

**The Eileen Illtyd Memorial Lecture on Human Rights 2018: “A Human Rights Act for Wales?”**

**Diolch o galon i chi am eich croeso twymgalon heno. Mae'n braf iawn cael bod yma ym Mhrifysgol Abertawe.**

**Thank you very much for your warm welcome to the University and especially for the kind invitation to deliver this year's Eileen Illtyd memorial lecture.**

**I feel I have rather a long standing relationship with Swansea University.**

**Although I wasn't a student here, my mother worked here as a secretary in the department of Welsh for twenty years so I was a regular, if somewhat informal, visitor.**

**Not least during my university vacations when I used to use the library here to study, presumably gaining access using my mum's security pass - but perhaps we can gloss over that minor breach this evening.**

**But the particular delight I feel at giving this year's lecture stems principally from its origins in the world of education in the community.**

**For many years, as a teenager I attended a Welsh literature class organised by the university's extramural studies department in Pontarddulais where I grew up. As a fifteen year old I would attend each month I think with several septuagenarian members of the community to dissect and discuss the poetry of Waldo Williams and T.H. Parry-Williams. Textual analysis, cultural references, literary context.**

**I was an unusual teenager.**

**But looking back, that experience taught me at first hand the immense value of taking ideas, taking philosophy, into the community. To be explored and evaluated in the places where people live and in the context of their lived experience.**

**So the work of Illtyd David and others like him, of taking ideas into the community, for reflection, debate and challenge. To quench the**

**intellectual thirst of people who in many cases had no realistic prospect of an advanced formal education. That work I recognise as indispensable in forming an informed, engaged citizenry. And one which sits in a long and distinguished tradition here in Wales.**

**I happen also to have my constituency office round the corner from where in Pontardawe he established one of his longest running classes – which, almost unimaginably, ran for 60 years more or less.**

**Illtyd David, Edward's father, endowed the lecture in memory of his late wife, Eileen, who studied here at Swansea.**

**Its founding purpose was to consider and to promote the study - through a wider lens - of human rights, to which he was so profoundly committed.**

**To see them in their historical, international, political, economic, social and legal context. And to bring that context directly into the lives of his students.**

**And there could hardly be a more urgent moment to be engaged in such a task.**

**2018 provides us with the occasion to think carefully and considerately about the future of human rights in Wales.**

**This December we celebrate the 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights.**

**A foundation stone for the protection and safeguarding of individual rights, the declaration has fundamentally shaped the work of democratic institutions around the world in the post-war age.**

**This November we also mark the anniversary of the passage of the Human Rights Act.**

**Over the last twenty years our own parliament here in Wales has been profoundly influenced by these two documents.**

**Both in the way it has operated and in the shape of the laws it has passed.**

**Yet we live in an age when many of the underlying values and principles contained in these two important texts seem under threat.**

**What some saw as an inevitable march toward the universal application of human rights now seems less certain.**

**New and unruly forms of populist anger and the rise of authoritarianism around the globe put hard won human rights victories in danger.**

**And they pose ever greater challenges for governments across the world in how to respond.**

**And so I am pleased to be here this evening.**

**To reflect as Counsel General – as both a law officer and a politician - on those founding purposes of that lecture series.**

**To look back, as well as to look forward, in considering the historical, international, political, economic, social and legal context of the challenge that confronts us here in Wales.**

**And it is a great pleasure to be *here* also, at this university.**

**An institution which has developed such a strong reputation both for raising-awareness and for promoting public debate about human rights.**

**For scrutinising the actions of those who exist to protect and enhance them.**

**We are particularly grateful to you for the role that you play in helping us interpret the particular Welsh dimension to the rapid constitutional change we are living through at the moment.**

**The list of those who have previously given the lecture – Donald Woods, Roy Jenkins, Lord Scarman, Paul Robeson Jr, Wendy Savage, Bruce Kent, Lord Alf Dubs – is a roll call of individuals who have made a unique and**

personal contribution, in their very different ways, to the development of human rights.

And that leads me to two reflections.

Firstly, that I should approach this topic with a degree of diffidence.

And secondly, I am struck in particular that the theme which is common to those illustrious previous lecturers is not in fact that they contributed to the development and championing of human rights -- but specifically to the practical application of human rights in the lives of people.

