Ten-year anniversary lecture series

Wales: Law in a Small Nation

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The Boston Manuscript

In July 2012 an unusual manuscript came up for sale by auction at Sotheby's in London. Known as the Boston Manuscript[1], it dates from the second half of the 14th century and is a bound volume of 99 vellum leaves. The main legal text in the manuscript is a version of the Blegywryd redaction of medieval Welsh customary laws to which had been added a selection from another legal manuscript. Written in Welsh by four hands, the main section of text is believed to have been the work of a person connected with the great Cistercian Abbey of Strata Florida (Ystrad Fflur) in Ceredigion. Although the manuscript was known and transcribed in the seventeenth and early eighteenth centuries, it then vanished. It is likely to have travelled to America in the luggage of an emigrant and it reappeared in the Library of the Massachusetts Historical Society in Boston by 1831. On 10 July 2012 it was purchased at Sotheby's by the National Library of Wales for £541,250 and it is pleasing to think that it is now back in Ceredigion, some 20 miles from where it was created. The particular fascination of this volume, however, is that it would have been carried by an itinerant judge or lawyer on circuit in the Welsh Marches in the 14th and 15th centuries. It is small enough to have fitted neatly into a saddle bag. It includes handwritten comments showing that it was used as a working law text. It was, perhaps, a medieval fore-runner of Archbold, although the texts cover both criminal and civil law. As a result, it conveys a very real sense of the law in action in Wales in the late middle ages.

The Boston Manuscript is one of some 42 surviving manuscripts (six in Latin and the remainder in Welsh) dating from the 13th to the 16th centuries containing customary Welsh laws which were codified much earlier in the 10th century in Dyfed (South West Wales). The work of codification is usually attributed (often by the texts themselves) to Hywel Dda - (Hywel the Good) who is the only Welsh Prince to have earned that suffix and who died in about 950 – and as a result

[1] NLW NS 24029A. See https://www.library.wales/discover/digital-gallery/manuscripts/the-middle-ages/the-boston-manuscript-of-the-laws-of-hywel-dda/

medieval Welsh law is usually referred to as "cyfraith Hywel" (the laws of Hywel Dda).[2] Hywel certainly came close to uniting almost the whole of Wales under his leadership. The account that he summoned six men from every commote in Wales to Whitland in Carmarthenshire to agree on a codification of that customary native law may be an invention of the twelfth century. However, it does appear that Hywel sought to harmonise, modernise and systematise the customary laws of his different kingdoms.[3] The resulting codification, attributed to Hywel, is widely regarded as among the most significant cultural achievements of the Welsh.

This is not the occasion – and I certainly do not have the expertise – to consider in any detail the content of the laws of Hywel Dda. Those of us who were in Cardiff for the sitting of the Supreme Court in July were privileged to attend an inspiring lecture on the subject in the Senedd by Dr. Sara Elin Roberts. It is, however, worth recording that this was a sophisticated body of law which was codified, taught and transmitted by a quasi-professional group of jurists. It addressed those matters you would expect to find in the customary law of a community: criminal law, the law of contract, civil wrongs, land law, inheritance and family law. Despite its preservation in codified form, it was not immutable but showed a flexibility in responding to social change. In many respects it is, to modern eyes, distinctly more enlightened and humane than its English counterpart of the same period.[4] For example, it distinguished between different degrees of murder, allowed illegitimate offspring to inherit and paid particular attention to the rights of women. Similarly, criminal offences were often regarded as if they were personal actions capable of amendment by payment of compensation.[5] With regard to the function of a judge it states:

> "Brawdwr a dyly gwrandaw yn llwyr, cadw yn gofawdyr, dyscu yn graff, datganu yn war, barnu yn trugarawc."
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> "A judge is to listen fully, keep in memory, learn acutely, pronounce courteously and judge mercifully."[6]

[2] See generally, Thomas Glyn Watkin, The Legal History of Wales, 2nd Ed., (2012), Chapter 4; Sara Elin Robert, The Legal Triads of Medieval Wales, 2nd Ed. (2011); The Welsh Legal Triads (Selden Society) (2015); R.R. Davies, Conquest, Coexistence and Change: Wales 1063-1415, (1987) 18-19, 65, 133-4, 368-70.
[3] Thomas Glyn Watkin, op. cit., 48.
[4] R.R. Davies, op. cit., 133-4.
[5] Pollock and Maitland, The History of English Law, 2nd Ed. (1898), i, 221; R.R. Davies, op. cit, 368.
[6] Laws of Hywel Dda, Demetian Code, Book II.

These are the words inscribed in a beautiful document presented by the Legal Wales Foundation to this court on the occasion of its inaugural sitting in Wales earlier this year. They are, to my mind, a fine expression of what we judges should be trying to achieve today.

It does seem that, beyond its strictly legal significance, the creation of a single body of laws for Wales played an important part in the emergence of the idea of the Welsh as a united people.[7] The first extant treaty between an English King and a Welsh Prince, that between King John and Llywelyn ap Iorwerth in 1201, formally recognised the unitary and distinct character of Welsh law.[8] As Professor Rees Davies observes, the existence of this body of law was, by the time of the surviving law texts and probably earlier, a cardinal affirmation of the distinctiveness of Wales as a country and of the Welsh as a people.[9]

Following the conquest of Wales by Edward I between 1277 and 1283, and the death of Llywelyn ap Gruffudd, the last native Prince of Wales in 1282, the Statute of Wales (the Statute of Rhuddlan) 1284[10] resulted in the introduction in the areas under direct royal control (i.e. mainly the principalities in north and south west Wales) of English structures of government and the administration of justice, and of many features of English law. Whereas Edward had been hostile to the Irish laws – dismissing them in 1277 as "detestable to God and … not to be deemed laws"[11] – he was more selective in relation to Welsh law. Thus, for example, the right of illegitimate offspring to inherit was abolished as was the native criminal law in respect of all major felonies. On the other hand, Edward I confirmed the Welsh custom of dividing inheritances between male heirs. As Professor Rees Davies puts it, Wales was to be won to the common law by stages.[12] The Statute of Wales did not apply in the Marches, but there the picture was inconsistent. Some of the Marcher Lords followed the King's example, whereas, as Professor Thomas Glyn Watkin observes in his magisterial history of Welsh law to which I am indebted, in other areas along the English border "the law was a thorough mixture of English and Welsh customs with both constituencies from time to time borrowing freely to their advantage".[13] Pollock and Maitland were more direct when they observed:

[7] R.R. Davies, op. cit., 18-19; Geraint H. Jenkins, A Concise History of Wales, (2007), 41, 45 et seq.
[8] R.R. Davies, op. cit., 18.
[9] Op. cit, 19.
[10] Ivor Bowen, The Statutes of Wales (1908) 2
[11] Foedera, I, ii, 540 cited by R.R. Davies, op. cit., 367
[12] Op. cit. 370.
[13] Op. cit., 106-116. R.R. Davies, op. cit.

