Cynulliad Cenedlaethol Cymru
The National Assembly for Wales

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

Dydd Llun, 18 Mehefin 2012
Monday, 18 June 2012

Cynnwys
Contents

Yn y golofn chwith, cofnodwyd y trafodion yn yr iaith y llefarwyd hwy ynddi. Yn y golofn dde, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

In the left-hand column, the proceedings are recorded in the language in which they were spoken. The right-hand column contains a transcription of the simultaneous interpretation.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mick Antoniw	Llafur (yn dirprwyo ar ran Julie James) Labour (substitute for Julie James)
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
David Melding	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Committee Chair)
Eluned Parrott	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Yr Athro/Professor Thomas Glyn Watkin	Cyn-bennaeth Ysgol y Gyfraith, Prifysgol Bangor Former Head of the Law School, Bangor University

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

Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Olga Lewis	Clerc Clerk
Alys Thomas	Ymchwilydd Researcher
Adam Vaughan	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 2.28p.m.
The meeting began at 2.28 p.m.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant
Introduction, Apologies, Substitutions and Declarations of Interest

[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 you hear the alarm, please follow the instructions of the ushers, who will help us to leave safely. These proceedings will be conducted in Welsh and English. When Welsh is spoken, there is a translation on channel 1 of the headset, and channel 0 will amplify our proceedings if you are hard of hearing. Please switch off all mobile phones and electronic equipment completely as even leaving them on silent means that they can interfere with our recording equipment. I have received apologies from Julie James and I am pleased to welcome Mick Antoniw who will substitute for Julie, and who has been an occasional attender, or a regular attender, although perhaps not frequent. We look forward to

your contribution this afternoon.

2.29 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:** There are two listed here. Are there any comments? I see that there are not.

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:** There are no items that require reporting.

2.30 p.m.

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

[4] **David Melding:** This is a continuation of our inquiry into the establishment of a separate Welsh jurisdiction. Professor Watkin will join us shortly.

[5] Today's meeting is the eighth oral evidence session that we will have held. At the previous meeting, we heard evidence from Winston Roddick. Today, we will hear evidence from Professor Thomas Watkin, whom I welcome this afternoon. We are delighted to have you here for our proceedings today. Professor Watkin is head of the law school at Bangor University.

[6] **Professor Watkin:** I will stop you there, Mr Chairman, as I am not the head of the law school at Bangor. I was until 2007, but I am now retired.

[7] **David Melding:** I do apologise. Just to give you some idea of how these proceedings will be conducted, we have a range of questions and we have read your written evidence very carefully. Members will put questions to you, but there may also be some supplementary questions. I am sure that you are used to these sorts of proceedings, but should there be any issue that you have not been able to address that you think is relevant to our inquiry, I will invite you to add any comments at the end if you see fit then.

[8] I will start with the first question on the distinction that you are keen to make between the jurisdiction of a court in civil law countries and its competence. These concepts are often confused. What are the dangers to our inquiry if we do not have a more lucid understanding of why these two matters need to be seen more distinctly?

[9] **Professor Watkin:** My principal concern was the fact that the word 'jurisdiction' in English has several meanings, which can have an impact on the debate. The possible source of confusion comes when people use the word 'jurisdiction' in different senses of the word in the course of argument. So, it can occur that people are proposing something with regard to a

Welsh jurisdiction that apparently is vehemently opposed by others, but in point of fact they are not talking about the same thing. To illustrate that, when one thinks of jurisdiction as a system or an organisation, in the most modern usage of the term—and this usage begins in the middle years of the eighteenth century, really—one sometimes thinks of there having to be a system of courts, high court, a court of appeal, and so on, but also possibly things such as a commission to advise on matters and all sorts of ancillary services that go with it, with the result that people believe that if you cannot have all that, you cannot have any of it. However, one does not necessarily have to use 'jurisdiction' in that very large sense.

[10] In essence, as I have argued in the paper, I see 'jurisdiction' as being a function rather than an institution. That is, wherever you have a body of law, it follows necessarily that that law has to be applied, and there must be some system, person or body, that is a court, which can apply it. That is the oldest meaning of the word going back to the Middle Ages when there was a multiplicity of jurisdictions in England.

[11] So, my concern is that you can end up using the word in different senses, thereby unnecessarily complicating the debate. If one is clear about what one wants and why one wants it, that moves things forward. It was very important, if I may say so, that the question of what was meant by a separate jurisdiction was posed as the initial question in this inquiry.

[12] I am also aware that, over the last century or so, the concept of 'jurisdiction' has featured as a reason for denying Wales, or at least suggesting that Wales cannot have, certain things that other parts of the UK have. So, you find the concept of 'jurisdiction' being wheeled out, as it were, as a reason why certain things cannot be given to Wales. If I may, I will give some illustrations of that. For instance, in the 1880s, when the first attempt was made to gain legislation from Westminster for Wales only, those who opposed it said that you could not have laws just for Wales because Wales was not a territory that had its own judicial system and you cannot have a body of law unless you have a judicial system.

[13] In part as a reaction to that, the legal professions in Wales, the Bar and the judiciary in particular, were mindful to look back to see the Courts of Great Sessions in Wales that had been in place earlier in the century and say, 'We once had our own courts; perhaps we should get them back'. In the years after the first world war, at the Speaker's Conference on devolution, a sub-committee was set up to consider the question of whether, with the reorganisation of the UK following the partition of Ireland, there should not be separate judicial systems in Northern Ireland and Scotland and in Wales and England as separate units. The reason given for opposing separate courts for Wales was that Wales is not a territory with its own body of law, which is the converse of what was said in 1880, namely that Wales could not have a body of law because it did not have courts; now it was said that it could not have courts because it did not have its own body of law.

[14] However, the sinister part of this—and I am not using that word in a nasty sense—is that you can describe a territory with a body of law as a jurisdiction and you can describe a territory that has its own courts as a jurisdiction. So, you can translate those two responses as: 'Wales cannot have its own laws because it is not a jurisdiction' and 'Wales cannot have its own courts because it is not a jurisdiction', and a spurious consistency is given to arguments that are actually different.

[15] The concept is then run out again in the 1930s, 1940s and 1950s as a reason for denying Wales an office of Secretary of State on the same grounds, namely that it did not have a body of law or its own courts. However, the senses in which 'jurisdiction' is being used is slightly different on each occasion. That is why it is important to come to an understanding of what is meant by jurisdiction and how that differs from other concepts such as competence. I am conscious that I have gone on for some time and that I have not reached the question of competence. May I continue?

[16] **David Melding:** Please do.

[17] **Professor Watkin:** I am happy to stop there if you want to cut in.

[18] **Simon Thomas:** You seem quite competent to continue. [*Laughter.*]

[19] **Professor Watkin:** The distinction between 'jurisdiction' and 'competence' is one that is rather more fundamental and is one that is honoured in the doctrinal writing of certain other European legal systems in the civil law tradition. It is perfectly clear that one cannot insist that the word 'jurisdiction' be used in English in any sense other than that in which English people use it. However, one can use the distinction between 'jurisdiction' and 'competence' as a conceptual tool of analysis to clarify various questions with which one has to deal. By 'jurisdiction', what is meant in civil law countries is what I have just described, namely the function of a court in administering a particular body of law. 'Competence', on the other hand, addresses the question of how you share out, within a judicial system, particular roles. For instance, if you were to say that you have a body of criminal law and you must therefore have some mechanism for applying it, you could, theoretically—madly—have just one court dealing with all cases in one place. However, that would clearly be inefficient and would cause delays and so on, so you begin to make distinctions and say that the courts will be in several places and you give each territorial competence. You say that some will deal with minor offences and some with more serious crimes, so you have subject-matter competence. Some will deal with cases at first instance and some on appeal, so you have functional competence.

[20] In England and Wales, we talk about those different courts as having 'jurisdiction' over the matters with which they are concerned, rather than having competence within the jurisdiction of criminal law. The result of that, once again, can be unfortunate for this sort of discussion or inquiry, because the question of how you share out that competence is one that has to be addressed regardless of whether you are talking about Wales, England and Wales, the United Kingdom, or whatever area is in question. So, it is not really a question that is pertinent to whether Wales should have its own jurisdiction. In other words, you are slicing up the cake and deciding how you will share it out, but the jurisdiction question is not about how you slice up the cake, but about whether you will be given a cake to slice.

[21] **David Melding:** Or whether you can make your own cake. [*Laughter.*]

[22] **Professor Watkin:** That is possibly slightly different again. Nevertheless, it is a question that goes much deeper than that. The question of how you share the competence will largely be determined—not entirely, but predominantly—by practical issues: questions of convenience and of efficiency. The question about whether you should have jurisdiction is one of constitutional principle. If you do not distinguish between the two concepts, there is a danger—and this shows itself in current debates in Wales—of bringing to bear on the larger question issues of practical convenience, delay and efficiency as though those were the only matters to be addressed, and of losing sight of the fact that the larger question of whether one should have a jurisdiction at all is different. It is a question of constitutional and legal principle, and that is what should predominate in answering it. I am sorry that I have gone on for rather a long time.

[23] **David Melding:** It is most apposite that you have made those opening philosophical remarks, in many ways, because it allows us to drill down to practical and specific issues. We have quite a few to cover, so we need to maintain a certain pace, but I think that it is appropriate to have set the scene in that manner.

[24] I suspect that you will not have much sympathy with this view, but some witnesses

have said that the issue of a Welsh jurisdiction is really something that you face only when there is a sufficient body of law. I infer from what you have just told us that that is a red herring, really, and that, if we have a jurisdiction, it is a constitutional issue: we would inherit many laws, and we would just apply them and then start to change them, and that is how we would proceed. So, in a way, we do not have to wait for a sufficient body of law—or have I misinterpreted what you have said?