They took human rights out of the declarations and the conventions, beyond the symbolic and the declamatory, and into the everyday injustices and inequities of the lives of the vulnerable and disenfranchised.

And so I take my theme from that this evening.

That the role of human rights needs to be understood as it were, from the bottom up as well as from the top down.

And *that* I think has a particular resonance in the context of democratic devolution.

In preparing this lecture, I began to read the recently published book "Stories of Solidarity" by my good friend Professor Hywel Francis, whose own contribution to education in the community here in Swansea over decades has been so significant.

He reminds us of that beautiful line of Eleanor Roosevelt, on the tenth anniversary of the Universal Declaration:

*"Where do human rights begin...?"* she asked.

*"They begin in small places, close to home...they are the world of the individual person: the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity,*

*equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. ‘*

This, I think, is both the lesson for us in considering human rights in a devolved Wales: how to make them real in the lives of our citizens and our democracy.

And I believe it is also the key to what I will argue is the essential political fight back which needs to be engaged in order to reclaim a space for human rights.

That they should become seen as the practical, the basic.

The mundane even.

Rather than the limiting, the imposed.

The alien.

### Human rights and devolution

Human rights in Wales and the development of democratic devolution have trodden a common path over the last two decades.

The Human Rights Act of 1998 brought “rights home” as it was said.

But that year also saw passage of the Government of Wales Act 1998 which signalled the birth of modern, democratic devolution.

A ‘process not an event’, as someone famously once remarked.

From the start, devolution was built on the foundation of human rights.

Fundamental both to the powers of the Assembly (and what became the Welsh Government) was a principle that they have no power, no competence, to act incompatibly with the rights set out in the European Convention of Human Rights, as defined in the Human Rights Act.

It is embedded, you could say, in the very DNA of devolution itself.

**As Counsel General, my single most important responsibility is to advise the Welsh Government on its powers.**

**To provide the advice which enables it, always, to act within the boundaries of its competence.**

**And also to enable it to act to the fullest extent of its competence, in delivery of its policy priorities.**

**And, whilst you may have heard the Welsh Government opposing other limitations on powers as unnecessary or undesirable, this is a ‘constraint’ which we have keenly embraced.**

**In fact, the only Assembly bill which has been found to have been outside the Assembly’s competence was the “Medical Costs of Asbestos Diseases” Bill, a private member’s bill, passed by the Assembly and referred to the Supreme Court by a previous Counsel General.**

**You may recall that the provision in the bill which would have allowed the Welsh Government to recover the cost of NHS treatment for asbestos-related disease from insurance companies was incompatible with those insurers’ right to the peaceful enjoyment of their possessions under Article 1, Protocol 1 to the Convention.**

**Consequently the bill never proceeded to receive Royal Assent.**

**And so it is then that Welsh devolution and our body of laws have been inextricably linked with, and shaped by, the convention rights.**

**Or, as Professor Thomas Glyn Watkin has said, the convention has been:**

***‘an essential reference point in defining the scope of the powers of the National Assembly’.*<sup>1</sup>**

**And it remains so - at least for now.**

**We are a young nation when it comes to law-making, but our commitment to human rights has been much more than merely a rhetorical one.**

---

<sup>1</sup> AS SET OUT IN HIS BRIEFING FOR THE BRITISH ACADEMY ENTITLED ‘HUMAN RIGHTS FROM THE PERSPECTIVE OF DEVOLUTION IN WALES.

**Former US Supreme Court Justice Antonin Scalia once observed that rights have to be more than what is simply written down on a piece of paper - what the framers of the US Constitution would have described as merely a 'parchment guarantee'.**

**In Wales we have consistently gone beyond seeing rights as a 'parchment guarantee' in our approach to protecting the rights of our citizens.**

**We have sought, collectively, to seep them into the walls of the institution itself – shaping the executive and legislative processes.**

**This, in part, reflects our history as a nation.**

**One where community has traditionally been fostered and celebrated.**

**But also it speaks to our present and future commitment as an Assembly and as a Government to place our citizens at the heart of decision-making in Wales.**

**A tradition that runs right back to the creation of the very first friendly societies in Wales the 18<sup>th</sup> century.**

