

MEDIEVAL WELSH LAW

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By far the most important sources for the study of medieval Welsh law are the compilations known as the Welsh lawbooks. It may be helpful, therefore, briefly to outline some of their salient characteristics by way of introduction to research on the subject. The lawbooks are preserved in some eighty manuscripts, of which half were written between the mid-thirteenth and early sixteenth centuries, when Welsh law was still, in varying degrees, current in Wales rather than simply the object of antiquarian interest. The language of the majority of the lawbooks is Middle Welsh, but five are in Latin. Following Aneurin Owen in his monumental *Ancient laws and institutes of Wales* (Record Commission, 1841), the vernacular lawbooks are conventionally divided into three families or Redactions, now usually referred to as the Cyfnerth, Iorwerth and Blegywryd Redactions (this last text is largely based on a Latin lawbook, Redaction D). The Redactions consist essentially of collections of tractates, each of which deals with a single subject, such as the royal court, women, suretyship, land law, *galanas* (homicide and blood-feud), theft, arson, and the values of animals. In addition to the tractates, however, the lawbooks contain other miscellaneous material, normally appended as a 'tail' to the Redaction but found independently in some manuscripts.

A strong case can be made for placing the origin of the Cyfnerth Redaction in the late twelfth century; the other lawbooks were first compiled in the mid-thirteenth century and later. Thus – in contrast to the textual transmission of early Irish law – the earliest surviving manuscripts are broadly contemporary with the legal texts they preserve. It is of course likely that there were once earlier Welsh lawbooks than those which survive today. Whether any such putative lawbook had already been assembled in the pre-Norman period is open to doubt, however. Although the prologues of the lawbooks ascribe the reform, and in some cases the writing down, of Welsh law to Hywel Dda (Hywel the Good), the Welsh king who died in 949 or 950 – whence the lawbooks' description of the law as *cyfraith Hywel*, 'the law of Hywel', a term also found in other sources from the late thirteenth century – there are no compelling reasons as yet for pushing the compilation of lawbooks similar to those now extant back beyond the twelfth century.¹

The lawbooks pose relatively few linguistic difficulties. On the other hand, textual difficulties abound. This is because of the differences of substance, order and wording between the various manuscripts, even between those containing texts of the same Redaction. Recent studies have demonstrated that each lawbook is a composite work, compiled from a variety of sources, and that those who wrote individual lawbooks were usually editing as well as copying their texts. An editor might draw on different sources for different parts of his compilation, so that the textual history of, say, the tractate on women in a particular lawbook may differ from that of its tractate on land law. In other

¹ The issues are discussed in T.M. Charles-Edwards, *The Welsh laws* (Cardiff 1989), esp. 68-86 (which, however, favours the likelihood of there having been a model lawbook as early as the tenth century for those now extant). On the prologues, see H. Pryce, 'The prologues to the Welsh lawbooks', *Bull. Board Celtic Studies* 33 (1986) 151-87.

words, the recognition that lawbooks are essentially collections of tractates has led, in turn, to the realisation that textual analysis has to proceed tractate-by-tractate. The textual history of any given lawbook may, then, be very complex. This means that, ideally, each medieval manuscript-lawbook needs to be published separately: the availability of a *Corpus iuris Wallici* would be a valuable aid to producing more soundly-based editions of the texts.

Students of Welsh law are in fact already well-provided with published texts. Owen's *Ancient laws* remains of fundamental importance, above all on account of its comprehensive coverage. Very little of the content of the vernacular law-texts escaped inclusion in this massive work. Its main drawback, though, is that it is organised in such a way as to make it impossible to deduce the total content or the arrangement of individual manuscript-lawbooks. A welcome development during this century has been the publication of editions of a single manuscript (sometimes with variants noted from other MSS).² Owen also printed texts of three of the Latin Redactions, but his work was superseded by Hywel D. Emanuel's fine edition of all five: *The Latin texts of the Welsh laws* (Cardiff 1967). The first of these has recently been translated: Ian F. Fletcher, *Latin Redaction A of the law of Hywel* (Pamffledi Cyfraith Hywel, Aberystwyth, 1986). A number of English translations are also available of the vernacular lawbooks. Apart from those (deemed generally reliable) by Owen in his *Ancient laws*, there are translations of MS V of the Cyfnerth Redaction by Wade-Evans in his *Welsh medieval law* and of Williams' and Powell's edition of *Llyfr Blegywryd* in M. Richards, *The laws of Hywel Dda* (Liverpool 1954). Special mention must be made here of Dafydd Jenkins, *The law of Hywel Dda* (Llandysul 1986). This, by the doyen of Welsh law studies, contains a translation of MS B of the Iorwerth Redaction as well as of passages from other lawbooks, together with an introduction, notes and glossary, and provides an excellent general guide to the subject. Professor Jenkins has also written an introductory book on the laws in Welsh, *Cyfraith Hywel* (Llandysul 1970; 2nd edn 1976).³ Other important general accounts are Morfydd E. Owen's two chapters in G. Bowen (ed.), *Y traddodiad rhyddiaith*