[25] **Professor Watkin:** I do not think that you have misinterpreted what I have said, but I do not think either that the issue of sufficiency is entirely a red herring. If there were only one law that applied in Wales and not in England, it would still have to be applied and there would still have to be jurisdiction over it, but the question of what you would do about that by way of institutional development would clearly be very different from the situation that now pertains, where there is a growing body of law. I suppose that, ultimately, what we are asking is what constitutes a body of law?

[26] However, in addressing that issue, I would like to wind back a little, because I think that there is an element in the question that needs to be teased out, with regard to sufficiency. I mentioned earlier that questions like this arose in the 1880s and 1920s. When a similar inquiry to this was being held in the years after the first world war, the point was made that Wales could not have its own judicial system and jurisdiction in that sense, because it did not have its own body of law. Now, Wales does have its own body of law, so that reason appears to go away. However, it does not go away; it transmutes itself. Now that we have a body of law and have satisfied that criterion, it transmutes itself into the question of whether that body of law is sufficient. I would not accuse those who are advancing that argument of doing anything improper, but it strikes me that this is the remnant of that earlier argument. The question changes and the nature of the question changes. In a sense, the goalposts have moved, because it is no longer a matter of having a body of law, but a sufficient body of law.

2.45 p.m.

[27] The nature of scoring a goal also changes. The question of whether there is a body of law that is Welsh is basically a straightforward question that has a ‘yes’ or ‘no’ answer—either there is one or there is not. The question of whether or not there is a sufficient body of law is a question that does not have a ‘yes’ or ‘no’ answer; it is a question on which opinion can differ with regard to the correct answer. Therefore, it raises the important question: if you are going to put in a criterion of sufficiency, who will decide what is sufficient? I think that that is a very important question. The recommendations of the Speaker’s conference on devolution inquiry, which was held after the first world war, were obviously never implemented—I think that the report itself was divided—but one of the recommendations made was that the question of whether Wales should have its own judicial system was one that should be answered by a Welsh legislature. To say that in 1920, I suppose, is a mighty kick to touch. The ball has been in touch for probably 80 years, but it is now out of touch. The question, therefore, of whether or not the body of law is sufficient, is, according to what was decided or recommended then by some, a question that belongs to a Welsh legislature. Indeed, that inquiry went further and said that the UK Parliament should give Wales its own judicial system and all accessory institutions to go with it, if and when it was requested to do so by a Welsh legislature.

[28] **David Melding:** That is interesting. I think that we will ask for a note on the Speaker’s conference, because it dealt with fundamental issues. I have read the Speaker’s conference, but not all the work of the various committees that reported to it. Would it be fair to say that an effectively functioning legislature, if it did not have a sufficient body of law when it started, would soon generate one? If you thought that that criterion did apply, are we not talking about a relatively short spell of time before some level of sufficiency would be met? It will not last for five, 10 or 15 years, will it? You will soon have laws, or that

legislature is not doing very much.

[29] **Professor Watkin:** Short of something totally unforeseeable happening, I think that we are on a one-way street towards reaching that point. The question is whether one prepares in advance to reach it, and has a solution that will be suitable, or waits until one collides with problems and has to produce something on the spur of the moment, which will not be best. That is why it is important that these issues are discussed fully at the present time.

[30] **David Melding:** Before I move on, did you just want to follow up on one of those points, Mick?

[31] **Mick Antoniw:** Is it not the crux of the issue that, at the moment, we have a dual legislature? I suppose that you can even argue, in some ways, that it is almost tertiary, if you also take the European element. However, you still have a great deal of law that affects Wales; the majority at present is still probably UK/Westminster determined, and you also have a certain amount that is now being created in Wales. You also have the law that is created by virtue of the fact that, as law develops in England, some of it specifically excludes Wales. I agree with what you say about how and when this happens and so on, but is not the key thing, really, the codification—making sure that people know what the laws are—and secondly, how you accommodate that?

[32] **Professor Watkin:** I certainly think that it is important, with law being made in more than one place for Wales, that there is, as it were, a place where the law that applies can be discovered. My feeling is that you would be more likely to achieve that if you had a formal separation with regard to the administration of justice in the two nations. That raises the whole profile of what is happening, and it will produce a response that is slower coming, when people are still thinking about and approaching the situation in terms of there being one jurisdiction. One jurisdiction suggests one legal literature, one set of reporting and one statutory body. Certainly Wales, and I think eventually England, with regard to the law that is separate, will to some measure suffer as a consequence. Raising the profile of what is happening with regard to law-making and the administration of justice will provide dividends in the form of the greater likelihood of there being legal literature and so on.

[33] **Suzy Davies:** Thank you, Professor Watkin; I thought that this was a really helpful paper. I hope that you will bear with me as I try to translate it into something that I can explain. I want to talk about the administrative system and its relationship with the creation of law. At the moment, we have a system where you have England and Wales law, law that is applicable only in England and law that is applicable only in Wales; the current system seems to deal with that relatively well, subject to any rush of new law that might come in that is made here in Wales. The system itself is not necessarily at fault—am I broadly right in suggesting that? There is one exception: law that is created here in Wales, primarily by this Assembly, and is therefore produced bilingually, requiring special skills by the judge and the professionals acting on the case. If I understand your argument correctly, many of the geographical and territorial questions are covered through sheer practicality and convenience at the moment, through courts of first instance—cases tend to be started in the area where the cause arises. So, we have an element of that already. It is only when we get to the Court of Appeal stage that the problem that you have highlighted arises—where you need judges with dual competence in the languages and interpretation skills for legislation that has originated here as opposed to in Parliament, monolingually.

[34] You are using that as an argument for a legally defined jurisdiction of the competence of the courts of England and Wales. That is effectively a geographical competence question. Is your reason for doing that consistency with the rest of the UK, or is there something about the status of these higher courts that requires legislation as opposed to practice direction?

[35] **Professor Watkin:** I am not sure that my reason is either. I have very little doubt that a solution to many of the issues that we are discussing could be achieved by means of practice directions from the courts. I have no complaint, really, with the manner in which they might well solve that, but I would not regard it as a satisfactory way of solving it, and that for a number of reasons. The first is that practice directions are what they say they are—they are directions about legal practice, they are made, and they can be unmade. They have no permanence, and they would provide no guarantee that the situation that they would create would be a lasting situation. What we are discussing is not a short-term change or one that is temporary; we are talking about moving along a road of legal development and the acquisition of a legal identity in Wales that flows from that and which requires a permanent change. That is my first objection—that they are not permanent.

[36] My second objection—and this should not be misunderstood—is that they are made by judges, and that is proper, because they are concerned with the distribution of business and the efficiency of the courts. That is where, I would say, we touch a constitutional principle, because the change that is now being addressed is not one that should be made by judges; it is a matter of constitutional principle that rightly should be made by those who represent the people of Wales, namely this Assembly. Having been made in legislation, it would be as permanent as any other piece of legislation.

[37] My final point is this: having been made by the representatives of the Welsh people, they are then answerable to the Welsh people for what they deliver in a way that judges, with their practice directions, are not. If I could just stray linguistically for a bit, Dr Robyn Léwis in his Welsh language dictionary provides two Welsh terms for practice directions. One is *cyfarwyddiadau ymarfer*, which is almost a literal translation of 'practice directions'; the other, which is informative, in my view, is *cyfarwyddiadau barnwyr*—judges' directions, which is what they are. However, the issue that is under discussion here is one of constitutional principle. It should not be for judges to settle according to what works well in the courts; it should be for the democratically elected representatives of the people to settle and to be answerable for the manner in which it is settled.

[38] **Suzy Davies:** May I develop that slightly? If we are talking about a situation in which the responsibility for Court of Appeal governance lies with this body rather than with Parliament, the inferior courts underneath the Court of Appeal would necessarily have to come under National Assembly for Wales jurisdiction as well.

[39] **Professor Watkin:** I would certainly not want to say that the Assembly would run the court; there would have to be that independence with regard to the judiciary and the judicial services—

[40] **Suzy Davies:** Yes, but the responsibility for—

[41] **Professor Watkin:** However, the decision as to the shape of the justice system would be made by one or the other, or both, of the democratically elected bodies—the UK Parliament or this Assembly.

[42] **Suzy Davies:** May I ask one final question, which is on subject areas and relevant competencies? It has been suggested that civil competence could be devolved here, but not criminal competence. Do you have any views on that? Is it feasible or desirable?

[43] **Professor Watkin:** We talked earlier about bodies of law, and one of the clearest distinctions that is used in the law of England and Wales and other legal systems is between civil and criminal justice. There have been, historically, in England and Wales, some clear dividing lines between courts of civil jurisdiction—the county court, the High Court and going up to what is now the civil division of the Court of Appeal—and criminal courts; in the

past, you had assizes and quarter sessions, and you now have the Crown Court, minor offences in magistrates' courts and a separate Court of Appeal, which is now the Court of Appeal criminal division. In a sense, there is already a jurisdictional separation. That would make it possible to devolve one, but not the other, but that is not to say that I would favour that, because some of the issues that are pertinent to the question of why you would seek to devolve the administration of law, which is common to England and Wales, to any new Welsh judicial system would remain valid—particularly the linguistic question; if a defendant wanted to be tried in Welsh, having the jurisdiction in Wales would enable that to be done.

[44] The snag, possibly, with criminal justice being devolved, is that so many other things are necessarily linked to it, which is not quite the same with regard to civil justice. I am thinking of things like the police, the Crown Prosecution Service, the prison service, the probation service, and so on. That seems a much bigger undertaking. However, ultimately, I cannot see any strong reason why both of those jurisdictions should not be devolved to Wales.

[45] **Simon Thomas:** Rwyf eisiau gofyn cwestiwn penodol am eich ateb i Suzy Davies. Roeddech yn sôn am y Senedd hon yn deddfu i greu awdurdodaeth, ond hefyd yn sôn am yr angen i San Steffan gael rôl yn hynny. Fy nehongliad i yw y byddai rhaid i San Steffan a'r lle hwn ddeddfu. A ydych yn ei weld fel rhywbeth a fyddai'n cael ei wneud ar y cyd rhwng y ddwy Senedd?

