



Cynulliad Cenedlaethol Cymru **The National Assembly for Wales**

Y Pwyllgor Materion Cyfansoddiadol a **Deddfwriaethol** **The Constitutional and Legislative Affairs Committee**

Dydd Llun, 25 Mehefin 2012
Monday, 25 June 2012

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal, cynhwysir
trawsgripiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In

addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

| | |
|-----------------|--|
| Suzy Davies | Ceidwadwyr Cymreig Welsh Conservatives |
| Vaughan Gething | Llafur (dirprwyo ar ran Julie James) Labour (substitute for Julie James) |
| David Melding | Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair |
| Eluned Parrott | Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats |
| Simon Thomas | Plaid Cymru The Party of Wales |

Eraill yn bresennol
Others in attendance

| | |
|--|---|
| Y Gwir Anrhydeddus/ The Rt. Hon Arglwydd/Lord Morris KG QC | Cyn Ysgrifennydd Gwladol Cymru a Twrnai Cyffredinol Former Secretary of State for Wales and Attorney General |
|--|---|

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

| | |
|----------------|---|
| Steve George | Clerc Clerk |
| Gwyn Griffiths | Uwch-gynghorydd Cyfreithiol Senior Legal Adviser |
| Olga Lewis | Dirprwy Glerc Deputy Clerk |
| Alys Thomas | Y Gwasanaeth Ymchwil Research Service |

Dechreuodd y cyfarfod am 2.29 p.m.
The meeting began at 2.29 p.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **David Melding:** Good afternoon, and welcome to this meeting of the Constitutional and Legislative Affairs Committee. I will start with the usual housekeeping announcements. We do not expect a routine fire drill, so if we hear the alarm please follow the instructions of the ushers, who will enable us to leave the building safely. These proceedings will be conducted in Welsh and English. When Welsh is spoken, there is a translation on channel 1. Anyone who is hard of hearing can amplify these proceedings on channel 0. Please switch off all electronic equipment completely, as it can interfere with the broadcasting equipment. I have received apologies from Julie James, and I am pleased to welcome Vaughan Gething as a substitute. Vaughan, of course, has been involved in our work over the past few months, so we very much welcome his participation this afternoon.

2.30 p.m.

**Offerynnau nad ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reol
Sefydlog Rhifau 21.2 neu 21.3
Instruments that Raise no Reporting Issues under Standing Order Nos. 21.2 or
21.3**

[2] **David Melding:** We do not have any matters under this item.

**Offerynnau sy'n Cynnwys Materion i'w Codi gyda'r Cynulliad o dan Reol
Sefydlog Rhifau 21.2 neu 21.3
Instruments that Raise Issues to be Reported to the Assembly under Standing
Order Nos. 21.2 or 21.3**

[3] **David Melding:** This item concerns instruments made under the negative procedure. There is just one. Do Members have any comments to make? Gwyn, do you need to bring our attention to anything?

[4] **Mr Griffiths:** Mae un pwynt adrodd, sef bod geiriau ychwanegol yn y Gymraeg nad ydynt yn y fersiwn Saesneg. Y geiriau hynny yw: **Mr Griffiths:** That is one reporting point, in that the Welsh version contains words not found in the English. Those words translate as

[5] 'i gyflawni'r swyddogaeth honno o dan y Rheoliadau Tatws Hadyd ar ran Gweinidogion Cymru.' to fulfil that function under the Seed Potatoes Regulations on behalf of Welsh Ministers.

[6] Nid oes angen y geiriau hynny. Maent wedi eu tynnu o'r fersiwn Saesneg. Rwy'n fodlon ag ymateb y Llywodraeth y bydd yn eu dileu o'r geiriad Cymraeg wrth gyhoeddi'r rheoliadau hyn. Those words are unnecessary. They have been removed from the English-language version. I am satisfied with the Government's response that it will delete them from the Welsh version of these regulations on publication.

[7] **David Melding:** Are Members content? I see that you are.

[8] We have a superaffirmative resolution instrument, namely the Natural Resources Body for Wales (Establishment) Order 2012. Gwyn, do you want to outline anything specific before we consider the second point about whether the Environment and Sustainability Committee is likely to ask for an extension on its consideration?

[9] **Mr Griffiths:** Nid oes ond un pwynt bach, Gadeirydd. Mae'r pwynt technegol yn glir, ond yn yr ail baragraff, o dan '*merits*', mae cywiriad i'w wneud i'r pwynt adrodd. Mae hwn yn dweud mai hwn yw'r Gorchymyn cyntaf i'r Cynulliad ei ystyried o dan y Ddeddf hon. Hwn yw'r Gorchymyn cyntaf i Weiniogion Cymru ei wneud o dan y weithdrefn hon. Rydym wrth gwrs wedi ystyried Gorchymynion blaenorol o dan y Ddeddf. Fel arall, mater o esbonio'r weithdrefn anarferol yw gweddill yr adroddiad drafft, sef gweithdrefn sy'n rhoi dewis i'r Cynulliad ynglŷn â pha drefn sydd i'w dilyn i gymeradwyo'r Gorchymyn hwn. **Mr Griffiths:** There is just one small point, Chair. The technical point is clear, but in the second paragraph, under '*merits*', there is a correction to make to the reporting point. This says that this is the first Order to be considered by the Assembly under this Act, when it is the first Order to be made by the Welsh Ministers under this procedure. We have of course considered previous Orders under the Act. Otherwise, the rest of the draft report clarifies what is an unusual procedure, in that it gives the Assembly a choice as regards which procedure is to be followed to approve this Order.

[10] **David Melding:** Are we content with the merits report before we discuss the issue of the length of time for consideration? I see that we are.

[11] We anticipate that there is a likelihood that the Environment and Sustainability Committee will ask for the time to be extended to 60 days. It is set at 40 at the moment. I am told that we can defer a recommendation on that until next Monday, but we can lay the technical and merits part of the report immediately, and we need to do that to meet our reporting requirements. So, I suggest that we defer until next Monday our consideration of whether we recommend the full 60 days. I anticipate that that is more likely than not, but it is for the environment committee to indicate its preference. Are we content?

[12] **Vaughan Gething:** I am a member of the environment committee, Chair.

[13] **David Melding:** Yes, but it has not met to determine this.

[14] **Vaughan Gething:** No, we have not.

[15] **David Melding:** So, I will not ask you to anticipate it, either.

[16] **Vaughan Gething:** No, nor I would try to, but I could tell you what our Chair and the rest of the committee might do.

[17] **David Melding:** Thank you for that.

2.22 p.m.

**Ymchwiliadau'r Pwyllgor: Ymchwiliad i Sefydlu Awdurdodaeth ar Wahân i
Gymru
Committee Inquiries: Inquiry into the Establishment of a Separate Welsh
Jurisdiction**

[18] **David Melding:** We now come to the main purpose of this afternoon's meeting, which is to continue our inquiry into the establishment of a separate Welsh jurisdiction. This is our ninth oral evidence-taking session. I am particularly delighted to welcome Lord Morris of Aberavon, who is a former Secretary of State for Wales and a former Attorney-General. So, he is particularly well positioned to give us evidence on this important question.

[19] We very much welcome your presence this afternoon, Lord Morris, and the fact that you have taken time to help us with our inquiry. I know that you are well used to how parliamentary committees operate. We have a range of questions that we want to put to you, and I will invite Members to put those questions, although some others may come in on supplementary points. However, we would like to start by offering you a chance to make some opening remarks.

[20] **Yr Arglwydd Morris:** Mr Melding, **Lord Morris:** Mr Melding, dear Members, it annwyl Aelodau, pleser a braint imi yw is a pleasure and privilege for me to give rhoddi tystiolaeth i chi y prynhawn yma. evidence this afternoon before you.

[21] With your leave, I will make a short statement.

[22] Overarching all is the need to improve communications between Westminster and the Assembly. We know too little of your inquiries and deliberations. Until I received the invitation from you, Mr Chairman, I was not aware of the inquiry. Therefore, I am very

grateful for that. I was a little surprised that, in Mr Melding's letter of invitation dated 9 December, the meaning of the term 'separate Welsh jurisdiction' was asked. I would have been happier to concentrate on my response to a particular proposal, rather than to pursue a number of different themes. I assumed, for the purposes of the paper that I have submitted, that what is meant is of the same breed as the jurisdictions in Northern Ireland or, I suppose, Scotland. Hence, I invited a very eminent lawyer from Northern Ireland, Lord Carswell, a former member of the Supreme Court and former Lord Chief Justice of Northern Ireland in my time, when I held the separate office of Attorney-General for Northern Ireland, to prepare a factual addendum and he agreed. Therefore, unless you have already done so—and you may well have, given that you have had nine sessions—I would respectfully suggest that you take evidence from someone of that experience as a matter of priority. I think it is a *sine qua non*.

