NATIONAL EISTEDDFOD OF WALES BRO OGWR 1998

LAW LECTURE

THE LAW IN WALES:
PAST, PRESENT AND FUTURE

His Honour
DEWI WATKIN POWELL MA LLD

THE LAW SOCIETY

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GIVEN BY
HIS HONOUR DEWI WATKIN POWELL MA LLD
7 AUGUST 1998

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His Honour Dewi Watkin Powell MA LLD

The author spent his professional life in the law, as a barrister in the Temple in London and then for 21 years before retiring in 1992 as a Judge of the Crown Court and Official Referee of the High Court in Wales.

He took a leading role in drafting the Government of Wales Bill 1954 and in compiling the Parliament for Wales Movement's bilingual volume, "Power to the People of Wales" which includes the draft Government Bill presented to Parliament by Dr John Marek MP in 1997.

In 1998 he received the honorary degree of LLD from the University of Wales.

FOREWORD

By Lord Gwilym Prys Davies, Solicitor

It is my privilege to present this lecture.

It was with pleasure and benefit that I listened to His Honour Dewi Watkin Powell delivering the lecture at the Bro Ogwr National Eisteddfod. I feel sure that the reader will profit likewise. I warmly commend the lecture to the attention of the public at large as well as fellow lawyers. It makes a substantial contribution since it provides a synopsis of early Welsh law, traces the place of Welsh in the Courts since 1284, reviews the principles upon which the National Assembly for Wales is based and assesses the jurisprudential developments which are within reach in Wales as we arrive at the new millennium.

Dewi Watkin Powell stands in a line of distinguished lawyers who have in the course of this century enhanced the status of the Welsh language in the Courts - men such as Thomas Artemus Jones, Daniel Lleufer Thomas, David Hughes Parry, William George and Edmund Davies. Without their work the Welsh language would be much impoverished. And on a personal note I thank him sincerely for his ready advice, whenever I sought it, his energy, his tenacity and for giving of his talents to the service of our nation.

Gwilym Prys Davies

St David's Day 1999

THE LAW IN WALES:
PAST, PRESENT AND FUTURE

First of all, may I congratulate the Associated Law Societies of Wales on its decision to establish an annual lecture at the National Eisteddfod. This will be generally welcomed. It creates a formal link with our main cultural institution and is an affirmation of the shared aspirations which may transform our nation.

At the same time may I thank you for inviting me to deliver the inaugural lecture, which is a special privilege and honour for one who has never been a member of the Law Society as such, although I have had the privilege of being an honorary member of the Gwynedd Law Society, of which my old friend, the late Trevor Morgan, was a founder member. That Society has done much to bring greater Welshness to the profession in the North and has also led the way for the Associated Law Societies of Wales. Long may it continue.

The Eisteddfod this year is a historic one in many respects.

Last Friday the Government of Wales Act received its Royal Assent and we can now be certain that there will be a Welsh Government in place before the next National Eisteddfod. A new and exciting era in our history has already began, the significance of which we have not yet had time to fully comprehend.

The day after that momentous event saw the opening of the first National Eisteddfod in the history of the new Wales.

Two days after the opening, Emyr Lewis, one of our distinguished young solicitors, was crowned for his *pryddest* to Freedom, a subject which was chosen with prophetic faith by the Literary Committee of the Eisteddfod and a poem described by Alan Llwyd in terms which would be fitting only to one of the great poems of the Welsh language.

Being in the land of Iolo Morgannwg, the founder of the Gorsedd, and the district of the late and dear Brinli, and having seen another of our former Archdruids, William George, accepting the greatest honour which the National Eisteddfod can bestow, namely a Fellowship, it goes without saying that the Eisteddfod and Welshness is nothing new to people practising the law. During the coming months and years you will have an important role to play in key areas and it is encouraging to see your Association, which represents nine out of ten of those who practise law in Wales, responding so positively to the challenge ahead.

