

National Eisteddfod of Wales, Swansea & District 2006

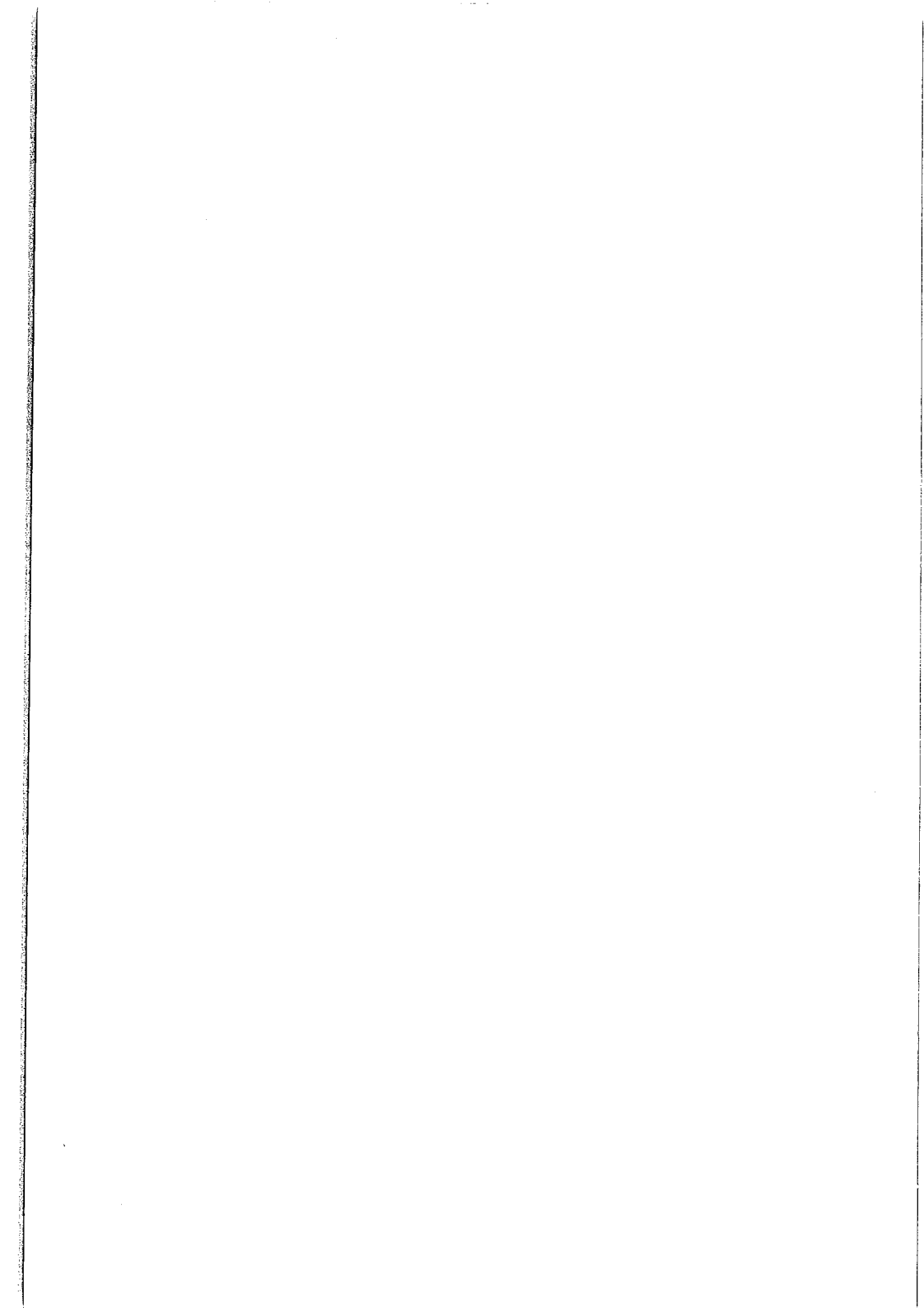


Cymdeithas y Cyfreithwyr
The Law Society

Sir Roderick Evans

Legal Wales -

The way ahead





Cymdeithas y Cyfreithwyr
The Law Society

Sir Roderick Evans

Sir Roderick Evans was born in Swansea and raised in Morryston. He was educated at Bishop Gore School before studying Law at University College London. He is a Judge of the High Court, Queen's Bench Division since 2001 and Presiding Judge of the Wales and Chester Circuit since 2004.