Simon Thomas: I want to ask a specific question about your response to Suzy Davies. You talked about this Senedd legislating to create a jurisdiction, but also about the need for Westminster to have a role in that. My interpretation is that Westminster and this place would have to legislate. Do you see it as something that would be done through collaboration between the Parliaments?

[46] **Yr Athro Watkin:** Byddwn yn gobeithio y byddai'n cael ei wneud ar y cyd, gyda phenderfyniadau sydd yn berthnasol i'r dyfodol yng Nghymru yn dod i'r Cynulliad. Fodd bynnag, mae'n amlwg bod rhaid cael penderfyniadau yn San Steffan hefyd, oherwydd bydd angen creu cyfundrefn gyfreithiol newydd ar gyfer Lloegr, gan y bydd awdurdodaeth newydd yn cael ei chreu yno—ni fyddwch yn gadael Lloegr gyda'r hyn a oedd yn bodoli o'r blaen yn unig. Bydd yn rhaid addasu'r hyn sydd yn cael ei adael i ryw raddau.

Professor Watkin: I would hope that it would be done in collaboration, with decisions that are relevant to the future of Wales coming to the Assembly. However, it is apparent that decisions will also have to be taken at Westminster, as it will be necessary to create a new legal system for England because a new jurisdiction will be created there—you will not leave them with only what existed in the past. There will have to be some adaptations to what remains.

3.00 p.m.

[47] Felly, mae angen cydweithio, ond rwy'n gobeithio y bydd unrhyw Ddeddf yn y dyfodol sy'n creu cyfundrefn gyfreithiol newydd ar gyfer Cymru o ran y llysoedd yn cael ei gwneud i ryw raddau, ac yn enwedig ar gyfer y dyfodol ar ôl hynny, gan y Cynulliad Cenedlaethol, a hynny am y rhesymau a roddais mewn ymateb cynharach, oherwydd rwy'n credu y dylai Aelodau'r Cynulliad fod yn atebol i bobl Cymru am eu penderfyniadau.

Therefore, there is a need for collaboration, but I hope that any future legislation that creates a new legal system for Wales with regard to the courts will be made to some extent, and particularly for the future after that, by the National Assembly. That is for the reasons that I gave in an earlier response, because I believe that Assembly Members should be accountable to the people of Wales for their decisions.

[48] **Simon Thomas:** Rydym wedi bod yn edrych ar hyn o safbwynt Cymru drwyddi

Simon Thomas: We have been looking at this from the Welsh perspective throughout,

draw, ond o edrych arno o safbwynt Lloegr am eiliad, a yw hyn yn ychwanegu rhyw gymhlethdod neu ddryswch ychwanegol, os ydych yn edrych ar geisio creu awdurdodaeth sifil ar wahân a chadw'r elfen droseddol ar lefel Cymru a Lloegr? Roedd cyfeiriad at hyn yn eich ateb diwethaf i Suzy Davies. Sut fydd yn effeithio ar Loegr pe baem yn cymryd hanner y pecyn yn hytrach na'r pecyn cyfan?

but in looking at it from the English perspective for a second, would attempting to create a separate civil jurisdiction while retaining the criminal aspect on an England and Wales level introduce some complexity or additional confusion? Your last response to Suzy Davies referred to this. How will it affect England if we were to take half the package rather than all of it?

[49] **Yr Athro Watkin:** Mae'n rhaid y bydd effaith. Os yw'r gyfraith droseddol yn parhau i fod yn un ar gyfer Cymru a Lloegr, nid wyf yn gweld unrhyw reswm o ran egwyddor pam na ddylai'r gyfundrefn gyfreithiol—yr awdurdodaeth—adlewyrchu'r ffaith honno. Mae hefyd yn amlwg, po fwyaf y gwaith barnwrol sy'n cael ei wneud o dan awdurdodaeth Cymru, y mwyaf lletchwith y bydd rhedeg awdurdodaeth dros y ddwy wlad yn y dyfodol.

Professor Watkin: There would of necessity be an impact. If criminal law continues to serve England and Wales, I do not see any reason in principle for the legal system—the jurisdiction—not to reflect that fact. It is also clear that the more judicial work that is carried out under a Welsh jurisdiction, the greater the difficulty in future in operating a jurisdiction that covers both countries.

[50] **David Melding:** Are there many examples of countries that have this division between civil and criminal, whereby different jurisdictions apply? Someone told me that Canada may be an example of this, but I cannot verify that.

[51] **Professor Watkin:** I cannot speak to Canada, but I know that in Spain, for example, in Europe, the criminal law applies throughout the national territory, but some of the autonomous communities have a part of their own civil law that is unique to them, as well as, in other areas, having a civil law that is part of the national scheme. This partial division of jurisdiction is present in other European countries, but that is the only one I know of with any degree of closeness.

[52] **David Melding:** Thank you. Eluned Parrott will take us on.

[53] **Eluned Parrott:** I want to ask about access to the law and the location of the law. We have heard evidence that while the administrative court and some higher courts have been established in Wales now, cases are not always being started in Wales, for reasons of speed or for the convenience of the lawyers involved. Can you comment on the implications of that for access to justice for the people of Wales? Is it a practical issue, or is it something that is philosophically undemocratic, if you like, because people are not able to access the law in Wales?

[54] **Professor Watkin:** I mentioned earlier that divisions of competence would predominantly be made on grounds of practicality and efficiency, but that there would be some issues of principle that are relevant. The issue of access to justice, like the issue of the language, is an issue of principle that affects the question of competence. This is the danger of leaving the division of labour, if I can put it that way—that is, where cases begin, where they are heard and so on—in the hands of those who run the courts, rather than having a principled decision taken on how it affects the people, by the representatives of the people. Although I have no experience of practice before the courts, as opposed to studying the work of the courts, I would have thought that in the situation we are now contemplating, there would be an improvement in access to justice insofar as all cases that originated in Wales, unless there were some exceptions, would be heard here. That cannot but be for the benefit of the people of Wales.

[55] **Eluned Parrott:** One of the issues that you have raised in terms of access to the law is the linguistic element here in Wales, where people wish to access the law through the medium of Welsh, but are unable to do so if the court does not sit within the territory of Wales. You say in your paper that hearings that could involve laws made bilingually must, in your opinion, be heard in Wales. Do you think that that is the case full stop, or do you think that an alternative might be to allow for Welsh to be heard in courts outside Wales?

[56] **Professor Watkin:** It is an interesting factor that, despite there being one jurisdiction of England and Wales, when the right to hearings and to take part in hearings in Welsh was given, suddenly an idea of territorial competence emerged as a matter of principle in statute and a clear line was drawn. In some ways, that gives the precedent for further such divisions. It would be unrealistic to expect courts across England to be able to cater for trials in Welsh, or witnesses giving evidence in Welsh, on a regular basis. It would make far more sense if cases that came from Wales and involved such witness testimony, or involved defendants wishing to be tried through the medium of Welsh, were heard within Wales. I am sure that courts in England could, with due notice, possibly cope with this in the way in which Lord Chief Justice Widgery once described, and in the same way in which evidence can be given in Polish in the Central Criminal Court, courts can deal with the question of evidence being given in Welsh. However, I suspect that that would lead to delay, whereas the position in Wales would allow for greater speed in the delivery of justice. 'Speed' is perhaps the wrong word, but certainly there should not be delay.

[57] To try to patch the existing set-up to allow for such new developments is a second-best solution. A number of the things that we have just discussed go back to one basic point, that is that the current court system in England and Wales was designed in the second half of the nineteenth century to suit the then legal reality of England and Wales, which was law being made by the UK Parliament and nowhere else. What we currently have is a very different legal reality; the question is how long do we go on trying to make what exists work in that new legal reality before accepting that some new element of design is needed to meet the needs. I am sure that if we were designing a court system for England and Wales, we would not do it on the basis that currently exists. If we accept that, I think that we need to begin thinking about what we would do and prepare to move on to it.

[58] **Eluned Parrott:** Laws made in Wales are made bilingually and when you are hearing a legal argument in court it will often turn on the definition of an individual word. Our laws are bilingual laws and the meaning of the law is in both languages together rather than one language individually. Would you say that that territorial distinction in statute, in effect, already states that Wales must have a legal jurisdiction because laws made in Wales cannot be appropriately heard elsewhere?

[59] **Professor Watkin:** I would not want to say that there are no judges sitting in London or other parts of England who would not be capable of interpreting bilingual legislation because I know that there are judges sitting in London who would be capable of doing that. Again, it is a question of how you want to design for the future, is it not? There are really serious questions. The laws that are being made by this Assembly and by Welsh Ministers are being made bilingually. The law is not in the English text or the Welsh text; it is in both texts taken together and that is a very important point. That penny has not entirely dropped across the legal profession yet, because it is a very major change in legislation in the United Kingdom. It affects the way, as you say, that law is interpreted, not only in the court; it affects the way in which a solicitor who is sitting in his office in a small town in Wales advises the client if he has to pull down a statute book or a statutory instrument and give advice. That is a new challenge and a new skill. It is one of the new skills that the new legal reality requires to be addressed.

[60] I can give an example of how this can work in practice in relation to one piece of legislation that has come out of the Assembly, which is with regard to the Rights of Children and Young Persons (Wales) Measure 2011 where, in the Schedule to that Measure, there is the text of the United Nations convention and some protocols. That text in the Measure is given in English, which is the literal text, as it is in the treaty, and the Welsh text had to be provided by the Welsh Government when the Measure was being promoted. In preparing the Welsh text, an ambiguity was discovered in the English text that was not possible to resolve from looking at the text itself. It was a fairly simple point: it was a case of a number of nouns and adjectives, but when translated into Welsh, it was not clear which went with which for reasons of gender and number, which was not relevant in English. So, what does one do? We recognised that the convention was not only in English, but also in French and Spanish, which have the same question in relation to gender and number and, therefore, we looked at the other two texts and the Welsh text reflects what we found was the true meaning from those other two texts.

