THE COMMISSION ON JUSTICE IN WALES

SUBMISSION

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Introduction

1. This submission addresses the role of the legal system in relation to the rapid development, since 1999, of devolved government in Wales and how that role might best evolve in order to maximise its contribution to good government and effective justice in Wales. The views expressed are personal views of the author.

2. The reforms introduced by the three devolution statutes of 1998 – the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 1998 (since superseded by the Government of Wales Act 2006, which has itself been substantially amended by the Wales Act 2017) were essentially limited to the legislative and executive powers of government. They did, of course, define the extent to which the devolved bodies were to be able to exercise legislative and executive powers in relation to the criminal and civil law, the organisation of the courts and judiciary, legal aid, policing and prisons. But the devolution statutes did not, themselves, make any structural changes to these matters. They preserved, by default, the status quo relating to the respective legal jurisdictions in the United Kingdom.

3. This approach of not addressing the structure of the legal jurisdictions within the UK, alongside the massive constitutional change made by devolution, was not inevitable. The only previous exercise in devolving legislative and executive powers within the UK – the Government of Ireland Act 1920 – made detailed provisions relating to the organisation of the courts and the judiciary, amounting to the establishment of separate jurisdictions for Northern and Southern Ireland in parallel with the proposed establishment of legislative parliaments in both parts of Ireland, within the UK.[2]

4. The failure to conduct any debate as to how the courts, judiciary and other elements of the justice system might best be organised within a devolved UK can no doubt be atributed to a wish not to further complicate the already ambitious plan for legislative and executive devolution. The existing Scottish and Northern Ireland jurisdictions were (with some exceptions, including tribunals such as the Employment Tribunal, which dealt with disputes in the reserved field of industrial relations) in effect simply transferred, as they stood, to the control of the devolved legislatures. No consideration was given to the creation of separate courts to deal with devolved matters such as the criminal law and reserved matters such as company law. This is in contrast with many federal systems (the USA and Canada are obvious examples) which include separate systems of federal courts which exist alongside state or provincial courts, each system having jurisdiction over disputes arising out of the legislation of federal or state / provincial legislatures, respectively.

[1] For further information about the author, see http://www.swansea.ac.uk/staff/law/keithbush/ .
[2] In the event, only the Northern Ireland jurisdiction survived, with Southern Ireland being granted, instead, Dominion status as the Irish Free State outside the UK.

5. Whilst the transfer to the Scottish Parliament and Northern Ireland Assembly[3] of competence over the existing legal jurisdictions and associated subjects has worked without difficulty in those territories, the position of Wales, where devolved government continues to operate within a single England and Wales jurisdiction, is now anomalous. Of course, Welsh devolution was originally conceived as being purely executive in nature. Only very limited differences in primary legislation as between Wales and England, based on narrow ad hoc special provisions for Wales made by Westminster legislation on devolved subjects, were anticipated. Twenty years after the passing of the Government of Wales Act 1998 the situation has changed out of all recognition. As a result of the reforms made by the Government of Wales Act 2006 and the Wales Act 2017. the National Assembly for Wales now has very wide legislative powers, similar to those enjoyed by the Scottish Parliament and Northern Ireland Assembly. The major significant difference is the reservation to Westminster, in the case of Wales, of those matters regarded as being inextricably bound up with the existence of a single legal jurisdiction for England and Wales, including the courts and the judiciary, but also policing, prisons, and the general criminal and civil law (although these reservations are themselves subject to wide exceptions essential if the Assembly is to legislate effectively on devolved subjects).

6. The level of complexity imposed on Welsh devolution by the preservation of the single England and Wales jurisdiction is formidable and the effectiveness of these provisions is yet to be tested. It contributes to growing demands for Welsh devolution to be brought into line with that for Scotland and Northern Ireland by creating a Welsh jurisdiction, along similar lines to the creation of the Northern Ireland jurisdiction in 1920. Although the practical benefits of doing so will be reviewed below, the author is firmly of the view that such a development is, for the reasons which will be stated, inevitable at some stage. The emphasis of the paper will therefore be on examining the practical difficulties associated with such a change and on suggesting practical ways in which those difficulties might be mitigated.