He is married to Kathryn and they have four children. His main interests outside law include Welsh culture, Swansea pottery and mountain walking.

LEGAL WALES – THE WAY AHEAD

Sir Roderick Evans

It is a great privilege to be asked to deliver this year's Law Society lecture. The pleasure of doing so is greatly increased for me by the fact that this Eisteddfod is being held within a mile or two of where I was brought up and in the City which is my home.

This is not the first time that "Legal Wales" has appeared in the title of a lecture in this series. As recently as 2001 in his lecture delivered at the Eisteddfod in Denbigh Professor Iwan Davies spoke of "The Challenge of Legal Wales". During the last five years positive responses have been made to the challenges he described. The National Assembly has grown in status and influence. As the Assembly Government develops a distinctive legal regime in Wales across a number of policy areas it recognises the important contribution "Legal Wales" can make to that process and supports the development of structures and arrangements for the better administration of justice in Wales.

The universities in Wales are developing courses – under-graduate and post-graduate – focussed on the emerging needs of what is sometimes misleadingly called "post devolution Wales". Members of the legal professions in Wales are also becoming increasingly aware not only of the responsibilities that "Legal Wales" imposes upon them but also of the opportunities for career and professional fulfilment that it presents.

In the autumn of this year the fourth annual "Legal Wales Conference" will be held in Cardiff. This is an event which grows year by year. Last year it attracted a number of overseas contributors who helped us focus from a novel perspective on issues relevant to the changing legal landscape in Wales.

"Legal Wales" is vibrant and creative. It is playing and will play in the years ahead a vital role in Wales and I make no apology, therefore, for revisiting the subject in this lecture.

As far as I am aware, no one has sought to define what is meant by "Legal Wales". As it is a developing concept it might be unwise to attempt a definition. However, I understand "Legal Wales" to include:

- (a) the repatriation to Wales of law making functions;
- (b) the development in Wales of a system for the administration of justice in all its forms which is designed to serve the social and economic needs of Wales and its people;
- (c) the development of institutions and professional bodies in Wales which will provide a proper career structure for those who want to follow a career in Wales in law or in related fields;

- (d) making the law and legal services readily accessible to the people of Wales;
- (e) the development of a system which can accommodate the use of either the English or Welsh language with equal ease so that in the administration of justice within Wales the English and Welsh languages really are treated on a basis of equality;

Prior to April 2005, for the purposes of the administration of justice, Wales was part of an administrative unit called the Wales and Chester Circuit. Its head office was in Cardiff. It administered all Crown and County Courts in Wales and Cheshire and had support offices in Courts throughout the Circuit. In April 2005 the administration of Magistrates' Courts in Wales and Cheshire was united with the administration of the Crown and County Courts and came under the Cardiff office. The name of the administrative unit was changed from the Wales and Chester Circuit to the Wales and Cheshire Region.

The geographic boundaries of the Circuit prior to April 2005 and of the Region thereafter were identical and in broad terms were based on the old Assize Circuits created by the tradition of sending High Court Judges from London to hear cases in the remainder of England and Wales. Barristers also organised their practices and professional structures on the basis of these Circuits and thus we have the present Wales and Chester Circuit of the Bar.

The present geographic boundaries of the Region are, however, comparatively recent and date back only to the 1970s when the Crown Court was created. At that time Birkenhead, which was then part of the Wales and Chester Circuit, moved to the Northern Circuit and Warrington and surrounding areas moved from the Northern Circuit to the Wales and Chester Circuit. In the south, Monmouthshire which had always been part of what was then the Midland and Oxford Circuit joined the rest of Wales and became part of the Wales and Chester Circuit.

Wales and Cheshire as an administrative unit is, as far as I am aware, unique to the administration of justice and derives ultimately from the fact that the administration of justice in North Wales was carried out from Chester following the Edwardian wars of the 13th Century as Chester became the seat of the conqueror. After 1972 North Wales and Cheshire were administered as one with listing and administrative functions relating to North Wales criminal, civil and many family cases being carried out in Chester.