I had the privilege as a barrister and then as a judge, over a period four years

longer than Moses spent in the wilderness, of dealing day after day with tens, if not hundreds, of solicitors. The public is greatly indebted to you for your commitment and perseverance. I wonder how many outside legal circles, and apart from one or two policemen, would be prepared to second this. Lawyers hardly have a 'fan club'. Historically, at least during the last three centuries, solicitors and barristers have been regarded as a sort of scarecrow. There has never been a lack of critics and, amongst them, a few cynics, some more willing than others to put their views on the record.

There is Ceiriog's englyn:

> *Eich gelyn yn eich galwad - mab y diawl*
> *Ymhob dim heb eithriad*
> *Mab lledrith ym mhob lladrad*
> *A mab y tric ymhob trâd*
>
> Your foe in your vocation - son of satan
> In all without exception
> Son of illusion in thieving
> And son of the trick in all trades.

For a scathing condemnation, the award must definitely go to the author of 'Gweledigaethau'r Bardd Cwsg' (The Visions of the Sleeping Poet), Ellis Wynne of Las Ynys, no less, for Lucifer's speech in the Vision of Hell:

> 'Go and speak to that miserly lawyer who, whilst dying, offered a thousand pounds for a clear conscience. Roast the lawyers by their own parchments and papers till their learned entrails fall out, and to smell the vapour, hang the contentious court pleaders above them, their nostrils down in the roasting chimneys, to see if they had their fill of law.'

Let me leave behind these past revilers of lawyers but not before noting that the two from whose work I have quoted, were defenders of the British establishment at a time when that establishment was undoubtedly hostile towards the Welsh language, and the question which comes to mind, especially at a time such as this in our history, is what connection there is between language and law and nation.

Which brings me to my subject matter. The law in Wales past, present and future is a subject that is sufficiently open ended for me to go astray!

My aim in brief is to follow two avenues which are interconnected; the fate of the language under the law, and the fate of the law under the political system.

According to that great pioneer in the study of Welsh history, Goronwy Edwards,

in a lecture he delivered in Bangor many years ago, the native Welsh law, the Law of Hywel Dda, together with the Welsh language, was until 1282, 'a potent force recognised by others, as well as by ourselves, as marking us off from other people and strengthening our national consciousness', notwithstanding that this was at a time when Wales was politically divided into a number of principalities.

Professor Dafydd Jenkins, our leading authority on the Law of Hywel, has this to say in his Preface to the volume 'Hywel Dda: the Law' about the dignity of that law in the middle ages and its relevance to us today.

> 'Since Welsh was the language of the law, the Welsh language had a publicly-expressed dignity which English did not have in England at that period and the technical terms of law which passed into the ordinary vocabulary were natural to the vocabulary, not foreign borrowings as they are in English . . . (The) law of Hywel was proving its ability to adapt to changing circumstances, which is the great condition for the survival of any legal system; and it was able to adapt because it was a learned law, preserved in writing by a learned profession. Our great regret must be that so many good principles of Welsh law were lost when English law replaced it: it is ironic that some of those principles have found their way into English law in the last hundred years or so and especially in the present generation.'

We still have the language and its prospects are better than they have been for a long time but the Law of Hywel ceased to be effective four and a half centuries ago. The interesting but significant question for us today is whether we will see the powers of the Assembly being extended so as to create a body of modern native law which will be learned, able to adapt to modern day circumstances, which will give the Welsh language dignity and which will strengthen our sense of identity as a nation.