> "Meanwhile in the marches English and Welsh law had met; but the struggle was unequal, for it was a struggle between the modern and the archaic."[14]

A reference to the date 1401 in the final section of the Boston Manuscript[15] shows that this section was written at the start of the 15th century, at the time of the revolt led by Owain Glyn Dwr, (Glendower in Shakespeare's Henry IV, Part I), the time at which Wales came closest to ever being an independent nation. Glyn Dwr was advised by experts in canon law and in Roman civil law. He sent ambassadors to Scotland and France, concluded a treaty of alliance with France and, this being the time of the Papal schism, he recognised the Pope in Avignon, while the English King recognised the Pope in Rome.[16] The revolt resulted in the imposition of penal statutes against the Welsh by King Henry IV. In particular, Welshmen were not to hold lands in England or in English boroughs within Wales[17] nor were they to hold office within the Principality or the March.[18] These statutes were re-enacted during the 15th century and remained in force until the 17th century, but it seems that they were often not enforced.[19]

What did the Tudors ever do for Wales?

There is a rich irony in the fact that the sophisticated body of Welsh native law, which has come down to us in the Boston Manuscript and the other surviving texts, was to be largely swept away in the 16th century by Henry VIII, whose ancestors were squires from Penmynydd in Anglesey and whose father had led at Bosworth Field a largely Welsh army under the banner of the Red Dragon of Cadwalladr.[20] The union of England and Wales – effected by the statutes of 1536 and 1542 known as the Acts of Union[21] – was a part of the Tudor revolution in government. The driving force behind this transformation was Thomas Cromwell, although he did not live to see it completed, having died on the scaffold in 1540.[22] The incorporation of Wales into England was intended to create a unitary state. As a result, there came into existence an entity known as "England and Wales" which survives to this day.[23]

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[14] Pollock and Maitland, op. cit., i, 220-1.
[15] See footnote 1.
[16] R.R. Davies, The Revolt of Owain Glyndwr, (1995), 169-70, 186-96.
[17] 2 Hen. 4, cc. 12 and 20; Bowen, op. cit. 31, 33.
[18] 2 Hen. 4, c. 32; Bowen, op. cit. 36.
[19] See Thomas Glyn Watkin, op. cit., 116-7.
[20] Glanmor Williams, Wales c.1415-1642, Recovery, Reorientation and Reformation, (1987), 217-27.
[21] An Act for Law and Justice to be Ministered in Wales in like form as it is in this Realm 27 Hen. 8, c. 26, Bowen, op. cit. 75; An Act for Certain Ordinances in the King's Dominion and Principality of Wales 34 & 35 Hen. 8, c. 26, Bowen, op. cit. 101.
[22] Glanmor Williams, op. cit. 266; Diarmaid MacCulloch, Thomas Cromwell, A Life, (2018), 326-8, 544
[23] Geraint H. Jenkins, op. cit., 131.

Wales was "incorporated, united and annexed" to England. The border between England and Wales was clearly defined for the first time. Five new shires were created in the March – Denbigh, Montgomery, Radnor, Brecknock and Monmouth – which were added to the six counties of the Principality and the Counties Palatine of Pembroke and Glamorgan. These 13 counties survived until 1974. Welsh shires and boroughs returned members to Parliament in Westminster for the first time. Justices of the Peace were appointed in the whole of Wales for the first time. The use of Welsh in administrative or legal affairs was forbidden.

Welsh law was abolished and English law applied throughout Wales. Wales, however, was given its own courts system. The Courts of Great Session[24] administered royal justice in Wales – or most of it - from 1543 until 1830, exercising criminal jurisdiction over serious offences and a wide civil jurisdiction which spanned those of the Court of King's Bench and the Court of Common Pleas in Westminster. They later also assumed an equity jurisdiction. The four justices each exercised jurisdiction in a circuit of three counties.[25] That left out Monmouthshire from where cases went either to the Oxford assize circuit or direct to Westminster. This is likely to be the origin of the widely held misconception that Monmouthshire is not part of Wales. Things got off to a bad start in Radnorshire when the Justice was murdered by robbers on his way to Rhayader. As a result, the Sessions were moved to Presteigne – just a few hundred yards from the safety of the English border. In addition, the Council of Wales and the Marches, established by Edward IV in 1473 with its seat in Ludlow, continued to exercise an important jurisdiction – including an equity jurisdiction - over Wales and substantial areas of England until it was finally abolished in 1689. [26]

The Acts of Union were largely welcomed in many quarters in Wales, in particular by the gentry who seized the opportunities which were now open to them[27]. While young Welshmen had studied at the Inns of Court in London and in the ancient universities since the middle ages, there was now a dramatic increase in their numbers. Professor Watkin calculates that in the

[24] Thomas Glyn Watkin, op. cit. 128-30, 145-67; Glanmor Williams, op. cit. 339-40.
[25] The Justice of North Wales in what had been the Principality and was now the counties of Anglesey, Caernarfon and Meirionydd, the Justice of Chester in Flintshire, Denbighshire and Montgomeryshire, the Justice of Brecon in Radnorshire, Brecknock and Glamorgan, and the Justice of Carmarthen in Carmarthen, Cardiganshire and Pembrokeshire.
[26] Thomas Glyn Watkin, op. cit., 131-4, 140-4, 147-8, 150-1; Glanmor Williams, op. cit. 336-7. The Council was first abolished with the other prerogative courts in 1641 but was resurrected following the restoration in 1660.
[27] Glanmor Williams, op. cit., 275-8.

century following the union over 2,000 Welshmen studied at Oxford and Cambridge and almost 700 entered the Inns of Court and he observes that law was the profession perceived to be particularly favoured by Welshmen.[28]

