



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

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LORD CHIEF JUSTICE OF ENGLAND AND WALES**

LEGAL WALES: SHAPING THE FUTURE

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1. May I begin by talking about my recent visit to Merthyr Tydfil. You may wonder why. It was on the occasion of the visit of Chief Justice Robert French, the Chief Justice of the High Court of Australia. The visit was in honour of Sir Samuel Griffith, the first Chief Justice of Australia, who was born there in 1845. He was a lawyer and a politician who played a critical role drafting the new constitution that Australia developed to turn the then colonies into a federal state, and thereafter in the creation and success of the High Court. Here was a great Welshman who had done a great deal outside Wales.
2. But then one also saw in Merthyr, and what was equally important, was what needed to be done in a city that had been the cradle of much of the industrial revolution, much of that now forgotten. Instead a terrible decline and a terrible lack of prosperity. That second thought should turn us to looking at actually what the law can do for Wales, not only by inspiration from the past, but by looking at the future and at the prosperity of Wales. This is something which really ought to govern all our discussions and ought to be the future focus of Legal Wales.
3. I wanted first of all to say a word or two about the Wales Bill and then I want to look at the future focus under four subject headings:

- i. the law;
- ii. the reform to the courts and tribunals;
- iii. the judiciary and
- iv. the profession and the universities.

The Wales Bill

4. The Bill has been so eloquently discussed on two earlier occasions today that I do not think I need say a great deal. I wanted to say just three things.
5. First of all, when I discussed the Bill last year I had hoped that certain things would be made clear. I do think it is right to pay tribute to both Secretaries of State for the fundamental changes they made to the draft Bill and to commend them for making the changes which will keep away from lawyers, and in particular judges, issues of what is “necessary”. Court is not the best place to decide that. On the other hand I think it is disappointing that no real attempt has been made to provide something that is much simpler not because it will stop litigation but, more importantly, because it will enable the citizen to understand who is accountable for what. I think the great problem with this highly complex form of legislation is that it is very difficult, as many have pointed out, for the ordinary person to understand who it is who ought to be delivering the prosperity that Wales so badly needs. We can criticise the complexity for legal reasons, but I think the criticism is much more fundamental – the need for clear democratic accountability.
6. Secondly, there are views that have been expressed as to whether changes can still be made to the draft Bill. I am encouraged to believe that we should see two things that will help just a little bit. The first is the creation of a post of the President of Welsh Tribunals because the Welsh Tribunals have no coherent

overall leadership; and secondly something critical to the proper recruitment into the Welsh Tribunals - enabling members of Welsh Tribunals to sit in the UK and England and Wales Tribunals and also to sit in the courts of England and Wales. One of the very big changes that is occurring is the bringing together of the judiciary of the courts and of the tribunals and making cross-deployment an actual reality. If Parliament does not make provision that would enable judges of the Welsh tribunals to sit in other courts and tribunals, they would be a complete exception to the way in which the rest of the judiciary will go. It would impose a huge disadvantage on the Welsh Tribunals. I believe those clauses will be put into the Bill. I am very optimistic that will happen. It may be thought a tiny change but it is one very important to the delivery of justice in Wales.

7. The third and final observation about the Bill is the work that is being done, if I may put it this way, to manage the “justice function” with respect to Welsh legislation. There is a need to ensure that when the Assembly passes legislation, there is the ability to make it actually work through the courts, by changes to the rules and communication to judges. I would like to pay tribute to the huge change that Scott McPherson at the Ministry of Justice has personally brought about through his interest in designing a function that will enable the legislation passed by the Assembly to be dealt with by the courts. The creation of this small, very practical group - the Justice in Wales Working Group - is to carry out what is actually a “nuts and bolts” job. It is to make what the Assembly legislates for work in court. I am very glad it is being done because it takes a weight off the Judicial Office and the Judges’ Council.
8. To say more about the Bill would be to descend into the political sphere, and that is not for me.

The Future

9. So I then turn to the four subject headings under which I wanted to look at in the future focus. I think in analysing each of the four subjects it is necessary to bear in mind three different considerations.
- i. How is justice system in Wales to support devolution?
 - ii. How is it to provide access to justice?
 - iii. How is it to support an industry based on legal services? I prefer to call it an industry and, actually, if it is seen in industrial terms, it is looked at more favourably.
10. I think therefore looking at each of the four subjects, it is necessary to bear the three considerations in mind, because the answer to one does not necessarily provide the same answer for another as to the way in which the justice system should be developed in Wales.