We must go back to the events of 1284 and 1536 for an answer to our questions because what happened then still casts a shadow over our nation's life and mode of thought. Although our uncertainty of our identity, as to whether we are Welsh or some sort of English people, which the late J. R. Jones described, is much less than it was when he wrote about it over thirty years ago, it is far from having disappeared. The consequences of losing the 1282-1283 war were grievous for Wales. The aim of Edward I was to abolish the burgeoning Welsh state which had come into existence during the reigns of Llywelyn the Great and Llywelyn the Last. His determination is evidenced by the grandeur of the castles he built at huge cost. And the nation knew the terminal implications of the defeat: You will be familiar with what Sir Thomas Parry called "the passion of the majestically sad lines" of Gruffydd ab yr Ynad Coch:

O laith Llywelyn cof dyn ni'm daw
Oerfelawg calon dan fron o fraw;
Och hyd atad Dduw, na ddaw môr dros dir!
Pa beth y'n gedir i ohiriaw?

Of Llywelyn's death, I remember not
My heart is cold under a breast of fear . . .
Would to God that the sea were to flow over the land,
Why need we tarry longer?

The native law was eroded but not abolished by Edward I but the law administered in the centres he and his successors established was the law of the King's Court, which was conducted in Latin and French. Although Edward did not abolish the Law of Hywel, when the budding Welsh state disappeared the dignity of Welsh law and its ability to adapt also disappeared. But it was the Act of Union 1536, two hundred and fifty years later which abolished it entirely. By then its practice and authority had weakened substantially. But if the native law had lost its force as one of the two 'powerful forces' which maintained our identity, the language had not. The language remained strong as the age of *Beirdd yr Uchelwyr*, the Poets of the Nobility, testifies.

The policy of Henry VIII and his government was to eradicate the differences between our forebears and their neighbours, and one of the most substantial differences was the language. Part of that policy was to banish the Welsh language from official and public life. In the defiant words of the Act of Union 1536: "....from henceforth, no Person or Persons that use the Welsh Speech or Language shall have or enjoy any Manner Office or Fees within this Realm of England, Wales or other the King's Dominion, upon Pain of forfeiting the same Offices or Fees, unless he or they use and exercise the English Speech or Language."

It cannot be overemphasised that what Edward I and in particular Henry VIII accomplished, has cast a long shadow over the life and thought of the Welsh nation not only in its daily involvement with the law and the authorities but in its self-confidence, the uncertainty as to identity mentioned earlier which has been a millstone around our necks for centuries. To the degree to which it was possible to undo what has been done, we have had to wait until our own day.

The Act of Union 1536 was responsible for appointing Justices of the Peace in Wales for the first time, eight of them in each County, with the twofold responsibility of sitting in judgment and undertaking local government within their counties. Apart from licensing, their responsibility for local government came to an end with the establishment of the County Councils in 1888 and the District Councils in 1894. As with that of a Sheriff, the office of Justice of the Peace was

influential, desirable and the price to be paid was conformity. English was the only language of record and the proceedings of these courts. Despite prohibition on the use of Welsh and the punishment of loss of office for breaching that prohibition, there is evidence that the Justices during the first 100 years after the Act of Union used the Welsh language from time to time, in order to facilitate the work of the Court. This is how it remained for 400 years.

In 1942 a conditional right was granted by the Welsh Courts Act for a party or witness to use the Welsh language and have an interpreter at the expense of the Court, but only if he/she considered he/she would otherwise be at a disadvantage due to the fact that Welsh was his/her natural language of communication, a condition for all practical purposes which prohibited Welsh learners or people who used English in their daily work, from taking advantage of the Act and which prevented people who felt too embarrassed to admit that their English was too limited, from using Welsh and doing themselves justice.

