Awdur
Author

by Wynne I. Samuel.

Teitl erthygl
Article title

"The ancient laws of Dyfed"

Teitl cylchgrawn

The Pembrokeshire historian : journal of the Pembrokeshire Local History Society.

Journal title

The Pembrokeshire historian journal of the Pembrokeshire Local History Society.

Rhifyn
Issue

No. 3 (1971), p. 42-52.

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THE ANCIENT LAWS OF DYFED

by

WYNNE I. SAMUEL, LL.B.

When a reference is made to the Ancient Laws of Wales, what is the precise meaning of the term ? Let me quote from *Wales Through the Ages,* Vol. I, p. 67, the words of Professor J. Goronwy Edwards in his contribution to the volume on *The Laws of Hywel Dda*:

> " By ' The Laws ' we mean, in this case, the Welsh laws which governed Wales in the Middle Ages, but which eventually—say by about the middle of the sixteenth century—were superseded by English law. Now the laws of a people are very important for the historian because on the one hand they reflect that people's way of life, and because on the other hand they also shape it; of that way of life, the laws are at once a mirror and a mould. The Welsh laws current in Wales during the Middle Ages have precisely that two-fold importance for the Welsh historian."

How do we know of the existence of these Laws and of their content?

Our main source of information comes from a series of some seventy manuscript law books, which still survive. Most of these are written in Welsh, a few in Latin.

It is worth recording that some thirty-five of these Welsh law books are of medieval date, say between 1200 or earlier and 1500. Dr. Stephen J. Williams, in his introduction to *Llyfr Blegywryd,* expresses the opinion that the Laws were in written existence in the middle of the tenth century. The explanation, probably, for the existence of Latin versions is that the original Welsh versions were translated into Latin because Latin was the recognised international language of the period and that the Latin versions were used as a means of international communication with other countries. Tradition has it that when Welsh Law was codified, 940—942 A.D. (some scholars attribute 945 as the correct date), Hywel Dda, the king of all Wales, took a copy of the codified Welsh Laws to the Pope in Rome to receive the Pope's blessing. This copy might well have been a Latin translation.

It is significant indeed that Welsh Law was enshrined in the Welsh language in the middle of the tenth century—a unique legal event during a period when Latin was the *lingua franca* of scholarship and law throughout the greater part of Europe. It is acknowledged

that legal language is the most exacting form of language, and is even more difficult to interpret than some *vers libre* contributions to modern poetry! On the matter of legal language, let me quote from the *History of English Law,* Vol. I, by Sir F. Pollock and F. W. Maitland:

"Legal language is the most difficult form of language. It is difficult not only because of its form, and its use of specialised terms, but because of its precision. The development of language proceeds from the spoken word, to the written word, to literature and poetry, and only in its most developed form can it embrace legal terminology."

It follows that by the tenth century the Welsh language had developed to such a high cultured and civilised degree that it could embrace the whole range of technical legal terms.

This was not so with the English language. The two main sources of the English legal system are the *Dialogus de Scaccario,* attributed to Glanvil, who was Chief Justiciar to Henry II (1154-1189), and *Tractatus de legibus et consuetinibus Anglise,* attributed to Bracton, who was one of the King's Justices (1248-1268). These important and original sources of English Law are not written in English, but in Latin. Indeed, nearly all the known sources of English Law are written in Latin, and some in Norman-French. All the early, medieval, and later Statutes of England, and all the Royal Charters are mostly in Latin, and some in Norman-French. If the test of legal language defined by Pollock and Maitland is to be accepted, it is obvious that for at least 600 years the development and elasticity of the Welsh language was far in advance of English which, far too often, was considered as the language of the plebs, and not the language of scholarship or law. It is not too unkind to remind ourselves that the practice of transcribing English Statute Law into English was popularised by the Welsh Tudors, particularly Henry VIII. It is even more ironical to remember that it was a Statute of Henry VIII, written in English (and not in Latin) which proscribed the Welsh language for the first time in Wales (Act of Union, England and Wales, 1536).

CODIFICATION

Hywel Dda, originally the King of Deheubarth (South-west Wales) became the King of all Wales, and in this capacity, he summoned to the White House on the Tâf in Dyfed (literally Hendy Gwyn-ar-Dáf, now known as Whitland), an assembly of about 1,000 people, representing the whole of Wales, with six representatives from each *cwmwd* (commote).

