



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RT HON THE LORD JUDGE

LEGAL WALES CONFERENCE

MARRIOT HOTEL CARDIFF

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It is a true pleasure for me to be addressing this meeting; indeed, I accepted the invitation with great pleasure.

I cannot claim to be Welsh, but that does not mean that I do not love Wales. I first courted my future wife in North Wales. She has come to Wales virtually every year since her father returned from the war. We go there as often as we can. The beauty of North Wales is inspiring; its tranquillity reviving; and there is a generosity of spirit among the Welsh men and women we have met there that is enriching.

There are some of you here today that have heard me say on other occasions that I am half English. The other half – my mother’s half – came from a small island race which, like Wales, has left its mark on history. I remember two things that my mother would say – don’t forget that you are half Maltese, and the better half too! She would also say that I should never forget that the Maltese were civilised when the English were still covered in woad.

I was born, as it happens in the middle of a bombing raid, in the George Cross island Malta. The temples there predate even those of Egypt. In 1565 even Protestant Elizabeth I ordered the church bells to ring when the siege of Malta was lifted and the threat of Turkish domination in Europe had rescinded. Malta was the only British colony actually to seek the protection of the King of Great Britain after the Maltese themselves had thrown out Napoleon’s Frenchmen. So another pulse, other than the English pulse beats in me, and I am proud of that too as I am proud of the fact that I can, albeit ungrammatically and not fluently, speak Maltese. It is an ancient language spoken by just the 400,000 that live on the island. Apart perhaps from the Catholic faith, the language played a huge part in how this tiny race of people survived and retained its autonomy despite being invaded and/governed by the Arabs, the Normans, the Knights of Malta themselves, the French and the British including, dare I say it, the odd Welsh man or two.

When I opened the Crown Court at Caernarfon last summer I quoted a passage from a verse of R.S. Thomas, the poet of Aberdaron. I should like to repeat it here. It echoes in my mind. It is haunting and humbling to anyone with a drop of English blood in him.

“....What have you done to make the speech,
My fathers used a stranger at my lips,

An offence to the ear,
A shackle on the tongue..."

Chilling. Yet this great Welshman, and great poet, could not write in his own language. How lamentable. I think it a very poignant lament!

And if I may say so, one of the judgments of which I am greatly proud – and judges should not take pride in the judgements they give – is the judgment I gave in 1999 which involved the use of the Welsh language. I said

"The Laws in Wales Act 1535, sometimes called the Act of Union, the main legislative provision for Wales enacted by the Reformation Parliament, the Welsh language, spoken daily by the people of Wales was "nothing like, ne (nor) consonant" to what was said to be "the natural mother tongue within this realm". It was therefore enacted that the language to be used in courts was to be English, not Welsh, and those who continued to speak Welsh were to be excluded from any office, including judicial office. In other words Welsh people appearing in court in Wales, litigating over problems in their own country, were prohibited from using their own language. Mr Williams – he was the appellant – and those who support him no doubt regard this legislation, and the subsequent Act of 1542 as an outrage...for what it is worth I agree with them."

Standing here today in Cardiff, I wish to make it clear to you all, less there be any in doubt, that I do not regard my office as Lord Chief Justice as simply a great privilege, although it is certainly that: it is indeed a great responsibility. I wanted to accept your invitation today in order to share a few thoughts with you.

My present office means that I am responsible for the administration of justice in Wales as Lord Chief Justice of Wales. It important for me to emphasise that when I am standing in Cardiff, as I am today, or for that matter Caernarfon, I am here as the Lord Chief Justice of Wales. In Wales, Wales comes first, and England second. That priority is not in doubt. And perhaps with Baroness Prashar coming to speak after me, I am entitled to point out that the composition of the Judicial Appointments Commission Panel which made its recommendation about the next Lord Chief Justice of Wales and England included, and I have no doubt deliberately included, the Welsh member of that Commission.

My present office means that by statute I am the Head of the Judiciary of Wales. That has some consequences. It means that I am responsible for representing the views of that judiciary to Parliament, and to the Assembly Government in Wales, to the Lord Chancellor and to Ministers generally, and that I am also responsible for the maintenance of appropriate arrangements for the deployment of judges throughout Wales and the allocation of work within the courts of Wales, as well as the welfare training and guidance of the judiciary. It happens to be a coincidence, but it is not totally without importance that the first Court building which I opened while holding the office of Lord Chief Justice of Wales and England was the new Crown Court at Caernarfon. This is not just coincidence; the first Cathedral Service at the beginning of the legal year to which I was invited and attend in my capacity as Lord Chief Justice, and which I have chosen to attend, is the Cathedral Service which will take place here on Sunday.