As for the higher courts, in 1542 a special High Court was established for Wales, the King's Court of Great Sessions. If the Welsh language's position was weak in the Magistrates' Courts, it was even weaker in the Great Sessions. A few statistics clearly tell the story. This court existed for nearly 300 years. It was abolished in 1830. During this period, 217 judges were appointed but only thirty of these were born in Wales and it is doubtful whether more than 10 of them spoke or understood Welsh. It is significant that the Court had existed for over three-quarters of a century before anyone born in Wales was appointed as a judge. In terms of quality and ability it is hard to criticise them but considering that they had to weigh the evidence and deal regularly with parties and witnesses who only spoke Welsh, it is hard to imagine, even by the standards of the time, how they could have administered justice in such cases. This problem was known to the authorities as early as 1575-7, because in a letter to Sir Francis Walsingham, the Secretary of State to Elizabeth I, Justice William Gerrard, Vice president of the Council of Wales and the Marches, recommended that a judge who could speak Welsh should be appointed as a Justice on the Carmarthen Circuit but his recommendation was ignored and a Welsh speaking Justice was not appointed until 1612.

After the abolition of the Court of Great Sessions in 1830, the English assizes system came to replace it. Predictably there was no change in the official attitude towards Welsh for the next 140 years. Two examples suffice:

In 1872, Homersham Cox, a monoglot Englishman was appointed as a judge in the County Courts of Merionethshire, Montgomeryshire and Ceredigion. The matter was raised in Parliament by Osborne Morgan MP for Denbighshire. In words that are incredible to us today, Lord Hatherley, the Lord Chancellor, responded,'In cases between an Englishman and a Welshman, a Judge selected for his Welsh

acquirements would be subject to mistrust on the part of an English litigant', and Homersham Cox remained in Wales.

The second example comes from the judgment of Mr Justice Widgery (subsequently Lord Chief Justice) on the right of a party or witness to use Welsh in accordance with the Welsh Courts Act 1942. The case of Jenkins v the Justices of Merthyr stemmed from the language campaign. The appellant who was bilingual had sought to conduct his case in Welsh. He was refused. He appealed to the High Court against the justices' decision. His appeal was rejected. According to Mr Justice Widgery, a Welshman had no more right to use his own language in his own country than a Pole had to use Polish in the Old Bailey.

The following year, after some ten years of campaigning the like of which had not been seen since the days of the Rebecca Riots, the Welsh Language Act 1967 was passed. Between this Language Act and the Welsh Language Act of 1993 the situation and status of the language within the courts were transformed. The 1967 Act gave any party or witness or any other person (including judges, justices, barristers, solicitors and court clerks) the unconditional right to use Welsh in the Court's proceedings. This was reinforced by the 1993 Act. The Welsh Courts Act 1942 was abolished with the result that court records no longer need to be in English. Hence, within the law, it is possible to hold a trial in the Crown Court entirely in Welsh as has been the case in the Magistrates' Courts since 1973 following the statement of the Lord Chancellor, Lord Hailsham.

One substantial disincentive however still exists which stands in the way of anyone who wishes a case in the Crown Court to be heard in Welsh. A person whose case is to be heard in English has the right to reject any proposed member of the jury if there is reason to believe that that person does not understand English. Fellow citizens who wish their case be heard in Welsh do not have a corresponding right to ensure that everyone on the jury understands what is said in Welsh in the original language. An amendment to the Welsh Language Act of 1993 was proposed by the opposition which would have secured this right but it was defeated in the House of Commons. There is another disincentive which should be mentioned. According to existing regulations, it is the parties and not the Court who must pay for the cost of interpreters in a civil case.

During my term as a judge I was encouraged whilst training Welsh language judges and justices to use the Welsh language in the courts by their willingness to learn and their enthusiasm to make use of the Welsh language, and give it dignity within the courtroom. What disappointed me was the unwillingness of Welsh speakers to use Welsh even in such simple matters as taking an oath. It would be easy to accuse them of being servile but we must take into account how difficult it is to eradicate the effect of the centuries of conditioning the nation to look upon their own language as having an irrelevant if not subordinate place in public life

