings, 2003; Richard Commission, 2004; McAllister and Stirbu, 2007a) and thus an impediment to the democratic process.

This inherent executive-legislative conflict acted as a constant institutional 'irritant' in the Assembly's life and marked the restructuring process as well. First, the corporate body allowed for executive dominance in the writing of the standing orders. Secondly, the separation project was influenced by the uneven access to resources available to the parliamentary and government side. Thirdly, the planning for the third Assembly had to address the perceived knowledge and expertise gap that characterised the parliamentary side.

7.2.1. Executive dominance case in the writing of the new standing orders

One of the most important institutional constraints in the process of re-writing the Assembly rules of procedure was the executive dominance reflected in the CSO's composition. In most modern democracies, parliamentary organisation (writing the institution's standing orders for example) is a task exclusively for backbenchers. Inter parliamentary organisations, such as the Commonwealth Parliamentary Association [CPA], issue benchmarks for parliamentary organisation, suggesting that the rules of procedures of any parliamentary institution should be designed by backbench member only, with no government influence (BPA/WBi report 2005; CPA 2007).

Nevertheless, the Committee on Standing Orders operated within the corporate body framework, which meant that the Business Minister was allowed, if not requested, to sit on the committee. Subsequently, civil service support from the government side was involved in the process at all stages.

Constitutional condescendence

Interestingly, this is not actually a direct institutional constraint: neither the 1998 Act nor the Assembly Standing Orders (2005) made any provisions about ministerial membership in ad-hoc/temporary committees in the same way they do for the subject committees for instance. The political context at the time, with Labour minority government in Cardiff, alongside with several 'safeguards' enshrined in the 2006 Act (the new Standing Orders had to get the support of two thirds majority in the Assembly and be approved by the Secretary of State for Wales), led to an indirect political constraint on the CSO's membership and on the process of redrafting the Assembly's standing orders. Commenting on this issue, one official noted:

... of course I can imagine the process without heavy government influence but I don't see how, realistically, it could have taken place in the political climate at the time, when the special advisers of the minority Labour government would have not allowed it to. The prize for the Assembly was to write them [standing orders] themselves rather than have the Secretary of State do it, but the fact that, formally, the Secretary of State published the Standing Orders meant that the Labour government has a trump card to play if they had fundamental objections to anything in the Standing Orders (Interview with official, August 2008).

This illustrates the rather low profile that the National Assembly has within the present UK political and constitutional framework. The 'prize' for the Assembly was indeed to write its own rules of procedures, rather that have them imposed by the Secretary of State for Wales as it had been initially suggested in the *Better Governance for Wales* White Paper:

Secretary of State should take powers to make a new set of Standing Orders for the Assembly, to take effect when the separation of the executive and the legislative elements comes into force. The Secretary of State would be assisted by an advisory committee with a broad-based representative membership, which would prepare a draft of the new Standing Orders for his approval (Wales Office 2005: 27).

The initial White Paper proposals denote a certain degree of condescendence in relation to the Assembly, which is not *a priori* trusted with writing its own rules of procedures like any other modern parliamentary institution. There is, of course a constitutional difference between 'making' the standing orders - here indeed the Secretary of State for Wales was the one who had the powers (legal authority) to do so - and

'writing', or preparing the standing orders, which should clearly be the remit of the Assembly itself.

In the evidence to the Welsh Affairs Committee, the Secretary of State for Wales attempted to convince the committee that the role and future implication of the Wales Office in the redrafting of the Assembly Standing Orders is only a fall back mechanism in of the event of a possible stalemate, and that the Secretary of State would in fact act as the final arbiter (Peter Hain MP 2005, Evidence to the Welsh Affairs Committee).

As expected, this argument fell short in convincing the Assembly Members, who unanimously endorsed the view of the Committee on Better Governance for Wales White Paper, that the redrafting of the Standing Orders should be the remit of the Assembly. This view was also taken by the vast majority of those giving evidence either to the Wales Office, the Welsh Affairs Committee or to the Assembly committee scrutinising the White Paper. Some based their arguments on the existing precedent in Scotland which proved that

> *once an initial set of Standing Orders is in place, future changes by the Parliament [or Assembly] itself tend to build upon, rather than wholly replace, them, thereby entrenching, to some degree, the central government's [initial] vision of the body in operation (Winetrobe 2005).*

Winetrobe's argument addresses the concern that the new set of standing orders might deviate from the original goals of devolution, unless it is designed by the initial architect of the Assembly (the Wales Office):

> *Do Ministers fear that such an exercise could become a Welsh equivalent of the Scottish Constitutional Convention, potentially*

opening up a Pandora's Box of wider constitutional questions/options? (Winetrobe 2005).

Nonetheless, given the tight time-scale and the pressure to achieve consensus on the standing orders, the CSO's approach was to not open the Pandora's box but to build on the pre-existing consensus, retaining the old standing orders where appropriate (CSO 03-06(P1)), and sticking to the initial principles and goals underpinning the establishment of the Assembly:

> *The key recommendations of the National Assembly Advisory Group have been discussed over the past seven years. The principles that it recommended are enshrined in our current Standing Orders, and have been used as a starting point for many of the new Standing Orders (Jenny Randerson, CSO Transcript, 25 September 2006).*

Others based their arguments about the Assembly redrafting its standing orders in house on constitutional logic more than on anything else claiming that parliamentary procedure was "normally left to the Assembly concerned to regulate" (Sir Michael Wheeler Booth 2005, Evidence to the Welsh Affairs Committee). The Presiding Officer took a similar line of argument:

> *I do not believe that it is appropriate for anyone except the Members of the National Assembly for Wales to write their own standing orders [...] we have clearly indicated that we wish to be responsible for our own Standing Orders, which has cross-party support in this report; and our wish is to go ahead and begin drafting our Standing Orders as soon as practical (Lord Dafydd*

Elis-Thomas AM, Presiding Officer of the National Assembly, Evidence to the Welsh Affairs Committee (2005).

Executive dominance in the CSO

The fact that the Assembly won this symbolic constitutional argument is only a consolation prize. In practice, as most of the officials interviewed admitted, the influence exerted by the WAG side on the redrafting of the standing orders was enormous. One official noted that the "government was the most important player in the negotiations" (Interview with official, January 2007). This is down to several institutional features of the corporate body: most of the legal expertise and capacity was concentrated on the government side; the Minister had access to briefings from the CSO support staff but backbenchers' access to government officials was more restricted.

To illustrate the influence exerted by the Business Minister and the government officials in the process, one official recalled a particular example in the early days of the negotiations. The opposition members insisted on making special provisions in the standing orders that the First Minister formally inform the Assembly of any changes in the Cabinet. The Labour committee members resisted this; however, it was the Business Minister (the government side), not the Labour backbenchers, who came up with the 'convincing' argument. In a letter addressed to the Chair of the CSO, the Business Minister expressed her strong view that it is not for the standing orders of a parliamentary institution to regulate the activity of the government, which is a separate institution[2].

One official admitted that this was indeed a case of 'double standards', since government officials were having such a strong say on matters that

[2] Due to confidentiality issues, full reference to this document cannot be provided.

regarded the operation of a parliamentary institution (Interview with Official, July 2008).

The negotiations for the standing orders were atypical given that they took the form of a government (minister, civil servants and Labour backbenchers) versus opposition (backbenchers) battle rather than a multi party negotiation on the rules of procedure for a new parliamentary organization.

> *The officials from the government side were supporting the Business Minister but also had a very clear agenda of their own: to make it easier for themselves to get government business through (Interview with Official, July 2008).*

This illustrates a clear divide between government vs. parliamentary side - as opposed to ruling party backbenchers vs. opposition parties-, an atypical feature of the institutional change process and an unavoidable consequence of the corporate body status. This is also hints at a majoritarian political culture conducted in an institution that was originally designed to depart from that culture and to encourage multi-party negotiation and co-operation. From a constitutional point of view, this is relevant in the discussions over separation of powers and independence of the parliamentary institution from the other branches of government. The Assembly (as a corporate body) might have symbolically won the case for writing its new rules of procedures in house. Nevertheless, as the evidence presented here shows, the executive (WAG) exerted some degree of influence over the third Assembly's procedures.

Historical institutionalism emphasises that early choices in an institution's life determine its subsequent development (Pierson 2000). The corporate body set-up presents several idiosyncrasies: on the one hand it acted as a

perpetual institutional irritant which pushed the Assembly towards the traditional legislative/executive separation (Osmond 2004, Rawlings 2005). Nonetheless, the institutional features of the corporate body allowed and facilitated executive dominance, and the process of redrafting the standing orders clearly shows that.