The Wales and Cheshire Region is one of seven administrative Regions set up to support the administration of justice in England and Wales. It is the smallest of the Regions and is smaller by far than some other Regions. One or two statistics might illustrate this point: in Wales and Cheshire we have 41 Circuit Judges and 34 District Judges. In the Midland Region the figures are 91 and 64 respectively and in the Northern Region 91 and 70 respectively.

On any one day one would expect to find more High Court Judges sitting in Manchester or Birmingham than in the whole of Wales. In Manchester they are now building a court building which will contain more court rooms for civil and family work than we are likely to need on any one day. Looked at from a London perspective, Cardiff is no more than a medium sized regional centre.

Against this background, what is it that requires us and gives us the confidence to think in terms of “Legal Wales”? In my view there are two factors; firstly the fact that Wales is Wales and, secondly, the existence of the Welsh language. These two factors are, of course, inextricably linked but benefit from separate consideration.

Wales

The most significant recognition that Wales is administratively and politically different from England was the Government of Wales Act 1998 and the subsequent establishment of the Welsh Assembly. The administration of justice in Wales is not a devolved function and the Assembly has no control over the administration of justice in Wales. However, there was a positive reaction from London to this latest stage in the process of devolution. Firstly, a decision was taken that both Divisions of the Court of Appeal should sit from time to time in Wales and, secondly, the Administrative Court in Wales was established. This court is particularly significant. It is the only court we have whose jurisdiction is geographically delineated by the boundaries of Wales and it was set up because it was thought that it would be inappropriate for a challenge to a decision of the Assembly to be heard by a court sitting in England.

The importance of developing institutions of the law in Wales was emphasised in May 2000 by Lord Bingham, the then Lord Chief Justice, when he came to Cardiff to open the new Mercantile Court. Lord Bingham had been appointed Lord Chief Justice of England but he changed his title to Lord Chief Justice of England and Wales. In opening the court he said:

“I welcome the establishment of this court as long overdue recognition of the need for the Principality of Wales to have its own indigenous institutions operating locally and meeting the needs of its citizens here. This court is another step towards recognising Wales as a proud, distinctive and successful nation ... I do express the confident hope that when people look back on this day in years to come they will wonder not why the Mercantile Court was established but why in the world everyone was content to wait so long.”

Although these developments were very welcome, it has to be said that neither the Administrative Court in Wales nor the sittings of the Court of Appeal in Wales have been an unqualified success. But the problem is one of structure not principle. The Administrative Court in Wales was set up without any administrative staff. It is no more than a post box for the Administrative Court in London and case papers filed in the Administrative Court in Wales in Cardiff are sent to London for processing and it is

London who deals with the progress and listing of cases. The result has been that Welsh cases – even some involving the National Assembly – continue to be heard in London and few Administrative Court cases have been heard in Wales.

A not dissimilar situation exists in relation to the Court of Appeal. The support and listing offices of the Court of Appeal are all based in London. It is a court in which the pressure of work is great and it is not unreasonable for London to wish to deploy Court of Appeal Judges in the most efficient way possible. Recent experience of Court of Appeal sittings in Cardiff, however, has shown that there is sometimes not enough work listed in Cardiff to fully occupy the court for the whole of its planned sitting period although this was not the situation during the Civil Division's latest sitting in Cardiff. The result is that the Court of Appeal sitting in Cardiff sometimes does less work than it would have done had it sat in London. This should not be taken, however, as indicating that there is not enough Welsh work available. There is, and there are examples of substantial cases from Wales being heard in London in the weeks immediately before a planned sitting of the Court of Appeal in Cardiff.

The Government of Wales Act will take the devolutionary process still further. It will enable the Assembly to create primary legislation albeit by a somewhat indirect route. It will also contain a mechanism which, subject to a referendum of the people of Wales, will allow the Assembly to obtain direct primary law making powers. Therefore, the constitutional framework in Wales is changing and is likely to change further in the not too distant future. While it is at present too early to hail the emergence of a Welsh jurisdiction there can be little doubt that the seeds of such a jurisdiction are planted, germination is taking place and they will develop.

