

**NATIONAL EISTEDDFOD OF WALES, LLANELLI, 2000
LAW LECTURE**

**THE NATIONAL
ASSEMBLY: A YEAR OF
LAYING THE
FOUNDATIONS**

Lord Gwilym Prys Davies



THE LAW SOCIETY



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I would like to thank the Law Society – the society of my chosen profession – for its kind invitation to me to deliver the Eisteddfod's annual law lecture and to discuss devolution to the National Assembly, a subject close to my heart.

It is very appropriate that we are discussing the National Assembly for Wales in the National Eisteddfod that is being held in Llanelli, because the contribution made by James Griffiths, the Member of Parliament for Llanelli and the first Secretary of State for Wales, to the devolution cause during the last fifteen years of his life was crucial. Within the Labour Party, it was he, more than anyone else who gave legitimacy to the idea of an elected Assembly for Wales. So high was his standing and authority in the Labour Movement his opinion could not be ignored. In the sixties and seventies he was one of the most important influences supporting the developments which would by the end of the century give birth to the National Assembly for Wales, a national body elected on a proportional basis by the people of Wales, assuming executive powers, the rights and the duties of the Secretary of State for Wales together with his authority to create subordinate legislation, and with a substantial annual budget.

If James Griffiths were alive he would see that the establishment of the National Assembly has been an historic and encouraging turning point in the history of his nation. His advice, as it always was, would be 'Deuparth gwaith ei ddechrau - a start is two thirds of the work'.

A year has gone by since responsibilities were transferred to the Assembly on 1 July 1999. Let us remember that it did not exist in shadow form before power was devolved to it. The year has not been an easy one. A vote of no confidence was carried against the first ever First Secretary. Its government is a minority one. There have been difficulties which no one could have foreseen and others of the significance of which we cannot yet be sure. We are aware of the concern of many of its supporters, the scepticism amongst its doubters and the scorn of its opponents. Moreover there is cynicism in our society about what politics can achieve, let alone the age-old cynicism in Gwynedd that no good may come from the South. Despite all this, it has been a very significant year in the history of Wales. The wind of change is blowing through Wales.

It is no easy task to establish a completely new democratic institution and get it to work smoothly and effectively, worthy of the electors' trust. There are lessons to be learned and difficulties to be overcome. That also is the message that comes to us these days from Scotland and from Northern Ireland. Therefore before I go into

detail about aspects of the National Assembly's activity I would like to acknowledge gratefully the great work done day in day out by the members and staff of the Assembly since its establishment, remembering that its ministers and the majority of the ordinary members had no experience of working in either Parliament or a County Council.

It is worth reiterating why the Assembly was established. The Government of Wales Act 1998 ('the Wales Act') does not contain a statement setting out the purpose and aim of the Assembly. But Lord Irvine, the Lord Chancellor, provided an answer to the question in a lecture¹ he delivered to the Constitution Unit² on the new constitutional reforms in the United Kingdom. I quote:

The new **Scottish Parliament** will have the power to pursue a distinctive legislative agenda for Scotland over an extensive range... There we were building on the work of the Scottish Constitutional Convention³ and therefore on the wishes of the people of Scotland. In contrast to the Scottish Parliament, the **National Assembly for Wales** will have no power to enact primary legislation; rather, it will serve an executive function, exercising the executive powers previously exercised by the Secretary of State for Wales, so providing a more transparent and democratic framework for the government of Wales.

Therefore, in the opinion of the Lord Chancellor, one of the chief architects of the constitutional settlement, the main reason for establishing the National Assembly was to strengthen democracy in Wales.

It was created to serve that purpose. It has no precedent amongst other democratic bodies. It is described in the preface to its Standing Orders as 'a new form of democracy for Wales.' The National Assembly is the creation of the Westminster Parliament. Westminster can amend, strengthen and increase its powers and, in theory, - but only in theory, I believe - annul it. Already it is asked whether the Assembly's activities have improved the quality of our standard of life. The question is not a fair one to ask after barely a year. But the lesson is clear. When the next general election to the Assembly comes in 2003, then it will be a fair question for the voters to ask.

