



Address given to an IWA Swansea Bay Branch Lunch on the 17th June 2002 by Carolyn Kirby, Vice-President of the Law Society of England and Wales.

The Contribution of the Legal Profession to the Future Economic and Social Development of Wales

Ladies and Gentlemen,

I am truly honoured but also somewhat daunted at the prospect of addressing you today. I am honoured because I am an enormous admirer of the work of the Institute of Welsh Affairs and its contribution to the intellectual life and public discourse in Wales, particularly post-devolution. But that is also why I am daunted. The sheer scope of your activities from publications such as *Building a Civil Culture* to regular monitoring reviews of the National Assembly, to discussion meetings on topics such as "The Malcontents of Feral Capitalism" makes the challenge of entertaining a distinguished IWA audience, in the 30 stomach-rumbling minutes before lunch, all the more acute.

Notwithstanding this, over the next 30 minutes I hope to set out for you some views on the role the legal profession has played in recent developments in Wales and how it might contribute to the future economic and social development of Wales. At the outset, I would like to make a few points by way of background to the scope of my comments.

I should explain that the Law Society of England and Wales is an apolitical organisation. We did not, for example, take a position one way or the other on devolution for Wales. We would never express a view on which party should be in or out of Government, either in the Westminster parliament or the Assembly. Likewise, the Law Society does not take a position on joining or staying out of the Euro.

The apoliticism of the Law Society does not mean, however, that we do not take a stance on some important issues, it merely governs how we make our representations and the manner in which we do so. So, for example, we take a huge interest in the efficient working of Government and representative structures, law reform, the administration of justice and, importantly, citizens' access to justice. We try to represent faithfully the legal profession's interest in these issues. More often than not, it is exactly the same as our clients' interests.

This is why in the run up to the establishment of the National Assembly we sought straightaway to contribute to the development of the processes by which the Assembly would make and communicate law, and the processes by which it would involve the public and interested parties when doing so. It also means that we have a huge interest in ensuring that the legal profession fulfils its potential, provides an excellent service to the community both to individual members of the public and to the business sector, and contributes to the wider economic and social development of society in Wales and in England.

So I hope today to sketch how we in the Law Society think the legal profession can contribute to the considerable challenges facing Wales in the future. I will do so under three themes:

1. economic and business development
2. community development;
3. governance of Wales.

My remarks today draw heavily on the work of others including the Law Society's own Strategic Research Unit, much useful work done by the Welsh Development Agency and recent papers delivered at a number of high profile seminars and lectures, some, I am pleased to say, sponsored by the Law Society. It seems to me that one of the very positive developments post-devolution has been a heightened engagement by various groups and professions in the community in Wales in debate about the Principality's future development.

For example, the legal challenges posed by devolution have, I think, brought the legal academic community, the two branches of the legal profession and law makers in Wales together in an unprecedented way. It was prompted by our concerns that law making by the National Assembly should be well thought out, transparent and clearly communicated. Otherwise, there was a real danger that law in Wales would diverge considerably from that of England but no one would be able to define clearly what the differences were, or what the current state of the law in Wales would be at any given point. Working together we have made substantial progress with the Assembly, although more remains to be done. But coming together to tackle these issues has led to considerable other benefits. Since devolution, the legal profession is thinking more deeply and in a much more integrated way about its own development and the contribution it can make to Wales. The concept of "Legal Wales" has taken root. A further benefit is that as well as working together in a more unified way, I believe that the legal community has also become more outward facing and is linking better with some of the new and well established institutions in Wales.

It is enormously important that the legal profession continues to build on developing the "Legal Wales" concept. Wales needs a vibrant, indigenous, legal profession offering the full range of expertise and specialisms required for a developing economy.

Let me paint a picture of the solicitors' branch of the legal profession in Wales. There are around 3,000 solicitors practising in Wales. Of these 2,430 work in private practice distributed among 480 firms. In Wales there is one solicitor in private practice per 1,210 members of the population. This is a lower density than that for England and Wales as a whole where the ratio is 1:830. You will, undoubtedly, be relieved to know that it is substantially lower than the ratio of lawyers to members of the American population which is now thought to be about 1:270!

As you might expect, private practice firms in Wales earned gross fees of approximately 66% of the average earned in England and Wales as a whole, and that's excluding London. Gross fees per principal in Wales were 76% of the average earned in England and Wales as a whole. And, following on from this, it will not surprise you that the median earnings of private practitioners in Wales were £35,000 in 2001 compared to £41,000 overall for England and Wales.

Practising in Wales offers a less exciting economic prospect to young people entering the profession. Roughly 4% of the total numbers of solicitors in the Roll are from Wales, but we know that only 2.3% of trainee registrations last year were placed within organisations headquartered in the principality of Wales. This can easily be explained. Most trainee solicitors in Wales last year were paid less than £12,000 (typically they carry £10,000 debt) and it was only 70% of the average salary paid to trainees in England and Wales as a whole. You might be tempted to say "well, let them go and eat cake and enjoy the rich pickings at a large City of London firm" but the low level of trainee participation has profound implications for the future of the legal infrastructure in Wales.