7.2.2. Uneven access to resources and the rhetoric of expertise gap

There were other institutional factors that influenced both the writing of the standing orders and the re-organisation of the Assembly. The original corporate body set up was characterised by a diffusion of power to various centres. However, in terms of the distribution of resources, the government side had always been placed on a privileged position. Executive power rested with the Welsh Assembly Government, whereas financial authority rested with the National Assembly as a whole. However, given ministerial membership in subject committees, claims of executive dominance over the policy agenda were made by several academics (Rawlings 2003; McAllister and Stirbu 2007). In addition, most of Assembly's human resources, assets, and legal expertise were concentrated at the WAG level. One official characterised the state of facts before separations as follows:

> *it was never going to be a case of splitting the Assembly [corporate body] into two equal halves. There was the Welsh Assembly Government, accounting for 90 or 95 percent, and then there was this small off-shoot [the parliamentary side] (Interview with official July 2008).*

In terms of staffing the ultimate authority rested with the Permanent Secretary John Shortridge. In addition, legal expertise was also concentrated on the WAG side, the Assembly's access to independent legal advice being limited to three lawyers that ultimately were still answerable to the Permanent Secretary. In terms of constitutional expertise and

influence, the Constitutional Affairs Unit in WAG played an important role in the drafting of the White Paper and with the passage of the Bill through Westminster.

Conversely, the parliamentary side's pool of knowledge and expertise in constitutional matters for instance consisted largely of the Presiding Officer, his constitutional adviser, and the former Clerk. The 1998 Act did not make any provision for an office behind the Presiding Officer, or for the parliamentary side, which made it difficult to provide a serious counterbalance to the big bureaucracy behind the executive side. Nonetheless, the Presiding Officer succeeded in securing a separate budget for the parliamentary side in October 2000 (Standing Order 28, SO 2000) and continued to raise its profile and research resources continuously. This is not a constitutional novelty or exception, rather a normal practice elsewhere. International standard of parliamentary organisation emphasize the importance that the offices supporting the Presiding Officers / Speakers /Presidents of legislative bodies be adequately resourced (CPA 2005). Similarly, parliamentary reforms elsewhere reflect similar trends in empowering the offices of the Presiding Officers and strengthening the parliamentary services (Strøm 2000; Raunio 2004; Russell and Paun 2007).

The Assembly's parliamentary and procedural expertise was also concentrated around the Presiding Officer and the former Clerk, whose background as a Clerk of the House of Commons, brought in a wealth of experience and expertise on procedural matters.

The most important aspect related to the Standing Orders negotiations was the access to legal advice. Asked about the support received from the APS staff in comparison to the support the Business Minister received from her own civil servants and lawyers, one politician, a member in the CSO, noted that

There was no comparison. I mean she had civil servants, she had lawyers [...] and it was in the government's interests to get her points through. And I think the legal support that we had – I don't mean to criticise – but it did feel as if we didn't have options to put in front of us in the same way as the Business Minister (Interview with Assembly Member, July 2008).

This illustrates two very important points: first, it is the capacity and expertise deficit that the parliamentary side was faced in the process of drafting the new procedures. The argument still applies more generally (to the research and back up support the Assembly Commission has now versus the WAG capacity; to the Westminster Parliament research capacity versus the Whitehall's civil service expertise. Secondly) and exposes the clear executive dominance and the expertise deficit in the Assembly. The two most sensitive areas were related to procedural and legal matters.

7.2.3. Addressing the knowledge and expertise deficit in the Assembly

The rhetoric surrounding this expertise deficit in the Assembly is also significant. Evidence from participant observation and from interviews with officials suggests that during the separation stages, the APS invested a significant amount of resources and time in training and raising awareness about the challenges posed by the 2006 Act. The Procedures Unit, supporting the Committee on Standing Orders, held seminars and presentations explaining the implications of the new standing orders and the legislative process (the LCOs and Assembly Measures). Moreover, secondments to and from the Scottish Parliament and Westminster became a practice and were encouraged by the Shadow Commission (Shadow Commission Minutes Date 2006) as a means of upgrading the procedural expertise in the Assembly.

Moreover, short-term, training initiatives were tailored to address different needs of the APS staff as well as of Assembly Members. The Assembly research services provided regular updates on the passage of the Government of Wales Bill through Westminster, as well as briefing notes on the changes arising from the 2006 Act (MRS, 2006, 2007). The new and unique legislative process also required a quick upgrade in expertise, and circa twenty APS staff were involved in a shadowing bills exercise. This exercise saw different teams (clerks as well as research staff) shadowing bill committees in Scotland and Westminster, and liaising with Scottish or Westminster counterparts on matters related to the passage of the Bill through different stages in committees.

Commenting on the effectiveness of these training initiatives, one official suggested that

> *Maybe not all of them were very effective in terms of what we actually learnt as participants, but they were very useful because they kept us informed about what was going on and what we had to expect from May 2007. I would say that the most useful exercise was the bill shadowing with Scotland (Interview with official, July 2008).*

Given the lack of institutional precedent regarding legislation in Wales, and the very limited parliamentary experience and expertise within the Assembly, both at political and administrative level, an upgrade in the staff's skills set was seen as crucial. Procedural expertise was not the only target for training.

There was also recognition of the fact that, on a personal level, working for a parliamentary institution required a different skill set than for working in the civil service:

We are a small and dynamic organisation and those who choose to remain here have to face the fact that they will be working very closely with the politicians. It is not the same for the majority of the Welsh Assembly Government officials who, unless they are very senior, get to meet they Minister once in a while. Here you may have to interact not with just one, but maybe with several Assembly Members on a daily basis and you are constantly under the spotlight. (Interview with official December 2006)

To address this concern, the APS conducted another shadowing exercise: a member of staff would shadow a politician for a week in order to understand their demands and specific requirements. At the end of the shadowing exercise, the member of staff would share his or her experience with the other members of staff via the Assembly's intranet site. Several officials, who did not participate directly in the exercise, claimed that indirectly, the exercise was beneficial to them as well, because it prompted them to think of a more member-oriented approach to the way they were serving either individual AMs or committees.

It is very surprising to see how busy the Assembly Members actually are and how little time they have to read their briefings. I think it makes all of us reconsider the manner in which we produce our briefings and reports. (Interview with official November 2006)

The plethora of training initiatives undertaken suggests a certain panic about the Assembly's ability to cope with the future challenges of legislation. Evidence reveals staff's concerns over the future demands placed on them by the new legislative framework. One official admitted that their main concern was about

how the Assembly would cope in the future with only sixty members and with a legislative process that is so novel that they can hardly draw any inspiration and learn any lessons from anyone (Interview with official, November 2006).

Furthermore, despite all these training initiatives, the reality was that the Assembly was losing important knowledge and expertise through the departure of several senior officials. However, the Assembly reorganisation was marked by an important process of organisational learning. The former Clerk was particularly interested in disseminating his knowledge and procedural expertise to the staff supporting the CSO who, in turn, shared this with other Assembly staff through discussion seminars, formal presentations and other informal practices (Interview with officials, November 2006, March 2007, July 2008).

Evidence from participant observation supports this argument of 'informal' sharing of best practice and knowledge. During the redrafting of the standing orders, once items were agreed in formal committee meeting and then publicised on the Assembly website, the staff supporting the standing orders committee would be approached informally by their colleagues who would request clarifications about certain procedural aspects. One official notes that:

The fact that they [staff working on the Standing Orders] were so approachable made us feel somehow more secure because we had a picture of what was going on and we always had someone to go to if we didn't understand how the standing orders would affect our work.(interview with official, July 2008).

At strategic level, involving a long-term approach, the upgrade in knowledge and expertise also featured on the Shadow Commission's

agenda. The Commission received the HR department's proposals for future training opportunities for AMs and APS staff with enthusiasm (Shadow Commission Minutes, 19 September 2006). These proposals included developing a Learning Strategy for the Assembly as well as training programmes for developing APS staff's parliamentary skills.

Nonetheless, the more stringent issue appeared to be the legal support for the third Assembly. Here, the views of the Shadow Commission and the senior APS officials differed. Several of the officials interviewed were of the view that the Assembly did not need an immediate upgrade in lawyers but in para-legal expertise (Interviews with officials, November 2006, December 2006, July 2008). The Shadow Commission took the view that from a risk management perspective, the Assembly should have at least three new lawyers in place by May 2007, with the possibility that this number be increased to nine until 2009 - should the legislative burden on the Assembly require this (Shadow Commission Minutes, 16 January 2007).

This illustrates an interesting case of "reverse bureaucracy", as one official referred to:

> *It is interesting that the politicians in the Shadow Commission are advocating for recruitment campaigns in order to attract new and capable people in the APS before 2007[...] Whereas we are more cautious and want to make a thorough assessment of the real need for expertise and personnel. This will only come to light when the Assembly starts operating within the new framework. (Interview with official, December 2006)*

This cautionary approach from the officials' side could be linked with the idea of institutional resistance, or, more precisely, with identity resistance.

The Assembly was an organisation striving to develop and shape a separate identity from that of a civil service and the 2006 Act creates the institutional framework for the Assembly staff to pursue a distinct professional identity: that of parliamentary officials. The professional background of the staff working for the APS was mixed. Staff came not only from the civil service but mainly from the local government, and to a lesser extent, from the private sector and the third sector.

Nonetheless, the inherent tensions within the corporate body in the first two terms forced the government and parliamentary side of the Assembly into assuming different roles and embracing separate identities (Osmond 2002, 2004; Rawlings 2003). Unsurprisingly, during a re-branding exercise conducted early in the third term, there was a very strong identification of the staff with the APS acronym (Interview with official, August 2008). This suggests a relatively strong sense of belonging to a parliamentary organisation. The 2006 Act and the change in status for the APS staff also represented an opportunity to professionalise the parliamentary business.