² These may be listed as follows, using the sigla, most of them adopted by Aneurin Owen, commonly used by scholars working on the laws: A.W. Wade-Evans (ed. and tr.), *Welsh medieval law* (Oxford 1909) (V, with lacunae filled from W); T. Lewis (ed.), *The laws of Howel Dda* (London 1912) (Tim); S.J. Williams and J.E. Powell (eds), *Cyfreithiau Hywel Dda yn ôl Llyfr Blegywryd* (Cardiff 1942; 2nd edn 1961) (O, with lacunae filled from Tr and L); M. Richards (ed.), *Cyfreithiau Hywel Dda o Lawysgrif Coleg yr Iesu Rhydychen LVII* (Cardiff 1957; 2nd edn 1990) (J); A.R. William (ed.), *Llyfr Iorwerth* (Cardiff 1960) (B); D. Jenkins (ed.), *Llyfr Colan* (Cardiff 1963) and *Damweiniau Colan* (Aberystwyth 1973) (Col). Attention should also be drawn to the valuable, and as yet unpublished, edition of MS S by Christine James, 'Golygiad o BL Add. 22356 o Gyfraith Hywel ynghyd ag astudiaeth gymharol ohono a Llanstephan 116' (Univ. of Wales PhD thesis, Aberystwyth, 1984), as well as to A.R. William's transcriptions of sections of the composite manuscript, Peniarth 35 (G), namely 'Llyfr Cynghawsedd', *Bull. Board Celtic Studies* 25 (1988) 73-85, and *Llyfr Cynog* (Pamffledi Cyfraith Hywel, Aberystwyth, 1990). Texts and translations of the lawbooks' tractates on women and suretyship are included in the two *Festschriften*, *The Welsh law of women and Lawyers and laymen*, referred to below.

³ See also D. Jenkins, 'The medieval Welsh idea of law', *Tijdschrift voor Rechtsgeschiedenis* 49 (3-4) (1981) 323-48; 'The lawbooks of medieval Wales', in R. Eales and D. Sullivan (eds), *The political context of law. Proceedings of the Seventh British Legal History Conference, Canterbury 1985* (London and Ronceverte 1987) 1-15.

yn yr oesau canol (Llandysul 1974) 196-244, and T.M. Charles-Edwards, *The Welsh laws* (Cardiff 1989).

