Awdur Author	I.Ll. Ffoster,
Teitl erthygl Article title	"Summary and suggestions"
Teitl cylchgrawn	*Cylchgrawn Hanes Cymru / Welsh History Review*
Journal title	*Welsh history review Cylchgrawn hanes Cymru.*
Rhifyn Issue	(1963), p. 61-67.
url	

SUMMARY AND SUGGESTIONS

THE aims of the Colloquium on the Welsh Laws were 'to afford an opportunity for those who are working upon, or are interested in, the Welsh laws to meet each other, to pool and exchange ideas, and to make plans for the future'. Throughout the meetings—in the widely representative membership, in the papers and discussions—there were many encouraging signs that the Welsh lawbooks are beginning to receive 'the attention which is their due'. At the final meeting a discussion was held 'to summarize and bring together the ideas put forward and the suggestions made in the foregoing discussions'. This paper is based on notes made during the Colloquium and represents the substance of the remarks of the opening speaker at that discussion.

In his 'review of studies in the Welsh laws since 1928' Sir Goronwy Edwards has reminded us of the two main tasks which have to be undertaken. There is the essential preliminary of making the texts of the lawbooks available in satisfactory editions. Only then can the historical and comparative study of Welsh law, the study of its central ideas and of its development, be fruitfully accomplished.

The basic weaknesses in the pattern of Aneurin Owen's 'operose task' are now apparent to all. At the same time the greatness of his achievement is widely recognized. His bi-partite hypothesis of 'three independent codes', of regional applicability, and 'anomalous laws' containing 'additional and later matter' in which 'are comprehended legal dicta and decisions, pleadings and elucidatory matter', is no longer tenable. Nevertheless, Owen's concept of 'three distinct forms of laws', in so far as this is taken to mean 'main versions', still offers a convenient starting-point for the general planning of critical editions. An immediate problem, however, is that of the nomenclature to be used when referring to these main 'forms', or 'groups', or 'families'. As Sir Goronwy has pointed out, it is clear that there must be agreement on a system of conventional designations for these families and that 'substantive titles' should at present be avoided. This problem, of course, is closely related to that raised by the tendency to replace Owen's territorial or regional ascription by attribution to a particular author or compiler—thus Venedotian/Iorwerth, Dimetian/Blegywryd, Gwentian/Cyfnerth. Since 'the Welsh lawbooks in their extant form are patchworks made up of varying numbers of distinct parts, each dealing with some topic or aspect of

Welsh law'[1]—that is to say, they are lawyers' textbooks and therefore show the effects of the process of inserting new 'treatments' or tractates into existing, and current, collections of tractates—it is of the highest importance that attributions to a particular author or compiler should not be made unless we have both evidence that the attribution is reasonably approximate to the alleged author's own day and external proof of the historical existence of the alleged author. By applying these tests, Sir Goronwy Edwards has produced strong arguments against the attribution of the so-called Dimetian version to Blegywryd ab Einion. On the other hand, by the same tests, the credentials of Iorwerth ap Madog may be accepted as valid. Although the full extent of the tractates which can be attributed to him remains to be determined, Iorwerth is particularly important since he provides a significant example of the activity of a mid-thirteenth-century Welsh lawyer.

Mr. Dafydd Jenkins has reminded us that, during the thirteenth century, lawbooks—*Rechtsbücher*, perhaps, rather than *Gesetzbücher*[2] —were being compiled in several European countries: e.g. in Sweden (1225),[3] in Germany (1235), Bracton in England (*circa* 1240-56);[4] and Iorwerth ap Madog (*circa* 1245) represents this activity in Wales.

Meanwhile, until the problems connected both with the analysis of the 'families' of lawbooks and with the identification of authors or compilers are satisfactorily solved, there is much to be said in favour of agreeing upon the use of *Ior.*, *Cyfn.*, *Bleg.*, *Col.* as conventional but non-committal designations for the Welsh lawbooks.