[23] Northern Ireland, if I may say so, does work as a jurisdiction. I say that from my experience as Attorney-General, and I have spelt out in my paper the interface that I had. In my ministerial experience, I operated on the basis of the best possible estimate of costs between various agencies, and all had to be done before the event; it was no good doing it afterwards. The arguments that I had with other departments that I had inherited when my predecessors had failed to clinch other departments as to who would pay were always embarrassing and difficult. As a Cardi, I always talk about money first. Therefore, please look at costs.

[24] I emphasise that, while I yield to no-one in my enthusiasm to develop and build on devolution, such a proposal is not my priority at present. Who is to know what the future will demand? Hence I keep an open mind. However, what is clear to me is that an independent, legal jurisdiction is not a governmental activity. I state in my book—if I may mention it, with perhaps no diffidence whatsoever—that I won new powers for the Welsh Office subject by subject. They were the building bricks for the Assembly; otherwise you would have had an even steeper learning curve, if I may say so. It is prudent for anyone—a Secretary of State or an Assembly—to take on a battle with Whitehall one subject at a time. Hence, it is not my priority in the battle for winning more governmental powers for Wales.

[25] When I was installed as Chancellor of the University of Glamorgan—and I wear its tie—a long time ago in 2011, I advocated that broadcasting powers should come to the Assembly. Experience has shown the vulnerability of the funding of S4C and if anything is Welsh, it is Welsh broadcasting. I am a convert to the need for the police, the probation service and maybe the magistrates to come within the purview of the Assembly. When I was Lord-lieutenant of Dyfed, I presided over three Lord Chancellor's advisory committees appointing justices of the peace. We recommended and no-one ever turned us down, and they are very local decisions. My Welsh justices of the peace advisory council committee in Ceredigion always met in Welsh—with translation, as here—and my other advisory committee in Carmarthen did the same on one occasion.

[26] The Assembly already funds some police activities. It has interface with other agencies and local government and it is crying out for devolution. An opportunity arises now before the police commissioners have embedded in. When I was Attorney-General, I brought the Crown Prosecution Service regions into line with the 42 police areas. I have long felt the need for the Environment Agency to be more accountable, and I welcome the initiative in the 'A Living Wales' programme. I say that as a very necessary prerequisite to my order of priorities. That is my timetable, and I would need a lot of persuading to turn me away from it.

[27] I now turn to your subject—and forgive me for taking a few minutes—to the administration of justice. Since writing my paper, I have had the advantage of consulting with senior lawyers, and it seems to me that what is talked about is more or less, up to a point, a freestanding court structure. That is my interpretation. I am told, and as you set out in your consultation, that there have been considerable developments in the devolving of specific

court sittings to Wales. I invite you to consider—this is the emphasis that I would put—first, the extent and effectiveness of the proportion of Welsh work of the Court of Appeal—the criminal and the civil divisions. How often do they sit? What happens to the criminal cases? What are the problems? I suspect that a great deal more can be done if there is the will. A lot of these things are down to will.

[28] I read the consultation response of the Association of Judges of Wales, and it was most helpful. However, the criticism in some of the papers that I have read is the time taken for setting up the administrative back-up for more legal settings in Wales. It has been a long and painful journey. When I was a very young man at the Bar—I started off in Swansea, just after the launching of the ark, if I may say so—the label outside the Lord Chief Justice’s court in London was the ‘Lord Chief Justice of England’. I think that it was Lord Bingham—Tom Bingham—who lived for part of his time in Wales, who ensured that it was the Lord Chief Justice’s Court of England and Wales. That was a small but symbolic step.

[29] It is the machinery of the back-up of justice and its administration in Wales that you, with respect, should emphasise. Part of the Ministry of Justice in London should be devolved to Cardiff or somewhere else in Wales. Likewise, the court service. Lord Carswell spells out what is happening in Northern Ireland and some of the machinery that is required. I understand that judges are contemplating the practical problems of more judicial sittings in Wales, while maintaining efficiency and the availability of judges in the Strand. It all depends on the number of cases and how they are concentrated. Those are two pressures that perhaps counteract each other.

[30] Additionally, there is the need to ensure that some judges, at all levels down to district judges, are able to take cases, where required, in the Welsh language. I think that I recall some statutory provision in the 1940s about the county court judge in north Wales. That may still be alive—I am not sure. There are now plenty at the higher level, but we have to get it right down to the lower level to ensure that there is the availability if required.

[31] To sum up, my approach is to build on developments; it is an incremental approach. I believe that the most practical proposal that you could make would be a presumption in the setting down of Welsh appeals or, as they say regarding administrative law—this is what I am told; I have no experience of it—of issuing cases that concern the administration of law in Wales. A presumption that they are set down is the machinery that unlocks that key. That would, first, help to develop the profession. Secondly, it would strengthen the case for appropriate court settings in Wales—the more cases that are set down, the more likely they are to be heard in Wales. Thirdly, it would bring justice closer to people more than anything else. Thank you very much for your patience.

[32] **David Melding:** Thank you very much, Lord Morris. It is important that the committee hears a case so lucidly put in terms of where we might go in cautiously adapting current structures before diving into new forms of administering justice completely. Indeed, that is the case that our review will try to weigh in the balance in order to help the Government, particularly with its Green Paper—the consultation on it closed last week.

2.45 p.m.

[33] Before I put the first question to you, I wish to say that the committee visited Northern Ireland last week. We had a series of meetings with people there, including the High Court judge Lord McCluskey. We found the evidence-gathering sessions that we held very helpful indeed. As you note, they do have jurisdiction and it works well—

[34] **Lord Morris:** It works well, but there are problems with a small jurisdiction. It does work; that is the bottom line, but there are problems.

[35] **David Melding:** I suppose that they have had a jurisdiction since the early 1920s because a certain principle was grasped then, namely that, if you have a legislature—and, of course, Stormont was coming in in 1921—it is best to establish quite cleanly a legal jurisdiction at that point. Constitutional experts felt that at the time. Now that the Assembly is a full legislature, do you see the argument that some people have advanced to this committee that we should perhaps now acknowledge the need to see and prepare for a separate jurisdiction?

[36] **Lord Morris:** They are not wholly *ad idem*, sir. There was a huge political imperative in 1921. I suspect that that was the driving force. I am enormously pleased that you have been to Northern Ireland. I made a presumption to suggest that you should have it as a priority as I wrote my paper some time ago. That is why I discussed the matter with Lord Carswell. You will find, as I am sure was the case when you were questioning the judges you have met, his addendum might well be of some assistance because he pinpoints the machinery required. I do not think that anything automatically follows; what is needed is the best form of administration for whatever is the need.

[37] **David Melding:** That is very clear and I am now going to ask Vaughan Gething to take us through the next set of questions.

[38] **Vaughan Gething:** Thank you very much for your evidence, both oral and in writing, which I found very interesting, particularly given your own experience. We heard evidence from Professor John Williams, another Aberystwyth man—he taught me actually—

[39] **Lord Morris:** There is no harm in that. I am too.

[40] **Vaughan Gething:** None at all—I am a graduate. [*Laughter.*]

[41] We heard this from John Williams, but a number of other people have tried to make this sort of point as well, that to get a separate jurisdiction you may need to have a sufficient body of law to sustain that jurisdiction. Part of the point we want to test with you is whether you see that a separate jurisdiction would be more likely to be sustainable if there was a sufficient body of law and, if so, what those things might look like.

[42] **Lord Morris:** You could have a separate jurisdiction without a corpus of law. They are not dependent upon each other. However, the bigger the corpus of law perhaps the more persuasive is the case. That is why I perhaps keep my mind open about this, thinking that, perhaps in five or 10 years' time or at some other suitable time, the case will be even stronger. However, at the moment, it does not necessarily follow logically. You can set up an administration of justice on its own, up to a point, in Yorkshire, Lancashire or wherever or in Wales. It does not need it.