These introductory works all contain references to further reading which may be consulted by those seeking fuller bibliographical guidance than it is feasible to offer in this brief survey. Turning specifically to studies of the laws, it is probably fair to say that the appearance of Owen's *Ancient laws* marked a crucial turning-point. True, the law-texts were scrutinised by the sixteenth-century Protestant humanist, William Salesbury, who deployed some of their vocabulary in his translation of the New Testament and claimed to find in them evidence justifying the marriage of the clergy (see Dafydd Ifan's, *William Salesbury and the Welsh laws* (Pamffledi Cyfraith Hywel, Aberystwyth 1980)). The antiquary William Maurice made a pioneering compilation of legal texts in his *Deddfgrawn* (1660-3), while the first printed edition of the laws – based on MS B of the Iorwerth Redaction – appeared in 1730 with the publication of W. Wotton and M. Williams, *Cyfeithjeu Hywel Dda . . . seu leges Wallicae*. But it was Aneurin Owen who made the laws truly accessible to study by scholars in Wales and outside. His work was used, for example, by Ferdinand Walter in his *Das alte Wales* (Bonn 1859), as well as by F.W. Maitland in his still valuable essay of 1881, 'The Laws of Wales – the kindred and the blood feud' (repr. in H.A.L. Fisher (ed.), *Collected papers* (Cambridge 1911) 202-29). Friedrich Engels drew on Owen in his (in parts inaccurate) account of Welsh marriage customs in *The origin of the family, private property and the state* (1884; Penguin Classics edition 1985) 166-8. In the early decades of the twentieth century T.P. Ellis published a number of studies of the laws, including *Welsh tribal law and custom* (Oxford 1926), which, while more wide-ranging than anything that has since appeared, suffers from a tendency to treat all the law-texts as if they formed a homogeneous whole, thereby ignoring evidence for developments and divergences in legal doctrine. There is helpful discussion of the work of Ellis and other scholars up to the 1960s by H.D. Emanuel, 'Studies in Welsh laws', in E. Davis (ed.), *Celtic studies in Wales* (Cardiff 1963) 71-100. Narrower in chronological scope but also useful is J.G. Edwards, 'Studies in the Welsh Laws since 1928', *Welsh History Review: Special number, 1963: The Welsh laws* 1-17.

Edwards' essay appeared in the published proceedings of the first Colloquium on Medieval Welsh Law, held in 1962. As a result of this colloquium the University of Wales Board of Celtic Studies established a Welsh Law Sub-committee to promote and co-ordinate further research. The sub-committee has provided an important focus for subsequent work on the subject. Apart from organising colloquia every four or five years, it has also, since 1970, held several series of seminars, meeting twice or three times a year, and been responsible for a number of publications. The seminars are currently being organised by Morfydd Owen (who took the initiative in establishing them originally), and are taking as their theme the lawbooks' tractate on the royal court and royal authority in the laws more generally. Earlier themes were the tractates on women and on suretyship, the fruits of which were published in two *Festschriften*, namely D. Jenkins and Morfydd E. Owen (eds), *The Welsh law of women. Studies presented to Professor Daniel A. Binchy on his eightieth birthday, 3 June 1980* (Cardiff 1980), and T.M. Charles-Edwards, Morfydd E. Owen and D.B. Walters (eds), *Lawyers and laymen. Studies in the history of law presented to Professor Dafydd Jenkins, Gŵyl Ddewi 1986* (Cardiff 1986). These combine editions of texts and textual studies with essays on topics of legal history.

Another series of seminars concentrated on the manuscripts containing the lawbooks. In

this connection reference should be made to the important descriptions of individual manuscripts by Daniel Huws⁴, as well as to his excellent introductory pamphlet, *The medieval codex with reference to the Welsh law books* (Pamffledi Cyfraith Hywel, Aberystwyth 1980; repr. with corrections 1982). This last work belongs to a series of pamphlets published by the Welsh Law Sub-committee, several of which have already been mentioned above.

A distinctive feature of the colloquia and seminars has been that they have brought together scholars working in different disciplines: lawyers and legal historians, specialists in medieval Welsh literature and language, archivists, and medieval historians, to name the most obvious categories. This means that, while recent work has been informed by a growing recognition of the need to confront the textual complexities presented by the lawbooks, it has nevertheless been marked by a diversity of interests and approaches. For example, historians have looked at the legal evidence with an eye to what it reveals about the political, social and ecclesiastical development of medieval Wales, just as J.G. Edwards and T. Jones Pierce did earlier in the century.⁵ The laws have also been examined for the light they shed on medieval Welsh literature and as genres of writing in their own right.⁶ Nor have comparative studies been neglected. These have focussed largely on comparisons between Welsh and Irish law,⁷ but D.B. Walters has placed the

4 'Leges Howelda at Canterbury', *National Library of Wales Journal* 19 (1975-6) 340-4; 20 (1977-8) 95; 'The manuscripts', in *Lawyers and laymen* 119-36; *Peniarth 28: Darluniau o lyfr cyfraith Hywel Dda* Illustrations from a Welsh lawbook (National Library of Wales 1988); *Cyfreithiau Hywel Dda o Lawysgrif Coleg yr Iesu Rhydychen LVII* (2nd edn 1990) ix-xiii.