The Law

11. I would first like to thank the Law Commission. It is a great thing to see the Chairman, some of his Commissioners and the Chief Executive here today. It enables us to praise them for what they have done in actually saying that for Wales the Westminster model of legislation is not necessarily the right one. Wales is unburdened with a long statute book; the Assembly at least acknowledges that you can use word processors in the chamber, something that Westminster finds very difficult to understand.
12. The Law Commission is taking forward a new approach.¹ It is obvious that the laws in Wales ought to be in forms of codes. It is obvious they ought to be

¹ <http://www.lawcom.gov.uk/project/the-form-and-accessibility-of-the-law-applicable-in-wales/>

drafted in language of which Sir Mackenzie Chalmers would be proud and not in much of the current style. It is obvious that we need to look at processes to simplify the law. We have the means of doing it relatively simply. The procedures of Parliament do not work in many respects. Wales has the opportunity to be different. The Commission have done Wales an enormous service in what they have proposed and what they will do.

13. There is also progress with the Welsh language. The Sentencing Council has now taken the decision that it will move towards publishing the Magistrates' Court Sentencing Guidelines in Welsh. I mention that because it raises an issue to which I wish to come back to at the end. How are we to be sure we get the terminology right? This is a matter that goes back to discussions when the Welsh Language Act 1942 was first published as to what was the correct Welsh word for a felon. We do not have that particular problem today because we do not have felons or we do not call them felons any more. We have to get our terminology right. I mention that for two reasons. One is to say the Sentencing Council will be looking for help. I am looking at the great experts in criminal law in the room who can speak Welsh as well as English, and secondly as an example of the task I want to set out at the end of these observations.

The reform to the courts and tribunals

14. Can I now turn to what I would call court reform? I want to highlight that the reform for the courts that is envisaged is the most radical reform for 150 years. If people had not appreciated the magnitude of the change that will happen, they ought to. It will be manifested in a number of different ways. First, IT. Although we will be moving forward by experimenting in various discrete areas such as probate, divorce, the Social Security and Child Support Tribunal and in

small civil claims, the process may look a bit different in each at first. Our ambition however is to create one IT system for the whole of civil, family and tribunal work. The second (and most radical) is to unify the procedure of the different jurisdictions of civil, family and tribunals, because it is very difficult to understand why you now need to have different procedures and different attitudes in the different jurisdictions. It may be difficult to understand the history, but one thing that moving to a computerised digital system compels you to do is make the procedure fit a new system. This is what we intend to develop. This is a radical change that may shock many of you, but it will happen.

15. Thirdly, there will be a change to the estate. The statement that I made with the new Lord Chancellor and with Sir Ernest Ryder sets out what our ultimate vision is of that.² It will require us, particularly in Wales, to look at using technology which has so ably been provided by the great US technocrats rather than the antediluvian equipment that we have been used to and have had to make do with. I envisage Skype or FaceTime or some other commercial product replacing completely the present video links. We envisage very different ways of working. I was very encouraged to hear Dr Nerys Llewelyn Jones speaking about how she had revolutionised her practice by using IT to work from a location in Wales. Although we will revolutionise the estate, we will remember the report published when they were thinking of abolishing the Courts of Great Session in the early nineteenth century. Those looking at it in London saw that Mold and Ruthin were very near each other. They had to be reminded that there was a “great mountain” in between. I think sometimes those in London forget that Wales has mountains and winding roads. When I was a child, it took two and a half hours

² <https://intranet.judiciary.gov.uk/wp-content/uploads/2016/09/narrative.pdf>

to go from Cwmgiedd to Aberystwyth. The time has not changed. Those in London must not forget that Wales is different.

16. Fourth are the effects of these changes on people. I touched on one of the most important changes - that is the bringing together of the courts and tribunals and the judiciary, which will make a very great difference.
17. All of these issues are relevant to each of the three considerations that I have set out: how these changes will support devolution, how they will support access to justice and also how they will support law as an industry.

The judiciary

18. Third, let me turn to the judiciary. There is a shocking fact I must mention first. Within a very short period of time there will be no judge on the High Court Bench or the Court of Appeal who practised for much of their life and who live and have their main home in Wales. There will be those of Welsh descent or people who were born in Wales and have a home there (such as myself), but there will be none who have practised in Wales and live there. This is at a time where we are concerned that the judiciary must be reflective of society. However from this nation there will be no one who has those characteristics.
19. Therefore this is an urgent area for action. It is serious because if you take the view, as is accepted, that the judiciary must be reflective of society, it must also be reflective of both nations that make up England and Wales. It is important therefore to say that we are looking radically at how we recruit into the judiciary. We will be launching at the end of November a competition for Deputy High Court Judges. We will be launching in the early New Year a High Court Judge competition and then a Recorder competition. In some of these, the Judicial

Appointments Commission has been looking at the way in which it carries out these processes. We are trying to make certain that they are much fairer.