The interesting counterargument here is that most of the officials interviewed also agreed that the requirements of the 2006 Act, as well as a possible move to Part IV of the Act, make a strong case for boosting the legal expertise in the Assembly. However, as several officials noted, there was a difference in legal and para-legal expertise. Whilst on the officials' side the predominant view was that the Assembly needed para-legal and parliamentary expertise (Interviews with officials November 2006, December 2006); the Shadow Commission took that view that the Assembly would need a fully equipped legal service of lawyers (Shadow Commission Minutes, 7 November 2006 and 5 December 2006).

7.3. Privileged groups: up close and personal

Literature on parliamentary institutions organisation classifies privileged groups in: political parties, committees, and leaders (Strøm 1995, 2000). These structures have various degrees of power and influence over the organisation and functioning of legislatures.

The writing of the standing orders and the re-organisation of the Assembly reveal the importance of strong political leadership in institutional change. They also emphasise the struggles for power and influence between institutional actors during moments of change.

7.3.1. 'Privileged' groups and loci of power

Political party groups lack a solid formal basis of power within parliamentary institutions, unless they operate in majoritarian systems or they form a wide majority (Strøm 1995, 2000). Given that Wales does not operate in a pure majoritarian system, one would assume that the Labour Party, in minority government at the time, lacked a formal solid power base. Nonetheless, as evidence presented earlier in this chapter suggests, Labour enjoyed quite a privileged status and its representative in the Committee on Standing Orders could negotiate from a position of power, having access to significant legal support and resources.

This peculiar institutional setting (the Business Minister part of the CSO) gave an indirect advantage to the Labour Party group, since, as one official recalls, the goal for the government side was to make things easier for themselves and to create mechanisms that would get the government's business through (Interview with official, 2008). One politician also emphasised the uneven playing field for the parties involved in negotiations:

We seemed to have this fundamental divide between government - and that including government back-benchers - who wanted to cut anyone other than government out of all the action [...] So we had had that versus the opposition, wanting to ensure that with separation, we would have massive safeguards, by increasing the role of the Assembly in certain ways (Interview, 20 March 2007).

This is indicative of how institutional contexts can directly or indirectly favour various groups in their pursuit for institutional dominance.

In theory, committees, or other formal structures established by the standing orders have a very important power base (Strøm 2000). The Committee on Standing Orders and the Shadow Commission were instrumental in the process of parliamentary re-organisation. However, literature does highlight the fact that given enough political support, formal power structures as well as formal institutional rules and norms can be overturned/by-passed in plenary through a majority vote (Strøm 1995, 2000). Evidence shows that the House Committee, an important actor whose remit was the very organisation of the Assembly, was gradually sidelined in the process of establishing the Shadow Commission and the Committee on Standing Orders.

The Committee on Standing Orders, notably, did not include the Presiding Officer, or the Deputy Presiding Officer in its membership, despite the fact that the two most senior figures in the Assembly had considerable experience in guarding and interpreting the Standing Orders. One member of CSO commented on this issue:

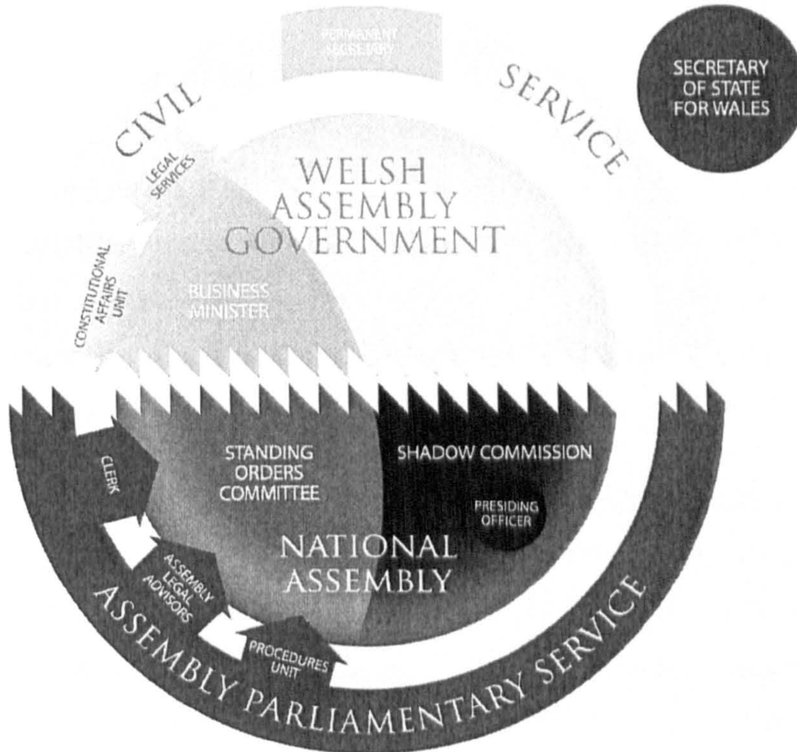
There is a very complicated set-up here. You have a Presiding Officer who is not united in his view. You then have a Deputy Presiding Officer who is normally a member of the Business

Committee and therefore normally has a very valid input on standing orders issues. [...] I think that the Presiding Officer ought to have a strong input into the evidence that goes to the committee. Unfortunately, the PO took the view that he ought to chair the committee but the background was that he chaired the Better Governance for Wales White Paper Committee, which was a very unsuccessful committee. And there were also issues arising from the fact that he wanted to chair the Shadow Commission committee that would set up the Assembly Commission... But there is a limit to how much one person ought to be running and steering everything (Interview with Assembly Member, June 2006).

This illustrates only partly the tensions behind the various privileged groups in the Assembly. Diagram Four represents graphically the main loci of power and influence during the separation project, emphasising the stark imbalance in resources between the Welsh Assembly Government and the parliamentary side of the Assembly.

The diagram also points at the fact that, in the process of institutional re-organisation, the Presiding Officer and the Shadow Commission, chose to ensure a certain independence of their role by appointing their secretariat from the Welsh Assembly Government rather than from the parliamentary side. They have also commissioned external advisers to conduct various institutional evaluations and to make recommendations for the future organisational structure of the Third Assembly.

Diagram 4 – The Separation



7.3.2. Institutional leaders

The other category of privileged structures is represented by leaders: presiding officers or speakers, party whips and clerks (Strøm 1995). Their roles span out from monitoring the institution and enforcing behaviour to controlling the selective incentives for members (Strøm 1995). In some countries, Presiding Officers (or Speakers) derive their power from constitutional provisions, which often exalt their profile and kudos. The Speaker in the US House of Representatives for instance is second in succession to presidency (Strøm 1995), whereas in some of the new

democracies in Eastern Europe, the Speaker/President of the Upper House is the first one in succession to presidency (Romanian Constitution 2001) Similarly, in Sweden, the Speaker of the Riksdag represents the institution nationally and internationally and leads negotiations in the event of a change of Government, presenting nominations for the role of Prime Minister (Riksdag website 2009).

The original design of the Assembly did not provide for a strong formal power base for the office of the Presiding Officer (Rawlings 2003). Literature suggested that ever since the Assembly's establishment, the Presiding Officer made important progress in raising the profile of the office and of the parliamentary side as a whole (Rawlings 2003). Nevertheless, it was admitted that, formally, the Presiding Office lacked an appropriate power base:

> *The PO did not have an office prior to the establishment of the Shadow Commission. The Business Committee was chaired by the Liberal Democrat Jenny Randerson; it has always been the duty of the DPO to chair the House Committee, and the Committee on Standing Orders did not include the PO (Interview with official November 2006).*

The establishment of the Shadow Commission represented an important opportunity for the Presiding Officer to exert his leadership and influence onto the re-organisation of the Assembly. Nonetheless, tensions between the Presiding Officer, his new "office" - the Shadow Commission - and the other parts of the organisation -the DPO and the House Committee, the APS staff and the former Clerk of the Assembly- continued to exist.

The most 'visible' of these tensions was felt between the Presiding Officer and the Deputy Presiding Officer. One official remarked retrospectively:

It is well known that the Presiding Officer and the then Presiding Officer had completely fallen out and were not prepared to work with each other. [...] Each of them had their power base: the Presiding Officer had the Shadow Commission, whereas the Deputy Presiding Officer had the existing House Committee. So decisions as to who is going to make decisions for the future weren't solely a matter of rationale thinking because there were personal rivalries involved. (Interview with official, July 2008)

The Presiding Officer denied a personality clash with the DPO, claiming that they just had "a different view of what the Assembly should be about" (Lord Dafydd Elis-Thomas, cited in Western Mail, 29 September, 2006). One official hinted that the senior leaders of the Assembly had a different perception on how to negotiate the terms of separation with the Welsh Assembly Government, the Presiding Officer being more open to finding pragmatic solutions (Interview with Official, December 2006).