and as being inappropriate for "official" events. They cannot be blamed either for still believing this to be the case when they see and hear the English language being given priority throughout court proceedings. In the case of the criminal courts Robyn Lewis has shown that there has been unwillingness on the part of the police to use Welsh in preparing reports and recording statements and in giving evidence, even when all the previous interviews were in Welsh. This has proved to be a major obstacle to hearing cases in Welsh. Recent improvements have been made in this respect but more thorough training is clearly needed and more determination in preparing to meet the requirements of justice. The Crown Prosecution Service's record is uneven, and differs from area to area, some are good and others are poor. In some areas of Welsh speaking Wales, such as Dyfed-Powys, the Service has failed to appoint enough solicitors or barristers with the ability to present cases in Welsh. All too often also, in Welsh speaking areas of Wales, summonses in English only are sent, sometimes with a note at the bottom of the summons stating that a Welsh summons can be obtained on request, at other times with nothing to this effect. In addition to all of this, I have never seen or heard of a social enquiry report being presented in Welsh despite there being a substantial number of Welsh speaking defendants when the whole of Wales is taken into account. In these circumstances, it is all too easy for practitioners to succumb to the temptation of believing that, even today, the individual who wishes to use Welsh in a courtroom is not welcome and to advise the client to take the easiest course.

If we are to undo the injustices of the past the situation should be reformed at every level of the legal process, as it is essential, in the name of justice, whatever the situation may have been in the past, to give priority to schemes to promote the use of Welsh. By now, the law calls for the Welsh language to be dealt with on the basis of equality with the English language, when administering the law as well as when conducting other public business. It is hardly necessary to say that public organisations involved with the law, above all, should abide by the spirit as well as the terms of the Welsh Language Act. They will in due course be required to present a scheme to the Language Board and if the Board is satisfied with its content, to implement it. The days of indifferent or negative attitudes are over. The government's intention was made clear by the Earl of Ferrers when the Bill was before the House of Lords that "public bodies cannot take a subjective view of what they believe is 'appropriate under the circumstances' and 'reasonably practical'. The interpretation should be objective in all cases. It should be agreed upon by the Language Board and public bodies will be required to show that they have paid attention to the guidelines of the Board".

In education the situation is much more satisfactory now that Welsh is a core subject in schools up to 16, and that Welsh is acceptable and, dare I say, fashionable, where it was not so before. As Menna Richards, the president of the day on Wednesday, told the media about the district in which the Eisteddfod is

being held, the enthusiasm of some areas of south east Wales is "explosive". The language's prospects are good in these parts. It is significant that Welsh was made a core subject by secondary legislation. This brings me back to the words of Goronwy Edwards when he referred to the law as one of the strongest features of our identity in the past. In the matter of making Welsh a core subject we have an example of legislation (in this case, secondary legislation) being used to restore the Welsh language as a mark of our identity.

This leads me to the second avenue I want to explore, namely the fate of the law under the political system.

The Assembly will not have the power to pass primary legislation nor to raise taxes, although it will have the power to determine its own budget. These limitations have to be accepted and we must ensure that the Assembly is successful within the limitations of the present Act. At the same time we must look ahead because, sooner or later, the Assembly will come face to face with the need to pass primary legislation to meet the requirements of Wales. One of the reasons given for refusing the right to pass primary legislation whilst at the same time granting the Scottish Assembly the right to do so, was that there is no such thing as Welsh law and that therefore there is no need, it is alleged, to give the Assembly the right to legislate.

For two reasons this argument is without foundation if we look at the experience of the former countries in the old British Empire (before it was christened the 'Commonwealth') and, secondly, the fact that there already exists a body of statutory and secondary legislation relating specifically to Wales.

(a) Although English common law forms the basis for the law administered in Wales, this same common law was and is the basis of law in a number of countries which were previously part of England's colonial Empire such as Ireland, most of the United States, Australia, New Zealand and the majority of the Canadian states.