This large assembly, according to the preamble in the Code, "with mutual counsel and deliberation examined the ancient laws some of which they suffered to continue unaltered, some they

amended and others they abrogated entirely". (*Welsh Tribal Law and Custom in the Middle Ages,* by T. P. Ellis, Vol. I, p. 6).

The codification of Welsh Law meant the reproduction of custom and rule existing at the time in different parts of Wales. " They became the fixed authority, the Law of the Book, to which appeal could be made in cases of dispute . . ." (*ibid.* Ellis, Vol. I, p. 7). It would appear that Welsh Law was the first to be codified in Europe, after the fall of the Roman Empire, although, primarily under the influence of the Catholic Church, codification was part of a general movement throughout Europe.

It may be recalled that the law of every country in Europe has been codified, except English Law. To this day, English Law has not been codified.

The three main sources on the codification of Welsh Law are the Venedotian, or the Code of Gwynedd, the Gwentian Code—for Gwent, mainly Monmouthshire, and the Demetian Code, i.e. the Code of Dyfed. It is interesting to note that the three Codes denote that Whitland was the meeting place of the Assembly, and that Whitland was in Dyfed. Nowadays Whitland is in Carmarthenshire. Under the Act of Union, 1536, which completed the division of Wales into counties on the English pattern, the County of Pembroke was created. Under this Act, Whitland still remained a part of Dyfed or Pembrokeshire, and it was not until 1861 that Whitland became a part of Carmarthenshire. It is amusing to note that Whitland is a member of the Pembrokeshire Rugby Union League, and perhaps, unknown to them, the rugby enthusiasts have re-united Pembrokeshire and a substantial part of the old Kingdom of Dyfed!

The actual work of codification was entrusted to a man called Blegywryd and 12 laics. Blegywryd was a skilled lawyer, but he was not a priest. He was " learned in the law " and apparently he was a teacher of law to the family and Court of Hywel.

> " Their function was to form (codify) the laws, to guard against anything opposed to the law of the Church, and to keep it in line, generally, with European Law " (*ibid.* Ellis, Vol. I, p 6).

It is not my function to deal with the three Codes, or to analyse their differences. This work has already been subjected to an immense amount of research and analysis, particularly from a literary standpoint. My task is to refer only and briefly to the Demetian Code, or the Code of Dyfed. As a guide, an excellent book is available, called *Cyfreithiau Hywel Dda, yn ôl Llyfr Blegywryd, Dull Dyfed* (" The Laws of Hywel Dda, according to the Book of Blegywryd, in the pattern of Dyfed "). There are joint authors to this book, Dr. Stephen J. Williams and (be it noted) J. Enoch Powell. He is well known as a classical scholar, but he is not so well known as an Englishman

who learnt Welsh to such a degree that he was able to collaborate with an eminent Welsh scholar in the production of a standard reference book on a difficult Welsh subject. The book was published in 1961.

GENERAL PRINCIPLES AND CONTENTS

It is now my task to try and analyse briefly the principles of law and to pin-point some of the contents in the Code, particularly as they apply to Dyfed. My sources are numerous, but I must rely mainly on the Book of Blegywryd and the two volumes of T. P. Ellis's *Welsh Tribal Law and Custom in the Middle Ages.*

Custom in the Middle Ages

The Laws of Hywel Dda were not the laws of a King, or of the Crown, or of a privileged class like the English or Norman Barons, or the laws of a state. They were social laws. What is meant by the term " social law "?

Although the Codes were published with the authority of a King, they did not emanate from the King.

The Welsh title to the Codes is perhaps significant. In English there is only word—Law. But in Welsh, there are two words, *deddf* and *cyfraith*. When the word *deddf* is used, it generally means a law belonging to one person, or one state, e.g. the law of nature, the law of God, the law of the King (King's Peace), or of a State. *Rhaith* is an old Welsh word meaning " law," but when there is a pre-fix *cyf,* the word becomes infinitely richer and has a wider meaning. It denotes that there is an " inter-relationship " between two or more persons or things (examples, *amod — cyfamod; undeb — cyfundeb; iawn — cyfiawn,* etc.). And so, when reference is made to the Laws of Hywel Dda, the Welsh word *deddf* is not used, but *cyfraith,* denoting that the laws have an " inter-relationship " with all the people of the nation. This is only one descriptive indication that the Laws of Hywel Dda were social laws. Incidentally, it may be recalled that the same word *cyfraith* is used in Welsh to translate the Law of Moses—which was also a social law.