[61] That is an example of how, in future, where there is an ambiguity in the text of an SI, a Measure or an Act made in Wales, courts will act to get to the true intention of the legislating body. However, if you do not have an awareness of that to begin with, and then a building of skill on that awareness, that is lost. It would be utterly unreasonable to expect the whole of England and Wales to respond to that, rather than saying that this is something that now belongs to Wales and therefore needs to be developed here.

[62] **Eluned Parrott:** That leads me neatly into my next area of questioning regarding the ability of the legal profession in Wales to deal with the establishment of systems for administering the law here in Wales. Are they ready for that? One of the immediate skills that springs to mind is whether the legal profession is able to adequately deal with this issue of bilingualism in the Welsh law.

[63] **Professor Watkin:** Clearly, in the short term, one is not going to be in a position where all lawyers at every level will be bilingual, therefore, one would have to respond in a way that, as a basic minimum, creates what I mentioned earlier, namely an awareness of the new situation and rules of good practice and best practice with regard to how you respond to that. In my paper, I suggested, for example, that if you had judges sitting at first instance who are faced with a point of interpretation, which could raise the question of whether two texts had to be compared, one might well have a mechanism by which they could remit that one issue—a point of law—to a higher court, such as the Court of Appeal, which could resolve it by empaneling the right sort of panel to give an opinion. That sort of procedure is, I would not say 'common', but certainly not unknown, whereby a point of law is sent up to a higher court to be resolved before you determine the issue at first instance. I would have thought that that would be a fairly simple way of addressing it.

[64] The problem is more difficult for the practitioner who is faced with a point at issue. There may well be room here for the development of new expertise in certain areas of the profession whereby there would be some lawyers who would specialise in this question of bilingual interpretation or even a new sort of profession, such as that of legal reviser or jurilinguist, which has emerged in the law-making processes of other countries with the capacity for giving advice when it is needed.

[65] **Eluned Parrott:** What other skills or capacities would the Welsh legal profession struggle with if more cases were being heard in Wales due to the establishment of a separate system for the administration of justice?

[66] **Professor Watkin:** That is the one that I would regard as the major change and it is worth remembering that it is not linked with the question of setting up a new jurisdiction. The problem is there now and it needs to be addressed. The opportunity of having a fresh, judicial

structure would enable it to be addressed according to principles that were settled internally in Wales.

[67] 3.15 p.m.

[68] **Simon Thomas:** Mae gennyf gwestiwn ynglŷn â'r Gymraeg a'r gyfraith. Un o'r cwestiynau sydd heb ei ateb yw'r alwad ar gyfer rheithgor yn Gymraeg; hynny yw, sefyll prawf gyda rheithgor Cymraeg ei iaith. Nid yw hynny'n bosibl o dan y gyfundrefn bresennol. Efallai fod gennych farn am hynny ac, os oes, hoffwn ei chlywed. Yn ail, beth bynnag yw eich barn am hynny, a yw sefydlu awdurdodaeth yn caniatáu i benderfyniad ar y mater hwnnw gael ei wneud?

Simon Thomas: I have a question about the Welsh language and the law. One of the unanswered questions is the need for a Welsh-speaking jury; that is, to stand trial with a Welsh-speaking jury. That is not possible under the current system. Perhaps you have an opinion on that and, if so, I would like to hear it. Secondly, whatever your opinion is of that, does establishing a jurisdiction allow a decision on that matter to be made?

[69] **Yr Athro Watkin:** Yn amlwg, os ydych yn cael awdurdodaeth newydd Gymreig, bydd y math hwnnw o gwestiwn yn cael ei setlo yng Nghymru. Mater felly ydyw i'r Senedd, i'r Cynulliad. Fodd bynnag, credaf y byddai'n haws ystyried yr egwyddorion mwyaf perthnasol yng Nghymru pe bai'r penderfyniad yn cael ei wneud yma yn hytrach na'r tu allan i Gymru. Nid yw fy marn bersonol am y cwestiwn hwnnw yn well na'n waeth na barn neb arall—barn y person ar y stryd. Fodd bynnag, o ran tegwch unrhyw achos, mae'n bwysig bod rheithgor yn deall y dystiolaeth yn yr iaith y mae'r dystiolaeth honno yn cael ei rhoi i'r llys. Mae rhai pobl yn fy nghlywed i'n siarad yn awr drwy gyfieithiad, ond nid wyf yn gwybod pa lais y maent yn ei glywed, felly a ydyw'r un peth â'r hyn y maent yn ei glywed gennyf fi fy hun? A yw clywed llais oedolyn mewn llys yr un peth â chlywed tystiolaeth plentyn, neu lais dyn yn lle menyw, neu lais menyw yn lle dyn? Mae'n effeithio ar sut rydych yn ymateb i'r hyn rydych yn ei glywed. Felly, o ran tegwch, mae'n bwysig nad yw'r elfen uniongyrchol honno yn cael ei cholli, a dyna pam rwyf o blaid hynny. Fel rwyf yn dweud, fy marn bersonol yw honno. Fodd bynnag, mae'n amlwg y bydd cwestiynau o'r fath yn haws i'w hateb yng Nghymru yn sgîl awdurdodaeth yng Nghymru, ac mewn modd sydd yn ymateb yn eglur i ofynion pobl Cymru.

Professor Watkin: It is clear that if you have a new Welsh jurisdiction, that type of question will be settled in Wales. It would therefore be a matter for the Senedd, this Assembly, to decide upon. However, I believe that it would be easier to consider the most relevant principles in Wales if the decision was taken here rather than outwith Wales. My personal opinion on that question is not any better or worse than any other individual who may have an opinion. However, in terms of the fairness of any case, it is important that a jury should be able to understand the evidence in the language in which that evidence is given to the court. Some of you are now listening to me through interpretation, but I am not sure whose voice they are hearing, so do they hear exactly the same as when they hear me speak? Is hearing an adult's voice in a court the same as listening to the evidence of a child, or hearing a male voice rather than a female voice and vice versa? It has an impact on your response to what you hear. So, in terms of fairness, it is important that that element of directness is not lost, and that is why I am in favour of that. As I say, this is a personal opinion. However, it is clear that questions of that nature would be easier to answer in Wales as a result of a Welsh jurisdiction, and in a way that clearly meets the needs of the people of Wales.

[70] **David Melding:** Could I have some clarification on the issue of the capacity of the legal profession? I presume that we would all accept that any given population will generate

or has the capacity to generate the legal skills that it requires for the functioning of society, and 3 million people, unless your education system is a bit strange, will generate those with the necessary knowledge and skills to practice. However, because we have been in an England and Wales jurisdiction for so long, some people have said that because so much of our expertise has ended up in London, that could not be put right very quickly and ought to make us pause for thought in terms of what the legal profession in Wales is capable of sustaining. Do you have much sympathy for that argument?

[71] **Professor Watkin:** I am not convinced by it. There is clearly a chicken-and-egg element here. If you have a judicial centre in a place, it is likely to attract a legal profession and legal services around it. If you do not have a judicial centre in a particular place, you are not going to have that. So, the apparent or relative strength of the legal profession in Wales as against other centres in England, particularly London, reflects the fact—to come back to what I said earlier—that the courts system, namely the judicial system created in the second half of the nineteenth century, was highly centralised, and that centre was London. That reflected what had been the reality for some centuries before that.

[72] If you have judicial centres outside the state capital, you will attract legal services to them. I heard a lecture given by Professor John Davies, the historian, a few months ago here in Cardiff about the families who had been responsible for the early mining, iron and coal industries in south Wales. I was struck that he frequently referred to the fact that they had taken legal advice from their lawyers in Brecon. I asked myself, 'Why Brecon?' I then realised that Brecon was the centre, until 1830, of what you might call the south-eastern circuit of the Great Sessions. So, because that was the centre, that is where you went for legal advice. That was before Cardiff and Merthyr developed. In any society, where you centre your judicial resources, you will also have legal professions developing around them.

[73] I think that we are a bit unfortunate in this debate in that we compare with London, because London is not just a legal centre in terms of being the capital of England, or being the legal centre for England and Wales, it is also an international city of considerable standing and has legal services that reflect that. If we compared, possibly, with other national capitals, it might give a clearer idea of what one would expect. Having said that, it is the case that you do have all of that legal expertise in London and it is there for reasons that are not to do with just the fact that the courts of England and Wales are there; it is because of the history of financial services and commercial transactions, and so on. However, at the end of the day, those legal services are only two hours away by train and there is no reason why, in my view, a barrier should be put up between legal practitioners in London and legal practitioners in Wales.

[74] **David Melding:** It is now with you, Mick, if you want to follow up that point and then take us through the next set of questions.

[75] **Mick Antoniw:** I would just like to clarify that point. To some extent, it does not really matter where the lawyers are, as long as they are competent in their understanding of the law and the courts that they are working within. That applies across all sorts of specialisms in the law. You would argue that the days when lawyers were portrayed as being able to act in any field are long gone and the legal profession has become very specifically specialist. That is the same issue that you have raised. You are not talking about barriers in terms of where you are based and where you can practise, and so on, but that the individual will go where he thinks the specialism is and that, to some extent, overcomes the potential commercial problems of law firms operating, which are increasingly large and increasingly specialist, gleaning experience from all parts of Europe and so on. So, you are not suggesting in any way that there needs to be any sort of separation, but that it is really just a question of expertise within the UK.

[76] **Professor Watkin:** Yes, indeed. I can see no case for setting up barriers to the work of the legal professions between England and Wales or between Wales and any other jurisdiction. Indeed, I think that the trend is entirely in the other direction; it is to allow people to cross borders freely with their expertise and to make use of it. I would have thought that control over one's own judicial system would possibly enable the greater transfer of expertise.