[43] **Vaughan Gething:** I am always interested when I hear phrases such as 'sufficient body of law', having been a lawyer myself unfortunately, or fortunately, depending on your perspective. What is meant by that? Are you able to envisage a time when you might say we had reached a tipping point? There are different arguments on this. There are people who see it as a matter of principle and want to have a separate jurisdiction, and there are others who take a more practical view and ask whether there is a practical imperative and a practical benefit. From your evidence, I think that you are on the practical side of the argument, but I do not want to put words into your mouth.

[44] **Lord Morris:** I have not practised law in Wales since 1961, but occasionally someone might invite me to defend in a murder case or prosecute a sheep stealer. However, those were very rare occasions because of the practical problems of leaving Westminster. The

answer, very simply, is this: if I were practising—as a solicitor, in particular—I would need to check all the relevant material emanating from Westminster and Cardiff to advise a client. Let us take a ridiculous example of the case of plastic bags: you need to check the law that you have got it right before you advise your client. That may well be so in relation to planning. Probably the least likely to do so is criminal law, which is my field. I have been a criminal law practitioner for 50 years of my life. That is probably less so, and it is probably not very likely. You are not going to get even more serious—excuse my using the example of plastic bags, but it is a case where the law is different, and I am looking at differences. I cannot anticipate what the situation might be in five or 10 years' time. I emphasise what I said earlier to the Chairman, that it does not hinge on that. You can have a separate jurisdiction that is an administration of courts in any part of the kingdom, without necessarily having a corpus of law. If solicitors and barristers in Cardiff turn up a huge amount of Welsh law in addition to Westminster law, they might be happier to have courts that are used to dealing with it as a matter of practical efficiency. However, we have a long way to go.

[45] **Vaughan Gething:** The First Minister has been on record as saying that you do not need to devolve criminal justice to have a separate jurisdiction. I think that, essentially, is the point that you are making as well.

[46] **Lord Morris:** They are shying away from the business that I want, which is for the police to be devolved to the Assembly. They have to take that on board.

[47] **Vaughan Gething:** You were very clear about areas that you felt were ripe for further devolution. That was particularly interesting, but I am interested in the point that you were going on to make, which was mentioned partly in your written evidence and partly in your oral evidence. It is the point about the practicability, efficiency and effectiveness of courts. You made the point in your evidence that higher courts can already sit in Wales, including the Administrative Court and the Court of Appeal, and also I know from my own practising days that the employment appeals tribunal can and does conduct some hearings in Wales. I am interested in your view on why you do not think that those bodies meet as regularly as they could in Wales. You were talking about having a presumption that they should do so. How would that presumption work? How would you see the material test as to when there is a presumption that a case should be heard in Wales, and how would that affect the availability of lawyers, who you would wish to instruct, as well as of judges who you would wish to hear that particular case?

[48] **Lord Morris:** I do not know now—you need somebody wiser than me to give you advice—what the yardstick is for having a hearing now of the Court of Appeal civil or criminal division. Why the existing numbers? Hence I asked the question as a matter of priority—many things are priorities with me, I fear—of how many cases of the criminal division sit in Cardiff. There are practical problems of getting the people of the Court of Appeal to be available. Sometimes it is easier to get them for a day, a day and a half, or two days, which is the usual length of many of these appeals, than getting them for a block of a week. Those are the practical difficulties, which I gather that the judiciary is looking at. If you block away a judge of the Court of Appeal for a fortnight, you may find that you have not got enough work for him. I go back to my circuit days as a pupil of the great Sir Alun Davies, when clerks were looking around for work to fill the civil lists. The biggest crime for the clerk of the circuit was not to have enough work for the judge on a Friday. I will not say facetiously that the judge might have been happy to have had a day off—I will leave that to one side—but those were the imperatives. So, there is a practical problem and the question is: how do they arrive at the number of sittings now? How much criminal work is not dealt with in Cardiff? What are the problems of getting more sittings for a man convicted of murder and his family and the victim's family, who will be interested, to have to tramp up from west Wales to the Strand? Would it not be better for that to be decided in Cardiff? Likewise with the civil division. I understand that there is no problem regarding the Administrative Court.

All judicial review cases concerning this Assembly are heard in Cardiff, I am told. So, this is the problem. How did they arrive at the existing figures, do they meet the need, and how can they practically expand that need? That is why I say, when I make my case for what might be termed a conservative approach, that it is an incremental approach of building on what is happening and seeing where we go. I am sure, in my mind, without evidence, that more could be done in this field.

[49] **Vaughan Gething:** That is conservative with a small ‘c’. In your earlier comments, you said that you can run a small jurisdiction—of course you can. However, you said that there are problems with that. To what particular problems were you referring? If we are taking evidence, we might as well hear exactly why you think that there might be problems.

[50] **Lord Morris:** It was my responsibility—it was an onerous responsibility—as a jurymen to decide whether you could be entitled in a criminal case in Northern Ireland to have a jury trial. It went against all of my instincts, but there were practical problems, hence Lord Diplock, in his wisdom, decided that somebody should decide that in cases of tension of this kind—I will put it in that way, as I cannot remember the formula—there should not be a jury trial. Over the years, that worked. As you know, in many cases, there are issues to be tried on admissibility, public interest immunity, evidence that is not admissible against one defendant, and a whole host of matters that have to be decided at some point in the course of a criminal trial. Eventually, it goes to trial, and it may well be advisable to have another judge to try the case who knows nothing at all about some of the issues that have been decided, particularly in the case where there is no jury—this issue does not arise, more or less, in other jurisdictions. Well, given the size of the judiciary, it was sometimes difficult to get judges who had not been, in my words, and they are not good words, contaminated by earlier knowledge. Likewise, the Court of Appeal, as I understand it, and that is why these are the questions that you would ask and have better advice on from your visit to Northern Ireland. Puisne Judges or High Court Judges would have to sit more frequently as members of the Court of Appeal, because it is a very small Court of Appeal. Not much bigger—well, a bit bigger—in number are Puisne Judges, so they have to take turns sitting on the Court of Appeal. Those are the practical problems, but, at the end of the day, they were overcome. However, I suspect that there were enormous difficulties for the Lord Chief Justice to ensure not only that justice was done, but—perhaps it is a trite phrase—that justice was seen to be done. That is what I meant.

[51] **Simon Thomas:** Yn eich tystiolaeth, rydych yn dweud yn ddiymhongar iawn nad ydych yn siŵr beth yw awdurdodaeth ar wahân yn ei chrynswth, fel petai. Fodd bynnag, wrth ateb ein cwestiynau hyd yn hyn, rydych wedi sôn am sawl peth—datganoli’r heddlu, y gwasanaeth prawf, ynadon, o bosibl, a gweinyddu cyfiawnder yng Nghymru—a sut yr ydym yn gallu datganoli’r pethau hynny mewn ffordd sy’n broses. Rydych hefyd wedi sôn am yr iaith Gymraeg, sy’n nodwedd arbennig i gyfiawnder yng Nghymru. Hefyd, mae eisoes gennym diriogaeth, sef Cymru, sydd wedi’i diffinio mewn Deddf. Mae’r Senedd hon bellach yn deddfu. Mae’n ymddangos i mi, os ydych yn rhoi’r pethau hynny at ei gilydd, rydych yn gallu rhagweld rhyw fath o awdurdodaeth yn cael ei sefydlu, boed hynny’n rhywbeth annibynnol neu’n

Simon Thomas: In your evidence, you say very modestly that you are not sure what a separate jurisdiction is in its entirety, as it were. However, in answering our questions so far, you have mentioned several things—devolving the police, the probation service, magistrates, possibly, and the administration of justice in Wales—and how we can devolve those things in a way that is a process. You have also mentioned the Welsh language, which is a specific characteristic of justice in Wales. Also, we already have a territory, namely Wales, which has been defined in an Act. The Senedd is now legislating. It seems to me that, if you put all of those things together, you can foresee some kind of jurisdiction being established, whether it is independent or something remarkably similar to the situation in Northern Ireland, from what I saw, at least.

rhywbeth hynod debyg i'r sefyllfa yng Ngogledd Iwerddon, o'r hyn a welais i, beth bynnag.