What were the sources of these Welsh lawbooks? Is it possible to establish the content and date of their archetype? Both Sir Goronwy Edwards and Dr. Hywel D. Emanuel have indicated the complex nature of these questions. Dr. Emanuel's researches have thrown a penetrating light on the major importance of the Latin versions in this context. He has emphasized how essential it is to establish the date of composition of each version, a task which calls for a sound knowledge of medieval Latin and exact training in the disciplines of palaeography and textual criticism. From Dr. Emanuel's patient

[1] Sir Goronwy Edwards, 'The historical study of the Welsh lawbooks', *Trans. R. Hist. Soc.*, series 5, XII (1962), 143.

[2] A distinction which reminds us of the 'legal' implications of the etymology and semantic development of Welsh *rhaith* and *deddf*.

[3] See Lester B. Orfield, *The Growth of Scandinavian Law* (Philadelphia, 1953), p. 253, with references.

[4] On the 'date' of Bracton, see T. F. T. Plucknett, *Early English Legal Literature* (Cambridge, 1958), pp. 75-7. Chapters II, III and IV of this work are of particular interest to students of the history of medieval Welsh law. Dorothea Oschinsky, 'Medieval treatises on estate management', *Econ. Hist. Rev.*, Series 2, VIII (1955-6), 296-309 is also relevant.

examination of the Latin versions it becomes evident that the question of sources and 'the concept of the archetype' of the Welsh texts cannot be profitably studied until critical editions of the Latin versions have been published.

We are told that the exemplar of Peniarth MS. 28 (Aneurin Owen's *A*) cannot be earlier than the middle of the twelfth century; that B.M. Cotton. MS. Vespasian E xi (*B*) of the mid-thirteenth century, while yielding evidence of oral and written sources, of 'Venedotian' matter and of much older strata, shows traces of the revival of interest in Roman law and suggests the milieu of Bracton's *De legibus regni Angliae et consuetudinibus*; again, that B.M. Harleian MS. 1796 (*C*), *circa* 1260, which on the whole seems to be an amalgam of what is found in *A* and *B*, offers clues to indicate that it was of special interest to Gwynedd; that Rawlinson MS. C 821 (*D*), *circa* 1300, the most ample of the Latin versions, is particularly important not so much because of its links with a 'Venedotian' version but primarily because of its date, its reflection of the influence of *lex ecclesiastica* and its exposition of the trends of legal thought in the thirteenth century; and finally that CCCC MS. 454, *circa* 1400, with its 'antiquarian' aura and its associations with north Wales, is of interest because of its popularity with copyists, some of whom may have been providing material for practising lawyers and for officers of the Crown.

Clearly, then, the Latin versions promise a rich field of inquiry and will reveal new horizons. Dr. Emanuel has drawn a distinction between 'tractates' and 'complete versions'. Presumably, if either were put together in Hywel's time they would be in Welsh. The weight of the argument at our disposal at the moment, however, is in favour of supposing that the 'codifying' of the tractates is not older than the twelfth century; if so, the probability is that Latin would be used. It may be asked in this connexion whether there was a parallel in Wales to the Latin *Quadripartitus* (*circa* 1114)[5] in England. Sir John Lloyd's opinion[6] was that the Latin versions 'appear to be based on older Welsh texts than any which have come down to modern times'. When critical editions of the Latin versions are available it should be possible to examine these questions in detail, largely along the lines which Dr. Emanuel himself has explored in so illuminating a manner. Among other things, a linguistic analysis of the technical vocabulary in the Welsh and Latin versions is much needed. It would be helpful, too, as Mr. Dafydd Jenkins indicated in discussion, if

[5] But see Plucknett, op. cit., pp. 24-31.
[6] *History of Wales*. (two vols. London, 1948), I, 342.

the place of *Cyfn.* in the textual tradition could be established and if its relationship to the Latin versions could be fixed; for example, what in *Cyfn.* represents the 'Welsh' development of earlier material used by the first compiler of the Latin versions?

