

Creating a just Wales:
Keynote address
by Mick Antoniw MS,
Counsel General for Wales

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About the speaker

Mick Antoniw is Counsel General for Wales and Minister for the Constitution, and Senedd Member for Pontypridd.

Before being elected as an Assembly Member in 2011, Mick was a partner at Trade Union solicitors Thompsons, where he specialised in spinal and head injuries and corporate manslaughter.

In the Senedd, Mick has served as Counsel General for Wales from 2016 to 2017, and sat on its Enterprise and Business Committee and the Environment and Sustainability Committee, and was Chair of the Standards of Conduct Committee.

He was a founder member of the Bevan Foundation in the early 2000s.

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Creating a just Wales

Keynote address by Mick Antoniw MS

Counsel General for Wales and Minister for the Constitution

26th June 2023, Bevan Foundation, Cardiff

Thank you to the Bevan Foundation for inviting me to address your Summer Social.

I am pleased to be able to contribute to the really important work that you are doing on the challenges facing Wales, in the areas of social justice and equality.

I am particularly pleased to see how the Foundation has emerged as the most influential and probably most referred to think tank in Senedd debates. I was a member of the small group that set up the foundation all those years ago, with the late Dr Hywel Francis, Rowan Williams who was then Archbishop of Wales, Mick Leahy of the Community trade union, and others. Victoria has been the stalwart Director throughout nearly all those years and your reputation as an advocate and ambassador for social justice is second to none, so thank you for all you do and are doing.

My remit today, as Counsel General and Minister for the Constitution, is to talk about justice in Wales and its inter-relationship with equality and social justice. Ten years ago, in Spring 2013, I had a similar discussion with Victoria prior to the publication of the Bevan Foundation Review, Issue 22! And I agreed to write a piece on Access to Justice.

My article then was entitled *Legal Aid Cuts - the end of post war consensus*. On re-reading the article I am reminded that we have had a UK Conservative government for 13 years and financial austerity throughout all those years, and in effect throughout my entire career as a Senedd member. Legal Aid will be my starting point, but it will lead into my thoughts, and that of Welsh Government, in the field of devolution of justice, youth and family justice, and accessibility of the law, and ultimately, equality and social justice.

In that article I quoted Viscount Simon, who led the debate in the House of Lords on behalf of the post-war Attlee Labour Government. He set out the principle of the importance of accessibility of Law which underpinned the establishment of the state system of Legal Aid:

"If members of our community are to share equally in the value of the institutions of the country, ... then the question of securing legal aid and advice to those who cannot afford to pay professional fees is one of enormous consequence. It is an incorrect slander to say there is one law for the rich and another for the poor. Our system of open courts and incorruptible judges exists to protect all, rich and poor, who are wronged and to vindicate their rights. That is not the point at all; the point is that many of our poorer citizens do not always get the necessary legal aid and advice to vindicate their rights or to explain where they are wrong".¹

Recommending the report, he said:

"I therefore recommend this report to the House with this simple reflection that whatever the difficulties may be in the way of poverty, no citizen should fail to get the legal aid or advice which is so necessary to establish his or her full rights. I hold that this is an essential reform in a true democracy."

He described the proposals as the creation of a National Health Service for the law.

The report led to the Legal Advice and Assistance Act of 1949. Since then, successive governments have, decade on decade, chiselled away at these principles leading to the near-death blow to these principles via the Legal Aid Sentencing and Punishment of Offenders Act of 2012, which decimated the Legal Aid system. Alongside a court closure programme which led to over half of Welsh courts being closed, justice is no longer local nor accessible to so many of the most vulnerable in our communities.

The Thomas Commission three years ago, led by former Lord Chief Justice Lord Thomas, said that the justice system in Wales has let down the people of Wales and called for the full devolution of justice and Legal Aid and policing in Wales.

So, talking about justice, we must define what we mean by justice and why it is important.

Justice is not just the system of courts and judges whereby laws are enforced. It is as much about, or should be as much about, the delivery of social justice. In my view, justice and social justice go hand in hand, and the purpose of the justice system is not simply about the enforcement of laws but also about tackling and trying to resolve the social problems, the difficulties that many people face in life, which bring them in contact with the justice system.