The relationship of policing to the justice systems

7. Although policing is the most visible element of the "law and order" system, in the wider sense, the formal links between the organisation and financing of the police, on the one hand, and the justice system (courts and offender management, including prisons) on the other, are relatively weak. Policing was originally (outside London) a local authority function and continues to be operationally independent (at least in principle) of central government. However, increasing Home Office control over the financing of police forces has resulted in closer and closer government oversight of policing matters although in England and Wales police forces continue, with some exceptions, to be answerable, politically, to independent Police and Crime Commissioners or, in the case of London, to the Mayor, rather than to central government. But whether police forces are seen as part of the machinery of central or of local government they are certainly not part of the courts system. Their function of collecting and presenting evidence to the courts, in conjunction with the Crown Prosecution Service, does not necessarily need to reflect the organisation of the courts. This is illustrated by the existence of police forces such as the Ministry of Defence Police and the British Transport Police which operate across administrative boundaries and even across jurisdictions (although the British Transport Police is in

[3] Following a transitional period, in the case of Northern Ireland, when control over "justice and policing" was retained by Wesrtminster.

the process of integration into the Scottish policing system – a process which is proving far from smooth).

8. In principle, therefore, there is no difficulty in envisaging a devolved system of courts and a non-devolved system of policing or vice versa. The arguments for devolution of policing have been well-rehearsed. Devolution of policing would enable government financial support for police forces to reflect more closely the needs of Wales rather than those currently determined by the Home Office on the basis of the needs of London and other English conurbations. It would also facilitate further integration of emergency services, since organisation and funding of the Fire and Rescue Service and of the Ambulance Service are already devolved.

9. On the other hand, were the courts to be devolved it seems logical that the prosection function would also be devolved, by the creation of a Crown Prosecution Service for Wales and this would also be a powerful practical argument for also devolving policing, given the close partnership between prosecuting and investigative bodies.

10. Subject to the caveat that the devolution of policing is, conceptually, distinct from the devolution of the courts, judiciary, legal aid and prisons (the "justice" function) the remainder of this paper will proceed on the assumption that the creation of a separate Welsh jurisdiction, involving devolution of "justice" functions to Wales, would be accompanied by devolution of policing (unless, of course, this had aleady taken place). Reference will therefore be made, below to "policing and justice" which, unless the contrary is made clear, includes the police (other than the National Crime Agency, which would continue to operate on a UK basis, as at present) together with the courts, judiciary, prosecutions, legal aid and offender management.

The benefits of creating a devolved justice system for Wales

11. As stated above, the author believes that the arguments for the devolution of policing and justice are self-evident and will, in the long run, prevail. It is therefore proposed to do no more than list the factors militating for such a change, namely:

    - The rapidly-developing legal divergence, as between Wales and England, resulting from legislative activism by the National Assembly for Wales in fields such as health, education, social welfare, the environment, housing, planning and local government coupled with the unwillingness of Welsh legislators to follow legal changes in England where these reflect different political agendas;
    - The need for the justice system in Wales to reflect the reality of life in Wales; the physical isolation and economic depression characteristic of many Welsh communities calls for different approaches to questions such as the location of courts and availability of legal aid to those applicable in England to communities more geographically compact and with lower levels of economic deprivation;
    - The need for the emerging body of Welsh law to be interpreted and applied by judges immersed in the society from which it originated, and best able to understand the intentions of the legislators who made the law in question;
    - The need for the justice system in Wales to be operated in a way that reflects distinctly Welsh values, for example in adopting a less punitive and more rehabilitative approach to young offenders;

- The need for a justice system which operates bilingually, able to accommodate with equal facility the needs of users of the system irrespective of whether their preference is to use the English language or the Welsh language.

Arguments against creating a devolved justice system for Wales

12. These, and the author's response to them, are as follows:

- **The England and Wales jurisdiction has existed for almost 500 years and there is no pressing reason to change it.**

  In fact, the present unified England and Wales jurisdiction has only existed in its present form since 1831. For 300 out of the 500 years of the life of that jurisdiction it involved distinct Welsh judicial institutions, the Courts of Great Session and, indeed, until 1689 an appellate Council of Wales and the Marches. The abolition of the former and the mindless imposition of the English circuit system on Wales, in the face of overhwelming evidence that, for all its faults, the Court of Great Session provided faster, cheaper and more comprehensive legal remedies than the English system was widely condemned. Its pernicious effect was eventually mitigated, by the creation, after 20 years, of the county courts across England and Wales and, 120 years later, of the Crown Court, each reform, in its way, reinstating features of the previous distinctively Welsh system which the powers-that-be had sneered at when they were features of the Welsh system.

