

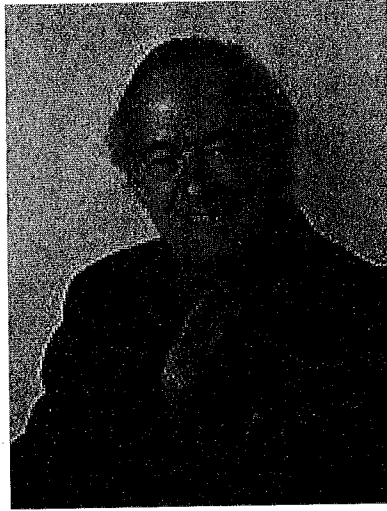
NATIONAL ESTEDDOD OF WALES, YNYS MÔN, 1999
LAW LECTURE

CROSSING THE ROAD

Winston Roddick, QC



THE LAW SOCIETY



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Madam Chairman, Emyr and colleagues.

I feel honoured to have been invited to deliver this address at the National Eisteddfod here in Anglesey. A year ago neither the Assembly nor the post of Counsel General existed. And today, here I am, by virtue of that post, receiving the honour of addressing you as the Assembly's first Counsel General. How things have changed – utterly changed – and all within only twelve months – it augurs well for other developments in the future.

It has also been a great change for me too – leaving the Bar – a difficult emotional decision – and taking on the responsibility of being the first Counsel General for the Assembly – a challenge that was impossible for me and, I dare say, for any sane Welshman to refuse. I see it as my role to contribute towards laying the foundations for a New Wales. I am honoured to be given that role.

The Attorney General is a political appointment but the Counsel General is a servant of the Assembly. Because the Assembly is a corporate body with a single

legal personality conflicts of interest within it are not legally possible. It is important to understand the legal nature of the Assembly and the fundamental legal differences between it and the UK Parliament. It is a basic characteristic of the UK Parliament that the executive, that is the Cabinet, is separate from the legislature – the doctrine of the separation of powers. That separation can only exist de facto in a corporate body like ours and there lies what is perceived to be a weak point in the devolution settlement for Wales.

The Counsel General's Functions

The principal reason for creating the post of Counsel General is that the Assembly will not be able to take advantage of direct advice from the Law Officers. The role of the Law Officers is vital in ensuring that the Government keeps within the law in its legislative and operational functions. If there are sufficient legal aspects to policy development, it is entirely possible that the Law Officers will advise on a permanent basis as the development proceeds. Sometimes the Law Officers are called in by a departmental legal advisor who is unable to convince a determined Minister of doubts about the legality of the proposed action; under such circumstances the judgement of the Law Officers is authoritative, in terms of the recognised quality of their work, and because of their authority as chief legal advisors to the Cabinet.

The post of Counsel General was created because it was considered essential that the Assembly too should have legal advice of undeniable authority, in order to reduce the risk of the Assembly acting illegally, and the danger of disagreement with the UK Government or with the European Commission. The need was also observed for the Assembly to be represented by a very authoritative lawyer in discussions on legal matters with the Government and in Brussels.

As an internal lawyer, the Counsel General is in a position to become aware of all the proposals for action by the Assembly, and for people to be able to consult him readily. For his guidance to be effective, there is a need for the Counsel General to be on close terms with the Assembly, so that he is aware of what the Assembly intends to do, and to give advice without waiting for instructions. The Counsel General is the chief source of legal advice for the Assembly and in particular for the First Secretary and his Executive Committee (Cabinet), the Presiding Officer and his staff and the administrative officers of the Assembly. The key areas of his responsibility include:

- responsibility for a considerable amount of the Assembly's proposed legislation and its preparation;
- the legality of the Assembly's proposed policies;
- the legal effect or retrospective effects of the Assembly's actions on matters to do with the United Kingdom and Europe;
- the legal effect of primary legislation and European legislation on the work of the Assembly and on Wales;

- liaison through the Office of the Secretary of State for Wales with Whitehall departments in developing the Assembly's powers in Bills which go before Parliament.

As well as being the Assembly's highest source of legal advice and head of the profession, the Counsel General is a member of the Assembly's Senior Management Board and contributes to the management and strategic direction of the Assembly's staff, including the allocation of resources concerned with operational costs which come to a total of around ninety million pounds (£90M) and a personal operational cost budget which exceeds two million pounds (£2M).

Although the Counsel General is required to make a substantial individual contribution on complex matters, there is also a substantial management task which involves leading the legal team as it advises the Assembly on how to achieve its policy objectives, including carrying out the Assembly's annual subordination legislation programme. He also needs to assist members of the Assembly in realising what their new responsibilities are and in carrying them out.