(b) Secondly, from the outset following the Act of Union, which incorporated Wales in the Kingdom of England, laws unique to Wales were passed. Two early examples are the Act which founded the Court of Great Sessions in 1542 and the Act which authorised the translation of the Bible and the Book of Common Prayer into Welsh in 1563. From 1889, many Acts have been passed specifically relating to Wales. The most recent classic examples are the Welsh Language Act 1993 and the Local Government Act (Wales) 1994. During the past thirty years there have been a number of Acts of Parliament relating to Wales alone or with a different provision for Wales, within areas varying from broadcasting to commercial arrangements: a small number in comparison with Scotland but nevertheless significant. Additionally, since establishing a separate administrative structure for Wales in 1964, numerous statutory instruments have been made by the different

Secretaries of State, some corresponding word for word to those relating to England but others taking a very different line owing to the distinct and separate requirements of Wales. Hence, we already have a body of Welsh law.

There is a danger that the Government of Wales Act may hide the significance of what is going on around us. But July 28, 1998 remains one of the most important days in our nation's history when the Act completed its passage successfully through both Houses of Parliament after over a hundred years of intermittant campaigning for a Parliament of our own. Very significant developments have occurred over the last fifty years. If there is such a thing as 'the logic of events' it is obvious in the way institutions have developed in Wales since 1948 when we were given a Council of 27 wise men nominated to advise the Government and to whose advice the Government did not listen. There was a Welsh Affairs minister from 1951-57 and a Minister of State from 1957-64, but then in 1964 the Welsh Office was established. The Welsh Office developed quickly and at an escalating rate until it controlled about seventy per cent of Government activities, establishing a comprehensive administrative network without which no form of self-government would be possible. In one respect, therefore, the Welsh Office was (and still is for a short while longer) the Welsh government, but a one-person government enjoying the powers of a colonial ruler, as was apparent when English Members of Parliament were appointed to the post.

If the history of the Commonwealth countries has any significance, the next logical step is inevitable, namely full responsibility within a society of European states. There is no turning back.

Some idea of the range of the administrative duties of the Assembly and its ability to pass secondary legislation is given in the Statutory Instrument, which will transfer these powers from the Secretary of State to it. The published draft names nearly 350 Acts of Parliament. We will be required to look closely to see how many of these contain power to make secondary legislation and how many statutory instruments made by successive Secretaries of State are still in force.

Lord Prys Davies has made many important recommendations, which deserve close attention, in a speech he gave in Caerphilly and which will be published soon in your magazine[1]. I will only mention one, namely the desirability of publishing an Encyclopaedia containing the legislation passed by the Assembly. From the point of view of politicians and practitioners a publication of this kind will be essential. I would like to see the idea being extended to include primary and secondary legislation already in force together with reference to any case law relating to them. It was also suggested that appendices should be published to update the information and that the task should be handed to one of the companies which publishes legal material. It is encouraging to know that discussions are underway.

[1]Wales Law Today, Summer Edition

In the absence of a Statutory Committee to recommend changes in the legislation Andrew Francis has suggested that it would be beneficial if the Associated Law Societies of Wales were to establish a panel on the lines of the Law Society's Legislation Committee in London[2]. I would like to see such a committee being extended to include barristers and academic lawyers.

The Assembly and its Executive Committee will have to rely heavily on its legal personnel whenever they are required to draft legislation or to publish statutory guidelines. It will be their task to advise the Executive Committee on what is possible and what to avoid when putting flesh on the bones, in order to ensure that the secondary legislation keeps within the limitations set by the primary legislation and to avoid a course of action which would be subject to judicial review. The Assembly of course must appoint a Subordinate Legislation Scrutiny Committee to consider all secondary legislation before presenting it to the Assembly. This Committee is a kind of legal 'long stop'. It would accordingly be essential for this Committee to be advised by a lawyer independent of the team of lawyers advising the Executive Committee.

In addition, drafts of secondary legislation presented to the Assembly must be bilingual. This means that it will be necessary for the team of draftsmen responsible for secondary legislation to include from the beginning a sufficient number of lawyers who are completely fluent in both languages as well as being well versed in law and legal terminology. The Act foresees that the norm would be to provide bilingual drafts unless particular circumstances make it inappropriate or reasonably impracticable. As with similar provisions in the Welsh Language Act, objective proof would be needed of the existence of such circumstances.