  But if there are, by now, practical attractions to maintaining the status quo, this is not, in the long term, an option. Whilst it is true that initially the degree of legal divergence between Wales and England was negligible and was far removed from the bread and butter fields of criminal law, damages claims and family disputes, the pace of legal change in Wales, as Welsh legislators make increasing use of their expanding powers, is ever accelerating. The status quo in terms of the basic organisation of the courts and the judiciary is unsustainable and some alternative structure must, at some stage, be created.

- **Wales is too small to be able to provide a comparable level of legal ability to that available across the England and Wales jurisdiction**

  Since the England and Wales jurisdiction is heavily centralised in London, with the overwhelming proportion of High Court and Court of Appeal cases heard there and with a highly lucrative international legal market revolving around the "magic circle" law firms based in and around the City of London, there is an inevitable centripetal force drawing lawyers of outstanding ability to London. Barristers and solicitors who wish to earn the highest earnings available within the jurisdiction, and judges who aspire to the highest echelons of the judiciary, will inevitably be attracted towards the centre of gravity of the legal and judicial professions in England and Wales, currently located very firmly in London. The argument that this phenomenon means that Wales could not sustain its own legal jurisdiction is, however, baseless, for a number of reasons.

  Firstly, it overlooks the fact that the vast majority of legal work in Wales – the bread and butter work of the legal system – involves the application of straightforward legal principles to common factual situations. Highly specialised legal skills are not prerequisite to effective day-to-day delivery of justice.

  Secondly, establishment of a Welsh legal jurisdiction would itself help to reverse the leakage of legal talent out of Wales. No-one suggests that Scotland, with a

population of only five million against Wales's three, let alone Northern Ireland with a population of less than two millions, cannot produce, and retain, individuals having legal skills of the highest order.

Thirdly, there is no reason to assume that a Welsh jurisdiction could not continue to draw, when necessary, on the skills of practitioners based outside Wales. Legal qualifications would be likely to be largely interchangeable with England (as is largely the case as between Northern Ireland and England and Wales) in view of what would be a continuing common law basis for both jurisdictions.

Fourthly, it is similarly wrong to assume that the courts of Wales would not be able to draw on judicial skills, particularly at the highest level, from outside Wales. The smallest jurisdictions within the British Isles, those of Jersey and Guernsey, appoint to their courts of appeal judges from outside the Channel Islands and there is no reason why there could not be some degree of interchangeability between the judiciary of the Welsh and English jurisdictions.

- **A separate Welsh jurisdiction would exclude lawyers based in Wales from participation in the lucrative England and Wales legal market.**

  Wales-based lawyers are currently able to participate in all aspects of the England and Wales legal market and to compete for a share of business generated across the whole of England and Wales and indeed originating abroad. The reverse is also true – lawyers from outside Wales can compete for work generated in Wales. But lawyers in Wales would continue to be able to market their services in both jurisdictions, subject to making appropiate arrangements to do so. There is no doubt, however, that fear of effective exclusion from the English market, based on the actual or perceived disadvantages of being based outside that jurisdiction, is understandably seen by many solicitors in Wales as being an unwelcome consequence of the creation of a Welsh jurisdiction. It would be unrealistic to ignore this objection. In the longer term there is no reason to doubt the ability of the legal profession in Wales to adjust to such a change, finding new sources of work within Wales and improving their ability to compete effectively outside Wales. But in the short term the resistance of the legal profession to a far-reaching and potentially economically damaging change, introduced without regard for the need for time to adjust to it, would be inevitable.

- **The additional cost of a separate Welsh jurisdiction**

  Detailed examination of the cost to the public finances of dividing the current unified jurisdiction is outside the scope of this paper. Comparisons are difficult, in view of the likely degree of variation in cost within the current jurisdiction. It cannot be assumed that the cost of supporting a Welsh jurisdiction would simply be the same as Wales's per capita share of the current cost of the England and Wales jurisdiction. Nevertheless, there is sufficient evidence to suggest the existence of a real practical problem in financing, under current conditions, a Welsh jurisdiction able to meet the needs of Wales.