The lawbooks, as Mr. Jenkins has remarked in his contribution on the legal and comparative aspects of the Welsh laws, provide examples of both obsolete and active rules still intermingling in the thirteenth century, and he has rightly called attention to the need for a fresh examination of technical terms and of ordinary, non-legal words which were acquiring special meanings. This, of course, is essential for the study of the law itself. Mr. Jenkins has also emphasized the importance of comparative studies: not only the comparison of one text of the Welsh laws with another but also the comparison of the Welsh legal system with others, in particular with the medieval systems of western Europe. If it is true that 'we can now begin to study the law', then that study cannot fail to be a comparative one. It should also be diachronic and synchronic in its method. Here it must be observed that no student of Welsh law can afford to leave out of account the stimulating results of the researches into early Irish law undertaken by Thurneysen and Professor D. A. Binchy. The latter has declared that his 'hopes of discovering in the Celtic law-books, and more particularly in the Old Irish tracts, a valuable source of information about primitive Western institutions have been abundantly justified'. Again, 'throughout the whole "Corpus Iuris Hibernici" linguistic and legal archaisms walk hand in hand. . . . Some of them . . . are also reflected in the Welsh law-books. For these, too, have their own archaic stratum, the significance of which has hitherto been largely overlooked by modern Welsh scholars'.[7] The 'survivals of what we may call "common Celtic" legal terminology',[8] the similarities and differences in Irish and Welsh institutions, the 'archaic stratum' in the Welsh lawbooks are all matters for investigation by both philologists and legal historians.

The 'archaism' and the 'modernity' of the lawbooks are closely interrelated.[9] 'Most of the extant material', according to Professor Binchy, 'is ultimately derived from a single law-book compiled towards the middle of the tenth century on the orders of Hywel

[7] D. A. Binchy, 'Linguistic and legal archaisms in the Celtic law-books', *Trans. Philological Soc.*, 1959, p. 15.
[8] Ibid., p. 24.
[9] As Maitland remarked, in his review of Seebohm's *The Tribal System in Wales*, 'At any given moment the law of a nation contains things new and old', *Collected Papers* (Cambridge, 1911), III, 3.

Dda'.[10] To discover the nature of that 'single law-book' will be an exciting inquiry which, among many other things, cannot fail to investigate the significance of, for example, the eighth-century *Surexit* memorandum in the Lichfield Gospels (or the so-called Book of St. Chad) in the development of legal custom and practice in Wales and its clear indication of the existence of a social organization much more stable than seems to have been recognized by many scholars.

The flexibility of the Welsh legal system is revealed in the lawbooks. Dr. Aled Wiliam's proposal for a conspectus and critical edition of the collection of *Damweiniau* or bodies of case-law deserves every encouragement. *Cynghawsedd* (pleadings), too, should be carefully examined both with reference to the Latin texts and with attention to the content of the commentaries of later jurists.

Professor T. Jones Pierce in his account of the historical and social aspects of the Welsh laws has described the effects on the legal system of the disruption of a homogeneous society in the thirteenth century, although—as is shown by the Commission of Inquiry of 1281 and by the Ordinance of 1284—the substance of the Welsh laws was still 'part of the living jurisprudence of the time'. There were attempts to bring greater flexibility into the system and new principles of jurisprudence begin to emerge. The question whether the social upheaval—and its consequent impact on the legal system—is altogether the result of the Norman conquests in Wales or forms part of the general demographic movement in Europe in the eleventh and twelfth centuries must be the concern of historians. So, too, the question of assessing to what extent the Normans applied a jurisdiction useful to their system to an already existing economy. It was made clear in the discussions that later economic changes are reflected in the substance of the more recent lawbooks. Professor Jones Pierce has drawn attention to the importance of Peniarth MS. 166 (for example, it shows the development of *cynnydd* and *goresgyn* as technical terms) and Mr. J. Beverley Smith, in his description of legal procedure in the lordship of Cydweli about 1510, pointed to the lively relevance of B.M. Additional MS. 22356 (Aneurin Owen's *S*). Expert investigation of these particular manuscripts and of the material incorporated in court records, assize rolls, and other cognate documents will greatly increase our knowledge of legal thought and procedure in Wales both before and after 1282.

[10] Op. cit., p. 17.