Public records of plenary proceedings confirm that the two were at odds with each other and that the Deputy Presiding Officer did not agree with what he though was the "unfair dismissal" of the former Clerk of the Assembly (John Marek AM, Plenary record of Proceedings, 15 November 2006).

As these illustrations show, the Clerk of the Assembly is himself an important *locus* of leadership and influence within the Assembly, and was the centre of a political dispute over the future of the Assembly. The dispute had two dimensions. One related to the 'position' of the Clerk, the office, and the other one was at personal level, given the imminent departure of Clerk.

At the institutional level, the competing ideas were: traditional parliamentary and procedural expertise, something that many believed the Assembly would need under the new constitutional settlement, versus management and administrative skills. The Shadow Commission favoured the latter option. One official admits that staff were aware of the international practices to seek people with Chief Executive experience to run parliamentary organisations. Such is the case of the Scottish Parliament where even from the outset of the institution, appointed a Clerk/Chief Executive as top senior official (Scottish parliament Press release, 30th of August 1999). Nonetheless, as one official stated, this not be done "at the expense of parliamentary and procedural expertise" (Interview with official, July 2008).

More importantly, at a more personal level, the former Clerk was perceived as a very important and respected leadership figure in the Assembly, bringing constitutional and procedural expertise. One official admitted that:

> *His leadership style was very much appreciated not only because we had a lot to learn from him and because we worked with him on a regular basis, but also because he was very approachable and very visible within the organisation (Interview with official, July 2008.)*

His departure (as he did not apply for the Chief Executive position) was seen as a huge loss for the Assembly. One Assembly Member commented:

> *I think that [Paul Silk's departure] is a huge loss. Because there have been a number of occasions when I think we have, regrettably, we would have benefitted from not just knowing what the parliamentary procedure was but why it existed and [...] it*

would have provided a nice balance on occasions. (Interview with Assembly Member, July 2008)

The departure of other senior officials from the APS left the organisation somehow at the discretion of the political actors, thus fuelling staff's fears of political interference in the administration of the institution:

The biggest upset during the process was the way Paul departed and the whole handling of the situation [...] The PO practically got rid of Paul and immediately after other senior officials departed. He then surrounded himself by people who can't really stand up to him on procedural matters and introduced controversial figures in the organisation (Interview with official with official, September 2007).

Another official recalled that:

What happened to Paul Silk travelled a long way and, in the parliamentary world, was a big issue, spurring debates on the role and the independence of parliamentary Clerks in modern parliamentary institutions (Interview with official, July 2008).

These illustrations bring some light into some of the power and personality dynamics within the Assembly during the separation process. They also highlight some problems inherent to all political institutions: the tension between the political and administrative element. Moments of change, when strong leadership often comes from political leaders, may find the administrative staff feeling vulnerable in the face of political will. Moreover, multiple centres of institutional leadership (Presiding Officer, Clerk) may polarise institutional loyalties towards one of another leadership centre, thus creating a form of institutional resistance.

Linked with organisational and leadership theory (Brymann 1996; van Wart 2003), the Assembly offers an interesting example of formal and informal leadership, differentiated on the basis of decision making power and democratic legitimacy. In this case, politicians are in position of formal leadership, holding a legitimate office and having the legal and political authority to make decisions. Top senior officials represent an informal locus of leadership, in that they do not hold democratic legitimacy and, in the chain of democratic delegation, are generally considered the 'agents' (in the principal/agent paradigm) of elected representatives (Strøm 1995).

7.3.4. Power struggles: the new distribution of power

The Assembly's most important shift in terms of institutional power and influence is that under the current settlement (2006 Act and 2007 Standing Orders) there is a convergence of power towards the institution of the Presiding Officer. Several officials and politicians have emphasised the extremely influential status that the Presiding Officer now enjoys. Drawing upon the early experience of the third term, one official noted that:

> *With the new Standing Orders the PO now chairs the Business Committee, he chairs the Assembly Commission, he is pretty much unchallenged when it comes to the interpretation of the standing orders, he drives the legislative process by triggering ballots every other month. It has become the most powerful centre of power. (Interview with official July 2008)*

One constitutional consultant explained that this was one of the goals of the re-organisation process: to create an organisation with a single but important centre of power. The argument was that there were too many power *loci* on the parliamentary side which meant that the Assembly could not counterbalance the Welsh Assembly Government effectively (Interview with constitutional consultant, January 2009).

The powerful office of the Presiding Officer came, in part, as a result of strong and intelligent political leadership on the part of Lord Dafydd Elis-Thomas, the Presiding Officer of the Assembly, who chaired the Shadow Commission and who was extremely influential in shaping the new organisational structure of the Assembly.

Agency theory as well as literature on parliamentary organisation draw attention to the importance of political leadership in parliamentary re-organisation (Strøm 1995, 2000; Donnering *et al.* 1995). Political leadership can be located in an office (Speaker/Presiding Officer, Clerk, committee chairs) or in political parties' leaders (Jenny and Muller 1995; CPA/WBI Report 2005). The balance of institutional power is an interplay between these *loci* of leadership and the rules and norms that regulate the relationship between them.

7.4. Context, actors and institutional constraints

This chapter provided an analysis of some of the key factors that influenced the process of institutional design and change in the Assembly during the separation stages between 2005 and 2007, and during the redrafting of the third Standing Orders. This chapter focused on three aspects: the importance of the political context, the constraints of the corporate body, and the influence of privileged groups over the process, and. This chapter concludes that institutional design is the result of the interplay between all these factors.

The evidence and illustrations presented thus far emphasize the importance of institutional change in parliamentary organisations and the role that context plays in the process of change. Some institutionalist scholars hold the view that, within the broader debate on parliamentary government and democracy, the organisation of parliamentary life is essential in placing constraints on legislators' behaviour, thus influencing the legislation and

political output of parliamentary institutions (Strøm, Budge and Laver 1994).

This chapter emphasised the importance of formal and informal institutional arrangements in the process of parliamentary organisation. The peculiar features of the corporate body created a competitive advantage for the government side and, implicitly for the Labour Government. Executive dominance was felt not only at political level - the Labour majority in the CSO, ministerial presence in the committee -, but also at administrative level access to resources, advice and support during the writing of the Standing Orders.

Despite theoretical claims that institutional rules and practices shape the behaviour of political actors, evidence from the reorganisation of the National Assembly suggest that institutional rules can be bent by massive political support from the 'backbenchers', or successfully and constructively manipulated by strong political leadership. The way the Shadow Commission and of the Committee on Standing Orders were set up suggest that these were result of heavy political compromise behind closed doors, outside the constraints of the institution as such.

Moreover, institutionalist theory draws attention to the fact that, at moments of change, institutions become 'arenas of constant struggle (Thelen 1999). Actors in privileged positions seek to pursue their often self-interested goals, mostly within the confines of the institutional rules and norms. The struggle over power, influence and resources is often exacerbated by personal conflicts and by contrasting views over the future of the institution. Institutional design and change are seen here as an interplay between contextual, institutional and personality factors, which do not act in isolation but all shape political action.

Chapter 8

CONCLUSIONS: THE LIMITS OF INSTITUTIONS

This thesis has explored theoretical and practical issues raised by the process of institutional change undergone by the National Assembly for Wales between 2005 and 2007, a period marked by the publication of the *Better Governance for Wales* White Paper and the implementation plans for the Government of Wales Act 2006. The thesis has analysed key developments within the Assembly that occurred almost simultaneously: the last stages of the separation between the legislative and the executive arms of the Assembly; the writing of a new set of standing orders by the Assembly Committee on Standing Orders; and the institutional re-organisation and the strategic planning for the third Assembly undertaken by the Shadow Commission.

The thesis has addressed a series of research questions prompted by the legal separation of the executive and legislative functions of the Assembly, as set out in the Government of Wales Act 2006. The research has explored how the various *loci* of power centres within the Assembly evolved during the separation process, what alliances were formed during the negotiations; and to what extent personalities and displays of political leadership influenced the process. The thesis has offered an institutional insight and has assessed the extent to which institutional rules, norms and practices shaped the individual actors' behaviour in the process of change, and what changes took place at the ideational and cultural level during the separation process. Moreover, this thesis has examined the pivotal role of the National Assembly for Wales in shaping the next phase of constitutional design for Wales's young democracy.

The thesis' approach was to capture elements of change as it happened, bringing together the analysis of internal institutional processes, as well as of individual and collective behaviour of the political and administrative leaders. A mixed method approach, combining snapshot ethnographies, suited the design of the thesis/key research questions. This was conducted during two research placements in the Assembly (in June 2006 and from November 2006 until April 2007), with semi-structured interviews with officials and politicians, and with documentary research.

This thesis was structured in three parts: the first providing a background and literature review on Welsh devolution and institutional change in Wales, and setting the discussion in the broader British constitutional context; the second presenting the theoretical and methodological approach taken by the researcher; and the third presenting and discussing the findings of this investigation. This investigation has generated a series of principal findings as well as some incidental findings, which are outlined here as further areas of research and investigation.

8.1. Analysing change

The process of institutional change in the Assembly, between 2005 and 2007, was critical for the future operation of the third Assembly; hence an analysis of the process is not only timely but necessary as well for a better understanding of the evolution of devolution in Wales.