In making secondary legislation as a result of the powers transferred to it under the Act, the background and content of the Act will be well known. So long as the Assembly follows the usual procedure of consultation and accepts the advice of its lawyers the help of Whitehall departments should not be needed. But there are cases where information as to what is happening in Westminster and the attitude of Government departments at Whitehall is vital. One such example is when the government intends to introduce a new law which is likely to affect matters which have been transferred to the Assembly. The other is when the Assembly decides that an Act of Parliament is required in order to meet the needs of Wales. In both cases both governments should know each other's mind and come to an agreement. If the arrangements are to run smoothly and effectively much will depend on the willingness of civil servants from different departments within Whitehall to give information to the civil servants of corresponding Assembly departments. This means that both sides will have to have confidence in each other, rather a lot to expect of administrators in the world of politics. This also

[2]The Government of Wales Bill and the Law Society. March 1998

means that the relationship between the Executive Committee and the Secretary of State should be one of mutual confidence and understanding.

According to the Government this will be achieved by means of concordats, formal agreements between Assembly officers and officers in ministries in Whitehall. The weakness of such a system is that the success of the Assembly will depend on personal factors. It does not need imagination to know what would happen to the advisory process under an adverse or indifferent Government or Secretary of State. We cannot disregard what can fairly be called the Redwood factor.

The ability of Assembly officers to obtain information and co-operation and to 'bargain' with Whitehall will ultimately depend more or less on the rank and, consequently, the clout of those representing the two sides The salary offered to the Chief Legal Adviser to the Assembly suggests that the office carries high status within the civil service hierarchy which will enable the person appointed to enter upon discussions with the political head and senior legal service officers at Westminster and Whitehall and the corresponding officers in Scotland on terms of equality. The status of the Chief Officer will also be reflected in the status of the members of the department under his responsibility. One of the unanswered questions as yet is the relationship between the Chief Legal Adviser and the Permanent Secretary if the intention is not to adopt a similar relationship to the one which already exists between the Permanent Secretary and the Chief Inspector of Schools. It is totally essential that the Chief Legal Adviser and his department should be completely independent of any other department under the Permanent Secretary's rule if he is to give unbiased advice on legal matters to the Executive Committee and the Assembly.

There are similar considerations regarding European legislation. Despite the White Paper's explicit promises and the Secretary of State's statement on September 10th 1997 that the voice of the Assembly will be heard in Brussels at all levels, up to the Commission and the Council of Ministers, there is no mention of it in the Act. In two key areas it is vital that the Assembly should be in a position, not only to require information on the plans of the Community but also to be able to exercise influence as the Institutions of the Community come to decisions on the grants available (such as Objective 1 and grants to agriculture), and legislation which could, as we already know from experience, place unnecessary burdens and hindrances on Wales.

The most convenient way of setting about it would be to give the Executive Committee a statutory right to send Assembly representatives to meetings of European Community institutions as independent observers *whenever the Executive Committee might consider it appropriate*, rather than that the invitation should depend on Whitehall's whim. But according to the Welsh Office, what the

Government has in mind is an understanding, a concordat, between the Assembly and the relevant ministry at Whitehall, that the Assembly will be invited *when the relevant ministry considers it appropriate* to invite a representative to join the United Kingdom's delegation in Brussels as part of that delegation. The theory is that a British delegation would hear and consider the arguments of the Assembly representatives before and during the discussions, but that only the decision of the British delegation would be presented to the Community.

The success of this scheme depends on four things: the good will of the relevant departments at Whitehall and their willingness to respond positively to the Assembly's application for an invitation: the thoroughness of the information the Assembly receives regarding the calendar of Community institutions: the strength of the Welsh team which will join the British delegation: and last but not least, the arrangement that a significant number of the Assembly's staff will be chosen by the First Secretary of the Assembly to join the UKREP staff in Brussels.