Of greater importance is the distinction between English Law, particularly Criminal Law, and Welsh Law. The primary function of English criminal law is to protect the Crown or the State. The primary function of Welsh Law was to protect the person or society.

English criminal law is simply defined as " a crime committed against the State". Hence prosecutions emanate from the Crown. *Rex* (or *Regina*) v. Jones: *R.* v. Smith. It is the Crown that prosecutes and it is the Crown that imposes punishment. But the person who has

suffered loss, e.g. the larceny of £100 from him, is no better off, although the offender may be sentenced to six months imprisonment. There are exceptions, like restitution, which must be specifically ordered.

In Welsh Law, the position was entirely different. If A. stole £100 from B., A. would have to repay the £100 to B., as the function of Welsh Law was to protect the person. This is the reason why the Welsh Code contains such long and dreary lists of payments to persons who had suffered loss, e.g. the loss of an arm or an eye. The lists are not dissimilar to those found in the XII Tables of Roman Law.

In the realm of interpretation, there was a distinct difference between the Code of Dyfed and English Law. The golden rule in the interpretation and application of English Law is precedent, and the application of precedent can sometimes cause an injustice.

The golden rule in the Code of Dyfed, was not precedent, but natural reason. The application of reason was a strong element in Welsh Law even to the extent of enquiring whether two opposing parties had sought to settle their differences (1) by voluntary agreement, (2) if that failed then agreement by a compromise. Only after the failure of (1) and (2) could the parties call upon the judgment of the court.

There are clear indications that Welsh Law and the Code of Dyfed were not only reasonable but, on the whole, they were kindly, compassionate, and avoided the harshness and the barbarity which was so common to English Law of the period.

Welsh Law knew nothing of the barbarous methods of English Law known as Trial by Ordeal, or of *peine forte et dure,* or Trial by Battle.

Trial by Ordeal required an accused person to plunge his arm into boiling water, or carry molten metal in his hand, or walk barefooted over red-hot irons. If after seven days his wounds festered, he was found guilty of the offence, but if within the same time the wounds healed, he " came clean from the ordeal " and was not guilty. This form of trial survived until the fourteenth century. (*English Legal History,* Potter, p. 108-109).

The *peine forte et dure* was a form of torture which was legalised by Edward I. It meant " Justice, take him back to prison and load him with as heavy a weight of iron as he can bear, etc." (*ibid.* Potter, p. 114-115).

The English legal procedure of placing an offender in the stocks in a public square, to be the victim of public jeers, ridicule and contempt, was also unknown to Welsh Law. The hanging of children was never countenanced at any period in Welsh Law.

It is one of the outstanding attributes of old Welsh Law that it was so delightfully free of the barbaric concepts of " justice ".

OWNERSHIP OF LAND—THE CONCEPT OF KINGSHIP

Perhaps the most rigid test of law is to be found in the legal concept of ownership, particularly of land. In this respect, Welsh Law differed fundamentally from English Law, where the feudal concept was predominant.

While an accurate description of feudalism is difficult, it is suggested that it may be described as "a system of government which includes the administration of justice, based upon landholding".

William the Conqueror fused the Saxon and Norman systems of feudalism. He insisted that "all land should be held of the King". This was in keeping with the feudal theory that all land should be held of an overlord, and in the last resort of the King.

William required all tenants, whether holding of him directly or indirectly, to take an oath of fealty to him at Sarum, in 1086.

The introduction of this form of feudalism brought with it the recognition of the right of the lord to hold court for his tenants. This seignorial justice was regarded as a proprietary right, and later inspired some of the most significant clauses of Magna Carta, and resolved into a struggle between King and the manorial lords.

In principle, English Land Law decreed that the King was the font of all land ownership.

This is an important concept not only in English Land Law, but in the pattern of English society, with its county tradition, social classes and social distinctions.

It was a concept entirely rejected by Welsh Law, and the difference is emphasised by the Act of Union, in its severity and in its determination to stamp out Welsh Law in Wales.