The structures of the law in Wales must be responsive to these constitutional changes and must adapt and grow to support them.

The Welsh language

The intention of the Welsh Language Act 1993 is that “in the administration of justice in Wales the English and Welsh languages should be treated on the basis of equality” and the Act reaffirmed the rights first given in the Welsh Language Act 1967 that “in any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it ...”

This right to use Welsh is not dependent on an inability to speak English or on a perceived or actual lack of fluency in English. The right to use the Welsh language is unqualified. However, the right exists only “in Wales” which means that in a case heard in Cheshire or in an appeal heard in London, the right to use Welsh no longer exists.

In this respect, the approach of the Westminster Government to the linguistic rights of speakers of a language indigenous to the United Kingdom can be contrasted with that of the Canadian Government towards French speakers. In Canada, rather than confining the

linguistic rights of French speakers to the areas where historically French was spoken, the Canadian Federal Government accorded full linguistic rights to French speakers across the whole of Federal Canada.

For my part I think the approach of the Westminster Government is correct and that it is appropriate that the rights of Welsh speakers be confined to Wales. The political decision to so confine them, however, has an important consequence. If the right to use the language is to be meaningful, there must exist within the geographic area within which the statutory right applies all those institutions of the law in which legal proceedings take place and in which a Welsh speaker may want to exercise his statutory right to use the Welsh language.

Fundamental to the development of the law and its institutions in Wales is a consideration of the geographic boundaries of the administrative unit which serves and services them. Whether Wales should form an administrative unit of its own and the link with Cheshire be ended has been the subject of debate for some time. In 2002/3 when the administrative structures of the Court Service were reviewed it was decided that Wales and Cheshire should continue to be administered as one but a review of the boundary was promised for 2006/7.

In the event it was the Westminster Government's proposal to reorganise the police forces of England and Wales and the suggestion that a single police force be created for Wales that put the matter back on the agenda earlier than expected. The advantages to efficiency and the effective provision of services which flow from the various agencies involved in the administration of justice - including Her Majesty's Court Service - having similar geographic boundaries pointed towards the separation of Cheshire from Wales. This possibility, unsurprisingly, produced a range of reactions.

Some either argued for or accepted the inevitability of the political imperative which demands that Wales be administered as a unit of its own. Others opposed the separation of Cheshire from Wales and they advanced two main arguments. Firstly, that North Wales would suffer if Cheshire were to move into the administrative unit of the North West of England and that the removal of the link with Cheshire would cause North Wales to become a legal backwater. Secondly, that the status of Chester as a legal centre would be diminished if it were to be administered alongside legal centres as large as Liverpool and Manchester.

The Westminster Government has now decided not to proceed – in the immediate future at least – with the merger of Police Forces. Nevertheless, changes to the administrative structures of HMCS which would have been necessary had the police mergers proceeded are to go ahead and the Lord Chancellor has now made and announced his decision that in April 2007 Cheshire will become part of the North West of England's administrative region and Wales will form an administrative unit of its own.

I should like, however, this afternoon to deal specifically with the argument that North Wales will become a legal backwater after April 2007. As Chester has long been regarded as the administrative centre for both North Wales and Cheshire resources i.e. investment and jobs have been concentrated in Chester. This has had a number of consequences; one is that Cheshire has more courtroom space than it needs to do Cheshire work while North Wales has insufficient courtroom space to do North Wales work. A second consequence is that litigants from North Wales are often required to travel to various courts in Cheshire to have their cases heard. Sometimes this causes little or no inconvenience to the litigants; on other occasions it causes substantial inconvenience. It is not acceptable, for example, for a litigant from Anglesey to travel to Crewe County Court to have his case heard. A more disturbing feature is that it is often the most vulnerable litigants – those involved in cases arising from the break up of families – that are required to make significant journeys to have their cases heard. To what extent the listing of North Wales cases in Cheshire is brought about by the insufficiency of courtroom space which undeniably exists in North Wales rather than by the convenience of the administration or legal profession is impossible to gauge as no records have ever been kept of the reasons for moving an individual case.