**In doing so we have created, if you like, an enhanced human rights framework for Wales.**

**And we can point to specific examples - in areas such as organ donation or domestic violence against women. And, in the current legislative programme to tenant rights in renting homes legislation or the abolition of the defence of reasonable punishment of children.**

**These are all examples of enhanced rights.**

**But important though they are on their own terms, they are not perhaps qualitatively different from any other legislation which confers enhanced subject-matter specific protections.**

**We also have the pioneering Well-Being of Future Generations (Wales) Act.**

**Enacted in 2015, the legislation has become the central framing mechanism for Welsh Government which places sustainability at the heart of public decision making, a move heralded by the United Nations as a *'model for other regions and countries.'***

**I will return to this later as it is an important feature of any future development in human rights protections in Wales.**

**But it's important to remember too that we have explicitly legislated for human rights.**

**And we have done so using our powers in relation to human rights under the devolution settlement.**

**The current devolved settlement provides that certain powers are reserved to Westminster.**

**These include "international relations" which is taken to include relations with other territories, the EU, and other international organisations.**

**But there is an exception to the reservation providing that the Westminster parliament has not reserved to itself the observing and implementing of obligations under the "Human Rights Convention".**

**The effect of this is that the Assembly *can* legislate for the purpose of observing and giving effect to human rights obligations so far as they relate to devolved matters.**

**And indeed the Assembly has legislated on a piecemeal basis to embed specific international human rights conventions into overarching legislation as you will know.**

**This has happened in the social care field, placing a duty to have "due regard" to the United Nations principles for older persons on those who are carrying out functions in relation to adults with care and support needs, and indeed for carers.**

**The act also imposes 'due regard' duties in relation to the care and support needs of children and child carers, this time referable to the UN Convention on the Rights of the Child.**



**The Additional Learning Needs and Education Tribunal (Wales) Act 2018 likewise delivers a new legal system which enshrines the rights of children and young people, giving effect to the principles of the same UN convention.**

**The code which will be issued under the Act will also include guidance for local authorities and NHS bodies on discharging their duty to have due regard to the UN convention.**

**These are sector specific initiatives but we have also legislated proactively for human rights at a higher, more overarching level.**

**An example, particularly apposite given the work of the Observatory here, is of course the Rights of Children and Young Persons (Wales) Measure 2011, which places the Welsh Ministers under a duty to have due regard to the requirements of the Convention on the Rights of the Child whenever they exercise their functions.**

**I should probably mention finally the Law Derived from the European Union (Wales) Act (the Welsh Brexit Continuity Act). Though the focus here has been on preserving EU law in Wales, we also legislated to the effect that EU derived Welsh law created under the Act should be interpreted in accordance with the European Union Charter of Fundamental Rights (which will otherwise be lost at the point of Brexit).**

**We will come back to this later. But I think, it gives a signal of the Welsh Government's willingness to legislate boldly for human rights, to the fullest extent of its competence, when the case is made out.**

**So whilst, there is currently no 'one' Human Rights Act for Wales, I would argue that there *is* a statutory Human Rights *Framework* for Wales.**

**One that is distinct from that at a UK level and one which is important and ambitious.**

## The attack on rights

As I have said, the 2018 anniversary of the Universal Declaration of the Human Rights Act and of the Government of Wales Act is significant.

A moment to pause and to take stock.

When one looks across the world, it is perhaps easy to be discouraged by the surge of nationalist discontent that takes aim at international protections of human rights.

The Universal Declaration which states a: *'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family' as 'the foundation of freedom, justice and peace in the world'* provides rather a stark contrast to the language all too often used today to describe human rights.

We are witnessing a retreat from the inspirational, aspirational principles espoused in 1948.

Perhaps what is even more worrying is that those sentiments can clearly be seen in quarters which have led the way in developing and fostering the creation of universal rights in the first place.

In both the United States and the United Kingdom we face the need to re-make the argument for universal rights.

Fundamental human rights are in retreat in almost two-thirds of countries surveyed by the World Justice Project for the rule of law index.

The grim reality is that a worldwide surge in authoritarian nationalism and a retreat from international legal obligations is endangering the fundamental values which, despite being recent innovations in many places, we have upheld.

If we are honest with ourselves, perhaps we have taken them for granted.