It will become apparent quite early in the history of the Assembly that the arrangements in the present Act are insufficient to meet the requirements of Wales. There are four classes of responsibilities that are not transferred to the Assembly under the Act, but which are sure to demand its attention sooner or later:-

(1) The transfer of responsibilities for services and agencies which remain at present under the responsibility of Whitehall departments: these include the agencies and the services which are connected with the law such as the Court Service Agency, the Crown Prosecution Service (which is on the verge of being reorganised), and the Police and, in a different field, the Benefits Agency, bodies which all have to do with people in which close location and communication facilities are important. These administrative bodies can probably be transferred to the Assembly's control by Statutory Instrument.

(2) Provision to ensure that the privatised public utilities meet the reasonable requirements of users in Wales, public bodies upon which according to the Government White Paper "the Assembly should keep an eye" and public bodies whose decisions have a substantial effect on the Welsh economy. A clearly defined arrangement is required if the Assembly's Economic Powerhouse is to have a fair chance. Amendments to several Acts would be needed to ensure this. Clauses 46 and 47 of the Government of Wales Bill 1997 (a bill drafted by the Parliament for Wales Movement and presented to Parliament by Dr John Marek MP) propose a way to deal with this.

(3) Transferring the power to appoint Welsh representatives on the different governmental and advisory bodies in the broadcasting and television world to the

Assembly. This would also mean amendments to the Act. (See clauses 60 to 66 in the Government of Wales Bill 1997).

(4) One of the shortest sections, but one which possibly has most potential in the Act, is Section 33, which grants the Assembly the power to consider and make representations on any matter affecting Wales. This is the clause which could be used in order to express the will of the Assembly in legislative matters at any time.

There is one significant matter for which there is no provision in the Act, namely the establishment of a separate courts system for Wales. In the ultimate analysis justice depends on the effectiveness of courts of law. This is a matter of importance to everyone in Wales which can be discussed and for which proposals can be made before the Assembly under Section 33.

Your profession is very conscious of the need to improve the facilities of the courts, especially after the setting up of the Assembly, and the establishment of a division of the Commercial Court in Cardiff would be welcome. There is also a call for the establishment of a division of the Court of Appeal in Wales. There is a precedent for the Court of Appeal to sit in the Capital. There would be no difficulty for it to sit in centres in the west and north in turn also. One suggestion which has been made is that it would be possible to establish a Welsh division of the High Court with authority to hear cases emanating from the Queen's Bench and Chancery Divisions, the Family Division, the Commercial Court and the Employment Appeals Tribunal. Such provisions are needed and we have the facilities. This is something which could be done by Order. It would also be appropriate for the Lord Chancellor to consult with the First Secretary of the Assembly (the Prime Minister of Wales in other words) before appointing judges to sit in the different courts in Wales.

At times it seems to me that, as a nation, we have not yet awakened to the full significance of what is happening, even though we have been not only witnesses to but have played a part, as electors, in one of the most important events in the history of Wales.

This year brings joy after the bleak centuries, a year in which we can celebrate the wonder, if not the miracle, of our survival. In the words of Dafydd Iwan, "Despite everyone and everything we are still here." And when I remember that, I am grateful that we, mortals do not have the last word!

For the first time in six hundred years, we will shortly have a Welsh Government, a democratic government, with all which that entails. Before long, we shall again be politically "clodus ym mysg gwledydd" (acclaimed amongst nations) to quote one of the phrases in our national anthem.

It is a great challenge, we have the resources and this meeting is an affirmation of the new spirit which is running through our land. The work of formulating the law and of constructing a framework for governance in which justice thrives will, in many ways, be in your hands as solicitors.

We did not reach thus far without work and sacrifice. Let us arise to our responsibility.