For it is my belief that in order to help develop sound economic infrastructure in Wales we have to have a healthy vibrant legal profession and vice versa. Finding our way through this chicken and egg conundrum this presents a challenge for us all.

I think that is more than enough statistics about the solicitors and, of course, I do not expect you to assimilate them in any detail. I quote them merely to reflect that the legal profession largely mirrors the current economic position of Wales and it faces much the same challenge as other sectors in Wales in terms of catching up with our bordering neighbour.

I would now like to go on to give an overview of the economic contribution that legal services makes to the Welsh economy. And, here, I want to acknowledge that I am drawing very heavily on a recent, and deeply thoughtful analysis presented by Roy Thomas of the Welsh Development Agency.

The position of Welsh gross domestic product per head of population vis-à-vis the UK as a whole is, I am sure, well known to you. However, to remind you, in 1999 in Wales it was at about 80% of the UK average. Interestingly, as Roy Thomas indicated, research undertaken by Cardiff University shows that legal services in

Wales generate around £250 million of GDP (almost 1% of the total). This compares with 1.5% for agriculture and 3% for banking. So the current contribution is small but significant. I would argue, however, that it is a percentage that needs to rise and, if it begins to rise, will be an indicator of the rising prosperity of Wales as a whole. An enormous amount of attention is, paid, rightly, to agriculture. But, isn't it time to think about paying the same kind of attention to the development of our legal infrastructure?

No one could argue with the National Assembly's vision for Wales in 10-15 years. Its vision describes "a prosperous Welsh economy that is dynamic, inclusive and sustainable based on competitive businesses and skilled and motivated people."

And the Welsh Development Agency has identified what it calls "winning Wales targets". It says if Welsh GDP per head is to reach 90% of the UK average by 2010 then Welsh GDP has to grow by around 3.2% a year. The forecast for the UK as a whole over this period is 2.2% a year.

As I have already mentioned, I believe it is heartening to see a stronger interface than ever before between the legal profession, the academic community and the business community on how we can all work together for the future development of Wales. We need to keep up this dialogue because the legal profession is an essential core element of the infrastructure needed to facilitate the kind of economic development that would be required to sustain these goals.

That is why we in the Law Society are so concerned about the current economic position of many practitioners in Wales and concerned with how we can make the prospect of practising law in Wales more attractive. Cynics might say that lawyers will follow the money. When there is more lucrative work available in Wales, the lawyers will come and do it. But I believe that we need to be more proactive than that and should be working actively to create a much larger cadre of lawyers in Wales who are committed, equipped and skilled to play their role in driving forward the economy of Wales. The Welsh Development Agency talks in its corporate plan about important linkages: the need for competitive businesses in and into Wales, competitive communities and competitive people. This strikes a chord. We need the brightest and best young people entering our profession to be attracted to a career in Wales.

We are particularly fortunate in Wales in the calibre of people who teach law in our third level institutions. The challenge is to capture our qualified law graduates and keep them rooted in legal practice in Wales. But, to do that, we have to offer them a vision of an expanding and economically challenging society that will reward their energy, talent and enterprise.

We need to encourage the legal profession to develop and expand in Wales, to bid competitively for the work arising out of inward investment and to promote actively its services to entities that have to do business in Wales or connected to Wales.

And, of course, the business community can contribute to this by choosing to place its legal work with firms in Wales.

Let me move on now to the contribution of the legal profession to the social development of Wales although all of these themes are, of course, highly interconnected. I mentioned earlier some stark statistics about the nature of private practice in Wales and how it lags far behind the earnings potential enjoyed in some of the regions of England.

A frustration for the legal profession in Wales is the failure by successive governments to recognise that the provision of legal services is an important element of a community's infrastructure. In common with many other sectors, the legal profession has suffered from the blinkered view of government policy makers that, somehow, a one sized policy solution will suit all regions of England and Wales.

Let me give you some examples. Legal practitioners in Wales have continuing concerns about the policy of court closures as it has taken effect in Wales. It is part of a cost cutting exercise by the Lord Chancellor's Department, that has seen the closure of many local magistrates courts throughout England and Wales. We know our senior judiciary here in Wales have given great thought to the use of court buildings in Wales and have a draft consultation paper proposing a significant but sensible rationalisation of premises and services across the judicial system in Wales. However, it seems that this consultation paper is being sidelined when, in fact, it could be a very useful contribution to the current review process of the entire criminal justice system being undertaken by the Westminster parliament.

The court service appears to think that court closures based purely on numbers have no greater effect in Wales than anywhere else. This is simply not the case. And this approach fails to take into account the public interest in its widest sense. It ignores the dangers of creating further social exclusion by denying ready access to justice to people who live in remote areas and/or who may already be marginalised. In simple economic terms, it fails miserably to take into account the real cost of court closures in terms of the cost of travelling time of practitioners, defendants, victims, witnesses and their advisers.