5 E.g., J.G. Edwards, 'Hywel Dda and the Welsh lawbooks', repr. in D. Jenkins (ed.), *Celtic law papers* (Brussels 1973) 135-60; 'The royal household and the Welsh lawbooks', *Trans. Roy. Hist. Soc.* 5th ser., 13 (1963) 163-76; T. Jones Pierce, 'Einion ap Ynyr (Anian II) bishop of St Asaph', *Flintshire Hist. Soc. Publications* 17 (1957) 16-33; J.B. Smith (ed.), *Medieval Welsh society. Selected essays by T. Jones Pierce* (Cardiff 1972); R.R. Davies, 'The twilight of Welsh law, 1284-1536', *History* 51 (1966) 143-64; 'The survival of the bloodfeud in medieval Wales', *ibid.* 54 (1969) 338-57; 'The status of women and the practice of marriage in late-medieval Wales', in *The Welsh law of women* 93-114; 'Law and national identity in thirteenth-century Wales', in *idem et al.* (eds), *Welsh society and nationhood* (Cardiff 1984) 51-69; 'The administration of law in medieval Wales . . .', in *Lawyers and laymen* 258-73; L.I.B. Smith, 'The gage and the land market in late medieval Wales', *Economic Hist. Rev.* 2nd ser., 29 (1976) 537-50; 'The gravamina of the community of Gwynedd against Llywelyn ap Gruffudd', *Bull. Board Celtic Studies* 31 (1984) 158-76; "'Cannwyll disbwyll a dosbarth": gwŷr cyfraith Ceredigion yn yr oesoedd canol diweddar', *Ceredigion* 10 (3) (1986) 229-53; J.B. Smith, 'Dynastic succession in medieval Wales', *Bull. Board Celtic Studies* 33 (1986) 199-232; D. Stephenson, *Thirteenth-century Welsh law courts* (Pamffledi Cyfraith Hywel, Aberystwyth 1980); *The Governance of Gwynedd* (Cardiff 1984); H. Pryce, 'Ecclesiastical sanctuary in thirteenth-century Welsh law', *J. Legal History* 5 (3) (1984) 1-13; *Native law and the church in medieval Wales* (Oxford forthcoming).

6 E.g., D. Jenkins, 'Pencerdd a bardd teilu', *Ysgrifau Beirniadol* 14 (1988) 19-46, discusses the evidence of the lawbooks relating to poets, while T.M. Charles-Edwards explores one genre of legal writing in 'Cynghawsedd: counting and pleading in medieval Welsh law', *Bull. Board Celtic Studies* 33 (1986) 188-98.

7 T.M. Charles-Edwards deploys his expertise in early Irish law in 'The seven bishop-houses of Dyfed', *Bull. Board Celtic Studies* 24 (1970-2) 247-62; 'Nau kynywedi teithiauc', in *The Welsh law of women* 23-39; and especially in *Early Irish and Welsh kinship* (Oxford forthcoming). See also R.C. Stacey, 'Lawbooks and legal enforcement in medieval Ireland and Wales' (Yale

former in a much broader legal context in *The comparative legal method. Marriage, divorce and the spouses' property rights in early medieval European law and cyfraith Hywel* (Pamffledi Cyfraith Hywel, Aberystwyth 1982) and in his contributions to *The Welsh law of women* and *Lawyers and laymen*, as well as in seminar papers on the influence of Roman law on *cyfraith Hywel*. Finally, analyses of the values assigned to trees and animals in the laws have yielded valuable results.⁸

The variety of recent work in turn reflects the fact that the study of Welsh law, though much advanced over the last three decades, remains a fertile area for debate and investigation. There is certainly no shortage of projects for future research (the principal shortage is rather one of researchers, as the number of scholars currently working on the laws is small and all have other academic interests and commitments). We are still far from having satisfactory answers to some of the most fundamental questions raised by the lawbooks, including the reasons for their composition and the relationship of their rules to practice. Further progress will no doubt depend in large measure on continued analysis of the structure and inter-relationship of the legal texts. This would be helped by the publication of more manuscript-lawbooks, as suggested above; more specifically, there is still room for detailed examination of the orthography and language of the texts – including those in Latin, which have received less attention than the vernacular lawbooks of late. But such work, while of intrinsic value, should also be seen as a means to an end, namely the elucidation of the development of native customary law in medieval Welsh society. This is the objective of the current programme of seminars on the laws of court and royal authority, which has the potential of achieving a productive combination of textual, literary and historical studies. For it remains the case that the best chance of increasing our understanding of Welsh law is to attack it on several fronts simultaneously. In other words, we need to be both text-oriented and problem- or theme-oriented in our approach.

