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Criminal Justice in Wales

Carwyn Jones, a former First Minister of Wales and currently a Professor of Law at Aberystwyth University is interviewed by Karen Harrison, a Professor of Law and Penal Policy at the University of Lincoln.

Professor Rt. Hon. Carwyn Jones is a former First Minister of Wales, a role he held between 2009 and 2018. He left the Welsh Parliament in 2021 after representing the Bridgend constituency for twenty-two years which included eighteen consecutive years in government. Before politics he practised at the Bar for ten years and was a Professional Tutor on the Bar Vocational Course at Cardiff University, where he taught Karen! He is now a Professor at Aberystwyth University with a strong interest in constitutional law. He is also Bencher at Gray's Inn. Since leaving politics he has been involved in broadcasting and business consultancy and is also involved with a number of charities. His autobiography was published in 2020. In his spare time, he enjoys sport, reading and travel and is now trying to catch up with a list of tasks around the house that his family tell him he has neglected for the past twenty years.

The interview took place on 20th September 2021.

KH: How would you say Wales differs from England in terms of criminal justice?

CJ: Well, the most obvious difference is that unlike England, Wales doesn't control its criminal justice system. Scotland does, Northern Ireland does, but Wales is an adjunct really to the system in England. What has that meant in practical terms? So, first of all the rurality of Wales makes it increasingly difficult for people to access legal advice, particularly legal aid and they have to travel long distances to get it because rural solicitors are not able to obtain the necessary contracts to be able to provide that advice. Secondly, courts, we have a very small number of courts in Wales now. Rural areas have lost their courts. It's nothing now for people to have to travel 30 or 40 miles just to get to a magistrates' court. Now, the principle always was that justice travelled to the people but that's no longer the case, particularly in Wales. There is also an issue with the education of prisoners and health provision for prisoners, because they are provided by organizations of Wales that are not responsible to the UK Government. So, you've got this jagged edge which is jarring between different organizations in terms of how they work with each other. So, if you're looking at the proper approach to the rehabilitation of offenders, you

need everybody on board and unlike in Scotland or Northern Ireland, the bodies that have to come together to provide that are all answerable to different people, and that creates problems in terms of being able to create a completely coherent strategy. Finally, is that we have a different language and as somebody who's a native Welsh speaker, I don't have the right to a jury trial in my own language, in my own country. I'm able to speak Welsh. I'm able to use Welsh, but I'm not entitled to a Welsh speaking jury. Everything has to be translated, and that again, is a major difference. I mean, the Welsh language was excluded from the courts until 1942, by law, and we're not in that situation now, but it does show that the bilingual nature is not fully appreciated by having one criminal justice system for the two countries.

KH: How supportive/proactive do you think Westminster is in terms of ensuring that those differences are recognised and acted upon?

CJ: Not at all is the simple answer. The difficulty we have, and it's the same with the Home Office and the MoJ [Ministry of Justice] is that they forget about the Wales bit after the word England in England and Wales. Wales is treated as an adjunct to England. Whatever is applied in England is applied to Wales, even though the circumstances might be different. For example, when decisions were taken to close down courts. That decision was taken effectively in London by somebody looking at a map. No real consideration was given to public transport links, to distances, it was taken on the basis that 10 miles in London is equivalent to 10 miles in rural Northwest Wales, it isn't, but that's the approach that was taken. So, I don't think there's any attempt at all to recognise Wales' distinctiveness. They are absolutely set against any devolution of the criminal justice system, even though they accept it in Scotland and Northern Ireland. Largely because we have this bizarre situation in Wales where we have the only Parliament in the common law world, without its own jurisdiction. We rely on Westminster to enforce our laws, which is not a sensible long-term policy. On the ground, on a practical level the non-devolved and devolved bodies do work together, they're professionals, they're practitioners and the politics doesn't interfere. But what it does mean is that any one

of those bodies could pull out at any time. We had a situation a few years ago where there was an attempt to pull the police out of meetings where the Welsh Government was involved and then they realized how daft that was because you need people to work together. So, we have this ad hoc arrangement in Wales which has worked, but it's not really stressed proofed, and it's subject to the goodwill of both governments to work together and that's unlike anywhere else in the UK and that to me is an obvious weakness.

KH: Do you think that's because Wales is viewed as a principality rather than as a country?