20. We are also looking at what many would think as a very alien concept to the judiciary (but one, which actually was much embodied in the way the old Lord Chancellor's department used to work) - some proper career development.
21. By one or other of these means, something must be done about the composition of the High Court Bench (and above) so that there are people who have practised in Wales and, importantly, live in Wales. There is a huge challenge there.

The Legal Profession

22. Last, the legal profession. The reason I was not present this morning was that I had to introduce a lecture given last night by Professor Richard Susskind. He came down to Cardiff in November 2015 at my request to talk to the profession in Wales as to what is happening in the legal profession worldwide. I think the difference between the talk he gave in Cardiff and the one he gave last night, is simply things are moving more quickly than anticipated. From what I have picked up since he came to Cardiff in November 2015 and today, changes are happening more rapidly. There is therefore a real risk that the changes that are happening at increasing rapidity in the legal profession will leave Wales behind.
23. What do I mean? We must look at the law as partly serving the community and partly as operating as an industry for the wider benefit of Wales. I think, if I may again refer to Dr Nerys Llewelyn Jones's earlier talk, she has got one vision. But there are other visions. The most important point, whatever the vision, if Wales is to participate in a legal services industry on a global scale or at least to be joined with London in doing that, is lawyers have to confront the fact that legal services will be organised and delivered very differently. For example it is

probably correct to say that as soon as we have better statistical information, artificial intelligence using that statistical information will be better at predicting the outcome of cases than the most learned Queen's Counsel.

24. There are other changes. It may be the case that the procurement of legal services will no longer be through the traditional large firm model but by the decomposition of work and the re-sourcing of it. I think there is absolutely no doubt the progress we have seen in the medical profession, the use of a large number of well qualified nurses and paramedics reinforced by technology and easy access, will be something that will happen to the legal profession.
25. What must therefore happen in Wales is that we must actually seize the opportunity that is here now. In the period since November 2015 it has become apparent to me that other law schools are now seizing the initiative to teach this new approach to the profession for the future. More importantly, firms in other cities of the United Kingdom are seeing, and rapidly moving towards seizing, the opportunity of getting into the new legal market.
26. Law is a highly competitive industry. If we look globally, the principal competitor to English law is the law of Delaware and New York. There is a bit of competition from Germany, a bit of competition from France and some very well financed competition from Singapore; and no doubt China will come in, in due course. There are huge opportunities at stake. It is a competitive industry. It is vital that Wales must look at it in that light. From my discussions with the Lord Chancellor, it is very clear that she sees the opportunities for developing the legal profession through this industrial, international competition. It is critical therefore that the firms of Wales, if they are interested, must actually participate in what is something central to the prosperity and future prosperity of Wales.

Conclusion

27. If you go to the upper parts of the Valleys, and I cross them when I go back to my home in Cwmgiedd, industry is not there anymore. We have to look at new industries. We have to see law as an industry that can help in these areas. But, how are we to achieve this?
28. I have touched in these few remarks to you first of all on the problem that relates to the accurate translation of Welsh terminology; we established a group to tackle that issue and it did so successfully. I have touched on the body that carries out what I call the “nuts and bolts” functions of getting legislation to work; I am confident that will deliver.
29. However what we really need is a high level body that will drive forward these other issues which are far, far more important. It is possible and it is certainly – I think I can say this – a Welsh habit to sit down and talk. That is a useless occupation. The estate agents say when you want a house, there are three things that matter: location, location, and location. I think as regards the future of all of these issues, I have three things to say: delivery, delivery, and delivery.
30. To go back to the theme of the conference, what is required is a very careful analysis of convergence and divergence against the reality of transnational litigation and transnational legal services. There are strong arguments for some solutions that benefit the legal industry. There are arguments in respect of the other things that need to be done for divergence. What is needed is a high level body to think these through and actually analyse what is in Wales’s fundamental economic interests, protecting not only and the civil liberties of the people of Wales, but ensuring their prosperity.
31. I do not underestimate the difficulty of the task. But it must be tackled. The body I have suggested must be formed. It must not talk. It must act. To ensure

that it acts, it must have a programme at its beginning and say what it is going to do in 12 months. It must do it.

32. That is a tall order but I do see that Wales, like the United Kingdom, faces huge challenges. The law does provide a way forward on many different fronts but it is an opportunity that is to be measured in terms of being achieved in two to three years, no longer. If the train leaves the station without the lawyers and the law firms of Wales, Wales will be the poorer. That must not, and will not, happen.
33. Thank you.

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