[52] Rydych hefyd yn sôn yn y papur am gost posibl cyflwyno'r pethau hynny. Fodd bynnag, mae'r pethau rydych yn sôn amdanynt heddiw yn bethau sydd eisoes yn cael eu talu amdanynt. Yr hyn yr ydych yn sôn amdano yw gweinyddu'r pethau hynny mewn ffordd wahanol. Nid yw hynny o reidrwydd yn ychwanegu at y gost. Os ydych yn rhoi'r ddau beth hwnnw at ei gilydd, hyd yn oed wrth gymryd yr hyn rydych yn ei alw'n safbwynt ceidwadol, mae'r broses sy'n digwydd yma yn ffordd y gall hwn ddatblygu'n naturiol yng Nghymru a hefyd mewn ffordd sy'n fforddiadwy i Gymru.

3.00 p.m.

[53] **Yr Arglwydd Morris:** Dyna pam rwy'n cadw fy llygaid ar agor i'r hyn all ddigwydd mewn pum neu 10 mlynedd. Y cwbl rwy'n ei ddweud yw fy mod yn rhoi blaenoriaeth i bethau eraill yn awr: materion ynglŷn â llywodraethu yn hytrach na chyfraith. Mae'r ddau yn hollol ar wahân. Rydym yn cymysgu os ydym yn meddwl mai rhywbeth llywodraethol yw datganoli sut mae cyfraith yn cael ei weinyddu. Dyna rwyf am ei gadw'n hollol glir, gan roi fy mlaenoriaeth i bethau eraill. Nid wyf yn gallu rhagweld beth fydd yr angen mewn pum neu 10 mlynedd. Dyna pam rwy'n credu bod datganoli'r heddlu yn gam pwysig iawn. Rwy'n credu bod ynadon yr un fath gan eu bod wedi eu datganoli i bobl fel myfi, pan oeddwn yn Arglwydd Raglaw yn Nyfed—ni wrthodwyd un cynnig a wnaed gan fy mhwyllgorau, o ran pwy a oedd i fod yn ynad.

[54] **Simon Thomas:** I bob pwrpas, roedd wedi ei ddatganoli.

[55] **Yr Arglwydd Morris:** Roedd wedi ei ddatganoli, a hefyd yn rhannau eraill o'r wlad. Mae yn lleol. Fodd bynnag, o ran datganoli'r heddlu, oherwydd eich bod yn wynebu awdurdodau lleol a chymdeithasol, mae'r achos yn cryfhau bob dydd—ac rydych chi'n ariannu yr heddlu ychydig; mae hynny yn rhan o'ch swydd chi. Mae hynny'n dod yn agos, rwy'n credu. Mae'r cyfan yn adeiladol,

You also mention in the paper the potential cost of introducing these things. However, the things that you are talking about today are things that are already paid for. What you are talking about is administrating those things in a different way. That does not necessarily add to the cost. If you put those two things together, even taking what you call a conservative approach, the process that is under way here is a way in which this can develop naturally in Wales and also in a way that is affordable for Wales.

Lord Morris: That is why I am keeping my eyes on to what could happen in five or 10 years' time. All that I am saying is that I am giving priority to other things now: matters relating to governance rather than law. The two are completely separate. We are getting confused if we think that devolution of how the law is administered is a matter of governance. That is why I want to keep it completely clear, giving my priority to other things. I cannot anticipate what the need will be in five or 10 years' time. That is why I think that devolution of the police is a very important step. I think that the same is true of magistrates, as they have been devolved to people such as me, when I was the Lord-Lieutenant of Dyfed—not one proposal made by my committees was refused, in terms of who was to be a magistrate.

Simon Thomas: It had been devolved to all intents and purposes.

Lord Morris: It had been devolved, and also in other parts of the country. It is local. However, in terms of devolving the police, because you are facing local and social authorities, the case gets stronger every day—and you are funding the police a little; that is part of your office. That is coming closer, I think. It is all incremental, I accept that, the more that you do—and that is why I

rwy'n derbyn hynny, y mwyaf rydych yn ei gwneud—a dyna pam rwyf yn cadw fy llygaid yn glir a, gobeithio, yn agored. Nid oes gennyf unrhyw ragfarn yn erbyn datblygiad: rwyf am weld datblygiad, ond y cyfan yn ei amser.

am keeping my eyes clear and, hopefully, open. I do not have a presumption against development: I want to see development, but all in good time.

[56] **Simon Thomas:** Er eich bod yn dweud nad yw'n fater i Lywodraeth, ydych chi, serch hynny, yn derbyn bod rhaid i Lywodraeth Cymru gymryd ryw safbwynt ar y mater hwn wrth i'r broses ddatblygu? Er enghraifft, mae'r Llywodraeth bresennol fan hyn newydd ymgynghori ar y mater.

Simon Thomas: Although you say that it is not a matter for Government, do you, despite that, accept that the Government has to take a view on this matter as the process develops? For example, the current Government here has just consulted on the matter.

[57] **Yr Arglwydd Morris:** Dyna yw eich swydd a'ch braint. Pwy ydywf i i amau hynny?

Lord Morris: That is your office and your privilege. Who I am to doubt that?

[58] **Eluned Parrott:** I will follow up on a couple of issues. One is to do with costs, which have been mentioned, and one is to do with making sure that the courts have enough work, which was discussed a little earlier. One of the things that we looked at in Northern Ireland was how the courts service was administered, and, because Northern Ireland has a whole package of devolution of the courts, or quite a full one, it is able to achieve some cost savings and some critical mass, if you like, in individual courts by removing some of the barriers between different kinds of law and which courts look at different kinds of law. Do you think that an incremental approach might make it difficult to achieve those kinds of tailored cost savings?

[59] **Lord Morris:** Chairman, since I was a young lad, as a baby Minister, I have heard all sorts of assertions of cost savings, and I believe them when I see them. As Simon said earlier, some of these matters are operating now, and therefore are existing costs. However, if you look at Lord Carswell's piece, he sets out a number of things that will be required. There is a Bar council and a law society there now, and I have spoken to most of them in my time. There would be an appointments commission. There is a director of public prosecutions there. There is an attorney-general there. You would need both of those. Having been in charge of the Crown Prosecution Service with my own two DPPs, one in England and Wales, and one in Northern Ireland, I know that they all add to the costs. All I am saying is this. My sole point, and please do not misinterpret me, is: just look at the costs and establish what they are. I think of the arguments I had with my predecessors trying to win back a battle that had never been fought about cost. That is why I always say, 'Do it before the event'. That is when my Cardiff instincts came to the fore, and we have been there since 1625.

[60] **Eluned Parrott:** Your Lordship, obviously there are some above-the-board additional costs that will be fairly easy to assess by comparison with others. As our courts services are intertwined, it is difficult to get data as to how much of the legal processes would have to be devolved. How would you go about investigating and unpicking that, should that be the political direction in which we travel in the long term?

[61] **Lord Morris:** I suspect that you will need a lot of pressure to disgorge the facts. You may have to take estimates. There is nothing sacrosanct about it. As pointed out to me, some of the work is done here already. I believe strongly that there should be a separate office of the Ministry of Justice and the courts service in Cardiff, which you already have in Northern Ireland. That is the start line. That is the practical issue. That is the way that I am developing my thesis in a pragmatic way. That is something that you can do very shortly and to have the

fruits of your labours before you. That would not detract from higher ambitions that some of your colleagues may have.

[62] **David Melding:** Lord Morris, do you see any virtue in splitting a jurisdiction between civil and criminal matters? The Government here seems to think that that may be possible. You could have a Welsh jurisdiction over civil matters, but criminal matters would not be devolved and would be left on an England and Wales basis.

[63] **Lord Morris:** They are quite separate. If you want to bring justice closer to people—that was my fundamental idea in the little work that I did on devolution from 1952 onwards—you will bring not only Government, but justice closer to the people. Sir, put yourself for one moment in the position—I am confident that it will never happen and that is why I am putting it to you—of having been convicted of murder, living in Pembrokeshire, to take a neutral county. Your family, the victims and the neighbours would all be interested, and they would all have to travel to London. Would it not bring justice closer to people if that case was heard in Cardiff? There are practical problems, of course. In a civil case, if justice means anything, not only should it be seen to be done, it should be seen to be done locally. That is my presumption. When you have the offices in Cardiff, they would have the will to ensure that some of the work stays within their corner, as opposed to going to the Strand. It was very nice and exciting for a counsel from Swansea, as I was for a short time, to go up to London to the Strand, but it would be much easier to go to Cardiff.