Recent changes to the structure of delivery of publicly funded legal services have had a serious effect on clients' access to justice in Wales. Many of the firms in the more rural parts of Wales were too small or insufficiently resourced to obtain franchises for publicly funded work. In the Law Society's view, the franchising rules are too inflexible to take account of the importance of providing legal services in remote locations, particularly when it comes to family work and general litigation. The piloting of the provision of such franchised services was done in relatively large towns such as Wrexham with the result that the pilots did not reflect the difficulties in the remote and least populous parts of west, south-west, mid and north Wales. And

so, the so-called "Community Legal Service" is a model that is in fact failing the most socially disadvantaged and marginalised communities.

These are not trade union points or special pleading on behalf of lawyers. The danger is that the network of independent law firms could, in time, become so severely eroded that whole communities in Wales will find themselves without access to legal services. We have great concerns, therefore, about policy making in regard to the administration of justice in Wales. Sometimes we are driven to the conclusion that it is neither integrated nor tailored in any way to the particular needs of the Principality.

It is nothing short of a disgrace that, at present, in the whole of Wales there is only one Law Centre that attracts Government funding. It is in Cardiff. A second is due to open shortly in Aberystwyth. None here in Swansea. None in North Wales.

Even though the administration of justice is still part of central government, we consider that it is vitally important that these concerns are widely understood in Wales and that the National Assembly takes account of them.

There are two possible routes to a better outcome for people needing legal assistance in Wales. Either Central Government can take a more thoughtful approach to the effects of its policies in Wales, or responsibility for the funding and administration of justice in Wales should become fully devolved.

The Law Society does not take a view on which route would be the best, but we are determined to ensure through our lobbying and representative work, that these issues are addressed.

One of the goals of economic and social development should be that people in Wales want to stay here and that some who have left will want to come back. Ensuring a sound community infrastructure has an important role to play in achieving that goal.

I think the legal profession has in recent years played a useful role in its lobbying on the development of the administration of justice in Wales. In future, this contribution to social development in Wales is going to be even more important. The need for better policy making to ensure access to justice for citizens in Wales has never been as acute.

I should mention briefly that in addition to those lawyers who work for very low rates of pay doing publicly funded legal work, there are many lawyers who also give back a great deal to the community through their voluntary work and when they work for needy clients for no fees at all.

The final aspect of my remarks today is to comment briefly on the contribution the legal profession makes to governance. I have mentioned earlier that the legal profession sought to be involved at an early stage of the National Assembly's development of law making policies and procedures. The Law Society has also

forged very productive relationships with officials, advisers and members of the National Assembly and I hope this relationship will continue to thrive.

Our major concern has been to ensure that law made by the Assembly is communicated promptly and widely in Wales so that everyone whether conducting business transactions or sorting out matters in their personal lives, can have an idea of what the law is at any given time and that their lawyers are in a position to advise them accurately and competently. And, as I mentioned earlier, I believe we have made significant progress and laws made by the Assembly are now published reasonably promptly on the website.

I hope that we can now move on to some broader governance issues and play with other sectors of the economy, a wider role in helping the National Assembly to develop its potential and deliver to the people of Wales. I believe the National Assembly is not making sufficient use of the consultative mechanisms that were provided for in its law making procedures. And I think the legal sector and the business community generally ought to combine together to ensure that their voice is heard and that we are all thoroughly consulted and given the fullest opportunity to contribute to development of legislation.

The IWA itself has provided a communication channel for some who have wished to voice significant disappointment with the achievements of the National Assembly so far.

This is not the kind of issue on which the Law Society would ever comment directly. I want only to say that our desire in the legal profession would be to work in every way possible to help the Assembly fulfil its potential. One of the ways in which it can do so is to make full and effective use of the powers it has under the Government of Wales Act and the Devolution Settlement. I would go further and say it could, if it has the will, become more creative in its approach. A micro example: it could provide for the creation of more Law Centres in needy communities via local government funding. And a macro example: it could seek to hold Central Government more firmly to account for those areas of policy and delivery that fall outside the Devolution Settlement.

Lawyers, I believe, could work very creatively with the Assembly on maximising legitimately the scope of the National Assembly's powers.

We must also, of course remember that there are many agencies of Central Government in Wales upon which citizens rely for delivery of many aspects of their day-to-day lives. Lawyers will always play an important role in enforcing the rights and entitlements of these citizens when these agencies fail them.

In my remarks today I have thrown out a couple of areas for consideration rather than presenting you with a fully joined up thesis. I think that, in part, reflects that we have embarked on an open-ended journey and it is still at its earliest stage. But, already,

there are signs that the various sectors of the Welsh economy are inter-connecting better than ever before.