Peoples' preconceptions were unrealistic in two respects in particular. First, many of the leaders were all too ready to promise the new Jerusalem and that great things were shortly to come. Perhaps this is understandable since the work of a successful politician is to win support for his cause. He is not a civil servant weighing up all of his statements with care. Secondly, the belief grew that the Assembly would transform the nature of politics in Wales, mainly because its members have been elected on the basis of proportional representation⁴. They would eschew the confrontational party politics of Westminster, and in a spirit of inclusiveness work together happily with the welfare of Wales always in their sights. But political parties are in essence partisan and cause divisions.

But without question the voice of democracy in Welsh Government is already more alive and stronger than it has ever been in the past by virtue of the very existence of the Assembly. Very many of the governmental decisions affecting the lives of the people of Wales are now being made in Wales by the elected representatives of the people of Wales who were elected for that sole purpose. Today, there are nine ministers, rather than three, supervising the work of the civil servants in Cardiff, and of necessity supervising it more thoroughly since they are able to spend more time on each subject. Today, rather than the Secretary of State giving oral answers to an average 6-7 questions once a month on the floor of the House of Commons, the Assembly secretaries on average give a similar number of oral answers in the Assembly Chamber in each of the two plenary sessions held each week, as well as answering questions asked in the subject and regional committee meetings which are open to the press. All of these are radical and intrinsically valuable changes. Surely bringing this strong lay element into the governance of Wales should make a difference to the lives of the people of Wales.

As under the Wales Act 1978, it was responsibilities for specific powers in specific subject areas, and not responsibilities for whole subjects that were devolved to the Assembly on 1 July 1999. Its right to create subordinate legislation is one of its most important responsibilities. The term 'subordinate-legislation' is not easy for the lay person to comprehend. It includes rules, regulations, orders and codes of practice. (The terms subordinate legislation and statutory instrument are used synonymously.) The word 'subordinate' itself suggests that its content is inferior. As to its importance, subordinate legislation varies greatly. But it is all legally binding and important to those affected by it. In the United Kingdom and in the countries of the Commonwealth very extensive use is made of subordinate legislation. Today in Westminster there is a deluge – some 3,000 statutory instruments a year – with the vast majority of them not subjected to either debate or a vote in Parliament. It is foreseen that even more use will be made of subordinate legislation in the future. Furthermore, the Government has published a Bill⁵ in draft form that would substantially extend the power to amend primary legislation by means of a new type of deregulation order which is a form of subordinate legislation. Given this background, it is difficult to overemphasise the Assembly's responsibility to make full use of its legislative powers where Welsh needs require it. Thus subordinate legislation is the raw material of what might be called 'Welsh Law'.

One of the strengths of the National Assembly is that it has power not only to approve or to reject subordinate legislation, but also to **amend** it in its draft form. This is so different from the system in Westminster where Parliament is prohibited from **amending** subordinate legislation. It has to content itself with either approving or rejecting it in its entirety. That is a fundamental weakness in the *status quo* – a weakness that is the subject of increasing criticism from parliamentarians, constitutional lawyers and others. Some of the critics have noticed that the Welsh provision for amending subordinate legislation (section 58 The Wales Act) could be a model for Parliament itself:

The Welsh Assembly has found a way of debating and, if the majority so wish, amending secondary legislation. Can we learn from it? ⁶

Those are the words of Ralf Dahrendorf. Praise indeed.

Much important governmental activity does not involve legislation at all, yet there is reason to believe that its failure to fully use its important power to make subordinate legislation forms a significant part of the Assembly's problems. Is this impression wrong? To give a definite answer to the question one needs comprehensive and detailed information about each piece of subordinate legislation approved, together with the history of its passage through the Assembly. Despite all my inquiries and investigations, it appears to me that this information is not yet available in enough detail nor in a form that can be easily used by an outsider to give a definite answer to my question. It would be of great service if more of the Assembly's documents could be made available conveniently in print form.