The Courts of Great Session eventually became subservient to the English courts. In 1723 the Court of King's Bench asserted its concurrent jurisdiction in criminal matters in *R v. Athos*.[29] Thomas Athos, Mayor of Tenby, and his son were accused of murder. The Attorney General succeeded in having the case transferred from the Great Sessions in Pembrokeshire to Hereford Assizes where they were convicted. On a jurisdictional challenge the Court of King's Bench upheld the convictions. Early in the proceedings that court observed that

> "it was very difficult to have justice done in Wales by a jury of Welshmen, for they are all related to one another, and therefore would rather acquit a criminal than have the scandal that one of their name or relations should be hanged; and that to try a man in Wales for murder was like trying a man in Scotland for high treason, those being crimes not much regarded in those respective places."[30]

An attempt to establish a concurrent jurisdiction of the King's Bench in civil matters failed in *Lampley v Thomas* in 1747[31] but succeeded in *Lloyd v Jones* in 1769[32]. This led eventually to the decline of the Great Sessions and their abolition in 1830 when the "separate jurisdiction" was ended and the Assize system was extended to Wales.[33] Thereafter the machinery of justice in Wales was largely indistinguishable from that in England despite largely unsuccessful attempts during the nineteenth and twentieth centuries to secure some recognition of the distinct needs of Wales within the legal system of England and Wales.[34]

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[28] Thomas Glyn Watkin, op. cit. 138-7.
[29] (1723) 8 Mod. 136. See Professor Sir David Williams QC, The Law of England and Wales: The Welsh Contribution, (2005) Transactions of the Honourable Society of Cymmrodorion 161, 166-7 where the author also draws a parallel with the trial of Saunders Lewis, the Revd. Lewis Valentine and D.J. Williams at the Old Bailey in 1936.
[30] For an account of the functioning of the Great Sessions in the eighteenth century see Geraint H. Jenkins, The Foundations of Modern Wales, Wales 1642-1780, (1987), 334-7.
[31] (1747) 1 Wils. 193.
[32] (1769) 1 Dougl. 213, n. 10. See also *Penry v Jones* (1779) 1 Dougl. 213.
[33] An Act for the more Effectual Administration of Justice in England and Wales (The Law Terms Act), 1 William 4, c. 70; Bowen, op. cit. 239.
[34] Sir John Thomas, Legal Wales: Its Modern Origins and its role after Devolution: National Identity, the Welsh Language and Parochialism, in Thomas Glyn Watkin (ed.), Legal Wales: Its Past, Its Future (Welsh Legal History Society, 2001) 113.

The advent of devolution

The advent of devolution has meant that, for the first time since the age of the Tudors, it is meaningful to speak of Welsh law as a living system of law. It has to be said that the Welsh showed themselves initially reluctant to take up devolution. A heavy defeat for the devolutionists in a referendum in 1979 was followed by the narrowest possible victory in the 1998 referendum. Moreover, the first devolution settlement for Wales was a pale shadow of that for Scotland and was not well thought through. As Professor Sir David Williams observed, Wales was whisked into devolution on the hem of a kilt. Nevertheless, Wales has seen the most extraordinary constitutional changes in recent years. In the space of the last 20 years we have witnessed a rapid process of the evolution of devolution and have seen four constitutional settlements.

Under the first, the Government of Wales Act 1998 created a National Assembly for Wales, but it was not given the power to make primary legislation. Rather it was limited to making subordinate legislation under powers previously vested primarily the Secretary of State for Wales.

In the second phase, the Government of Wales Act 2006 formally recognised the distinction between the executive and legislative functions of the Assembly which had already emerged in practice. But it also made provision for the first time for the Assembly to acquire primary legislative powers in a piecemeal manner within twenty fields.[35] Unhappily, this system was extremely slow and of Byzantine complexity. Although it was intended to last a generation, in fact it lasted for only one session of the Assembly and was superseded after only four years.

The third phase of devolution came about because the 2006 Act included another model for legislation. It provided that following a positive result in a referendum, the Assembly would acquire the power to legislate under Part 4 of the Act in relation to the twenty specified subjects

[35] The scheme, which entered into force automatically under the 2006 Act, contemplated that the Assembly would gradually acquire primary legislative competence in a piecemeal manner by the insertion of matters into the identified fields, in respect of which the Assembly would be permitted to adopt legislative measures. This could be done either by an Act of the Westminster Parliament or, following an application by the Assembly to the Westminster Parliament, by an Order in Council – a legislative competence order or LCO.

without any requirement of approval by the Westminster Parliament or the United Kingdom government. Following a referendum in March 2011, that system was brought into force.[36]

The fourth phase of devolution in Wales is another fundamental development. Whereas previously powers had been devolved to the Assembly and the Welsh Ministers on a devolved powers basis, the Wales Act 2017 amends the Government of Wales Act 2006 to give the National Assembly the power to legislate on matters which are not reserved to the UK Parliament.[37] Corresponding provision is made for executive powers.[38] Although the intention had been to put devolution in Wales on a stable and enduring footing by the 2017 Act, it remains to be seen how long this fourth settlement will last in its present form, in particular having regard to the consequences of the United Kingdom's withdrawal from the European Union.

So, Wales now has its own legislature and its own government, although the competence of both is limited and subject to the overriding sovereignty of the United Kingdom Parliament.[39] The new Welsh statute law extends to England and Wales – it is a part of the law of England and Wales – but it applies only in relation to Wales. It is an inevitable consequence of devolution that we are already seeing a considerable divergence between the statute law of England and that of Wales within the non-retained areas – for example in the fields of health, social services, education, planning, residential tenancies – and with time that divergence is bound to increase.