University PhD thesis 1986), and H. Pryce, 'Early Irish canons and medieval Welsh law', *Peritia* 5 (1986) 107-27.

⁸ W. Linnard, *Trees in the law of Hywel* (Pamffledi Cyfraith Hywel, Aberystwyth 1979); J.G.T. Sheringham, 'Bullocks with horns as long as their ears', *Bull. Board Celtic Studies* 29 (1982) 691-708; T. Charles-Edwards and F. Kelly (eds), *Bechbretha. An Old Irish law-tract on bee-keeping* (Dublin 1983), App. 7 ('Bees in the Welsh laws').

EARLY MODERN IRISH MEDICAL WRITINGS

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The bulk of Early Modern Irish medical writings is contained in over 100 manuscripts dating from the 15th to the 17th centuries which are almost entirely medical in content; medical texts also occur in a relatively small number of manuscripts of the same period which are not predominantly medical. A number of 18th and 19th-century transcripts of antiquarian inspiration are regarded as being peripheral to the corpus proper. A complete list of the contents of this body of literature has not been compiled and hence it is not practicable to describe it precisely in terms of the numbers of different texts – and the numbers of copies of these – which it comprises; however, in order to give some idea of the range of material involved it may be worth noting that, to date, more than 80 distinct treatises have been identified; many texts and hundreds of extracts await identification.

The medical texts are for the most part translations or adaptations of Latin treatises which expound the Graeco-Arabic learning taught in European medical schools from the 12th to the 17th centuries, and all the varied aspects of that learning are represented in them. Compendia of general medicine and pathological treatises which deal in standard Arabic arrangement with diseases of the body *a capite usque ad pedes* are among the lengthiest and most frequently copied works; other important texts treat of anatomy and physiology, of diagnosis and prognosis, of diet and regimen, of surgery, of obstetrics and of pharmacology. The nature of medieval medicine required that its practitioners be trained not only in these disciplines but also in philosophy, cosmology and astronomy, and these latter sciences are well represented too in our tracts.

In addition to translations or adaptations from Latin the manuscripts contain indigenous compilations which draw on Irish versions of Latin texts rather than directly on the Latin sources themselves. An examination of the tract contained in King's Inns library MS 15, ff. 77-127 for instance, shows that its compiler, who was possibly Maeleachlainn (mac Illainn) Mac an Leagha, the main scribe of that manuscript in 1512, drew on no less than four different Irish treatises in composing the new work. Excellent copies of the principal sources used survive, enabling us to analyse in considerable detail the composition of the new compendium. Such highly wrought and independent compilations are eloquent testimony to the complete assimilation by native medical men of contemporary European scholastic medicine, as indeed are the abridgements of and excerpts from translations of canonical works which abound in our manuscripts.

The medical texts are invariably written in Early Modern Irish and deliberate archaisms of syntax or vocabulary are found only in a relatively small number of tracts. A few treatises wholly in Latin survive in the Irish manuscripts and Latin citations are an integral part of most vernacular medical texts. An Irish translation of a Latin 14th-century alphabetical list of medical synonyms, in which French and English equivalents for Latin words had been introduced by the terms *Gallice* and *Anglice* respectively, survives in two 16th-century manuscripts, viz. Corpus Christi College Oxford MS 129, ff. 21v1-33v, 35r1-36v, 38r1-18 and Trinity College Dublin MS 1334, pp. 37-44b21. Wild garlic, for instance, is described as follows: *Scoredeon allium agreste calidum 7 siccum in .3.0 gradu Gallice ail sauage Anglice ualde garlec 7 bidh a baladh 7 a blath cosmail risin ngairleoig*