The constitutional arrangements for Wales are in a state of change. It is obvious to me too that moves for further change lies ahead. There are some here who would wish for more change and more rapidly. But I may perhaps be excused from noting that, as in every democracy, there are different views about these issues, and in

particular the pace of change and the form it should take. That is the crucial element to what I have to say next.

I have read the address about the new constitution in Wales given at the National Eisteddfod this year by Lord Elis-Thomas. Unsurprisingly, from such a distinguished source, came an illuminating and penetrating analysis of the constitutional changes which have taken place in Wales. They contain an informed view of what may lie ahead. I look forward to reading the report of the All Wales Convention chaired by Sir Emyr Jones Parry later this year

The way in which justice will be administered in Wales in the end will I hope be determined by the way in which the constitution of Wales actually develops, rather by some anticipation of the way in which it might develop, or which some might hope that it would develop. Ultimately the constitutional issues are for political not judicial decision. To be legitimate, any legal system needs to keep pace with and reflect political changes, but I respectfully suggest that the legal system cannot be, and cannot be manoeuvred so that it can be seen to be a force for change or against change, or any particular direction of change, or as advancing or supporting the views of one or other of the different sides of the arguments all legitimately advanced in a democracy by the protagonists. It is not for me, whatever my personal views might be, to advance my political views, certainly when they are exercising their judicial responsibilities. And if they were to do so their efforts, whatever form they may take, would almost inevitably clash with the views of one or other of the different political forces in Wales, which in any event are not themselves fixed. Not all the views of all the judges would coincide with each other, let alone with the views of each and every political force. The pace of constitutional change is ultimately for the people of Wales and the workings of present and future constitutional arrangements.

That is not my view as Lord Chief Justice of Wales and England: that presents my view as Lord Chief Justice of Wales. Judges cannot force the pace nor can they obstruct developments based on the ballot box and the constitution. We must be neutral. Nothing comes without a price, and one of the foundations on which the respect for the independence of the judiciary is based in this country is that judges cannot be catalysts for political change. One short and simple reason is that we are not elected: we are not answerable at the ballot box: we have the privilege that we cannot be removed by the electorate however much they might wish to remove us. We have no political mandate.

What the judiciary can do, and can legitimately do, in the context of Wales is to respond to the fact of devolution and the changes that have already taken place and are now embedded within the constitution.

Let me identify some of the responses to those changes that have already taken place since devolution. I take them in no particular order of importance

- A liaison judge for Welsh language matters has been appointed.
- To give practical effect to the principle that the Welsh and English languages should be treated "on a basis of equality", both in criminal and civil proceedings in Wales, appropriate practice directions have been issued. These are authoritative.
- The Judicial Studies Board holds a conference annually in Wales for the Welsh speaking judges to provide them with intense training in the use of Welsh in the courts. It was attended by 26 judges from the District, Circuit and High Court Benches. I am told that the course was a great success, an example of how to build confidence in the use of Welsh in our courts.

- A Mercantile court has been established in Cardiff. It exercises its responsibilities throughout Wales.
- Judicial review proceedings concerning any devolution issue arising out of the 1998 Act, for any issue concerning the Assembly of Wales, or the Executive of Wales, or any public body, including a local authority in Wales not only may be started in Cardiff as well as in London, but now should be started in Cardiff, and if for any reason started in London, by someone from Wales or bringing the proceedings because of an interest in Wales, the proceedings will be transferred back out of London to Cardiff. I shall return briefly to this point.
- Perhaps the most important and symbolic recent change has been the end of the old Wales and Chester Circuit. The boundaries of Her Majesty's Court Service and the organisation of the judiciary in Wales is confined in effect but is co-extensive with the boundaries of Wales.

This list is not closed; there is plenty of space left on the paper.

I make it clear that I am willing to consider any proposals for change or development which can be shown to fall within or which are consistent with the current constitutional position. It has been the practice of Her Majesty's Government to consult the Lord Chief Justice in relation to legislative proposals which affect the operation of the administration of justice, and in particular, on any proposals that affect the Court Service. These arrangements for consultation are consistent with the new constitutional position of the Lord Chief Justice as head of the judiciary of Wales and England. I am in favour of this type of constructive consultation. This consultation does not address the desirability or otherwise of proposed Government policies. That is politics and is nothing to do with us. Rather, it is focussed on the administration of justice, and any practical steps for its improvement, are all legitimate. As I emphasise I am always willing to consider any such proposals but particularly those coming from those with a democratic mandate or from my fellow judges in Wales.