8.1.2. Perspectives on the separation process

The thesis has shown that institutional change was perceived differently by the actors involved in the process who acted as agents of change. From the government side, mainly the Business Minister and the team of officials supporting her role in the Committee on Standing orders, the separation was in fact 'business as usual'. The goals of separation were to make it as

clear and effective as possible. Looked at from a rational actor's perspective, the officials negotiated the terms of the separation (including the standing orders), with an eye on how the future changes would impact on their work. For the parliamentary side it was also crucial to ensure effective and thorough scrutiny of the political process in the next Assembly, and to secure adequate resources for the institution. Conversely, for government officials, the bargaining and negotiations over assets and resources was less important; the essential thing was the legality, effectiveness and thoroughness of the process. In supporting the Business Minister during the re-writing of the Standing Orders, the most important thing was to ensure that procedures were put in place so that the government could get its business as smoothly as possible, irrespective of the future political arithmetic of the third assembly.

For the Assembly Parliamentary Service, and to an extent the Committee on Standing Orders, the objectives revolved around creating a sustainable parliamentary operation. This coloured a lot of their emphasis during the separation, which was also infused with the rhetoric of enhancing the parliamentary culture and identity. The new legislative process constituted an exciting prospect for developing this parliamentary identity. From this perspective, writing rules of procedures in line with best parliamentary practice was essential, as was the bargaining and negotiation over resources. The process was less than business as usual, representing a critical moment in the institutions life, when the parliamentary arm secured power and influence that would effectively counter-balance the executive. Some of the actors involved saw themselves as protectors/guardians of the democratic process. The separation and re-writing of the standing orders was an institutional response to legislative changes, very much procedurally driven. Despite some criticism regarding the consultation

process, it found legitimacy in the new legislative requirements and did not face much resistance from the institution.

From the Presiding Officer's and the Shadow Commission's side, the perception was very much political and went beyond to simply responding to legislative changes. Separation was seen as a window of opportunity not only to redress a flawed constitutional framework but, more importantly, to create a new and modern institution. Since all political parties had their representatives in the Shadow Commission, one assumes that most of the Assembly Members had similar expectations about creating a modern parliamentary institution. The Shadow Commission strategically planned the new positioning of the third Assembly within Welsh society.

The new Assembly Commission's four-year strategy envisages clearly stated goals and objectives, including: to promote and widen engagement in devolution; to show unity and leadership in constitutional change; to demonstrate respect, probity and good governance; to work sustainably and to ensure that the Assembly is provided with the best service (Assembly Commission 2007: 2)

Hence, the Shadow Commission's planning resulted in a more strategic and medium term approach to institutional change. The Shadow Commission's work tackled change not only at organisational and operational level but at ideational and cultural level as well. For the new Assembly Commission's goals (Assembly Commission 2007) to be translated in practice, these need to be mainstreamed throughout the day to day operation of the institution. This requires quite a significant cultural shift given that, at ideational as well as at practical level, members of staff need to actively "promote and widen engagement in devolution" and "show leadership and unity in constitutional change" (Assembly

Commission 2007). This individual 'repositioning' is probably one of the most challenging adjustments staff have to deal with in the future.

The new organisational structure of the Assembly is also likely to have an impact on the overall organisational culture over time, given the professionalization of the services: since May 2007 there has been an intake of lawyers, and experts in media and communications.

8.1.2. Multi-dimensional change

The thesis has revealed that institutional change within the Assembly had a significant impact at administrative, political and constitutional levels. At the administrative level, the separation creates two distinct institutions, the National Assembly for Wales, as a legislative body, and the Welsh Assembly Government, as an executive structure (GWA 2006). The third Assembly operates according to new rules of procedure, has new legislative competences, and has its own strategic plan as well as a whole new organisational structure. These new institutional settings are expected to shape a new institutional culture within the Assembly (creating a more outward looking institution, more proactive approach to public engagement, devolution and constitutional change).

At the political level, the separation process was accompanied by individual and collective actors' struggles to secure power and influence. During the first two terms, the corporate body was characterised by executive dominance – power being concentrated in the Ministers and the civil service supporting the executive portfolios, and by the Presiding Officer's continuous struggle to secure appropriate resources for the parliamentary arm. The new institutional arrangements marked the clear and formal administrative separation between the executive (the Welsh Assembly Government) and the legislature (the National Assembly for Wales). Nevertheless, it can be argued that at political level, the separation

of powers is less clear, since the executive is still drawn from the legislature, in line with British constitutional practice. The major change at political level is that Ministers are no longer required to be members of their respective scrutiny committees, and that the executive-legislative relationship has been formalised via a new way of conducting business in the Assembly.

At the constitutional level, the separation redresses several abnormalities. However it does not provide for a more intelligible framework of operation, the legislative process being extremely complex, slow and fragile, still relying on political congruence and good will between Cardiff and London (Elis-Thomas 2009). In constitutional terms, the separation of the executive and legislative arms represents a return to normal constitutional practice. The issue of independence and integrity of the parliamentary organisation is also in line with international standards of parliamentary organisation (CPA/WBI 2005; CPA 2007). The new constitutional arrangements in Wales - Government of Wales Act 2006 and the Standing Orders 2007 - represent a significant shift from the previous settlement - Government of Wales Act 1998 - which barely recognised the role of the Presiding Officer and made no provisions about the office supporting the parliamentary process (Rawlings 2003). The 2006 Act includes specific provisions in relation to the functions and role of the Presiding Officer and the Assembly Commission (GWA 2006 ss. 25 and ss. 27). The 2007 Standing Orders (SO 11.5(i)) provide for the Presiding Officer to chair the Business Committee. Given that the Presiding Officer also chairs the Assembly Commission and the plenary, the position covers an entire range of political institutional leadership in a parliamentary institution (administrative, procedural and political).

The concentration of power in the office/institution of the Presiding Officer is in line with constitutional practice elsewhere – the need for adequate

resourcing and independence of the Speakers / Presiding Officers and the parliamentary administrations having been recognised and acknowledged internationally (CPA/WBI Report 2005; CPA 2007). There is an argument that only in this way can the parliamentary side effectively counterbalance the executive. The arrangements in Wales were the result of an interplay of factors: political influence over the wording of the Bill, deliberation on best constitutional practice in the Committee on the Standing Orders, political leadership shown by the Presiding Officer throughout the first two terms and during the deliberations of the Shadow commission. The set-up is not untypical for the other European and Commonwealth legislatures (German Bundestag, Scottish Parliament, New Zealand Parliament) , where the Presiding Officers/Speakers play important administrative and political roles, chairing the parliamentary administrative bodies and the equivalent of business committees (Russell and Paun 2007), or even representing national interests in international relations and making nominations for the Prime Minister (Sweden) (Riksdag 2009).

8.2. Summary of principal findings

The main area investigated by this thesis relates to the evolution of the National Assembly for Wales and the issue of managing institutional change on the parliamentary side. The case-study used here provides institutional insight into the structural and operational re-adjustment of the Assembly to its new constitutional framework between 2005 - after the publication of the *Better Governance for Wales* White Paper - and 2007, in readiness for the implementation of the Government of Wales Act 2006. Such investigation was both timely and necessary since this represented a critical period for the Assembly. There are four principal findings.

8.2.1. Power struggles

The process of institutional change was accompanied by continuous power struggles among the various actors of change, confirming theoretical claims that, at moments of change, institutions are 'arenas of constant struggle' (Thelen 1999). The bargaining and negotiations over resources often followed a rational approach, individual actors, such as parliamentary arm vs. executive arm, seeking to maximise their power and influence base. Strøm (1995, 2000) suggests that within parliamentary organisations, these struggles revolve around the allocation of time in plenary, the conduct of business, selection and formation of cabinets, opportunities of scrutiny etc). During the negotiations for the new standing orders and during the administrative separation, institutional norms and rules played a significant factor, though they were not the sole factor in influencing the output of the political process.

The power balance within the Assembly has changed significantly as a result of the Government of Wales Act 2006 and the new Assembly standing orders. The parliamentary organisation emerged as more robust than it had been during the corporate body settlement, when power was dispersed to several *loci*: the civil service, the minister, the Presiding Officer as an individual, not necessarily as an office, the Deputy Presiding Officer, the Assembly committees (the House Committee, the Business Committee). The third Assembly marks the polarisation of power to the Assembly Commission and the institution of the Presiding Officer leading the Commission and the Business Committee.

This thesis has argued that, despite the power struggles during the process of change, the institution was generally less resistant to change than theory suggests (March and Olsen 2006). Change brought about by legislation is often less contested by the members of the organisation. The 'resistance' to change in the Assembly generally took the form of contesting the actual

process rather the goals of change. Some of the work conducted by the Shadow Commission (the external consultants for instance) was contested by individual members of the institution. The dynamics within the Assembly confirms theoretical claims that institutions are validated by outsiders and protected by the insiders.