CJ: No, it's because of the Acts of Union of 1536. One of the consequences of that legislation was that the Welsh legal system was abolished. The Welsh courts were abolished, and Wales was integrated into England, it effectively became part of England until 1967. Scotland was never in that position. Scotland entered into the Union with its own jurisdiction, its own laws. Ireland was the same and Northern Ireland picked up from that in 1921 and became its own jurisdiction. When the Welsh Assembly was established it didn't have primary law-making powers, and so the question of having separate legal jurisdiction didn't arise. But now it does and not having legal jurisdiction is problematic. So, being part of a criminal justice system that's answerable to Parliament at Westminster in London, which doesn't apply to Scotland or Northern Ireland means Wales is in effect, when it comes to the criminal justice system, on a par with Cornwall, even though Wales is a country that has its own government and parliament.

KH: What are the challenges faced by the police, the courts, prisons and probation in Wales?

CJ: In terms of the police, it's funding. We have four constabularies; one is very rural and the other three are mixtures of both. South Wales is probably the most urban and for years South Wales Police has struggled with funding. Most funding comes from Westminster and South Wales Police has unique challenges, for example, it hosts large sporting events in Cardiff, which for example Bristol wouldn't have. So that's been a problem for us in terms of ensuring that all of those issues are appreciated in Wales. In terms of the courts, there simply aren't enough. We've seen so many rural courts closed, and we've seen courts closed

down in urban areas. I live in a town of 40,000 people and we've lost our county court and our magistrates' court. You have to travel 20 miles to Cardiff to access those now. There was no reason for it other than to sell off the land, the magistrates' court was demolished, and the land was sold, so it was a money-making exercise. It was nothing to do with the delivery of justice and that's caused enormous problems. The probation service was in turmoil. It's now one national probation service in Wales again, but answerable bizarrely to Whitehall and not to the Welsh Government. And with the prisons again, on a practical level, it's a question of how they work with the health boards and with the education authorities to deliver what they need to deliver. That has to be done cross government as it were, but also prison provision in Wales is very poor.

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So, we don't have a category A prison, perhaps we don't need one and we don't have a women's prison. No woman can serve a custodial sentence in Wales and we know that part of the process of rehabilitation is for people to be able to serve their sentences close to their communities and close to their families. If you're a woman in Wales, you are discriminated against in that way, because you cannot serve your sentence in your own country. In terms of the prison population, we are effectively part of a joint prison service with England. To create a separate prison service would be

an expensive undertaking, although that's not something we should shy away from if we have control of that system. But prison provision is very, very patchy across Wales and offenders in Wales have to travel great distances to serve their sentences.

KH: What was the decision-making process in terms of putting HMP Berwyn in Wales?

CJ: It wasn't seen as a Welsh prison. It's a big prison, there just happened to be land available. There was strong public opinion in Wrexham against the prison, so they gave it the name of a mountain range about 25 miles southwest of Wrexham to try and sweeten the pill. The prisons in South Wales are all quite close to each other, none of them more than 20 miles apart. There's nothing in the West, nothing in the Northwest, nothing in the middle and then there's Berwyn which was not designed to be a Welsh prison because there aren't 2000 offenders in North Wales to put in that prison. So, it was simply a decision taken in Whitehall for the benefit of the prison system.

KH: What steps have been taken to create a particular Welsh criminal justice culture or ensuring that criminal justice practices are appropriate for Wales?

CJ: Not much I'm afraid is the answer. We tried when we were in government to do that and I suppose at a practical level the best example is the ability of bodies to cooperate with each other regardless of where the line of responsibility is. But there's no sense of a Welsh criminal justice system. There is a Welsh Probation Service now, but that's fairly new. There is a Welsh courts service, but that's not run from Wales and there's no Welsh prison service.

KH: You are a region aren't you in terms of the prison service, which, as you say, is similar to Devon and Cornwall.

CJ: Yes, well, that sums it up really — a region. So, we are alone in the UK in having no control and no say in the way our own justice system operates. And that's the fundamental objection that many of us have. Different powers rest in different places, the major difference between Scotland and Wales now is justice. If you are part of a justice system with a country that's 20 times your size, you will not get much of a look in. That's certainly the impression that I've had. Wales has simply been tailored to what is deemed to be appropriate. I just don't think that any thought has been given to the importance of providing justice in rural areas, including parts of rural England, because the decision makers and decision takers all live in large urban areas.

KH: On the basis that criminal justice in Wales is run by Westminster, what are the limitations of this?