However, I would like to offer a few general observations. My starting point is the Law Society's annual law lecture delivered last year by Winston Roddick, the Assembly's Counsel General.⁷ Having emphasised that creating subordinate legislation would be amongst the most important functions of the Assembly, he foresaw 'that there would be an increase of some 180 statutory instruments a year'. About 200 were approved (including some of a local nature, it's true) by the end of June this year, which tallies with his estimate. Moreover the Business Secretary confirmed that no 'legislation has been lost as was claimed'.⁸ But another question arises: to what extent does the subordinate legislation approved by the Assembly differ from that in England? I observed that Nick Bourne (the Conservative leader) was asking, as recently as June, for this information in relation to all subordinate legislation considered by the Legislation Committee.⁹ Without this information it is impossible to say to what extent the content of subordinate legislation passed by the Assembly is different and more appropriate than the subordinate legislation the Welsh Office would have been likely to have made to deal with the same situation. There is another important question: how much of the subordinate legislation in draft form has the subject committee or the Assembly amended, or tried to amend? Everyone would agree that perfection couldn't be improved upon; however this is seldom attained. Therefore an essential part of the opposition's function in any Assembly or Parliament is to examine draft legislation in a methodical and thorough manner with a view to improving it. Yet, unless I am greatly mistaken I doubt whether more than one or two statutory instruments were amended during the first year whilst possibly I, and others better qualified in the subject than I, might speculate that if the Assembly is to strengthen its position and its case for obtaining primary law making power, it would need to be amending at least 10% of the subordinate legislation in its draft form.

Let us (for example) consider the debate which took place during the Plenary Session on 13 June (a debate that lasted all of ten minutes) on *National Health*

Service (Choice of a Medical Practitioner) (Amendment) (Wales) Regulations. It can be seen from reading the Record of Proceedings¹⁰ that three of the Members were not completely happy with some aspect or another of the Regulations. However no amendment was put forward. They were approved in their draft form, without changing a single word: in favour 45, abstention 0, against 0. Why was no amendment proposed? Are the opposition parties lacking in the resources to be able to produce appropriate amendments? Or even, since only two Plenary Sessions a week are held each lasting only for three and a half hours, does the timetable permit too little time on the Assembly floor to scrutinize legislation and to ensure a full discussion of amendments? It is not uncommon to hear the Business Secretary repeating: 'In view of the time constraint this afternoon'. There is a weakness here. At the end of May this year, the Business Secretary announced that the Business Committee were reconsidering whether the 'process of creating subordinate legislation was efficient and effective.'¹¹ That is good news.

At the end of its first year it would be timely for the Cabinet to prepare and publish a detailed review of all activity with regard to the subordinate legislation that came before the Assembly and to show in particular:

- 1 the amount of subordinate legislation approved
 - (i) which differs from corresponding subordinate legislation in England and
 - (ii) that which does not so differ;
- 2 the amount of subordinate legislation implementing European Union law (and which is likely for the time being to be in the same form as the subordinate legislation for England);
- 3 the amount of joint subordinate legislation in Wales/England which was approved;
- 4 the amount of subordinate legislation amended by the Assembly;
- 5 the amount of draft subordinate legislation considered by a subject committee, without being amended;
- 6 the amount of subordinate legislation corresponding to that in England where there was a substantial delay before the Assembly approved it, also noting the reason for the delay;
- 7 on how many occasions the Assembly decided not to follow Whitehall in creating new subordinate legislation as circumstances in Wales did not call for it; and
- 8 the time spent by
 - (i) the subject committees, and
 - (ii) the plenary meetings to consider subordinate legislation.

It would be helpful to have an annual review along these lines from now on.

In the *Western Mail*¹² in May much was made of the severe criticism of the Assembly by Alun Michael after the vote of no confidence against him. As a

former First Secretary of the Assembly his criticism cannot be ignored. His main point was that the Assembly has not used sufficiently the powers it possesses and that it is the ordinary members' lack of understanding, their lack of experience together with the failings of some prominent members that is responsible for this. Assuming there is a problem, does this criticism go to the root of it? Or is part of the explanation to be found in the procedures which were new and untested? Or even, in the fact that the government is a minority one? Also, is there a possible explanation in the mindset of senior civil servants who advise the Assembly on matters of policy and legislation, but who are still only too ready to look to London for guidance? Furthermore, there is force in the Western Mail's question: if the criticism is well-founded, doesn't part of the responsibility lie with Alun Michael himself in that he was unsuccessful in getting the system to work more effectively.