[64] **Suzy Davies:** Lord Morris, you take a practical as well as a principled approach to the local administration of justice in your paper. Do you think that it would be possible for cases to be started in Wales or for that presumption that you spoke about to be made more definite simply by court practice direction?

[65] **Lord Morris:** I am not the expert on this. I have never been concerned with the mechanics of it. Therefore, you will need someone with some expertise on it. I am diffident about it, so forgive me for that. However, that is how my mind would operate. Let us take judicial review cases. I suspect that a decision was taken judicially that those cases should be heard in Cardiff. The Government is here, which means that you are probably party to many of them and which is, therefore, convenient. That is the machinery that I think should be looked at, but you need someone with expertise in this. If I were a solicitor practising in Cardiff, I would have the choice of issuing whatever the appropriate initial step is and eventually the next stage would be the setting down of the case in one part of Wales or London. I suspect that many of them use—they used to in my day as a young man when I did some civil work a very long time ago—London agents who are exceedingly proficient in those administrative steps at a later stage. So, there is a learning curve here. That is why I ended my remarks by saying that it will be good for the profession to flex its muscles by setting down in Cardiff. If you strengthen the profession, that has certain overflows, but you need somebody with expertise.

[66] **Suzy Davies:** You talk about expertise and people coalescing around Cardiff, which has started to happen in the administrative court, according to earlier witnesses. You talked a little earlier about the Court of Appeal and the lack of certainty about how many cases not only start in Wales, but could end in Wales. Again, that is information that we are finding very difficult to ascertain ourselves as a committee. When you are thinking of the Court of Appeal, are you arguing primarily for the Court of Appeal to sit permanently in Wales or to be a semi-division within the Court of Appeal division? Does it matter?

[67] **Lord Morris:** The Court of Appeal in London could decide to sit here, as it does in Birmingham and other parts of the country. There is nothing new about this. The practical difficulty—and this is where you need somebody who knows about it, as opposed to someone like me—is that you have to have the right number of judges, and, as I said at the beginning,

when I was a young man, if there was a high court judge on circuit, you had to ensure that he had plenty of work, because judicial time and court time is expensive, and therefore you have to fill up his diary. Even more important and more expensive is the Court of Appeal. The problem may have been—and there are very eminent lord justices of appeal who could tell you—filling in the time. If you allocate three judges of the Court of Appeal for a week or a fortnight to Cardiff, you have to be pretty sure that you have enough work for them.

[68] **Suzy Davies:** Let us just presume for a second that there was enough work for that to happen. Can you see any argument in favour of having a separate court of appeal for Wales, on the basis of having a separate jurisdiction?

[69] **Lord Morris:** What is the need to have a separate court of appeal? These gentlemen and ladies are some of my friends and are exceedingly highly qualified, and there is a shortage of them in England as well as in Wales. If you had a separate one, you would have to find the bodies in Wales. I am sure there are some very eminent lawyers in Wales, but it would be difficult to have a continuing pool of people who could sit as judges of the Court of Appeal; I would not dream of sitting in the Court of Appeal, even if I were asked, which I would not be. You have to have the people. The smaller the jurisdiction, the less availability.

[70] **Suzy Davies:** If we had a separate Court of Appeal here, do you think that would stop the brain drain down to London?

[71] **Lord Morris:** I do not think it is necessary. If you have sufficient sittings of the Court of Appeal here and you have the presumption that cases that emanate from Wales are tried, if possible, in Wales, you will solve the problem.

[72] **Suzy Davies:** Thank you. May I ask you about the issue of language now? You mentioned earlier that there are plenty of judges at the senior end of the spectrum who speak Welsh sufficiently well to deal with cases, and you would like to see the lower court judges attaining that level. In Wales, we produce our law from this place bilingually, with both languages being read together. What do you think might be the implications as we move on to a combined jurisdiction of being able to deal effectively with that, as more and more dual language law is made?

[73] **Lord Morris:** Both languages would be equally valid. Texts would be equally valid and there would be a text that every member of the court would be able to understand. They would be able to adjudicate on it; I cannot see where the problem would arise.

[74] **Suzy Davies:** In the law made here in the Assembly, both the English and the Welsh have to be read together, as you know. That might take a particular skill at interpreting, not translating, the two together.

[75] **Lord Morris:** Surely, if there are two texts of equal validity, where lies the problem?

[76] **Suzy Davies:** I am just wondering whether you see any implication.

[77] **Lord Morris:** I do not see any problem.

[78] **Suzy Davies:** That is fine; that is your answer.

[79] **Lord Morris:** Once you accept equal validity—and if I may say so, I was the first to use it in my evidence before the Sir David Hughes Parry inquiry, when I was a young Member of Parliament in 1962; I deal with that in my book—once you accept that principle, there is no problem. If you think that one is inferior to the other, you have a problem.

3.15 p.m.

[80] **Suzy Davies:** That leads me to my final question, which is about the legal profession of the future. If we find that we are having a divergence of laws, even if they are not in a formally separate jurisdiction, do you think that the young legal profession—certainly the universities—needs to be more aware of the fact that there is a potential divergence of these laws? What, would you say, is perhaps the best way to make sure that they are more than aware of it, but capable of dealing with it?

[81] **Lord Morris:** I think that I dealt with this earlier. If I am advising someone in my office in Carmarthen, when someone comes to see me, the adviser must be proficient and sufficiently diligent to look up the law that applies from Westminster and the law that emanates from Cardiff. If he does not do that he may get himself into very deep trouble and might be sued for negligence. Coming back to the issue of plastic bags, the solicitor practising in Norwich would not have any idea of the law that is special for Cardiff. This will increase, now that there are law-making powers here. Therefore, the adviser will have to be more diligent, because he will have to turn the page. You must ensure that not only the universities prepare those who intend to practise in Wales for going through this exercise—and I am not familiar at the moment with what happens—but it must be made as easy as possible for advising lawyers to look at the corpus of law that has emanated from Cardiff to ensure that they have easy access and are able to quickly advise, because, otherwise, they might find themselves in serious professional difficulty.

[82] **Suzy Davies:** Do you think that the standard of our legal profession in Wales is able to deal with this at present?

[83] **Lord Morris:** I would not dream of commenting.

[84] **Suzy Davies:** Thank you very much, Lord Morris.

[85] **Vaughan Gething:** I have a slightly different point on this, Lord Morris, which is about the numbers of lawyers that we might need to sustain a separate jurisdiction, both as practitioners and as judges. I understand the difference between quality and quantity—will we be able to produce enough lawyers of that sort of rank and calibre to sustain the jurisdiction? Is this one of the points that you made earlier about the problems that you might have in a smaller jurisdiction?

[86] **Lord Morris:** I would not dream of commenting, quite seriously. I was talking just now about quality. We have a long tradition of producing very eminent lawyers in Wales. We have four eminent members of the Court of Appeal and we have two eminent High Court judges. In my time, we have had equally distinguished members, including Lord Edmund Davies, Lord Morris of Borth-y-gest, Bill Mars-Jones and a whole host of people. It would be invidious to comment. I am sure that we have lawyers practising in Wales that are of the highest possible calibre and who would do justice to their predecessors. I would suspect that there is not a problem.

[87] **David Melding:** Did you just want to follow up, Suzy?

[88] **Suzy Davies:** Yes, very briefly. Would it be of concern to you to know that most of the Welsh universities' law schools are populated by students not necessarily from Wales, and that they might even be from overseas and, therefore, may not actually be interested in staying in Wales once they have qualified?

[89] **Lord Morris:** Of course, I would hope that they are able to choose whatever subjects or part of the law curriculum that they are interested in. There is nothing worse than forcing

some knowledge upon them, as I was forced—and I do not think that it is done so much these days—to learn a little about Roman law. There is nothing new about learning about law that you would never dream of practising in. You have to go through the motions of it and do the best that you can, as I did with the limited amount of Latin that I had. Courses have to be flexible. You have to interest your students. If you do not interest them, they will not give of their best. However, what is important is that law schools, because they will probably be training the bulk of those who practice in Wales, ensure that their students are given the right grounding and the discipline of checking the law that emanates from Cardiff and the law that emanates from London. We are in a new situation since you have had law-making powers, and it is therefore incumbent upon the law schools to cater for that. I hope that they will, and I suspect that they do.