[77] **Mick Antoniw:** I will move on to another area. We have the Law Commission, which has as its role not only the monitoring of the adequacy and so on of existing laws, but a proactive role in terms of identifying potential areas for the reform of law and so on. Of course, as we have this growing binary development of the law in Wales, to what extent do you think we need to start thinking about the issue of a law commission that operates specifically within the field of Welsh law?

[78] **Professor Watkin:** It might be worth putting it on record before I address the question that, when I was working in Government and looking across legal bodies, not just within Government, but across the whole area of the legal professions in England and Wales, I was very struck that the Law Commission for England and Wales was one area where there was great awareness of what was happening in Wales and there was a very real willingness to engage with it. I was very struck, for instance, in conversations that I had with one of the draftsmen there some years ago, before I retired, to the effect that they were conscious that if they were now going to bring forward proposals for the reform of the law in England, it might be necessary to bring forward a separate draft Bill for Wales because of the new situation and, if they did that, they wished to do it bilingually. That struck me as going a good deal further than many other institutions in the law were going at that time.

[79] There is undoubtedly a need for that sort of function to be performed in Wales. The worry I have is that we tend, perhaps, to look at other jurisdictions, including that of England and Wales, and say, 'There is a law commission for England and Wales, Scotland has a law commission and, more recently, Northern Ireland has acquired a law commission, therefore to be a proper jurisdiction, we must have one, otherwise we are not a proper jurisdiction.' I think that there is a more useful way of looking at the question, which is to look at institutions such as the Law Commission that exists in England and Wales and ask what the function of that institution is. Is that a function that needs to be performed with regard to Wales if we have our own jurisdiction? How, in Wales, would that function be best performed, without, as it were, downloading the England and Wales model, but by devising a way that would work within our needs in a better way?

[80] I think that there is a need for such a function to be performed in Wales, and I think that it could do a number of things in Wales, including the law reform work, but there is also the need for something that was mentioned earlier, namely to consolidate the law that is currently Wales-only law so that it can be found in one source, rather than in a multitude of sources across the two jurisdictions. If you respond to that need functionally in that way by asking how the function is to be performed, it might well address some other shortcomings currently in the way in which Welsh law is developing. That is, you could share the work to persons who had increased their expertise and their ability to comment on the law and, as well as thinking about reforming it, produce informed commentary on the law as it develops.

[81] **Mick Antoniw:** That is really quite interesting, because it is taking back the whole role of the commission in the fact that we do not have any systematic codification at the moment. Of course, one of the areas in which the Law Commission operates is, to some extent, hybrid politics, in that representations are made in terms of the law needing to change in a certain way and then it considers that change. To some extent, it represents movement within the political institution itself, within Parliament, when you might have a different emphasis in Wales on that. Obviously, the representation might be different, so it is also a mechanism. So, do you see it very much as a body that would be responsive specifically to

views in Wales about how an aspect of law was operating, or might change within the devolved areas?

[82] **Professor Watkin:** I think that that would be very important. I would not even want to go so far as to say that there should be a body as opposed to a method of performing the function where the staffing and so on and the people involved could change as we move from one area to another. I think there are different ways of looking at the work of law reform. Much law reform was carried out in the early years of the twentieth century before the Law Commission was set up and other forms of panel, committee and body were used to do it. Sometimes, it was even done by private members, such as the reforms in family law that were done just before the second world war as a result of A.P. Herbert's private Bills before Parliament. So, I think that there are various options open.

[83] The key thing is whether the function is one that is relevant. If I could just spin back a moment to something that I said earlier about the 1920 Speaker's conference, the response from the judiciary and the bar in Wales to the idea of a Welsh judicial system then did very much take the view of asking what the function is and how to do it in Wales, because they were not even convinced that a separate Court of Appeal was needed, with separate judicial staff. They felt that you could have a collegiate body of judges that would try cases at first instance and some of their number could take appeals. Various things were present at that time that showed a much more open way of looking at how the needs of Wales could be met, and there is something very refreshing about that.

3.30 p.m.

[84] **Mick Antoniw:** So, irrespective of where we go and how quickly we move in terms of the jurisdictional issue, whichever interpretation people take of that, would you say that there is a need for that codification and that law reform in any event, and that that is a process that needs to start sooner rather than later and that it is a matter of form and whether we could be more imaginative in the way in which we approach it?

[85] **Professor Watkin:** Yes, the need is there, because we already have a body of law that applies in Wales only and the question of the tidiness of that body of law is as relevant whether we remain in the single jurisdiction of England and Wales or whether Wales goes its own way. Clarity with regard to what the law is and accessibility to what the law is are important either way.

[86] **Mick Antoniw:** Does that not become more important bearing in mind that, as a body, we do not have a second Chamber? Is there an attraction to it there as well, or am I opening up a can of worms?

[87] **Professor Watkin:** It is not for me to say whether that is a can of worms or not. [*Laughter*.] Clearly, that puts added pressures on those who have to scrutinise legislation and one might well want to find ways of undertaking post-legislative scrutiny to ensure that avoidable inconveniences are dealt with. However, I do not think that it is necessarily something that connects with the idea of having a separate judicial system.

[88] **Mick Antoniw:** To move on to my final question, in terms of changes that we might want to see implemented at some stage, are these things that can be done, whether jurisdictional, administrative organisation and so on, things that would probably require legislation or could they be done administratively? I think that I know what the answer will be from something that you said earlier, but might we, at some stage, be looking at a specific Act of the UK Parliament to set the guidelines or can it be allowed to evolve with administrative jurisdictional controls?

[89] **Professor Watkin:** My view on that is quite simply that there is a need to separate the questions of principle from those of administrative convenience. One of the reasons why I wrote the sort of paper that I did was that I thought that it was important to try to separate the two things so that the convenience arguments did not affect, and possibly infect, the response to the principle arguments. The questions of principle deserve to be decided by a legislative body and decided with a degree of permanence so that people know where they stand. It is equally important that one does not set in stone things that one is likely to adapt from time to time, and one can do that by means of secondary legislation or by leaving some things to those who are running the administration of justice to do in a hands-on way. What I do not think is right is that it should be left to those people to make decisions that affect the principles around the administration of justice.

[90] We come back to this very odd—well, not very odd; it is very typical, I suppose—point that it all depends on what you mean by it. 'Administration of justice' here has two meanings. There is what the courts are doing when they try cases, which is administering justice according to law and applying the law. The question of jurisdiction is basically about how you organise that activity. There is then the question of how you administer that activity when you have decided it. That is the bit that you might leave to the officials, the court service and other bodies of that kind, having given them a structure and an outline in principle as to what is to be achieved. However, I do not want to see that second solution being used to settle questions of the first kind.

[91] **Mick Antoniw:** It is the people and buildings argument, is it not?

[92] **Professor Watkin:** Yes.

[93] **Mick Antoniw:** Thank you very much.

[94] **David Melding:** Simon Thomas will take us through the final set of questions.

[95] **Simon Thomas:** Nid oes llawer ar ôl, gan fod eich tystiolaeth wedi bod yn gynhwysfawr iawn. Hoffwn fod yn glir ynglŷn ag ychydig o bethau sydd wedi codi yn ystod y sesiwn. Yn gyntaf, rydych wedi'i ddweud yn glir nad ydych yn gweld waliau yn cael eu codi rhwng y gwahanol awdurdodaethau a bod pobl yn gallu gweithio ar draws ffiniau.

Simon Thomas: There are not many left, because your evidence has been very comprehensive. I would like to be clear about a few of the issues that have arisen during the session. First, you have stated clearly that you do not see walls being raised between the different jurisdictions and that people can work across borders.

[96] **Yr Athro Watkin:** Gobeithiaf.

Professor Watkin: I hope so.

[97] **Simon Thomas:** Rydym wedi derbyn tystiolaeth mewn sesiynau eraill o ran y ffordd y mae hynny'n gweithio, er enghraifft, rhwng Cymru a Lloegr a Gogledd Iwerddon. Nid oes waliau, ond mae prawf cymhwysedd. Mae hynny yn wir ar gyfer cyfreithwyr, hyd y deallaf, ac, o bosibl, bargyfreithwyr hefyd. O ddarllen eich papur a chlywed eich tystiolaeth y prynhawn yma, buaswn yn meddwl bod cwestiwn ynglŷn â chymhwysedd barnwyr hefyd, yn enwedig o safbwynt deddfwriaeth ddwyieithog. A ydych yn gweld, felly, yn ymarferol, y bydd rhyw

Simon Thomas: We have received evidence in other sessions regarding the way in which that works, for example, between England and Wales and Northern Ireland. There are no walls, but there is a competency test. That is true for lawyers, I understand, and possibly also barristers. From reading your paper and hearing your evidence this afternoon, I would think that there is also a question about the competence of judges, particularly in terms of bilingual legislation. Do you see that, in practice, there will be some kind of test or step that people must take in order to be

fath o brawf neu gam y bydd yn rhaid i bobl ei gymryd er mwyn iddynt fod yn gymwys i weithredu yn yr holl awdurdodaethau, sy'n brin o fod yn wal neu'n rhwystr ond sy'n cydnabod bod angen sgiliau arbennig i weithio yng Nghymru?

eligible to operate in all jurisdictions, which falls short of being a wall or a barrier but recognises that there is a need for particular skills to work in Wales?

[98] **Yr Athro Watkin:** Mae'r elfen o sgiliau yn bwysig. Rydym wedi trafod y cwestiwn o ran y sgil o ddehongli deddfwriaeth ddwyieithog; credaf fod hynny'n bwysig. Os ydym yn mynd i ddelio â'r cwestiwn hwnnw o ddifrif, bydd yn rhaid o leiaf i bobl fod yn ymwybodol o'r ffaith fod angen sgil neu gwybod ble i droi o ran ymarfer da i ddatrys y fath broblem.