The other point in Michael's criticism is a specific and important example of the former, namely that the members were unsuccessful when it came to using the subject committees effectively. (There is a suggestion of some frustration during the discussion in the subject committee on Pre 16 Education, Schools and Early Learning on 12 April, after the committee had secured the right to obtain a legal opinion, independent of the Office of the Counsel General.¹³) The origin of the subject committees, like a number of other provisions of the Wales Act, can be traced back to the original devolution scheme of the seventies. Up to the last minute these committees (with their membership both reflecting the balance of the political groups in the Assembly and having an interest in the subject) were intended to be a key element of the National Assembly. They were described as 'powerhouses'. However when the Bill was going through Parliament the Government decided that the Assembly should operate on cabinet lines. This was a fundamental change that substantially weakened the function of the subject committees. The Wales Act does not define their responsibilities, but they were defined in general terms in the Standing Orders [Order 9.7]. The Assembly itself can amend its Standing Orders and the sooner Order 9.7 is looked at again the better.

It takes more than fine speeches to create legislation. Ability, knowledge and experience are needed. Therefore the contribution of the civil service to the success of the Assembly is of vital importance. I sometimes ask myself whether enough thought was given to the Assembly's need for policy advisers and additional specialist staff if the members were from the outset to make the fullest possible use of its powers.

Society does not emerge out of a void. No society emerging from its past form of government can shed entirely its past, in the short term. It is the officials of the former Welsh Office who today serve the Assembly. However the Assembly is an elected democratic body based on different foundations from those of the Welsh Office. There was a predisposition on the part of senior officials at the Welsh Office to rely on their counterparts in the relevant Departments in Whitehall to

take the lead in the preparation of primary and subordinate legislation to be enacted in respect of Wales (apart from legislation concerning subjects exclusive to Wales, like the Welsh language, Welsh Local Government, the Welsh Development Agency, the Development Board for Rural Wales and aspects of education. The Civil Service in Cardiff had a history of dependence on London, though this was never discussed publicly. Throughout the whole of the period from its establishment in 1964 up to 1999, I wonder whether the Welsh Office drafted more than around 120 separate pieces of subordinate legislation for Wales (excluding Welsh language versions and regulations of a local nature, such as traffic orders). I don't doubt the commitment of the Civil Service in Cardiff to the Assembly, but what is the understanding of the civil servants in some Whitehall departments of the philosophy of devolution and the needs of the National Assembly? There are grounds for thinking that they have not come to terms with devolution "The Whitehall machine does not recognise devolution ... There is a mind set there that needs to be altered", was the allegation made by the former Secretary for Agriculture, Christine Gwyther, on Radio Wales.¹⁴ Perhaps it was unease about the civil servants in Whitehall's understanding that was at the root of the concern expressed in the call by some Assembly members to set up a working party under the chairmanship of the Presiding Officer to examine how the 'system including concordats works, especially in terms of legislation'.¹⁵ The situation today is that a Review Group has been established under the chairmanship of the Presiding Officer to examine its existing processes.

It is primary legislation (the statute) that authorises the creation of subordinate legislation. Since the National Assembly is not empowered to make primary legislation, we in Wales have a keen interest in the new statutes particularly affecting the devolved areas that will be enacted in Westminster. There are references to the Assembly in about eighteen of the statutes enacted this year.¹⁶ However the responsibilities given to the Assembly in this year's bills vary widely in substance. The implications of some of them for the Assembly are very small. On the other hand, there are substantial implications for the Assembly and for Wales in some bills, such as the Local Government Bill, the Care Standards Bill and the Transport Bill. Indeed, under the Local Government Bill the Assembly loses some of its current powers. The Transport Bill devolves about forty functions to the Assembly in relation to roads and bus services in Wales, but none in relation to the railways. The Care Standards Bill establishes a Children's Commissioner for Wales. Here is an excellent example of the Assembly's influence at work despite the Health Department in London's constant opposition to the establishment of a similar post in England. (The post of Commissioner for Children was pioneered by the charity Children in Wales from 1991 onwards, having undertaken great deal of research into the post and it was one of the recommendations of the Tribunal of Inquiry into the abuse of children in care in Gwynedd and Clwyd,¹⁷ though the proposal was rejected by the Welsh Office in 1994.) The question remains, should more Assembly proposals have been accommodated in the primary legislation enacted this year?