The rule of law is under threat not only because of the rise of authoritarianism, but also because of more subtle forms of populism which undermine social and political norms.

**In the United States, the checks and balances on the exercise of power are now routinely portrayed as instruments for political gain rather than for the effective functioning of the constitution.**

**In the UK even, we have seen the judiciary attacked, as the Daily Mail disgracefully branded some of our most senior and respected judges as “enemies of the people”.**

**Even more alarmingly, the Lord Chancellor at the time plainly did not consider it her constitutional role to defend the judges and to defend the independence of our judiciary more generally – a fundamental tenet of the rule of law.**

**The latest victim here in the UK is the scandalous failure of the home secretary Sajid Javid to insist on assurances from the US against the use of the death penalty in the extradition of two terrorist suspects for trial.**

**In doing so, subverting a basic tenet of the British justice system, upheld since the abolition of the death penalty in 1965 and decades of cross party consensus.**

**So we should be under no illusion that human rights protections are under attack.**

**Sometimes subtly.**

**And sometimes, the wolf comes as a wolf.**

**And I believe that this needs a political response.**

**A response, I would argue, which portrays human rights as the mundane tools of justice.**

**In “small places, close to home”, not the liberal pronouncements of distant marble halls.**

**But as well as this essential political response, we may need a legislative response, too.**

**I don't wish to labour the significance of 2018, but it is of course also the final year before the date on which we are scheduled to leave the European Union.**

**When, as Vernon Bogdanor has put it, both eloquently and starkly, we will be *'moving from a codified and protected constitutional system to an uncodified and unprotected one based on the sovereignty of parliament'*.**

**The question is, what happens next?**

**We know, of course, that the UK government has repeatedly stated its intention to repeal the Human Rights Act and replace it with a British Bill of Rights.**

**It has even threatened to leave the European Convention, though it appears to have rowed back from that for the time being at least.**

**I believe that the commitment by the UK government not to touch the Human Rights Act is time limited.**

**It will, perhaps, last only for this Parliament.**

**But once we are the other side of Brexit, and in the uncodified and unprotected constitutional space that Vernon Bogdanor referred to, it is not hard to imagine that those who prize repeal will return for the spoils.**

**The Welsh Government has been clear that in leaving the EU we will insist that protections and standards which benefit our citizens and the well-being of society are not eroded.**

**No one voted for fewer rights when they voted for Brexit.**

**And we have also consistently opposed the repeal of the Human Rights Act.**

**It is an inclusive, powerful force for good.**

**If the UK government attempts to repeal or weaken the Human Rights Act post-Brexit, the Government will do everything in our power to avoid the erosion of rights.**

**Let us be clear – changing the Human Rights Act goes to the very heart of the devolution settlement.**

**A space where democratic devolution and human rights have been intertwined for two decades.**

**And that was why the Welsh and Scottish Governments agreed to work together to fight the UK Government’s previously threatened plans to repeal the Human Rights Act arguing that it would be wholly wrong to change the constitutions of Wales and Scotland by repealing the Human Rights Act without the consent of the two countries.**

**But let us assume, for a minute that we are faced with repeal of the Human Rights Act and that it is proposed to be replaced with a weakened British Bill of Rights.**

**How would we respond?**

**Well, we have been here before.**

**Where the UK Government has threatened protections in specific devolved areas in the past, we have reacted by legislating to safeguard them, often in the face of staunch opposition and even legal challenge.**

**I am thinking of the Agricultural Sector (Wales) Act 2014 and the Trade Union (Wales) Act 2017.**

**In both cases we legislated to preserve protections which were vital to devolved sectors in Wales.**

**We did so within our competence and within convention rights.**

**Earlier this year the Assembly passed what became the Law Derived from the European Union (Wales) Act 2018.**

**The Continuity Act I mentioned earlier.**

**The Welsh Government considered carefully how the Act should deal with the rights of citizens as Wales left the European Union, in light of our clear policy that exiting the EU should not be seen as a dilution of rights.**

**We included a statutory obligation on Welsh Ministers, when they are incorporating directly applicable EU legislation, to seek to continue the rights, powers, liabilities, obligations, restrictions, remedies and procedures that are currently available under that legislation.**