  Annual current spending by the Home Office (including grants to the police), the Ministry of Justice (including the costs of the courts, judiciary and prisons) and

the Crown Prosecution Service and Serious Fraud Office totals £21 billion,[4] equivalent to £376 per capita across England and Wales. The equivalent per capita figures for Scotland[5] and Northern Ireland[6] are £560 and £666, respectively. International comparisons may be made with New Zealand[7], where equivalent services attract government spending of about £449 per capita and the Republic of Ireland[8], where the figure is about £545 per capita. There is clear evidence that the difference between spending on justice and policing in Scotland as compared with England and Wales is not entirely based on the difference in the cost of delivering justice and policing services in more sparsely populated areas or on "economies of scale". As recently as 2010 the cost of policing and justice was exactly the same in Scotland as in England and Wales (approximately £500 per capita) and before that the cost was marginally less in Scotland.[9] Instead, the wide gap that has now opened up is attributable to a modest growth in the level of spending in Scotland (12% in real terms), accompanied by very substantial cuts in spending on equivalent services in England and Wales (about 25%).

Were responsibility for the police, prosecution service, courts, judiciary, legal aid and prisons to be devolved to Wales one could expect, based on a per capita division of the current England and Wales level of expenditure, a financial transfer to the Welsh budget of about £1.1 billion. This should be compared with the £2.8 billion spent on these matters in Scotland and the £1.2 billion in Northern Ireland. Wales would not be able to finance the same level of provision as either of those territories without diverting very substantial resources from other areas of devolved public expenditure. Since the above international comparisons suggest that the normal level of public expenditure needed to maintain an adequate policing and justice system is around £500 per capita per annum, the resource available to Wales would fall short of what would be needed to reach this standard by around £400 million per annum.

This is, of course, an inevitable consequence of the UK government's austerity programme, which has eaten much more deeply into spending on the police, courts, prisons etc, than it has into spending on areas already devolved to Wales such as the health service. The devolution of policing and justice at present, or indeed in the medium term (i.e. until there has been some reversal of the current downward trend in spending on such matters across England and Wales) would be to hand Wales a poisoned chalice. Run-down services would be acquired together with an inadequate level of resources to fund them. There could hardly be a less opportune time for the devolution of the services in question.

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[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701014/main_estimates_2018-19_web.pdf

[5] http://www.gov.scot/Publications/2017/12/8959/11

[6] https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Northern%20Ireland%20Finances%20-%20Tables.pdf

[7] https://treasury.govt.nz/publications/budgets/justice-sector-estimates-appropriations-government-new-zealand-year-ending-30-june-2019

[8] http://www.budget.gov.ie/Budgets/2018/Documents/Part%20II%20-%20Expenditure%20Allocations%202018-20.pdf

[9] https://www.nuffield.ox.ac.uk/media/1940/publicpolicywp-public_spending_scotland.pdf

- **The impact on Welsh legal and professional education**

  A Welsh jurisdiction could not function without judges and lawyers trained in Welsh law. Providing the necessary training would not necessarily give rise to insuperable obstacles. Since, like Northern Ireland, Wales is, and would remain, a common law jurisdiction there would be a very large overlap between the legal education likely to be offered in Welsh universities and that offered in England. Given proper planning, it would continue to be possible for students from outside Wales to qualify to practice in England, in the same way that students from outside Northern Ireland can do so through study at Northern Ireland universities.

  However, given that Welsh universities have not, as yet, needed to address this issue in depth, and are currently operating on the basis of a continuing England and Wales jurisdiction, the planning involved in moving to a system of legal education in Wales which would be able to serve the needs of a Welsh jurisdiction whilst preserving, at the same time, the ability to attract students from outside Wales, would need to be careful and extensive. The development of a distinctive body of Welsh law within the unified England and Wales jurisdiction will, of course, give rise to similar issues. But the response to this process will be evolutionary rather than one which has to take place over a few years at the most.

  This subject is of course bound up with the organisation of the legal profession and, potentially, the need to create separate professional bodies for Wales and for England. This is itself a topic of huge complexity and sensitivity.

The inescapable conclusion

13. The impact of austerity on government spending, across England and Wales, on the elements which would make up a Welsh jurisdiction means that this is an exceptionally inauspicious time for creation of such a jurisdiction to take place. The genuine concerns about the immediate impact on the ability of lawyers in Wales to market their services, in England and beyond, the far-reaching changes in legal education that would be needed, and the massive upheavel to the structures of the legal professions, also suggest that an early move to divide England and Wales into separate jurisdictions would be fiercely resisted by the very people who would be expected to make the greatest contribution to the success of a Welsh jurisdiction.

14. On the other hand, for the reasons set out in paragraph 11 above, the creation, at some stage in the future, of a Welsh jurisdiction, is inevitable. How then, can one reconcile the need to prepare effectively for such a development with the impracticability of making any significant move in that direction in the foreseeable future?