It is essential that the Assembly Cabinet has every opportunity firstly to influence the United Kingdom government's legislative programme, and secondly to submit proposals for inclusion in the new primary measures where it has responsibility for implementing them in Wales. Under the protocol¹⁸ between the Secretary of State for Wales and the Assembly, and under Section 31 of the Wales Act, the Secretary of State is the link between Cardiff and the department in Whitehall which is responsible for promoting a bill. However, one cannot be content with the mere existence of a protocol, taking for granted that it will work effectively. It can be difficult to enforce: for example, Cardiff proposals may be contrary to the interests of the UK government, or low on its list of priorities. Who has the ear of the Prime Minister? And when the Assembly Cabinet wishes to amend a bill being introduced by a Whitehall department, it is not at all clear to me what will be the mechanism in place to ensure that the Welsh proposal receives full consideration in the Whitehall department – and in time – as the new bill is being drawn up and formulated. Where the Bill has substantial implications for Wales, will one of the Assembly's civil servants be a member of the bill team in Whitehall responsible for preparing the primary legislation? Otherwise, who will be there to scrutinize the bill and safeguard Welsh interests? If the new primary legislation does not adequately meet the requirements of the Assembly's Cabinet and give it an opportunity to make subordinate legislation to meet our distinctive needs, this may lead eventually to conflict between Cardiff and Westminster and to instability. It is here that I see the main threat to the Welsh devolution model.

I respect the ability of the Presiding Officer, Lord Dafydd Elis-Thomas, and his commitment to devolution. In the Presiding Officer's chair¹⁹, ever attentive, he has zealously protected the interests of the ordinary members, the opposition parties together with the interests of the Assembly itself. On several occasions he felt that he had to express publicly his standpoint on matters relating to his own party, or his standpoint as an ordinary member of the Assembly. This is a cause for some concern, as it is feared that it may undermine the 'mutual trust'²⁰ between presiding officer, members and officials, rather than nurture and safeguard it as far as possible.

In March of this year there was an important development when an independent legal adviser was appointed to the office of the Presiding Officer – independent of the Assembly's Counsel General. I always believed that this post was necessary in order to advise the Office of the Presiding Officer with regard to its duties. This new position was filled by David G. Lambert the former Chief Solicitor of the Welsh Office. Then – and this is the concern for some of us – it appears that when the members of one of the subject committees²¹ were unwilling to accept the advice of the Counsel General on a point of law, the committee was able to turn for the opinion of the Legal Adviser of the Office of the Presiding Officer. Therefore, it appears that a principle has been established, when a subject committee is unhappy with the advice of the Counsel General on a point of law it may in some circumstances ask for the opinion of the Legal Adviser of the Office of the Presiding Officer on the matter. To develop two legal focal points within the

Assembly is surely a step in the wrong direction? On this occasion the two lawyers were in agreement, but in the future it is possible that the two legal opinions may conflict and in that situation substantial friction could develop within the Assembly. I gather from reading the Cabinet minutes of 13 March 2000, that the Cabinet were aware of a possible danger. And on the basis of those minutes, the Constitution Unit drew attention to what it describes as 'emerging tensions between the Executive and the Office of the Presiding Officer.'²² If it be correct that tension is developing between them, perhaps there are other reasons at the root of it, possibly to do with the nature of the Assembly concerning which questions were raised in the Presiding Officer's important address in Aberystwyth on 9 July this year.²³