Alliance formation during the negotiations benefitted to an extent by the corporate structure of the Assembly - see the Shadow Commission's secretariat seconded from the Welsh Assembly Government. Nonetheless, the corporate body also allowed heavy executive dominance on the writing of the new standing orders of the parliamentary institution, and created some discrepancies in the access to resources between the parliamentary and the executive arms of the Assembly

8.2.2. Patterns of change

The process of re-writing the Assembly standing orders suggests varied patterns of change: radical departure from the status quo was preferred in deciding for the separation of committee roles (in scrutiny of legislation and scrutiny of the administration); whereas path dependent tendencies are reflected by the outlook of the mandatory committees. The committee also devised novel procedures for the complex legislative process prescribed by the Government of Wales Act 2006, and set up new parameters for the executive-legislative relations.

This mix of radical change, innovation and path dependency suggests that the process of writing the new standing orders was a deeply deliberative one. Exploration of options from outside the organisational boundaries supplemented the existing knowledge thus producing an institutional renewal in procedural terms. Nevertheless, a word of caution is necessary: the Committee was to an extent forced into 'radical' change and into looking elsewhere by the requirements of the 2006 Act. It was forced into

'innovation' because there was no institutional precedent regarding a legislative competence orders process anywhere in the UK. Moreover, at constitutional level, the degree of 'radical' change was limited to structural (split of the corporate body) and operational (new legislative competencies, new procedures) matters, as the Government of Wales Act did not tackle the deeper constitutional issues of the Welsh settlement: the size of the Assembly; the move towards the Single Transferable Vote electoral system; and the funding of devolution in Wales - the so-called 'Richard consequentials' (McAllister 2005, 2006).

8.2.3. Short term vs. long term planning in politics

Nevertheless, this research has revealed that the redrafting of the Assembly standing orders was often driven by short-termism and pragmatism. Several factors contributed to this: time constraints (the CSO had only nine months to deliberate, including summer recess in 2006); legislative constraints (the Government of Wales 2006 is itself a result of short-termism and pragmatism); and symbolic and institutional constraints (pressure to reach consensus). This confirms theoretical claims put forward by Pierson (2000) with regard to the short-time horizons in the design of political institutions and highlights one important limitation of institutional design in the realm of politics.

The implications of 'short-time horizons' were felt in the early days of the third Assembly, when the lack of anticipation for coalitions in the new standing orders became clear (McAllister and Kay 2009). Moreover, in relation to the new standing orders, the first 18 months showed that, irrespective of the institutional rules, it takes simply and opportune alliance between different groupings to suspend or overturn standing orders with a two thirds majority in plenary.

By means of illustration, the third Assembly standing orders provide for the Presiding Officer and the Deputy Presiding Officer not only to be from different political party groups but also prevent them from being on the same government or non-government side (Standing Orders 2007, SO2). Following the May 2007 Elections, during its first meeting in plenary, the Assembly elected Lord Dafydd Elis-Thomas (Plaid Cymru) as Presiding Officer, and Rosemary Butler (Labour) as Deputy Presiding Officer. However, when the Labour Party established the *One Wales* coalition deal with Plaid Cymru, there was the possibility of a breach of Standing Order 2. Nonetheless, given the wide majority support for coalition (just over two thirds of AMs came from the two potential coalition partners), the respective Standing Order was suspended. This reinforces the point about the lack of foresight in the design of the standing orders with regards to the eventuality of coalitions (McAllister 2007, Osmond 2007), despite Wales' experimentation with coalition government in the first term .

The planning for the third Assembly (the administrative separation, the strategic repositioning of the Assembly and the internal re-organisation of the parliamentary arm) presents different features and different tendencies. The planning process was more strategically focused, yet, as previously mentioned, more contested by the organisation. The parliamentary institution that emerged after the legal split of the corporate body presents essentially different features to the National Assembly for Wales between 1999 and 2007. These differences range from: its strategic profile, to its governance structure; from the new distribution of powers within the organisation, to the new legal status of its officials; and from its powers and competences, to the new constitutional status.

Short term thinking in institutional design can often lead to 'unintended consequences'. Such was the initial set-up of the Assembly in 1999, criticised by some as abnormal and unsustainable (Rawlings 2003; Richard

Commission 2004) and the result of heavy political compromise (McAllister 1999, 2000). Ron Davies partly conveyed the essential fluidity of Welsh devolution in his famous statement: "devolution is a process, not an event" (Davies 1999). Nonetheless, Wales' devolution architects foresaw little of the rapid pace and the scale of institutional change to follow, and of the impact Welsh devolution would have on Welsh society, identity and political life (Wyn Jones 2001). To illustrate this lack of anticipation, the Devolution Unit established at the Wales Office level prior to devolution was scrapped after the set-up of the Assembly. At the Welsh Assembly Government level, constitutional affairs had not been institutionalised until 2003, when it became clear that the deliberations of the Richard Commission would necessitate a response and adequate consideration of constitutional issues.

Institutionalist theories highlight that massive failure creates the condition for radical change to happen (March and Olsen 2006). It can be argued that the 2005 White Paper and the Government of Wales Act 2006 mark a radical change in the Assembly's life (Elis-Thomas 2009). However, there is also an argument that the 2006 Act maintains some features of the same political compromise, ambivalence towards devolution and short-term solutions, as its predecessor, making the scheme unsustainable in the long term (Trench 2005a, 2006).

The unintended consequences of the 2006 Acts are easy to spot already: the electoral ban on dual candidacy imposed by Labour is likely to affect them the most in the next election in 2011, given that in the 2007 Labour lost five constituency seats and gained their first two regional seats plus some Ministers will be defending marginal seats. If this trend continues, Labour is likely to lose some of their able AMs who cannot use the regional lists as a safety net as they do in New Zealand for example (IRP Report 2009). The ban is likely to reduce the pool of selection for talented

Assembly Members which can have unwanted consequences in the long term (Wyn Jones 2005). The standing orders also bring about the issue of 'unintended consequences'. To illustrate this, the split of Assembly time in plenary on a 60:40 allocation between the government and opposition, in the context of a large coalition government (Labour and Plaid Cymru account for nearly two thirds of the Assembly) seems very strenuous for the opposition parties that, according to evidence from the early operation of the third Assembly, struggle to fill in the time allocated to them.

8.2.4. Limits of institutional design

Despite new institutionalist claims that institutional rules, norms and procedures determine the behaviour of political actors, evidence presented in this thesis suggests that there are often limits of how much institutions can influence political life. Moreover, institutionalist theory has been mostly concerned with assessing the effects of institutions rather than investigating institutions' formation and change (Pierson 2000).

The original set-up of the National Assembly contradicted widely accepted constitutional principles (Rawlings 2003), and tells a different story about the extent to which institutions can explain political action. The 'political' nature of legislative bodies draws attention to the limitations of institutions, bringing into the equation other contextual, personality and leadership factors. The Assembly's initial design and subsequent development also reveal what open systems' theory calls the systems' tendency to grow and seek equilibrium (Gould 1989).

It has been suggested that the planning of Welsh devolution was driven predominantly by political expediency, compromise, and political pragmatism (McAllister 1999, 2000; Andrews 2003; Rawlings 1998, 2003, 2004a, 2004b; 2005). This was evident both in 1997, at the outset of devolution and in 2005, when a significant change was made in the Welsh

constitutional settlement. The overall trajectory of Welsh constitutional development (encapsulated in the *Better Governance for Wales* White Paper 2005 and the subsequent Act in 2006) reflects the heavy politicisation of constitutional and institutional design in Wales. One official noted:

> ... *There was a political judgement, that however intellectually strong the arguments of Richard were, they could not be delivered in that form. Hence, they [Labour Party] were trying to come up with something that would constitute a clear step forward, following the trajectory of Richard, but toned down a bit (Interview with official July 2008).*

The Richard Commission was mindful of the fact that its recommendations would not be implemented in full (McAllister 2005, 2006; Rowe and McAllister 2006). However, it set the ground for debate and informed decision makers by providing a clear constitutional blue print (Rawlings 2004). This illustrates how design does not always follow functionalist reasoning when it comes to the ultimate shape of political institutions (March and Olsen 2006). Nor does it necessarily follow a 'logic of appropriateness', or what is intellectually accepted as appropriate. Instead, the prevailing logic is what is politically acceptable and achievable at the time.

The re-organisation of the Assembly between 2005 and 2007 presents similar trends. Whilst institutional rules, norms and practices are essential in shaping the behaviour of political actors (Strøm, Budge and Laver 1994), they are not solely responsible for the output of the political process. The process of institutional design and change in the National Assembly was an interplay of institutional, personality and contextual factors. Whilst institutional rules and practices may have limited the poll of options

available to the agents of change, political actors sought to rationally enhance their power and influence through negotiation and bargaining, and through alliance formation.

8.2.5. The limits of path-dependent and critical juncture theories

The dichotomy of path-dependence/critical junctures is no longer seen as appropriate in explaining institutional change (March and Olsen 2006). The case study presented here, which focused on a rather atypical political institution – a constitutional hybrid between a limited legislature and an executive – further exposes some of the limitations of such approaches. Depending on various contextual factors underpinning institutional life - for example the degree of blank-slate and institutional entrenchment of rules, practices and culture - institutions exhibit a wide range of change and design patterns at the same time, from radical change and innovation to incremental change and holding onto the past.