The Supreme Court decisions

The Supreme Court has the role of interpreting the devolution legislation relating to all parts of the United Kingdom and of ruling upon whether a devolved legislature has exceeded its powers. In the system under Part 4 Government of Wales Act 2006, which came into force following the referendum in 2011, the Assembly was given power to make Acts in relation to a substantial number of devolved subjects listed under twenty headings.[40] The Wales Act 2017 substitutes new

[36] See, generally, Thomas Glyn Watkin, op. cit. 200-6.
[37] Wales Act, 2017, section 3 (substituting section 108A for section 108 of the Government of Wales Act 2006), Schedules 1 and 2 (substituting Schedules 7A and 7B for Schedule 7 of the Government of Wales Act 2006).
[38] Wales Act 2017, section 19 (inserting section 58A into the Government of Wales Act 2006).
[39] Thomas Glyn Watkin, op. cit. 211.
[40] Government of Wales Act 2006, section 108, Schedule 7, Part 1 (as enacted).

provisions on legislative competence.[41] An Act of the Assembly is not law so far as any provision of the Act is outside the Assembly's legislative competence.[42]

Part 4, Government of Wales Act 2006, both in its original form and as amended by the Wales Act 2017, therefore seeks to define the boundaries of the appropriate scope of legislative power of the Assembly but the successive arrangements approach the issue from different directions. This is an area where total precision is unattainable. As Lord Hope pointed out in the *Local Government Byelaws (Wales) Bill* case, when enacting the Government of Wales Act 2006 Parliament had to define, necessarily in fairly general and abstract terms, permitted or prohibited areas of legislative activity. The aim was to achieve a constitutional settlement and, although the description of the 2006 Act as being of constitutional significance cannot be taken, in itself, as a guide to interpretation, it is appropriate to have regard to that purpose if help is needed as to what the words mean.[43]

The Attorney General for England and Wales or the Counsel General for Wales can refer to the Supreme Court the question whether an Assembly Bill, or any provision of an Assembly Bill, is within the legislative competence of the Assembly.[44] When performing this function the Supreme Court does not apply the normal principles of judicial review (for example, the principle of irrationality). The approach, first enunciated in relation to the Scottish Parliament, applies equally to the Welsh Assembly. As Lord Reed explained in the *AXA* case[45] - a case concerning the Scottish Parliament - it was the intention of Parliament in establishing the Assembly that it should have plenary powers within the limits set by statute upon its legislative competence. Since its powers are plenary, they do not require to be exercised for any specific

[41] Wales Act 2017, section 3 (substituting section 108A for section 108 of the Government of Wales Act 2006), Schedules 1 and 2 (substituting Schedules 7A and 7B for Schedule 7 of the Government of Wales Act 2006).
[42] In particular an Act will be outside legislative competence if it relates to reserved matters (section 108A(2)(c)). Reserved matters are identified in Schedule 7A. An Act will also be outside competence if it breaches any of the restrictions in Part 1 of Schedule 7B Section 108A(2)(d). Schedule 7A addresses reserved matters in 200 paragraphs. Schedule 7B sets out general restrictions including restrictions concerning the law on reserved matters, private law and criminal law.
[43] *Re Local Government Byelaws (Wales) Bill 2012* [2012] UKSC 53; [2013] 1 AC 792 per Lord Hope at [79]-[80]; *Re Agricultural Sector (Wales) Bill* [2014] UKSC 43; [2014] 1 WLR 2622 per Lord Reed and Lord Thomas at [6].
[44] Government of Wales Act 2006, section 112.
[45] *AXA General Insurance Ltd. v. Lord Advocate (Scotland)* [2012] AC 868 at [52], per Lord Reed at [147].

purpose or with regard to any specific considerations.[46] It is in principle accountable for the exercise of its powers within the limits set to the electorate rather than the courts.

That the delimitation of powers can give rise to problems in practice is apparent from the three decisions of the Supreme Court to date on the scope of devolved powers in Wales.[47] These cases do, however, provide guidance on the approach which can be adopted in considering this issue. For example, the *Local Government Byelaws case* casts light on the extent to which it is possible to interpret a provision narrowly so that it falls within the area of the Assembly's legislative competence.[48] In the case concerning the *Agricultural Sector (Wales) Bill* the Supreme Court, having concluded that the legislation fell within the devolved field of "agriculture" went on to consider whether legislation would nevertheless fall outside the Assembly's legislative competence if it might be considered to relate also to another subject not within the Assembly's competence. It concluded that it would not. The legislation does not require that a provision should only be capable of being characterised as relating to a devolved subject.[49] Nevertheless, this remains an area of potential difficulty as can be seen from the third case, *Re Recovery of Medical Costs for Asbestos Diseases (Wales) Bill*, where the members of the Supreme Court went to great lengths in scrutinising the underlying policy of the Bill, but the views expressed in the Supreme Court varied considerably.

The new body of Welsh law: codification

The Welsh Assembly and the Welsh Government have made extensive and enthusiastic use of their law-making powers. There is, perhaps, a lack of appreciation in England of the pace and scale at which English and Welsh statute law are diverging in many different areas. To take one example, the Welsh law of residential tenancies will soon be entirely different from that of

[46] It follows that grounds of review developed in relation to administrative bodies which have been given limited powers for identifiable purposes, and which are designed to prevent such bodies from exceeding their powers or using them for an improper purpose or being influenced by irrelevant considerations, generally have no purchase in such circumstances, and cannot be applied. Its decisions as to how to exercise its law-making powers require no justification in law other than the will of Parliament.

[47] *Re Local Government Byelaws (Wales) Bill 2012* [2012] UKSC 53; [2013] 1 AC 792; *Re Agricultural Sector (Wales) Bill* [2014] UKSC 43; [2014] 1 WLR 2622; *Re Recovery of Medical Costs for Asbestos Diseases (Wales) Bill* [2015] UKSC 3; [2015] 2 WLR 481.

[48] *Re Local Government Byelaws (Wales) Bill 2012* [2012] UKSC 53; [2013] 1 AC 792 per Lord Neuberger at [64].

[49] *Re Agricultural Sector (Wales) Bill* [2014] UKSC 43; [2014] 1 WLR 2622 per Lord Reed and Lord Thomas at [67].

England, the National Assembly having implemented, in the Renting Homes (Wales) Act 2016, Law Commission recommendations which have not been implemented in England. [50]

However, there are serious problems of accessibility attending this new body of statute law.[51] It can often require a great deal of skill and perseverance in order to identify which particular statutory rules apply in a given area and this can often involve piecing together a number of different statutory provisions from a variety of sources. There are several causes of this unsatisfactory state of affairs. One is a result of the way in which devolution has developed. For example, the fact that powers to make subordinate legislation have been transferred under successive devolution settlements often makes it unclear which body has the power to make law or to exercise legal powers. A second cause of the impenetrability of legislation applicable to Wales is that primary legislation in the devolved areas may now be amended by both the Westminster Parliament and the National Assembly. This is a further source of confusion. Thus, for example, it can be the case that within a single section of a Westminster statute some subsections apply to England and Wales, some to England alone and some to Wales alone.[52] A third source of difficulty in this regard – but one which is not connected with the consequences of devolution or indeed limited to Welsh law - is that the traditional style of amendment employed in Westminster is just to publish the amendment – not the amended text. On its face, the statutory provision is meaningless. Unless you relate it back to the statute that is being amended you can have no idea of what it means. Given that in many instances a statutory provision is amended time and time again, this can result in an impenetrable mess. A fourth cause of the difficulty – and perhaps the biggest single cause - is the sheer volume of legislation which is scattered all over the statute book. To use a much-cited example provided by the Law Commission, depending on how widely "the law of education" is defined, the law which applies to education in Wales is to be found in between 17 and 40 Acts of Parliament, 7 Assembly Measures and 6 Assembly Acts, as well as hundreds of statutory instruments[53].