It is very pleasing to note that a quiet revolution is taking place in many areas as a result of the existence of the National Assembly.²⁴ In the administration of law in Wales significant developments have been seen, developments which have been demanded for years. The Civil Court of Appeal holds hearings in Wales and the Criminal Court of Appeal and the Employment Appeals Tribunal has agreed to hold hearings in Wales. A Mercantile Court has been established in Cardiff to hear commercial cases. Cases on the Crown Office List (that include judicial review cases) are to be listed from now on in Wales. Earlier this afternoon the Court Service Welsh Language Scheme was launched at the National Eisteddfod by Mr Justice Thomas the Presiding Judge of the Wales and Chester Circuit. I want to acknowledge the debt we owe to Mr Justice Thomas for his constructive leadership. I believe that further important development may be expected in the years to come, such as making provision that the most important forms in the courts in Wales are bilingual and extending the provision in clause 22 of the 1993 Welsh Language Act to courts that sit in England. And this Society itself contributes more and more to creating an awareness of a Welsh legal culture. This is an opportunity for us, members of the Society, to express our appreciation to Winston Roddick for his valuable service, within a short period of time, in building upon the foundation laid by the Legal Group in the former Welsh Office, to create a strong legal department to support the very substantial increase in the workload of the Assembly's lawyers an increase that required the recruitment and the training of new staff to draft subordinate legislation.²⁵

I have spent a good portion of my time this afternoon on the Assembly's mechanism and its right to legislate. To conclude the lecture I wish to turn to the Assembly's standpoint on the Welsh language. We firmly believe that all our citizens have an equal right to fundamental human rights, and the Wales Act (Section 107) charges the Assembly to observe at all times the European Convention on human rights. Within that ruling principle we are entitled to ask what is the National Assembly for Wales's vision for the place of the Welsh language in Welsh citizenship? The language after all is the mother tongue of a substantial minority of the citizens of Wales and a key to many aspects of Welsh life. There is concern amongst many of the language's supporters that the Assembly so far has not paid any real attention to the Welsh language. Perhaps I

may remind you that safeguarding the Welsh language was the principal, if not the sole aim of the movement for self-government for Wales three quarters of a century ago when the Welsh Nationalist Party was established. It is a significant fact that little was said during the Referendum campaign about the place of the Welsh language at the core of the case for devolution. The subject of the language was removed from the politics of devolution. It is disappointing, but not surprising, that we had to wait until a month ago for the first discussion on the Welsh language in the Assembly (see *The Record*, The National Assembly for Wales), and I noted, in particular, the valuable speech of Cynog Dafis in the debate, and that the Education and Training Secretary, Tom Middlehurst, accepted that the Welsh Language Board's strategy for the development of the language must be resourced effectively. On the other hand, it is disappointing to read that the use of Welsh on the Chamber floor has fallen each quarter.²⁶

The Wales Act itself is clear that the Welsh language has equal status to English in the administration of the Assembly [section 47 (1)]. It is under a duty to prepare all subordinate legislation, with rare exception, in its draft form in Welsh and in English [section 66 (4)] and that duty has been fulfilled. Furthermore, the Act provides that the Assembly may 'do anything to support the Welsh language', even outside Wales [section 32 (c)] and the Welsh culture in Wales [section 32 (d)]. However excellent these provisions may be, the strangest references were made to the Welsh language in the final version of the draft application document to the European Commission for Objective One funding:

An emphasis on the distinctiveness of Welsh culture might be perceived as evidence of insularity and could discourage inward investors and lead to reduced opportunities for innovation.²⁷

To many of us, this may suggest the mind set of a colonial civil service which is still operating in Cardiff. Thanks mainly to the Welsh press, this sentence was deleted before the document was presented to the Commission, but how on earth was it incorporated in it in the first place? Why was it approved by the Economic Development Committee? Had the members and their young researchers not read it diligently, or did they fail to understand it or be unaware of its significance? Or is it that the members believed, to begin with, or in their hearts, that mentioning the Welsh language would prove an obstacle in this all-important document?

The late J. E. Caerwyn Williams – to whom Welsh scholarship is so heavily and evidently indebted – believed that the prospects for the Welsh language from one perspective were a lot brighter at the end of the twentieth century than they were at its beginning.²⁸ However he believed that it was still at a crossroad.²⁹ He spoke for many of us. It is difficult to overemphasise the indispensable leadership the Assembly can give by:

- (i) respecting and giving effect to the central principle of equality between Welsh and English in its own administration;
- (ii) formulating a comprehensive Welsh language policy cutting across all subjects as recommended by the Welsh Language Board;

- (iii) promoting and strengthening the status of the language in Welsh life which should involve a review of the Welsh Language Act 1993 as well as of the powers and resources of the Welsh Language Board which is already in hand by a Subject Committee;
- (iv) safeguarding the continued survival of the Welsh speaking heartland.