This brief review of the major themes and ideas which emerged during the talks and discussions at the Colloquium may help to suggest some plans for the future. At the moment one cannot do more than submit in outline a general list of *desiderata* and *agenda*. The more complex work of planning, ordering, and co-ordinating must be undertaken by a body with the authority and resources of the Board of Celtic Studies, whose generous encouragement has been greatly appreciated by all those attending the Colloquium.

(i) The publication of critical editions of the Welsh lawbooks must continue. Sir Goronwy Edwards, on a different occasion, has stated that 'the exemplars that matter for our present purpose are those which were compiled and transcribed while Welsh law was still more or less current, i.e. the exemplars transcribed before about the beginning of the sixteenth century, during the period when the Welsh lawbooks were the plant of a going concern'.[11] It would be wise to leave the decision as to the sequence in which the groups of manuscripts are to be edited to the co-ordinating body. Nevertheless, it may be said without prejudice that at present critical editions of the Latin versions seem to be the most urgent need. After them, perhaps, should come Peniarth MS. 166 and B.M. Additional MS. 22356. The usefulness of a conspectus and analysis of the *Damweiniau* has already been noticed; similarly, a critical examination of the *Deddfgronau* would be welcome. Within this phase of the main programme I should set a fresh investigation of the content of *Cyfn.* as found in Peniarth MS. 37 (Owen's *U*): the text has already been published, with an English translation, by the Rev. A. W. Wade-Evans in *Y Cymmrodor*, XVII (1904), 129-63. Mr. Wade-Evans's admirable example of providing a translation should be followed by all editors because, in Sir Goronwy Edwards's words, 'the study of medieval Welsh law is unlikely to become fully fertile, even for its direct purposes, unless its field is made fully accessible to scholars from other fields, especially from the field of comparative law'.[12]

(ii) The problems and tasks facing linguistic scholars have already been mentioned. The University of Wales's *Dictionary of the Welsh Language* will be of immeasurable value in coping with them. At the same time, there should be intensive study of the whole range of legal terminology in Welsh; this will include comparative etymology, loanword analysis, and semantic studies. It is now nearly fifty years since the appearance of Timothy Lewis's *Glossary of Medieval Welsh*

[11] Op. cit., p. 147.
[12] Ibid., pp. 153–4.

Law. Its replacement by a more authoritative 'glossary' is a matter of urgent priority.

(iii) On the historical side, the discussions at the Colloquium brought into clearer focus some of the fields for further research: e.g. the 'common Celtic' background of the laws and institutions of Wales; the structure and legal nexus of penitential discipline; the cultural relations between Wales and Mercia and Wessex; the study of Roman and Canon Law; the political, social, and intellectual background of the twelfth and thirteenth centuries.

(iv) During the Colloquium Mr. Dafydd Jenkins made the welcome and hopeful statement that 'the lawyer can now say something to the linguist'. There are accordingly strong reasons for carefully considering which themes and topics relating to Welsh legal theory and practice can now be most profitably studied.

(v) Our 'plans for the future', as I have suggested, must be co-ordinated if the vital enterprise of giving the Welsh laws 'the attention which is their due' is to be successfully accomplished. I have also declared my opinion that this planning can most effectively be co-ordinated by the Board of Celtic Studies.

These, then, are some of the suggestions which seem to me to derive from the talks and discussions at the Colloquium. They range over diverse fields of scholarly disciplines and inquiry. Yet no one who becomes involved in the study of the Welsh laws can afford to work in isolation and in ignorance of what is being done in adjacent fields both at home and abroad. It is therefore a matter of first importance that plans should quickly be made for the publication of an annual bulletin or bibliography of works published and of research in progress on early and medieval law and institutions.[13]

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[13] Meanwhile, of course, students of medieval Welsh law will continue to consult with profit the relevant sections of, for example, the *Current Legal Bibliography* and *Annual Legal Bibliography* published by the Harvard Law School Library, and the *Index to Legal Periodicals* and the *Index to Foreign Legal Periodicals* published by the American Association of Law Libraries, New York.