Concern was such that in 2013 the Welsh Government asked the Law Commission to undertake a project on the form and accessibility of the law applicable in Wales. Following an extensive

[50] Rhentu Cartrefi yng Nghymru / Renting Homes in Wales, Law Commission No 337, Cm 8578, (2013).
[51] See, generally, David Lloyd Jones, The Future of Welsh Law [2015] 45 Cambrian Law Review 21.
[52] See, for example, Education Act 1996, section 569.
[53] Form and Accessibility of the Law Applicable in Wales, Law Commission No 366, (2016), para 7.2.

consultation[54], the Law Commission reported in 2016 making a large number of recommendations for the codification of Welsh statute law.[55] I am delighted to say that nearly all of those recommendations have been accepted by the Welsh Government[56] which agrees that a sustained, long term programme of consolidation and codification of Welsh law would deliver societal and economic benefits and is desirable in order to ensure that the laws of Wales are accessible. The Welsh Government considers that this would make the work of the Government and the Assembly in developing new laws, and in scrutinising them, considerably more straightforward and therefore more efficient. Indeed, in one respect it has gone further than the Law Commission recommendations in that it proposes that the codification should include both primary and secondary legislation. As a result, the Legislation (Wales) Act 2019, which came into force on 11 September 2019, provides that the Counsel General must keep the accessibility of Welsh law under review[57] and that Welsh Ministers and the Counsel General must prepare a programme to improve the accessibility of Welsh law, including an ongoing process of consolidation and codification.[58] All involved are well aware of the huge nature of the undertaking which will make great demands of time and resources and that this work will take many years to achieve. However, a start has been made on the codification exercise at a time when the problem is remediable. And it is gratifying to imagine this exercise bringing a smile to the face of that first codifier of Welsh laws, Hywel Dda.

The curious situation of Wales

The context in which Welsh statute law is made and in which it operates is curious, to say the least. Wales and England form one legal jurisdiction, whereas Scotland and Northern Ireland are distinct jurisdictions with their own legal systems. Wales is not a separate country for the purposes of private international law. But the reality is more complex than that and may well be unique. England and Wales is one legal district with two legislatures: a sovereign legislature in Westminster with the power to make law for the entire unit and a devolved legislature in Cardiff with the power to make law for Wales.

[54] Form and Accessibility of the Law Applicable in Wales: A Consultation Paper, Law Commission Consultation Paper No 223, (2015).
[55] Form and Accessibility of the Law Applicable in Wales, Law Commission No 366 (2016).
[56] The Future of Welsh Law: Classification, Consolidation, Codification, Welsh Government Consultation Document No WG39203, 17 October 2019, para 24.
[57] Legislation (Wales) Act 2019, section 1.
[58] Legislation (Wales) Act 2019, section 2.

Wales and England continue to share one courts system – as they have done since 1830 – and to share the legal professions of barristers, solicitors and legal executives. Moreover, under the Government of Wales Act the single legal jurisdiction of England and Wales is a reserved matter. Courts, judges and civil and criminal legal proceedings are all reserved matters.[59] However, a substantial body of public opinion in Wales is now calling for the establishment of a separate jurisdiction for Wales, as a counterpart to the devolution settlement. In recent years this proposal has been considered by a number of enquiries established by the Welsh Government.[60] The All Wales Convention chaired by Sir Emyr Jones Parry, which reported 2009, found a general consensus in Wales that, at that time, a separate jurisdiction was not required. In 2014, the Silk Commission on Devolution in Wales was not convinced of the case for devolving the courts system or creating a Welsh judiciary and legal profession at that time but recommended, in the light of the growing body of Welsh law, that this be reviewed within ten years.[61]

The Commission on Justice in Wales chaired by Lord Thomas of Cwmgiedd, which reported in October 2019 has now made recommendations which, if implemented, would bring about major changes in the administration of justice in Wales. It identifies a fundamental problem arising from the split between two governments and two legislatures of responsibilities for justice on the one hand and social, health, education and economic development policies on the other. As a result, it recommends legislative and executive devolution of the administration of justice. Restrictions and reservations governing the Assembly's power to legislate on all forms of justice, including policing and offender management and rehabilitation, should be removed.[62] In parallel, it recommends that responsibility for executive functions in relation to justice in Wales should be transferred to the Welsh Government.[63] It also calls for the law applicable in Wales to be formally identified as the law of Wales, distinct from the law of England, on the ground that it is

[59] Government of Wales Act 2006, Schedule 7A, para 9.
[60] It concluded that while Wales needed appropriate legal institutions and systems to support the progress of devolution and the developing legislative competence of the National Assembly for Wales, a separate Welsh jurisdiction was not a precondition for the development of increased legislative competence, even if the Assembly were to acquire Part 4 powers. (All Wales Convention Report, para3.9.22.)
[61] It considered that, in view of the emergence of a distinct body of Welsh law that will need to be adequately administered, a separate Welsh courts system and a separate Welsh judiciary is something that must be contemplated in the future. It recommended that the UK and Welsh Governments review the case for this within the next ten years. (Commission on Devolution in Wales, Empowerment and Responsibility: legislative powers to strengthen Wales, March 2014, para 10.3.36.)
[62] Commission on Justice in Wales, Justice in Wales for the People of Wales; Comisiwn ar Gyfiawnder yng Nghymru, Cyfiawnder yng Nghymru dros Bobl Cymru, 24 October 2019, Recommendation 58, para 12.63
[63] Recommendation 59, para 12.63.

confusing that Welsh law and English law are held to be part of a single legal system.[64] Perhaps most fundamentally of all, it recommends the creation of a separate courts system: the Assembly, it says, should legislate to create a High Court of Wales and a Court of Appeal of Wales.[65] These recommendations would, of course, bring the administration of justice in Wales more closely in line with the position in Scotland and Northern Ireland.