I would like, if I may, to refer briefly to the translation of official documents. The lawyer has from one point of view a very important voice. He knows as well or better than the next person that the meaning of each word in a document must be precise.

Welsh vocabulary, like the vocabulary of other languages, is growing constantly.³⁰ Welsh words must be coined and standardised to correspond to contemporary and new words in English, one of the major languages of the world, without mentioning the endless new vocabulary in EU law. There is no need for me to say that every solicitor and administrator working through the medium of Welsh is indebted to our fellow lawyer, Robyn Léwis, for his Welsh legal terms. We depend heavily on his legal dictionaries;³¹ this is our bible. Of course we greatly welcome the decision of the Assembly to set up jointly with the Court Service a project to coin new legal terms and standardise Welsh legal terminology. This project is a valuable contribution to the development of the Welsh language.³²

It is time for me draw to a close. When I was young, like thousands of Welsh people over the centuries, I saw the National Assembly for Wales in the distance and in my dreams in all its beauty. Now I see it clearly as it is. Without that vision the Assembly would never have been brought into being. It is not without its weaknesses. And the Wales Act has not addressed every problem that arises. However this is the foundation – the only foundation – we have to build upon. I have raised a number of questions which, I believe, require an answer. The response may lead to other questions just as important and which may be more complex, but will need a satisfactory answer. The sooner the improvements, which are seen to be necessary in order to ensure that the Assembly becomes increasingly effective, are embarked upon the better.

The process of devolution to the National Assembly has not finished. It is evolving. Possibly the next development in the growth of the Assembly's responsibilities would be to transfer to it functions in subject areas such as the fire service, the police and the probation service. Such transfer would be possible under the Wales Act [section 22] subject to Parliament's approval, but without the need for new primary legislation. Therefore, as I see it, and to underline the main theme of the lecture, it is by building on its success that the National Assembly for Wales will develop into an institution worthy of the pride of the people of Wales.

NOTES

- ¹ Lord Irvine, *Government's Programme of Constitutional Reform*, The Constitution Unit Annual Lecture, Nov.1998, p. 5.
- ² The independent body established in London in 1995 to study and prepare detailed plans to implement devolution. Cf. *Delivering Constitutional Reform, 1996*.
- ³ A non-party political body set up in 1990 in Scotland to develop a constitutional policy for Scotland. Attempts to establish a similar body for Wales failed.
- ⁴ *Report of the Joint Consultative Committee on Constitutional Reform*, Labour /Liberal Democratic Parties, 1997.
- ⁵ Order 4713, *Publication of the draft Regulatory Reform Bill*, April 2000.
- ⁶ Cf. Lord Dahrendorf, *Hansard* (The House of Lords) Ref. 801, 29 March 2000, s. 818-819. There is a summary of the situation in the report of the Royal Commission on the House of Lords, Chapter 7, Order. 4537.
- ⁷ Winston Roddick, *Crossing the road*, The Law Society in Wales, 2000.
- ⁸ The Record of Proceedings, 24 May 2000, Statement on Secondary Legislation by the Business Secretary, Andrew Davies, pp. 1-2. Cf. also an article by the Business Secretary, *Western Mail*, 16 May 2000.
- ⁹ *Minutes of the Assembly's Legislation Committee*, para 1.1, 6 June 2000, p. 1.
- ¹⁰ *National Assembly for Wales, The Record of Proceedings*, 13 June 2000, pp. 33-36.
- ¹¹ *Ibid*, *The Statement on Secondary Legislation*.
- ¹² *Western Mail*, 15 May 2000, p. 8.
- ¹³ *The Minutes of the Committee for Pre 16 Education, Schools and Early Learning*, 12 April 2000, p. 11, para 6.2, 12 April 2000. Cf. also *Devolution 'A Dynamic, Settled Process'?* Ed. John Osmond, Institute of Welsh Affairs, December 1999, pp. 14-15.