From the young people who get into trouble, from difficult and sometimes impoverished homes, abusive environments, and many of the other adverse circumstances which we are aware of particularly in some of our poorest and most deprived communities, to the children and families who end up in the family courts because of their personal and social circumstances, which can involve abusive

¹ Hansard volume 139, debate on Legal Aid For Poor Persons, 18 February 1946
<https://hansard.parliament.uk/Lords/1946-02-18/debates/8c24f710-19aa-462e-9176-0edda1af3c0e/LegalAidForPoorPersons>

relationships, drugs, alcohol - basically poverty in all its various forms in which children are often the main victims.

Increasingly, there is recognition that to deliver real justice, it is necessary to be able to address and solve the social problems that have led to them being before the court. We use the phrase 'problem solving courts' where all the agencies that are available to assist an individual or family are brought together in the court to assess the needs, and support that is necessary to tackle the problems they face.

In Cardiff we have just passed the first year and a half of the pilot drug and alcohol court funded jointly by Welsh Government and the Ministry of Justice. A similar pilot is underway in North Wales to tackle the issue of private family court hearings as part of a problem resolving, dispute resolution approach, which is part of an MOJ pilot which again brings together all those relevant devolved services and which has proved so successful that we would like to see it rolled out to other parts of Wales. That, of course, will be a decision that rests with the Ministry of Justice.

One of the great challenges in reforming justice is to know why, when, and how to reform, and the evidential base for doing so. The lack of data disaggregation for Wales is a key challenge. If we want to reform with social justice at the core of the system, we need to understand what is happening on the ground. Without that core data, policy development is hindered.

The work by Cardiff University, Richard Wyn Jones and Rob Jones, is eye-opening. Through research and freedom of information requests, we begin to see some of the worst excesses of the jagged edge of our non-devolved justice system. The disproportionate imprisonment of Welsh citizens from ethnic minority backgrounds is shocking. The disproportionately high level of imprisonment is equally so. I suspect there are many other anomalies to be discovered.

I attended, with the Minister for Social Justice, Eastwood Park and Berwyn Prisons. Eastwood Park is a women's prison as there is no facility in Wales. The Governor of the prison explained to us that every prisoner was in one way or another a victim, either of abuse or poverty. The failure and often pointlessness of our prison system is a disgrace and a direct consequence of our outdated and dysfunctional justice system. Although there is progress, with Welsh Government working with the Ministry of Justice for the establishment of an alternative women's residential centre in Wales, this has yet to happen.

In Wales we do have responsibility for a number of devolved tribunals of which the most prominent are those which hear appeals about Additional Learning Needs provision and from those subject to the Mental Health Act. All of these are key parts of the already devolved justice system in Wales and apply to wholly devolved local services.

The links between poverty and deprivation, and learning needs and mental health, are increasingly understood and recognised within the court system and in

particular in the youth justice system. There is evidence that 60 per cent of those in the youth justice system have additional learning needs.

The proposal in Gordon Brown's report on constitutional reform recommends as a starting point the devolution of youth justice and probation. I welcome this. This at least begins to bring together all those key devolved elements of the youth justice system and may even have a place within a reformed Welsh Tribunal system which we intend to legislate for.

At the very root of access to justice should be the fundamental right to support and advice, for the homeless, family issues, welfare issues, housing, benefits, education. Instead, this is where the justice system has created a desert of advice. The £11 million Single Advice Fund set up by Welsh Government provides advice to tens of thousands each year.

In 2022-23, the Single Advice Fund services helped 83,874 people deal with 391,326 social welfare problems. Those helped were supported to claim additional income of £49 million and had debts totalling £10 million written off. Important support and advice, but it is inevitably a sticking plaster on a Legal Aid system that has excluded so many of those who most need it.

We have a legal system with advice deserts, where there is a limited career path for young lawyers who are interested in social justice, where many people, usually the poorest in our society, are resigned to accepting whatever the authorities tell them, who do not believe the law is for them, but for others. A system where the law is increasingly authoritarian, restricting traditional rights of protest, and is increasingly racist, as we now see from the Illegal Immigration Bill where international conventions and human rights are disregarded and where in many areas there aren't even the lawyers with the knowledge and expertise to represent them, even if Legal Aid were available.

Devolution of justice is not about who controls the justice system or who is responsible for justice, it is about how we deliver a justice system that works, that embraces the principles of social justice and accessibility. I also believe that the decentralisation of many areas of the justice system, the devolution of justice, is as important to England as it is to Wales.

I just happen to believe that with the devolution of so many of the key services and functions that are at the core of a progressive justice system being devolved, that it is the way forward, and in Welsh Government we are preparing the ground for it to happen under the next UK Labour Government.

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