There, perhaps, is a glimpse of what the future might hold. These are, of course, largely political matters and it would not be appropriate for me as a serving judge to comment on them. What I can draw to your attention, however, is the remarkable ways in which the administration of justice has already evolved in Wales since the advent of devolution, in recognition of the distinct character and needs of Wales.[66]

- Wales is served by a professional judiciary with a very strong Welsh identity and which has created its own distinctive institutions.[67]
- Wales now has its own tribunals system operating in relation to devolved subjects, such as special educational needs and mental health, in parallel to a system of cross-border tribunals operating in relation to reserved matters. The Wales Act 2017 put this on a statutory footing with a unified structure and created the judicial post of Senior President of Welsh Tribunals.[68]
- It is a remarkable fact that until 2009 all public law proceedings in England and Wales were required to be heard in London. The decentralisation of the Administrative Court in 2009 was taken up with enthusiasm in Wales. The Administrative Court in Wales has the power to review acts of the Welsh Government and has facilitated the hearing of public law cases in any court centre in Wales for the convenience of the parties.
- Formal links have been established between the judiciary and the Welsh Assembly and the Welsh Government, with regular meetings taking place between the Lord Chief Justice and the First Minister.

[64] Recommendation 73, para 12.123
[65] Recommendation 75, para 12.159
[66] See, generally, David Lloyd Jones, The Machinery of Justice in a Changing Wales, (2010) 16 Transactions of the Honourable Society of Cymmrodorion, N.S., 123.
[67] The Association of Judges of Wales was founded in 2008.
[68] Wales Act 2017, sections 59 – 64.

- The Welsh Government works enthusiastically with the Law Commission of England and Wales which has secured amendments to the Law Commissions Act 1965 permitting Welsh Ministers to refer law reform projects to the Commission and requiring Ministers to report annually to the Assembly on implementation of Law Commission recommendations.[69]
- Uniquely, both the Civil and Criminal Divisions of the Court of Appeal sit regularly in Wales. And in July 2019 the Supreme Court of the United Kingdom sat in Wales for the first time.
- Perhaps most distinctive of all is the extensive use of the Welsh language as of right in the courts in Wales.

The Welsh Language

It is to the use of the Welsh language in courts and in legislation in Wales that I wish to turn in the time remaining. The Welsh language now has the status of an official language in Wales. The population of Wales, as recorded in the 2011 census was 3.06 million and that census recorded that 23.3% of those born in Wales were able to speak Welsh. That figure, of course, includes a range of linguistic ability, but it is estimated that about 11% of the population of Wales is fluent in Welsh. For many of these fluent speakers – in particular in the North and West of Wales, Welsh is the language of everyday life. Whereas, only 50 years ago, many would have dismissed Welsh as a dying language and its cause as a lost cause, recent decades have seen a considerable revival in its fortunes and the Welsh Government is supporting a drive to hit the target of a million Welsh speakers by 2050.

The use of Welsh in courts in Wales[70]

The history of the Welsh language and its use in the law is a troubled one. One of the reasons given in the statute of 1536 for the incorporation of Wales into the Realm of England was that

[69] Law Commissions Act 1965, sections 3(1)(ea), 3A(7), 3C, 3D, as amended by the Wales Act 2014, section 25.

[70] See Form and Accessibility of the Law Applicable in Wales: A Consultation Paper, Law Commission Consultation Paper No 223, (2015), Chapters 10-12; Form and Accessibility of the Law Applicable in Wales, Law Commission No 366, (2016), Chapters 10-12;
https://www.lawcom.gov.uk/project/the-form-and-accessibility-of-the-law-applicable-in-wales/
Lloyd Jones, (2010) 16 Transactions of the Honourable Society of Cymmrodorion, N.S., 123.

> "the People of the same Dominion have and do daily use a Speech nothing like, nor consonant to the natural Mother Tongue used within this Realm".[71]

As a result, that statute not only provided for the annexation of Wales but also included the chilling injunction:

> "Also be it enacted by the Authority aforesaid, That all Justices Commissioners Sheriffs Coroners Escheators Stewards and their Lieutenants, and all other Officers and Ministers of the Law, shall proclaim and keep the Sessions Courts Hundreds, Leets, Sheriffs Courts and all other Courts in the English Tongue;
>
> and all Oaths of Officers Juries and Inquests, and all other Affidavits Verdicts and Wagers of Law, to be given and done in the English Tongue
>
> and also that from henceforth no Person or Persons that use the Welsh Speech or Language shall have or enjoy any Manner Office or Fees within this Realm of England, Wales or other the King's Dominion, upon Pain of forfeiting the same Offices or Fees, unless he or they use and exercise the English Speech or Language".[72]

That prohibition on Welsh speakers holding office, of course, included judicial office.

In the centuries that followed the Act of Union, however, the Welsh language was remarkably resilient and it appears that it continued to be used in courts of law in Wales at all levels. It seems that the language clause was largely ignored. There was no alternative when a very large proportion of court users would have been monoglot Welsh speakers.[73] The Welsh language was also used extensively in County Courts in Wales from their creation in 1846.[74] However, this continuing use of Welsh met with considerable official disapproval. In 1847 a Government Report on Education in Wales had some strong things to say about the use of the Welsh language generally and its use in the courts in particular. Its publication inflamed public opinion in Wales to such an extent that it became known as the Treason of the Blue Books (Brad y Llyfrau Gleision). The Commissioners concluded:

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[71] An Act for Law and Justice to be Ministered in Wales in like Form as it is in this Realm of 1535/6, 26 & 27 Hen 8 c. 26, section 1.
[72] 26 & 27 Hen 8 c. 26, section 20.
[73] Glanmor Williams, op. cit. 333-4.
[74] Sir J. Thomas op. cit. 113.

> "The evil of the Welsh language … is obviously and fearfully great in courts of justice … It distorts the truth, favours fraud, and abets perjury, which is frequently practised in courts, and escapes detection through the loop-holes of interpretation … The mockery of an English trial of a Welsh criminal by a Welsh jury, addressed by counsel and judge in English is too gross and shocking to need comment. It is nevertheless a mockery which must continue until the people are taught the English language…"[75]

The solution was obvious – to stamp out the use of the Welsh language.
I am glad to say that the twentieth century brought a gradual improvement in the legal status of the Welsh language. The language clause of the 1536 Act was repealed by section 1, Welsh Courts Act, 1942. However, that provision did not confer a right to use Welsh in the courts; it merely provided that

> "… the Welsh language may be used in any court in Wales by any party or witness who considers that he would otherwise be at any disadvantage by reason of his natural language of communication being Welsh."