Professor Watkin: The skills element is important. We have discussed the question of the skill of interpreting bilingual legislation; I think that that is important. If we really are going to deal with that question, people will at the very least have to be aware of the fact that the skill is required or know where to turn in terms of good practice to solve such a problem.

[99] Ar wahân i hynny—ac efallai un eithriad arall—nid wyf yn sicr ar hyn o bryd fod cymaint o wahaniaeth rhwng y gyfraith yng Nghymru, cyfraith Cymru a Lloegr, a chyfraith Lloegr i'w wneud yn angenrheidiol i gael unrhyw fath o brawf arbennig neu gymhwysedd ychwanegol i drosglwyddo. Dywedaf hynny oherwydd y ffordd y mae'r rhan fwyaf o gyfreithwyr a bargyfreithwyr yn cymhwyso ar hyn o bryd yng Nghymru a Lloegr. Mae'r rhan fwyaf ohonynt yn gwneud gradd anrhydedd, *qualifying law degree*, ac, fel rhan o hynny, maent yn dysgu sgiliau. Bydd y rhan fwyaf o'r sgiliau hynny yn berthnasol yn y dyfodol hefyd, oherwydd sgiliau'r gyfraith gyffredin ydynt.

Apart from that—and perhaps one other exception—I am not sure at the moment that there is such a difference between the law in Wales, the law in England and Wales, and the law in England, to make it necessary to have any kind of specific test or additional competence to transfer. I say that because of the way that the majority of solicitors and barristers currently qualify in Wales and England. Most of them complete an honours degree, a qualifying law degree, and, as part of that, they learn skills. The majority of those skills will also be relevant in the future, because they are common law skills.

[100] Yna, mae'r wybodaeth o'r gyfraith ei hunan. Mae Cymdeithas y Cyfreithwyr a Chyngor y Bar yn mynnu bod rhai pynciau yn orfodol, mwy neu lai, ond nid yw'r pynciau hynny yn cyfateb i'r meysydd sydd wedi eu datganoli. Felly, nid oes angen addasu'r corff o gyfraith sy'n angenrheidiol i bob person gyda LLB ei gael, a dim ond pan mae'n dechrau effeithio ar y cyrsiau craidd hynny bydd yn rhaid ystyried y posibilrwydd o ryw fath o brawf neu gymhwysedd ychwanegol. Er enghraifft, roedd gwahaniaethau o ran cyfraith tir rhwng Gogledd Iwerddon a Chymru a Lloegr oherwydd nad oedd deddfwriaeth o'r 1920au wedi dod i rym—hynny yw, cael ei mabwysiadu—yng Ngogledd Iwerddon. Felly, roedd rheswm am rywbeth ychwanegol. Felly, yr hyn sydd angen ei wneud yw cael rhyw fath o gwrs arbennig i sicrhau bod pobl yn gallu cael y wybodaeth

Then, there is the knowledge of the law itself. The Law Society and the Bar Council insist that some subjects are compulsory, more or less, but those subjects do not correspond to the areas that are devolved. Therefore, there is no need to adjust the body of law that it is necessary for each person with an LLB to have, and it is only when it starts to affect those core courses that we will have to consider the possibility of some form of test or additional competency. For example, there were differences in land law between Northern Ireland and Wales and England because legislation from the 1920s had not come into force—that is, had not been adopted—in Northern Ireland. So, there was a reason to have something additional. So, what needs to be done is to have some sort of special course to ensure that people can get the additional information if such information is needed in future. At present, I do not see

ychwanegol os bydd angen y fath wybodaeth yn y dyfodol. Ar hyn o bryd, nid wyf yn gweld bod angen, oherwydd er bod elfennau bach yn dod i mewn o bethau fel cyfraith iechyd a chyfraith addysg, i bob pwrpas, wrth edrych ar y cyfan, nid oes digon o wahaniaeth i ddweud na fyddai'r QLD yn ddigonol ar gyfer Cymru neu Loegr.

that there is a need, because although some small elements are coming in from things like education law and health law, in effect, looking at it as a whole, there is not enough of a difference to say that the QLD is insufficient for Wales or England.

[101] Nid wyf yn siarad am yr ail ran, sef y cwrs ymarfer cyfreithiol a'r cwrs i fargyfreithwyr, hynny yw, yr LPC a'r BVC, oherwydd nid wyf byth wedi eu haddysgu a byth wedi cael fy hyfforddi arnynt. Fodd bynnag, deallaf fod yr un peth yn wir o ran y cyrsiau hynny. Ar hyn o bryd, nid oes digon o wahaniaeth i ddweud bod angen cymhwysedd ychwanegol. Os nad ydych yn mynd i fynnu bod yn rhaid cael rhyw fath o wybodaeth am gyfraith iechyd, addysg, yr amgylchedd ac yn y blaen nad ydynt, ar hyn o bryd, yn rhan o'r cyrsiau craidd, nid oes problem ar hyn o bryd.

I am not talking about the second part, namely the legal practice course and the bar vocational course, that is, the LPC and BVC, because I have never taught them and have never received training on them. However, I understand that the same is true of those courses. At present, there is not enough of a difference to say that additional competence is needed. If you are not going to insist on some knowledge of health law, education, law or environmental law and so on that are not, at present, part of the core courses, then there is no problem at present.

[102] **Simon Thomas:** Gan dderbyn hynny am y tro, a oes cwestiwn yn codi wedyn ynglŷn â naill ai hyfforddiant proffesiynol cyfreithwyr wrth iddynt fynd yn eu blaen, oherwydd bod yn rhaid i gyfreithwyr gadw lan gyda'r gyfraith a gwneud hyn a hyn o ddyddiau hyfforddiant bob blwyddyn?

Simon Thomas: Accepting that for the moment, does a question then arise concerning either the continuing professional training of lawyers, because lawyers have to keep up with the law and undertake so many days of training each year?

[103] Mae hefyd y cwestiwn o addysg coleg a phrifysgol i ddarpar-gyfreithwyr. A oes cwestiwn yn codi, drwy sefydlu awdurdodaeth ar wahân, ynglŷn â'r ddarpariaeth honno, sy'n brin o fod yn gymhwyster neu brawf ond rhywbeth sydd efallai ar goll ar hyn o bryd a fydd ei angen os bydd dau awdurdodaeth yn datblygu?

There is also the question of college and university education for future lawyers. Does a question arise, in establishing a separate jurisdiction, with regard to that provision, which is not quite a qualification or test, but which is perhaps missing at present that will be needed if two jurisdictions develop?

[104] **Yr Athro Watkin:** Ni fuaswn eisiau gwneud gormod o hynny, a dweud y gwir, oherwydd os nad oes gwahaniaeth yn y cyrsiau craidd a'r hyn sy'n angenrheidiol ar gyfer cael QLD, nid wyf yn gweld y dylai unrhyw wal gael ei godi ynglŷn â myfyrwyr o Loegr yn astudio yng Nghymru a myfyrwyr o Gymru yn astudio yn Lloegr. Fel rwy'n deall ar hyn o bryd—rhywbeth rwyf wedi ei glywed yw hwn—mae graddau y rhan fwyaf o ysgolion y gyfraith yng Nghymru a Lloegr yn cael eu derbyn fel QLD yng Ngogledd Iwerddon. Rwy'n gwybod hefyd fod graddau ysgolion y gyfraith yng Nghymru a Lloegr yn

Professor Watkin: I would not want to make too much of that, to be honest, because if there is no difference in the core courses and what is required to achieve a QLD, then I do not see that any wall should be raised in relation to English students studying in Wales and Welsh students studying in England. As I understand it—it is what I have heard—at present, the degrees of most law schools in England and Wales are accepted as a QLD in Northern Ireland. I also know that the degrees of law schools in England and Wales are accepted in other countries throughout the world, because you ensure

cael eu derbyn mewn gwledydd eraill ledled y byd, oherwydd rydych yn sicrhau eich bod yn cydymffurfio gyda gofynion y cyrff cyfreithiol yn y gwledydd hynny.

that you comply with the requirements of the legal bodies in those countries.

[105] Wrth edrych i'r dyfodol, gwelaf fod elfennau sydd eisiau eu sicrhau ynglŷn â phethau fel datblygiad proffesiynol parhaus ac ati, oherwydd nid wyf yn credu, ar hyn o bryd, fod digon yn cael ei wneud i sicrhau bod pobl yn ymwybodol o'r newidiadau sydd wedi digwydd yn y cyfansoddiad. Dywedais yn gynharach fod ymwybyddiaeth Comisiwn y Gyfraith yn uchel, ond rwyf hefyd wedi dod ar draws pethau sydd yn wir siomedig. Yn fy marn i, byddai llawer yn rhwyddach ymateb i gwestiynau o'r fath tu fewn i awdurdodaeth arbennig a darparu'r hyn sydd ei angen ar gyfer pobl sy'n dod i mewn o awdurdodaethau eraill.

Looking to the future, I can see that there are elements that would need to be addressed in relation to such things as continuing professional development and so on, because I do not think, at present, that enough is being done to ensure that people are aware of the changes that have taken place in the constitution. I stated earlier that awareness in the Law Commission was very good, but I have also come across things that are truly disappointing. In my view, it would be far easier to respond to such questions within a specific jurisdiction and provide what is required for people coming in from other jurisdictions.