Path dependence theories suggest that the options available to an institution at a point in time are generally determined by the past choices made by the institution or by its original architects (Arthur 1994; Mahooney 2000). To an extent, the corporate body infrastructure established by the 1998 Act determined much of the Assembly's subsequent development, suggesting that change is path dependent and limited by the previous choices made in the institution's life (for example, the 'virtual parliament' could only evolve within the boundaries of the Government of Wales Act 1998). At the same time, the essential flaws in the system prompted the need for significant constitutional change, suggesting that change took the form of a critical juncture. The theoretical attempts to solve the path-dependency / critical junctures dichotomy propose the punctuated equilibrium model which claims that periods of incremental stability and incremental change are punctuated by moments of critical juncture, when the institution is re-adjusting significantly, not only its operational procedures and practices

but its strategic vision and culture as well. This thesis has argued that the process of institutional change undergone by the Assembly from 1999 until 2007, but especially between 2005 and 2007, fits in this theoretical framework.

8.2.5. Institution's role in constitutional design

This thesis reveals that, despite the broad constitutional framework (the 1998 and the 2006 Acts) being imposed from the centre (by the UK Government), nevertheless, the Assembly played a significant role in defining the more detailed parameters of its own operations. Some of these parameters are the result of path-dependency in institutional life. Others are clearly the result of radical change and innovative processes. The internal *de facto* re-adjustment of the Assembly, moving away from its corporate body status to a more traditional parliamentary structure, prompted a change in legislation that formalises the legal separation of the Assembly from the Welsh Assembly Government. Moreover, there is evidence to suggest that a 'Welsh' debate on their territorial constitution has existed and has continued to mature: from the first major review of procedures (ARP 2001), to the comprehensive Richard Commission Report (Richard Commission 2004), and to the whole scale revision of the Standing Orders between May 2006 and January 2007. More significantly, recent developments in the third Assembly, suggests that the constitutional debate Wales now leaps onto the 'Richard consequentials' territory, addressing the thorny issue of the Barnett formula and the financing of devolution (The Holtham Report 2009). Similarly, the *All Wales Convention*'s deliberations address another Richard Commission consequential - a referendum on a potential move to Part IV of the 2006 Act on primary powers in devolved areas (All Wales Convention 2009).

As the most recent constitutional re-adjustments in Wales suggest, the ultimate authority to bring domestic constitutional deliberation in effect

still rests with the UK Government, which may or may not act on the recommendations made by the Welsh constitutional designers. Nevertheless, the devolution dynamics in Wales allude to a political institution's capacity to proliferate and push their own boundaries. From the perspective of to open systems' theory, the Assembly's internal re-organisation can be regarded as an organic development, open systems having the natural tendency to grow and seek equilibrium (ref). The *de facto* split in the first two terms represents the Assembly's attempt to balance and redress its peculiar internal architecture in search of equilibrium. Similarly, the Richard Commission's work, and the re-organisation following the publication of the *Better Governance for Wales* White Paper in 2005 and the Government of Wales Act 2006, suggest the institution's tendency to expand beyond its status quo, by making the case for enhanced powers, by modernising its internal operation, and by adopting a more strategic and long term approach.

8.3. Further lines of inquiry

This thesis has also produced a series of incidental or adjacent findings. At the theoretical level, the thesis explored the narratives around the gap between rhetoric and practice in UK constitutional practices. It showed that, despite significant changes having been made in the practice of the constitution in the UK (constitutional multi-layering via EU membership and devolution), British constitutional theory has been slow to absorb these changes, the discourse still being couched in the Diceyan lexicon of parliamentary sovereignty, rule of law and conventions. Devolution in Britain is indeed a 'process', but lacks appropriate theorisation within constitutional theory.

More importantly, the emerging territorial constitutional practices in Scotland and Wales present some centrifugal tendencies (different electoral systems that broaden representation, patterns of coalition governments and pluralist politics; committee based parliamentary process as opposed to plenary) that might have a long-term impact on the British constitution. The new territorial constitutions are mostly written and present a high degree of judification of their internal procedures and operations (Government of Wales Act 1998, 2006,; Scotland Act 1998; and the plethora of Memoranda and concordts). They are also extremely dynamic and evolving, relying on established practices of on-going constitutional review and deliberation. The principle of separation of powers, albeit never a codified feature of the British constitution, has penetrated the political discourse in the UK, not only at territorial level but also at the centre - the creation of the Supreme Court, marking a more independent judicial branch.

These centrifugal tendencies are counterbalanced by the centripetal forces of the British political culture, and the organisation and culture of the British wide political parties. Critics highlight that despite some differentiation on policy issues (Keating 2003, 2005), there is not much evidence to support the claim of a 'clear red water', or 'devolution' within the major UK parties as far as their approach to constitutional issues is concerned (Bradbury 2005).

This thesis has touched upon these issues only adjacently, and highlighted the academic contributions. A theorisation around devolution and territorial constitutionalism in the UK is an area of further investigation. Multi-level governance theories (Hooghe and Marks 2003) for instance could offer a possible starting point for a theoretical modelling of devolution.

8.4. The principal contributions of this research

The contribution of this thesis to the study of Welsh devolution and institutional change is four fold:

- it has presented first hand insight into a period of critical change for the National Assembly for Wales. Despite the growing literature on devolution and Welsh politics in the last decade, the Assembly is still under-researched, especially in areas of institutional change and internal re-organisation as a parliamentary institution.

- it has outlined an important case of institutional as well constitutional change in 'real time', having benefitted from a mixed method approach which aimed to best capture the internal dynamic within the institution. The author went beyond the analysis of formal rules and practices and was able to study the behaviour and contributions of some of the principal agents of change (politicians and well as parliamentary and government officials). Moreover, the semi-ethnographic approach allowed the researcher to consider contextual factors (organisational climate, political climate and culture), as well as to personality and institutional factors that shaped the present institutional design and change.

- it has analysed a 'unique' case of a hybrid political institution (the corporate body), preparing for its constitutional 'normalisation'. The analysis presented here reveals unusual institutional dynamics, such as the difficulties and challenges of separating processes, assets and of defining power relationships in a hybrid institution. From a constitutional perspective, this research has shown how a parliamentary institution's standing orders are written with government support and influence.

- it bridges the discussion on institutional change, constitutional development and constitutional theory. Recognising that in the UK, constitutional change and development often comes down to the gradual change of institutional practices, this thesis highlights the constitutional significance of the Assembly's internal re-organisation and broadens the debate further, to the impact of territorial constitutional practices on the overall British constitutional theory.

This thesis has provided a timely assessment of the process of institutional change undergone by the National Assembly between 2005 and 2007, in readiness for the implementation of the Government of Wales Act. This investigation has emphasised the complex nature of institutional change, which is an interplay of institutional as well as personality and contextual factors. It has also drawn attention to certain limits of institutional design in the realm of politics, which is affected by short-termism and is often a result of the power struggles between groups or individuals in privileged positions of power. This research has shown that institutional change in the National Assembly between 2005 and 2007 presents a mix pattern of radical change, innovation and path-dependency, emphasising that the institution has been less resistant to change. The separation constituted an important window of opportunity which allowed significant change to take place at strategic, organisational and ideational level. This thesis has also highlighted the lag between constitutional theory in the UK and the rapid development of new constitutional practices in the devolved territories, suggesting that the theorisation of the process of devolution is still underdeveloped and remains an area for further investigation.

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APPENDIX 1 – INTERVIEW LETTER

Date

Dear Ms or Mr. x,

My name is Diana Stirbu and I am currently undertaking my PhD at the University of Liverpool Management School under the supervision of Professor Laura McAllister with whom I work jointly on several projects on devolution.

My doctoral research, initially entitled 'The Invisible Constitution: Rhetoric and Reality in Constitution Making in the UK – Wales as a case study', attempts to feed in a new dimension to the academic debate over constitutional issues in the United Kingdom, by focusing mainly on the recent process of constitutional change in Wales. The internal anatomy of a constitution is assessed in an attempt to link the major theories of the state and constitutionalism, with the practice and reality of current constitution making and institution renewal and building in the UK.

Adopting a micro-level approach, this research attempts to bring light into the making of the new Assembly Standing Orders and the preparations made for the 3rd Assembly. It tracks the internal constitutional development of the National Assembly for Wales offering insights into its becoming a parliamentary structure.

In your quality as (position undisclosed) in the Welsh Assembly Government, I would like to invite you to a discussion which intends to cover the making of the new Assembly Standing Orders, future expectations and challenges faced by the Assembly in the dawn of a new era in its operation.

I will be in Cardiff conducting interviews on the following dates. However, I would like to express my flexibility regarding the time and dates of a possible interview.