The two options

15. In the author's view there are two approaches which could pave the way to the establishment, when circumstances permit, of a Welsh jurisdiction. They have the advantage that neither would, as it happens, pre-judge the ultimate goal. Both would be equally desirable even if, contrary to the author's prediction, formal separation of the unified jurisdiction never takes place. Since they are not in any way mutually exclusive, either could proceed independently of the other. Indeed, since one would depend on a commitment by the UK government whilst the other is generally within devolved powers they would inevitably be complementary rather than monolithic.

Administrative decentralisation within a unified non-devolved structure

16. The years immediately following devolution saw a number steps taken in the direction of aligning the administration of the courts so as to recognise Wales as an essential unit within the architecture of public administration, irrespective of whether the field of government was devolved or not. Major milestones were the creation of a Wales (as opposed to a Wales and Chester) region of HM Courts (now Courts and Tribunals) Service and the creation of the Administrative Court in Wales. The appointment of specialist Chancery and Mercantile judges, working together with the Designated Civil Judge for Wales, has equipped Wales with a team of versatile civil judges whose quality and flexibility far surpasses the provision made in most parts of England. Practice Directions applicable to Wales have strengthened the position of the Welsh language in the courts in Wales. Steps have been taken towards recognition of the growing need for an element to judicial training which reflects the increasing divergence between the law in Wales and that in England.

17. But in recent years progress has slowed and, in some cases, reversed. The centralisation of the County Courts, including the transfer of functions to do with the commencement of money claims to Salford and of bulk and digital claims to Northhampton have involved transferring work which would formerly have been carried out in Wales to centres in England and have inevitably introduced some complications for those wishing to make greater use of the Welsh language when commencing or responding to proceedings. Some administrative functions to do with the running of the courts (e.g. judicial travel and subsistence claims) have been transferred from HMCTS Wales to outsourced organisations in England.

18. Perhaps more significant has been the failure to recognise the need for processes to do with judicial appointments to give clearer recognition to the fact that judges who work in Wales work in a distinct emerging jurisdiction and for judicial training to fully respond to the growing need for training reflecting the growing body of Welsh law.

19. A minimum agenda for change which would both recognise the growing legal distinctiveness of Wales and prepare for an orderly transition, at some future stage, to a separate Welsh jurisdiction, would involve:

- recognition of Wales as a national unit and not just a region, within judicial and administrative structures;
- a special status, with a longer term of office, for the judicial lead of the England and Wales judiciary in Wales (currently the senior presiding judge of Wales);
- a presumption that cases relating to Wales should be heard in Wales;
- provision, through courts and administrative support located in Wales, of all administrative and judicial functions relating to Wales, including commencement of money claims, digital claims and bulk claims at a centre within Wales;
- conferring on the Welsh committee of the Judicial Appointments Commission the function of conducting separate recruitment exercises for appointments in Wales;
- creation of a Welsh branch of the Judicial College, based in Wales and charged with the training of judicial office holders based in Wales.

Development of the role of devolved Welsh tribunals

20. The Welsh tribunals[10] have recently, under part 3 of the Wales Act 2017, acquired a collective identity and a degree of overarching judicial leadership (the President of Welsh Tribunals) which they have never previously enjoyed. The changes to the definition of the legislative competence of the National Assembly for Wales made by the Wales Act 2017 also make it clear that "devolved tribunals", i.e. those whose functions are exercisable only in relation to Wales, and do not relate to reserved matters, are within that competence.[11]

21. The Assembly therefore now has power to reform the structure of the Welsh tribunals and to add to their functions in respect of devolved subjects. The need to rationalise the structure of the Welsh tribunals has been recognised for many years.[12] An obvious element of any reform would be to create a single Welsh Tribunal organised into specialist chambers covering the jurisdictions of the current individual Welsh tribunals. But the jurisdiction of the Welsh tribunals is far from comprehensive in its coverage even of devolved areas of government. This omission should be rectified. The opportunity should be taken, for example, to create a planning and environmental chamber which could exercise judicial functions currently exercised, in relation to Wales, exclusively by the Administrative Court.