These present arrangements should be contrasted with the arrangements which will exist after April 2007. By the time the boundary changes come into effect, listing and management functions, and the jobs that go with them, relating to all North Wales criminal, civil and family cases will be centred in North Wales. There will be a group of Circuit and District Judges based in North Wales supported by staff also based in North Wales. It will not be possible to ensure that all North Wales cases are heard in North Wales but present court buildings will be adapted and extended and additional courtroom space will be used so that as soon as possible all North Wales work will be heard in North Wales. In the meantime arrangements will be put in place to hear those cases in North Wales which cannot be listed in North Wales because of the inadequacy of courtroom accommodation. Those arrangements will include identifying a court in the Civil Justice Centre in Chester in which will be listed civil and family cases which cannot be accommodated in North Wales. That court will be managed from North Wales. We shall be able to separately monitor and statistically assess North Wales work. Future investment, jobs and career structures relating to North Wales work will be in North Wales.

In my judgment, these arrangements will be a significant improvement on those that presently exist and will provide a better service to litigants in North Wales. North Wales is in no danger of becoming a legal backwater; on the contrary the boundary changes present a huge opportunity to those involved in the administration of justice in North Wales and Wales as a whole.

So the geographic boundaries of Wales and those of the organisation which administers and serves the courts in Wales will soon be the same. This is an important advance for Legal Wales.

What of the Bar? Many individuals practising at the Bar in Wales and Chester are enthusiastically involved in Legal Wales. The Circuit as a body, however, and many of its members have regarded Legal Wales and the changing of the administrative boundary as a threat not only to the position of those practising at the Bar in Chester but also to the existence of the Wales and Chester Circuit itself.

I believe their fears are misplaced. After April 2007 solicitors practising in North Wales will require on behalf of their clients access to the Bar for advocacy and advisory services just as they do today. The need for the services of barristers in North Wales will not diminish after April 2007. At present solicitors in North Wales instruct barristers in Chester, Liverpool, Manchester and beyond. All those Bars will continue to exist after April next year and will continue to be available to solicitors from North Wales. There will be no diminishing in the expert legal services available to the people in North Wales. From the Bar's point of view, there will be no reduction in the available sources of work. Moreover, the fact that Chester will be in a different administrative unit from Wales does not prevent the Bar calling their Circuit the Wales and Chester Circuit if they wish to do so although it may be thought appropriate that it be called the Wales Circuit. Nor does it prevent barristers practising in Chester from being members of that Circuit whatever it is called. In short, the boundary change need have no adverse effect on the Chester Bar or the Circuit in general.

Will there be a barristers' chambers in North Wales? We shall have to wait and see. I would welcome and encourage the opening of chambers in North Wales and many solicitors in North Wales have expressed the same view to me. I understand, however, that at present at least the Chester Bar does not see a financial case for opening an annex or branch chambers in North Wales. That view might, of course, change in the future and there is always the possibility that a set of chambers might open in North Wales independently of the chambers presently situated in Chester.

The truth is that Legal Wales is not a threat to the Bar but an opportunity for it. The Bar in England and Wales feels that it is under threat and that the Westminster Government is not only reducing the level of its publicly funded fees but also reducing its sources of work. The Crown Prosecution Service is encouraged now to do more of the prosecution work which until recently was regarded as the province of the Bar. The criminal defence service and solicitors in private practice are also doing work which the Bar used to do. However, barristers who practice in Wales, although suffering from these reductions in their sources of work have available to them the potential of Legal Wales which is not available to their counterparts in England. Government is a major employer of lawyers and a voracious consumer of legal services. Also Government activities frequently create the need for others to have recourse to legal services. As the constitutional and governmental processes in Wales develop so professional opportunities and careers for lawyers in Wales will increase.

As Legal Wales advances the panorama widens; changes which even eight or ten years ago were little more than pipe dreams are now upon us. The timeframe is short. Lawyers in Wales, whether barristers or solicitors, need to develop the skills and expertise to accommodate these changes and to make the most of the opportunities they present.

What are the issues that we should be looking at in the next few years? There are many and several are of a nature that each would justify a lecture on its own. I should like, however, to mention a few of them and I shall do so briefly.