[106] Nid wyf am wneud gormod o hyn, a dywedaf pam, os caf. Pan ddechreuais fy ngyrfa yng Nghaerdydd yng nghanol y 1970au, roedd Ysgol y Gyfraith Caerdydd yn newydd. Roedd y graddedigion cyntaf newydd raddio. Roedd tri neu bedwar o'r staff, gan gynnwys pennaeth yr adran, wedi dod o Ogledd Iwerddon; roedd Gogledd Iwerddon yn colli llawer o staff prifysgol oherwydd y sefyllfa yno ar y pryd. Nid oedd anhawster gan y bobl hynny addasu i addysgu cyrsiau craidd yng Nghaerdydd, wedi graddio a chael eu hyfforddiant ym Melfast. Roedd hefyd ar y staff bryd hynny o leiaf dri o bobl a oedd wedi graddio yn yr Alban; nid oedd problem gyda hwy yn addysgu yn y brifysgol. Os edrychwch o gwmpas ysgolion cyfraith Cymru a Lloegr ac Iwerddon a'r Alban, byddwch yn gweld pobl o wledydd gwahanol yno. Dyna ran o fod yn rhan o deulu'r gyfraith gyffredin ledled y byd. Yn y mis diwethaf, rwyf wedi dod yn ôl o fod yn arholwr allanol ym Mhrifysgol Dulyn. Dyna awdurdodaeth y tu allan i'r Deyrnas Unedig, ond nid oes problem yn delio â chyrsiau craidd hyd yn oed, gan fod y strwythur yr un peth. Felly, ni fuaswn am wneud gormod o broblemau wrth drosglwyddo. Wrth edrych ar y gorffennol a'r hyn sydd wedi mynd ymlaen, credaf y dylem fod yn hyderus na fydd waliau yn cael eu codi.

I do not want to make too much of this, and I will tell you why, if I may. When I started my career in Cardiff in the mid-1970s, Cardiff Law School was new. The first students to graduate had just done so. Three or four of the staff, including the head of department, had come from Northern Ireland; Northern Ireland was losing a lot of university staff because of the situation there at the time. Those people did not have any difficulty in adapting to teach core courses in Cardiff, having graduated and received their training in Belfast. Also on the staff at that time were at least three people who had graduated in Scotland; they had no problem in teaching in the university. If you look around the law schools of Wales and England, Ireland, and Scotland, you will see people from different countries there. That is part of being a part of a family of the common law throughout the world. This last month, I have returned from being an external examiner in Dublin University. That is a jurisdiction that is outside of the United Kingdom, but there is no problem in dealing with even the core courses, because the structure is the same. Therefore, I would not want to make too much of problems in transferring. If we look at the past and what has happened, I think that we should be confident that walls will not be raised.

[107] **Simon Thomas:** Diolch am hynny.

Simon Thomas: Thank you for that. I want

Rwyf am edrych drwy ben arall y telesgop yn awr, fel petai. Rydych chi wedi'ch hyfforddi ac rydych yn gyfreithiwr sy'n gallu gweithio yng Nghymru, Lloegr neu le bynnag. O dan y gyfundrefn bresennol, sut ar y ddaear a ydych yn gwybod am ddatblygiad cyfreithiau Cymru? Rydym eisoes wedi sôn am y diffyg llyfr statud, ac rydym wedi cael tystiolaeth gan wahanol bobl yn sôn am ddiffyg sylwebaeth. Efallai nad oes corpws mawr o gyfraith ar hyn o bryd, ond mae'n bendant yn datblygu, a buasech yn disgwyl bod rhywun neu rywbeth yn y system a fuaswn golygu bod sylwebaeth gyson er mwyn cyfoethogi cyfreithwyr yn y materion hyn, beth bynnag eu cefndir, er mwyn iddynt allu dysgu mwy am y gyfraith yng Nghymru a'i dehongli yn unol â'r canllawiau gorau posibl. A ydych yn gweld hynny'n greiddiol i awdurdodaeth? Y cwestiwn nesaf yw sut yr ydych yn gweld hwnnw'n datblygu yng Nghymru. Mae'r dystiolaeth yr ydym wedi'i chael yn dweud bod hyn yn ddiffyg yn awr heb sôn am wedi inni ddatblygu yn awdurdodaeth ar wahân.

to look through the other end of the telescope now, as it were. You have been trained and you are a lawyer who is able to work in Wales, England or wherever. Under the current system, how on earth do you know about the development of Welsh law? We have already talked about the lack of a statute book, and we have received evidence from various witnesses about a lack of commentary. Perhaps there is not a large corpus of law at present, but it is certainly developing, and you would expect someone or something in the system that would mean that there would be regular commentary to enrich lawyers in these matters, whatever their background, so that they can learn more about law in Wales and interpret it according to the best possible guidelines. Do you see that as being at the core of a jurisdiction? The next question is how you would see that developing in Wales. The evidence that we have heard has indicated that this is already a failing, let alone after we develop into a separate jurisdiction.

3.45 p.m.

[108] **Yr Athro Watkin:** Cytunaf fod diffyg ar hyn o bryd o ran y llenyddiaeth am y gyfraith yng Nghymru. Mae angen i ni ofyn pam. Nid wyf yn credu ei fod yn ymwneud â'r ffaith bod academyddion neu gyfreithwyr yng Nghymru yn ddiog mewn unrhyw ffordd neu heb ymateb i'r her. Fodd bynnag, mae gwahaniaeth mawr rhwng sut y gwnaeth academyddion, yn enwedig, ymateb i gyfraith Ewrop pan ddaeth yn rhan o'r gyfundrefn gyfreithiol yn y 1970au a'r hyn sydd wedi digwydd yn sgîl datganoli. Pam? Un cwestiwn pwysig sy'n berthnasol iawn i'r ymchwiliad hwn yw a fuasai proffil y gyfraith yng Nghymru yn codi pe bai'n awdurdodaeth ar wahân.

Professor Watkin: I agree that there is currently a failing in respect of the literature on the law in Wales. We need to ask why that is the case. I do not think that it comes down in any way to the fact that academics or lawyers in Wales are in some way lazy or have not responded to the challenge. However, there is a huge difference between how academics, in particular, responded to European law when it became part of the legal system in the 1970s and what has happened in light of devolution. Why? One important question that is extremely pertinent to this inquiry is whether the profile of Welsh law would be raised if it were a separate jurisdiction.

[109] **Simon Thomas:** A fuasai'n gosod statws?

Simon Thomas: Would that give it status?

[110] **Yr Athro Watkin:** Buasai. Mae pobl yn edrych ar Gymru ac ar gyfreithiau Cymru fel rhyw fath o ychwaneg i gyfraith Cymru a Lloegr—rhywbeth yn y troednodiadau. Wyth mlynedd yn ôl cyn imi fynd i Fangor, rwy'n cofio cael dau lyfr a anfonwyd ataf ym Mhrifysgol Caerdydd a oedd yn ymwneud â chyfundrefn gyfreithiol Lloegr. Teitl un

Professor Watkin: Yes. People look at Wales and at Welsh laws as some sort of add-on to the law of England and Wales—something in the footnotes. Eight years ago, before I went to Bangor, I remember receiving two books, which were sent to me at Cardiff University, relating to the English legal system. One of them was entitled 'The

ohonynt oedd ‘The English Legal System’—a dyna fel y mae pethau. Edrychais ar yr hyn a oedd ynddo am ddatganoli, ac o 600 o dudalennau, dim ond hanner dwsin oedd am ddatganoli yn yr Alban ac yng Nghymru. Yn yr ail lyfr, troednodyn yn unig oedd, yn esbonio pam nad oedd yr awdur yn mynd i ddelio â datganoli. Felly, dyna ble yr ydym ar hyn o bryd. Mae’r proffil yn rhy isel.

English Legal System’—and that is how things are. I looked at what it had to say about devolution, and out of 600 pages, there were only half a dozen about devolution in Scotland and in Wales. In the second book, there was simply a footnote, explaining why the author would not be dealing with devolution. So, that is where we are at the moment. The profile is too low.

[111] Cefais brofiad tebyg pan ddechreuais weithio i’r Llywodraeth. Euthum i Lundain ar gwrs a oedd yn ofynnol i bawb a oedd yn mynd i weithio i’r uwch-wasanaeth sifil am y tro cyntaf. Roedd naw neu 10 ohonom ar y cwrs, a thri neu bedwar o Gaerdydd. Dywedwyd y byddai’r cwrs yn delio â datganoli. Roedd yn gwrs deuddydd, a chwarter awr yn unig a roddwyd i bwnc datganoli, a hynny i ddelio â Gogledd Iwerddon, yr Alban a Chymru. Mae angen i ni godi’r proffil a buasai cael awdurdodaeth yn gwneud hynny.

I had a similar experience when I started working for the Government. I went to London to attend a course that was mandatory for everyone entering the senior civil service for the first time. There were nine or 10 of us on the course, three or four from Cardiff. It was said that the course would be dealing with devolution. It was a two-day course and only a quarter of an hour was devoted to devolution—for Northern Ireland, Scotland and Wales. We need to raise the profile, and having a jurisdiction would do that.

[112] Beth sydd ei eisiau? Gallech edrych ar ddeddfwriaeth Cymru a gallech gael mynediad ato yn eithaf hawdd, ar wefannau fel LexisNexis a Westlaw UK.

What is needed? You could certainly look at Welsh legislation and you could access it quite easily on websites such as LexisNexis and Westlaw UK.

[113] **Simon Thomas:** Nid ydynt yn agored i’r cyhoedd, a ydynt?

Simon Thomas: Those are not open to the public, though, are they?

[114] **Yr Athro Watkin:** Mae’n rhaid talu, ond mae’r ddeddfwriaeth ar y gwefannau yn cael ei diweddaru. Fodd bynnag, ar hyn o bryd, maent yn uniaith Saesneg. Yn rhad ac am ddim, gallwch gael y testunau i gyd ar legislation.gov.uk, ond nid yw’r ddeddfwriaeth yn cael ei diweddaru yn yr un ffordd ag ar y gwefannau eraill yr wyf wedi’u crybwyll. Felly, mae rhywbeth ar goll yno. Fodd bynnag, wedi dweud hynny, mae’r un peth yn wir am bobl sydd eisiau gweld y testun diweddaraf yn Saesneg—maent naill ai’n gorfod talu neu’n gorfod gweithio allan y sefyllfa o ran y diweddaru.