22. The Welsh Government could also ensure that devolved legislation which creates new judicial functions assigns those functions to the Welsh Tribunal. To date, it has been reluctant to do so. Proposals that new judicial functions to be created under the Renting Homes (Wales) Act 2016 should be vested in the Residential Property Tribunal for Wales were opposed by the Welsh Government on the grounds that to do so would give rise to "difficulties due to capacity constraints, and very significant resources would be needed to overcome them."[13] Since the county court, which acquired the functions in question instead, is paid for out of UK resources, the impact of conferring the functions in question on that court was apparently not a matter with which the Welsh Government felt it needed to concern itself, an attitude which is unlikely to be tenable as Welsh legislation continues to grow and to create new remedies which need to be adjudicated upon.

23. Yet the development of the jurisdiction of the Welsh tribunals would appear to be entirely in line with the policies and philosophy of Welsh government. In terms of jurisdiction, membership and administration they are entirely devolved and can therefore be developed in ways that reflect the policy priorities of the Assembly and of the Welsh government. They are local, approachable and flexible, able to interract effectively with their users and to hold hearings in locations that reflect, as much as possible, the needs of litigants. They are relatively inexpensive to run.[14] They are able to keep closely in touch with specifically Welsh legal developments. They are able to

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[10] Currently, the Agricultural Land Tribunal for Wales, the Mental Health Review Tribunal for Wales; the Residential Property Tribunal for Wales, the Special Educational Needs Tribunal for Wales (shortly to become "the Education Tribunal for Wales"), the Adjudication Panel for Wales and the Welsh Language Tribunal (see section 59 of the Wales Act 2017).

[11] Schedule 7A paragraph 9(2) of the Government of Wales Act 2006 as amended by the Wales Act 2017.

[12] See the "Review of Tribunals Operating in Wales" produced by the Welsh Committee of the Administrative Justice and Tribunals Council (2010).

[13] See record of plenary, 10 November 2015.

[14] The annual cost of the Residential Property Tribunal for Wales, with a case-load of about 130 cases per annum is currently about £193,000 (https://gov.wales/docs/rpt/publications/180322-rpt-annual-report-201617en.pdf)

offer an effective bilingual service. In all these respects they are much better placed to serve the needs of Wales when adjudicatiing on disputes relating to devolved matters than are the courts or tribunals that operate across England and Wales.

24. Both in the interests of providing accessible, effective and economical justice for the people of Wales in relation to devolved matters but also as a means of preparing for an orderly transition, in due course, to a Welsh courts system as well as a Welsh tribunals system, it should be a presumption (subject to exceptions where necessary) that where legislation relating to devolved matters requires provision for adjudication by an independent judicial body, the body in question should be the proposed Welsh Tribunal rather than the courts.

25. The process of developing the Welsh tribunal system should not be confined to devolved subjects in the narrow sense. A property chamber of the proposed Welsh Tribunal could also acquire functions currently exercised by the county court (for example the making of possession orders) where this is ancillary to a dispute with which the Tribunal is already seized. And subjects which are currently wholly reserved could be transferred to the Tribunal, for example disputes relating to children and family financial support. Such changes would require, by agreement with the UK government, some adjustments to the current reservations in Schedule 7A to the Government of Wales Act 2006 but the mechanism to do this, through secondary legislation, exists in section 109 of the Act.

26. By these means, an indigenous Welsh system of adjudication, reflecting the particular needs of devolved law and policy, could be built up over time, establishing a body of Welsh judicial, professional and administrative expertise, which would not only be of intrinsic benefit to the people of Wales but would also contribute to building an infrastructure for an ultimate merger with the courts system in Wales.

Conclusion

27. In the author's view, the effect of devolution is to create an inescapable need, in the long term, to bring Wales into line with Scotland and Northern Ireland by the creation of a Welsh policing and justice system, including a Welsh jurisdiction.

28. However, the time is exceptionally unpropitious for such a step. The swingeing cuts in central government expenditure on the functions in question (which are continuing), as well as the unpreparedness of legal education in Wales and the legal professions in Wales for such a revolutionary change would, if it were to be imposed in the short term, seriously harm the interests of those who use the courts in Wales as well as those needed to enable the courts to function.

29. Over the short to medium term, a strategy should be adopted which would not only have immediate benefits in terms of the quality of justice in Wales but would also pave the way for the creation of a Welsh jurisdiction in due course, comprising:

- As much decentralisation as possible of the existing England and Wales justice system (see paragraph 19) ;
- Development of the existing Welsh tribunals so as to provide an indigenous Welsh justice system catering for the demands of the growing body of Welsh law (see paragraphs 21, 24 and 26).

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