The English feudal system, as part of law, was unknown to old Welsh Law.

In Welsh Law, the King was not the font of all ownership. The King was in practice the ultimate administrator of land, but not the arbitrary owner.

In English Law, a grant of land made by the King could be recalled, but in Welsh Law, once a grant had been made by the King it could never be recalled.

In Welsh Law, the right of occupation of land was inviolable. The Norman-French concept was that the King could deal with the land held by the occupants, whether free or unfree, as he willed.

In Welsh Law the King could make no grant of property which was not his own, and there was no recognised formality to be observed in the conveyance of land.

In Welsh Law, the dominant factor in ownership was governed by an oral form or tradition. It was sufficient for a person to make

an oral grant of land to another person, without any rigid formality. It was sufficient for him to say, e.g. that a farm or a house had been in his possession or in the possession of his family for 20 years or for generations.

That was not English Law. Ownership could only be proved by a strict formality and/or the production of a conveyance or deed.

It follows that the English system of tenure was essentially different from that of the Welsh. England possessed a more or less complete manorial system in which the majority of cultivators were unfree; they were serfs tied to the land. The triumph of feudal ideas in England was complete. Under Welsh law, the concept of the serf being tied to the land was unknown. The rebellion of Wat Tyler to free the serfs from the land was peculiar to England alone; in Wales, the problem did not exist. The feudal system of tenure was also unknown to Welsh Law, although it must be admitted that the concept of feudalism did appeal to some Welsh princes, and the manorial system was introduced by the Normans and practised by the Marcher Lords.

But until the Act of Union, 1536, the English feudal system of land tenure was not generally practised throughout the whole of Wales. The Act of Union not only destroyed perhaps the remnant of Welsh Law, it also gave the English system of land tenure legal sanction in Wales.

MORTGAGES

In English Law, mortgages were always regarded as a lucrative method of earning interest to the lender of money. Immediately the mortgagee defaulted, the mortgagor would foreclose, and the property would be his.

The severity of English Law on mortgages was later mitigated through the influence of Equity. But in Welsh Law, a mortgage was a loan which never carried interest. The security would be a loan of up to two-thirds of the property, but Welsh Law would lean backwards to prevent the land falling into the hands of the morgagor.

LEASEHOLD

It is a historical fact that, over a long period of years, here has been strenuous opposition in Wales to the leasehold system of land tenure. There may be historical reasons for this opposition.

In the Code of Dyfed of the Laws of Hywel Dda, the leasehold system of land tenure found in English Law did not exist. On the other hand, this form of leasehold tenure has for centuries been an integral part of English Land Law.

It stems from the root of English feudal history. When a lessee agrees with the landlord to lease a piece of land over a term of years, the payment of yearly rent is in fact a recognition that fealty is due to the overlord. In modern times, instead of service, the fealty is commuted into a sum of money. This obeisance to the overlord runs through English social history. But the unfairness of the leasehold system is that upon the expiration of the term of years, not only the land, but all that is built on the land reverts to the landlord, without any compensation to the lessee. It must be particularly noticed that this system never existed in the Laws of Hywel Dda or in Dyfed.

WOMEN

In old Welsh Law, and in the Code of Dyfed, all women had equal rights of ownership with men. Women were not regarded as chattels.

A woman was entitled to receive gifts of land. She could own land or chattels, whether married or unmarried. Land held in common was divided equally with all daughters. In chattels or moveables, daughters held with sons—called *gwaddol*. Gavelkind only applied to land.

If a woman died, gavelkind was not restricted to her sons, property descended to her children (sons—daughters). A widow was entitled to one-third of her husband's estate (despite gavelkind), but if she remarried it would return to her sons.

MARRIAGE

Old Welsh Law in Dyfed does not refer to the necessity of a religious ceremony. It does not exclude a religious ceremony, but it is not an essential.

Welsh Law did not require a religious ceremonial as it regarded marriage as a civil contract. Nothing is said about "marriages being made in heaven".

There is nothing comparable in Welsh Law to the Common Prayer Book citation of the marriage ceremony, which incidentally has little Biblical validity, and which proclaims that the essence of marriage is the procreation of children.