[90] **Eluned Parrott:** Your Lordship, I would like to talk about the role of the attorney general, if I may. In your evidence, you state that you believe it likely that a separate attorney general for Wales will be appointed. May I clarify whether you mean that that would happen if the status quo persists, if further devolution of justice comes to Wales, or in either situation?

[91] **Lord Morris:** If you were to follow the Northern Ireland pattern, and Lord Carswell makes this point, there would have to be an attorney general for Wales with the jurisdiction of supervising criminal prosecutions, as I had, guarding the public interest and, of course, leading the legal profession in Wales as far as the Bar is concerned. You have been to Northern Ireland, as I now understand, and I welcome that very much. He sets out those as the matters that would have to be considered. Whether you have them or not is a matter for those who decide these matters. However, if one were to follow the pattern in Northern Ireland, you would have a director of public prosecutions, an attorney general, a Bar council, a law society and an appointments commission. I would not like to sit on an appointments commission, I can tell you that, but that is another matter. However, Lord Carswell spells out much better than I would what flows from following the pattern in Northern Ireland, if that were the pattern. Again, that is not without some expense.

[92] **Eluned Parrott:** You also talk about the relationship between the attorneys general in different jurisdictions and about the need for those individuals to define their relationships with the England and Wales attorney general. Do you envisage that as a hierarchical arrangement?

[93] **Lord Morris:** It does not necessarily follow. I was the attorney general before the Easter settlement. When the criminal process was devolved under the agreement, the Northern Ireland Assembly, which was resurrected after a period in abeyance, then necessarily had an attorney general of its own, as it used to have. It always had a DPP—that was essential. He would come over to discuss cases with me and I would go over there every three or four weeks to discuss matters that needed consideration by the attorney of the day. Nothing necessarily follows, but these are the matters raised by Lord Carswell. You have had the advantage of talking to some of the judges in Northern Ireland, who would have either agreed or dissented. I hope very much that Lord Carswell's paper would have been put to them.

[94] **Eluned Parrott:** In your paper, you state that, in Northern Ireland, the England and Wales attorney general is also the advocate general, is that correct?

[95] **Lord Morris:** No, I do not think that that is quite clear. There is an attorney in Northern Ireland. I am not sure, but I think that the attorney in London is the advocate general. That may be the position.

[96] **Eluned Parrott:** I believe so.

[97] **Lord Morris:** There is an inherent jurisdiction in Westminster, and matters of dispute between Northern Ireland and London or Scotland and London or Wales and London have to go before the Supreme Court, and I suspect that his role in London is now very limited indeed. There is a difference. I know that, in Scotland, there is the advocate general, who used to be called the Lord Advocate but is now the advocate general. There is a difference.

[98] **Eluned Parrott:** Indeed. What I am trying to understand is the hierarchical structure because, obviously, the Supreme Court presides over the jurisdictions. Therefore, would it be necessary or desirable for an attorney general for Wales to have a similar arrangement to that in Northern Ireland? Is that a compromise to take account of the Northern Ireland situation or is there another reason why that was established in that way?

[99] **Lord Morris:** I am not advocating that. All that I am doing is saying that you have a pattern from Lord Carswell and what happens in Northern Ireland. If you were to go along that road, you could decide whatever you wanted as an Assembly Government. Nothing follows; that is why I was surprised and queried at the beginning that you did not hone in on a particular course when you asked the advice of consultees. I queried why you asked that question and now you are surprised that I am asking the question too. Whatever course you take, nothing follows of necessity; it is an option.

[100] **Eluned Parrott:** Absolutely, and we do not have to carbon copy anything in the future. One final question from me: we have a Counsel General for Wales, but in what way does that role differ from how you would see an attorney general for Wales?

[101] **Lord Morris:** The first Counsel General came to my office for a little while to find out what I did, but that is a long time ago. [*Laughter.*] It was appreciated that my office was available, but the role is quite different. I was the legal adviser, with my solicitor general, to the Government at Westminster. The Counsel General, as I understand it, is the legal adviser of the National Assembly, so it is basically whom you are advising. Not only did I have responsibility for the Crown Prosecution Service, I was also the legal adviser to the Government and I was collectively responsible, with my ministerial colleagues, for matters short of prosecution. It was not easy to persuade people that there was a difference between collective responsibility and individual responsibility. Her Majesty's Government had nothing to do with prosecution. That was quite independent. Those decisions that had to be taken in the public interest were matters for the individual law officers and not part of their collective responsibility. I could go on about a whole host of things. I had a responsibility for supervising charities, believe it or not. If someone gave a lot of money to cancer causes, I had to decide which cancer organisation would get it; there was a formula that was accepted by all the charities. If anything was going wrong with a charity, I had the ultimate responsibility for applying to the court to do something about it. So, it is quite a different job; that is the short answer.

[102] **Simon Thomas:** Hoffwn ofyn ychydig gwestiynau ar rai agweddau ar awdurdodaeth sy'n cael eu trafod o bryd i'w gilydd ond nad ydynt wedi'u trafod, hyd yma, y prynhawn yma, gan ddechrau gyda'r cyfeiriad ym mhapur yr Arglwydd Carswell at y comisiwn diwygio'r gyfraith sy'n bodoli yng Ngogledd Iwerddon. Rydym wedi clywed tystiolaeth yn y pwyllgor hwn hefyd ynglŷn â'r angen am ryw fath o gomisiwn i Gymru a fydd yn wahanol i gomisiwn Cymru a Lloegr. A ydych yn gweld rhywbeth felly

Simon Thomas: I would like to ask a few questions on some aspects of jurisdiction that are discussed from time to time, but have not been discussed, as yet, this afternoon, starting with the reference in Lord Carswell's paper to the law reform commission that exists in Northern Ireland. We have heard evidence in this committee as well about the need for some kind of commission for Wales, separate to the Wales and England commission. Do you see something like that as crucial as we develop the law in Wales?

yn hanfodol wrth inni ddatblygu'r gyfraith yng Nghymru?

[103] **Yr Arglwydd Morris:** Byddai'n help mawr. Dyna un o'r llwybrau ymarferol y gallech eu cymryd. Ni allai neb eich gwahardd rhag gwneud hynny. Os yw'r gyfraith yn datblygu mewn un maes, mae'n help mawr cael comisiwn annibynnol i wyntyllu'r broses a rhoi cyfarwyddyd—nid oes raid i chi ei dderbyn, mae arnaf ofn; mae cymaint o argymhellion Comisiwn y Gyfraith yng Nghymru a Lloegr nad ydym yn gwrando arnynt yn ddigon buan. Mae'n cymryd oes i weithredu ei argymhellion. Fodd bynnag, rwy'n siŵr y byddai hynny'n beth da iawn.

3.30 p.m.

[104] Os dychwelwn at enghraifft y bagiau plastig, os ydych eisiau rhagor o ddeddfwriaeth ynglŷn â bagiau plastig rhyw fath arall o fag neu rhyw fath o ddilledyn, byddai'n help mawr ichi gael y wybodaeth ymarferol. Dyna beth mae'r comisiwn yn ei wneud, pa un a yw'n ymwneud â chyfraith teulu, cyfraith droseddol neu unrhyw beth o'r fath. Byddai comisiwn yn gwneud argymhellion a fyddai'n cael eu llunio gan arbenigwyr, felly pe baech am ddeddfu mewn unrhyw faes, byddai'n help mawr cael comisiwn o'r fath i weithio ar beth sy'n weddus i'w wneud. Peidiwch byth ag anwybyddu cyngor—derbyniwch ef neu gwrthodwch ef—ond mae'n gallu bod yn help mawr.

[105] **Simon Thomas:** O'ch profiad fel twrnai cyffredinol yn gweld y comisiwn yn Lloegr a Chymru yn gweithio, pa fath o brofiad a mewnbwn ddylai fod ar y comisiwn gan y proffesiwn neu gan brifysgolion? Beth fyddai'n cyfoethogi gwaith y comisiwn? Pa fath o bobl ddylai fod arno?