The Courts in Wales

I have already mentioned the need to ensure adequate courtroom accommodation in North Wales. Across Wales the courts range from new, purpose built buildings to buildings which are not fit to be used as courts. Money is necessary to replace, improve and maintain our courts and to ensure that areas like Mid Wales are provided with adequate facilities to dispense justice locally. Ideally each town should have a court building in which the various courts would sit but that is not possible and compromises must be made. What is important is ensuring that the pattern of courts across Wales properly reflects our mix of urban and rural areas and that rural areas do not suffer because of a comparatively small and widespread population.

The Judges

Closely linked with the location of courts in Wales is the deployment of judges to sit in those courts. Some judges, because of their particular responsibilities, will sit most of their time in one court centre but it is not good for all judges to remain in one area all the time. We need movement of judges throughout Wales to develop a collegiate spirit amongst the judiciary of Wales.

It is important that as judges in Wales we look beyond the jurisdiction of England and Wales. There are jurisdictions which are close to us from which we can learn a lot and with whom we can exchange ideas and experiences; Scotland, Ireland, Northern Ireland, the Isle of Man, the Channel Islands as well as the small countries and devolved states in Europe. Further afield, countries like Canada, and the Canadian province of New Brunswick in particular, can teach us invaluable lessons on how to run a legal system which easily accommodates two languages. Each of these jurisdictions has its own judicial institutions. Is it time for the judges in Wales to form an association of our own? We can then engage with colleagues in these other jurisdictions and learn from their experiences. It would also provide a vehicle through which on domestic matters we can formulate and articulate views from a Wales perspective?

Court of Appeal and Administrative Court in Wales

If sittings of the Court of Appeal and Administrative Court in Wales are to be efficient, arrangements for the running of these courts must be strengthened. At the very least the arrangements for identifying cases from Wales and listing them in Wales must be improved but this is unlikely to be sufficient. What are needed, in my view, are offices in Cardiff to support the work of these courts. These would not only ensure the efficient disposal of work from Wales in Wales but also create in Wales the jobs and career structures connected with this work.

Prisons

Each day of the week Magistrates and Judges sitting in courts in Wales send defendants to prison. However, there are insufficient prisons in Wales to hold prisoners who come from Wales. There are inadequate prisons for male adult prisoners and male young offenders and no places at all for female prisoners.

North of Usk there is no prison of any sort in Wales and the result of this shortage of prison places is that large numbers of prisoners whose homes are in Wales are sent to prisons long distances from where they and their families live. Visiting fathers, mothers, sons and daughters in prison can be difficult if not impossible for those left on the outside especially if they live in rural areas or in straightened circumstances. Contact between a prisoner and what might be a supportive family is endangered and arrangements for pre-release contact which is so important for reintegration of prisoners into society and their eventually rehabilitation is made more difficult.

A campaign to build more prisons in Wales will not attract popularity or votes in an election campaign. Nevertheless, the Welsh Assembly Government and the Minister for Social Justice and Regeneration are keen to ensure the provision of proper prison facilities in Wales. Such a provision is an essential part of the framework for dealing with and rehabilitating our offenders.

What does the Future hold for the Welsh Language and the Law

I clearly remember discussing in a current affairs lesson in the sixth form in Bishop Gore School in 1963 whether the Welsh language should be accorded "official status". We have come a long way since then but there remain areas where the Welsh language still suffers a status inferior to that of the English language. One which is very relevant to the development of Legal Wales is the inability to select a bilingual jury in trials where evidence is to be given in Welsh as well as English. This inability means that the English and Welsh languages are not treated on a basis of equality for the administration of justice. The present situation, in my view, is unfair and puts a witness who gives evidence in Welsh

before the jury at a disadvantage when compared to someone who gives evidence in English. It can lead to injustice. At the beginning of this year the Westminster Government carried out a consultation on the desirability of bilingual juries in criminal trials in Wales. This is a topic which deserves far greater attention than I am giving it this afternoon. However, I raise it only to express the hope that following this consultation changes will be made to the law to remove this inequity.

Observing the creation of a new jurisdiction, being part of the development of new legal institutions and processes and seeing new career structures opening up in the law in Wales is an interesting and exciting experience. Young people starting on a career in the law in Wales today can look forward to challenging and exciting opportunities. I envy them greatly. I wish I were 25 years younger.