WEDDING CEREMONY

To conform with the requirements of Welsh Law, the question asked was, not whether the marriage was to be sanctified by the Church, but whether

1. the marriage was " rodd o cenedl "—gift of a kindred marked by " bestowing " the bride on the bridegroom by her relatives —the most common form, or
2. the marriage was " lladrut," i.e. secretive, without a gift of kindred.

Welsh law required to know whether marriage was by consent of relatives or not. In both cases a religious ceremony might follow, but the law never inquired whether the marriage was to be sanctified by the Church. It was clear that the bestowal of a woman in marriage was the affair of (a) the father, (b) the brother, or (c) the nearest relative in the fourth degree.

This theme runs through the Mabinogion tales—*Culhwch and Olwen, Branwen daughter of Llyr, and Matholwch.* In the story of *Branwen,* Efnysien, who was only a half-brother to Branwen, becomes enraged because he was not consulted before the marriage. The point of the story is whether a half-brother should have been consulted. The answer is " No," and Efnysien becomes enraged, and the subsequent tragedy of the story turns on the acts of revenge carried out by Efnysien, to Branwen's sorrow.

The marriage laws again show that a daughter had the right to choose her own husband. Welsh Law stated clearly that " every woman is to go the way she willeth freely ".

DIVORCE

Old Welsh Law has a very modern ring in its treatment of divorce proceedings.

Under Welsh Law, ordinarily marriage was for life, but not necessarily so.

1. Marriage could be dissolved at any time by mutual consent of the parties, and in certain circumstances by the option of either party.
2. The only distinction drawn by Welsh Law was whether divorce took place before seven years of marriage or after.
3. If before seven years, conditions were rather stringent but were relaxed after seven years.
4. If there was a separation, the wife was entitled to take with her all her property, but if she was guilty of adultery she would lose her possessions, except land, to her husband.
5. If she left her husband without fault or without his consent, she would lose all her moveable possessions if before seven years. After seven years, she took everything with her.
6. If the husband left his wife after seven years without fault or her consent, the wife was entitled to half of all his possessions. This would be construed as her life's maintenance, as Welsh Law would

estimate that after being married for seven years, her value on the marriage market would deteriorate, and prospects of re-marriage would become remote.

7. If the husband died within seven years of marriage his widow was entitled to a share of all his possessions equally with all his sons.
8. A wife could separate from her husband if he was impotent, a leper, or had foetid breath.
9. If the husband introduced another woman into the house, his wife was entitled to an immediate separation, as conduct of this character was considered to be the greatest dishonour a husband could bring upon his wife. If the wife killed his paramour, she would not be guilty of murder.
10. Once separated, there were other duties and obligations, but on re-marriage, all ties between husband and wife came to an end.
11. If she was again separated, or her second husband died, she would have no claims against her first husband.

By comparison, in English Law, if the wife was guilty of adultery, her ears and nose would be cut off. If she was caught in adultery, she could be killed immediately, but if the husband was guilty of adultery, the wife had no redress.

CONCLUSION

With some reluctance, I have omitted any reference to Welsh Law on Contract and Tort, or to the relation between the Law and the Church, or to many other facets of law. It would also be an object lesson for some modern administrators to know, and to study, Welsh Law in relation to public health, and to learn about the particular care the Welsh people applied to personal hygiene and general cleanliness.

It may astonish some to know that the hateful word "foreigner," or its Welsh equivalent, is not found in the Code of Dyfed—or any other Welsh Code. The word used in the Code is *dieithr* (stranger), and Welsh Law insisted that the stranger was to be accorded the same welcome and the same respect as any member of the community, and that he was allowed to share the same table as other members of the family.

In his *History of Wales* (Vol. I, p. 339), Sir J. E. Lloyd writes : "The laws of the Welsh were not the creation of any legislator, owing their origin to the royal fiat and capable of being altered by the same authority. They were the ancient customs of the race, handed on in each tribe, as a priceless heirloom from generation to generation . . . having the sanction of immemorial antiquity," and let Sir J. E. Lloyd speak again (p. 342). "The Dimetian (Dyfed) Code seems to

have best preserved, both in substance and in arrangement, the original Law of Hywel".

Even in terms of civilised law, the people of Dyfed, the people of Pembrokeshire and of Wales, have a rich and wonderful heritage.