**And section 7 of the Act requires any question as to the validity, meaning or effect of any EU derived Welsh law created under the Act to be decided in accordance with the case law of the Court of Justice, general principles of EU law and the Charter of Fundamental Rights.**

**It falls short of incorporating these into domestic law, but does mean that EU derived Welsh law would be interpreted in the context of EU fundamental rights.**

**The Law Derived from the European Union (Wales) Act remains on the statute book as of today but is in the course of being repealed, which we agreed with the UK Government we would do, in order to secure important changes in the EU (Withdrawal) Act and protections for devolution.**

**The repeal motion has been laid for debate in the Assembly on 20 November.**

**So we have legislative precedent for the Assembly legislating to make good when the UK Parliament has chosen to weaken rights protections in Wales.**

**I have already spoken about the powers we have in relation the implementation of convention obligations within devolved areas.**

**Provided we steer clear of reserved areas, in my judgment there is nothing in principle which would prevent the Assembly responding to a weakening of human rights protections across the board, by doing in one act what we have chosen to do piecemeal in subject-specific bills to date.**

**Namely - legislating to create new rights in Wales within devolved areas.**

**Whether that would happen will, of course, depend on the government of the day and the exact steps taken by the UK Government, which will colour the available responses for the Welsh Government and Assembly.**

**And I should also say that it may also depend on the outcome of the current Supreme Court reference of the Scottish Continuity Bill.**

**In July I intervened on behalf of the Welsh Government in the Attorney General's reference of the Scottish equivalent of our continuity legislation to the Supreme Court.**

**We are now awaiting the decision of the Court regarding the competence of the Scottish Parliament to legislate as it purported to.**

**This could have an impact on our devolution settlement in Wales, which is why I intervened.**

**The relevant question for this debate is what constitutes a modification by the Scottish Parliament (or Assembly in our case) of a protected enactment – which would include the Human Rights Act?**

**Is modification in this context limited to textual amendments, or is it broader? That is one of the questions currently before the Supreme Court and we are awaiting the decision of the Supreme Court as we speak.**

**But given the legislative precedents to date, is it conceivable that the response to an assault by the UK Government on human rights protections could be a Human Rights Bill introduced into the Assembly?**

**Crafted as I have outlined above, a Human Rights Act for Wales seems perfectly possible to me.**

### **The future of human rights in Wales**

**But how will future equalities and rights frameworks apply and co-exist, when we have left one of the overarching regimes from which many of them derive?**

**What if the UK Government does ultimately withdraw us from the Convention?**

**How will the common law, itself infused with international influences, develop or 'step in' when we leave the EU, if and when changes are made to the Human Rights Act?**

**Will that lead, as some have worried, to a clash between the judges and the UK Parliament?**

**We are in unprecedented territory.**

**I am struck by what Dr Tobias Lock said in evidence to the National Assembly about the dangers of what he described as 'constitutional illiteracy, naïveté, or arrogance' as a driver of developments in the UK political arena.**

**Challenges which present constitutional questions in excessively simple form.**

**In posing questions about the future form of rights protection in Wales, if you accept my argument that we already have a statutory human rights framework in Wales, we have a strong platform for action.**

**But that is not to say that we are not open to calls to do more.**

**I hope you will recognise from what I have said that we are listening carefully to calls for the possibility of legislating in a more comprehensive manner.**

**An approach which previously we have taken in a piecemeal fashion and for specific purposes.**

**It is understandable, particularly in the shadow of EU exit, that the people of Wales look to the Welsh Government for reassurance and leadership in this field.**

**There have been many suggestions from different sources of how the Welsh Government could secure and promote human rights in the future, separate from the question of how to respond to reform of the Human Rights Act.**

**The UK Government's decision not to incorporate the EU Charter on Fundamental Rights into UK law after Brexit has triggered a question about how we might respond in Wales.**



**The Assembly's External Affairs and Additional Legislation Committee and Equalities, Local Government and Communities Committee have questioned whether the principles of the Charter could be incorporated by a piece of legislation in Wales.**

**There have also been calls for the Welsh Government to further incorporate the UN Conventions into Welsh legislation.**

**In addition to this, the Equality and Human Rights Commission believes that, to strengthen the existing human rights infrastructure in Wales, the Welsh Government should legislate in relation to additional UN treaties and conventions.**