What, with respect, I cannot do, and I could not do it whether I wished to do it or not, is to countenance structural changes to the administration of justice which are inconsistent with the constitutional arrangements. It really is as simple and as stark as that. Whatever constitutional changes may come, and even assuming that no changes will come, the question remains how justice should be administered in individual cases up and down the country on a day to day basis. And you will forgive me for saying that I do mean, up and down this country. For those of you who do not live in North Wales, and some of you of course do, may I suggest that you should from time to time put yourselves in your mind's eye in Holyhead, and living and working there. I would like to remind you, as Mr Roddick himself knows, that the first sitting of the court in Caernarfon took place in 1294 at a time when the law Hywel obtained. It has a very lengthy history. Basing myself on a scholarly paper from Sarah Roberts at the University of Bangor, Mr Roddick was pleased to be reminded that people from outside Wales – that is therefore visitors from England – were treated as men and women with very low status and had very few rights. In those days my life value, as an English visitor, to be paid to my family if I were murdered, would be calculated on the kind of negative scale that might make today's financial position seem generous. When the law of Hywel obtained lawyers were scholars with special learning in the north of Wales. I regret to say that the lawyers in South Wales were often the local landowners. But, and I quote, the best lawyers "were found in North Wales in the Kingdom of Gwynedd". In that kingdom the lawyers were skilled men of the highest status with an exceptionally high life value. In the Royal Court the lawyer sat next to

the son of the King, and the price on the lawyers tongue, as a symbol of his office, was 110 head of cattle.

I spend a great deal of my time in London arguing against the over-London centricity of the system of the administration of justice. There is much more to England than London and much more to Wales than Cardiff. It matters to me that the people living in Cambridge, Carlisle and Cornwall have the same access to justice. I hope that one of my successors as Lord Chief Justice of Wales will not be arguing with the executive or the administration against the over-Cardiff centricity of the administration of justice in Wales. It would be an easy trap to fall into. We all know something of the difficulties of driving or indeed getting a train from North to South Wales and back. Will a motorway be built to improve the transport links between the north and the south of Wales – but where, and through which area of so many areas of outstanding natural beauty? And who would pay? As a guest I speak with great deference, but might a time come when this conference, Legal Wales, could take place in North Wales? It has not, I believe, taken place there yet. Is such a thought has horrified some of you, then your horrified thoughts have greatly worried me.

One crucial test of a judicial system, and whether the rule of law is truly in force in a particular country, and I regard it as a most important test, is this; does the citizen have the ability to hold the executive of the day, or any of the large and weightier authorities to account before an independent judge who will give the relief or redress which the law permits, or to require them to act lawfully? It is, in fact, very rare for such authorities deliberately to act unlawfully, but from time to time whether by accident, or oversight, or bad advice, they do so. That, however, is not the purpose of this comment.

The Administrative Court in Cardiff represents a major step, not only against London centricity – which is the reason why similar courts have now been opened in Manchester, Birmingham and Leeds. This offers a huge opportunity to the legal profession in Wales but it does of course, and more importantly, offer a service to the citizens of Wales. I do hope that the legal profession will take advantage of this new opportunity to specialise in public law, so that a not necessarily very large, but a highly skilled and specialist body of advocates can be developed to do this work here. I give you a few figures; from 21st April until 28th September fresh applications for judicial review in Cardiff amounted to 62 cases. In Manchester there were 212, Birmingham 164, and Leeds 158. What conclusions do we draw? This of course proves that Welsh men and women are not litigious: or maybe it proves, that the National Assembly and executive body of the Government of Wales and the large bodies exercising vast powers in this country never get anything wrong: alternatively it means that people have not woken up to the facility on their doorstep. But even as I am speaking here, there are a number of outstanding cases against the Welsh ministers which will be heard this autumn, here in Cardiff. A recent high profile case involving the University of Cardiff was heard here in Wales, before a Welsh speaking Welsh judge of the Queen's Bench Division. It is a small example which illustrates the nature and extent of the progress which has been made. It is not just a question of cost, it is also an acknowledgment of a different principle that, to all practical extent, justice should be administered locally. What is more, these cases should be handled by Welsh advocates instructed by Welsh solicitors. In the final analysis the administration of justice is a community issue, and the judges are the servants of their communities.

My own office is a very high one. I am conscious of that, and of my responsibilities. The higher the office the greater the responsibilities. My resolve is fixed. I shall

exercise my responsibilities for Wales to the best of my ability. I am proud to serve you.

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