CJ: Our justice system is entirely within the control of another parliament and another government in a way that isn't the case in Scotland and Northern Ireland. Wales has 40 MPs, but that's out of 650 and after the next election it will be 32 MPs out of 650. So, Wales doesn't exactly dominate debate in Westminster. So, whenever there's talk of justice, frankly I don't think Wales counts. There have been some changes, we now have a Lord Chief Justice of England and Wales, when I studied to become a Barrister, it was just for England. But these are just words, we're not seeing anything in practice. We don't see anything that would actually

benefit Wales. It's all things that they have to do, so the bilingual nature of justice system forms, they are compelled to provide them, but beyond that the MoJ would see no reason as to why Wales is any different from England. There are many of us who would see those differences and would like to take Wales down a different path, for example, when it comes to criminal justice.

KH: What might a future criminal justice strategy for Wales look like?

CJ: There are some who might say well, we could have bits devolved. We could devolve probation; we could devolve the police. My view is you can devolve the police, but once people are through the doors of the criminal justice system everything is linked. You can't have control of the probation service unless you have control of sentencing policy because you have to control the flow of people, who are put under the aegis of the probation service. You can't control the prisons unless you have control of sentencing policy again, because you don't control the method by which people end up in prison. I think there's certainly room for debate in Wales. There are some of my former colleagues in the Welsh Parliament who believe that women shouldn't be incarcerated at all. I don't get that. I think if you murder

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somebody, your gender shouldn't make a difference as to what the sentence is, but they would actually be quite opposed to establishing a women's prison at all. Other colleagues would want to see smaller prisons which are able to focus more intensely on rehabilitation. They don't like the idea of big prisons, such as Berwyn with its 2000 places. Can Berwyn really focus on rehabilitation when there are so many prisoners all under one roof? And what would we do with our most extreme offenders. We would probably have to buy places from the English prison system and then that raises more questions if you're relying on somebody else to provide services for you. These are all questions that arise, and all these factors become part of the debate, but it's not a debate we can have because we are inextricably linked to the system that exists at the moment, which is going in a different direction to what many of us would like to see. Unlike England, unlike Scotland, unlike Northern Ireland, people in Wales have no say over the direction of that policy.

KH: What is happening with the proposal for a new prison in Wales?

CJ: That's disappeared. There was a problem with the land as they hadn't checked who owned the land and that was part of the problem. They do have an awful habit of announcing that they want to take forward new facilities without telling anyone and without consulting on it. The MoJ are not good at preparing the ground for announcements. You could make the argument that there needs to be a prison in the northern valleys, for example, because everybody there has to come down to the southern prisons to serve their sentence. You could make a case for a prison in the middle of Wales as well, but none of these things are debated because those in London just don't get it. They want to impose their own template on England and then Wales as a result. They are reluctant to devolve criminal justice to us because they wonder why do they want this power? They must be wanting to do something that we won't like so we won't give them the power in the first place.

KH: What is your view on custodial provision in Wales? Is current provision fit for purpose?

CJ: No. Firstly geography. There's no geographical spread. Secondly, prisons in Wales are not designed with Welsh prisoners in mind. So that clearly is an issue, but we can't have a debate in Wales about alternative criminal justice provision because we don't have the power to deal with it. I think we could do something quite different and better if we had those powers. One of the examples that I have given is smaller prisons. That would cost more per head, inevitably because of the capital costs of building them, but we may end up with a better outcome, but at the moment we can't

even do that. We can't even have that debate because we don't have those powers. However, building prisons is not a vote winner. Crumbling Victorian prisons are not an election issue. People are either indifferent or they take the view that's all they deserve. Whereas if you sit down and say, look, if we had a prison system that stopped people from reoffending, the emotional cost to the victims and the cost to society is much less. If you start talking about the longer term, then they start to get it. It's not simply about sticking them in prison and when they come out, hoping for the best. But it's not a debate that we can have. Let's not pretend that everybody can be rehabilitated because they can't, but at least we could give it a good try with some of those who are slipping through the net at the moment.

KH: If you were still in office what would your priorities be for criminal justice in Wales?

CJ: Devolve it, but that would take time. You can't devolve it overnight, you can't suddenly say from the end of this year you're in charge of everything, that doesn't work. It has to be gradual and there is a cost involved. You could probably devolve the police pretty quickly, but when it comes to the prison system and the courts, that would take some time and you would need a few years to do that, to get that right; to make sure the money is in place and to put in place the capacity in the civil service. You don't want to take over something when you don't have the capacity amongst your own civil servants to actually run the system and create policy. So yes, for me that will be the biggest objective because we can tinker around the edges with the justice system, but we can't really do anything fundamental without being able to control it ourselves and to me without that there's not an awful lot that we can do.