- *Date 1*
- *Date 2*

Sincerely,

Diana Stirbu

APPENDIX 2 – INTERVIEW TEMPLATES

Interview template (used post January 2007 with WAG Officials)

1. The role of the Constitutional Affairs Unit
2. CAU's involvement in the constitution building process in Wales:
   a. 'Better Governance for Wales' White Paper
   b. drafting of the Government of Wales Bill
   c. separation project
   d. Standing Orders
3. Tension between political considerations and constitutional fundamentals
4. Diverging agendas in constitution making (politicians – opposition and government, officials – government and parliamentary arm)
5. Standing Orders:
   a. ***Process*** – co-operation between actors involved, expertise
      i. Legal and procedural expertise?
      ii. Communication between government officials and parliamentary staff
      iii. How did government officials perceived the climate in the Assembly?
      iv. What were the stakes for the government officials advising the Business Minister?
      v. Were there any cases where there was conflict (at administrative level) between APS and WAG?
      vi. In any parliamentary democracy redrafting of the rules of procedure of any legislature should be done without executive interference (according parliamentary best practice else where). How did you feel about having some much influence on the re-writing of the standing orders?

   b. ***Content*** – sticking points, nature of negotiation, compromise
      i. What was essential from the government perspective in the writing of the new standing orders?
      ii. Was it the same as what the Business Minister wanted?
      iii. What do you think guided the process: Vision or political pragmatism?
      iv. Negotiations: what was lost and what was gained (from the civil servants perspective)

6. Legislative process - issues about the Welsh Assembly Government preparations for initiating legislation:
   a. legal expertise
   b. staffing etc
   c. any training on the Government of Wales Act 2006 and legislative competences

7. Comment on formalising the split of the corporate body. What institutional barriers did you encounter in the separation process?

Interview template (used post January 2007 with AMs)

On symbolism of the Standing Orders [SOs]

1. Writing the Standing Orders and achieving consensus was a big task. What message do you think the Assembly will send /sent to the SoSW (in full) and the UK Government about its maturity in the event of a successful re-writing of the Standing orders?

On process

2. How would you evaluate the process of drafting these SOs? Was the process (co-operation with other Committee members, Assembly parliamentary staff, Wag officials etc) as you expected it to be?
3. What were the difficulties encountered?
4. Did you at any time feel that the committee is not up to the job? (and resources)
5. How would you appreciate the support you receive from the parliamentary staff?
6. Did the tense climate in the Assembly influence the way negotiations were conducted?

On content:

7. In terms on content of the SOs, what were the major sticking points and how did you manage to come to agreement?
8. How much did the political pragmatism influenced the debate and how much was the intellectual argumentation/ constitutional, procedural, legal expertise?
9. What was the rationale behind committee's commitment to write the Standing Orders in a clear language?

On re-structuring and the future

10. Although the Assembly has to operate with a limited number of politicians but within an enhanced legislative framework, there are still lots of let's say statutory committees among which there are some that many people question their necessity (European Affairs,

Equality of Opportunities, Regional Committees). What were the reasons behind?

11. Do you think the new committee structure will enforce a solid scrutiny culture within the Assembly?
12. Do you believe there is still scope for scrutiny committees to have an input on policy – the Subject Committees have done a pretty good job at that?
13. What are your expectations for the next Assembly?
14. What are your worst fears?

On Welsh constitutional development

15. Do you agree with the SOSW comment that with the new GWA 2006 and the new Standing Orders the constitutional debated in Wales can be put to sleep? Or is it that it has just matured and is now ready to be re-launched?

Interview template (used post January 2007 with APS Officials)

On the making of the Standing Orders (process)

- How would you characterise the writing of the standing orders: visionary or piecemeal process?
- Who assumed leadership of the process (politically/staff)?
- What were the most contested points in the writing of the standing Orders and the separation of assets and resources?
- How open do you think the re- structuring process was? Did you trust those in charge?
- What were your fears regarding the process?
- You have clearly been a part of a very important process. Did you realise that at the time? And do you think the rest of the staff looked at you differently because you were so involved in the re-drafting of the standing orders?

Power battles / Behaviour

- How were the political tensions between the PO and the DPO perceived by the staff?
- Have these tensions affected you in any way?
- How did you feel about the Shadow Commission's redesign of the parliamentary structure?
- What was the relationship between the APS and the WAG officials working on the separation project?
- Who, in your opinion, was the most important actor in:
    - Re-writing of the standing orders

- Administrative separation
- Planning the future outlook of the Assembly

- How did the clerk's departure affect you on a personal and professional level?
- During the standing orders re-writing, how did you feel the negotiations between politicians were done? What were the most controversial areas?
- How did you feel about the WAG officials with whom you had to negotiate with?

Resources

- The Assembly has had to build up expertise as it went along in order to meet the requirements of the legislative framework. How useful do you think the "learning exercises" have been? (shadowing of bills, secondments, weekly staff meetings etc)
- On the same 'expertise' issue, how did you feel when more that five senior parliamentary officials left the APS (including the Clerk Paul Silk)?
- How do you think it will all work out?
- Did you feel your access to resources was adequate?

APPENDIX 3 – RESEARCH LOG (SAMPLE)

Research Log – The Rewriting of the National Assembly's Standing Orders (*relevant aspects of the observational placement within the National Assembly for Wales, 12-23 June 2006*). This is a summary report handed to the Head of the MRCS after the first placement.

Organisational level + symbolic aspects

Publicly Available	*Possibly sensitive information*	*Commentary*
Committee's terms of reference	n/a	The underlying principle is that of **consensus seeking**. This goes along the line of the much vaunted new political lexicon that has emerged in Wales after devolution. It is vital for the Assembly to agree on its own future Standing Orders. Otherwise it would be like a "slap on the face", sending a very negative message to the public – that the Assembly is not mature enough (AE+JR)
Committee's membership: Jenny Randerson (LD) – Chair Lisa Francis (C) Val Lloyd(LB) Ann Jones (LB) Gwenda Thomas (LB) Jane Hutt (LB) Jocelyn Davies (PC)	n/a	The Committee is an all-woman committee. *However, we don't have to read too much into this. Apparently there is no engineering but pure coincidence (the business managers are all women, the business minister is a woman and Labour nominated 3 more women.)* There are some other interesting aspects we can comment on regarding the membership of Standing Orders Committee (i.e. the fact that the Presiding Officer, the one who has been instrumental in drafting, interpreting and guarding the Assembly's current Standing Orders was left aside from the new discussion on the Standing Orders). Some possible explanations for the POs exclusion from the SOs: • Conflict of interests – the Office of the PO should not set the SOs which in future they'll have to implement – issues with separation of powers (J.R. – debatable though); • There is only so many committees that a person can chair – fear of dictatorship? • Opposition's dissatisfaction the PO's chairing of the GoWB Committee was ineffective

Strategy Level

Publicly Available	*Possibly sensitive information*	*Commentary*
Principles of the Committee: - retain the current SOs where appropriate - clarity and flexibility - compliant with the CPA norms	n/a	Agreed in formal meeting Why is the government involved though (civil service)? – to follow up with officials and politics
	Meetings: Most discussions will be carried out in informal meetings and then decisions agreed in formal meetings	During the first committee meeting, the Business Minister suggested that the debate on the Standing Order 1 be moved to an informal session. Therefore, most probably, the substantive debates will take place behind the closed doors. Extremely tense climate within the officials and politicians (Staff 1 + Staff 2, Politician 1)
Strategic approach The Committee identified 4 areas in which there might be a case of major re-thinking: - Times of sittings and control of business - Financial procedures - Committee structures and functions - Legislative procedure		However, because these areas are deeply inter-related, it will be difficult for the committee to approach them other than holistically. As advocated in the first formal committee meeting, there's going to be a twin-track approach and the committee will try to agree on as many Standing Orders as possible by the end of this term. Focus on lesson learning from Scotland and Westminster
Consultation The Committee will carry out an "internal consultation" with other Committees: Business, Legislation, Standards of Conduct, Equality of Opportunity, Panel of Chairs and the Presiding Office	*The Panel of Chairs did receive a letter with the invitation to consultation in the last meeting. However, it did not appear to have been taken into consideration. (to use only after the*	It would be interesting to look at this: The Committee met for the first time on June, the 6th and agreed on the consultation process. However, on the same day the committee debated (or tried to) the SO referring to the election of the Presiding Officer and Deputy Presiding Officer. Were the Presiding Officer and the DPO consulted by that date? – No but the invitation came later

Publicly Available	*Possibly sensitive information*	*Commentary*
	Panel of Chairs Minutes are published)	JR ?– confirmed the fact that an invitation to consultation was sent to the OPO but no answer has been received by the Committee.
Evidence taking Facts finding visit to Scotland	Invitation for evidence from the Power Commission members (not on public domain at the time of the research)	Although the general feeling is that the Assembly will opt for a Westminster parliamentary committee style (JR), the Committee is still looking at Scotland (legislation, petitions system etc)

Organisational / Behavioural aspects

Publicly Available	*Possibly sensitive information*	*Commentary*
The Standing Orders Committee will be supported by the Government of Wales Bill Procedures Unit (4 people)	The Government of Wales Bill Procedures Unit was established in October / November 2005 and served 2 other committees (Committee on the Better Governance for Wales White Paper And the Committee on the Government of Wales Bill)	
	In readiness for the dismantling of the corporate body, at administrative level, a Separation Project has been initiated. This is managed by the Separation Project Board	Split leadership between the Clerk, the DPO and the PO, via the Shadow Commission