- ¹⁴ I have taken the quotation from *Monitor*, The Constitution Unit Bulletin, June 2000, p. 3.
- ¹⁵ *The Record of Proceedings, ibid*, pp. 7-8, 8-9
- ¹⁶ I do not claim that this list is exhaustive. Nevertheless it will be useful to refer to the following Public Bills: Carers and Disabled Children Bill, Care Standards Bill, Children (Leaving Care) Bill, Countryside and Rights of Way Bill, Fire Prevention Bill, Freedom of Information Bill, Fur Farming (Prohibition) Bill, Government Resources and Accounts Bill, Learning and Skills Bill, Local Government Bill, Political Parties, Elections and Referendums Bill, Postal Services Bill, Protection of Animals (Amendment) Bill, Race Relations (Amendment) Bill, Regulations of Investigatory Powers Bill, Sex Discrimination (Amendment) (No.2) Bill, Transport Bill, Utilities Bill.
- ¹⁷ HC 201, 15 February 2000; *Lost in Care; the report of the Tribunal of Inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974*. Welsh/English Summary of Report.
- ¹⁸ It was approved by the Assembly in its draft form on 20 February 2000. However it had not been finalised by June 2000. With respect to consultation on subordinate legislation we are referred in very general terms by the Cabinet Office in London to the Concordats; *Hansard* (House of Commons), 17 May 2000, WA, col.141W.
- ¹⁹ The word 'president' is stronger than the word 'presiding officer', the term used in the Wales Act for the office. [section 52]. The functions of the office were not defined in the Act but are expressed in the standing orders although not in great detail. The characteristics and nature of the office of the Speaker of the House of Commons are discussed in the standard volume, Erskine May, *Parliamentary Practice* (Edition 22), pp. 188-193. However the Assembly being a corporate body is different in nature to the House of Commons which is a constituent part of Parliament resting upon centuries of tradition and conventions. Cf. also *Devolution Relaunched*. Ed John Osmond, Institute of Welsh Affairs, March 2000, pp. 19-24.
- ²⁰ Cf. Ben Bowen Thomas, 'Y Cadeirydd' in *Mr Cadeirydd*, Abercynon, 1965, pp. 7-12.
- ²¹ *Ibid.*, Minutes of the Pre-16 Education Committee
- ²² *Ibid.*, *Monitor*

- ²³ Lord Dafydd Elis-Thomas, *The National Assembly, a Year in Power?*; Welsh Institute of Politics University of Wales Aberystwyth, 8 July 2000.
- ²⁴ As foreseen by the Counsel General in his law lecture at the Anglesey Eisteddfod, '*Crossing the road*', *ibid.* and as Judge Dewi Watkin Powell had foreseen in his law lecture at the Bridgend and District Eisteddfod, *The Law in Wales: Past, Present, Future*, The Law Society in Wales, 1998. Cf. also Richard Rawlings invaluable article, *Living with Lawyers*, *Institute of Welsh Affairs – Agenda*, Summer 1999, pp. 2-4.
- ²⁵ *Ibid.*, *Crossing the road*.
- ²⁶ *Y Cymro*, 8 July 2000, *Cadw Golwg ar y Cynulliad*, Owen Thomas, p. 4.
- ²⁷ The quotation is taken from the editor of *Barn*'s monthly column, No 447, April 2000, '*Evidence of Insularity ...*', p. 6.
- ²⁸ *Geiriadur yr Academi*, 1995, *Rhagair*, t.vi.
- ²⁹ Cf. *Ysgrifau Beirniadol* Cyf.XX111, 1997, *Golygyddol*, pp. 9-15
- ³⁰ The vocabulary of Welsh is 'growing, more now possibly than during any period in its history, as it is being used increasingly in every aspect of the modern world'. Gareth A. Bevan, *Gwaith Pwysfawr a Llafurus yw cyfansoddi Geirlyfr, Trafodion Anrhydeddus Gymdeithas y Cymmrodorion*, 1944, p. 34.
- ³¹ Robyn Léwis, *Termau Cyfraith*, 1972; *Geiriadur y Gyfraith*, 1992; *Atodlyfr Cyntaf Geiriadur y Gyfraith*, 1996; *Geiriadur Newydd y Gyfraith* (at press).
- ³² The case for the establishment of a body to standardise Welsh terminology is given in the Report of the Panel on Official Welsh presented to the Welsh Language Board on 20 July 1995.