[106] **Yr Arglwydd Morris:** O ran ei aelodaeth, rwy'n cofio trafod y mater flynyddoedd maith yn ôl. Rydych am gael gwahanol ddisgyblaethau arno, gan amlaf, cyfreithwyr o ryw fath, boed yn broffesiynol neu academiaidd—pe gallech eu gwahanu. Gallai fod yn aelodaeth rhan amser, gan fod ein tiriogaeth mor fach hyd yn hyn a'n cyfreithiau ychydig yn gynnil. Felly, efallai

Lord Morris: It would be of great assistance. That is one of the practical routes that you could take. Nobody could preclude you from doing that. If the law develops in one area, it is a great assistance to have an independent commission to discuss the process and to offer direction—you do not have to accept it, I am afraid; there are so many recommendations from the Law Commission in Wales and England that we do not listen to soon enough. It takes an age to implement its recommendations. However, I am sure that that would be a very good thing.

To return to the plastic bags example, if you want further legislation on plastic bags any other kinds of bags or any items of clothing, it would be very useful for you to have that practical information. That is what the commission provides, whether it is on family law, criminal law or anything of that sort. A commission would make recommendations that would be drawn up by experts, so if you wanted to legislate in any field, it would be very useful to have such a commission to work out what is appropriate. You should never ignore advice—you can accept it or reject it—but it can be extremely useful.

Simon Thomas: From your experience as the attorney general in seeing the commission operate in England and Wales, what kind of experience and input should it have from the profession or from universities? What would enrich the work of the commission? What kind of people should be represented on it?

Lord Morris: In terms of membership, I remember discussing the issue many years ago. You need various disciplines represented; for the most part, they would be lawyers of some kind, either professional or academic, if such a distinction could be made. They could be part-time members, given that our territory is so small and that the body of law is rather limited. So, perhaps

mai rhan amser fyddai rhai aelodau. Gallwch gael athrawon sy'n arbenigo yn y maes o Loegr, Cymru, yr Alban neu unrhyw le arall. Os ydych eisiau mynd ar drywydd rhyw lwybr arbennig, megis cyfraith gyhoeddus neu ymddygiad penodol, rydych yn cael arbenigwyr i wneud hynny. Byddwn yn croesawu penodi arbenigwyr rhyngwladol i roi cyngor ichi. Y penderfyniad mawr yw pa un a ydych yn derbyn y cyngor neu'n ei newid. Rwy'n credu y byddai hynny'n beth da.

[107] **Simon Thomas:** Mewn ateb i gwestiwn gan Suzy Davies, roeddech yn sôn am pa mor bwysig oedd gwneud y gyfraith mor hawdd ag y bo modd i bobl ei deall yng Nghymru. Roeddech yn sôn am fagiau plastig bryd hynny hefyd. Un peth sy'n cael ei weld fel diffyg yng Nghymru ar hyn o bryd yw bod cyhoeddi cyfreithiau Cymru wedi methu—nid oes cysondeb yn y ffordd mae cyfreithiau Cymru yn cael eu diweddarau ar-lein, ac nid oes sylwebaeth; nid oes corff o waith yn cael ei wneud i sylwebu ar y gyfraith, fel sy'n cael ei wneud ym Mhrifysgol Queen's ym Melffast, er enghraifft. Awdurdodaeth i Gymru neu beidio, a ydych yn gweld bod hwnnw'n ddiffyg sydd angen ei gywiro mor gyflym ag y bo modd?

[108] **Yr Arglwydd Morris:** Ydwyf. Rwy'n credu fy mod wedi cyfeirio mewn rhyw hanner llinell at hyn yn barod mewn ateb i gwestiwn. Rwy'n credu y dylech sicrhau bod corpws o'r hyn sy'n dod allan o'r Cynulliad yn cael ei gyhoeddi er mwyn ei gwneud yn rhwydd i gyfreithwyr. Mae'n rhaid ichi wneud pethau'n rhwydd. Mae cyfreithiwr sy'n eistedd yn ei swyddfa yng Nghaerfyrddin yn ddyn prysur iawn. Mae'n cael 10 o achosion bob dydd; mae ganddo chwe ffermwr sydd am werthu eu ffermydd, un troseddwr, un arall eisiau gwneud ewyllys, ac mae'n gorfod troi ei feddwl yn gyflym iawn o un maes i'r llall, ac nid oes llawer o amser ganddo. Pan rydych yn mynd i weld eich meddyg, rydych yn lwcus i gael 10 munud. Mae'n bwysig bod gan y cyfreithiwr rywbeth i droi ei law ato yn weddol gyflym. Mae'r cwmnïau masnachol yn gwneud cryn dipyn o hyn, ac mae gennych gryn dipyn o wybodaeth ar y we. Dyna'r pethau sy'n cael eu defnyddio.

some members would be part-time. You could have expert professors from England, Wales, Scotland or anywhere else. If you want to follow a certain route, such as in public law or in some specific behaviour, you would need experts to do so. I would welcome the appointment of international experts to advise you. The big decision is whether you accept the advice or whether you change it. I think that that would be a good thing.

Simon Thomas: In response to a question from Suzy Davies, you mentioned the importance of making the law as easy as possible for people in Wales to understand. You talked about plastic bags then as well. One thing that is seen as being deficient in Wales at present is that the publication of Welsh laws has failed—there is no consistency in the way in which Welsh laws are updated online, and there is no commentary; there is no body of work being undertaken to comment on the law, as is done at Queen's University, Belfast, for example. Welsh jurisdiction or no Welsh jurisdiction, do you see that as a deficiency that needs to be corrected as soon as possible?

Lord Morris: Yes. I believe that I have already referred to this in half a line in response to a question. I believe that you should ensure that the body of law emerging from the Assembly is published as a corpus to make it easy for solicitors. You must make things easy. A lawyer sitting in his office in Carmarthen is a very busy man. He has 10 cases every day; he has six farmers who want to sell their farms, one criminal case, another client wanting to make a will, and he has to turn his mind very swiftly from one field to another, and he does not have much time to do so. When you go to see your doctor, you are lucky to have 10 minutes. It is important that the solicitor has something to turn to quite quickly. Commercial companies do quite a bit of this, and there is a lot of information on the internet. Those are the things that are used.

[109] **Simon Thomas:** Nid yw popeth ar bapur bellach, nag yw?

Simon Thomas: Not everything is on paper now, is it?

[110] **Yr Arglwydd Morris:** Dim i gyd. Mae'n well gennyf i ei gael ar bapur.

Lord Morris: Not everything. I prefer to have it on paper.

[111] **Simon Thomas:** Rydych yn pwysleisio ei bod yn bwysig dod â'r gyfraith yn nes at y bobl fel eu bod yn deall sut mae'n effeithio arnynt. Roeddech yn dweud y dylai'r comisiwn ddefnyddio profiad rhyngwladol os yn bosibl, ac mae Ewrop yn dod mewn i'r cwestiwn yn aml iawn yn awr hefyd. Fel ydych yn gweld gallu cyfreithwyr a bargyfreithwyr i symud o le i le, yn ynysoedd Prydain o leiaf, yn datblygu? Er enghraifft, mae'n weddol o rwydd i bobl symud o'r fan hon i Ogledd Iwerddon, ond nid yw mor hawdd i Suzy ymarfer ei chreffft yn yr Alban.

Simon Thomas: You stress that it is important to bring the law closer to the people so that they understand how it affects them. You mentioned that the commission should use international experience if possible, and that Europe very often also comes into the equation nowadays. How do you see the ability of solicitors and barristers to move about from place to place, in the British isles at least, developing? For example, it is relatively easy for people to move from here to Northern Ireland, but it is not so easy for Suzy to practise her craft in Scotland.

[112] **Yr Arglwydd Morris:** Ddim o gwbl.

Lord Morris: Not at all.

[113] **Simon Thomas:** Sut ydych yn gweld hynny'n datblygu, wrth i gyfraith Cymru ddatblygu ar wahân? A welwch y bydd eisiau sefyll prawf o ryw fath i ddangos eich bod yn deall cyfreithiau Cymru?

Simon Thomas: How do you see that developing, as Welsh law evolves separately? Do you envisage a time when one will need to sit a test of some sort to demonstrate an understanding of Welsh law?

[114] **Yr Arglwydd Morris:** Rydym yn awr yn edrych i'r dyfodol pan fydd mwy o gorpws—

Lord Morris: We are now looking into the future when there is more of a corpus—

[115] **Simon Thomas:** Ydym. Egwyddor yr wyf yn chwilio amdani.

Simon Thomas: Yes. It is a principle that I am looking for here.