Providing Legal Services to the Assembly

The Office of the Counsel General has taken on the responsibility for providing all the legal services previously provided for the Welsh Office. The range of subjects about which the Office of the Counsel General now gives advice is set out in Schedule 2 of the Government of Wales Act 1998.

The work of lawyers in the Office of the Counsel General is centred on policies and advising and drafting subordinate legislation. This last function is one of the Assembly's most important functions. It will cause a substantial increase in the Assembly lawyers' workload. Previously each instrument was made by the Secretary of State for Wales in a composite Wales/England instrument, but it is now assumed that the Assembly will make them separately. On that basis it has been estimated that there could be an increase of some 180 statutory instruments a year, i.e. an average which is based on figures for 1995, 1996 and 1997. This work and its other roles as the Assembly's chief legal adviser is bound to create a need for more staff for the Office of the Counsel General. Because experience in the field of drafting subordinate legislation, especially bilingually, is a scarce commodity, a substantial portion of the budget has been set aside to train them.

The Counsel General's wider roles

Although the main thrust of my role is within the Assembly, the Counsel General is expected to establish a new working relationship with senior lawyers in local authorities and non-departmental public bodies in Wales and with United Kingdom Government Departments in England and Brussels. To some extent, concordats will be of assistance here, but it is essential for the Counsel General to gain a good

reputation amongst his peers in order to keep up with developments especially where subordinate legislation is concerned. In June 1999, I was appointed by the Lord Chancellor to the Statute Law Revision Committee and in July 1999 I was appointed a member of the Standing Committee for the Use of Welsh in the Courts.

I will be working to promote the devolution of the administration of justice with the aim of ensuring that Crown Office cases which include 'devolution matters' are listed and heard in Cardiff. That will have a number of positive effects. It will promote the development of public law practices by the legal profession in Wales; it will save scarce human and financial resources (by avoiding the necessity of travelling to London); the judiciary will become more familiar with Wales, its National Assembly and with 'Welsh law'.

There is a public aspect to my role. I am regularly involved in legal conferences and other conferences. The public aspect of the role is a wide and very active one. I will be using these opportunities to let the public know of the importance of the Assembly and to raise its profile.

What does the Assembly represent to me?

What does the Assembly represent to me? Although I am now a Civil Servant, I believe it will be acceptable for me to express my personal opinion in answering this question. After all, there is no point in accepting high office in the church if you do not believe in what the church represents.

This is what the Assembly represents to me:

- (1) First of all, it is a platform for our nation's politics. Every nation must have a political platform. The Assembly is our platform.
- (2) Secondly, it is an opportunity to fulfil the promise of better democracy for Wales. In the words of Martin Luther King in one of the great speeches of this century, 'Now is the time to make real the promise of democracy'. Democracy is sure to be better if the relevant decisions are made in Wales by the people of Wales for the people of Wales.
- (3) Equality – equal status for the Welsh language in Assembly business. The Assembly also has the duty of ensuring equal opportunities for all.

These are three principles which have been secured by legislation and which are therefore part of its foundations. This house has been built on living foundations. The foundations include our history and our hopes as a nation.

We have to face the fact that the Assembly will stumble from time to time. It will

make mistakes from time to time. It will misbehave now and then in spite of our efforts to prevent it. One has to remember that the Assembly is a new institution – one with no precedent of any kind. In this sense, this Parliament is like a child without a parent. Of course it will stumble as it tries to find its feet. Of course it will make mistakes as it seeks to learn. We shall all have to be patient but we can be quite confident that the patience will be rewarded.

Some say that a room tells the visitor something about the character of its occupant. Let me give you a brief description of my room in the Assembly.

Facing you as you walk into my office are four big frames on the wall. In the first there is the verse from Saunders Lewis 'Gwinllan a roddwyd...', in the second there is a picture of 10 King's Bench Walk, my Chambers in London. This is a painting presented to me by my Chambers when I was appointed to this post. In the third there is a picture given to me by Caernarfon Football Team Supporters Club when I was appointed. In the fourth there is a large picture of Martin Luther King with the words 'Free at last'. What is the significance of these in the context of my job? Saunders Lewis's verse reminds me of my duty to be worthy of Wales. The painting of King's Bench Walk, the Chambers, reminds me of the importance of independent judgement. The picture from Caernarfon reminds me of my upbringing there and the influence which that background had on me and it reminds me also of the commandment to honour these things. And Martin Luther King's picture reminds me of the importance of tolerance and justice. 'Free at last?' – I leave you to interpret these words.

My role as the Counsel General is to assist the Assembly develop a distinct constitution for Wales. That development requires a sure understanding of the relationship between the civil service in Whitehall and the Civil Service in the Assembly. I foresee more powers being devolved to Wales. In the meantime, I must play my part in ensuring that we exercise our powers according to law.

WINSTON RODDICK Q.C.