**As part of the Welsh Government's ongoing gender equality review, led by my Cabinet colleague Julie James, who is here this evening, there has likewise been much discussion around the potential for legislating in relation to the UN Convention on the Elimination of all Forms of Discrimination Against Women.**

**And only last month, the Senedd debated a legislative proposal for a bill to incorporate the United Nations Convention on the Rights of Disabled People into Welsh law.**

**The aim of which would be to strengthen rights-based policy approaches to promote the rights of those with disabilities and use the UN convention as a framework for future developments.**

**So there is an emerging debate about the question of incorporation which may even go beyond a set of "due regard" duties.**

**Alongside this, as a result of the new devolution settlement which came into effect in April, the powers to enact the socio-economic duty of the Equality Act 2010 have now been devolved.**

**The ECHR and others have argued for it to be brought into force in Wales as it now has in Scotland.**

**And again I will say that a piecemeal approach to human rights protection may well not capture the same benefits that a dynamic and comprehensive approach could bring.**

**So tonight I want to reiterate that we are acutely aware of these questions and are committed to looking at ways of strengthening rights and protections in Wales.**

**There are, of course, a range of opinions on what the best approach is for the future.**

**For that we need a broader public conversation.**

**We need to consider the reality of the different options before us.**

**What difference would they make to the everyday lives of the people of Wales?**

**Universality is often said to be the essence of human rights but their application if it is to be meaningful needs to be local and individual.**

**Any actions we take need, on the one hand, to be effective.**

**But they also need to avoid introducing unhelpful complexity on the other.**

**They need to make a positive, practical difference.**

**In the context of calls for the ‘incorporation’ of additional international human rights conventions, that raises very real and sometimes difficult questions.**

**Firstly, what is meant by ‘incorporation’? Does it mean further “due regard” duties or does it mean more?**

**Who should be held accountable for ensuring these rights?**

**Should this only be at a Ministerial level, or should it be, for example, at a local authority level?**

**Or should it be at a more immediate level?**

**Likewise, how would an individual hold those to account when their rights are infringed? Is the enforcement of rights the best model, or is the real prize a fundamental culture change so that human rights considerations are built in naturally to public decision making.**

**Legislation would send out a strong, symbolic message and would be noticed, both around the UK and internationally.**

**That is positive but it is crucial that our action is not just symbolic.**

**It must also have a tangible, positive impact for the people of Wales.**

**We are interested in outcomes more than symbols.**

**And at the same time, we should be acutely conscious of the resourcing and capacity implications for public services.**

**Justice should be no casualty of austerity, but we do have to think carefully about the resourcing and access to rights, not least in a context of the shameful withdrawal of legal aid.**

**When we think of justice, perhaps the first thing that springs to mind is the administration of justice through the court system – the upholding of rights and the punishment of wrongs in accordance with the law. But it is of course a much broader concept. It means a society committed to the rule of law, to human rights and to equality – the same status, rights and responsibilities for all members of society.**

**In line with this, we firmly believe justice should be devolved in future.**

**This is why the First Minister has established the Commission on Justice in Wales to examine the issues and offer a long term expert view. I gave evidence to the Commission this afternoon.**

**Until justice is devolved, then the scope of devolved powers to legislate to make further provision in relation to international human rights protections is necessarily limited, including as compared to the other devolved administrations.**

**We also need to look at human rights in the broader light of socio-economic justice. What is the relationship between incorporating conventions or enacting the socio-economic duty with the framework we already have in place, provided by the Well-Being of Future Generations (Wales) Act?**

**Indeed, how does incorporation relate to the socio-economic duty, which covers much of the same ground, for example as the International Covenant on Economic, Social and Cultural Rights which the UK ratified in 1976?**

**These are important practical considerations. And it is crucial to develop a holistic view of how these separate measures could jointly contribute to a coherent picture of human rights protections.**

**To help us work through some of these questions, as my Cabinet colleague Julie James announced within the last few days, we have decided to commission a project to model the various options available.**

**To examine how they inter-relate and what practical impact they might have in those *“small places, close to home”*.**

**This will be an opportunity to consider what we can do in relation to existing regulation, the treaties, and the enactment of the socio-economic duty.**