[116] **Yr Arglwydd Morris:** Yn yr Alban, os caf ddweud wrth basio, allwch chi ddim practisio. Rwy'n adnabod cyfreithwyr o Gaerdydd sydd wedi priodi a symud i'r Alban lle oedd eu gwŷr yn gweithio, a chan nad oedd tystysgrif i practisio y gyfraith yno ganddynt, felly dim ond cynorthwyo y maent yn cael gwneud, sy'n broblem. Rwy'n adnabod unigolion yn y sefyllfa honno.

Lord Morris: In Scotland, if I may say so in passing, you cannot practise there. I know lawyers from Cardiff who got married and moved to live in Scotland, where their husbands worked, and as they did not have a certificate to practise law there, they are allowed to do no more than assist, which is a problem. I know individuals who have been in that position.

[117] Pan oeddwn yn ddyn ifanc, nid oeddwn yn gallu mynd i wneud achos yng Nghasnewydd. Mae pethau yn Ewropeaidd bellach. Pan symudais i bractisio ar gylchdaith y de-ddwyrain, roedd yn rhaid imi dalu rhyw £20 y dydd i ddyn neu wraig eistedd wrth fy ochr, ac roedd hynny'n waharddiad i symud. Yn awr, mae

When I was a young man, I was not able to go to Newport to take a case. Things are European now. When I moved to practise on the south-east circuit, I had to pay some £20 a day for a man or woman to sit next to me, and so that in itself was a barrier to moving. Now, lawyers move from one country to another, and lawyers from England and

cyfreithwyr yn symud o un wlad i'r llall, ac mae cyfreithwyr o Gymru a Lloegr yn mynd i Ogledd Iwerddon. Rwyf wedi cael y fraint o gael fy ngalw i'r bar yng Ngogledd Iwerddon, er nad oes neb wedi fy nghyflogi yno eto—mae bach yn ddiweddar yn awr.

Wales go to Northern Ireland. I have had the privilege of being called to the bar in Northern Ireland, although no-one has employed me there as yet—it is a little late in the day for that now, perhaps.

[118] **Simon Thomas:** Ond nid oedd rhaid i chi sefyll arholiad yno. [*Chwerthin.*]

Simon Thomas: But you did not have to sit an exam there. [*Laughter.*]

[119] **Yr Arglwydd Morris:** Nac oedd.

Lord Morris: No.

[120] Rhaid inni weld fel mae pethau'n mynd, ond rwy'n credu ei bod yn bwysig bod cyfreithwyr yn gallu symud o'r naill wlad i'r llall i sicrhau bod gennych y cyngor gorau, yn enwedig yn y byd troseddol. Os ydych yn cael eich cyhuddo o droseddu, byddwch eisiau'r dyn neu'r wraig orau bosibl i'r achos. Felly, ni fyddwn am weld dim gwaharddiad ar symud o un wlad i'r llall.

We will have to see how things develop, but I think it important for lawyers to be able to move between countries to ensure that you get the best advice, particularly in the field of criminal law. If you are accused of a crime, you want the best possible man or woman for the case. So, I would not wish to see any restriction on movement from one country to another.

[121] **Simon Thomas:** Felly, efallai y byddai rhyw fath o drefn yr hoffech ei gweld i'w gwneud yn glir bod pobl yn Lloegr a Chymru yn gallu cyfweld â'i gilydd yn y ffordd honno.

Simon Thomas: So, perhaps there is some kind of arrangement that you would like to see to make it clear that people from England and Wales can still cross-examine each other in that way.

[122] **Yr Arglwydd Morris:** Byddwn, ac mae'n gweithio i'r ddwy ochr, cofiwch.

Lord Morris: Yes, and it would work both ways, remember.

[123] **Simon Thomas:** Gan symud i'r cwestiwn olaf sydd gennyf, rydym wedi derbyn tystiolaeth am agweddau gwahanol ar yr angen i ddeddfu, yn enwedig yn San Steffan, pe bai penderfyniad i gydnabod awdurdodaeth i Gymru. A fyddai angen deddfu ai peidio? Mae'r Arglwydd Carswell, yn y papur yr ydych wedi ei gyflwyno, yn dweud yn glir y bydd angen deddfu yn San Steffan. Ymhlyg yn hynny efallai y byddai Deddf yma i gyfateb i hynny. Pe bai penderfyniad i ffurfioli'r system yn y modd hwn, a ydych yn gweld bod angen deddfu?

Simon Thomas: Moving onto my last question, we have received various evidence on the different opinions on the need to legislate, especially at Westminster, should it be decided that a jurisdiction for Wales should be recognised. Would there be a need to legislate or not? In the paper that you submitted, Lord Carswell states clearly that legislation at Westminster would be needed. Implicit in that perhaps there would be a corresponding Act here. If a decision were taken to formalise the system in that way, would you see a need to legislate?

[124] **Yr Arglwydd Morris:** Nid wyf yn gweld sut y gallech greu llys apêl na chyfundrefn arbennig yn debyg i eiddo Gogledd Iwerddon, os cymerwch y patrwm hwnnw, heb ddeddfu.

Lord Morris: I do not see how you could create a court of appeal or a separate jurisdiction along the lines of Northern Ireland, if you were to follow that pattern, without legislation.

[125] **Simon Thomas:** Felly, byddai unrhyw beth pellach na datganoli gweinyddu yn golygu deddfu, a fyddai?

Simon Thomas: So, anything beyond the devolution of administration would require legislation, would it?

[126] **Yr Arglwydd Morris:** Byddwn i'n meddwl. Dyna pam mae'n rhwydd datganoli gweinyddiad. Dim ond arweiniad sydd ei eisiau, yn enwedig gan farnwyr. Mae gennych gryn dipyn o ewyllys da, sydd wedi dod â ni i'r lle yr ydym yn awr. Rwy'n parchu'n ofnadwy y barnwyr sydd wedi dod â'r gyfundrefn sydd yma yn barod. Mae'n dal i egino, ac os yw'n tyfu ac yn ffrwythloni, gall fod gennych gyfundrefn a fyddai'n gweithio yn ymarferol.

Lord Morris: I would think so. That is why the devolution of administration is easy. All that is required is guidance, particularly from judges. You have quite a bit of good will, which is what has brought us to our current position. I am very respectful of the judges who have created the system that we currently have. It is still in the embryonic stage, but if it continues to grow and reach fruition, you could have a system that works in practice.

[127] **David Melding:** Thank you, Lord Morris. That concludes the questions that we want to put to you. We have had a full discussion, but if there is anything that you want to add that will help us in our evidence gathering, now is the time to do so, though I suspect that we have covered everything that both sides think valuable.

[128] **Lord Morris:** I am grateful for the opportunity. I have thoroughly enjoyed the questions. I do not know whether all your witnesses enjoy them as much as I have. Also, since Simon and I were dealing with each other in the language of God and heaven, I hope that, for others who had to follow the translation, the translators providing the facilities were sufficiently experienced, as undoubtedly they are, to ensure that you understood the exchange.

[129] **David Melding:** They were, yes.

[130] **Lord Morris:** I will quickly say that some translations, I feel, are not always that good. When I look at a 'No Smoking' sign, which says in Welsh, 'Dim ysmegu yn y fangre hon', I am transported back to the Old Testament. [*Laughter.*]

[131] **David Melding:** Happily, we have New Testament plus translators working for us, who are up to date and excellent. Thank you very much, Lord Morris.

3.41 p.m.

Papurau i'w Nodi Papers to Note

[132] **David Melding:** There is a paper on subsidiarity monitoring to note. This is how we will deal with this from now on. We will get a quarterly report, I think—or is it termly? Yes, there will be three, laid out as this one is, highlighting the particular issues—and we have dealt with one on procurement. There is a long list of issues that have been filtered, as some were not considered to warrant detailed scrutiny. Are there any comments on that? Do you like the layout? Is it helpful?

[133] **Simon Thomas:** As helpful as a report on subsidiarity in Europe can be.

[134] **David Melding:** Quite, and I know that there is a lot of detail, but, every so often, a really important issue is unearthed. The clerk is suggesting that we lay it as a committee report so that it is available to all Assembly Members and the public. I think that we should do that. There we are, we will.

[135] The other paper to note is the report of last week's meeting. We will meet next on 2 July, which is next Monday.

3.42 p.m.

**Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod**
**Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from
the Meeting**

[136] **David Melding:** I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 17.42(vi) and (ix).

[137] I do not see any Member objecting, so we will now go into private session.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 3.42 p.m.
The public part of the meeting ended at 3.42 p.m.*