The great breakthrough came with the enactment of the Welsh Language Act 1967 because it provided for the first time 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.[76] Then in 1993 the Welsh Language Act established the principle that:

> "in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on the basis of equality."[77]

[75] Report of the Commissioners of Inquiry into the State of Education in Wales: Accounts and Papers, 1847, Vol. 27, Pt. ii, 66.

[76] 22. (1) In any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it, subject in the case of proceedings in a court other than a magistrates' court to such prior notice as may be required by rules of court; and any necessary provision for interpretation shall be made accordingly.
(2) Any power to make rules of court includes power to make provision as to the use, in proceedings in or having a connection with Wales, of documents in the Welsh language.
[77] Welsh Language Act 1993, long title.

These changes in legislation have been accompanied by a similar change in attitudes to the use of the Welsh language in courts in Wales. Consider these contrasting statements by senior judges. In 1943 Lord Caldecote C.J. observed extra-judicially:

> "Welsh is a foreign language to me and, to tell you the truth, I do not know that I feel very sympathetic to this plan for keeping alive what, like Erse and Gaelic, is really a dying language."

In 1967 Widgery J., later Lord Chief Justice, observed:

> "I think that is quite clear that the proper language for court proceedings in Wales is the English language. It is to my mind a complete misapprehension to believe that anybody at any time has a right to require that the proceedings be conducted in Welsh. The right which the Act of 1942 gives is the right for the individual to use the Welsh language if he considers that he would be at a disadvantage in expression if he were required to use English. That is the only right which the Act of 1942 gives, and apart from that, the language difficulties which arise in Wales can be dealt with by discretionary arrangements for an interpreter, precisely in the same way as language difficulties at the Central Criminal Court are dealt with when the accused is a Pole."[78]

By contrast Judge L.J. as he then was, in his judgment in the Court of Appeal in ***Williams v. Cowell*** in 2000 referred to the prohibitions on the use of Welsh in the 1536 Act, and added:

> "In other words Welsh people appearing in courts in Wales, litigating over problems in their own country, were prohibited from using their own language. Mr Williams and those who support him no doubt regard this legislation, and the subsequent Act of 1542 … as an outrage…[F]or what it is worth I agree with them." [79]

It seems to me that it is a basic requirement of fairness that witnesses, litigants and other court users in Wales should be allowed to express themselves in court in the Welsh language in which

[78] *R. v. Merthyr Tydfil Justices, ex parte Jenkins* [1967] 1 All ER 636.
[79] [2000] 1 WLR 187. The Court of Appeal held that there was no statutory basis for permitting proceedings in Welsh when sitting in London. However, the Employment Appeal Tribunal now sits in Wales. R.G. Parry "Yr Iaith Gymraeg a'r Tribiwnlys Apel Cyflogaeth – ystiried y penderfyniad yn *Williams v. Cowell*" (2001) 1 Wales Law Journal 178; Timothy H. Jones and Jane M. Williams, Wales as a Jurisdiction, [2004] Public Law 78, 98.

they conduct their everyday lives. Today Welsh is used frequently in courts and tribunals in Wales, with simultaneous translation into English. In the year to March 2019 there were 766 cases conducted wholly or partly in Welsh. Most of these cases were in courts in North West Wales which remains the heartland of the language. There were 37 in the Crown Courts, 400 in County Courts, 311 in Magistrates' Courts and 18 in Tribunals. In 2006 a murder trial was conducted entirely in Welsh at Caernarfon Crown Court. And I should mention a particularly notable use of the Welsh language to present detailed legal argument when in 2014 the Welsh Language Commissioner challenged in the Administrative Court the decision of National Savings and Investments to withdraw its Welsh language scheme.[80] The Commissioner won.

On the foundation laid by the Welsh Language Act, there has developed a Welsh-speaking judiciary. Including the part time judiciary, 30% of Welsh judges speak Welsh, with the figure rising to 39% among the Circuit Judges.[81] Over 200 magistrates are able to conduct cases in Welsh.

It is not all plain sailing, however. There is a huge difference between the Welsh of everyday conversation and the more formal Welsh which has to be used in court. In particular, technical legal terms in Welsh are not part of the everyday vocabulary of most Welsh speakers. Recent academic research has revealed a number of cases where the defendants, having chosen Welsh as the language of the case, were unable to follow the proceedings. One is quoted as saying:

> "I didn't understand what was happening it was so posh."[82]

There is a story about a bail application before the Caernarfon Magistrates which was conducted entirely in Welsh at the defendant's request. At the end of the hearing the Chairman announced in Welsh that they had decided to grant bail - "Yr ydym ni wedi penderfynnu caniatau mechniaeth" - the Welsh word for bail being "mechniaeth". Whereupon the defendant shouted out,

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[80] *R (Welsh Language Commissioner) v National Savings and Investments* [2014] A.C.D. 95

[81] Commission on Justice in Wales, Appendix A 70.

[82] Iolo Madoc-Jones and Odette Parry, "It's always English in the Cop Shop": Accounts of Minority Language Use in the Criminal Justice System in Wales, The Howard Journal of Criminal Justice, Vol. 52, No. 1, 91, 101.

"I don't want bloody mechniaeth, I want bloody bail."

Welsh as the language of legislation[83]

In modern Wales, Welsh is now a language of legislation. Section 156 of the Government of Wales Act 2006 provides that the English and Welsh texts of any Assembly Measure or Act of the Assembly which is in both English and Welsh when it is enacted, or any subordinate legislation which is in both English and Welsh when it is made, are to be treated for all purposes as being of equal standing.[84] Virtually all of the primary and secondary legislation made in Wales since 2007 has been bilingual.[85] So, something quite remarkable has happened. We have, for the first time in the United Kingdom, bilingual legislation.[86]

Legal Terminology

Welsh is a highly sophisticated language, suitable for the expression of complex legal concepts and issues. Law courses in the medium of Welsh are offered at all five Welsh law schools and legal textbooks in Welsh for all the core subjects have been produced. The Law Commission of England and Wales issues publications in both English and Welsh and many learned legal articles are published in Welsh. The suitability of Welsh as a medium for modern legal communication and debate is therefore not in doubt.