Professor Watkin: You have to pay, but the legislation on those websites is updated. However, at the moment, they are in English only. Free of charge, you can get access to legislative texts on legislation.gov.uk, but the legislation is not updated in the same way as it is on the other websites that I have just mentioned. So, there is something missing there. However, having said that, the same is true of people who want to see the updated text in English—they either have to pay or have to work out the situation in respect of the updating.

[115] Pam nad yw academyddion wedi ymateb? Mae’r rhesymau am hynny y tu hwnt i gylch gorchwyl yr ymchwiliad hwn, a siaradais amdanynt yn fy narlith saith mlynedd yn ôl yn yr Eisteddfod Genedlaethol ym Mangor—

Why have academics not responded? There are reasons for that that are over and above the remit of this inquiry and I covered those in my lecture seven years ago at the National Eisteddfod in Bangor—

[116] **Simon Thomas:** Rhesymau

Simon Thomas: Those are cultural reasons,

diwylliannol yw'r rheini yn y bôn, onid e?

in the main, are they not?

[117] **Yr Athro Watkin:** Ie, a chredaf fod y modd y mae adnoddau wedi dilyn ymchwil mewn prifysgolion, gan gynnwys ysgolion y gyfraith, a sut maent wedi dibynnu ar ymchwil sy'n cyrraedd safon ryngwladol wedi creu ofn a phryder na all ysgrifennu am Gymru fod yn rhyngwladol. Rwyf wedi ei weld mewn du a gwyn tua wyth neu naw mlynedd yn ôl, ac roedd hyn ar ôl datganoli ac ymhlith pobl a oedd i fod i helpu ysgol y gyfraith yng Nghymru i ddatblygu ymchwil o'r safon uchaf. Gwelais y geiriau,

Professor Watkin: Yes and I think that how resources have followed research in universities, including law schools, and how they have been dependent on research that reaches an international standard has created fear and concern that writing about Wales cannot be international. I saw it in black and white some eight or nine years ago, and this was post devolution and among people who were charged with assisting a school of law in Wales to develop research of the highest quality. I saw the words,

[118] 'Wales cannot plead the Belfast Principle'.

[119] Hynny yw, ni allem ddweud bod angen llenyddiaeth am ein bod yn awdurdodaeth. Mae'n anodd iawn annog academyddion, yn enwedig y rhai ifanc, i ysgrifennu am gyfraith Cymru os oes perygl nad ystyrir eu bod wedi cyrraedd y safon honno ac felly nid oes dyfodol iddynt yn eu gyrfa. Felly, mae cwestiynau ehangach, rwy'n credu, sy'n dangos yr angen i ddod â'r pethau hyn ynghyd.

That is, we could not say that literature was required because we were a jurisdiction. It is very difficult to encourage academics, particularly the young ones, to write about Welsh law if there is a risk that they will not be considered to have reached that standard and therefore do not have a future in their career. So, there are broader questions, I think, which demonstrate the need to bring all these things together.

[120] Ymysg y pethau a eithriwyd o gymhwysedd y Cynulliad o dan Atodlen 7 yw cynghorau ymchwil, o dan addysg. Mae academyddion yn gorfod cael arian o'r cynghorau ymchwil i sicrhau eu bod yn cyrraedd y safon yn eu hymchwil. Os nad oes arian ar gael i ysgrifennu am y gyfraith yng Nghymru, mae problem, a rhaid taclo'r cwestiynau hynny hefyd os ydym i symud ymlaen. Rwy'n credu, yn wirioneddol, os ydych yn awdurdodaeth ar wahân, mae'r codi proffil hwnnw yn gwneud problem o'r fath yn llawer rhwyddach i'w datrys.

Among the exemptions from the Assembly's competence under Schedule 7 are research councils, under education. Academics have to have funding from research councils to ensure that they reach the standard in their research. If funding is not available to write about the law in Wales, there is a problem, and those questions need to be tackled as well if we are to make progress. I do believe, genuinely, that if you are a separate jurisdiction, that increase in profile makes such problems far easier to solve.

[121] **Simon Thomas:** Diolch am hynny, a oedd yn ddifyr iawn. Mae'r cwestiwn olaf sydd gennyf ar hyn yn cyfeirio'n ôl at eich ateb i Mick Antoniw o ran swyddogaethau comisiwn diwygio'r gyfraith yn hytrach na chorff. A wyf ar gam o weld bod ffordd o roi hwnnw gyda'r cwestiwn o sylwebaeth? Nid wyf yn gwybod ble y gallai hynny orwedd, ond mae swyddogaeth prifysgol yno, onid oes? Mae'n siŵr bod elfen o'r swyddogaeth honno mewn gwahanol leoedd, a phe baem yn dod â'r ddwy at ei gilydd, byddent yn gryfach, oni fyddent?

Simon Thomas: Thank you for that, which was very interesting. My final question on this refers back to your response to Mick Antoniw on the functions of a law reform commission rather than an organisation. Am I mistaken in perceiving a way of placing that with the question of commentary? I do not know where that could lie, but there is a university function there, is there not? There is certainly an element of that function in various places, and if we could bring the two together, they would be stronger, would they not?

[122] **Yr Athro Watkin:** Mae'r weledigaeth honno'n hollbwysig oherwydd, os ydych yn mynd i gael pobl yn gweithio ar gorff cyfreithiol i Gymru, bydd gan y bobl hynny ddealltwriaeth o'r gyfraith yng Nghymru sy'n well na'r arfer. Felly, buasent mewn lle arbennig o dda i ysgrifennu llyfrau yn esbonio'r cyfreithiau sy'n cael eu creu, y newidiadau a wnaed, ac i ddysgu ffrwyth y llafur hwnnw i fyfyrwyr a phobl sydd am ddod i Gymru o'r tu allan. Os oes modd clymu'r pethau hynny ynghyd, caiff yr agenda ei symud yn ei flaen mewn modd eithriadol o dda. Felly, o edrych ar awdurdodaeth, mae'n bwysig rhannu gweledigaeth o'r fath fel y bydd yn goroesi'r problemau sy'n bodoli ar hyn o bryd o ran academyddion yn edrych ar gyfraith Cymru. Nid rhywbeth plwyfol ydyw bellach, ond rhywbeth sydd yng nghanol bywyd y genedl.

Professor Watkin: That vision is crucially important because, if you are going to have people working on a corpus of law for Wales, those people will have a far better understanding of the law in Wales than most. Therefore, they would be very well placed to write literature explaining the laws being created and the changes that had been made, and to teach the fruits of that labour to students and to people who wish to come to Wales from outside. If those things could be joined together, the agenda will be able to progress far more effectively. Therefore, in looking at the issue of jurisdiction, it is important to share that kind of vision so that it outlives the problems that exist at the moment with academics looking at Welsh law. This is not a parochial matter anymore, but something that is at the heart of national life.

[123] **David Melding:** Thank you very much, Professor Watkin. That concludes the questions that we want to put to you, but if there are any concluding comments that you want to make, or if you want to draw a particular point of evidence to our attention, now is the time to do so.

[124] **Professor Watkin:** All that I want to say is thank you very much for the opportunity to give evidence this afternoon. Thank you for the invitation and for the opportunity to take part in the inquiry, which, as I suspect is obvious from what I have been saying, is extremely important. I do not think that I would be speaking entirely for myself by saying how heartened I have been, as I am sure others have been, at the response that the inquiry has provoked, both in respect of quantity and quality. The committee is to be thanked and congratulated on having launched this.

[125] **David Melding:** It is gracious of you to thank us, but really, it is we who should be thanking you for what was really fascinating evidence. The fact that we have gone on for a good hour and a half indicates the range of the subject matter and the issues discussed, as well as Members' genuine interest. You have brought a lot of interesting insight to this inquiry. As a committee, we have been pleased with the quality of the evidence that we have received, both oral and written, but this afternoon's session has been particularly useful and is very much welcome. Thank you very much, Professor Watkin.

[126] **Professor Watkin:** Thank you very much, and I wish you well in your future deliberations. I look forward to reading the report in due course.

3.55 p.m.

Papurau i'w Nodi
Papers to Note

[127] **David Melding:** We have a paper to note as a consequence of a question last week that related to the use of Welsh. Gwyn, I do not know whether you want to add anything.

[128] **Mr Griffiths:** Yr unig beth yr hoffwn ei ychwanegu, Gadeirydd, yw hyn, ac mae hwn yn fater sydd wedi codi yn y gorffennol. Yr wythnos diwethaf, roedd nifer o Aelodau yn dirprwyo ac efallai nad oeddent yn sylweddoli ein bod wedi mynd â hwn mor bell â phosibl gyda Llywodraeth Cymru. Y cam nesaf, felly, yw ei drafod gyda'r awdurdodau yn San Steffan i ddeall y sefyllfa yn iawn, oherwydd maent wedi trin deddfwriaeth yn y Gymraeg yn y gorffennol, o ran ffurflenni ac ati. Felly, mae angen i ni ddeall eu safbwynt hwy yn iawn ond nid wyf yn meddwl bod pwynt dychwelyd at Lywodraeth Cymru ar hyn o bryd.

Mr Griffiths: The only thing that I would like to add, Chair, is this, which is an issue that has come up in the past. Last week, a number of Members were substituting and perhaps they did not realise that we have taken this as far as possible with the Welsh Government. The next step, therefore, is for us to discuss this with the authorities at Westminster to understand the exact situation, because they have dealt with legislation through the medium of Welsh in the past, such as for forms. So, we need to understand their view, and I see no point in returning to the Welsh Government at the moment.

[129] **David Melding:** Are Members satisfied? I see that you are. Thank you for that.

[130] There is a report to note of the meeting held last week. The date of the next meeting is a week today, 25 June.

3.56 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

[131] **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).

[132] I see no Member objecting, so I ask that the public gallery be cleared and the broadcasting equipment switched off.

Derbyniwyd y cynnig.
Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 3.56 p.m.
The public part of the meeting ended at 3.56 p.m.