**We see this as a positive and proactive step towards establishing our own approach to human rights in Wales, for the future.**

**One that mirrors devolution itself – a system that works for Wales, but at the same time positions us as a nation ready to fulfil our own international obligations to justice and fairness for all.**

**In looking at human rights protection in Wales, the Welsh Government has been clear not only that these should be protected in Wales but indeed across the UK. And this is a fundamental dimension to the discussion. Our response should not be limited to what tools are available to us under devolution, but we should lend our voices to those calling for rights across the UK to be protected following Brexit.**

**Though we focus on the Human Rights Act and the European Convention, arguably of course it is the EU Charter of Fundamental Rights which has given the courts the greatest power to protect human rights.**

**The Human Rights Act gives the courts the power to make a declaration of incompatibility between primary legislation and the convention. But the Charter has been used to dis-apply primary legislation passed by Parliament on the basis that it was incompatible with charter rights.**

**That is a very significant inroad into the traditional constitutional doctrine of the sovereignty of parliament. That will no longer be available after Brexit. And that is a significant loss.**

**In Wales we are proud that human rights are in the DNA of devolution. We have no power to pass primary legislation which is incompatible with convention rights.**

**The Charter was in some way the beginning of a comparable constraint on parliament – it was used to dis-apply primary legislation. Many of us I am sure would welcome a world in which human rights were not only in the DNA of devolution, but also in the DNA of the union.**

**But above and beyond that, if we are looking for ways of weaving human rights into the daily lives of people and by doing so, to broaden the constituency of support, then perhaps the kind of rights protected by the Charter are a more effective tool for that than the rights in the European Convention.**

**A Human Rights Act amended in some way to reflect the principles of the charter might well connect more deeply, with the everyday concerns of most people.**

**But I would say this: a pan-UK dimension to this is vital for those of us committed to human rights and to devolution within the Union. Our ambition should be for better human rights protection across the United Kingdom.**

**The shared platform of rights which this can and should provide, which brings us all into a community of mutual regard and respect, should be part of the constitutional glue in a changing union.**

## **Conclusion**

**Where we started this evening was with the maintenance of existing rights in the face of threat.**

**But the clear goal is to strengthen and build on these rights for the future.**

**And our actions as a Government in Wales will be about preparing Wales for what is to come and continuing to ensure that the rights of our people are considered in everything we do.**

**But to do this in a way that doesn't inadvertently exacerbate the problem. To locate individual human rights in a societal, collective context.**

**In Wales perhaps we can overcome, or at least lead the response to the challenge of how to foster and to protect individual rights and at the same time increase the strength of the bonds between different groups in our community.**

**It is clear that we face a very great constitutional and political challenge.**

**Our response has to navigate the realities and contours of devolution as well as the restrictions placed on devolved powers.**

**And add into this mix conflicting and often confused signals from the UK Government.**

**But as we have demonstrated clearly in the past, the Welsh Government has not allowed these limitations to inhibit its ambition for rights protection.**

**And it will not do so in future, either.**

**In the face of unprecedented change we must and *will* be proactive, ambitious, forward thinking and continue to do whatever is within our powers to ensure that Wales remains a modern, inclusive place to live and work.**

**Academic and public discourse about human rights and how to realise those rights must, and thanks to institutions like yours I'm sure *will*, be central to how we take forward the proposals I have spoken about this evening.**

**I look forward to engaging in those debates with you.**

**But I think we can be rightly proud of what we have achieved to date and even take some inspiration from the human rights framework we have fostered in Wales.**

**It is a platform which I am confident we can build on.**

**Wales is a small nation but one where our sense of community has always been a powerful part of our national identity.**

**And when it comes to the accessibility and consistency of rights, perhaps we can use our small size to our advantage.**

**Perhaps it can provide us with the opportunity to further develop, to educate and to embed, our human rights framework in a way which closely reflects our needs and our values.**

**Rights which must be both global yet immediate so that they resonate with, are relied upon and are embraced by, all those who live here.**

**In those *“small places, close to home.”***

**Thank you. Diolch yn fawr i chi.**

**JEREMY MILES AM, COUNSEL GENERAL FOR WALES**

**15<sup>TH</sup> NOVEMBER 2018**