Essential to this function has been the development of a modern standardised legal terminology which equips Welsh for use as a legal language. This process is making good progress. A Welsh Legal Dictionary[87] published in 2003 contains approximately 30,000 terms. A group of practitioners and scholars has recently completed a project which has reached agreement on some 1,600 terms.[88] There is, however, much more work to be done – including the standardisation of new terminology as it is identified.

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[83] Lloyd Jones, [2015] 45 Cambrian Law Review 21.
[84] Legislation (Wales) Act 2019, section 5 is to similar effect.
[85] T.G. Watkin, Bilingual Legislation and the Law of England and Wales, (2014) 2(2) The Theory and Practice of Legislation 229 at 237.
[86] Thomas Glyn Watkin, Bilingual Legislation: Awareness, Ambiguity and Attitudes, (2016) 37(2) Statute Law Review 116.
[87] Robyn Lewis, Geiriadur Newydd y Gyfraith (Saesneg – Cymraeg) / The New Legal Dictionary (English – Welsh), (2003). This work was preceded by two other works by the same author: Termau Cyfraith / Legal Terms (1972) and Geiriadur y Gyfraith / The Legal Dictionary (1992).
[88] Termau Gweinyddu Cyfiawnder. A part of the product of this exercise is available on the website of Justice Wales Network / Rhwydwaith Cyfiawnder Cymru http://cyfiawndercymru.org.uk/?page_id=106&lang=en

Drafting bilingual legislation

Prior to the advent of devolution there was no experience in the United Kingdom of the making of legislation in bilingual form. However, the bilingual character of Welsh legislation is now central to the role of those charged with drafting it. The National Assembly and the Welsh Government have, therefore, been required to develop their own approach to the preparation of legislation in two languages. In doing so, they have sought guidance from other jurisdictions with such experience, most notably Canada, and have followed the model of New Brunswick legislation.[89]

To my mind, the principal objectives of bilingual drafting should be fidelity to the intention of the promoter of the legislation, consistency of meaning between the different language texts of the same provision, clarity of communication to two audiences, efficiency in the maintenance of a bilingual legal order and achieving effective equality between the two languages. However, I also agree with Professor Keith Bush who identifies a further objective:

> "The ideal to be achieved is a text in each language which conveys the same meaning as the other but which readers in each language perceive both to be [an] equally natural and familiar use of language."[90]

This, as he explains, is not driven by sentimentality for the language alone but by the need to achieve greater intelligibility.

[89] Bilingual Lawmaking and Justice: A Report on the Lessons for Wales from the Canadian Experience of Bilingualism, Office of the Counsel General, (2001), paras 15.4.1, 15.4.3. See, generally, Arthur N. Stone, Bilingual Drafting in a Common Law Jurisdiction in Canada, Canadian Parliamentary Review, Summer 1986; Winston Roddick QC, Law-making and devolution: The Welsh Experience, (2003) LIM 152, at pp. 154-5.

[90] Keith Bush, New Approaches to UK Legislative Drafting: The Welsh Perspective, (2004) 25(2) Statute Law Review 144 at 147.

Interpreting bilingual legislation

The fact that laws are now made in two languages which are to be treated for all purposes as of equal standing also brings completely new challenges for those required to interpret and apply them. It will be necessary to develop a body of rules concerning the approach to the identification of that meaning. The starting point must be that the bilingual texts of Welsh legislation are intended to bear a single meaning. However, there will sometimes be a tension between ascertaining that meaning and maintaining equality of the two language texts.[91]

It is likely that there will be occasions when the existence of parallel texts in English and Welsh will be of positive benefit to the attempt to ascertain the legislative intent. Professor Watkin argues for an approach to the interpretation of bilingual legislation which recognises that the exact meaning to be given to each language text depends on its meaning in the other.[92] Such an approach would mean that the legislative intention could not be ascertained from one language version alone but it would be more likely to result in a definitive interpretation.[93] On the other hand, there are likely to be occasions on which there is a conflict between the respective meanings of the two language texts which cannot be resolved in this way. It may be that in these situations neither text is capable of illuminating the other and, as a result, there is a stark choice between two incompatible meanings.[94] In these circumstances it may be appropriate to adopt the meaning which best reconciles the texts having regard to the object and purpose of the instrument.[95]

A system of legislation expressed in two languages, each of which is equally authoritative, will inevitably make fresh demands on its subjects. Moreover, this is likely to have major implications for legal education and training in Wales and for the appointment of the judiciary.

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[91] See, in the context of EU law, Schilling, Beyond Multilingualism: On Different Approaches to the Handling of Divergent Language Versions of a Community Law, (2010) 16 European Law Journal 47 at 51 et seq.; Solan, The Interpretation of Multilingual Statutes by the European Court of Justice (2009) 34 Brook Journal of International Law 278 at 279 et seq.

[92] Thomas Glyn Watkin, Bilingual Legislation: Awareness, Ambiguity and Attitudes, (2016) 37(2) Statute Law Review 116 at 121-122

[93] This approach could be beneficial, for example where the meaning in one language is wider than that in the other but includes the meaning in the second. However, it would not necessarily follow in all cases that the intended meaning was the narrower meaning. The answer may depend on what alternatives may have been available to the draftsman.

[94] Such a situation might arise, for example where the English and Welsh texts bear inconsistent meanings which do not coincide at all.

[95] See, by analogy, Vienna Convention on the Law of Treaties, 23 May 1969, 1155 United Nations Treaty Series 331, Article 33(4).

Conclusion: Legal Wales

Although today only a minority of the people of Wales speak Welsh, the language has played a vital part in maintaining our national identity. It is, perhaps, still our foremost defining feature. At the start of this lecture I suggested that there was a time, in the middle ages, when law was also a defining characteristic of the Welsh people and the Welsh nation. Cyfraith Hywel – the laws of Hywel Dda – have long ceased to exist as a living system of law. In more recent times, we Welsh have sought to define ourselves and our national identity by reference to a variety of other characteristics and enthusiasms – our history, religion, education, poetry, music and rugby football among them. Today, however, there is a growing appreciation of the rich legal history of Wales and I wonder whether it is too bold to suggest that, at the start of a new millennium, in the changed circumstances brought about by devolution, the codified statute law of Wales could – just possibly – become, once again, a defining national characteristic of which we can be proud.